

SOLID WASTE SERVICE AGREEMENT

This Solid Waste Service Agreement (hereinafter referred to as the "Service Agreement") is now being entered into by and between **The Bergen County Utilities Authority**, a public body politic and corporate of the State of New Jersey, having its principal offices for the performance of essential governmental functions and services located at the Foot of Mehrhof Road, Little Ferry, New Jersey 07643 (hereinafter referred to as the "BCUA"), and the Borough of New Milford, a Municipal Corporation of the State of New Jersey, having its principal offices for the performance of essential governmental functions and services located at 930 River Road, New Milford, New Jersey, 07646, New Jersey (hereinafter referred to as the "Municipality").

WHEREAS, in accordance with and pursuant to the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the County of Bergen constitutes a Solid Waste Management District; and

WHEREAS, the Board of Chosen Freeholders of the County of Bergen heretofore prepared a Solid Waste Management Plan (the "Plan") which has been amended from time to time, in order to provide for the collection, processing and disposal of solid waste generated within Bergen County; and

WHEREAS, by Resolution dated December 23, 1980, the Board of Chosen Freeholders of the County of Bergen designated the BCUA as the agency empowered to supervise the implementation of the Plan and to, inter alia, take control and responsibility for various solid waste systems and facilities operated in and by the County of Bergen; and

WHEREAS, pursuant to and in accordance with the foregoing, the BCUA issued bid specifications for solid waste processing, transport and disposal services and has contracted with several solid waste facilities for the processing and disposal of solid waste generated by participating municipalities located in the County of Bergen; and

WHEREAS, by Resolution adopted April 26, 2018 by the Board of Commissioners of the Authority, Covanta Sustainable Solutions, LLC (hereinafter referred to as "Covanta") was awarded a contract with the BCUA for the acceptance, processing and disposal of municipal solid waste (hereinafter referred to as "Contract 18-04"); and

WHEREAS, in accordance with Contract 18-04, the following transfer station facilities are designated by the BCUA as a disposal facility to be utilized by participating municipalities in accordance with this Service Agreement: i) 301 Maltese Driver, Totowa, New Jersey, 07512; and ii) 20-33 Fulton Street, Paterson, New Jersey, 07501 (hereinafter the "Covanta Transfer Station Facilities"); and

WHEREAS, the Municipality and the BCUA are desirous of entering into this Service Agreement, pursuant to which the Municipality shall deliver municipally-generated solid waste to the Covanta Transfer Station Facilities for processing, transportation and disposal, and the BCUA shall provide such solid waste processing, transportation and disposal services to the Municipality, in a cooperative effort relating to municipal solid waste management; and

WHEREAS, the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.) authorizes and permits contracting units, such as the BCUA and the Municipality, to enter into service agreements providing for the services contemplated herein; and

WHEREAS, the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) authorizes and permits contracting units, such as the BCUA and the Municipality, to enter into service agreements providing for the services contemplated herein without competitive bidding for same, pursuant to and in accordance with N.J.S.A. 40A:11-5(2); and

WHEREAS, the BCUA and the Municipality are desirous of entering into this Service Agreement for the processing, transportation and disposal of solid waste generated from within the Municipality pursuant to the terms, conditions, covenants and understandings set forth herein.

NOW, THEREFORE, based upon the mutual promises and covenants contained herein and other good and sufficient consideration,

IT IS on this 18 day of May, 2018, **AGREED** as follows:

I. REPRESENTATIONS

1.01 Representations by the BCUA.

The BCUA hereby represents and warrants as follows:

- A. The BCUA is duly authorized under the Constitution and laws of the State of New Jersey to execute and deliver this Service Agreement, and the BCUA has taken all actions required on its part for the execution and delivery of this Service Agreement and the performance of the BCUA's obligations hereunder;

- B. Upon its execution by the BCUA, this Service Agreement shall be a valid and binding obligation of the BCUA, enforceable in accordance with its terms;
- C. The execution and delivery of this Service Agreement and the performance by the BCUA of its obligations hereunder do not conflict with any applicable law, rule or regulation and will not constitute a breach of or default under any agreement, instrument or undertaking to which the BCUA is a party or by which it is bound; and
- D. No authority or proceeding for the transactions on the part of the BCUA contemplated by this Service Agreement has been repealed, revoked or rescinded.

1.02 Representations by the Municipality.

The Municipality hereby represents and warrants as follows:

- A. The Municipality is duly authorized under the Constitution and laws of the State of New Jersey to execute and deliver this Service Agreement, and the Municipality has taken all actions required on its part for the execution and delivery of this Service Agreement and the performance of the Municipality's obligations hereunder;
- B. Upon its execution by the Municipality, this Service Agreement shall be a valid and binding obligation of the Municipality, enforceable in accordance with its terms;

- C. The execution and delivery of this Service Agreement and the performance by the Municipality of its obligations hereunder do not conflict with any applicable law, rule or regulation and will not constitute a breach of or default under any agreement, instrument or undertaking to which the Municipality is a party or by which it is bound;
- D. No litigation or administrative action of any nature is now pending seeking to restrain or enjoin the execution and delivery of this Service Agreement by the Municipality or the performance by the Municipality of its obligations hereunder, or in any manner questioning the proceedings or authority under which the same have been effected or the validity or enforceability of this Service Agreement; and no authority or proceeding for the transactions on the part of the Municipality contemplated by this Service Agreement has been repealed, revoked or rescinded; and
- E. The Municipality, through its residents, is a generator of approximately _____ (____) tons per day of New Jersey Department of Environmental Protection (hereinafter referred to as "NJDEP") type 10, 13, 13C, 23, and 27 municipal solid waste.

1.03. In order to induce the Municipality to deliver to the Covanta Transfer Station Facilities the entirety of its municipal (non-commercial) solid waste stream during the term of this Service Agreement, the BCUA hereby warrants and represents that it is capable of

fulfilling the solid waste services required by the Municipality, and meets the following requirements:

- A. BCUA has heretofore procured solid waste disposal capacity at fully licensed and duly permit solid waste facilities, in volumes sufficient to accommodate the needs of the Municipality during the term of this Service Agreement;
- B. The Covanta Transfer Station Facilities are, and will during the term of this Service Agreement continue to be, properly licensed and permitted by the NJDEP and/or such other regulatory agencies exercising jurisdiction over and as to the operations of the Covanta Transfer Station Facilities as solid waste transfer stations authorized to accept solid waste; and
- C. The Covanta Transfer Station Facilities are, and will during the term of this Service Agreement continue to be, properly permitted to accept and process, inter alia, NJDEP type 10, 13, 13C, 23, and 27 municipal solid waste.

II. OBLIGATIONS OF THE BCUA

2.01. During the term of this Service Agreement, the BCUA shall be the exclusive vendor to the Municipality for the processing, transportation and disposal of all NJDEP type 10, 13, 13C, 23, and 27 solid waste collected by or on behalf of the Municipality. All such NJDEP type 10, 13, 13C 23, and 27 solid waste delivered by or on behalf of the

Municipality to the Covanta Transfer Station Facilities shall be transported to, and disposed of at, duly licensed and permitted solid waste disposal facilities.

2.02. The Covanta Transfer Station Facilities shall be open for receiving the Municipality's solid waste from Monday through Saturday excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

III. OBLIGATIONS OF THE MUNICIPALITY

3.01. During the term of this Service Agreement, the Municipality shall deliver all NJDEP type 10, 13, 13C, 23, and 27 municipal solid waste collected by or on behalf of the Municipality and generated from within the Municipality's municipal borders to the Covanta Transfer Station Facilities for processing, transportation and disposal.

3.02. During the term of this Service Agreement, the Municipality shall be billed by the BCUA on a monthly basis at the following rate for each ton of solid waste delivered to the Covanta Transfer Station Facilities by or on behalf of the Municipality:

June 1, 2018 through May 31, 2020 \$ 66.39 per ton

During the term of this Service Agreement, the Municipality shall pay the BCUA within thirty (30) days of the date of each invoice. A late fee equal to one (1%) percent of the unpaid balance shall be charged for every thirty (30) days the balance of the invoice or a portion thereof remains unpaid. The late fee shall be charged commencing five (5) days subsequent to the due date. Failure on the part of the Municipality to pay all or any amount required to be paid to the BCUA under this Service

Agreement pursuant to this section 3.02 shall constitute an Event of Default pursuant to Article IV of this Service Agreement.

IV. EVENTS OF DEFAULT

4.01. Each of the following shall constitute an Event of Default on the part of the parties to this Service Agreement unless such default shall be excused or justified by Uncontrollable Circumstances as hereinafter defined, or if caused by any other legally recognized cause customarily justifying or excusing nonperformance:

- A. The failure or refusal by the BCUA to fulfill, substantially in accordance with this Service Agreement, all or any of its obligations under this Service Agreement;
- B. The failure or refusal by the Municipality to deliver to Covanta Transfer Station Facilities all of the NJDEP type 10, 13, 13C, 23, and 27 municipal solid waste collected by or on behalf of the Municipality and generated within its municipal borders during the term of this Service Agreement;
- C. Failure on the part of the Municipality to pay all or any amount required to be paid to the BCUA under this Service Agreement within five (5) days after said amount becomes due;
- D. The delivery by the Municipality to the Covanta Transfer Station Facilities of any material or substance which, by reason of its composition or characteristics, is (i) toxic or hazardous waste as defined in applicable laws, the Solid Waste Disposal Act (42

U.S.C.A. 6901, et. seq.), the New Jersey Solid Waste Management Act (N.J.S.A. 13:IE-1 et. seq.), and/or the regulations thereunder, as replaced, amended, expanded, or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under other relevant federal or state law as replaced, amended, expanded, or supplemented, or any laws of similar purpose or effect, and any rules, regulations, or policies thereunder; (ii) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954 (42 U.S.C. §§ 2011-2021, 2022-2286i, 2296a-2297h-13); (iii) other materials which any governmental body having appropriate jurisdiction over shall determine from time to time are harmful, toxic, or dangerous, or otherwise ineligible for transportation and/or disposal; and/or (iv) all materials defined as hazardous by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), or any amendments thereto;

- E. The filing against BCUA of an involuntary petition for bankruptcy under the United States Bankruptcy Code or any federal or state statute intended to provide relief for political subdivisions which are insolvent or unable to meet their obligations as they mature; and/or

F. The written admission by BCUA that it is bankrupt or the filing by BCUA of a voluntary petition as such under the United States Bankruptcy Code, or under any federal or state statute intended to provide relief for political subdivisions which are insolvent or unable to meet their obligations or the consent by the BCUA to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by BCUA of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the BCUA's business property.

V. UNCONTROLLABLE CIRCUMSTANCES

5.01. As used in this Service Agreement, the term "Uncontrollable Circumstance" shall mean those acts or events that have had, or may reasonably be expected to have, a material adverse effect upon either party to this Service Agreement and the ability of such party to perform their respective obligations under this Service Agreement, if such acts or events are beyond the control of the party affected. Such acts or events shall include, but are not limited to, the following: (A) an act of God (except normal weather conditions for the Bergen County geographic area), epidemic, landslide, lightning, earthquake, explosion, fire or similar occurrence; (B) an act of public enemy, terrorism, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disobedience

or similar occurrence; (C) the entry of an injunction or a restraining order or judgment of any federal, state, or local court, administrative agency or governmental officer or body (specifically excluding the decisions of any courts interpreting tax laws), if such order or judgment is not the result of the negligent or willful act, or failure to act, of the party affected (the contesting in good faith of any order or judgment shall not constitute or be construed as a willful or negligent act); (D) any strike, work slowdown or stoppage, lock-out or similar disturbance affecting the affected party's contractors; (E) a change in law rendering the affected party's compliance with its obligations hereunder to be a violation of such law; and/or (F) the change of any law, rule or regulation affecting the performance of either party's obligations under this Service Agreement.

5.02. In the event of the occurrence of an Uncontrollable Circumstance, the party affected by the occurrence shall be relieved of its obligation to perform under the terms of this Service Agreement for so long as the Uncontrollable Circumstance continues to adversely affect that party's ability to perform its obligations under the terms of this Service Agreement. Notwithstanding the provisions of this Section 5.02, the parties may negotiate a temporary modification of their respective duties and obligations under the terms of this Service Agreement, and continue performance under such modified terms for so long as the Uncontrollable Circumstance continues. Upon termination of the Uncontrollable Circumstances, performance under the terms set forth herein shall be resumed.

5.03. In the event of the occurrence of an Uncontrollable Circumstance, performance of the party affected thereby shall be suspended for so long as the party

affected contests (including appeals) the event culminating in such uncontrollable circumstances. Upon completion of the affected party's contest, if performance is still prevented, this Service Agreement shall terminate and neither party hereto shall have any liability to the other.

VI. INDEMNITY

6.01. Indemnification:

- A. The BCUA shall protect, indemnify and hold the Municipality harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or other actions including reasonable attorney's fees, and will defend the Municipality in any suit, including appeals, for personal injury to, or death of, any person or persons or loss or damage to property (other than that of the BCUA, its agents, servants, employees and/or contacts) caused by the negligent act or omission of the BCUA, its servants or employees in connection with or as a result of this Service Agreement or performance of the BCUA's obligations hereunder;
- B. The Municipality shall protect, indemnify and hold the BCUA harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, expenses, suits or other actions, including reasonable attorney's fees, and will defend the BCUA in any suit, including appeals, for personal injury to, or death of, any person or persons or loss or damage to property caused by the

negligent act or omission of the Municipality, its servants or employees in connection with or as a result of this Service Agreement or the performance of the Municipality's obligations hereunder;

- C. The liability of the BCUA and the Municipality pursuant to the respective obligation of each to indemnify and defend the other, shall not be limited by the amount of any insurance proceeds that it recovers from any insurance coverage maintained pursuant to this Service Agreement and shall extend to occurrences for which insurance is not required by this Service Agreement;
- D. Neither the BCUA nor the Municipality shall be required to reimburse, defend or indemnify the other for loss or concurring negligence of the BCUA and the Municipality giving rise to a loss or claim against either one or both, each shall have full rights to contribution against the other; and
- E. Each party shall promptly notify the other of the assertion of any claim against which such other party is indemnified hereunder and shall give the other party the opportunity to defend such claim. The indemnification provisions set forth herein are for the protection of the BCUA and the Municipality only and shall not establish any liability to any third parties. Additionally, the parties hereto acknowledge and agree that except for any other payments

expressly provided for in this Service Agreement, these indemnification provisions are in lieu of any and all rights to other payments, including payments of damages, consequential or otherwise.

VII. TERM OF SERVICE AGREEMENT

7.01. The term of this Service Agreement shall be for a term of **two (2) years** (commencing June 1, 2018 and expiring May 31, 2020).

VIII. COORDINATION OF ACTIVITIES

8.01. Coordination of Activities. The parties hereto agree to consult regularly with each other regarding all aspects of the day-to-day delivery of Municipality-generated solid waste to the Covanta Transfer Station Facilities, including daily and weekly waste delivery scheduled, truck identification systems, and traffic issues. Good faith efforts shall be used by each party hereto with respect to the coordination of activities required in accordance with this Service Agreement, so as to conduct each party's respective obligations in a manner which will cause as little inconvenience as practicable to the other party.

8.02. Service Coordinators. The Municipality and the BCUA shall each designate a service coordinator (hereinafter referred to as the "Service Coordinator") to be in charge of the implementation and the day-to-day operations of this Service Agreement. The Service Coordinator for each respective party hereto shall regularly notify the other of any decisions or developments including any rules, guidelines or procedures with respect to

solid waste activities contemplated by this Service Agreement. The BCUA's Service Coordinator is Richard Wierer, Deputy Executive Director of the BCUA.

IX. NOTICE

9.01. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if made by a party hereto in writing and delivered to the other party hereto in person to the address for that party identified in Section 9.02 of this Service Agreement or sent by certified or registered mail, postage pre-paid with receipt requested, at such address identified in Section 9.02 of this Service Agreement; provided, if such notices, demands, requests or other communications are sent by mail, they shall be deemed as given on the third day following such mailing, which is not a Saturday, Sunday or day on which United States mail is not delivered.

9.02. All notices shall be addressed as follows:

A. If to the BCUA:

Richard Wierer, Deputy Executive Director
Bergen County Utilities Authority
PO Box 9
Foot of Mehrhof Road
Little Ferry, New Jersey 07643

B. If to the Municipality:

To: Christine Demiris
Borough of New Milford
930 River Road
New Milford, New Jersey 07646

9.03. Either party hereto may, by like notice, designate any further or different address to which subsequent notices shall be sent. Any notice sent hereunder signed on behalf of the notifying party by a duly authorized attorney-at-law shall be valid and

effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

X. WAIVER

10.01. Unless otherwise specifically provided in accordance with the express terms of this Service Agreement, no delay or failure to exercise a right 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 shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Service Agreement is breached by either party hereto and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Service Agreement.

XI. ARTICLE AND SECTION CAPTIONS; REFERENCES

11.01. The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof and shall not affect in any manner the construction or interpretation hereof. Except as otherwise indicated, all references herein to sections and articles are to sections and articles of this Service Agreement.

XII. SEVERABILITY

12.01. In the event any provision or any part of a provision of this Service Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or administrative agency, such holding shall constitute a basis for termination of this Service Agreement provided, the party desiring to terminate advises the other party in writing

within thirty (30) days of the action by such court or administrative agency invalidating or making unenforceable any provision of this Service Agreement.

XIII. AMENDMENT

13.01. This Service Agreement may not be amended or modified except by a written agreement signed by each of the parties hereto.

XIV. AGREEMENT GOVERNED BY NEW JERSEY LAW

14.01. This Service Agreement shall be construed in and governed by the laws of the State of New Jersey, without any consideration being given to any principle of choice or conflict of law.

XV. NO OTHER AGREEMENTS

15.01. All negotiations, proposals and/or agreements, oral or written, prior to the date of this Service Agreement are merged herein and superseded hereby, there being no agreements or understandings other than those written or specified herein, unless otherwise provided. This Service Agreement and any appendices hereto constitute the entire Service Agreement between the BCUA and the Municipality.

XVI. EXECUTION OF DOCUMENTS

16.01. This Service Agreement shall be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.

XVII. RELATIONSHIP OF PARTIES

17.01. Except as otherwise expressly provided herein, no party to this Service Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by the other party and nothing in this Service Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties hereto.

XVIII. SUCCESSORS AND ASSIGNS

18.01. This Service Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

XIX. ASSIGNMENTS

19.01. No party to this Service Agreement may assign any of its interests or rights herein without the prior written approval of each the parties hereto.

XX. NO THIRD PARTY BENEFICIARIES

20.01. This Service Agreement is not intended under any circumstances to be for the benefit of any third party, or to create in favor of any third party any interest in the Service Agreement.

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IN WITNESS WHEREOF, the Authority and the Municipality have caused this Service Agreement to be executed in their respective names by representatives of each thereof there unto duly authorized, and have caused this Service Agreement to be dated as of the date and year first above written.

WITNESS:

BERGEN COUNTY UTILITIES AUTHORITY



By: 
Robert E. Laux, Executive Director

ATTEST:



By: 
Borough of New Milford