

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

May 26, 2011

WHEREAS, the Buena Borough Municipal Utilities (the “BBMUA”), the Township of Buena Vista (“BVT”), and the New Jersey Pinelands Commission (the “Commission”) (all of which are collectively referred to herein as the “Parties”) entered into a Memorandum of Agreement (the “MOA”), dated March 27, 2007, which authorized the BBMUA to develop a proposed infiltration/percolation (I/P) facility, associated plant improvements and necessary piping to convey and discharge treated wastewater from the BBMUA sewage treatment plant to Block 106, Lot 6 (the “subject parcel”) in the Borough of Buena, County of Atlantic, upon which the BBMUA proposed to construct an I/P facility; and

WHEREAS, the subject parcel is located within a Pinelands Agricultural Production Area; and

WHEREAS, the proposed 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”); and

WHEREAS, strict application of the requirements of the Pinelands CMP, with limited exceptions which were not applicable to the proposed development of the I/P facility, would not permit the development of centralized wastewater treatment and collection facilities within a Pinelands Agricultural Production Area; and

WHEREAS, the March 27, 2007 MOA, authorized under N.J.A.C. 7:50-4.52(c)2, was required in order to permit the proposed development of the I/P facility within the Agricultural Production Area; and

WHEREAS, the BBMUA selected and acquired the subject parcel as the proposed location of its I/P facility after conducting preliminary soil tests to investigate the suitability of the parcel for effluent infiltration and percolation; and

WHEREAS, after acquiring the subject parcel, the BBMUA conducted more extensive geotechnical and hydrogeologic testing including deep and shallow soil borings, retrieval and examination of soil cores, and hydraulic profile tool (HPT) testing (static water level,

electrical conductivity, and hydraulic conductivity) and analyzed potential groundwater mounding conditions under the proposed wastewater loading conditions; and

WHEREAS, the Commission staff, the BBMUA and its engineers, and the staff of the United States Geological Survey reviewed the results of the geotechnical and hydrogeologic testing and concluded that proposed wastewater loading of the I/P facility would result in hydraulic failure of the facility, causing wastewater to flood the subject parcel within less than 60 days from the start of loading, and therefore concluded that the subject parcel can not satisfactorily infiltrate and percolate the hydraulic load from the BBMUA's sewage treatment plant; and

WHEREAS, the BBMUA has previously investigated numerous alternatives to meet its wastewater disposal needs, including the feasibility of discharging treated effluent to the Black Run and the Manumuskin at a point outside the Pinelands Area, discharging to both shallow and deep aquifer systems via well injection, and discharging to alternate land parcels via I/P facilities, none of which proved to be feasible; and

WHEREAS, the United States Department of Agriculture, Rural Development Agency committed to finance the development of the proposed I/P facility on the subject parcel; and

WHEREAS, as a result of the inability of the parcel to infiltrate and percolate wastewater, the United States Rural Development Agency has agreed to allocate the USDA funds reserved for the proposed I/P facility to finance best available wastewater treatment technology upgrades to the BBMUA wastewater treatment plant, but only provided that the plant upgrades can be completed within a very short time frame without a substantial expenditure of capital by the BBMUA beyond the previously approved and budgeted USDA funds allocated for the I/P facility project; and

WHEREAS, Membrane Bioreactor (MBR) treatment technology represents the best available wastewater treatment technology and has the capability to significantly improve the effluent quality from the BBMUA treatment plant by reducing Total Nitrogen, Total Phosphorous, Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, *E. coli* and Effluent Turbidity; and

WHEREAS, the Commission recognizes that there are significant water quality and ecological benefits to the resources of the Pinelands Area as a result of BBMUA employing the best available wastewater treatment technologies; and

WHEREAS, BBMUA's use of the MBR treatment technology is contingent upon the approval by the United States Department of Agriculture, Rural Development Agency of the BBMUA's request for an exemption of the "Buy American" provision associated with the ARRA funds; and

WHEREAS, if the BBMUA is unable to obtain an exemption of the "Buy American" provision, it is committed to obtaining an American made wastewater treatment

technology that is the functional equivalent of the MBR treatment technology. A functional equivalent technology is one that is able to meet the effluent limits set forth in Paragraph 2.d. below and is determined by the Pinelands Commission to be the functional equivalent of the MBR treatment technology; and

WHEREAS, the Commission further recognizes the rarity and value of federal funds to finance sewage infrastructure upgrades and is supportive of BBMUA's efforts to acquire this time-limited federal funding ; and

WHEREAS, the Commission has determined that there are no other practicable wastewater disposal alternatives available to the BBMUA and, as a result, has concluded that the only feasible alternative to the BBMUA's effluent disposal needs is to permit the BBMUA to continue its discharge of treated effluent to the Deep Run; and

WHEREAS, BBMUA's existing effluent complies with the CMP's water quality requirement at N.J.A.C. 7:50-6.84(a)3.iii of two parts per million nitrate/nitrogen as computed on an annual average basis, but exceeds two parts per million total nitrogen (Ammonia-N + Nitrate-N + Nitrite-N); and

WHEREAS, the CMP, at N.J.A.C 7:50-6.84(a)3 authorizes the continued direct discharge of effluent into Pinelands surface waters when improvements are made to existing wastewater treatment facilities, provided that there is no practical alternative to the discharge, there is no increase in the existing and approved capacity of the facility, and all discharges from the facility into surface waters are such that the nitrate/nitrogen levels at the point of discharge from the outfall do not exceed two parts per million; and

WHEREAS, BBMUA's use of best available wastewater treatment technology will attain compliance with the CMP's water quality requirement of two parts per million nitrate/nitrogen and importantly, will reduce both concentrations (part per million) and mass loadings (pounds) of Total Nitrogen and Total Phosphorous, as well as reduce Total Suspended Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, *E. coli* and Effluent Turbidity; and

WHEREAS, the March 27, 2007 MOA provided an opportunity for the BBMUA to increase flow to its sewage treatment plant beyond the existing permitted capacity of 400,000 gpd, (of which approximately 350,000 is currently allocated) up to 600,000 gpd as a means to finance the development of the I/P lagoon facility and to reduce the cost of plant upgrades to existing utility rate payers; and

WHEREAS, the BBMUA has advised that it would only be able to fund the installation of best available wastewater treatment technology upgrades if permitted to expand its rate payer base by increasing plant capacity from the currently permitted 400,000 gpd to 600,000 gpd; and

WHEREAS, both the Buena Vista County Club and Buena Vista Camping World appear to be significant sources of non-point pollution in the watershed due to nutrient runoff

from the county club's golf course and septic system discharges from the camping park; and

WHEREAS, in addition to the plant upgrades at the STP required by the MOA amendment, widespread implementation of best management practices at the Buena Vista County Club for both stormwater management and turf grass fertilization is likely to further reduce non-point nutrient discharges to the Deep Run Creek and Pancoast Mill Pond; and

WHEREAS, the existing septic systems which serve Buena Vista Camping World, although not causing a public health problem, greatly exceed the water quality standards of the Pinelands CMP as calculated by the Pinelands Septic Dilution Model; and

WHEREAS, Buena Vista Camping World is a pre-existing non-conforming use located in both a Pinelands Rural Development Area and Forest Area; and

WHEREAS, elimination of these existing septic systems through the sewerage of Buena Vista Camping World will reduce non-point pollution to the Deep Run Creek and provide additional public health and water quality benefits; and

WHEREAS, the Pinelands CMP only permits the development of centralized wastewater collection facilities in Rural Development Areas and Forest Areas to address an existing public health problem ; and

WHEREAS, currently, in accordance with N.J.A.C. 7:50-5.23(d) and 5.26(d), no new development may be authorized at Buena Vista Camping World absent acquisition of significant additional acreage in order to bring the development into compliance with the CMP's water quality standards, specifically N.J.A.C. 7:50-6.84(a)4ii; and

WHEREAS, sewerage of Buena Vista Camping World, will not permit new development to occur at the camping park, unless the camping park is brought into compliance with the water quality requirements of the Pinelands CMP, particularly N.J.A.C. 7:50-6.84(a)4ii ; and

WHEREAS, the execution of this Memorandum of Agreement will serve to authorize the sewerage of existing development at Buena Vista Camping World; and

WHEREAS, the existence of the BBMUA effluent outfall to the Deep Run Creek precedes the implementation of the CMP; and

WHEREAS, the BBMUA has demonstrated its inability to terminate the discharge to the Deep Run Creek due to region-wide geologic limitations; and

WHEREAS, the BBMUA serves Town Management Areas of the Pinelands Area that are designated for future growth, in harmony with the overall goal of the CMP to preserve and protect critical Pinelands resources; and

WHEREAS, the circumstances surrounding the need to responsibly dispose of wastewater from the BBMUA STP, to provide opportunities for future growth in designated Pinelands growth areas, and the opportunity to simultaneously address existing non-point sources of pollution in the Deep Run watershed represent unique and extraordinary circumstances; and

WHEREAS, the measures included in the March 27, 2007 MOA and this First Amendment more than provide a minimum level of protection to the resources of the Pinelands equivalent to those provided through strict application of the standards of the Pinelands CMP; and

NOW THEREFORE, in consideration of the promises, and of the mutual covenants and agreements contained herein, the Parties agree to amend the March 27, 2007 MOA as follows:

1. The Agreement contained herein supercede the agreements set forth in Paragraph VI of the March 27, 2007 MOA.
2. The BBMUA agrees:
 - a. With the exception of 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 permitted flow of 400,000 gpd to its Sewage Treatment Plant (STP) (approximately 350,000 gpd of which is currently committed) as described in Exhibit 1 – Flow Allocations of the March 27, 2007 MOA, regardless of whether such connection will serve development located inside or outside of the Pinelands Area prior to upgrading its sewage treatment plant with MBR treatment technology; and
 - b. With the exception of up to ten acres of the parcel upon which the BBMUA intends in the future to install a solar energy generation facility, , or as otherwise authorized by a future CMP amendment if authorized by a future CMP amendment and following submission and approval of an application for same to the Pinelands Commission, the BBMUA agrees that Block 106, Lot 6 located in the Borough of Buena, County of Atlantic and originally proposed for the development of an I/P facility shall be utilized only for those uses permitted in an Agricultural Production Area in accordance with N.J.A.C. 7:50-5.24.
 - c. Upon completion of the geologic and hydrogeologic investigations, and prior to the execution of this Amended MOA, the BBMUA shall provide the Commission and the NJDEP with a professional engineer's signed and sealed report that summarizes the results of such investigations and quantifies the hydraulic recharge capacity of the site.

- d. To design, construct and operate its STP utilizing MBR treatment technology or an equivalent technology determined by the Pinelands Commission to be the functional equivalent of MBR technology to attain Discharge Monitoring Report limits of 2 mg/l Total Nitrogen (TN) calculated as a six-month average (where total nitrogen is defined as the sum of ammonia-nitrogen plus nitrate-nitrogen plus nitrite-nitrogen), and 3 mg/l TN monthly average. and Discharge Monitoring Report limits of 0.15 mg/l Total Phosphorous (TP) (Total as P) calculated as a monthly average and 0.23 mg/l calculated as a weekly average to accommodate the existing flows and any future average annual daily flows if permitted under this MOA (up to 400,000 gpd of treated wastewater generated by its STP as described in the March 27, 2007 MOA, Exhibit 1 – Flow Allocations). The point of compliance for all discharge parameters shall be within the STP discharge pipe. Mass loading to the Deep Run Creek of both Total Nitrogen and Total Phosphorous shall be less than the currently permitted TN and TP mass loadings, even if the permitted flow to the STP increases from 400,000 gpd to 600,000 gpd.
- e. To submit by May 1, 2012, a complete application for the proposed sewage treatment plant upgrades to the Commission demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP and to the NJDEP for review and approval and to seek all other required construction approvals provided that substantial expenditure of capital by the BBMUA beyond the previously approved and budgeted USDA funds allocated for the I/P facility project is not required.
- f. With the exception of the 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 as required by this Paragraph.
- g. To complete construction of its proposed sewage treatment plant upgrades, by March 1, 2013, in accordance with any conditions contained within any approvals issued by the Commission and/or the NJDEP, including all upgrades required by this MOA to the sewage treatment plant.
- h. To commence, by March 1, 2013, operation of the upgraded sewage treatment plant for the current and committed wastewater volume of up to 400,000 gpd Until such time as a revised NJPDES-DSW permit, approved by the Pinelands Commission, 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.

- i. To copy the Commission on all correspondence, reports and permit applications, including Progress Reports and Discharge Monitoring Reports sent to NJDEP. The BBMUA agrees to provide the Commission with any other relevant information, as requested.
- j. Once the sewage treatment plant upgrades are constructed and operating, to continually monitor influent flow, TN and TP concentrations and mass loadings and to report the results to the Pinelands Commission on a monthly basis.
- k. That it will only permit new sewer connections for development located either inside or outside of the Pinelands Area beyond its existing permitted capacity of 400,000 gpd, if the monthly monitoring reports required by paragraph 2.j above demonstrate that the upgraded sewage treatment plant is able to accept all the permitted flow of 400,000 gpd, as well as meet the Total Nitrogen and Total Phosphorus standards identified in paragraph 2.d above, for a period of not less than 24 months without a serious NJPDES permit violation as defined at N.J.A.C. 7:14A-1.2, and following submission of a public development application to the Commission to authorize an increase above 400,000 gpd and the Commission's approval of same unless authorized as described in Paragraph 4.b below.
- l. If, at any point in time, the upgraded sewage treatment plant does not meet the Total Nitrogen and Total Phosphorus standards identified in paragraph 2.d above, 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 treated by its STP is once again meeting all discharge standards identified in this MOA.
- m. To take all reasonable steps to maximize beneficial reuse of wastewater treated 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 minimize discharges to the Deep Run to the maximum extent practical.
- n. As stated at paragraph 2.n. in the March 27, 2007 MOA, to guarantee Buena Vista Township 15,000 gpd, included within the current and committed flow of 400,000 gpd.
- o. To guarantee Buena Vista Township 1/3 of the total flows generated beyond 400,000 for a period of ten (10) years of the BBMUA obtaining additional wastewater flow beyond its current permitted flow of 400,000 gpd, provided that the upgraded sewage treatment plant meets effluent

standards identified in paragraph 2.d and k. above, for a period of not less than 24 months, and provided, the Commission authorizes an increase in capacity at the STP following submission and approval of an application for same, subject to the BBMUA being in a position to permit new sewer connections in accordance with Paragraph 2.k. above.

- p. To assist Buena Vista Township in applying for grants, loans, or other subsidies to design and construct the U.S. Route 40 interceptor and to further assist Buena Vista Township in the development, advertising, review and awarding of contract documents for the construction of the U.S. Route 40 interceptor. BVT shall be responsible for all costs associated with the design and construction of the interceptor.
- q. To undertake an annual public education campaign to disseminate educational materials to all BBMUA customers emphasizing the importance of implementing water conservation practices and the importance of properly disposing of household hazardous materials and pharmaceuticals to prevent their discharge to the BBMUA sewer system.
- r. Notwithstanding any other provision contained herein to the contrary, should the BBMUA fail to comply with all of its obligations under this Agreement, including but not limited to, upgrading its STP with MBR or an equivalent treatment technology, BBMUA shall 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 such time as it satisfies all of its obligations herein.
- s. Nothing contained herein shall prevent the BBMUA from submitting an application with all of the standards and conditions set forth herein to the NJDEP, prior to completion of the treatment upgrades at its STP, for a NJPDES permit to increase flows at its STP to 600,000 gpd. Thus both the necessary Water Quality Management Plan amendment and any NJPDES permit issued by the NJDEP shall be contingent upon the BBMUA's installation and utilization of the MBR or an equivalent treatment technology and the demonstration required in Paragraph 2.k. above that the upgraded STP is capable of accepting all the permitted flow of 400,000 gpd, as well as meet the Total Nitrogen and Total Phosphorus standards identified in paragraph 2.d above, for a period of not less than 24 months. Additionally, the Total Nitrogen and Total Phosphorus standards contained in paragraph 2.d above shall be incorporated as standards in any NJPDES permit issued for the STP. The applicant shall request that the NJPDES permit contain the standards and conditions contained in this First Amendment to the March 27, 2007 MOA.

3. Buena Vista Township agrees :

- a. It shall, within ten (10) years of the BBMUA obtaining additional wastewater flow beyond its current permitted flow of 400,000 gpd and being in the position to permit new sewer connections in accordance with Paragraph VI.A.13 of the March 27, 2007 MOA, 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; including the sewerage of the Buena Vista Township Municipal Building, Buena Vista Camping World, and residences located along Fursin Avenue thereby reducing the number of existing uses reliant upon onsite septic systems (see Exhibit 1 of the March 27, 2007 MOA).
- b. 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.
- c. To utilize its best efforts to minimize the nutrient runoff flowing from the Buena Vista Country Club to the Deep Run Creek and Pancoast Mill Pond.
- d. Within six (6) months of execution of this amended MOA by all parties, to amend its Recreational and Open Space Inventory and submit same to the New Jersey Department of Environment Protection, Green Acres Program to include the approximately 232 acres of land that it deed restricted in accordance with the provisions of Paragraph VI.B.3 of the March 27, 2007 and which are set forth in the Deed of Conservation Restriction dated January 31, 2008 and recorded at Deed Book 1274; CFN #2008009588.
- e. Notwithstanding any other provision herein to the contrary, should BVT fail to satisfy all obligations contained herein, it shall not receive any of the waste flow allocated to it pursuant to Paragraphs 2.n & o above. To the extent that a portion of the waste flow has already been allocated to and utilized in BVT, no additional waste flow shall be allocated until BVT satisfies all of its obligations under this Agreement.

4. The Commission agrees:

- a. To allow for the continued discharge of treated wastewater from the BBMUA sewage treatment plant to the Deep Run provided:
 - i. 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 the March 27, 2007 MOA;

- ii. An application for development of sewage treatment plant upgrades incorporating MBR treatment technology is completed with the Pinelands Commission by the BBMUA as required by paragraph 2.e. above, demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP;
 - iii. 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;
 - iv. 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 amended MOA, and upon submission of a Public Development Application to the Pinelands, pursuant to the requirements of paragraph 2.e. above, demonstrating the proposed development's compliance with N.J.A.C. 7:50-6 of the Pinelands CMP;
 - v. To investigate defining all Pinelands Town Management Areas as designated "growth areas", thereby potentially making these areas eligible for funding of sewerage infrastructure improvements through the Pinelands Infrastructure Trust Fund; and
- b. Based upon analytic investigations, any increase beyond the currently permitted 400,000 discharge will not result in a significant increase in existing downstream flooding at the Pancoast Road Dam as a result of any increased discharge from the BBMUA. The Commission agrees to provide all parties with copies of any and all documents and studies establishing the BBMUA's contribution to a significant and additional negative impact.
 - c. To assist BVT in seeking grants outside the scope of the Pinelands Infrastructure Trust Fund to construct the necessary sewerage conveyance infrastructure to sewer the campground.
 - d. To contribute up to fifty percent (50%) of the cost, up to a maximum of \$ 25,000.00, to assist BVT to abate the existing flooding condition at Pancoast Mill Pond. Such contribution is contingent upon BVT demonstrating to the Commission's satisfaction that it has utilized its best efforts to Minimize the nutrient runoff from the Buena Vista County Club to the Deep Run and Pancoast Mill Pond. Best efforts may include the BVT Administration promulgating an ordinance requiring Buena Vista

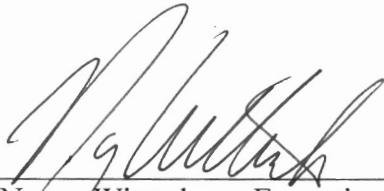
Country Club and other non-point sources of nutrients to Deep Run to institute fertilizer best management practices and/or pretreatment of stormwater or to require such as a condition of any approval issued should Buena Vista County Club seek approval from the BVT planning and/or zoning board. Further, best efforts also may include adoption of local ordinances that control fertilizer formulations and fertilizer application schedules.

- e. To consider further amending this MOA to authorize additional wastewater flow to the BBMUA's STP above 400,000 gpd, prior to BBMUA's demonstration in accordance with Paragraph 2.k. above that the upgraded sewage treatment plant is capable of accepting all the permitted flow of 400,000 gpd, as well as meet the Total Nitrogen and Total Phosphorus standards identified in paragraph 2.d above, for a period of not less than 24 months without a serious NJPDES permit violation, 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 upgrading its STP with MBR or an equivalent treatment technology that can be substantially mitigated by accepting additional wastewater flow at the STP. Such authorization may only be granted if the Commission determines:
 - 1) The NJDEP has approved a Water Quality Management Plan Amendment and that increases the wastewater flow capacity of the BBMUA's STP above 400,000 gpd, under the conditions contained herein;
 - 2) The BBMUA has entered into a contract for the completion of the STP treatment upgrades and construction is imminent; and
 - 3) Such request will not delay the upgraded treatment of wastewater generated by the STP; and
 - 4) The BBMUA has proceeded with all due diligence to expeditiously satisfy all of its obligations under this Agreement.
5. This MOA shall take effect upon approval and signature by the authorized representatives of all parties and following the conclusion of the Governor's review in accordance with N.J.S.A. 13:18A-5(h).
6. This First Amendment to the March 27, 2007 MOA shall remain in effect unless amended or terminated by written consent of all parties.

SIGNATURES

NEW JERSEY PINELANDS COMMISSION

Date: 8/1/11

By: 
Nancy Wittenberg, Executive Director

Approved as to form by:

Date: 28 July 11

By: Jean Reilly
Jean Reilly, Deputy Attorney General
State of New Jersey

BUENA BOROUGH MUNICIPAL UTILITIES AUTHORITY

Date: 7/13/11

By: 
John Brunini, Chairperson

BUENA VISTA TOWNSHIP

Date: 7/12/11

By: 
Chuck Chiarello, Mayor