

RESOLUTION - AUTHORIZING THE EXECUTION OF A HOST BENEFIT AGREEMENT WITH THE COUNTY OF MONMOUTH, NEW JERSEY


WHEREAS, pursuant to NJS 13:1E-28 et seq, the Borough of Tinton Falls is authorized to enter into a Host Community Agreement regarding the Monmouth County Landfill Operations located within the Borough, and;

WHEREAS, negotiations were instituted by and between the Borough of Tinton Falls through its Special Counsel and the County of Monmouth to establish terms and conditions of a Host Benefit Agreement between the parties for the period of January 1, 2010 through December 31, 2017, and;

WHEREAS, said negotiations have resulted in substantial agreement as to the terms and conditions of the Host Benefit Agreement annexed hereto and made part hereof, subject to the approval of both entities,

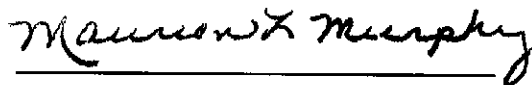
NOW THEREFORE BE IT RESOLVED, by the Borough Council of the Borough of Tinton Falls in the County of Monmouth, State of New Jersey that the attached Host Benefit Agreement for the period of January 1, 2010 through December 31, 2017 is hereby formally ratified by the Borough of Tinton Falls ; and

BE IT FURTHER RESOLVED, by the Borough Council of the Borough of Tinton Falls in the County of Monmouth, State of New Jersey that the Mayor and Borough Clerk are hereby authorized and directed to execute said agreement annexed hereto, together with any amendments as may be deemed necessary by Borough Special Counsel on behalf of the Borough.


GARY BALDWIN, COUNCIL PRESIDENT

I hereby certify that the above Resolution was duly adopted by the Borough Council of the Borough of Tinton Falls at a meeting held January 4, 2011.


MAUREEN L. MURPHY, BOROUGH CLERK

	M O V E D	S E C O N D E D	A Y E S	N A Y S	A B S E N T	A B S E N T I N	I hereby certify that the above Resolution was duly adopted by the Borough Council of the Borough of Tinton Falls at a meeting held on January 4, 2011.
MS. FAMA		X	X				 Maureen L. Murphy, Borough Clerk
MR. LARKIN			X				
DR. MAYER	X		X				
MR. MORRILL					X		
MR. BALDWIN			X				

HOST BENEFIT AGREEMENT

Between

THE COUNTY OF MONMOUTH, NEW JERSEY

And

THE BOROUGH OF TINTON FALLS, NEW JERSEY

January 1, 2010 – December 31, 2017

Dated as of January 1, 2010

HOST BENEFIT AGREEMENT

This Agreement is made and entered as of this 1st day of January, 2010.

BETWEEN The COUNTY OF MONMOUTH, through its BOARD OF CHOSEN FREEHOLDERS, Main Street, Freehold, New Jersey, a body corporate and politic of the State of New Jersey (the "County")

AND The BOROUGH OF TINTON FALLS, through its Mayor with the approval of its BOROUGH COUNCIL, 556 Tinton Avenue, Tinton Falls, New Jersey, a body corporate and politic of the State of New Jersey (the "Borough")

WHEREAS, the County is the owner and operator of a solid waste facility located within the Borough and which facility is known as the Monmouth County Reclamation Center (the "MCRC"), and

WHEREAS, the County has been paying the Borough a host community benefit pursuant to an agreement between the parties, the term of which has expired, and

WHEREAS, the County and the Borough desire to establish new host community benefit payments to be realized by the Borough from the County for the use of land within the municipal boundaries of the Borough, and

NOW THEREFORE, and in consideration of the mutual promises contained herein, the benefit and detriment to each party being hereby acknowledged, the County and the Borough agree as follows:

1. Host Community Economic Benefit.

(a) Subject to the provisions of Section 1(d) hereof, for each ton or part thereof, of solid waste delivered to the MCRC by customers of the County for disposal in the County's MCRC located in the Borough or, with respect to Type 13 Waste, for transfer to an out-of-county disposal site, the County shall pay to the Borough an economic benefit payment in the sum of

\$4.85 per gross ton commencing as of January 1, 2010, and continuing through the time that the MCRC transmits its leachate into the Tinton Falls sewerage collection system.

(b) Subject to the provisions of Section 1(e) hereof, starting with the month the MCRC transmits its leachate into the Tinton Falls sewerage collection system, and as long as it continues to transmit such leachate and until December 31, 2017, for each ton or part thereof of solid waste delivered to the MCRC by customers of the County for disposal in the County landfill located in the Borough and for each ton of Type 13 Waste delivered to the MCRC by customers of the County for transfer to an out-of-county disposal facility, the County shall pay to the Borough an economic benefit payment in the sum of \$5.50 per gross ton.

(c) The revenue to be paid to the Borough shall be reduced by the amount due and owing from the Borough to the County for the full tipping fee (including taxes and surcharges) charged to the Borough which shall be based upon the charge to customers of the County as such tipping fee may change from time to time for each ton of solid waste that it delivers or causes to be delivered to the MCRC. More specifically, each quarter therefore the County shall determine the net payment due and owing to the Borough and should forward said payment in accordance with the requirements of Section 2 of this Agreement. The Borough shall not be entitled to an economic Benefit payment for (1) separated or commingled recyclable materials delivered to the MCRC for processing, (2) commodities or materials which will be beneficially re-used at the MCRC, (3) other materials which are not subject to the host community fee payment requirement of the County's tariff, and (4) royalty payments from the co-generation facility located at the MCRC. In addition, the Borough agrees that the co-generation facility is not subject to real estate taxation.

(d) The parties agree that during the period from January 1, 2010 through December 31, 2010, the MCRC shall make a minimum annual payment of \$2,470,000. Starting January 1, 2011 and until the month the MCRC transmits its leachate into the Tinton Falls sewerage collection system, the MCRC shall make a minimum annual payment of \$2,182,500.

(e) For the period starting with the month MCRC transmits its leachate into the Tinton Falls sewerage collection system, and continues to transmit such leachate into the Tinton Falls sewerage collection system and until December 31, 2017, the County shall pay to the Borough a minimum annual payment of \$2,475,000.

(f) In the year that the MCRC begins transmitting its leachate into the Tinton Falls sewerage collection system, the minimum payments set forth in subsection (d) and (e) hereof

shall be pro-rated. By way of example, if the MCRC begins transmitting leachate into the Tinton Falls sewerage collection system as of April 1 in a particular year, the minimum payment shall be pro-rated with 25% being at the pre-leachate minimum payment and 75% at the post leachate minimum payment.

(g) The minimum payments set forth herein shall be calculated prior to netting out the amounts representing the Borough's disposal charges as set forth in subsection (c) hereof.

(h) In addition to the above payments, the MCRC agrees to pay to the Borough the sum of Ten Thousand Dollars (\$10,000.00) per year for the benefit of the fire districts that service the MCRC.

2. Payment of Economic Benefit.

All economic benefits due to the Borough from the County under Section 1 shall be payable quarterly. The quarters shall end March 31, June 30, September 30 and December 31. Payment shall be made by the County to the Borough within 45 days of the end of the applicable quarter. In the event that the total of payments paid during a year is less than the minimum payment, and a shortfall payment is due the Borough pursuant to Section 1(d) or (e), such payment shall be made by the County within 45 days of the end of the fourth quarter of each year. If payment is not received by the Borough within the 45-day period, the amount due from the County shall accrue thereafter with interest, at a rate of interest equivalent to the 90-day Treasury Bill sold at the most recent auction in relation to the host payment due date.

3. Leachate Treatment and Disposal.

(a) The Borough agrees to cooperate with the County in order to permit the leachate from the MCRC to be transmitted from the MCRC through the Tinton Falls sewerage collection system to the Township of Neptune Sewerage Authority (TNSA). The cooperation will include either consenting to or filing any permits and obtaining any approvals which may be required from either the New Jersey Department of Environmental Protection or the TNSA. All costs of any applications shall be the responsibility of the County.

(b) The Borough agrees that the County can use a capacity of 165,000 gallons per day (gpd). For such capacity, the County agrees to advance to the Borough the sum of \$455,000 which sum shall be paid as follows: \$218,334 in 2011 and 2012 and \$18,332 in 2013. Upon connection to the sewer system, the advance shall be deemed earned by the Borough.

(c) Upon connection to the Tinton Falls sewerage collection system, the County agrees to pay the applicable connection fee. Based on the current connection fee and the reservation of an additional 150,000 gpd, the connection fee is estimated to be \$1,078,000.

(d) The parties acknowledge that the pumping station on Jumping Brook Road (Jumping Brook Pumping Station) would have to be upgraded to handle the leachate from the MCRC. The Borough agrees to expeditiously upgrade the Jumping Brook Pump Station and review both the upgrade and the timing of the upgrade with the County. The County agrees to advance to the Borough a sum of \$250,000 to upgrade the Jumping Brook Pumping Station. In addition, the County agrees to advance to the Borough in 2013 the sum of \$200,000 against the amount owed to the Borough as a connection fee. The \$450,000 advanced by the County shall be deducted from the connection fees owed by the County pursuant to Section 3(c) hereof.

4. Term.

(a) This Agreement shall terminate on December 31, 2017. The County and the Borough agree to commence negotiations for a new agreement no later than June 30, 2017 so that the Borough may anticipate the host benefit income for its budget year including 2018. In the event that a new agreement is not reached by December 31, 2017, then it is agreed that the economic benefit payable to the Borough hereunder for the year 2018 shall continue until a new economic benefit is effective and, at such time, the new economic benefit payment shall be adjusted retroactively, up or down, to January 1, 2018.

(b) In the event that the County is unsuccessful in connecting its leachate to the Borough's sewerage collection system by August 1, 2014, either party after August 1, 2014 can terminate this Agreement as of December 31, 2014 by giving the other party notice by September 1, 2014. The parties agree to negotiate a Host Community Economic Benefit for the year 2014 within ninety (90) days after the termination.

(c) In the event of a termination pursuant to Paragraph 4(b) above, the Borough shall repay the sum of \$905,000 (said sum being the advance for capacity of \$455,000 and advance for connection fees of \$450,000). The \$905,000 shall be repaid by the Borough to County over a minimum of three (3) years following the year of the notice. If this contingency occurs, and notice is given pursuant to Paragraph 4(b), then 150,000 gpd of sewer capacity will revert to the Borough.

5. Advisory Committee

The parties agree that an Advisory Committee consisting of six (6) people shall be formed. The County shall have three (3) appointments and the Borough shall have three (3) appointments which shall include representatives of the residential communities which are in close proximity to MCRC. The function of the Advisory Committee shall be to advise the County with regard to the operation of the Landfill with respect to impact on the Borough.

6. Covenant Not to Sue: Limitation On Consultants.

(a) The parties acknowledge that it is in their mutual best interests to cooperate in the full performance of this agreement by each party and that the payment of Economic Benefits hereinunder is predicated on the operation of the Landfill under its present permitting structure and as intended in this agreement. Accordingly, so long as the County is not in breach of its obligations herein, the Borough agrees that it will not undertake or initiate any action at law or equity or any administrative proceeding seeking to terminate the operations of the Landfill or seeking closure of same during the pendency of this Agreement.

Consistent with the previous paragraph, the Borough will not provide financial support for any of its consultants or permit its own employees on behalf of the Borough, including any legal or technical advisors to appear or assist in any lawsuit or administrative hearing to request or give evidence or consultation on behalf of any objector or challenger to the County's use or operation of the landfilling facility at the Landfill site. An employee that is subpoenaed or ordered by Court to testify or participate in a proceeding relating to the use or operation of the landfilling facility by either testifying or participating shall not be deemed to be a violation of this Agreement by the Borough. Failure of the Borough to abide by the terms set forth above will constitute grounds for the termination of this Agreement by the County in accordance with Paragraph 8 (Breach) herein.

(b) Nothing herein shall limit the right of the parties to seek to enforce the terms of this Agreement nor limit the right of individual representatives of the Borough to indicate their official position with the Borough and state their views in an individual capacity with regard to the County's use and operation of the Landfill facility.

7. County Termination As Owner/Operator.

In the event that any Court, Administrative or Governmental Agency permanently enjoins the use of the Landfill, the County may terminate this agreement upon 30 days notice to Borough, whereupon all obligations of County shall terminate as of the date set forth in such notice to the Borough, including but not limited to the payments set forth in Section 1.

8. Breach.

(a) In the event of an alleged breach, the Administrator of the non-breaching party shall notify the Administrator of the alleged breaching party and they shall meet to attempt to resolve the alleged breach. In the event they cannot resolve the problem, the non-breaching party will have the right to appear before the governing body of the alleged breaching party to present its position. In the further event that the matter is not resolved by the governing body, the non-breaching party may then file an action in an appropriate court to enforce its rights.

(b) In the event either party breaches this Agreement and does not cure same within 14 days of notice of the breach, or in the event it is not practical to cure such breach within 14 days, or shall fail to take reasonable action to cure such breach within such time, the resolution procedure in Paragraph 8(a) shall be employed. If, however, the breach is not resolved within sixty (60) days after the notice set forth in subsection (a) hereof, the non-breaching party may terminate this Agreement whereupon all obligations of the parties pursuant to this Agreement shall terminate.

9. Entire Agreement.

This Agreement constitutes the entire agreement and understanding of the parties and there are not representations, inducements or other promises applicable between the parties hereto other than those set forth in the Agreement. It is expressly agreed and acknowledged that any prior understandings and agreements between the parties hereto are superseded by this Agreement. This Agreement may not be changed or terminated orally by either party; it may be amended only by writing which is signed by both County and Borough.

10. Binding Effect.


This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11. Counterparts.

This Agreement may be executed in counterparts which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties have caused their duly authorized officials to execute this Agreement intending to bind each party, its successors and assigns.

BOROUGH OF TINTON FALLS



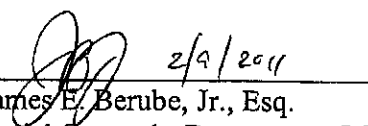
Name: Michael Skudera
Title: Mayor

Attest:



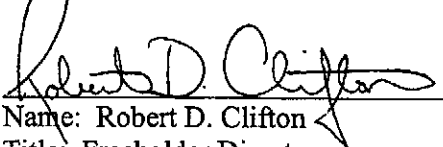
Name: Maureen L. Murphy
Title: Borough Clerk

Approved As To Form:



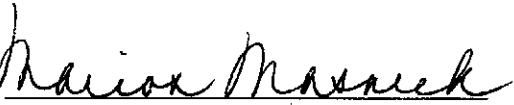
Name: James E. Berube, Jr., Esq.
Title: Special Counsel - Department Of Law

COUNTY OF MONMOUTH



Name: Robert D. Clifton
Title: Freeholder Director

Attest:



Name: Marion Masnick
Title: Acting Clerk of the Board of Chosen Freeholders