Record and Return To:
Daniel A. Schwartz, Esq.
Wolff & Samson PC
One Boland Drive
West Orange, New Jersey 07052

# SECOND AMENDMENT TO GROUND LEASE AGREEMENT

**THIS SECOND AMENDMENT TO GROUND LEASE AGREEMENT** (this "Second Amendment") is made and executed as of July 25, 2013 by and between the **POLLUTION CONTROL FINANCING AUTHORITY OF CAMDEN COUNTY**, a public body corporate and politic and a political subdivision of the State of New Jersey, as landlord ("Landlord") and **CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES, L.P.**, a New Jersey limited partnership, as tenant ("Tenant").

## RECITALS :

**WHEREAS**, pursuant to the terms of a Ground Lease Agreement, dated as of November 18, 1987 (the "Original Lease"), between Landlord, as landlord, and Camden County Energy Recovery Associates, a New Jersey general partnership, as tenant (the "Original Tenant"), which was recorded in the Office of the Clerk of Camden County, New Jersey in **Deed Book 4256 Page 0441**, Landlord leased to the Original Tenant certain real property described on Exhibit A thereto but excluding therefrom certain "Retained Facilities" depicted on Exhibit A-1 thereto (the "Demised Premises"), upon the terms set forth therein;

**WHEREAS**, pursuant to that certain Assignment and Assumption Agreement, dated as of December 15, 1993, between the Original Tenant and Tenant, the Original Tenant assigned all of its right, title and interest in the Original Lease to Tenant;

**WHEREAS**, Landlord and Tenant previously entered into an Amendment to Ground Lease Agreement, dated as of June 28, 2012 (the "First Amendment"), providing for an extension of the Original Lease term and certain other matters;

**WHEREAS**, the description of the Demised Premises attached as Exhibit A to the Original Lease inadvertently and incorrectly identified "Tract II" as being Lot 15, Block 860 (Old) Block 641 (New) in Ward 8-3 instead of Lot 16, Block 860 (Old) Block 641 (New) in Ward 8-3; and

**WHEREAS**, Landlord and Tenant now desire to amend the Original Lease as amended by the First Amendment (the Original Lease, as amended by the First Amendment, being hereinafter referred to as the "Existing Lease") to correct the lot and block reference for "Tract II" on Exhibit A thereto.

**WHEREAS**, Landlord and Tenant have also now agreed to a further extension of the term of the Existing Lease and the grant of additional option periods to Tenant and desire to set forth the terms of such lease extension and options in this Second Amendment.

**NOW, THEREFORE**, incorporating the recitals hereinabove set forth by reference and intending to be legally bound hereby, and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Capitalized Terms; Definitions. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Existing Lease.

2. Amendment of Exhibit A to Existing Lease. The last sentence of Exhibit A to the Existing Lease (describing and identifying "Tract II" of the Demised Premises) is hereby deleted and replaced with the following:

   "BEING known as Lot 16, Block 860 (old) Block 641 (New) in Ward 8-3."

3. Term. The term of the Lease is hereby extended for an additional ten (10) year period which shall commence on July 1, 2021 and shall expire on June 30, 2031.

4. Basic Rent for the Period July 1, 2021 to June 30, 2026. The annual Basic Rent for the period July 1, 2021 to June 30, 2026 shall be the amount that is yielded by the following calculation subject to the floor and cap stated below. The calculation is the CPI Index as of June 1, 2021 divided by the CPI Index as of June 1, 2016. This amount is then multiplied by $300,000.00 which product shall be the annual Basic Rent for this period. Notwithstanding the above the annual Basic Rent for the period July 1, 2021 to June 30, 2026 shall be no less than $330,000.00 and no greater than $375,000.00.

5. Basic Rent for the Period July 1, 2026 to June 30, 2031. The annual Basic Rent for the period July 1, 2026 to June 30, 2031 shall be the amount that is yielded by the following calculation subject to the floor and cap stated below. The calculation is the CPI Index as of June 1, 2026 divided by the CPI Index as of June 1, 2021. This amount is then multiplied by the annual Basic Rent due for the period July 1, 2021 to June 30, 2026 (as calculated pursuant to paragraph 4 above) which shall be the annual Basic Rent for this period. Notwithstanding the above the annual Basic Rent for the period July 1, 2026 to June 30, 2031 shall be no less than 110% of the annual Basic Rent for the previous 5 year lease period and no greater than 125% of the annual Basic Rent for the previous 5 year period.

6. Tenant Option for the Period July 1, 2031 to June 30, 2036. In the event that Tenant is not in default of any of its obligations under the Lease as of the date of the exercise of this option and the Lease has not otherwise been terminated as of the date of the exercise of this option, Tenant shall have the option to extend the Lease for an additional period of five years which additional option period shall commence on July 1, 2031 and expire on June 30, 2036 (the "First Option Period"). In order to exercise its right to the First Option Period, Tenant must provide Landlord with written notice of its exercise of the right no later than July 1, 2030. In the event that Tenant fails to provide written notice to Landlord of the exercise of this option on or before July 1, 2030 Tenant shall forfeit the right to exercise this option. The exercise of this option by Tenant is not revocable and once exercised in accordance with this paragraph the option is binding on the parties.

7. Basic Rent for the Period July 1, 2031 to June 30, 2036. If Tenant validly exercises its option for the First Option Period, the annual Basic Rent for the period July 1, 2031 to June 30, 2036 shall be the amount that is yielded by the following calculation subject to the floor and cap stated below. The calculation is the CPI Index as of June 1, 2031 divided by the CPI Index as of June 1, 2026. This amount is then multiplied by the annual Basic Rent due for the period July 1, 2026 to June 30, 2031 (as calculated pursuant to paragraph 5 above) which shall be the annual Basic Rent for this period. Notwithstanding the above the annual Basic Rent for the period July 1, 2031 to June 30, 2036 shall be no less than 110% of the annual Basic Rent for the previous 5 year lease period and no greater than 125% of the annual Basic Rent for the previous 5 year period.

8. Tenant Option for the Period July 1, 2036 to June 30, 2041. In the event that Tenant is not in default of any of its obligations under the Lease as of the date of the exercise of this option and the Lease has not otherwise been terminated as of the date of the exercise of this option, and if Tenant has validly exercised its option for the First Option Period pursuant to paragraph 6, Tenant shall have the option to extend the Lease for an additional period of five years which additional option period shall commence on July 1, 2036 and expire on June 30, 2041 (the Second Option Period"). In order to exercise its right to the Second Option Period, Tenant must provide Landlord with written notice of its exercise of the right no later than July 1, 2035. In the event that Tenant fails to provide written notice to Landlord of the exercise of this option on or before July 1, 2035 Tenant shall forfeit the right to exercise this option. The exercise of this option by Tenant is not revocable and once exercised in accordance with this paragraph the option is binding on the parties.

9. Basic Rent for the Period July 1, 2036 to June 30, 2041. If Tenant validly exercises its option for the Second Option Period, the annual Basic Rent for the Period July 1, 2036 to June 30, 2041 shall be the amount that is yielded by the following calculation subject to the floor and cap stated below. The calculation is the CPI Index as of June 1, 2036 divided by the CPI Index as of June 1, 2031. This amount is then multiplied by the annual Basic Rent due for the period July 1, 2031 to June 30, 2036 (as calculated pursuant to paragraph 7 above) which shall be the annual Basic Rent for this period. Notwithstanding the above the annual Basic Rent for the period July 1, 2036 to June 30, 2041 shall be no less than 110% of the annual Basic Rent for the previous 5 year lease period and no greater than 125% of the annual Basic Rent for the previous 5 year period.

10. CPI Index. For purposes of the calculations required in this Second Amendment, "CPI Index" shall mean the US Department of Labor Consumer Price Index for all Urban Consumers (CPI-U) Philadelphia. In the event that this index is not published for any period needed to make the calculations set forth in this Second Amendment the parties shall utilize the replacement index that is most comparable to the foregoing index.

11. Monthly Installments and Payment of Expenses. The annual Basic Rent provided for in paragraphs 4, 5, 7 and 9 shall be paid in 12 equal monthly payments due on the first day of each month during the annual period for which the payment is due. The payment of Basic Rent under paragraphs 4, 5, 7 and 9 shall be fully net to Landlord. Tenant at its sole cost and expense shall be responsible for the payment of all utilities, insurance,

maintenance, repairs and replacements to the Facility and the Premises for all periods set forth in this Second Amendment.

12. Surrender. The provisions of paragraph 6 of the First Amendment shall apply to the end of the Lease term as extended by this Second Amendment and at the end of the First Option Period or Second Option Period if applicable.

13. Environmental Matters. All references in Section 32 of the Existing Lease (as set forth in paragraph 7 of the First Amendment) (i) to "Extension Term" shall mean the term of the Lease as extended by this Second Amendment and, if exercised, as further extended by the First Option Period or Second Option Period as applicable, and (ii) to "Extension Expiration Date" shall mean the end of the Lease term as extended by this Second Amendment and, if exercised, as further extended by the First Option Period or the Second Option Period as applicable.

14. No Other Amendment. Except as expressly set forth herein, nothing herein is intended to or shall be deemed to modify or amend any of the other terms or provisions of the Existing Lease and any references in the Existing Lease to "this Lease" or any references to the Existing Lease in any other document or instrument shall be deemed to mean the Existing Lease as amended by this Second Amendment.

15. Counterparts. This Second Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement.

16. Entire Understanding. This Second Amendment and the Existing Lease together contain the entire understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof or thereof. Any promises, representations, warranties or guarantees not herein or therein contained and hereinafter made shall have no force and effect unless in writing, and executed by the party or parties making such representations, warranties or guarantees. Neither this Second Amendment nor the Existing Lease nor any portion or provisions hereof or thereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto intending to be legally bound and to so bind their respective representatives, successors and assigns, set their hands and seals to this Second Amendment to Ground Lease Agreement as of the day and year first above written.

WITNESS:

Joseph C. Carney

LANDLORD:

POLLUTION CONTROL FINANCING AUTHORITY OF CAMDEN COUNTY

By: ____________________

Name: David A. Luthman

Title: Deputy Executive Director

TENANT:

CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES, L.P.

WITNESS:

By: Camden County Energy Recovery Corp., general partner

By: ____________________

Name: Anthony Scerbo

Title: President



3905222.7

STATE OF NEW JERSEY )
) ss:
COUNTY OF Hunterdon )

I CERTIFY that on July 29, 2013, Anthony Scerbo personally appeared before me, and that this person acknowledged under oath, to my satisfaction, that:

(a) this person is the President of Camden County Energy Recovery Corp., which is the general partner of **CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES, L.P.**, which is the limited partnership named in the attached document:

(b) this person executed and delivered the attached document as the voluntary act and deed of such entity, for the uses and purposes therein expressed; and

(c) this person was authorized by such entity to execute and deliver the attached document on behalf of such entity.

Patricia Lively

PATRICIA J LIVELY I.D. #2113527
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 07/14/18

STATE OF NEW JERSEY )
) ss:
COUNTY OF Camden )

I CERTIFY that on 8/9/2013, 2013, David A. Luthman personally appeared before me, and that this person acknowledged under oath, to my satisfaction,

(a) this person is the Deputy Executive Director of **POLLUTION CONTROL FINANCING AUTHORITY OF CAMDEN COUNTY**, the public body corporate and politic named in the attached document;

(b) this person executed and delivered the attached document as the voluntary act and deed of such entity, for the uses and purposes therein expressed; and

(c) this person was authorized by such entity to execute and deliver the attached document on behalf of such entity.

Cynthia H. Zingaro

CYNTHIA H. ZINGARO
Notary Public of New Jersey
My Commission Expires Feb. 14, 2016



3905222.7