

RESOLUTION NO. 2015-008

**RESOLUTION OF THE BORDENTOWN SEWERAGE
AUTHORITY, IN THE COUNTY OF BURLINGTON, NEW
JERSEY AUTHORIZING THE AUTHORITY'S EXECUTIVE
DIRECTOR TO EXECUTE AN INTERMUNICIPAL SLUDGE
MANAGEMENT AGREEMENT WITH THE COUNTY OF
BURLINGTON**

WHEREAS, the County of Burlington ("County") is a designated solid waste management district and is responsible for the development, adoption, and implementation of the Burlington County District Solid Waste Management Plan;

WHEREAS, the County provides sewerage sludge processing and co-composting services at its facility located in Florence and Mansfield Townships to wastewater treatment plants within the County;

WHEREAS, the Bordentown Sewerage Authority ("Authority") is the owner and operator of a wastewater treatment plant that produces de-watered sludge; and

WHEREAS, the Authority wishes through this resolution to memorialize its review and acceptance of an Intermunicipal Sludge Management Agreement with the County and to further authorize the Authority's Executive Director to execute the Agreement.

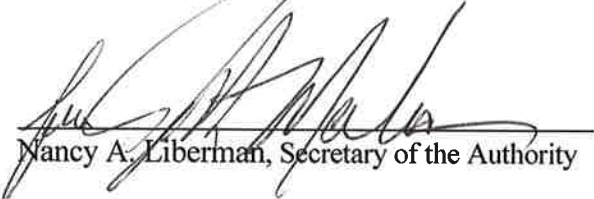
**NOW, THEREFORE, BE IT RESOLVED BY THE BORDENTOWN SEWERAGE
AUTHORITY, IN THE COUNTY OF BURLINGTON, NEW JERSEY, THAT:**

1. The Intermunicipal Sludge Management Agreement submitted to the Authority by the County of Burlington (attached hereto as Exhibit "A") is hereby approved and accepted.

2. The Authority hereby authorizes its Executive Director to execute the Agreement and to further submit the necessary documentation to the County of Burlington needed to implement said Agreement.

Attest:
Adopted this 20th day of January, 2015

BORDENTOWN SEWERAGE AUTHORITY



Nancy A. Liberman, Secretary of the Authority

By: 

RONALD MARINO, Chairman

Exhibit "A"

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THIS INTERMUNICIPAL SLUDGE MANAGEMENT AGREEMENT is made and dated January 1, 2015, by and between the **COUNTY OF BURLINGTON, NEW JERSEY** (the "County"), and the **BORDENTOWN SEWERAGE AUTHORITY, IN THE COUNTY OF BURLINGTON, NEW JERSEY** (the "Generator").

RECITALS

WHEREAS, the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. ("Solid Waste Management Act"), provides a comprehensive legislative, regulatory and administrative framework for the management and disposal of municipal solid waste and sludge in the State of New Jersey; and

WHEREAS, the State Legislature has determined that the efficient and reasonable management of solid waste and sludge are inherently compatible; that the recycling of solid waste and the processing of sludge into energy, fertilizers and other useful products are complementary; that State programs which seek to provide for comprehensive approaches to the proper disposal or utilization of solid waste or sludge must be regional in nature; and that the interests of the citizens of this State would best be served through an integration of sludge management with the regional solid waste planning and management process; and

WHEREAS, the County has been designated as a Solid Waste Management District (the "District") and, as such, is responsible for the development, adoption and implementation of the Burlington County District Solid Waste Management Plan (the "County Solid Waste Management Plan") to provide for the long-term solid waste and sludge processing and disposal needs of the District; and

WHEREAS, the County Solid Waste Management Plan sets forth a strategy that relies upon multiple waste management methods and facilities, including source reduction, source separation, recycling, possible refuse derived fuel, co-composting, land application and landfilling; and

WHEREAS, included in the County Solid Waste Management Plan was the 1986 County Sludge and Septage Management Plan (the "201 Plan"), which set forth a long-term utilization strategy that provided, in pertinent part, for the composting of dewatered sludge generated within the County; and

WHEREAS, the 201 Plan provided that the County would develop and operate a co-composting facility to provide a long-term, reliable and environmentally sound means of sludge disposal and to assist the County in meeting the State-mandated recycling goals; and

WHEREAS, pursuant to a Settlement Agreement dated February 10, 1987 between the County and the New Jersey Department of Environmental Protection (the "DEP"), the County is a designated Sludge Management Agency, and in furtherance of such designation, the County entered

into loan agreements with DEP and the New Jersey Wastewater Treatment Trust to finance construction of a co-composting facility; and

WHEREAS, pursuant to the provision of the Solid Waste Management Act, the County issued Requests for Proposals/Requests for Qualifications to private vendors to construct and operate a co-composting facility; and

WHEREAS, on May 10, 1996, the County entered into the "Co-Composting Facility Construction and Operation Agreement" with Wheelabrator Clean Water New Jersey, Inc. ("Wheelabrator"), pursuant to which Wheelabrator has constructed and operated a facility to co-compost dewatered sludge with wood chips, shredded paper and, in the future, selected organic waste (the "Facility"), which is located at the Burlington County Resource Recovery Complex in Florence and Mansfield Townships; and

WHEREAS, in 2000, the Co-composting Facility Construction and Operation Agreement was assigned by Wheelabrator to Synagro - WWT, Inc., and the agreement was subsequently renewed by the County for an additional five year operational term, commencing in September 2003 and terminating in September 2008; and

WHEREAS, on August 27, 2008, the County entered into the "Co-Composting Facility Service Agreement" with WeCare Organics, LLC, ("WeCare") pursuant to which WeCare will operate the Co-Composting Facility for a term for 10 years, commencing in February 2009 and terminating in February 2019; and

WHEREAS, as a component of the County's integrated Solid Waste System, the co-composting of dewatered sludge at the Facility will conserve other components of the County's Solid Waste System, and is, therefore, crucial to the County's efforts to maintain a cost effective and competitive Solid Waste System generally; and

WHEREAS, the County intends to provide sewage sludge processing and co-composting services at the Facility to wastewater treatment plants within the County on a cost effective basis; and

WHEREAS, the County intends to enter into contracts, on specified terms and conditions, with sludge generators in the County, or other sludge generators as the County deems necessary to economically process sludge at the Facility; and

WHEREAS, the Generator is the owner and/or operator of one of the thirteen wastewater treatment plants that produces dewatered sludge generated within the County; and

WHEREAS, the Generator has determined to make its dewatered sludge available to the County, and to transport same to the Facility for processing and co-composting in accordance with the terms and conditions set forth herein; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5(2), the Generator may enter into this Agreement with the County without public advertising for bids and bidding therefor; and

WHEREAS, the County and the Generator recognize that these Recitals are set forth to recite the statutory and regulatory history of this Agreement and that the signing of this Agreement does not constitute admission to the statutory and regulatory history as enumerated herein;

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Sludge" means any sludge with a minimum of 12% and a maximum of 30% solids, derived from the operations of wastewater treatment facilities that is permitted to be processed at the Facility by Applicable Law.

"Adjustment Date" means the first day of each Billing Year (or January 1st).

"Agreement" means this Intermunicipal Sludge Management Agreement between the County and the Generator, as the same may be amended or modified from time to time in accordance with the terms and conditions set forth herein.

"Alternate Facility" means either (1) an alternate facility for processing Acceptable Sludge for composting, land application or other lawful uses, or (2) a facility for disposing of Residue, Unacceptable Sludge, and Acceptable Sludge. The Alternate Facility shall be approved by the County, operating under a valid permit, and otherwise shall meet the requirements of Applicable Law.

"Applicable Law" means any law, rule, regulation, requirement, guideline, action, determination or order of, or legal entitlement issued or deemed to be issued by, any federal, state or local agency, court or other governmental body having jurisdiction, applicable from time to time to the acquisition, design, construction, equipping, financing, ownership, possession, start-up testing, operation or maintenance of the Facility, the Landfill, the Sewerage System, or any other transaction or matter contemplated by this Agreement.

"Billing Period" means each calendar month during the Term of this Agreement

"Billing Year" means each twelve month year during the Term of this Agreement.

"BCRRC" means the Burlington County Resource Recovery Complex, which is the site upon which the Facility, among other things, is located.

"Company" means WeCare Organics, LLC., and any substitute contractor selected by the County to operate and maintain the Facility on behalf of the County.

"Compost" means the humus-like product that results from the composting process applied to the organic substrate of Acceptable Sludge, organic waste and amendment and that has been stabilized and cured for its intended use.

"Cost Substantiation" means, with respect to any costs and expenses incurred or to be incurred by the parties hereto in the performance of their obligations hereunder, that all such costs and expenses shall be reasonably documented and accompanied by a certificate, signed by an authorized representative of the County or the Generator, as the case may be, stating the reason for incurring the cost, the amount of the cost, including labor, materials and a fixed overhead, the event or Section of this Agreement giving rise to the requesting party's right to incur such cost, and that such cost represents a competitive price for the service or materials supplied and any other information that is reasonably requested by the other party in order to assist in the evaluation and approval of the certificate; provided, however, that such amounts shall not include any contingency amounts.

"County" means the County of Burlington, New Jersey, acting by and through the Board of Chosen Freeholders, and its successors and assigns.

"DEP" means the Department of Environmental Protection of the State of New Jersey.

"Facility" means the County's co-composting facility to be operated at the BCRRC by the Company pursuant to the Service Agreement, or to be operated by the County, if the County so elects at the expiration of the term of the Service Agreement, or if the Service Agreement is earlier terminated.

"Generator" means Bordentown Sewerage Authority, in the County of Burlington, New Jersey its successor and assigns.

"Generator's Contractor" means a contractor selected by the Generator to operate and maintain the Wastewater Treatment Plant or Sewerage System on behalf of the Generator.

"Hazardous Waste" means hazardous waste or hazardous substances as defined under any Applicable Law.

"Landfill" means the Burlington County Landfill located at the BCRRC.

"Normal Receiving Times" shall have the meaning set forth in Section 2.4 hereof.

"Settlement Agreement" means the 1989 Settlement Agreement between the County and DEP.

"Service Agreement" means the "Co-Composting Facility Service Agreement" between the Company and the County, dated August 27, 2008, pursuant to which the Company will operate and

maintain the Facility, as the same may be amended or modified from time to time in accordance therewith, and any subsequent agreement entered into by the County for the same purposes or for the purpose of operating and maintaining the Facility.

"Sewerage System" means the Wastewater Treatment Plant and all sewers, pumping stations, manholes and related property, assets, improvements and equipment comprising the Generator's system for collecting, processing and treating sewage, whether owned or operated by the Generator or by third parties under contract or otherwise on its behalf.

"Side Streams" means grit, scum, screenings, grease, rags and debris resulting from processing, operations, maintenance or cleanings of the Sewerage System.

"Sludge" means the solid residue consisting of sewage solids combined with water and dissolved materials in varying amounts.

"State" means the State of New Jersey.

"Term" has the meaning set forth in Section 6.1 hereof.

"Ton" means a short ton of 2,000 pounds measured on a wet basis, unless expressly stated otherwise in this Agreement.

"Unacceptable Sludge" means any Sludge that does not constitute Acceptable Sludge, including Side Streams and Hazardous Waste.

"Unforeseen Events" means any act, event or condition or any combination thereof (other than a labor strike) that is (i) unforeseeable as of the Date of execution of this Agreement, (ii) outside of the control of the party relying thereon for justification for not performing an obligation or complying with any condition required of such party under the Agreement; and (iii) has had or may be reasonably expected to have a direct, material adverse effect on either the rights and obligations of the parties or the Facility, the Alternate Facility, the Landfill, the Wastewater Treatment Plant, or the operations thereof, including but not limited to the following:

1. Force Majeure events, such as acts of God, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts and explosions, civil disturbances, acts of the public enemy, and war;
2. Change in Law, defined as the enactment of any law or regulation after the date of execution of this Agreement (excluding pending Changes in Law reasonably anticipated to be enacted as of the date of execution of this Agreement and further excluding changes in tax law); or (b) a material modification of or imposition of any material condition on the issuance, modification or renewal of any official permit, license or approval, which in

either case establishes requirements affecting the financing or operation or capital costs of the Wastewater Treatment Plant or Facility that are materially more burdensome than the most stringent requirements in effect as of the date of execution of this Agreement;

3. the order, judgment, action and/or determination of any federal, state or local court of competent jurisdiction, administrative agency or governmental body;
4. the suspension, termination, interruption, denial or failure of renewal or issuance of any permit, license, consent, authorization or approval that is necessary to the Wastewater Treatment Plant, the Facility the Landfill or the Alternate Facility.

"Wastewater Treatment Plant" means any wastewater treatment plant or plants owned or operated by or on behalf of the Generator that is situated in the County and that processes and treats Sludge collected by the Sewerage System.

**ARTICLE II
COUNTY OBLIGATIONS**

SECTION 2.1 FACILITY OPERATIONS.

(A) The County shall be solely responsible for operation and maintenance of the Facility. The County shall be responsible for the sale or disposition of the Compost.

(B) The parties hereto acknowledge and agree that the Facility will be operated on behalf of the County by the Company in accordance with the terms and conditions of the Service Agreement; provided, however, that at the expiration of the term of the Service Agreement, or if the Service Agreement is earlier terminated, the County may elect, at its sole discretion, to operate the Facility. This Agreement should not be construed as approval by the Generator of the terms and conditions of the Service Agreement.

SECTION 2.2 COUNTY COMMITMENT TO ACCEPT ACCEPTABLE SLUDGE.

(A) During the Term of this Agreement, the County shall accept all Acceptable Sludge that is delivered to the BCRRC by or on behalf of the Generator pursuant to Section 3.1 hereof. The County and the Generator shall develop a delivery schedule for the Generator's Sludge that is acceptable to the Company, but that incorporates sufficient flexibility to allow the Generator to dispose of Acceptable Sludge at times other than scheduled delivery times as may be required by the Generator.

(B) In the event that the Facility is unable to process Acceptable Sludge or any portion thereof, the County shall provide for disposal of such Acceptable Sludge at the Landfill, subject to the terms and conditions of the Settlement Agreement, at no additional cost to the Generator. If neither the Facility nor the Landfill can accept Acceptable Sludge, the County shall provide an Alternate Facility for the Acceptable Sludge. The County shall be responsible for transporting or causing the transportation of Acceptable Sludge that has been delivered to the BCRRC, but cannot be processed at the Facility or disposed of at the Landfill, to an Alternate Facility at the County's cost and expense.

SECTION 2.3 RECEIVING TIMES. The County shall accept Acceptable Sludge at the BCRRC between the hours of 7:00 a.m and 5:00 p.m, Monday through Friday, and between 7:00 a.m. and 2:00 p.m. on Saturday ("Normal Receiving Times"). At the request of the Generator, the County may accept Acceptable Sludge at the BCRRC for processing at the Facility at times other than the Normal Receiving Times, subject to the consent of the Company.

SECTION 2.4 WEIGHING RECORDS.

(A) The County shall operate and maintain truck scales at the BCRRC, calibrated to the accuracy required by Applicable Law, to weigh all vehicles delivering Acceptable Sludge to the BCRRC on behalf of the Generator. In addition to the requirements of Applicable Law, the truck

scales shall be calibrated at least quarterly by a company certified by the State Department of Weights and Measures to repair, maintain, and certify scales. Each loaded vehicle shall be weighed, indicating gross weight, tare weight, date and time and vehicle's identification on a weight record. The Generator and its agents shall have the right to monitor weighing activities and to receive copies of scale calibration certificates.

(B) To the extent that the weighing facilities are incapacitated or are being tested, the County shall estimate the quantity of Acceptable Sludge delivered on the basis of truck volumes and estimated data obtained through historical information. These estimates shall take the place of actual weighing and shall be the basis for records during the scale outage.

(C) The County shall maintain daily records of the number of Tons of Sludge and waste delivered to the BCRRC and received and processed, disposed of or rejected, including Acceptable Sludge and Unacceptable Sludge, indicating, in each case and to the extent practicable, the date and time of arrival or departure of each vehicle transporting such material, with appropriate identification of each vehicle. The County's records will indicate the ultimate disposition of the Acceptable Sludge accepted at the BCRRC (i.e., the Facility or, if applicable, to the Landfill or Alternate Facility). The Generator shall have access to the weighing records relating to the Generator upon request in order to verify amounts owed in the monthly Billing Statement (as defined in Section 4.2(A)).

SECTION 2.5 ACCESS AND VISITATION TO THE FACILITY. Upon the request of the Generator, the County will permit the Generator to visit the Facility during normal business hours for any reasonable purpose upon reasonable notice to the County, subject to Company approval; provided, however, that such visits shall be limited to portions of the Facility that the Company and the County deem suitable for visitations, and that such visits shall be conducted in a manner that will not interfere with the Company's performance of its obligations under the Service Agreement. All visitors must be accompanied by a Company escort at all times.

SECTION 2.6 SCREENING PROTOCOL FOR UNACCEPTABLE WASTE. The County, in conjunction with the Company, shall maintain a waste screening protocol to reduce the likelihood that Unacceptable Sludge, including Hazardous Waste, is delivered to, or processed at the Facility. The protocol is intended to specify the appropriate procedures to be followed should Unacceptable Waste, including Hazardous Waste, be delivered to the Facility. The protocol includes educational efforts, enforcement, and waste screening and handling procedures. The respective obligations of the County and the Company under the screening protocol are as set forth in the Service Agreement. This Agreement should not be construed as an approval by the Generator of the waste screening protocol as contained in the Service Agreement.

SECTION 2.7 UNACCEPTABLE SLUDGE. In the event that the Generator delivers Unacceptable Sludge to the Facility, the Company shall not be obligated to accept such Unacceptable Sludge, and the Generator shall be responsible for providing for the disposition of such Unacceptable Sludge at its sole cost and expense. If such Unacceptable Sludge has been inadvertently accepted by the Company, the County shall immediately notify the Generator. The Generator shall have the option to arrange for the removal, transportation and disposal of such material. In the event that the

Generator fails to arrange for the timely removal of such material, the County shall provide for the disposal of such Unacceptable Sludge, and the costs of transporting and disposing of such material shall be reimbursed by the Generator, subject to Cost Substantiation by the County. Payments of any fines or similar charges assessed upon the County by DEP or any other governmental body due to delivery to or transportation from the Facility, or disposal of Unacceptable Sludge, shall be the responsibility of the Generator.

SECTION 2.8 HAZARDOUS WASTE.

(A) **Responsibilities.** The parties hereto acknowledge that the Facility has not been designed and is not intended to be used in any manner or to any extent as a facility for the receiving, handling, transportation, storage or disposal of Hazardous Waste. Neither the County nor the Generator shall countenance or knowingly permit the delivery, acceptance or storage of Hazardous Waste at the Facility. The County and the Generator shall use their best reasonable efforts to identify any person responsible for delivery to or abandonment at the Facility of any Hazardous Waste and to require such person to bear all costs and liabilities associated with the removal, transportation and disposal thereof. In addition to the County's and the Company's obligations under the screening protocol referred to in Section 2.7 hereof, the County shall diligently enforce all Applicable Laws of the County prohibiting the delivery of Hazardous Waste to the Facility, and both the County and the Generator shall take all reasonable steps necessary to seek the enforcement of all other Applicable Laws regarding such delivery. If the County or the Company discovers Hazardous Waste by or on behalf of the Generator delivered to the Facility, it shall isolate such waste from the waste stream and give immediate notice of such discovery to the Generator and to the DEP. The County (or the Company on its behalf) also shall immediately notify all other appropriate governmental officials as required by Applicable Law. It shall be the Generator's obligation to arrange for the removal, transportation and disposal of such Hazardous Waste in a manner as directed by DEP. In the event that the Generator fails to arrange for the timely removal, transportation and disposal of such waste, the Company may, on behalf of the County, in the most expeditious manner possible under the circumstances, cause such Hazardous Waste to be removed from the Facility and transported to and disposed of at a landfill or other disposal site selected by the County in its sole discretion, which is lawfully permitted to receive and dispose of such Hazardous Waste. Notwithstanding anything herein to the contrary, the County may dispose of any such Hazardous Waste through the County's Household Hazardous Waste Program as the County, in its sole judgment, deems appropriate.

(B) **Costs and Liabilities.** The costs to segregate, test, handle, transport and dispose of any Hazardous Waste delivered to the Facility by or on behalf of the Generator shall be paid by the Generator. Nothing withstanding herein, the Generator shall not be responsible for Unacceptable Sludge delivered by any other Generator.

SECTION 2.9 OPERATION OF FACILITY

(A) The County shall cause the operation and management of the Facility to be undertaken in accordance with the terms and conditions of the Service Agreement, all Applicable Law, and all permits, licenses and approvals issued for or with respect to the Facility. The County

shall be responsible for obtaining and maintaining all such licenses, permits, and approvals necessary to provide for the processing or disposal of Acceptable Sludge at the Facility, the Landfill or an Alternate Facility.

**ARTICLE III
GENERATOR OBLIGATIONS**

SECTION 3.1 ACCEPTABLE SLUDGE DELIVERY COMMITMENTS.

(A) Throughout the Term of this Agreement, the Generator shall deliver or cause to be delivered to the BCRRC during Normal Receiving Times all Acceptable Sludge generated at the Wastewater Treatment Plant. The Generator shall use only properly licensed haulers to deliver Acceptable Sludge to the BCRRC or, if applicable, an Alternate Facility.

(B) The Generator shall not make available or deliver any Acceptable Sludge from any other source unless expressly approved in writing, in advance, by the County. The Generator shall not deliver or cause to be delivered to the Facility any Side Stream materials from any source.

(C) The Generator warrants and represents that it shall utilize all reasonable means to efficiently and effectively operate its Wastewater Treatment Plant to process Sludge in a manner that will produce Acceptable Sludge for delivery to the BCRRC. The Generator further warrants that it will maintain the quality of its Sludge and, to the extent that the Generator's Sludge is not consistent with Applicable Law, the Generator shall use its best efforts to improve the quality thereof.

SECTION 3.2 REPORTING AND TESTING REQUIREMENTS. The Generator shall provide the County with copies of the Generator's monthly Residuals Transfer (RTR) and monthly or quarterly Residuals Discharge Monitoring Reports (DMR) within ten (10) days of the filing thereof with DEP. The Generator shall also provide a Notice and Necessary Information (NANI) Form to the County at the same time and frequency as the DMR. Additionally, upon request, the Generator shall permit inspection by the County of all records maintained by the Generator concerning the results of any tests of the Generator's Sludge. If, upon review of the tests performed by the Generator, the County or the Company establish that any dewatered Sludge is not in conformance with Applicable Law and the provisions of this Agreement, then the Generator shall thereafter be required to take all action necessary to ensure that the Wastewater Treatment Plant produces Sludge that so conforms. The Generator shall conduct such additional tests as the County deems reasonably necessary to determine whether the dewatered Sludge is in conformance with Applicable Law and this Agreement. Such tests shall be conducted for as long as the County shall reasonably deem appropriate to make this determination. The costs of conducting such tests shall be borne by the Generator. If the Generator fails to conduct such tests, the County shall not be obligated to dispose of the Generator's dewatered Sludge.

SECTION 3.3 REJECTION RIGHTS. If any load of Acceptable Sludge delivered to the Facility contains any Unacceptable Sludge or materials other than Acceptable Sludge, the County or the Company on behalf of the County shall have the right to reject the entire container of such Sludge, and the Generator shall be solely responsible to provide transportation and disposal of the contents of the container. In the event such Sludge is not discovered prior to unloading, the County shall immediately notify the Generator of the delivery of such Sludge and the Generator shall bear the costs incurred by the County to reload, segregate, handle, transport and dispose of such Sludge.

SECTION 3.4 CHANGE IN SLUDGE QUANTITY AND COMPOSITION.

(A) Permits. The Generator shall notify the County in advance of any significant actions that are expected to substantially increase or decrease the quantity of Acceptable Sludge or change the composition of Acceptable Sludge produced at the Wastewater Treatment Plant.

(B) Notice. The Generator shall immediately notify the County in writing of any regulatory report, test, inspection, enforcement action, lawsuit or threatened lawsuit affecting the ability of the Generator to produce and deliver dewatered Sludge to the Facility.

SECTION 3.5 EXPANSION OR SHUTDOWN OF PLANT. The Generator shall give the County at least ninety (90) days' prior written notice of any planned expansion, shutdown or curtailment of service at the Wastewater Treatment Plant. If the Wastewater Treatment Plant suffers an emergency shutdown or curtailment of service that is reasonably anticipated to affect the Generator's ability to produce and deliver dewatered Sludge in accordance with the Generator's delivery schedule, the Generator shall immediately notify the County as to such shutdown or curtailment of service and give an estimate as to when regular service will resume.

ARTICLE IV
SERVICE FEE; ADDITIONAL SERVICE FEE

SECTION 4.1 FEEES FOR SERVICE.

(A) Service Fee. Commencing with the first Billing Period and for each Billing Period thereafter during the Term of this Agreement, the Generator shall pay the County a Service Fee for the acceptance of Acceptable Sludge and for the processing or disposal of its Acceptable Sludge at the Facility, the Landfill or the Alternate Facility, which Service Fee shall be calculated as follows:

$$\text{SF} = \text{TF} \times \text{T/BP}$$

Where:

SF = Service Fee

TF = Tipping Fee, which for the first Billing Year shall be equal to \$74.00 per ton. For the first day of the second Billing Year and for each Adjustment Date thereafter, the Tipping Fee shall be adjusted by the increase of the Operation Price Index used in the Service Agreement as follows:

$$\text{TF} = \text{Tipping Fee} \times \text{CPI}$$

CPI = Consumer Price Index for All Urban Consumers (CPI-U): Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD. Please note that the CPI shall not exceed 2% to remain consistent with the mandatory cap on municipal spending that has been legislated in the State.

T/BP = Tons per Billing Period, which means the number of Tons of Acceptable Sludge delivered by or on behalf of the Generator to the Facility, or if applicable, the Landfill or an Alternate Facility in the Billing Period to which such bill relates.

(B) Additional Service Fee. If applicable, the Generator shall pay an Additional Service Fee which shall be calculated as follows:

$$\text{OC} + .5(\text{UEC} \times \text{T/BP})$$

Where:

OC = Other Costs identified in this Agreement, including, but not limited to, the costs incurred by the County in accepting, segregating,

processing, transporting and/or disposing of Unacceptable Sludge delivered by or on behalf of the Generator, the costs to segregate, handle, transport and/or dispose of Hazardous Waste delivered by or on behalf of the Generator, or the incremental additional costs incurred by the Company and the County to accept the Generator's Acceptable Sludge at times other than the Normal Receiving Times. An OC, if applicable, shall be billed as a flat fee per event to the Generator incurring such OC.

UEC = Unforeseen Event Cost, which shall mean the per ton cost properly incurred by the County at the Facility in accordance with the terms and conditions of the Service Agreement, or the per ton cost properly incurred by the County if the County is the operator of the Facility, as a result of an Unforeseen Event; provided, however, that upon request, the County provides the Generator with the Cost Substantiation provided by the Company. In no event shall the generators be responsible for more than fifty (50%) per cent of Unforeseen Event Costs, and the Generator shall be responsible for paying its share, which shall be a percentage determined by dividing Generator's tonnage by the total tonnage delivered by all generators.

SECTION 4.2 BILLING OF THE SERVICE FEE.

(A) Billing Statement. For each Billing Period, the County shall render a statement (a "Billing Statement") to the Generator by the 15th day of the following Billing Period. Each Billing Statement shall set forth all amounts payable by the Generator to the County hereunder for the Billing Period to which such Billing Statement relates. The Generator shall pay the Service Fee, Additional Service Fee, and any other payments due to the County within forty-five (45) days of the date of the Billing Statement. To the extent possible, the County shall notify the Generator in advance of a billing for an Additional Service Fee.

(B) Disputes. If the Generator disputes any amount billed by the County in any Billing Statement, the Generator shall, to the extent permitted by law, pay the full amount set forth in the Billing Statement and shall submit to the County, in writing, the basis for its objections and any reasonable documentation within thirty (30) days following the receipt of the Billing Statement to which such dispute relates. If the County and the Generator are not able to resolve such dispute within thirty (30) days after the date that the County receives the written objection, either party may refer the matter for dispute resolution in accordance with Section 6.2 hereof. The arbitration panel selected in accordance with Section 6.2 shall be guided by Generally Accepted Accounting Principles (GAAP) in settling all disputes referred to arbitration pursuant to this §4.2(B). If any such dispute is finally decided in the Generator's favor, the County shall credit the disputed amount, to the extent that it has previously been paid by the Generator, to the Generator on the next following Billing Statement after a decision is rendered.

**ARTICLE V
DEFAULT AND TERMINATION**

SECTION 5.1 EVENTS OF DEFAULT BY GENERATOR.

The following shall constitute Events of Default on the part of the Generator:

(A) persistent and repeated failure of the Generator to timely perform any material obligation or observe any material covenant under the terms of this Agreement, which failure has not been cured within thirty (30) days after the receipt of written notice from the County, except that if the Generator has diligently commenced steps to cure within said period, the Generator's failure to cure within such 30 days shall not constitute an Event of Default for as long as is reasonably required to allow the Generator to complete such steps to cure; or

(B) an Act of Bankruptcy on the part of the Generator (if the Generator is a private company) or the Generator's Contractor has occurred, or

(C) failure of the Generator to make payments to the County as required pursuant to the terms of this Agreement.

SECTION 5.2 EVENTS OF DEFAULT BY THE COUNTY.

An Event of Default on the part of the County shall mean the persistent and repeated failure of the County to timely perform any material obligation or to observe any material covenant under the terms of this Agreement, which failure has not been cured within thirty (30) days after the receipt of written notice to the County by the Generator, except that if the County has diligently commenced steps to cure within said period, the County's failure to cure within 30 days shall not constitute an Event of Default for as long as is reasonably required to allow the County to complete such steps to cure.

Notwithstanding this paragraph, if Acceptable Sludge is delivered to Facility and the Acceptable Sludge is refused by the operator of the facility, the Generator has the right to seek immediate equitable relief to compel performance under the term of this Agreement.

SECTION 5.3 REMEDIES OF THE COUNTY.

(A) In the event of the occurrence of an Event of Default by the Generator as set forth in Section 5.1(A) and Section 5.1(C), the County's remedies for such Event of Default shall be either:

(i) a suit seeking performance by the Generator of the provisions of this Agreement, and any such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance; or

- (ii) termination of this Agreement by the County upon thirty (30) days prior written notice to the Generator, and the County shall be entitled to seek any other damages available at law or at equity.

(B) In the event of the occurrence of an Event of Default by the Generator as set forth in Section 5.1(B), the County shall be entitled to terminate this Agreement upon five (5) days prior written notice to the Generator and to seek any other damages available at law or at equity.

SECTION 5.4 REMEDIES OF THE GENERATOR.

In the event of the occurrence of an Event of Default by the County as set forth in Section 5.2, the Generator's remedies for such Event of Default shall include a suit seeking specific performance of the County's obligations pursuant to this Agreement, and any such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance and any other remedies available in law or equity, including a suit for damages.

SECTION 5.5 WAIVER. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver must be in writing and signed by the party granting such waiver. If any covenant or agreement contained in this Agreement is breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and will not be deemed to waive any other breach under this Agreement. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

SECTION 5.6 OTHER TERMINATION.

(A) In the event that (1) the Facility is permanently shutdown by the County for any reason, or (2) the Service Agreement is terminated and the County does not enter into a substitute operations agreement, as the case may be, for the Facility, the County shall be entitled to terminate this Agreement upon fifty (50) days prior written notice to the Generator without any liability from either party to the other.

(B) In the event that the Generator's Wastewater Treatment Plant is permanently shutdown for any reason, the Generator shall be entitled to terminate this Agreement upon fifty (50) days prior written notice to the County without any liability from either party to the other.

SECTION 5.7 RIGHTS UPON TERMINATION.

(A) Upon termination of this Agreement, all rights, privileges and obligations hereunder shall cease, except that no termination of this Agreement shall release either party from any

obligation accrued hereunder or rescind any payment made or due to either party hereunder, prior to the time that such termination becomes effective. In no event shall this Subsection 5.7(A) preclude either party from pursuing its respective remedies as provided in Sections 5.3 and 5.4 of this Agreement.

(B) Neither party to this Agreement shall be entitled to seek or collect consequential, special, third-party or indirect damages in connection with the termination of this Agreement, except that this Subsection 5.7(B) shall not apply to any damages resulting from the delivery of Hazardous Waste to the Facility.

**ARTICLE VI
MISCELLANEOUS**

SECTION 6.1 TERM OF AGREEMENT. The Term of this Agreement shall commence on January 1, 2015 and shall continue in full force and effect until December 31, 2019, unless this Agreement is earlier terminated in accordance with its terms.

SECTION 6.2 DISPUTE RESOLUTION. Any disputes arising under this Agreement (other than a termination of this Agreement) may be referred by either party to an arbitration panel selected as follows: the County and the Generator shall each select one (1) independent third party to serve as an arbitrator and shall together select one (1) additional mutually acceptable independent third party to serve as an arbitrator, so that a panel of three (3) independent third-party arbitrators will be formed. The claim or dispute referred to the arbitration panel selected hereunder shall be arbitrated pursuant to the Rules of the American Arbitration Association. All arbitration decisions must set forth findings of fact and conclusions of law. The decision of said panel on any disputes arising under this Agreement shall be binding upon the County and the Generator.

SECTION 6.3 AMENDMENTS. This Agreement may not be amended except by a written agreement that is duly executed by both parties.

SECTION 6.4 FURTHER ASSURANCES. At any and all times, the County and the Generator, so far as may be authorized by law, shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 6.5 ASSIGNABILITY. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that: (1) the County may assign its rights and obligations hereunder to an implementing agency designated by the County pursuant to the County Solid Waste Management Plan or otherwise in accordance with Applicable Law, so long as such agency assumes, in writing, all of the rights and obligations hereunder; and (2) the Generator may assign its rights and obligations hereunder to a purchaser of the Wastewater Treatment Plant so long as such purchaser assumes, in writing, all of the rights and obligations of the Generator hereunder. The County or the Generator, as the case may be, must provide at least sixty (60) days prior written notice to the other party of any assignment or proposed assignment made pursuant to subsections (1) and (2) of this Section 6.5.

SECTION 6.6 INDEMNIFICATION.

(A) **By County.** The County shall protect, defend, protect, indemnify and hold harmless the Generator and its respective officers, members, employees, agents, representatives, contractors and subcontractors from and against all liabilities, actions, damages, claims, demands, judgments, losses, fines, penalties, costs, expenses, suits or actions and reasonable attorneys' fees, and will

defend such parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property or fines, penalties or economic loss arising out of (1) the negligence or fault of the County or any of its officers, members, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement, or (2) the performance or non-performance of the County's obligations under this Agreement.

(B) By Generator. The Generator shall protect, defend, protect, indemnify and hold harmless the County and its respective officers, members, employees, agents, representatives, contractors and subcontractors from and against all liabilities, actions, damages, claims, demands, judgments, losses, fines, penalties, costs, expenses, suits or actions and reasonable attorneys' fees, and will defend such parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property or fines, penalties or economic loss arising out of (1) the negligence or fault of the Generator or any of its officers, members, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement, (2) the performance or non-performance of the Generator's obligations under this Agreement, or (3) any agreement or arrangement by and between the Generator and any hauler it hires for Transportation Services.

SECTION 6.7 COUNTERPARTS. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

SECTION 6.8 SEVERABILITY. If any clause, provision, Subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction or administrative agency, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, Subsection, Section or Article that shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, Subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

SECTION 6.9 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, as follows:

If to the County:

Burlington County Board of Chosen Freeholders
49 Rancocas Road
Mount Holly, New Jersey 08060
Attention: County Administrator

If to the Generator:

Bordentown Sewerage Authority
P.O. Box 396
Bordentown, NJ 08505
Attention: Ronald Marino, Chairman

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party.

SECTION 6.10 **UNFORESEEN EVENTS.** If an Unforeseen Event occurs, the party affected thereby shall be relieved of its responsibility to perform to the extent necessitated by the Unforeseen Event and during the pendency thereof; provided, however, that in the event that the Landfill or an Alternate Facility is available for the disposal and/or processing of Acceptable Sludge, the County shall not be excused from performance due to an Unforeseen Event affecting only the Facility. The affected party shall promptly notify the other party in writing of the occurrence of the Unforeseen Event, including the anticipated duration and effects of the Unforeseen Event, and shall take reasonable steps under the circumstances to alleviate or eliminate the effects of the Unforeseen Event. The affected party shall notify the other party, in writing and in advance, of the date that the affected party is intended to re-commence performance of its obligations.

SECTION 6.11 **OTHER REPRESENTATIONS OF THE PARTIES.**

(A) The County has the full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. The County has duly authorized, executed and delivered this Agreement, and the authorization, execution, delivery and performance hereof by the County will not violate any law, judgment, order, ruling or regulation applicable to the County and does not constitute a breach of or default under any agreement or instrument by which the County is bound.

(B) The Generator has the full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. The Generator has duly authorized, executed and delivered this Agreement, and the authorization, execution, delivery and performance hereof by the Generator will not violate any law, judgment, order, ruling or regulation applicable to the Generator and does not constitute a breach of or default under any agreement or instrument by which the Generator is bound.

(C) No litigation is pending or threatened against the County that would impair its ability to perform its duties and obligations under this Agreement.

(D) No litigation is pending or threatened against the Generator that would impair its ability to perform its duties and obligations hereunder.

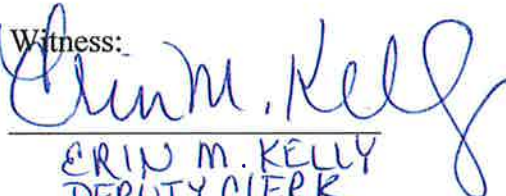
SECTION 6.12 BENEFITS OF SUBSEQUENTLY NEGOTIATED AGREEMENTS.

The Generator understands and acknowledges that the County intends to execute agreements with other in-county sludge generators upon terms and conditions substantially similar to this Agreement. In the event that any subsequently negotiated agreements contain terms and conditions deemed by the Generator to be more favorable than those contained herein, this Agreement shall be modified to incorporate identical terms and conditions contained in such subsequently negotiated agreements, upon notice by the Generator to the County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

[SEAL]


THE COUNTY OF BURLINGTON, NEW JERSEY

Witness:

ERIN M. KELLY
DEPUTY CLERK

By: 
Freeholder Director

[SEAL]

**BORDENTOWN SEWERAGE AUTHORITY, IN
THE COUNTY OF BURLINGTON, NEW
JERSEY**

Witness:


By: 