

AMENDMENT  
TO  
SERVICE CONTRACT  
BETWEEN  
PLAINFIELD AREA REGIONAL SEWERAGE AUTHORITY  
AND

BOROUGH OF DUNELLEN  
BOROUGH OF FANWOOD  
TOWNSHIP OF GREEN BROOK  
BOROUGH OF NORTH PLAINFIELD  
CITY OF PLAINFIELD  
TOWNSHIP OF SCOTCH PLAINS  
BOROUGH OF SOUTH PLAINFIELD  
BOROUGH OF WATCHUNG

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Dated: December 9, 2003

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**WITNESSETH:**

WHEREAS, the PLAINFIELD AREA REGIONAL SEWERAGE AUTHORITY ("the Authority") and BOROUGH OF DUNELLEN, BOROUGH OF FANWOOD, TOWNSHIP OF GREEN BROOK, BOROUGH OF NORTH PLAINFIELD, CITY OF PLAINFIELD, TOWNSHIP OF SCOTCH PLAINS, BOROUGH OF SOUTH PLAINFIELD, and the BOROUGH OF WATCHUNG ("the Participants") entered into a Service Contract dated August 3, 1995 which covers the operation, management, and financial arrangements between and among the parties; and

WHEREAS, the aforesaid Service Contract arose from the settlement of litigation captioned Township of Scotch Plains v. Plainfield Joint Meeting, et al., in the Superior Court of New Jersey: Law Division, Docket No. L-100243-88 resulting in the entry of an Order Entering Stipulation of Settlement dated January 9, 1995 and which provided inter alia for the Authority Charge System at Paragraph 7 thereof; and

WHEREAS, Paragraph 7 (a) (i) of the aforesaid Stipulation of Settlement provides:

A member or customer municipality's annual charge may be affected based upon the quantity of biochemical oxygen demand, chlorine demand or concentration of suspended solids (hereafter collectively referred to as "Pollutants") contained in the wastewater flows discharged by that municipality in order to offset any charges or fines which may be imposed upon the Regional Sewerage Authority by the MCUA or any State or Federal agency relating to the discharge of such pollutants; and

WHEREAS, the parties have entered into a Service Contract with the Middlesex County Utilities Authority ("the MCUA") providing for the treatment and disposal of wastewater originating in the Authority service area and under the terms of which MCUA charges the Authority

for the treatment and disposal of high strength wastewater of the type set forth in Paragraph 7 (a) (i) of the Stipulation of Settlement; and

WHEREAS, the Authority and the Participants desire to provide for the fair and equitable distribution and allocation of those charges among the Participants in relation to the actual quantities of such pollutants delivered to the Authority system from each such Participant and in accordance with the aforesaid provisions of the Stipulation of Settlement; and

WHEREAS, the 1995 Service Contract provides at Article 402 thereof for the payment of Annual Charges by the Participants to the Authority and more particularly to recover from the Participants charges imposed upon the Authority by the MCUA relating to the discharge of high strength waste (therein defined as "Pollutants") except to the extent that such charge is determined by the Authority to be caused by an Industrial User; and

WHEREAS, the Authority intends to monitor and measure the total flows from each Participant to determine the amount of high strength wastewater originating from each Participant and to formulate charges therefor which will directly reflect and recover the charges made to PARSA by MCUA therefor; and

WHEREAS, the Authority also desires to make discretionary the presently mandatory reporting requirements for sewerage capacity needs in order that the Participants not incur unnecessary costs in the preparation of same; and

WHEREAS, the parties desire to amend the 1995 Service Contract to provide therefor, to take effect January 1, 2004; and

WHEREAS, the Authority intends that any and all customer service contracts shall be revised and amended to provide for the same;

NOW, THEREFORE, in consideration of the premises of the mutual covenants and agreements herein set forth, and the undertakings of each party to the other, the Authority and the Participants, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

**Section One:**

Section 202 is amended to read as follows:

Section 202. Operation and Maintenance of System. Upon accepting transfer of and control over the System, the Authority will cause the System to be maintained and operated and, whenever necessary, will alter, improve, enlarge and extend the System so as to dispose of all Sewage which may be delivered into the System by the Participants in accordance with Article III. Rights to available capacity in the System shall not be allocated by the Authority amongst the Participants unless required by State or Federal law or any State or Federal agency. The Authority may at any time, subject to the provisions of Section 601, alter, improve, enlarge and extend the System in any respect or renew or replace any part thereof and issue Bonds to finance, among other things, the cost thereof. If requested by the Authority, a Participant shall prepare and provide a report evaluating its projected capacity needs for the forthcoming three year period. No Participant shall be required to provide a projected capacity needs report more frequently than once every three years.

**Section Two:**

Section 402 (B)(1)(2) and 402 (C) are amended to read as follows:

(1) The Annual Charge to be paid by each Participant shall be calculated on the basis of the cost of all operation, maintenance and ordinary repairs, as well as all capital expenditures incurred as a result of needed repair, restoration, or expansion of the System. All such costs and capital expenditures shall be borne by the Contracting Municipalities on a pro rata basis. The Annual Charge of each Contracting Municipality, regardless of whether such municipality is a Participant, shall bear the same ratio to the total expenses of the Authority, as described in Section 402(A), as the ratio that the total average daily flows attributable to each contracting Municipality on the basis of volume and quality bears to the total average daily flows in the System ("General Formula"). The Annual Charge to be paid by each Contracting Municipality shall be calculated in accordance with this General Formula. The Authority shall calculate such Annual Charge on the

basis of volume and quality in accordance with the General Formula using data averaged from the immediately prior three Measuring Years.

(2) The Annual Charge to be paid by a Participant may be decreased or increased as a result of the characteristics of the Sewage and other wastes and any other special matter affecting the cost of treatment and disposal thereof, including biochemical oxygen demand, chlorine demand, concentration of suspended solid, chemical composition or other forms of Pollution (hereafter collectively referred to as "Pollutants") contained in the Sewage regularly discharged by a Participant. The Authority also reserves the right to impose a separate charge upon a Participant to offset any charges or fines which are imposed upon the Authority by the MCUA or any State or Federal agency relating to an atypical, abnormal or anomalous discharge of such Pollutants.

(C) In the event a charge for a deficiency is imposed upon the Authority under the MCUA Agreement, the Authority reserves the right to, in turn, impose a Deficiency Charge upon any or all the Participants in order that each Participant pays its share of such deficiency. Any Deficiency Charge imposed by the Authority shall be intended to reimburse the Authority for the charge(s) or expense(s) imposed upon it. Any Deficiency Charge imposed by the Authority upon a Participant shall be calculated in accordance with the General Formula unless other factors relating to the deficiency charge imposed by the MCUA warrant otherwise. Such other factors include but are not limited to the level of Pollution in a Participant's discharge and/or the failure of a Participant to pay its Annual Charge as and when due. Any Deficiency Charge imposed by the Authority upon a Participant shall be paid by the Participant at the time of the Participant's next quarterly payment of its Annual Charge or within forty-five (45) days of receiving notice of such Deficiency Charge.

Should a Deficiency Charge result in whole or in part from a failure to receive sums payable to the Authority from any source, then said Deficiency Charge will not relieve such delinquent source of any debt for sums which are due and owing. If and when such sums are ultimately paid by such delinquent source, then such paid sums shall be distributed to those Participants which have paid a Delinquency Charge on account of such source as a credit against

their Annual Charge in the immediately succeeding Fiscal Year after said sums are received in the same proportion as the Deficiency Charge was originally paid by such Participants.

**Section Three:**

Section 501 (B) and (C) are amended to read as follows:

(B) Each Participant will cause all Sewage at any time discharged or allowed into the System by it, on its behalf or within its District to comply with the Service Rules. Each Participant will permit no new connection(s) and will discontinue any public connection(s) and will require the discontinuance of any private connection(s) to its Local Sewerage System or the System within its District which allows into the System, either directly or through its Local Sewerage System, Sewage which does not comply with the Service Rules. The Authority may from time to time make a determination as to whether Sewage discharged or allowed into the System by, on behalf of or within the District of any Participant is not in compliance with the Service Rules. A copy of such determination shall be mailed to such Participant's municipal clerk at its usual place of business and, for all purposes of this Agreement, shall be conclusively deemed to have been made in accordance with this Article and to be correct at the expiration of the period of forty-five (45) days after such mailing except as may be provided by the final judgment of a court of competent jurisdiction in an action begun by said Participant within such period.

(C) The Authority may from time to time fix, charge and collect reasonable rates or other charges from a Participant for the discharge of Sewage into the System by any person or entity of a quality which is not in compliance with the Service Rules then in effect and which is injurious, deleterious or otherwise burdensome to the System. A Participant, upon receipt from the Authority of a certificate signed by an Authority Officer stating the amount of any such charge with respect to sewage discharged into the System by such Participant, shall at the next quarterly date for the payment of Annual Charges pay to the Authority the amount of such charge.

**Section Four:**

The balance of the provisions of the 1995 Service Contract are confirmed.

**Section Five:**

This Amendment shall take effect on January 1, 2004.

IN WITNESS WHEREOF, the Authority and Participants have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

ATTEST:

PLAINFIELD AREA REGIONAL  
SEWERAGE AUTHORITY

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

TOWNSHIP OF SCOTCH PLAINS

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

CITY OF PLAINFIELD

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

PLAINFIELD MUNICIPAL  
UTILITIES AUTHORITY

\_\_\_\_\_ BY: \_\_\_\_\_

ATTEST:

BOROUGH OF DUNELLEN

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

BOROUGH OF WATCHUNG

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

BOROUGH OF NORTH PLAINFIELD

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

BOROUGH OF FANWOOD

*Carson McHoon* By: *Rouis C. Jung*

ATTEST:

TOWNSHIP OF GREEN BROOK

\_\_\_\_\_ By: \_\_\_\_\_

ATTEST:

BOROUGH OF SOUTH PLAINFIELD

\_\_\_\_\_ By: \_\_\_\_\_