

FIRST AMENDMENT OF THE JUNE 28, 2006  
MEMORANDUM OF AGREEMENT  
AMONGST  
STAFFORD TOWNSHIP,  
OCEAN COUNTY,  
AND  
THE NEW JERSEY PINELANDS COMMISSION

Dated: \_\_\_\_\_, 2010

**WHEREAS**, Stafford Township (the "Township"), Ocean County 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 June 28, 2006, which authorized the Township to proceed with closure of two landfills (known as the "New and Old" landfills) located at and redevelopment of property located in Stafford Township, Ocean County commonly known as the Stafford Business Park (the "Business Park"); and

**WHEREAS**, the Business Park site is located within the Pinelands Area in a Regional Growth Management Area;

**WHEREAS**, as authorized by the MOA, the Township, through its designated Redeveloper, implemented the following plans at the Business Park: 1) the Major Landfill Waste Disruption Approval Report and Request for Beneficial Reuse Approval for the Old Stafford Township Landfill (commonly referred to as the "Old Landfill") and the Landfill Closure Report for the Stafford Township Sanitary Landfill (commonly referred to as the "New Landfill") (collectively the "Landfill Closure Plans"); and 2) "Redevelopment Plan for the Stafford Business Park" adopted by the Mayor and Town Council of Stafford on November 1, 2005, by Ordinance No. 2005-102, as amended from time to time (the "Redevelopment Plan"); and

**WHEREAS**, the Redevelopment Plan called for, inter alia, the closure of the landfills in accordance with applicable law in order to protect the surface waters, groundwater and other resources of the Pinelands Area; and

**WHEREAS**, as part of its review process that resulted in the development and execution of the June 28, 2006 MOA, the Commission determined that implementation of the Landfill Closure Plans and the Redevelopment Plan would result in adverse impacts on wetland buffers, on the survival of two (2) local populations of threatened or endangered plants and on habitats that were critical to the survival of two (2) local populations of threatened or endangered animal species and, therefore, required deviations from the strict application of the requirements of the Pinelands Comprehensive Management Plan (the "CMP") that pertain to those resources; and

**WHEREAS**, as part of the measures included in the June 28, 2006, MOA, intended to provide an equivalent level of protection of the resources of the Pinelands, the Township, as required by Paragraph VI.A.15 of the MOA, placed a Conservation Restriction upon portions of the New Landfill, as depicted in cross hatch on the Lot Consolidation/Subdivision Plan, prepared for the

Stafford Business Park by Thomas J. Ertle & Associates, dated June 21, 2005, last revised on November 27, 2006, and filed in compliance with all provisions of the New Jersey Map Filing Law, N.J.S.A. 46:23-9.9, et. seq. in the Ocean County Clerk's Office, as Map Number L3511, on December 11, 2006 (the "Lot Consolidation/Subdivision Plan"), against future development and to retain this area, in perpetuity, as Open Space; and

**WHEREAS**, the two landfills have been closed in accordance with the requirements of the Closure Plans and the as-built certification for the landfill closures was approved by the New Jersey Department of Environmental Protection on June 18, 2009; and

**WHEREAS**, on or about, July 14, 2010, the Township, applied to the New Jersey Department of Environmental Protection for an amendment to the Landfill Closure Plan for the New Landfill in order to permit Renewable Energy Facilities (i.e. facilities that produce electrical energy from wind, solar, photovoltaic, or other technologies) to be developed on the lot comprising the New Landfill; and

**WHEREAS**, on or about July 1, 2010, the Township and the Township's Redeveloper approached the Commission staff to discuss the Township's desire to utilize the area of the New Landfill, with the exception of the area of the existing Stormwater Basins, wetlands and wetland buffers located thereon, and the approximately 20-acres currently leased to the County for operation of its composting facility located on the surface of the New Landfill, for the development of Renewable Energy Facilities on the lot comprising the New Landfill; and

**WHEREAS**, on July 19, 2010, the Township's designated Redeveloper submitted to the Commission a summary of and site plans for the Renewable Energy Facilities proposed to be developed on the lot comprising the New Landfill; and

**WHEREAS**, on or about July 26, 2010, the Township's Redeveloper submitted to the Commission reports prepared by Robert Zappolarti, Herpetological Associates and Joseph Arsenault providing an ecological assessment of the capped New Landfill, discussing any potential impacts thereto as the result of the development of Renewable Energy Facilities on the New Landfill and concluding that development of Renewable Energy Facilities would not adversely effect threatened and/or endangered plant or animal species; and

**WHEREAS**, the New Jersey Department of Environmental Protection on August 5, 2010, approved an amendment to the Landfill Closure Plan for the New Landfill to provide for, and permit Renewable Energy Facilities to be developed on the lot comprising the New Landfill, subject to conditions set forth within the Closure Plans as amended and modified by that August 5, 2010 approval; and

**WHEREAS**, as noted above, Paragraph VI.A.15 of the June 28, 2006, MOA required the Township to file Conservation Restrictions with the Ocean County Clerk's office for the New Landfill and other open space areas on the Redeveloped Business Park site, including wetlands buffer areas; and

**WHEREAS**, on December 11, 2006, the Township filed the required Conservation Restrictions with the Ocean County Clerk's Office, including a Declaration of Covenants and Restrictions

specifically pertaining to the Landfill, entitled "Declaration of Covenants and Restrictions (11b.)(Landfill) which was dated December 7, 2006, and recorded at Deed Book 13446, Page 0118; and

**WHEREAS**, in order to develop Renewable Energy Facilities on the lot comprising the New Landfill, the Township has requested that the June 28, 2006, MOA be amended to modify the obligation of Paragraph VI.A.15 that the area of the New Landfill remain vacant open space; and

**WHEREAS**, likewise, in order for development of Renewable Energy Facilities to occur on the lot comprising the New Landfill, the Declaration of Covenants and Restrictions (11b.)(Landfill), must be amended and restated, because the existing Declaration would not permit the development of any structures in, on, and/or under the New Landfill; and

**WHEREAS**, in accordance with the requirements of the New Jersey Conservation Restriction and Historic Conservation Restriction Act, N.J.S.A. 13:8B-1 et seq., the Township has conducted a public hearing and has requested the Commissioner of the New Jersey Department of Environmental Protection to issue a certification authorizing the Township to amend and restate the Declaration of Covenants and Restrictions for the New Landfill to permit the development and operation of Renewable Energy Facilities on the lot comprising the New Landfill; and

**WHEREAS**, on \_\_\_\_\_, 2010 the Commissioner of the New Jersey Department of Environmental Protection issued said certification; and

**WHEREAS**, the CMP at N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into a MOA with a governmental agency to authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of the Pinelands CMP are accompanied by measures that, at a minimum, afford an equivalent level of protection for the resources of the Pinelands than would be provided through strict application of the standards of the Pinelands CMP; and

**WHEREAS**, although development of Renewable Energy Facilities on the lot comprising the New Landfill located at the Business Park arguably does not require a deviation from the standards of the Pinelands CMP, it will result in a change to one of the measures that was included in the June 28, 2006 MOA that was intended to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands; and

**WHEREAS**, such measures were required in order for the Commission to authorize the deviations from the standards of the Pinelands CMP that were authorized by the June 28, 2006, MOA; and

**WHEREAS**, in order to mitigate for the loss of the open space on the lot comprising the New Landfill that will result from the development of the Renewable Energy Facilities, the Township, through its Redeveloper, is proposing an additional measure to afford an equivalent level of protection to the resources of the Pinelands. Specifically, the Township's Redeveloper has agreed to provide a monetary contribution to the Commission to be utilized to fund an

assessment of the existing landfills located in the Pinelands Area that have not, as of yet, been closed as required by N.J.A.C. 7:50-6.75(c); and

**WHEREAS**, the CMP at N.J.A.C. 7:50-4.52(c)1 authorizes the Commission to enter into a MOA with a governmental agency which authorizes such agency to carry out specified development activities without securing individual development approvals from the Commission, provided the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6; and

**NOW THEREFORE**, in consideration of the promises, and of the mutual covenants and agreements contained herein, the Parties agree to amend the June 28, 2006, MOA as follows:

1. Unless expressly amended herein, all provisions of the June 28, 2006, MOA shall remain in full force and effect.
2. Notwithstanding the provisions of Paragraph VI.A.15 of the June 28, 2006, MOA to the contrary, the Parties agree that the development of Renewable Energy Facilities within the lot comprising the New Landfill, with the exception of the area of the Landfill Stormwater Basins, wetlands and wetland buffers located thereon, and the approximately 20-acres leased to the County for operation of its composting facility, shall be a permitted use.
3. Notwithstanding the provisions of Paragraph VI.A.15 of the June 28, 2006, MOA to the contrary, the Parties agree that the Declaration of Covenants and Restrictions (11b.)(Landfill) recorded for the New Landfill on December 11, 2006, may be amended and restated in the form attached hereto as Exhibit A and incorporated herein by reference.
4. The Commission agrees that it will not require the filing of a formal public development application in accordance with the Pinelands CMP, N.J.A.C. 7:50-4.52(b) for the development of the Renewable Energy Facilities depicted on the plans delineated in Exhibit B and incorporated herein by reference.
5. Based on its review of the plans and documents delineated in Exhibit B, the provisions of the Pinelands CMP, the terms of the June 28, 2006, MOA and the terms of this First Amendment of the June 28, 2006, MOA, the Commission finds that the proposed development of Renewable Energy Facilities on the lot comprising the New Landfill is consistent with the requirements of the Pinelands CMP and may proceed.
6. The Parties agree that any material addition to, deviation from or modification to the Renewable Energy Facilities depicted in the plans delineated in Exhibit B, shall require the Township or its designated Redeveloper to submit a formal application to the Commission in accordance with the Pinelands CMP (N.J.A.C. 7:50-4.52(b)) or request a further Amendment to the June 28, 2006, MOA ("Amendment") and that the proposed development may not occur until an

application or Amendment has been completed with the Commission and the Commission has issued an approval or agreed to such Amendment.

- a. For purposes of this Section, an addition to, deviation from, or modification to the Renewable Energy Facilities shall only be considered "Material", if it is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to the MOA, or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of, and for which deviations from these standards of the CMP have been authorized by the June 28, 2006, MOA.
7. The Parties agree that, to the extent that changes are made to the scope or design of the Renewable Energy Facilities depicted in the plans delineated in Exhibit B, that would result in more than a de minimis change to the same, but would not be considered Material in accordance with Paragraph 6 above, the Township or its designated Redeveloper shall provide a description of such Material addition to, deviation from or modification to the Renewable Energy Facilities as depicted in the plans delineated in Exhibit B, and any additional information concerning such additions, deviations, modifications or changes as requested by the Pinelands Commission staff for its review and for a consistency determination by the Commission's Executive Director in accordance with Paragraph 8 below.
8. Within thirty (30) days of receipt of information submitted in accordance with Paragraph 7, the Commission agrees that its staff will provide written authorization in accordance with Paragraph 11 or a written explanation of inconsistencies in accordance with Paragraph 9.
9. If the Commission's Executive Director determines that any addition, modification, deviation or change to the scope or design of the Renewable Energy Facilities submitted to him in accordance with Paragraph 7 is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006 MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants, or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006 MOA, then the Commission staff shall provide a written explanation of the deficiencies/inconsistencies and identify specific actions that must be taken by the Township or its designated Redeveloper to remedy such deficiencies/inconsistencies.
10. If the Commission's Executive Director determines that any addition, modification, deviation or change to the scope or design of the Renewable Energy

Facilities submitted to him in accordance with Paragraph 7 is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006 MOA, the Township agrees, on behalf of itself and its designated Redeveloper, to modify the Renewable Energy Facilities until the Executive Director determines that it is consistent with all requirements of the June 28, 2006 MOA, this First Amendment and/or the Pinelands CMP. If the Township or its designated Redeveloper disagrees with the Executive Director's determination, it may file a complete Public Development Approval application and seek formal approval from the Pinelands Commission.

11. If the Commission's Executive Director determines, after review of any information submitted in accordance with Paragraph 7 or in response to a deficiency letter issued by the Commission staff pursuant to Paragraph 9 that any addition, modification, deviation or change to the scope or design of the Renewable Energy Facilities is consistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or will not result in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006, MOA, he will issue a written authorization to the Township or its designated Redeveloper setting forth such determination. This written authorization shall constitute a public development approval.
12. In order to ensure that there continues to be adequate measures provided to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands, despite the Parties agreeing to permit the development of Renewable Energy Facilities on the lot comprising the New Landfill in accordance with the terms herein, rather than retaining the area as vacant open space, the Township has obligated its designated Redeveloper to make a monetary contribution to the Commission in the amount of \$152,900. This contribution shall be utilized by the Commission to undertake an assessment of the existing landfills located in the Pinelands Area that have not, as yet, been closed as required by N.J.A.C. 7:50-6.75(c). This contribution may be paid in ten (10) monthly payment of \$15,290.00. The first payment shall be due upon commencement of development activities, including but not limited to site preparation, pertaining to the Renewable Energy Facilities and each subsequent payment shall be due on the first of each month thereafter.

13. The Township agrees that it shall legally obligate its designated Redeveloper to remove any structures associated with any Renewable Energy Facilities developed on the lot comprising the New Landfill within one (1) year of the complete cessation of operation of such facilities. This provision is not intended to, nor shall it prohibit periodic maintenance, repair or replacement of the Renewable Energy Facilities.
14. The Township agrees that it will legally obligate its designated Redeveloper to implement the development of the Renewable Energy Facilities on top or the New Landfill in accordance with the plans and documents set forth in Exhibit B, all obligations of the June 28, 2010 MOA and this First Amendment to that MOA and the requirements of the Pinelands CMP.
15. The Township agrees that it will legally obligate its designated Redeveloper to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing development of the Renewable Energy Facilities on the lot comprising the New Landfill.
16. Any activity not specifically identified in the plans and documents delineated in Exhibit B, with the exception of any changes to the scope or design of the Renewable Energy Facilities discussed in Paragraph 7 that would result in more than a de minimis change to the same, but would not be considered material in accordance with Paragraph 6 above, shall require a formal application to Commission in accordance with the Pinelands CMP (N.J.A.C. 7:50-4.52(b)) and that proposed development may not commence until an application has been completed with the Commission and the Commission has issued an approval of same.
17. 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) .
18. This First Amendment to the June 28, 2006. MOA shall remain in effect unless amended or terminated by written consent of all parties.

#### VIII. SIGNATURES

#### NEW JERSEY PINELANDS COMMISSION

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

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

Approved as to form by:

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

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

TOWNSHIP OF STAFFORD

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

By: \_\_\_\_\_  
John McMenamin, Mayor

OCEAN COUNTY

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

By: \_\_\_\_\_  
Carl W. Block, County Administrator