

**MEMORANDUM OF AGREEMENT  
AMONGST THE NEW JERSEY PINELANDS COMMISSION,  
THE BUENA BOROUGH MUNICIPAL UTILITIES AUTHORITY  
AND THE TOWNSHIP OF BUENA VISTA  
March 27, 2007**

**I. PURPOSE**

This Memorandum of Agreement (MOA) is entered into amongst the New Jersey Pinelands Commission (Commission), the Buena Borough Municipal Utilities Authority (BBMUA) and Buena Vista Township. The BBMUA operates a wastewater treatment facility that currently discharges treated wastewater into the Deep Run, which flows easterly through the Pinelands Forest Area to the Great Egg Harbor River. As discussed more fully below, since 1995, the BBMUA has been under an obligation to cease this stream discharge. The BBMUA identified a parcel of land in 2003 upon which it intends to construct the I/P facility to land apply its treated wastewater. To date, the BBMUA has conducted soil tests to investigate the suitability of this parcel for effluent percolation. This property, known as Lot 106, Block 6 on the official tax map of the Borough of Buena, County of Atlantic, is located in a Pinelands Agricultural Production Area. This MOA is intended to allow for the development of the proposed I/P facility, any associated plant improvements and necessary piping to convey the treated wastewater from the treatment plant to the proposed I/P facility and the discharge of treated wastewater into the recharge basins to be constructed at such facility (the “proposed development”). The I/P facility, its groundwater recharge basins and associated piping are considered centralized wastewater treatment and collection facilities pursuant to the Pinelands Comprehensive Management Plan (the “CMP”). Strict application of the Pinelands CMP, with limited exceptions, which are not applicable to the proposed development, would not permit the development of centralized wastewater treatment and collection facilities within an Agricultural Production Area. This MOA is required in order to permit the proposed use in the Agricultural Production Area. An application for the construction of the proposed development will need to be submitted to the Pinelands Commission and that application will need to demonstrate the proposed development’s consistency with the requirements of the Pinelands Comprehensive Management Plan (CMP), as modified by this MOA.

**II. BACKGROUND**

The BBMUA initially constructed its sewage treatment plant (“STP”) in 1968. The effluent from the BBMUA’s STP has been discharged to the Deep Run since 1969. In 1990, the BBMUA received an approval from the Pinelands Commission of an Application for Public Development (Pinelands Commission Application No. 89-0545.01) to upgrade its existing sewage treatment plant and construct a force main to

convey the treated effluent to a facility that would discharge the wastewater to groundwater. As a condition of this approval, the BBMUA was to cease its discharge of treated wastewater into the Deep Run by June 1, 1995. This requirement was subsequently included as part of an Amended Administrative Consent Order entered into between the New Jersey Department of Environmental Protection (NJDEP) and the BBMUA in November 1990. Specifically, this Amended Administrative Consent Order required that, “on July 1, 1995 and thereafter, the BBMUA shall discharge its wastewater to the new groundwater disposal facilities in compliance with all final effluent limitations contained within its New Jersey Pollutant Elimination System Discharge to Groundwater Permit and to cease the surface water discharge to the Deep Run.” Although this Amended Administrative Consent Order was terminated in September 1998, the BBMUA’s obligation to cease its stream discharge was subsequently incorporated as a condition to its New Jersey Pollutant Discharge Elimination Program – Discharge to Surface Water Permit. In addition, the Pinelands Commission issued subsequent public development approvals (Pinelands Commission Application No. 89-0545.03 (installation of an injection wall), -.04 (development and paving of an access drive), -.06 (development of an exploratory well in the PRM) and – .07 (installation of a test well and the performance of a pump test) to the BBMUA, all of which were conditioned on the BBMUA ceasing its discharge to the Deep Run by June 1, 1995. The BBMUA spent several years and a substantial sum of money investigating the possibility of utilizing deep and shallow well injection facilities for effluent disposal and other alternatives. Test wells were constructed and pump tested. Ultimately use of injection wells for effluent disposal was not approved by the NJDEP.

### III. BBMUA PROPOSAL

The BBMUA has agreed to purchase 61 acres of Block 106, Lot 6 in Buena Borough, on approximately 35 acres of which it proposes to construct an I/P facility. This property is located in an Agricultural Production Area. The property is presently in agricultural production. Consequently, construction of the proposed I/P facility will result in the loss of land that would otherwise be available for agriculture.

In advance of purchasing the site, the BBMUA conducted an initial soils investigation at a substantial cost in order to determine the wastewater recharge potential for the site. Based on the results of this investigation, the BBMUA believes that this site has the necessary capacity to assimilate all, or a significant portion of the treated wastewater generated at its treatment plant. It may also be able to recharge additional capacity, with a planning goal of 600,000 gpd.

The proposed I/P facility would consist of a number of recharge basins and necessary infrastructure to convey treated wastewater from the BBMUA’s treatment plant to the proposed facility. The precise number of basins, surface area and location on the parcel for the basins and necessary infrastructure have not been determined as of yet and would be dependent upon the recharge capacity of the site. The BBMUA has indicated that it will need to obtain financial assistance from other sources, such as the United States Department of Agriculture, in order to construct the I/P facility. In addition, the BBMUA

will require various approvals from the NJDEP, including issuance of a New Jersey Pollutant Discharge Elimination – Discharge to Groundwater permit, to discharge into the proposed recharge basins. These factors were taken into consideration when developing the project milestones set forth in Paragraph VI.A. below.

#### IV. MEASURES PROPOSED TO AFFORD AN EQUIVALENT OR BETTER LEVEL OF PROTECTION FOR THE RESOURCES OF THE PINELANDS

BBMUA's proposal involves the development of an I/P facility in a Pinelands Agricultural Production Area. Such centralized wastewater treatment and collection facilities are not permitted in Agricultural Production Areas pursuant to N.J.A.C. 7:50-5.24. Therefore, the development activities proposed by the BBMUA are not fully consistent with the provisions of the Pinelands CMP. The Commission may, nevertheless, authorize such development activities provided measures are included that ensure, at a minimum, an equivalent level of protection of Pinelands resources. In order to meet this requirement, Buena Vista Township is proposing to permanently deed restrict 232 acres of municipally owned land in its Forest and Rural Development Areas against future development. (Buena Vista Township does not own land within a Agricultural Production Area). The lands to be protected include large, substantially upland parcels located in sensitive subwatersheds, including the Deep Run subwatershed where the proposed I/P facility will be located. Permanent protection of these lands will reduce development potential in these sensitive areas, thereby better protecting surface water quality. The amount of land to be permanently preserved (232 acres) is sufficient to offset the land to be developed in the Agricultural Production Area for the I/P facility (61 acres), including a possible backup site. In exchange for providing the necessary offset, the BBMUA will grant to Buena Vista Township a share of the total wastewater flow allocation (See Exhibit 1) to facilitate extension of sewer service in the Township along U.S. Route 40, within the Pinelands Town. This will facilitate the elimination of discharge from septic systems in the area thus providing an additional environmental benefit.

As treated wastewater is applied and recharged at the I/P facility, discharge from the outlet pipe to the Deep Run will be restricted for use only under emergency circumstances. Any such discharge into the stream will be monitored, and restrictions will be enforced by NJDEP fines or through the BBMUA's imposition of a connection ban regardless of whether the development to be serviced by such connection is located inside or outside of the Pinelands Area. In addition, this MOA contains specific milestones, which, if achieved, would result in the cessation of the BBMUA's wastewater discharge to the Deep Run within seven (7) years of execution of this Agreement. Should any of these milestones not be achieved, the Commission retains the right to seek to enforce the terms of this Agreement, and the conditions of its prior approvals discussed in Paragraph II above.

Eliminating the stream discharge to the Deep Run will preserve the delicate Pinelands stream ecology. The treated effluent applied at the I/P facility will also recharge the groundwater aquifer. Under current conditions, treated effluent discharged to the stream

is conveyed to the Atlantic Ocean, in a relatively short period of time, with no benefit to the surficial aquifer. Finally the BBMUA will, in accordance with this Agreement, seek to implement a beneficial reuse program that will benefit the local surface and groundwater system by allowing recharge to occur at approved locations.

## V. THE BASIS OF THE MOA

The Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) authorizes the Commission to enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of the Pinelands CMP. The agency must demonstrate and the Commission must find that any proposed development that may not be fully consistent with the provisions of the Pinelands CMP is accompanied by measures that will, at a minimum, afford a level of protection to the resources of the Pinelands equivalent to that provided through strict application of the standards of the Pinelands CMP. As discussed above in Paragraph IV, the BBMUA's proposal includes measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands.

## VI. AGREEMENTS

### A. The BBMUA agrees:

1. Upon execution of this Agreement, to take all steps necessary so that condition no. 5 of the Public Development Approval issued by the Pinelands Commission to the Buena Regional School District for the new middle school (Pinelands Application No. 1984-1157.005) is satisfied and a construction permit may be issued for construction of the middle school using the BBMUA's wastewater conveyance system.
2. With the exception of the middle school, as discussed in Paragraph I above, connections that are consistent with the requirements of N.J.A.C. 7:50-6.84(a)2 and connections that would be authorized pursuant to N.J.A.C. 7:14A-22.22, to prohibit new sewer connections beyond its current and committed average annual flow of 400,000 gpd of treated wastewater generated by its STP as described in Exhibit 1 – Flow Allocations regardless of whether such connection will serve development located inside or outside of the Pinelands Area prior to ceasing its stream discharge in accordance with Paragraph 10.
3. To acquire by May 1, 2007, that portion of Block 106, Lot 6 located in the Borough of Buena, County of Atlantic to be used for the development of an Infiltration/Percolation (I/P) facility for the land application of wastewater (LAW) from its Sewage Treatment Plant (STP).

4. Upon acquisition of Block 106, Lot 6, to retain an independent engineering firm, in addition to the firm of Remington and Vernick, which is assisting the BBMUA in its soils investigation, with a qualified hydrogeologist possessing prior experience and success in siting and constructing Land Application of Wastewater (LAW) or I/P facilities. The BBMUA shall provide the Commission and the NJDEP the qualifications of the preferred engineering firm. The BBMUA shall retain the independent engineering firm that is acceptable to the BBMUA, the NJDEP and the Commission to collaborate with the current engineering firm in developing protocols for a hydrogeologic investigation that will enable certification of the hydraulic capacity of the site. Upon completion of the hydrogeologic investigation, the BBMUA shall provide the Commission and the NJDEP with a signed and sealed report that summarizes the results of such investigation and provides the hydraulic recharge capacity of the site.
5. To design an I/P facility, and associated conveyance system, to accommodate at least the current and committed average annual daily flows (400,000 gpd) of treated wastewater generated by its STP as described in Exhibit 1 – Flow Allocations. In addition, the I/P facility shall have enough excess capacity to accommodate routine maintenance in accordance with Paragraph VI.A.11, inflow and infiltration and winter season flows. Should either of the engineering firms retained by the BBMUA determine that the soils on Block 106, Lot 6 are not capable of infiltrating at least 400,000 gpd, the BBMUA agrees to resolve the recharge deficit by either developing and implementing a modified design to enhance capacity onsite and/or acquiring property suitable for the development of additional LAW facilities offsite. The BBMUA agrees to have both engineering firms certify that the modified design and/or new site will accommodate at least the current and committed average annual daily flows of 400,000 gpd.
6. To submit by May 1, 2009, an application for the proposed I/P facility to the Commission and the NJDEP for each agency's respective review and approval and to seek all other approvals required for the construction of the I/P facility.
7. With the exception of the connection for the new middle school, and connections that are consistent with the requirements of N.J.A.C. 7:50-6.84(a)2, to prohibit new sewer connections to the portion of the existing Weymouth Road interceptor located outside of the Pinelands Town. The BBMUA further agrees to include a provision in any future Wastewater Management Plan amendment prohibiting connections to such interceptor consistent with the terms of this Paragraph.
8. To complete construction, by May 1, 2012, in accordance with any conditions contained within any approvals issued by the Commission and/or the NJDEP, an I/P facility (or facilities if required pursuant to Paragraph 5 above) and all

associated piping required in order to convey treated wastewater from the STP to the I/P facility.

9. To commence, by May 01, 2012, recharge of the current and committed treated wastewater (400,000 gpd) from its STP at the I/P facility (or additional facilities if required pursuant to Paragraph 5 above). Recharge of the treated wastewater may be phased in over a maximum three-year period to permit for site testing to determine long-term sustainable site loading rates but it must occur as quickly as feasible. Any phase-in requirements set forth by the NJDEP will be included within BBMUA's NJPDES-DGW permit and any future NJPDES discharge to surface water (DSW) permit issued for the BBMUA's STP. Until such time as a revised NJPDES-DSW permit is issued for its STP, the BBMUA agrees that the amount of flow discharged to the Deep Run from its STP will be dictated by the terms of this Agreement and any phase-in requirements of the NJDEP, rather than by the amount of flow authorized by its current NJPDES-DSW.
10. No later than May 1, 2014, to cease all direct daily discharge to Deep Run including provision of reserve capacity to accommodate routine maintenance, inflow and infiltration, and winter season flows, with the exception of those emergency conditions in which the existing I/P facilities cannot accommodate any additional flow caused by a natural disaster (e.g. flooding, hurricanes) or unforeseen damage to the I/P facility or conveyance system (e.g. pipe break). If the I/P facility(ies) can no longer infiltrate treated wastewater flows long-term, BBMUA agrees to immediately implement the steps defined in Paragraph VI.A.14. As emergency conditions subside or are corrected, BBMUA agrees to again immediately cease all direct daily discharge into Deep Run.
11. To operate and maintain the I/P facility and associated conveyance system in accordance with a rigorous maintenance and inspection program to be developed by the BBMUA and approved by NJDEP and the Commission during the application phase of this Agreement, which shall include, but not be limited to a loading schedule and a rehabilitation schedule.
12. To copy the Commission on all operating reports and permit applications and Discharge Monitoring Reports sent to NJDEP. The BBMUA agrees to provide the Commission with any other relevant information, as requested. The BBMUA also agrees to submit a written status report to the Commission every six months commencing from the execution of this Agreement through complete recharge of 400,000 gpd.
13. Once the I/P facility(ies) is constructed and operating, to continually evaluate the rate of infiltration of wastewater at the parcel. If the site(s) is able to accept all the current and committed flow of 400,000 gpd, the BBMUA agrees that it will only permit new sewer connections for development located either

inside or outside of the Pinelands Area beyond the current 400,000 gpd if: 1) NJDEP has approved a Water Quality Management Plan amendment increasing the wastewater flow capacity for its STP, 2) the I/P facility constructed on Block 106, Lot 6, as constructed or with additional improvements, is capable of infiltrating all additional wastewater flow above 400,000 gpd or an additional I/P facility has been constructed and is capable of infiltrating such additional effluent and 3) all discharge of effluent from its STP to the Deep Run has ceased or unless this agreement is modified in accordance with Paragraph VI.C.6 below.

14. If, at any point in time, the I/P facility(ies) does not infiltrate any portion of the current average annual flow of treated wastewater or the amount of flow being generated at the STP at that time, for any reason, the BBMUA agrees to immediately cease permitting new sewer connections, with the exception of connections that are consistent with the requirements of N.J.A.C. 7:50-6.84(a)2 or that would be authorized pursuant to N.J.A.C. 7:14A-22.22, regardless of whether such connections will service development located inside or outside of the Pinelands Area until all of the wastewater generated by its STP is once again being land applied at the I/P facility(ies). BBMUA further agrees take all actions necessary to resolve the infiltration problem. The BBMUA agrees to develop and submit a plan for approval by the Commission and the NJDEP, which would include, at a minimum, one or more of the following onsite and/or offsite remedies: a revision to the maintenance program; investigation and eventual acquisition of an additional site; investigation to decrease inflow and infiltration; or investigation of design enhancements to increase capacity.
15. To take all reasonable steps to maximize beneficial reuse of treated wastewater generated at the STP and to identify potential users of reuse water. BBMUA is expected to maximize beneficial reuse to conserve Pinelands groundwater resources and to ease hydraulic loading on LAW site to the maximum extent practical and permitted.
16. To guarantee Buena Vista Township 15,000 gpd included within the current and committed flow of 400,000 gpd and 1/3 of the total flows generated beyond 400,000 for the ten (10) years from when the BBMUA obtains additional wastewater flow beyond its current and committed flow of 400,000 gpd and is in a position to permit new sewer connections in accordance with Paragraph VI.A.13 above.

B. Buena Vista Township agrees:

1. It will, within ten (10) years of the BBMUA obtaining additional wastewater flow beyond its current and committed flow of 400,000 gpd and being in the position to permit new sewer connections in accordance with Paragraph VI.A.13, expand and fund sewer infrastructure along

U.S. Route 40 at least up to and including the existing municipal building within the Buena Vista Township Pinelands Town; thereby reducing the number of existing uses reliant upon onsite septic systems (see Exhibit 1).

2. Once an interceptor is in place, it shall require all future development within the Pinelands Town to connect to the BBMUA sewer system, if capacity is available.
3. Within ninety (90) days of the effective date of this Agreement, it will permanently protect against future development, with the exception of low-intensity recreational facilities as defined at N.J.A.C. 7:50-2.11, at least 232 acres of land, owned by it and located within the Forest and Rural Development Areas, identified by the Commission in Exhibit 2 – List of Parcels to be Preserved, attached hereto. Protection of these lands shall be accomplished through the execution and filing of a deed restriction, the form (see Exhibit 3) shall be approved by Commission staff prior to filing. The list of parcels shall be included on the Recreation and Open Space Inventory (ROSI) database maintained by the Green Acres Program. Substitutions of parcel of land other than those identified in Exhibit 2 may occur with Commission staff approval. Buena Vista's failure to execute and file the deed restriction in accordance with the terms of this Paragraph will render this entire MOA null and void.

C. The Commission agrees:

1. To allow for the use of Block 106, Lot 6 by the BBMUA for the construction of a I/P facility and the discharge of treated wastewater from its STP to that proposed I/P facility notwithstanding the limitation against centralized wastewater treatment and collection facilities in a Pinelands Agricultural Production Area contained in N.J.A.C. 7:50-5.24 (b) 9 of the Pinelands CMP provided:
  - a. The required conservation easements are imposed by Buena Vista on at least 232 acres of land in the Forest and Rural Development Areas in accordance with the provisions of Paragraph VI.B.3 of this Agreement; and
  - b. An application for development of the I/P facility is completed with the Pinelands Commission by BBMUA in accordance with Paragraph IV.A.6, demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP.



2. To allow the BBMUA to use another site within the Agricultural Production Area for the construction of additional infiltration lagoons or another I/P facility and the discharge of treated wastewater from its STP to such lagoons or additional I/P facility not withstanding the limitation against centralized wastewater treatment and collection facilities in a Pinelands Agricultural Production Area contained in N.J.A.C. 7:50-5.24 (b) 9 of the Pinelands CMP provided that the BBMUA submits an application for such development to the Pinelands Commission in accordance with Paragraph IV.A.6, demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP, and the Commission approves such application.
3. The permanent deed restriction of 2.35 acres of land on Block 106, Lot 6 remains unnecessary as discussed in Application #1996-1089.004, proposing to subdivide the above-mentioned lot, approved by the Commission in October, 2006.
4. To provide an endorsement letter that the BBMUA may include in its applications for funding and to otherwise assist the BBMUA in its efforts to secure outside financial assistance and all requisite approvals.
5. To approve any improvements to the wastewater treatment facilities needed to effect treatment of additional flow proposed by the BBMUA, provided that such improvements are consistent with the requirements of the Pinelands CMP, as modified by this MOA, and upon submission of a Public Development Application to the Pinelands Commission in accordance with Paragraph IV.A.6, demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP.
6. The Pinelands Commission shall consider amending this MOA to authorize additional wastewater flow to the BBMUA's STP above 400,000 gpd, before all direct wastewater discharge to the Deep Run ceases, if either the BBMUA or the Borough of Buena demonstrates that it is experiencing an exceptional and undue financial hardship, including unforeseen financial hardships related to the BBMUA's obligations pertaining to the I/P facility(ies) and to cease its stream discharge, that can be substantially mitigated by accepting additional wastewater flow at the STP. Such authorization may only be granted if the Commission determines that:
  - a) the NJDEP has approved a Water Quality Management Plan amendment that increases the wastewater flow capacity of the BBMUA's STP above 400,000 gpd;

- b) the I/P facility's(ies') ability to infiltrate the total amount of flow to be generated by the STP is clearly demonstrated;
  - c) the BBMUA has entered into a contract for completion of the I/P facility(ies) and construction is imminent;
  - d) it will not delay the elimination of the direct wastewater discharge to the Deep Run; and
  - e) the BBMUA has proceeded with all due diligence to expeditiously satisfy its obligations under this Agreement.
7. As soon as access can be secured, the Commission will investigate the report of possible cultural resources on a portion of Block 106, Lot 6, and if necessary, ensure that an appropriate cultural resource survey is completed.

VII. EFFECTIVE DATE AND DURATION

- A. In accordance with N.J.S.A. 13:18A-5(h), this MOA shall take effect following the conclusion of the Governor's review period and approval of the Pinelands Commissions minutes authorizing entry of this MOA and then upon approval and signature by the authorized representatives of all parties or all parties agree, in writing, to otherwise terminate this agreement.
- B. This MOA shall remain in effect unless amended by written consent of all parties or unless Buena Vista Township fails to execute and file the deed restriction required by Paragraph VI.B.3 above.

VIII. SIGNATURES

NEW JERSEY PINELANDS COMMISSION

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John C. Stokes, Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Valerie Haynes, Deputy Attorney  
General State of New Jersey

BUENA BOROUGH MUNICIPAL UTILITIES AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John Brunini, Chairperson

BUENA VISTA TOWNSHIP

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chuck Chiarello, Mayor

