
INTERLOCAL AGREEMENT

BY AND BETWEEN THE

CITY OF PLAINFIELD

AND

THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY

Dated October 17, 1997

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PREAMBLE

THIS AGREEMENT made and dated as of the 17th day of October, 1997 (the "Agreement"), constitutes an agreement between the CITY OF PLAINFIELD (the "City"), a municipal corporation of the State of New Jersey situated in the County of Union and THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY (the "Authority"), a public body corporate and politic of the State of New Jersey.

WITNESSETH

WHEREAS, the Authority was created and established by virtue of an ordinance duly adopted by the City Council of the City on September 18, 1995 (the "Creation Ordinance"), pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1. et seq.) of the State of New Jersey as amended and supplemented (the "Act"), and the Authority is a public body corporate and politic of the State of New Jersey and an agency of the City with all the powers, privileges, and authority conferred by the Act; and

WHEREAS, it is the purpose and policy of the Authority, among other things, to (i) relieve the waters in the City of Plainfield from pollution or threatened pollution by provision of sewage collection, treatment and disposal services ("Sewage Services") and (ii) provide solid waste and recycling services and facilities that are consistent with the Solid Waste Management Act, P.L. 1970, c. 39, of the State of New Jersey, the Solid Waste Utility Control Act, P.L. 1970 c. 40, the New Jersey Statewide Mandatory Source Separation and Recycling Act, P.L. 1987, c. 102 and in conformance with the solid waste management plan adopted by the County of Union, to the extent required by applicable laws ("Solid Waste Services"); and

WHEREAS, to accomplish such purposes, the City and Authority recognize that it is necessary for the Authority to assume an interest in, and possession and operation of, the existing sewerage system and solid waste facilities and assets now owned, controlled or operated by the City; and

WHEREAS, in order to assist the Authority in connection with the assumption of assets and the provision of Sewage Services and Solid Waste Services as provided in this Agreement, it may be necessary, from time to time, for the City to provide certain forms of financial assistance to the Authority in connection with the Authority's capital financing needs and operations; and

WHEREAS, the City and the Authority have each determined that it will be economical and otherwise advantageous to each of them and the residents and property owners of the City for the City and the Authority to enter into a contract relating to the transfer to the Authority, by lease, sale or otherwise, as the case may be, of sewerage and solid waste assets in order for the Authority to

assume responsibilities relating to the collection, treatment and disposal of sewage and the establishment of a system for effective and efficient collection, processing, recycling, transfer and disposal of solid waste originating in the City, as the case may be; and

WHEREAS, pursuant to such Agreement the City shall transfer by lease, sale or otherwise, as the case may be, to the Authority its existing sewage collection and disposal and solid waste collection, transfer and disposal assets so that the Authority may assume the operation, maintenance and, as appropriate, further development and expansion thereof; and

WHEREAS, such Agreement shall provide for the cooperation of the City and the Authority in the development of a staffing plan and the transition, if any, of City employees to the Authority; and

WHEREAS, in consideration for the mutual promises, agreements and covenants of this Agreement, the City and the Authority have agreed to enter into the deficiency agreement appended hereto which provides, among other things, upon the terms and conditions specified therein, for the City to make deficiency payments to the Authority on account of shortfalls in revenues necessary to pay the debt service on Authority obligations and certain costs of operations of the Systems (as herein defined);

NOW THEREFORE, in consideration of the promises, agreements and covenants hereinafter set forth and mutually agreed to, the Authority and the City, each for itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I DEFINITIONS

The terms set forth in this Article shall, unless otherwise indicated herein or the context clearly requires otherwise, have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular.

"Act" shall mean the Municipal and County Utilities Authorities Act constituting Chapter 183 of the Laws of 1957 of the State of New Jersey and the acts amendatory thereof and supplemental thereto.

"Accountant's Certificate" shall mean the certificate of the Authority Accountant fairly presenting the revenues, operating expenses, and fund balances relating to Authority operations as required pursuant to Section 603 of the Agreement.

"Accounting Date" shall mean the date specified in Section 208 of the Agreement.

"Agreement" shall mean this agreement by and between the Authority and the City originally executed on the date specified above in connection with the transfer by lease, sale or otherwise, as the case may be, of the Assets to and the operation, and maintenance thereof by the Authority, and any and all modifications, alterations, amendments and supplements hereto which are made in accordance with the provisions hereof.

"Approval Ordinance" shall mean the ordinance adopted by the City Council approving this Agreement including the transfer of assets and authorization of the Deficiency Agreement contemplated herein which ordinance shall be substantially in the form attached hereto as Exhibit A.

"Assets" shall mean collectively the Sewerage System Assets and the Solid Waste System Assets.

"Authorized Authority Representative" shall mean the Chairman, Executive Director, Deputy Executive Director and/or Chief Financial Officer of the Authority, or such other representative that shall, from time to time, be designated by resolution of the Authority.

"Authorized City Representative" shall mean Mayor, Business Administrator, and/or Director of Finance of the City, or such other representative that shall, from time to time, be designated by resolution of the City Council.

"Base Year Revenue Calculation" shall mean the amount calculated in accordance with Exhibit B.

"Bonds" shall mean bonds or other obligations issued or entered into by the Authority pursuant to the Act.

"City Charter" shall mean the Charter of the City of Plainfield adopted July 12, 1968.

"City Fiscal Year" shall mean the period of twelve (12) consecutive months beginning July 1 and ending June 30.

"Closing Date" shall mean the effective date of the Approval Ordinance.

"Conditions Precedent" shall mean the conditions precedent to the performance of certain obligations under the Agreement as provided in Section 204.

"Deficiency Agreement" shall mean the agreement entered into between the City and the Authority providing for certain financial assistance to the Authority and which is appended hereto as Exhibit C.

"Deficiency Amount" shall mean the amount payable by the City to the Authority under the terms and conditions of the Deficiency Agreement.

"Escalation Factor" shall mean the escalation factor set forth in Exhibit D.

"Fiscal Year" shall mean the period of twelve (12) consecutive calendar months beginning January 1 and ending December 31 with the first Fiscal year beginning on the Closing Date and ending December 31, 1996.

"Force Majeure" shall include, but not be limited to, the following acts, events or conditions or any combination thereof provided, however, that such act, event or condition shall be one that has or is reasonably expected to have a material adverse effect on the ability of either party to wholly or partially perform its obligations under this Agreement, and shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Agreement:

(a) an act of God, lightning, earthquake, hurricane, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance, extortion, sabotage or similar occurrence or any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; or

(b) a landslide, fire, accident, strike or labor dispute, curtailment of supply or unavailability of construction

materials, replacement equipment or fuel, explosion, flood or nuclear radiation not created by an act or omission of the either party; or

(c) a change in law or any curtailment, law, rule, order, regulation or restriction imposed or enacted or interpreted by governmental authority after the date of execution of this Agreement ("Change in Law"), provided that the Authority takes prompt action to the extent possible, to comply with any such Change in Law; or

(d) an order, judgment, action and/or determination of any federal, state or local court, administrative agency or governmental body with appropriate jurisdiction impeding the construction, operation or maintenance of the Systems, provided, however, that the contesting of any such order, judgment, action and/or determination, in good faith, shall not constitute or be construed as an action or inaction within the control of such party; or

(e) the suspension, termination, interruption, denial or failure of or inability to obtain any renewal or issuance of any permit, license, right of way, consent, authorization or other approval which is essential to the construction, operation or maintenance of the Systems, provided, however, that the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, shall not constitute or be construed as an action or inaction within the control of such party; or

(f) any surface or subsurface condition that has a material adverse effect on the Systems.

"Governmental Approval" shall mean any authorization, consent, approval, license, permit, certification, exemption, filing or registration by or with any Governmental Authority.

"Governmental Authority" shall mean the Federal Government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority over any aspect of the Agreement or the performance of any of the obligations thereunder.

"Gross Revenues" shall mean all rents, rates, fees, service charges, user charges, interest, income, receipts, or revenues that are payable to or received by the Authority in connection with the operation of the Sewerage System and the Solid Waste System provided, however, that Gross Revenues shall not include (a) the proceeds of bonds, government loans or other obligations of the Authority, (b) casualty insurance proceeds (or the proceeds of any insurance policy maintained for the repair or replacement of any

Components of the Systems) and condemnation awards with respect to all or any portion of the Systems (except to the extent that such proceeds are not to be used for the construction, repair or replacement of the Systems, as the case may be, (c) payments made with respect to any variable rate bonds by the issuer of any liquidity facility and with respect to any bonds or by the issuer of any credit facility, (d) any government grants which are awarded with respect to the development, acquisition, or construction of all or any portion of the Systems, (e) any amounts which are received by the Authority which are required to be placed in an escrow account in accordance with the terms of any applicable law or by any order or directive of any regulatory agency, (f) compensatory damages or other payments payable to the Authority under any contract or agreement, or any surety bond or letter of credit issued as security for performance in connection therewith, and (g) any amounts payable by the City under the Deficiency Agreements.

"Lease Payment Anniversary Date" shall mean the date specified in Section 203 of the Agreement.

"Lessor" shall mean the City.

"Lessee" shall mean the Authority.

"Loans" shall have the meaning specified in Section 608.

"Local Finance Board" shall mean the Local Finance Board within the Division of Local Government Services, Department of Community Affairs of the State of New Jersey, or its successors and assigns.

"PARSA" shall mean the Plainfield Area Regional Sewerage Authority created pursuant to ordinances adopted by the municipalities that are parties to the PARSA Agreement.

"PARSA Agreement" shall mean the agreement by and among PARSA and the 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 Borough of Watchung, dated as of August 3, 1995, as the same may be amended from time to time.

"Permitted Encumbrances" shall mean and include (a) liens and charges which are incidental to construction or maintenance of the Sewerage System, on record as of the date of execution of this Agreement, which are being contested in good faith and which are to proceed to judgment; (b) the lien of taxes and assessments which are not delinquent; (c) minor defects and irregularities in the title to the Assets which do not in the aggregate materially impair the use of the Assets for the purposes for which they are intended; (d) easements, exceptions or reservations for the purpose of

pipelines, telephone lines, telegraph lines, power lines and substations, cable television rights, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may reasonably be expected to be held; (e) rights reserved to or vested in any municipality or Governmental Authority to control or regulate or use in any manner any portion of the Assets which do not materially impair the use of the Assets for the purposes for which they are intended under this Agreement; (f) any obligations or duties affecting any portion of the Assets, of any municipality or Governmental Authority with respect to any right, power, franchise, grant, license or permit that do not materially impair the use of the Assets for the purposes for which they are intended under this Agreement; (g) present or future valid zoning laws and ordinances; (h) encumbrances, pledges, mortgages or security interests granted to the holders of the Bonds; (i) any rights, easements or access granted to PARSA pursuant to the terms of the PARSA Agreement; and (j) this Agreement.

"Recyclable Materials" shall mean those materials used and discarded by the owner which would otherwise become solid waste, and designated by the City which may be collected, separated or processed and returned to the economic mainstream for recovery for the purpose of reclamation of all or a significant portion of the material.

"Repayment Date" shall mean the date specified in Section 608 of the Agreement.

"Revenue Sharing Percentage" shall mean for each Fiscal Year, 50% of the difference between the Authority's Gross Revenues and the Base Year Revenue Calculation (the "Difference") as described in greater detail in Exhibit B, provided, however, that if in any Fiscal Year, the Difference shall exceed 25% of the Authority's annual budget, then the City's Revenue Sharing Percentage shall be increased by the amount by which the Difference exceeds 25% of the Authority's annual budget and, provided further that in the event that the City shall at any time make payments to the Authority of a Deficiency Amount, then, in addition to the above and until the total Deficiency Amounts shall be paid in full, the Revenue Sharing Percentage shall be increased by the lesser of (i) an additional 50% of the difference between the Authority's Gross Revenues and the Base Year Revenue Calculation or (ii) an amount necessary to repay the Deficiency Amounts in full.

"Service Charges" shall mean rents, rates, fees or other charges for direct or indirect connection with, or the use of the services of the Systems, including charges relating to the recycling of Recyclable Materials.

"Sewage" shall mean the water-carried wastes created in and carried, or to be carried, away from, or to be processed by on-site waste water systems, residences, hotels, apartments, schools, hospitals, industrial and commercial establishments, or any other public or private building, together with such surface or groundwater and industrial wastes and leachate as may be present.

"Sewerage System" shall mean the sewerage system transferred to the Authority from the City in accordance with the terms hereof and to be designed, constructed, financed, owned, operated and maintained by the Authority including sewer trunks, intercepting, outlet and connection sewers, conduits, pipe lines, mains, pumping and ventilating stations, sewage treatment and disposal systems, plants, buildings, works, connections, outfalls, compensating reservoirs, boats, and other conveyances, structures and equipment and other real and personal property, and rights therein and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal of Sewage in a sanitary manner.

"Sewerage System Assets" means the assets used or to be used for the collection, treatment, purification and disposal of Sewage and the plants, structures, on-site waste water systems, and other real and personal property and rights therein acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by or on behalf of the Authority as permitted by the Act as more particularly specified on Exhibit E attached hereto.

"Solid Waste" shall mean garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations and from domestic and community activities, including municipal government and school district operations and shall include all other waste materials, including sludges, chemical waste, hazardous wastes and liquids, to the extent permitted by applicable law, except for sewage conveyed to or treated in public sewage treatment plants;

"Solid Waste System" shall mean the solid waste system to be developed, owned, operated, financed, implemented and maintained by or on behalf of the Authority including solid waste services agreements with any person, for the collection, transfer, processing, disposal and/or recycling of solid waste, including, but not limited to, transfer stations, recycling facilities, facilities for the composting of Solid Waste, sanitary landfill facilities or other property or plants for the collection, transfer, disposal or recycling of Solid Waste and all vehicles, equipment and other real or personal property and rights therein and appurtenances necessary or useful and convenient for the collection, transfer, recycling or disposal of Solid Waste in a sanitary manner.

"Solid Waste System Assets" shall mean the assets used or to be used for the collection, transfer, processing and disposal of Solid Waste and the plants, structures; vehicles, equipment and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by or on behalf of the Authority as permitted by the Act as more particularly specified on Exhibit F attached hereto.

"Start-Up of Solid Waste Operations" shall mean the date that Solid Waste originating within the geographic boundaries of the City shall commence to be collected, treated and disposed by or on behalf of the Authority consistent with bid specifications of the Authority relating to such collection, treatment and disposal.

"Systems" shall mean collectively the Sewerage System and the Solid Waste System.

ARTICLE II
TRANSFER OF ASSETS

SECTION 201. Lease Assets. As of the Closing Date, the City, as Lessor, shall lease to the Authority, as Lessee, the System Assets specified in Exhibit E-1 and F-1 of this Agreement.

SECTION 202. Lease Term; Terms and Conditions. The term of the Lease shall be for a period that is the greater of (i) thirty (30) years from the Closing Date or (ii) one (1) year following the final maturity of any bonds, notes or other obligations issued by the Authority but in any event not greater than forty (40) years from the Closing Date. This Lease shall be deemed to be and construed as a "net net lease" and pursuant to the terms hereof, the Authority shall be responsible during the lease term for all costs of operating, repairing, constructing, and maintaining the Assets and the Systems including, without limitation, all utility and insurance costs and any taxes, fees, fines or other charges and the City shall have no responsibility or liability with respect to the same.

SECTION 203. Consideration; Lease Payments; City Appropriation. (a) In consideration for the lease of the Sewerage System Assets set forth in Section 201 hereof, the Authority agrees to pay to the City, in each year during the Term of this Lease, a Lease payment of \$812,000 on June 1, 1998 and \$1,062,000 commencing on June 1, 1999, and which \$1,062,000 lease payment shall be payable on June 1 each year thereafter during the Term of the Agreement. As of June 1, 1999 and each June 1 thereafter ("Lease Payment Anniversary Date"), the Lease payment amount specified herein shall be adjusted in accordance with the Escalation Factor calculated in the manner set forth in Section 203 (d) below. Upon the Authority's failure to pay any lease payment by June 30 of any such year, the Authority shall be obligated to pay interest on such overdue amounts at the rate of ten percent (10%) per annum. The payment of such interest shall not relieve the Authority of the obligation to perform its other obligations hereunder, and the acceptance of such interest payment, at a time when the Authority is in default of its other obligations hereunder, shall not prevent the City from exercising its rights and remedies hereunder, including, without limitation, the right to terminate this Agreement in accordance with the terms hereof.

(b) In consideration for the mutual obligations of the parties hereunder relating to the lease and sale, as the case may be, of Solid Waste System Assets by the City to the Authority and the operation of the Solid Waste System by the Authority, the City and the Authority agree as follows:

(i) The City shall appropriate as a part of its annual budget in each City Fiscal Year commencing July 1, 1997, an

amount necessary to pay the cost of disposal of Solid Waste originating within the geographic boundaries of the City. The City appropriation shall be based upon an estimate of the Solid Waste tonnage available for disposal and the disposal cost per ton during the Fiscal Year as set forth in a certificate approved by resolution of the Authority and delivered to an Authorized City Representative as of June 1 preceding such City Fiscal Year. In addition to the estimates provided above, such certificate shall set forth the actual numbers of tons disposed and the cost of such disposal for the current City Fiscal Year;

(ii) The Authority shall pay to the City as a lease payment for the Solid Waste System Assets, an amount equal to the difference between (x) the City appropriation provided for in Section 203 (b) (i) above and (y) \$1,200,000 of said City appropriation. The lease payment shall be payable monthly in arrears on the first day of each month in each Fiscal Year commencing 60 days following the Start-Up of Solid Waste Operations by the Authority.

(c) On or before July 15 of each Fiscal Year, commencing July 15, 1997, the Authority shall undertake a reconciliation to determine the total cost of disposal of Solid Waste paid from the City Appropriation provided during the preceding City Fiscal Year. To the extent that the total disposal cost for such preceding City Fiscal Year shall be less than the City appropriation, then, such difference shall be credited against the lease payments payable by the Authority under Section 203 (b) (ii) of this Agreement. Said credit shall be applied against each next succeeding monthly lease payment until the full credit amount shall be exhausted. To the extent that the total disposal cost for such preceding City Fiscal Year shall be greater than the City appropriation, then, said difference shall be paid to the City on or before November 1 of the current City Fiscal Year. The reconciliation shall be undertaken in the manner set forth in Exhibit G.

(d) On the Lease Payment Anniversary Date, the Lease Payment shall be adjusted in accordance with the Escalation Factor. The Escalation Factor shall be calculated on or prior to fifteen (15) days prior to the Lease Payment Anniversary Date and on or prior to such day each year thereafter. The Escalation Factor for application on any Lease Payment Anniversary Date shall be calculated based upon the published data for the fourth (4th) month preceding the Lease Payment Anniversary Date and shall be compared to the published data for the same month in the preceding year. The Escalation Factor shall be calculated in a similar manner in each subsequent year during the term of the Lease.

SECTION 204. Sale of Assets; Additional Consideration; City Service Charges. To effectuate the terms of the Agreement, the parties agree to the following additional consideration:

(a) As of the Closing Date, the City shall sell to the Authority, for the additional sum of \$250,000, the Assets set forth on Exhibits E-2 and F-2. The City shall deliver evidence of title reasonable requested by the Authority

(b) The Authority hereby agrees that following the close of each Fiscal Year, it shall pay to the City its Revenue Sharing Percentage for such Fiscal Year, provided, however, that upon the issuance of Bonds, pursuant to the terms of any bond resolution, then the Authority shall establish within the Sewerage System and the Solid Waste System bond resolutions, as the case may be, a City Account into which shall be deposited the City's Revenue Sharing Percentage. Within sixty (60) days following the close of each Fiscal Year, the Authority shall pay to the City the Revenue Sharing Percentage and shall deliver in connection therewith, a copy of the calculation of the Revenue Sharing Percentage for such year.

(c) The Authority hereby agrees that all properties owned or controlled by the City and connected to the Sewerage System shall not be subject to the payment of Service Charges or other periodic charges. Further, the City shall also not be subject to the payment of Service Charges for all Solid Waste generated by properties owned or controlled by the City. The City shall pay Service Charges to the Authority for the cost of collection and disposal of Solid Waste illegally dumped on City owned property that the Authority collects and for which it arranges disposal at the direction of the City.

SECTION 205. Conditions Precedent. The following items shall be Conditions Precedent to the performance by the City and the Authority of the respective obligations under this Agreement on and after the Closing Date unless any of the Conditions Precedent shall be waived by the party that is not in control of such condition:

(i) The City and the Authority, cooperatively shall have developed, to the best of their respective knowledge, a list attached hereto as Exhibit H of all liens, easements, licenses and other existing or potential encumbrances affecting the Assets or the Systems including interlocal agreements, pending or threatened litigation or other claims.

(ii) The City shall have obtained the assent of any person with a contract with the City, which contract shall be necessary for the lease, ownership, operation and/or maintenance of the Systems by the Authority, to the assignment, grant or conveyance of such contract to the Authority.

(iii) The Authority shall have obtained all required Governmental Approvals necessary for a leasehold or ownership

interest in the Assets, as the case may be, and for operation and maintenance of the Systems, provided, however, that any Governmental Approval that can only be obtained following the Closing Date shall not be a condition precedent to the occurrence of the Closing Date.

(iv) Delivery as of the Closing Date of opinions of counsel to the City and the Authority that this Agreement has been duly authorized, executed, and, upon due execution by the other party will be a valid, binding and enforceable obligation of the City or the Authority, as the case may be, except as the enforceability therefor may be, subject to general principles of equity and laws affecting the enforcement of creditor's rights generally.

(v) Delivery to the City of a certificate of insurance in accordance with the provisions of Section 702 of this Agreement.

(vi) The Authority shall have completed its due diligence inquiry as provided in Section 206 hereof.

Section 206. Due Diligence; Good Faith Assistance. (a) Prior to the Closing Date, the Authority shall have the right to conduct a due diligence review of all of the Assets that are the subject of a lease, grant, transfer, sale, assignment or conveyance by the City under this Agreement, including such other documents, surveys, engineering studies, permits and approvals, consent orders or consent decrees, environmental compliance records, procurement documents, title reports and such other records, documents and reports or systems as are reasonably necessary for the Authority to analyze the construction, operations, management and maintenance of the Sewerage System and the Solid Waste System. The City agrees, in good faith, to provide the Authority with the information hereinabove identified and such other information as the City shall deem necessary for the Authority to assume its responsibilities as contemplated by the terms of this Agreement.

(b) In the event the Authority fails to complete its due diligence inquiries or otherwise elects not to perform same or any portion thereof prior to the Closing Date, the Authority shall waive the right to assert any claims with respect to liens, defects, or encumbrances thereafter and the City shall not be liable to the Authority for any claims with respect to liens, defects, or encumbrances to the Assets that may thereafter become known.

If, as a result of the Authority's due diligence inquiries undertaken prior to the Closing Date, it informs the City of the existence of encumbrances, liens or other conditions that materially impair the use of the Assets for the purpose for which they are intended, the City shall have the option of (1)

eliminating such encumbrances, defects or conditions, or (2) in its sole discretion terminating this Agreement after which neither the City nor the Authority shall have any further rights against the other under this Agreement. If the City elects to eliminate any material encumbrances, defects or other conditions that materially impair the use of the Assets for the purpose for which they are intended, the City shall have a reasonable period of time in which to eliminate such encumbrances, defects or other conditions and extend the Closing Date for a period not to exceed ninety (90) days. If the City cannot eliminate such encumbrances, defects or other conditions within such ninety (90) day period, either party has the right to terminate this Agreement.

It is expressly understood that the City has not and will not undertake any title searches, surveys, studies, environmental assessments or studies, or any other searches contemplated in this Section 206. The Authority has the responsibility of conducting any and all searches, reviews, studies, examinations and to take any other steps that may be required to demonstrate to the satisfaction of the Authority that there are no defects, liens, encumbrances or impediments or any other condition that would materially impair the use of the Assets for the purposes for which they are intended.

(c) Following the Closing Date, the City shall continue to provide assistance to the Authority by providing any additional data or information that the Authority shall reasonably request and assist the Authority with interpretations and analysis of such data or information.

SECTION 207. Employee Transition. The City agrees to cooperate with the Authority to ensure and effect a smooth transition of City personnel, if any, to the Authority. The City and the Authority shall assign the personnel with the appropriate expertise to coordinate the transfer of City personnel. In order to facilitate the employee transition described herein, the Authority shall develop a staffing plan ("Staffing Plan") that will identify the positions that must be created by the Authority and to the extent necessary, staffed in order to ensure the efficient operation and maintenance of the Systems. Nothing contained herein shall require the Authority to offer employment to any City employees, or otherwise implement salary and benefit arrangements that are in any respect comparable with the salary and benefit arrangements currently payable to City employees.

SECTION 208. Transition of Certain Assets. (a) As of November 26, 1996 (the "Accounting Date"), all receipts from sewer billings and accounts receivable due to the City are deemed to have been received for the account of the Authority. Notwithstanding the above, to the extent that City collections from sewer billings (including a reimbursement payment from PARSA to the City in the amount of \$242,000) from the period of July 1996 through November

25, 1996 shall be less than \$1,385,000, then the City shall be entitled to an amount of sewer receipts on and after November 26, 1996 equal to the difference between (x) \$1,385,000, and (y) the amount received by the City from sewer billings as of November 25, 1996. Any amounts collected by the City for the account of the Authority shall be paid to the Authority on the first business day of the week next succeeding the Closing Date and on the first business day of each week thereafter. Not later than the end of the City's Fiscal Year, the City and the Authority shall conduct an accounting to determine, among other things, the amounts collected by the City for the account of the Authority and the outstanding and delinquent accounts receivables from the most recent City sewer billing. Either party shall have the right to request an additional accounting with respect to the manners contained herein upon ten (10) days prior notice to the other party.

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(b) As of the Closing Date, the Authority and the City shall inventory the Sewerage System Assets and Solid Waste System Assets listed on Exhibits E and F, respectively, to be utilized by the Authority in connection with the performance of its obligations under the Agreement.

SECTION 209. Control of Property. After the Closing Date, the Assets purchased by the Authority shall be the property of the Authority and the Authority shall have a leasehold interest in the leased Assets. The Assets leased and purchased by the Authority shall be deemed public property and, to the extent permitted by the Act, in particular held by the Authority for the use and benefit of the inhabitants and property owners of the City.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Section 301. Representations and Warranties of the City. The City represents and warrants to the Authority as follows:

(a) General. The City is a municipal corporation of the State of New Jersey and has the power and authority to transfer the Assets to the Authority and to execute and deliver all documents necessary to effect such a transfer by lease, sale or otherwise, as the case may be, including this Agreement, and perform all obligations necessary to effect a transfer by lease, sale or otherwise, as the case may be, of said Assets.

(b) No Conflict. The execution, delivery and performance of the Agreement (i) has been duly authorized by all requisite action of the City, (ii) to the best knowledge of authorized representatives of the City, following diligent inquiry, will not violate or conflict with any provision of law, rule or regulation, any order of any court or other agency of government, or any provision of the City Charter, and (iii) to the best knowledge of authorized representatives of the City (other than proceedings relating to issuance of City general obligation bonds as to which no view is expressed), will not violate or result in a default under any provision of any indenture, agreement or other instrument.

(c) Litigation. Except as described in Exhibit H hereto, to the best knowledge of authorized representatives of the City, there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority or other agency now pending or, threatened against or affecting the ability of the City to enter into the Agreement to transfer the Assets or, following transfer of such Assets, that could have a material adverse effect upon the financial condition of the Authority or the ability of the Authority to operate the Sewerage System or the Solid Waste System.

(d) Design of Project. To the best knowledge of Authorized City Representative, (i) the current operation and design of the Sewerage System is in compliance with all governmental rules and regulations applicable thereto; (ii) All Governmental Approvals required to be obtained in connection with (x) the construction, operation and maintenance of the Sewerage System and (y) the execution, delivery and performance by the City of this Agreement, as of the date hereof, have been obtained and are in full force and effect, or are in the process of being obtained.

(e) Obligations of the City. When executed and delivered by the City, this Agreement will be a legal, valid and binding obligation of the City enforceable against it in accordance with its terms.

The representation set forth in Section 301(d) above shall expire thirty days after the Closing Date.

Section 302. Condition of Premises and Warranties. The Authority acknowledges that the City makes no warranty to the Authority, either express or implied of any nature or kind as to the condition of the leased and/or sold Assets. It is expressly understood that any property being leased and/or sold to the Authority pursuant to this Agreement are sold "AS IS" without any warranty to the Authority, either express or implied, as to (1) the condition of the property, (2) the property's freedom from defects or required repair or maintenance, or (3) the premises' fitness for any particular use or purpose. The Authority acknowledges that the City had not and will not undertake any studies or assessments of the Assets leased and/or sold pursuant to this Agreement and makes no representations of any kind as to their condition.

Section 303. Representations and Warranties by the Authority. The Authority makes the following representations and warranties to the City:

(a) **General.** The Authority (i) is a public body corporate and politic of the State of New Jersey pursuant to the Act; (ii) has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and (iii) by proper corporation action has duly authorized the execution and delivery of this Agreement.

(b) **No Conflict.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby do not conflict with or constitute a breach of or a default under the Authority's articles of incorporation or bylaws or under the terms and conditions or any agreement or commitment to which the Authority is a party or by which the Authority is bound.

(c) **Obligations of the Authority.** When executed and delivered by the Authority, this Agreement will be a legal, valid and binding obligation of the Authority, enforceable against it in accordance with its terms.

(d) **Litigation.** Except as described in Exhibit H hereto, to the best knowledge of authorized representatives of the Authority, following diligent inquiry, the Authority is not aware of any action, suit or proceeding at law or in equity or by or before any Governmental Authority or other agency now pending or, threatened against or affecting the ability of the Authority to enter into this Agreement to transfer by lease, sale or otherwise, as the case may be, the Assets or, following transfer of such Assets, that could have a material adverse effect upon the financial condition of the Authority or the ability of the Authority to operate the Sewerage System or the Solid Waste System.

ARTICLE IV
OPERATION AND MAINTENANCE OF SYSTEMS

SECTION 401. Generally. The Authority shall, as of the Closing Date, operate and maintain and, to the extent the Authority deems feasible and necessary, enlarge the Systems so as to collect, treat, process, recycle and dispose of Sewage and Solid Waste to be generated within or without the boundaries of the City in accordance with the Authority's rates, rules and regulations. The Authority shall not proceed with the enlargement or extension of the System Assets outside of the geographic boundaries of the City without the express written consent of the City. Further, the City's obligations under the Deficiency Agreement with respect to enlargements or extensions of the System shall not be effective without the express written consent of the City.

SECTION 402. Project Plans to be Approved. Project plans and specifications of the Authority shall, to the extent required by law, be submitted to and approved by the Department of Environmental Protection of the State of New Jersey or any successor Governmental Agency with jurisdiction over the business operation of the Authority.

SECTION 403. Sewerage System Connections to be Permitted. The Authority shall permit every property in the City fronting on the Sewerage System or having reasonable access thereto to be connected with the Sewerage System for the purpose of delivering Sewage therefrom into the Sewerage System, but only upon payment to the Authority of such connection charge or charges as the Authority may prescribe and subject to and upon compliance with the rates, rules and regulations of the Authority then in effect.

SECTION 404. Sewerage System Connections to be Required. The City shall require all properties within its territory fronting on the Sewerage System or having reasonable access thereto to be connected with the Sewerage System for the purpose of delivering Sewage therefrom into the Sewerage System, but only subject to and upon compliance by the owners thereof with the rates, rules and regulations of the Authority then in effect. Any action, ordinance, resolution or other proceeding taken by the City to require connection to the Sewerage System shall not be amended, modified, rescinded or repealed without the consent of the Authority. The City shall assist the Authority by diligently enforcing all laws, ordinances, rules and regulations relating to the operation and maintenance of septic systems located within the City.

SECTION 405. Establish Billing System. As of the Accounting Date, the Authority shall be responsible for billing all users of the Sewerage System and shall establish a billing and collection and accounting system for such purpose. Notwithstanding the provisions of any ordinance, rule or regulation to the contrary,

the Service Charges charged and collected by the Authority shall be determined solely by the Authority subject to the provisions of the Act.

SECTION 406. Investigation and Report as to System Assets.
As soon as practicable following the Closing Date, the Authority shall undertake or cause to be undertaken a study and analysis of those portions of the Assets that it determines are in need of immediate repair, reconstruction or rehabilitation and shall prepare a report regarding the same for delivery to the City Council. The report shall include, among other things, an analysis of the level of disrepair of the Assets, the estimated cost of any repair, reconstruction or rehabilitation, the estimated time within which such work shall be commenced and the projected impact of such work on the rates charged to users of the Sewerage and/or Solid Waste Systems. Notwithstanding the above, the Authority will undertake diligent efforts to commence to repair, reconstruct or rehabilitate within one (1) year of the Closing Date, and subject to all contract, regulatory and financing approvals, and contingencies, the Rock Avenue and Watchung Avenue pumping stations and the Arlington Avenue Road.

ARTICLE V
OTHER OBLIGATIONS OF THE CITY

SECTION 501. Deficiency Agreement. As part consideration for the obligations assumed by the Authority pursuant to this Agreement, the City agrees to enter into the Deficiency Agreement substantially in the form attached hereto as Exhibit C, to provide financial assistance to the Authority for its Sewerage System Services and for its Solid Waste Services.

SECTION 502. Location of Sewerage System and Use of Public Property. The Authority shall have the right to construct, maintain, operate and use such trunk, intercepting and outlet sewers, conduits, pipe lines, mains, pumping and ventilating stations, sewage treatment and disposal systems, plants and works at such places within or without the City and such other plants, structures, and conveyances as in the judgment of the Authority are necessary to collect, treat and dispose of Sewage or other wastes delivered or to be delivered into the Sewerage System, and to that end, may enter upon and use and connect with any public property within the City and close off and seal outlets and outfalls therefrom, and may construct, maintain and operate the Sewerage System, free of charge by the City, along, over, under and in any streets, alleys, highways, public easements, and other public places within the City. The City further agrees to waive any requirement for the Authority to file any application or obtain any permits or other City approval in connection with the Authority's construction, operation and maintenance of the Sewerage System, provided that, before proceeding with any construction, repair, rehabilitation, maintenance or other work within the boundaries of the City, the Authority shall, except in the case of an emergency, give prior written notice of its intention to perform such work to the City through its municipal clerk and the Director of Public Works and Urban Development at least five (5) days prior to the commencement of same. In the event of an emergency, immediate notice thereof shall be provided to the police department of the City and written notice shall thereafter be given to the City within five (5) days thereafter. Any area affected by the Authority in performing such work shall be restored to its former usefulness and condition within a reasonable time, and the Authority shall be responsible for ensuring that the affected work areas are properly maintained, and that proper and adequate measures are taken to ensure the safety of persons and property.

SECTION 503. Use of Public Property for the Solid Waste System. The Authority, its agents and contractors may, free of charge by the City, enter upon any streets, alleys, highways, public easements and other public places within the City to collect Solid Waste and Recyclable Materials and construct, repair, rehabilitate, operate or maintain any components of its Solid Waste System. The City further agrees to waive any requirement for the City to file any application or obtain any permit or other City

approval in connection with the Authority's construction, repair, rehabilitation, operation and maintenance of the Solid Waste System, provided that, before proceeding with any construction, repair, rehabilitation, maintenance or other work within the boundaries of the City, the Authority shall, except in the case of an emergency, give prior written notice of its intention to perform such work to the City through its municipal clerk and the Director of Public Works and Urban Development at least five (5) days prior to the commencement of same. In the event of an emergency, immediate notice thereof shall be provided to the police department of the City and written notice shall thereafter be given to the City within five (5) days thereafter. Any area affected by the Authority in performing such work shall be restored to its former usefulness and condition within a reasonable time, and the Authority shall be responsible for ensuring that the affected work areas are properly maintained, and that proper and adequate measures are taken to ensure the safety of persons and property.

SECTION 504. City Cooperation in Enforcement of Solid Waste System. The City shall cooperate with the Authority and agrees to use diligent efforts to enact all legislative measures as may be required to facilitate the use of the Authority's Solid Waste System by the inhabitants of the City. In this regard, the City shall cooperate with the Authority in the enforcement of its laws as well as the Authority's rules and regulations to assure the safe and sanitary collection and disposal of Solid Waste. The City further agrees that in order to protect the interests of holders of Bonds issued to finance all or any portion of the Solid Waste System, the City shall not amend, modify, rescind or repeal any law, ordinance, rule or regulation that may adversely affect the ability of the Authority to carry out its responsibilities with respect to the Solid Waste System as contemplated by this Agreement or develop or contract for any competing solid waste system or service to the Solid Waste System to be operated by and on behalf of the Authority.

ARTICLE VI
OTHER OBLIGATIONS OF THE AUTHORITY

SECTION 601. Reports to the City. The Authorized Authority Representative shall report to the City Council regarding the Authority's Sewer and Solid Waste operations including and relating to the provision of services, status of facilities, financings, financial condition, contracts or plans with respect thereto. Such briefings shall be conducted on a quarterly basis upon thirty (30) days prior written notice to the Authority. Additionally, upon prior written request by the City, the Authority shall provide to the City, within thirty (30) days of the availability of the information to the Authority, all information reasonably requested by the City pertaining to the Sewer and Solid Waste System not previously provided by the Authority to the City; provided, however, that the Authority may maintain as confidential any information that it legally is not required to disclose pursuant to the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., for the time and in the manner that such information is permitted to remain confidential in accordance with the provisions thereof. Further, the Authority shall submit to the Authorized City Representative on a monthly basis, reports regarding PARSA operations and, to the extent available, copies of PARSA's approved minutes from the prior PARSA meeting.

SECTION 602. City Review of Authority Annual Budget. The Authority shall provide the City annually with a draft of the Authority's Annual Budget in order to allow the City an opportunity to review and make written recommendations concerning the Authority's proposed Annual Budget prior to its submission to the Local Finance Board.

SECTION 603. Financial Statements; Accountant's Certificate. The Authority will keep proper books of records and accounts in which complete and correct entries shall be made of its transactions relating to the Systems or any part thereof. The Authority will cause its books and accounts to be audited annually in accordance with law and such books and accounts shall be maintained in accordance with generally accepted accounting principles, consistently applied. Copies of the reports of such audits shall be furnished to the City including statements in reasonable detail, accompanied by an Accountant's Certificate. The information required to be provided herein shall be submitted to the Authorized City Representative at the time that any such information is required to be filed with the appropriate regulatory agency.

SECTION 604. Authority's Compliance with PARSA Agreement. The Authority will at all times comply with the duties and obligations imposed upon the City under the "PARSA Agreement," and hereby undertakes full and complete responsibility for the full and complete performance of the City's obligations thereunder,

including but not limited to payment of any and all service or annual charges, connection charges, insurance deficiency, indemnification and any and all other obligations imposed on the City under the PARSA Agreement. The Authority shall indemnify and hold the City harmless against any and all liability, charge, cost, or loss (including reasonable attorneys fees) caused by the failure of the Authority to comply with the provisions of the PARSA Agreement, to make any required payments to PARSA, or for its failure to comply with any provision of the PARSA Agreement. Within thirty (30) days after the Closing Date, the Authority shall give written notice to the PARSA of its responsibility to perform pursuant to the PARSA Agreement and its responsibility to fulfill the rights, duties and liabilities of the City pursuant to the PARSA Agreement, sending a copy of such notice to the City's municipal clerk. Notwithstanding the above, the Authority shall not be deemed to be in violation of this Section 604 to the extent that it shall contest in good faith any PARSA rule, regulation or requirement of the PARSA Agreement as unreasonable or inconsistent with the terms and conditions of said agreement.

SECTION 605. Authority Provision of Services. The Authority shall provide Sewage Services and Solid Waste Services in a safe and environmentally sound manner and in all respects in conformance with all applicable federal, state, county and local laws, ordinances, regulations, permits and rulings.

SECTION 606. Compliance with Laws. The Authority shall take possession of the leased Assets and title to the sold Assets subject to all local, county, state and federal laws, ordinances, statutes and regulations. The City makes no representations with respect to compliance with such laws, ordinances, statutes and regulations other than to represent that it has no present knowledge of any violation. The Authority acknowledges that it is the Authority's responsibility to determine whether the Assets and properties under or which they are located are in substantial compliance with all applicable laws, including all zoning ordinances affecting the Assets.

SECTION 607. Use of Leased Assets. (a) The Authority shall take proper care and maintenance of the leased Assets and maintain all operating systems and premises in good condition and state of repair.

(b) The authority shall be responsible for repairing any damage to the Leased Assets, or the destruction of or damage of any kind whatsoever to the leased Assets, regardless of cause, at the Authority's own cost and expense.

(c) Any alterations, additions or improvements made by the Authority during the lease term shall not impair the condition of the leased Assets. All such alterations, additions or improvements and systems when made, installed in or attached to the lease Assets

shall upon execution of the lease terms, belong to and become the property of the City and shall be surrendered with the lease Assets and as part thereof upon the expiration or sooner termination of this Agreement.

(d) The Authority shall not, without the prior written consent of the City, assign, mortgage or hypothecate this Agreement and the Authority's rights hereunder, except to the extent necessary to protect the interests of the bondholders or the holders of other obligations of the Authority.

(e) The Authority shall not occupy or use the lease Assets, nor permit or suffer the same to be used for any other purposes other than as contemplated in this Act.

SECTION 608. Repayments of City Loans and Other Amounts.

(a) The Authority agrees to repay to the City within 120 days of the Closing Date (the "Repayment Date") all amounts loaned (the "Loans") by the City to the Authority, together with all unpaid interest thereon at the rate of five and one half per centum (5 1/2%) per annum. The principal amounts to be repaid by the Authority are as follows:

<u>Loan Amount</u>	<u>Dated</u>
\$250,000 --	1/23/96
\$103,000	5/29/96
\$ 40,000	7/15/96
\$ 40,000	8/15/96
\$ 40,000	9/15/96
\$ 40,000	10/15/96

Notwithstanding the above, the Authority's obligation to the Loans to the City as of the Repayment Date shall be suspended upon the occurrence of any of the following even circumstances, but only for the period of time that such even circumstances shall remain in effect and the Repayment Date be extended by a like number of days that any such even circumstances shall remain in effect:

(i) legislation shall have been enacted by the Congress of the United States of America or the New Jersey Legislature, as the case may be, which would have the effect of changing directly or indirectly the Federal or State income tax consequences, as the case may be, of the receipt of interest on obligations of the general character of the Bonds in the hands of the recipients thereof;

(ii) any action shall have been taken by the Securities and Exchange Commission or by a court or legislation shall have been enacted by the Congress of the United States which would require registration of any security of the general character of

the Bonds under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or qualification of any indenture under the Trust Indenture Act of 1939, as amended, in connection with the public offering of the Bonds;

(iii) a general banking moratorium shall have been established by Federal, New York or New Jersey authorities;

(iv) there shall be in force a general suspension of trading on the New York Stock Exchange as the result of an event affecting the national economy;

(v) (i) a general suspension of trading in securities shall have occurred on the New York Stock Exchange, or (ii) the United States shall have become engaged in hostilities which have resulted in the declaration, on or after the Closing Date, of a national emergency or war, the effect of which, in either case described in clause (i) or (ii), is, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Bonds; and

(vi) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any federal governmental authority or by any national association of securities dealers which materially adversely affects the value or marketability of the Bonds.

(b) As of the Repayment Date, the Authority shall pay to the City all amounts paid to PARSA (excluding credits from prior overpayments) in accordance with the terms of the PARSA Agreement from January 1, 1997 through June 30, 1997. The City shall provide to the Authority evidence, reasonable acceptable to the Authority, of the amounts paid to PARSA during the time period referred to in this subparagraph (b).

SECTION 609. Authority Obligation Regarding Competitive Disposal Costs. Within six (6) months of a final and nonappealable order in Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders, 931 F. Supp. 341 (D.N.J. 1996) or other State or Federal legislation invalidating New Jersey waste flow rules and thereby relieving the Authority of its obligations to dispose of waste at the facilities designated in the Union County Solid Waste Management Plan, the Authority shall receive competitive proposals or bids, as the case may be, seeking to determine disposal alternatives that will result in, among other things, the lowest cost and most reliable service to the citizens of the City.

SECTION 610. Notification of Capital Financing. Not less than fourteen (14) business days prior to the adoption by the Authority of any bond resolution authorizing the issuance of Bonds for the construction or acquisition of the Systems, the Authority shall notify the Mayor, the City Council and the City Clerk of the

proposed adoption of the bond resolution, the improvements or purposes to be acquired or constructed, the estimated costs of any such financing and the proposed impact of the financings on System rates and charges.

ARTICLE VII
MISCELLANEOUS

SECTION 701. Rules and Regulations: Exclusion of Certain Wastes from Systems. (a) The Authority may at any time, and shall, as required by and in conformity with applicable law, promulgate, issue, publish and from time to time amend, and enforce, rules and regulations regulating: the making of connections to the Sewerage System, the use of the Sewerage System or prohibiting or regulating the discharge or placement into the Systems or any sewer, sanitation or drainage systems connected therewith of (i) ground water or surface storm water drainage from roof leaders or catch basins or from any other source, (ii) industrial wastes, (iii) hazardous or chemical wastes or (iv) oils, acids or any other substances which, alone or in combination with other substances discharged or received into the Sewerage Systems, are or may be injurious or deleterious to the Sewerage System or to their efficient operation, and the City shall fully conform with such rules and regulations and fully cooperate with the Authority to cause the same to be fully observed and conformed within the geographic boundaries of the City. Such rules and regulations may, as are reasonably and lawfully implemented by the Authority, include lists of harmful wastes, discharge or placement of which into the Sewerage System or any sewer, sanitation or drainage systems connected therewith shall be prohibited. In the enforcement of such rules and regulations (or in the enforcement of Service Charges), the Authority may exercise any and all rights granted to it pursuant to the provisions of the Act and other applicable law.

(b) The Authority may, at any time, and shall, as required by and in conformity with applicable law, promulgate, issue, publish and, from time to time, amend and enforce rules and regulations relating to management, operation and maintenance of the Solid Waste System. Such rules and regulations may provide for, among other things, (i) the collection, handling, transfer, treatment and disposal of Solid Waste, (ii) the collection, handling, disposal or enclosure of hazardous substances as defined in the Act, (iii) the collection, treatment and disposal of recyclable materials as defined in the New Jersey Statewide Mandatory Source Separation and Recycling Act, P.L. 1987, c. 102 and (iv) the procedure for the charging and collection of solid waste rates and charges, including Service Charges under the Deficiency Agreement. All rules and regulations shall, to the extent required by applicable law, conform with the requirements of the Solid Waste Management Act, P.L. 1970, c. 39 of the State of New Jersey and the Solid Waste Utility Control Act, P.L. 1970, c. 40 of the State of New Jersey.

SECTION 702. Insurance. The Authority shall at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to sewage and solid waste systems of like character against loss or damage to the Systems and

against public or other liability to the extent not less than that reasonably necessary to protect the interests of the Authority. Said insurance shall be reviewed on an annual basis by the Authority, and shall be adjusted on an annual basis or shall be determined to be appropriated by the Authority in consideration with its insurance consultant.

The Authority shall at all times maintain with responsible, properly licensed and financially sound insurers all such public or other liability in a minimum amount of \$7,000,000 or in such greater amount as shall properly protect the interests of the Authority and the City.

Prior to the Closing Date, the Authority shall deliver to the City a binder for the policy or policies of insurance coverages referenced herein. At least thirty (30) days prior to the expiration or termination date of any policy, the Authority shall deliver a renewal or replacement policy with proof of the payment of the premium therefor. All insurance policies of the Authority shall name the City as additional insured and provide for a 30 day notice of cancellation to be provided to the City.

Section 703. City Indemnification. Subject to the limitations and exclusions set forth in this Agreement, the City agrees to indemnify, defend and hold harmless the Authority and its officers, members, employees, agents and consultants (the "Authority Indemnified Parties") from any and all liability, claims, actions, demands, losses, judgements, expenses, costs of suit (including reasonable attorney's fees) arising or alleged to arise or resulting from any action or omission wholly attributable to the City or the City's agents, representatives, employees, guests, licensees, invitees, subtenants, assignees or successors, or for any cause or reason whatsoever arising out of or by reason of the use by the City and the conduct of the City's operation of the Sewerage System and the Solid Waste System Assets prior to the Closing Date. Notwithstanding the above, the City shall have no responsibility to indemnify the Authority Indemnified Parties pursuant to this Section 703 with respect to the Authority's operation of the Sewerage System on or after January 1, 1997.

SECTION 704. Authority Indemnification. To the extent not covered by Authority insurance as provided in Section 702 above, the Authority agrees to indemnify, defend and hold harmless the City and its officers, members, employees, agents and consultants (the "City Indemnified Parties") from any liability, claims, actions, demands, losses, judgements, expenses, costs of suit (including reasonable attorney fees) arising or alleged to arise wholly or in part by or resulting from any acts or omissions by the Authority or the Authority's agents, representatives, employees, guests, licensees, invitees, subtenants, assignees or successors, or for any cause or reason whatsoever arising out of or by reason of the use by the Authority and the conduct of the Authority's

operation of the Sewerage System and Solid Waste System on and after the Closing Date. Notwithstanding the above, the Authority indemnification of the City Indemnified Parties pursuant to this Section 704 with respect to the Authority's operation of the Sewerage System shall commence as of January 1, 1997.

SECTION 705. Authority Rate Covenant. In connection with the operation of the Systems and in order to protect (a) the interests of the holders of Bonds issued to finance the acquisition or construction of the Systems and (b) the City from its requirement to pay Annual Charges under and as defined in the Deficiency Agreement, the Authority hereby covenants to establish, charge and collect Sewerage System Service Charges and Solid Waste System Service Charges that, together with other available moneys of the Authority, will be sufficient to satisfy the Authority's obligations with respect to the operation and maintenance of the Systems and debt service obligations, as well as any required reserves as may be required to be maintained by or set forth in the terms of any bond resolution adopted by the Authority.

SECTION 706. Defaults and Remedies. (a) The following shall constitute Defaults under this Agreement:

(i) the filing of a petition by or against the Authority seeking protection, liquidation or reorganization hereunder or with respect to the Loans under federal bankruptcy laws or under any other applicable law or statute of the United States of America or of the State of New Jersey or a receiver or trustee is appointed and such appointment is not vacated within thirty (30) days, which in any event will not be excused by the occurrence of an event of Force Majeure;

(ii) failure to pay any amount due and owing within sixty (60) days following the due date thereof, which in any event will not be excused by the occurrence of an event of Force Majeure;

(iii) failure to perform any material obligation hereunder within sixty (60) days following written notice, provided however, that no Default shall be deemed to during an occurrence of an event of Force Majeure.

(iv) failure by the Authority to provide S Services or Solid Waste Services (following the Star Solid Waste Operations) for thirty (30) consecutive provided however, that no Default shall be deemed to during an occurrence of an event of Force Majeure.

(b) Cure of Default. No Default under Section 706 (i), (iii), and (iv) shall be deemed to be an Event of Default purposes of this Agreement unless:

(i) with respect to the Default set forth in Section 706(a)(ii) above, the defaulting party shall fail to pay all amounts due and owing within ninety (90) days following written notice of such Default;

(ii) with respect to the Default set forth in Section 706(a)(iii) above, (a) the defaulting party shall have received written notice from the non-defaulting party, (b) the defaulting party fails to initiate action to cure such Default within sixty (60) days of receipt of such notice, and (c) the defaulting party fails to diligently pursue such cure.

(iii) with respect to the Default set forth in Section 706(a)(iv) above, (a) the defaulting party shall have received written notice from the non-defaulting party, (b) the defaulting party fails to initiate action to cure such Default within thirty (30) days of receipt of such notice, and (c) the defaulting party fails to diligently pursue such cure.

A default under Section 706(a)(i) shall immediately be deemed an Event of Default hereunder.

(c) Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right, subject to the rights of the holders of any Bonds, to the following remedies:

(i) commence an action (1) seeking specific performance of this Agreement and such other ancillary equitable remedies attendant to enforcement of a decree, judgement or order for specific performance, (2) seeking damages at law, or (3) any other remedy that is legally or equitably available to the non-breaching party; and

(ii) declare all amounts due and payable under this Agreement and with respect to the Loans to be immediately due and payable.

In any and all respects subject to the rights of the holders of any Bonds, upon the occurrence of an Event of Default, the City shall have the right to terminate this Agreement.

SECTION 707. Waivers.

(a) No Additional Waivers. In the event any provision contained in this Agreement should be breached by one party and thereafter waived by the other party (which waiver must be in writing), such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or subsequent breach hereunder.

(b) Non-Waiver. The various rights, remedies, options and elections of the parties herein are cumulative, and the failure of

either party to enforce strict performance of the conditions and covenants of this Agreement, including the lease provisions, or to exercise any election or option or to resort or have recourse to any remedy herein conferred, or the acceptance by the other party of any payment due after any breach by the other party, in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment for the future by that party of any such conditions and covenants, options, elections or remedies, but the same shall continue in full force and effect.

SECTION 708. City Police Powers Not Limited. Nothing in this Agreement shall be construed to impede or restrict the lawful exercise by the City of its police powers under the Constitution, laws of the State of New Jersey or its City Charter and ordinances.

SECTION 709. Consents. Any consents required by the City or Authority under this Agreement shall be adopted by a resolution of the respective governing bodies.

SECTION 710. Amendments. Any amendment or modification of this Agreement will only be effective upon the execution of a written instrument authorized by the Commissioners in the case of the Authority and the Mayor and City Council in the case of the City.

SECTION 711. Assignment. Neither party shall assign or attempt to assign its respective obligations under this Agreement without the prior written consent of the other party.

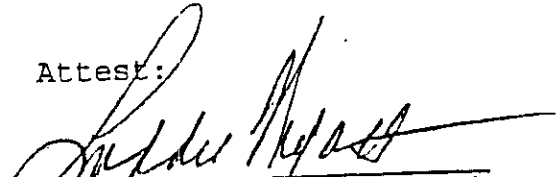
SECTION 712. Severability of Invalid Provisions. If one or more of the provisions of this Agreement are determined to be contrary to law, then such provision or provisions shall be deemed severable from the remaining provisions and shall not affect the validity of the other provisions of this Agreement.

SECTION 713. Notices. All notices required under the terms of this Agreement shall be given by mailing such notices by certified or registered mail, return receipt requested, to the address of the parties. Notices to the City shall be sent to the Municipal Clerk of the City. Notices to the Authority shall be sent to the Secretary of the Authority.

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


Seal

Attest:


Laddie Wyatt, City Clerk

Seal

Attest:


Eric Watson,
Executive Director

CITY OF PLAINFIELD

By: 
Mark A. Furg, Mayor

THE PLAINFIELD MUNICIPAL
UTILITIES AUTHORITY

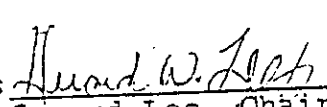

By: 
Gerard Lee, Chairman

EXHIBIT A
FORM OF APPROVAL ORDINANCE

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

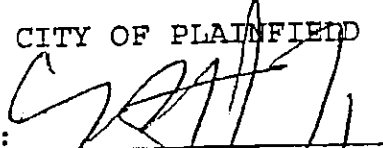
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Attest:


Laddie Wyatt, City Clerk


CITY OF PLAINFIELD

By:


Mark A. Furgy, Mayor

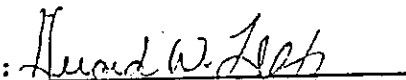
Seal

Attest:


Eric Watson,
Executive Director

THE PLAINFIELD MUNICIPAL
UTILITIES AUTHORITY

By:


Gerard Lee, Chairman

ORDINANCE OF THE CITY OF PLAINFIELD, IN THE
COUNTY OF UNION, NEW JERSEY AUTHORIZING THE
ENTERING INTO OF AN INTERLOCAL AGREEMENT WITH
THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY,
INCLUDING THE TRANSFER OF CERTAIN ASSETS AND
THE AUTHORIZATION TO ENTER INTO A DEFICIENCY
AGREEMENT AND DETERMINING OTHER MATTERS IN
CONNECTION THEREWITH

WHEREAS, the City of Plainfield, New Jersey (the "City") determined that the formation of a municipal utilities authority pursuant to the Municipal and Counties Utilities Authority Law of the State of New Jersey (Pamphlet Laws of 1957 Chapter 183, as amended and supplemented) N.J.S.A. 40:14B-1 et seq. (the "Act"), is in the best interest of the City, its inhabitants and the surrounding environment; and

WHEREAS, pursuant to the Act, the governing body of the City adopted Ordinance No. MC1995-19 on September 18, 1995 creating The Plainfield Municipal Utilities Authority ("Creation Ordinance"); and

WHEREAS, pursuant to the Act and the Creation Ordinance, the Authority is charged with the responsibility, among others, of operating, maintaining, constructing, repairing, reconstructing and financing the Sewerage System and the Solid Waste System within the City of Plainfield in accordance with the terms of an Agreement by and between the City and the Authority to be executed by the City upon authorization as provided in this Ordinance and executed by the Authority upon due authorization as provided by law (the "Interlocal Agreement"); and

WHEREAS, in order to provide financial assistance to the Authority in connection with the operation, maintenance, construction, repair, reconstruction and financing of the System, the City has agreed to enter into a deficiency agreement with the Authority in the form attached to the Interlocal Agreement as Exhibit C (the "Deficiency Agreement"); and

WHEREAS, the City and the Authority agree that the Interlocal Agreement and the Deficiency Agreement are in the best interests of the citizens and inhabitants of the City for purposes of providing efficient, safe and cost-effective sewerage and solid waste services and agree to be bound by the terms and conditions set forth in the Interlocal Agreement and the Deficiency Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLAINFIELD, IN THE COUNTY OF UNION, NEW JERSEY, as follows:

Section 1. The City Council hereby approves the Interlocal Agreement by and between the City and the Authority attached hereto

EXHIBIT B

REVENUE SHARING PERCENTAGE - BASE YEAR REVENUE CALCULATION

PRO-FORMA CALCULATION OF REVENUE SHARING FORMULA

<u>Base Year Revenue Requirement</u>	<u>Total</u>	<u>Sewer</u>	<u>Solid Waste</u>
Proposed Budget Expenditures	\$ 6,562,129	\$ 3,006,275	\$ 3,555,85
Proposed Lease Payment to City	<u>3,442,000</u>	<u>1,062,000</u>	<u>2,380,00</u>
Total Base Year Revenue Requirement	<u>\$10,004,129</u>	<u>\$ 4,068,275</u>	<u>\$ 5,935,85</u>

PRO-FORMA CALCULATION OF BASE YEAR ADJUSTMENTS

	<u>Total</u>	<u>Sewer</u>	<u>Solid Waste</u>
Base Amount per Above	\$10,004,129	\$ 4,068,275	\$ 5,935,85
Adjustments to prior year expenditures:			
Debt Service	(13,750)	(13,750)	
Sewer Flow Charges/Surcharges	(2,094,321)	(2,094,321)	
Garbage & Recycling Collection Contractual	(2,438,941)		(2,438,94
Leaf/Stump Disposal	(300,000)		(300,00
Lease Payment to City	(3,442,000)	(1,062,000)	(2,380,00
Insurance	<u>(113,000)</u>	<u>(63,000)</u>	<u>(50,00</u>
Base Year Amount Subject to Escalation Factor	1,602,117	835,204	766,91
Escalation Factor (Assumed for Calculation Purposes)	<u>1.25%</u>	<u>1.25%</u>	<u>1.25%</u>
Base Year Amount After Escalation	1,622,143	845,644	776,49
Current Year Adjustments:			
Additional Staffing Cost Requirements	50,000	25,000	25,00
Debt Service	263,750	263,750	
Sewer Flow Charges/Surcharges	1,901,495	1,901,495	
Garbage & Trash Collection Contractual	2,438,941		2,438,94
Leaf/Stump Disposal	300,000		300,00
Lease Payment to City	3,442,000	1,062,000	2,380,00
Insurance	<u>114,413</u>	<u>63,788</u>	<u>50,62</u>
Adjusted Base Year Revenue Amount	10,132,742	4,161,677	5,971,06
Actual Gross Revenue (Assumed for Calculation Purposes)	<u>10,350,000</u>	<u>4,350,000</u>	<u>6,000,00</u>
Amount Subject to Revenue Sharing	<u>\$ 217,258</u>	<u>\$ 188,323</u>	<u>\$ 28,93</u>
City Share of Excess Revenues (50%)	<u>\$ 108,629</u>	<u>\$ 94,162</u>	<u>\$ 14,46</u>

Note: Amounts shown are for illustration purposes only.

and the Deficiency Agreement by and between the City and the Authority attached as Exhibit C to the Interlocal Agreement and hereby authorizes the Mayor and the City Clerk to execute said Agreement and to have a certified copy on file in the offices of the City Clerk.

Section 2. Terms of the Interlocal Agreement and the Deficiency Agreement shall be given full force and effect by the adoption of this ordinance and any ordinances or regulations of the City to the contrary shall be deemed to be of no further force and effect.

Section 3. In accordance with N.J.S.A. 40:66-5, the Authority is authorized on behalf to provide Solid Waste collection and/or disposal services to the residential generators of municipal waste including all single family and multi-family dwellings. Further, in accordance with N.J.S.A. 40:66-5.1(b)(3) all commercial, industrial and institutional generators of waste shall be required to contract with a licensed solid waste vendor for the collection and/or disposal of such commercial, industrial and institutional waste. Each generator of commercial, industrial and institutional waste shall be required to identify the name of the solid waste vendor that provides collection and/or disposal services within seven (7) days following the execution of any contract with such solid waste vendor or any successor. Any commercial, industrial or institutional Solid Waste generator that shall fail to comply with the provisions of this Section shall be subject to penalties as permitted by applicable law or regulation.

Section 4. This ordinance shall take effect as provided by law.

EXHIBIT B

REVENUE SHARING PERCENTAGE - BASE YEAR REVENUE CALCULATION

PRO-FORMA CALCULATION OF REVENUE SHARING FORMULA

<u>Base Year Revenue Requirement</u>	<u>Total</u>	<u>Sewer</u>	<u>Solid Waste</u>
Proposed Budget Expenditures	\$ 6,562,129	\$ 3,006,275	\$ 3,555,8
Proposed Lease Payment to City	<u>3,442,000</u>	<u>1,062,000</u>	<u>2,380,0</u>
Total Base Year Revenue Requirement	<u>\$ 10,004,129</u>	<u>\$ 4,068,275</u>	<u>\$ 5,935,8</u>

PRO-FORMA CALCULATION OF BASE YEAR ADJUSTMENTS

	<u>Total</u>	<u>Sewer</u>	<u>Solid Waste</u>
Base Amount per Above	\$ 10,004,129	\$ 4,068,275	\$ 5,935,8
Adjustments to prior year expenditures:			
Debt Service	(13,750)	(13,750)	
Sewer Flow Charges/Surcharges	(2,094,321)	(2,094,321)	
Garbage & Recycling Collection Contractual	(2,438,941)		(2,438,9
Leaf/Stump Disposal	(300,000)		(300,00
Lease Payment to City	(3,442,000)	(1,062,000)	(2,380,00
Insurance	<u>(113,000)</u>	<u>(63,000)</u>	<u>(50,00</u>
Base Year Amount Subject to Escalation Factor	1,602,117	835,204	766,9
Escalation Factor (Assumed for Calculation Purposes)	<u>1.25%</u>	<u>1.25%</u>	<u>1.25</u>
Base Year Amount After Escalation	1,622,143	845,644	776,4
Current Year Adjustments:			
Additional Staffing Cost Requirements	50,000	25,000	25,00
Debt Service	263,750	263,750	
Sewer Flow Charges/Surcharges	1,901,495	1,901,495	
Garbage & Trash Collection Contractual	2,438,941		2,438,9
Leaf/Stump Disposal	300,000		300,00
Lease Payment to City	3,442,000	1,062,000	2,380,00
Insurance	<u>114,413</u>	<u>63,788</u>	<u>50,6</u>
Adjusted Base Year Revenue Amount	10,132,742	4,161,677	5,971,0
Actual Gross Revenue (Assumed for Calculation Purposes)	<u>10,350,000</u>	<u>4,350,000</u>	<u>6,000,00</u>
Amount Subject to Revenue Sharing	<u>\$ 217,258</u>	<u>\$ 188,323</u>	<u>\$ 28,9</u>
City Share of Excess Revenues (50%)	<u>\$ 108,629</u>	<u>\$ 94,162</u>	<u>\$ 14,4</u>

Note: Amounts shown are for illustration purposes only.

Revenue Sharing Percentage - Base Year Revenue Calculation

Base Year Revenue Calculation is used for the purpose of calculating the City's Revenue Sharing Percentage as defined in the Interlocal Agreement between the City and the Authority. Attached hereto as Appendix A is an example of a calculation of the Revenue Sharing Percentage. The calculation works as follows.

- (1) Determination of the Base-Year Revenue Requirement - This amount represents the minimum revenues required to sustain the Authority's budgeted expenditures including lease payments to the City, assuming one full year of Authority operations.
- (2) Base-Year Adjustments - In each subsequent year the Base Year Revenue is adjusted by deducting the "pass through costs" identified below and by application of the escalation factor to the remaining amount. (The escalator factor set forth in Section 203(d) and Exhibit D of the Interlocal Agreement). The following are deemed to be "pass-through" costs for purposes of this adjustment.
 - Debt Service
 - Sewer Flow Charges/Surcharges
 - Garbage and Recycling Collection - Contractual
 - Leaf/Stump Disposal
 - Lease Payments to the City
 - Insurance
 - Capital Improvements
- (3) Current Year Adjustments - After the application of the Escalation Factor, the "pass-through" costs identified in paragraph (2) above for the current year and costs for additional staffing requirements are added back to determine the adjusted revenue requirement. This amount is compared to the actual Gross Revenues (as defined in the Interlocal Agreement). Any excess is divided equally between the City and the Authority.
- (4) Adjusted Base Year Revenue Amount - In each year during the term of the Agreement the adjustments to the Base-Year Revenue shall be determined on the prior years Base Year Revenue Calculation. (See Appendix A - Adjusted Base-Year Revenue Amount).

EXHIBIT C

FORM OF DEFICIENCY AGREEMENT

FORM OF DEFICIENCY AGREEMENT

PREAMBLE

THIS DEFICIENCY AGREEMENT made and dated as of the 17th day of October, 1997 (the "Deficiency Agreement"), constitutes an agreement between the CITY OF PLAINFIELD (the "City"), a municipal corporation of the State of New Jersey situated in the County of Union AND THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY ("the Authority"), a public body corporate and politic of the State of New Jersey.

WITNESSETH

WHEREAS, the Authority was created and established by virtue of an ordinance duly adopted by the City Council of the City, pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.) of the State of New Jersey as amended and supplemented (the "Act"). The Authority is a public body politic and corporate, constituting a political subdivision of the State of New Jersey and an agency of the City with all the powers, privileges, and authority conferred by the Act; and

WHEREAS, it is the purpose and policy of the Authority to (i) relieve the waters in the City of Plainfield from pollution or threatened pollution by provision of Sewage collection, treatment and disposal and (ii) to provide solid waste services and facilities that are consistent with the Solid Waste Management Act, P.L. 1970, c. 39 of the State of New Jersey Solid Waste Utility Contract Act, P.L. 1970, c. 40; and

WHEREAS, to accomplish such purposes the City and Authority recognize that it is necessary for the Authority to assume possession and operation of the existing sewage and solid waste operations now owned and operated by the City; and

WHEREAS, in the interest of public health and welfare the work and activities of the Authority, if not performed by it shall otherwise be the responsibility and obligation of the City itself; and

WHEREAS, the City and the Authority have entered into an interlocal services agreement dated as of October 17, 1997 (the "Interlocal Agreement"), to provide for the transfer of certain sewerage and solid waste assets of the City to the Authority and the assumption of sewage, collection, treatment and disposal and solid waste services for the City as provided in such Interlocal Agreement; and

WHEREAS, in order for the Authority to carry out its purposes under the Act, the Act authorizes the City to provide financial assistance through the payment of Annual Charges (as defined

and ending December 31 with the first Fiscal Year beginning on the Closing Date and ending December 31, 1996.

"Revenue Sharing Percentage" shall mean 50% of the difference between the Authority's Gross Revenues (as defined in the Interlocal Agreement) and the Base Year Revenue Calculation, provided, however, that in the event that the City shall at any time make payments of a Deficiency Amounts to the Authority, then, in addition to the above and until the total Deficiency Amounts shall be paid in full, the Revenue Sharing Percentage shall be increased by the lesser of (i) an additional 50% of the difference between the Authority's Gross Revenues and the Base Year Revenue Calculation or (ii) an amount necessary to repay the Deficiency Amount.

"Service Charges" means rents, rates, fees or other charges for direct or indirect connection with, or the use of the services of the Sewerage System or the Solid Waste System, as the case may be.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from, or to be processed by on-site waste water systems, residences, hotels, apartments, schools, hospitals, industrial establishments, or any other public or private building, together with such surface or groundwater and industrial wastes and leachate as may be present.

"Sewerage System" means that portion of the Assets used for the collection, treatment and disposal of Sewage and the plants, structures, on-site waste water systems, and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including sewer trunks, intercepting, outlet and connection sewers, conduits, pipe lines, mains, pumping and ventilating stations, sewage treatment and disposal systems, plants, buildings, works, connections, outfalls, compensating reservoirs, boats, and other conveyances, structures and equipment and other real and personal property, and rights therein and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal of Sewage in a sanitary manner.

"Solid Waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations and from domestic and community activities and shall include all other waste materials, including sludges, excluding chemical waste, hazardous wastes and liquids, except for Sewage conveyed to or treated in public sewage treatment plants;

"Solid Waste System" means that portion of the Assets used for the collection, transfer, processing and disposal of Solid Waste and the plants, structures, and other real and personal property

acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including transfer stations, incinerators, recycling facilities including facilities for the generation, transmission and distribution of energy derived from the processing of Solid Waste and facilities for the composting of Solid Waste, sanitary landfill facilities or other property or plants for the collection, processing, disposal or recycling of Solid Waste and all vehicles, equipment and other real or personal property and rights therein and appurtenances necessary or useful and convenient for the collection, processing, recycling or disposal of Solid Waste in a sanitary manner.

"Systems" means collectively the Sewerage System and the Solid Waste System.

ARTICLE II CHARGES BY THE AUTHORITY AND PAYMENTS BY THE CITY

SECTION 201. Service Charges and Annual Charges. With respect to all Sewage or other wastes delivered into the Sewerage System and for all direct or indirect connection with, and all use of and services of, the Sewerage System, and with respect to all Solid Waste collected, treated and disposed through the Solid Waste System and for all direct or indirect use of and service of the Solid Waste System, the Authority shall charge Service Charges in accordance with the Act, and shall charge to the City an annual payment (hereinafter called the "Annual Charge") computed and to be paid in accordance with this Deficiency Agreement. The Annual Charges, computed and charged by the Authority and to be paid by the City as hereinafter provided, shall include and make provision for all of the amount, not actually paid from Service Charges collected by the Authority or certain other sources as hereinafter specified, necessary (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, and the principal of, redemption premium, if any, and interest on any and all Bonds as the same become due, (2) to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any other municipality or county or any person, or from any other cause, and (3) to maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds.

SECTION 202. Service Charges. With respect to all Sewage disposed through the Sewerage System and for all use and services of any portion of the Sewerage System, and all Solid Waste collected, treated and disposed through the Solid Waste System and for all use and services of any portion of the Solid Waste System,

the Authority will charge and collect Service Charges in accordance with the terms of the Act. Such Services Charges shall be established at the rates which are estimated by the Authority to be sufficient to provide for the receipt by the Authority in each Fiscal Year (beginning with the Fiscal Year in which the Authority begins actually operating the Systems of a sum of money which is at least equal to the sum of the amounts that are necessary in such Fiscal Year (to the extent not provided from other funds or revenues of the Authority, including proceeds from debt obligations) (1) to pay or provide for all administrative, operating and maintenance expenses of the Systems and the principal of, redemption premium, if any, and interest on any and all Bonds as the same may become due, (2) to maintain such reserves or sinking funds as may be required by the terms of any Bonds, (3) to comply in all respects with the terms and provisions of any Bond Resolution and with the Act, and (4) to make repayments to the City for any amounts paid pursuant to Section 203 of this Deficiency Agreement, provided, however, that nothing contained in this Section or in this Deficiency Agreement shall prevent the Authority from charging and collecting Service Charges which shall be less than sufficient to comply with subsection (4) of this Section, if the City shall have given its prior written consent to such lesser Service Charges. All Service Charges charged by the Authority shall be subject to the required regulatory approvals, if applicable.

Notwithstanding anything contained herein to the contrary, the Authority shall not charge and collect Service Charges from the City with respect to the provision of the Sewerage System or Solid Waste System Services provided however, that the City shall be obligated to pay Solid Waste Service Charges in connection with the Authority's collection and disposal of Solid Waste that is illegally disposed on City owned property for which it arranges disposal at the direction of the City.

SECTION 203. Computation of Annual Charges. For all purposes of this Deficiency Agreement, the Annual Charge made and to be charged by the Authority to and payable by the City for or with respect to any Fiscal Year shall be the sum of money equal to the excess (if any) of:

(A) The sum of all of the amounts necessary or expended in such Fiscal Year (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, (2) to pay or provide for any interest becoming due prior to the end of such Fiscal Year on Bonds, (3) to pay or provide for the principal or redemption premium of Bonds becoming due prior to the end of such Fiscal Year, (4) to provide for any deficits of the Authority resulting from failure to

receive sums payable to the Authority by any other municipality, any county or any person, or from any other cause, and (5) to maintain such reserves or sinking funds to provide for expenses of operation and maintenance of the Systems or for any interest on or principal or redemption premium of Bonds or for any such deficits as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds or be deemed necessary or desirable by the Authority, less -

(B) The sum of such parts (if any) of the several amounts referred to in Subparagraph (A) of this Section 203 as, prior to the end of such Fiscal Year, are properly paid and discharged or fully provided for by application, in accordance with the Act and the Authority's agreements (if any) with or for the benefit of holders of Bonds, of (1) Service Charges collected by the Authority, (2) the proceeds of Bonds received by or for account of the Authority, (3) the proceeds of insurance received by or for account of the Authority, (4) interest received on investments of funds held for the benefit or security of the Authority or the holders of Bonds, (5) contributions received by or for the account of the Authority and not under any circumstances repayable by the Authority until after the payment in full of all other obligations of the Authority including its Bonds, original or refunding or both, or (6) reserves on hand and available therefor at the beginning of such Fiscal Year.

SECTION 204. Payment of Annual Charge by City. (A) For or in connection with the operation of the Systems during each Fiscal Year, the City shall pay to the Authority the Annual Charge charged by the Authority to and payable by the City for each Fiscal Year computed by the Authority as provided in this Article II. Within twenty-five days after the end of each Fiscal Year, the Authority will deliver to the City its certificate stating the amount of the Annual Charge for said Fiscal Year computed in accordance with this Deficiency Agreement accompanied by a certificate signed by an Accountant approving the statements in such certificate of the Authority. Such certificate shall be approved by resolution of the Authority and shall be supported by analysis of the Annual Charges as computed in accordance with the terms of this Agreement. The Annual Charge for each Fiscal Year shall in all events be due and payable not later than thirty-three days after the close of such Fiscal Year, but current provision for and payment of all such Annual Charges on an estimated basis shall be made by the City in accordance with the following Paragraphs of this Section 204.

(B) On or before the twenty-fifth day of each Fiscal Year, the Authority shall estimate the amount of the Annual Charge

payable by the City for such Fiscal Year and, on or before the thirty-fifth day of such Fiscal Year, shall deliver to the City its certificate stating such estimated amount of the Annual Charge for such Fiscal Year. In the event that any part of any Annual Charge theretofore becoming payable by the City shall not have been paid, the Authority shall include in such certificate an additional provision separately stating the amount of such unpaid part (the "Deficiency Amount").

(C) The City will in each year make all budgetary and other provisions, appropriations, or emergency appropriations as necessary to provide for and authorize the payment by the City to the Authority during each Fiscal Year the estimated amount of the Annual Charge and the amount of the Deficiency (if any) stated in the certificate delivered in such Fiscal Year by the Authority..

(D) On or before the sixtieth (60th) day of each Fiscal Year, the City shall pay to the Authority the amount of the Deficiency (if any) stated in the certificate delivered in such Fiscal Year by the Authority. The City shall pay to the Authority the estimated amount of the Annual Charge stated in the certificate delivered in such Fiscal Year by the Authority in three equal installments on the last days of May, August and November of such Fiscal Year.

(E) In the event that the amount of the Annual Charge made and charged by the Authority to and payable by the City for any Fiscal Year computed as provided in this Article II shall be less than the estimated amount of such Annual Charge stated in the certificate delivered in such Fiscal Year by the Authority and paid by the City to the Authority, the Authority will credit the difference between said amounts to the City against the amount of the next payment becoming due to the Authority from the City under the provisions of Paragraph (A) or Paragraph (D) of this Section 204.

SECTION 205. Enforcement and Obligation of Annual Charges. If any payment or part thereof due to the Authority from the City under this Deficiency Agreement shall remain unpaid for thirty days following its due date, the City shall be charged with and shall pay to the Authority interest on the amount unpaid from its due date until paid, at the rate of five per centum (5%) per annum. Every obligation assumed by or imposed upon the City by this Deficiency Agreement shall be enforceable by the Authority by appropriate action or proceeding, and the Authority may have and pursue any and all remedies provided by law for the enforcement of such obligation including the remedies and processes provided by the Act with respect to Service Charges.

SECTION 206. Limitation on Service Charges. The sums payable by the City to the Authority under the provisions of this Deficiency Agreement are and shall be in lieu of part of the Service Charges which the Authority would otherwise, under the

ARTICLE II
TRANSFER OF ASSETS

SECTION 201. Lease Assets. As of the Closing Date, the City, as Lessor, shall lease to the Authority, as Lessee, the System Assets specified in Exhibit E-1 and F-1 of this Agreement.

SECTION 202. Lease Term; Terms and Conditions. The term of the Lease shall be for a period that is the greater of (i) thirty (30) years from the Closing Date or (ii) one (1) year following the final maturity of any bonds, notes or other obligations issued by the Authority but in any event not greater than forty (40) years from the Closing Date. This Lease shall be deemed to be and construed as a "net net lease" and pursuant to the terms hereof, the Authority shall be responsible during the lease term for all costs of operating, repairing, constructing, and maintaining the Assets and the Systems including, without limitation, all utility and insurance costs and any taxes, fees, fines or other charges and the City shall have no responsibility or liability with respect to the same.

SECTION 203. Consideration; Lease Payments; City Appropriation. (a) In consideration for the lease of the Sewerage System Assets set forth in Section 201 hereof, the Authority agrees to pay to the City, in each year during the Term of this Lease, a Lease payment of \$812,000 on June 1, 1998 and \$1,062,000 commencing on June 1, 1999, and which \$1,062,000 lease payment shall be payable on June 1 each year thereafter during the Term of the Agreement. As of June 1, 1999 and each June 1 thereafter ("Lease Payment Anniversary Date"), the Lease payment amount specified herein shall be adjusted in accordance with the Escalation Factor calculated in the manner set forth in Section 203 (d) below. Upon the Authority's failure to pay any lease payment by June 30 of any such year, the Authority shall be obligated to pay interest on such overdue amounts at the rate of ten percent (10%) per annum. The payment of such interest shall not relieve the Authority of the obligation to perform its other obligations hereunder, and the acceptance of such interest payment, at a time when the Authority is in default of its other obligations hereunder, shall not prevent the City from exercising its rights and remedies hereunder, including, without limitation, the right to terminate this Agreement in accordance with the terms hereof.

(b) In consideration for the mutual obligations of the parties hereunder relating to the lease and sale, as the case may be, of Solid Waste System Assets by the City to the Authority and the operation of the Solid Waste System by the Authority, the City and the Authority agree as follows:

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

CITY OF PLAINFIELD

Seal

By: _____
Mark A. Fury
Mayor

Attest:

Laddie Wyatt, City Clerk

THE PLAINFIELD MUNICIPAL
UTILITIES AUTHORITY

Seal

By: _____
Gerard Lee
Chairman

Attest:

Eva Alicea, Secretary

EXHIBIT D

ESCALATION FACTOR APPLICABLE TO PAYMENTS UNDER INTERLOCAL AGREEMENT

1. The Escalation Factor ("EF") applicable to payments under Section 203 of the Interlocal Agreement shall be based upon the Overall Index Escalation Factor ("OIEF"). The OIEF shall be determined in accordance with the following formula:

$$EF = OIEF = (70\% \times CPI) \text{ plus } (25\% \times IEF_{114}) \text{ plus } (5\% \times IEF_{061})$$

WHERE:

CPI = Consumer Price Index for all Urban Consumers - NY/NJ/CT, as published by the U.S. Department of Commerce, Bureau of Labor Statistics

IEF₁₁₄ = Index Escalation Factor for PPI-114 - for General Purpose Machinery and Equipment, as published by the U.S. Department of Commerce, Bureau of Labor Statistics

IEF₀₆₁ = Index Escalation Factor for PPI-061 - Industrial Chemicals, as published by the U.S. Department of Commerce, Bureau of Labor Statistics

and WHERE:

CPI = the CPI-U - NY/NJ/CT for January of the current Contract Year divided by the CPI-U - NY/NJ/CT for January 1998

IEF₁₁₄ = the PPI-114 index for January of the current Contract Year divided by the PPI-114 index for January 1998

IEF₀₆₁ = the PPI-061 index for January of the current Contract Year divided by the PPI-061 index for January 1998

2. If the formula set forth in paragraph (1) above results in a value for OIEF for a year that is less than or equal to zero, the OIEF for the current year shall be zero.

Decommissioned Sewer Lift Pumping Stations

Other decommissioned sewer lift pump stations have been converted to flow through facilities with parcel locations at:

1. West End Avenue, tax map sheet #157, Block 230, Lot 72
2. Monroe Avenue, tax map sheet #119, Block 525, Lot 23
3. Huntington Avenue, tax map sheet #117, Block 517, Lot 4
4. Randolph Road, tax map sheet #100, Block 732, Lot 2
5. Laramie Road, tax map sheet #100, Block 732, Lot 1

(2) Permits and Approvals

(3) Plans and Specifications

EXHIBIT E-2 SEWERAGE SYSTEM ASSETS - SOLD

(1) Equipment and Vehicles

Major operating equipment, materials and vehicles currently being used to operate and maintain the sewer system is listed and identified below.

1. Vehicle Number 353, Year 79, Sewer Jet Truck - Poor Condition
2. Vehicle Number 358, Year 80, Sewer Jet Truck - Poor Condition
3. Vehicle Number 359, Year 96, Sewer Jet Truck - New Equipment
4. One (1) Sewer Rod Machine - Poor Condition
5. Two (2) Sewer Cable Buck Machines - Fair Condition
6. Two (2) 3 inch Pumps - Good Condition
7. One (1) 4 inch Electric Pump - New
8. One (1) 1 inch Pump - Good Condition
9. 1,000 Feet of 3 inch Hose - Good Condition
10. 250 Feet of 4 inch Hose - Good Condition
11. One (1) Electric Generator - New
12. Two (2) Gas Detectors
13. One (1) Air Blower with 250 ft. Hose
14. Miscellaneous Other Equipment
 - One (1) Safety Lock-out Kit
 - Two (2) First Aid Kits
 - 20 feet of PCP Pipe
 - Six (6) 2 Feet Cast Iron Grates
 - Six (6) 4 feet Cast Iron Grates
 - Tools (picks, shovels, hammers, mason tools, wrenches)

(2) Accounts Receivable - As of the Closing Date, the City shall transfer or assign to the Authority the City's rights and interests in outstanding or delinquent accounts receivable and, except as otherwise provided in this Agreement or the Deficiency Agreement, all future rights and interests in charges, fees, rents, grants or other sources of funding anticipated or derived from the City's Sewerage System and

solid waste system, if any and including any cash realized from the collection of accounts receivable on or after November 26, 1996.

- (3) Systems
- (4) Additional Equipment/Hardware/Software
- (5) Procurement Documents/Arrangements

EXHIBIT E

SEWERAGE SYSTEM ASSETS

EXHIBIT E-1 SEWERAGE SYSTEM ASSETS - LEASED

(1) Physical Assets

Plainfield's Internal Collector Lines

Plainfield's internal collection system consists of more than 110 miles of sewer lines located, generally, in the Public Right of Way or within easements across non-city owned properties. Lines range in size from 8 inch and larger local collectors to major interceptor trunk lines of 42 inches. The system includes more than an estimated 2500 associated maintenance manholes and access pits ranging from 3 feet to over 22 feet in depth. There are approximately 10 or more active local internal siphons and 2 currently operating sewage lift pumping stations.

Currently Operating Sewer Lift Pumping Stations

1. Watchung Avenue Pump Station

The Watchung Avenue sewer lift pumping station is located on Watchung Avenue as identified on municipal tax map sheet #68 as Block 7, Lot 38. The facility consists of a ground level building structure containing electrical switching gear, instrument controls for operation and ventilation equipment. Three submersible type electric motor driven sewage pumps are located on the dry side of a deep wet well sewage receiving basin located in the basement of the station. The facility also includes an emergency diesel driven electric generator for backup power to the station.

2. Rock Avenue Pump Station

A second sewer lift pumping station is located at the Transfer Station Facility at 95 Rock Avenue, identified on municipal tax map sheet # 146 as Block 207, Lot 1. This station also consists of a ground level building structure equipped similarly to the Watchung Avenue station. The three (3) pumps are electric motor driven with the motors located at the ground floor level with the electric switch gear and are coupled to the three pumps via extended drive shafting to the dry side of the receiving wet well approximately 22 feet below grade. A diesel driven emergency electric generator is external to the station as well as various valves and piping which is tied into the PARSA owned Rock Avenue Siphon at the chamber located at Rock and Myrtle Avenue as well as at the chambers located at the Greenbrook River.

EXHIBIT F

SOLID WASTE SYSTEM ASSETS

EXHIBIT F-1 SOLID WASTE SYSTEM ASSETS - LEASED

(1) Transfer Station

Rock Avenue Transfer Station

The Rock Avenue Transfer Station Facility is located at 95 Rock Avenue, identified as that portion of the property set forth on the municipal tax map sheet # 146 as property Block 207, Lot #1, as more particularly described in Exhibit I. The site consists of a two level fabricated steel frame building structure built around 1975 and currently under renovation. The structure houses an originally supplied hydraulic waste compactor unit. In addition, the site includes a newly installed truck weigh scale.

(2) Permits and Approvals

Miscellaneous Items

- * Pending NJDEP Transfer Station Operating Permit

EXHIBIT F-2 SOLID WASTE SYSTEM ASSETS - SOLD

(1) Vehicles and Equipment

Major operating equipment, materials and vehicles currently being used to collect and dispose of solid waste is listed and identified below.

1. Vehicle No. 333, Year 80, Mechanical Packer (Poor Condition)
2. Vehicle No. 332, Year 84, Mechanical Packer (Poor Condition)
3. Vehicle No. 335, Year 95, Mechanical Packer (Good Condition)
4. One (1) Compactor Trailer No. 381-3, Year 94 (Good Condition)
5. Two (2) Compactor Trailers No. 381-6, Year 80 (Poor Condition)
No. 381-7, Year 80 (Poor Condition)
6. Vehicle No. 395, Year 85, Recycling Truck (Fair Condition)
7. Vehicle No. 325, Year 86, Front End Loader (Poor Condition)
8. Number (96) Public Litter Cans
9. Number (0) Roll off Containers
10. Vehicle No. 331, Year 85, LoDal Packer (Poor Condition)
11. Vehicle No. 345, Year 85, Tandem Tractor (Fair Condition)
(White)
12. Vehicle No. 344, Year 82, Tandem Tractor (Poor Condition)
(Volvo)
13. Vehicle No. 316, Year 85, Ford Vactor (Fair Condition)

DPW Street Bureau Operations

Vehicles and Equipment

Leaf Blowers
Leaf Vacuum
Line Trimmers

(2) Procurement Documents

Miscellaneous Items

- * Contract Services Solid Waste Management Plan and Bid
- * Specifications prepared by James C. Anderson Associates Inc.
- * T/Sta Renovation Services
Design Contract work by Mike Disko Associates
Construction Contract by _____
- * Curbside Recycling Service Contract with ARTS

(3) Grants or Other Liquid Assets

Grants

- * Recycling Tonnage Grant - Fiscal Year 1997 through the Lease Term
- * Clean Community Program - Fiscal Year 1997 through the Lease Term

Clean Communities Program

- * Program 1996 Funding - \$42,000

EXHIBIT G

TIPPING FEE RECONCILIATION FOR SOLID WASTE SERVICES

PLAINFIELD.MUA
PRO-FORMA SCHEDULE
RECONCILIATION OF TIP FEES TO LEASE PAYMENT

Actual City Tip Fee Expenditures	\$ 3,070,000
Less:	
Credit from City	<u>(800,000)</u>
Amount due from PMUA	2,270,000
Actual Payments to City	<u>(2,000,000)</u>
Amount Due to/(from) City	<u>\$ 270,000</u>

Note: Amounts shown are for illustration purposes only.

DEFICIENCY AGREEMENT

PREAMBLE

THIS DEFICIENCY AGREEMENT made and dated as of the 17th day of October, 1997 (the "Deficiency Agreement"), constitutes an agreement between the CITY OF PLAINFIELD (the "City"), a municipal corporation of the State of New Jersey situated in the County of Union AND THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY ("the Authority"), a public body corporate and politic of the State of New Jersey.

WITNESSETH

WHEREAS, the Authority was created and established by virtue of an ordinance duly adopted by the City Council of the City, pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.) of the State of New Jersey as amended and supplemented (the "Act"). The Authority is a public body politic and corporate, constituting a political subdivision of the State of New Jersey and an agency of the City with all the powers, privileges, and authority conferred by the Act; and

WHEREAS, it is the purpose and policy of the Authority to (i) relieve the waters in the City of Plainfield from pollution or threatened pollution by provision of Sewage collection, treatment and disposal and (ii) to provide solid waste services and facilities that are consistent with the Solid Waste Management Act, P.L. 1970, c. 39 of the State of New Jersey Solid Waste Utility Contract Act, P.L. 1970, c. 40; and

WHEREAS, to accomplish such purposes the City and Authority recognize that it is necessary for the Authority to assume possession and operation of the existing sewage and solid waste operations now owned and operated by the City; and

WHEREAS, in the interest of public health and welfare the work and activities of the Authority, if not performed by it shall otherwise be the responsibility and obligation of the City itself; and

WHEREAS, the City and the Authority have entered into an interlocal services agreement dated as of October 17, 1997 (the "Interlocal Agreement"), to provide for the transfer of certain sewerage and solid waste assets of the City to the Authority and the assumption of sewage, collection, treatment and disposal and solid waste services for the City as provided in such Interlocal Agreement; and

WHEREAS, in order for the Authority to carry out its purposes under the Act, the Act authorizes the City to provide financial assistance through the payment of Annual Charges (as defined herein) to the Authority to provide such sum or sums of money that may be necessary to cover deficits in the revenues from the operation of the Sewerage System and Solid Waste System (as herein defined); and

WHEREAS, in consideration of the mutual promises, agreements and covenants of this Deficiency Agreement and the Interlocal Agreement, the City and the Authority have agreed to enter into this Deficiency Agreement;

NOW THEREFORE, in consideration of the promises, agreements and covenants hereinafter set forth and mutually agreed to, the Authority and the City, each for itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I DEFINITIONS

The terms set forth in this Article shall, unless otherwise indicated herein or the context clearly requires otherwise, have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular.

"Accountant" means the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey or a registered municipal accountant or a certified public accountant of the State of New Jersey.

"Base Year Revenue Calculation" shall mean the amount calculated in accordance with Exhibit B of the Interlocal Agreement.

"Bond Resolution" shall mean any bond, note, or project note resolution or indenture of trust authorizing the issuance of Bonds and determining, among other things, certain terms and conditions relative to sale, issuance and security thereof.

"Bonds" means bonds or other obligations issued or entered into by the Authority pursuant to the Act.

"Closing Date" shall mean the effective date of the Approval Ordinance.

"Deficiency Amount" shall mean the amount payable by the City to the Authority under the terms and conditions of the Deficiency Agreement.

"Fiscal Year" means the Authority's fiscal year constituting period of twelve consecutive calendar months beginning January 1 and ending December 31 with the first Fiscal Year beginning on the Closing Date and ending December 31, 1996.

"Revenue Sharing Percentage" shall mean 50% of the difference between the Authority's Gross Revenues (as defined in the Interlocal Agreement) and the Base Year Revenue Calculation, provided, however, that in the event that the City shall at any time make payments of a Deficiency Amounts to the Authority, then, in addition to the above and until the total Deficiency Amounts shall be paid in full, the Revenue Sharing Percentage shall be increased by the lesser of (i) an additional 50% of the difference between the Authority's Gross Revenues and the Base Year Revenue Calculation or (ii) an amount necessary to repay the Deficiency Amount.

"Service Charges" means rents, rates, fees or other charges for direct or indirect connection with, or the use of the services of the Sewerage System or the Solid Waste System, as the case may be.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from, or to be processed by on-site waste water systems, residences, hotels, apartments, schools, hospitals, industrial establishments, or any other public or private building, together with such surface or groundwater and industrial wastes and leachate as may be present.

"Sewerage System" means that portion of the Assets used for the collection, treatment and disposal of Sewage and the plants, structures, on-site waste water systems, and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including sewer trunks, intercepting, outlet and connection sewers, conduits, pipe lines, mains, pumping and ventilating stations, sewage treatment and disposal systems, plants, buildings, works, connections, outfalls, compensating reservoirs, boats, and other conveyances, structures and equipment and other real and personal property, and rights therein and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal of Sewage in a sanitary manner.

"Solid Waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations and from domestic and community activities and shall include all other waste materials, including "sludges," excluding chemical waste, hazardous wastes and liquids, except for Sewage conveyed to or treated in public sewage treatment plants;

"Solid Waste System" means that portion of the Assets used for the collection, transfer, processing and disposal of Solid Waste and the plants, structures, and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including transfer stations, incinerators, recycling facilities including facilities for the generation, transmission and distribution of energy derived from the processing of Solid Waste and facilities for the composting of Solid Waste, sanitary landfill facilities or other property or plants for the collection, processing, disposal or recycling of Solid Waste and all vehicles, equipment and other real or personal property and rights therein and appurtenances necessary or useful and convenient for the collection, processing, recycling or disposal of Solid Waste in a sanitary manner.

"Systems" means collectively the Sewerage System and the Solid Waste System.

ARTICLE II CHARGES BY THE AUTHORITY AND PAYMENTS BY THE CITY

SECTION 201. Service Charges and Annual Charges. With respect to all Sewage or other wastes delivered into the Sewerage System and for all direct or indirect connection with, and all use of and services of, the Sewerage System, and with respect to all Solid Waste collected, treated and disposed through the Solid Waste System and for all direct or indirect use of and service of the Solid Waste System, the Authority shall charge Service Charges in accordance with the Act, and shall charge to the City an annual payment (hereinafter called the "Annual Charge") computed and to be paid in accordance with this Deficiency Agreement. The Annual Charges, computed and charged by the Authority and to be paid by the City as hereinafter provided, shall include and make provision for all of the amount, not actually paid from Service Charges collected by the Authority or certain other sources as hereinafter specified, necessary (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, and the principal of, redemption premium, if any, and

interest on any and all Bonds as the same become due, (2) to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any other municipality or county or any person, or from any other cause, and (3) to maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds.

SECTION 202. Service Charges. With respect to all Sewage disposed through the Sewerage System and for all use and services of any portion of the Sewerage System, and all Solid Waste collected, treated and disposed through the Solid Waste System and for all use and services of any portion of the Solid Waste System, the Authority will charge and collect Service Charges in accordance with the terms of the Act. Such Services Charges shall be established at the rates which are estimated by the Authority to be sufficient to provide for the receipt by the Authority in each Fiscal Year (beginning with the Fiscal Year in which the Authority begins actually operating the Systems of a sum of money which is at least equal to the sum of the amounts that are necessary in such Fiscal Year (to the extent not provided from other funds or revenues of the Authority, including proceeds from debt obligations) (1) to pay or provide for all administrative, operating and maintenance expenses of the Systems and the principal of, redemption premium, if any, and interest on any and all Bonds as the same may become due, (2) to maintain such reserves or sinking funds as may be required by the terms of any Bonds, (3) to comply in all respects with the terms and provisions of any Bond Resolution and with the Act, and (4) to make repayments to the City for any amounts paid pursuant to Section 203 of this Deficiency Agreement, provided, however, that nothing contained in this Section or in this Deficiency Agreement shall prevent the Authority from charging and collecting Service Charges which shall be less than sufficient to comply with subsection (4) of this Section, if the City shall have given its prior written consent to such lesser Service Charges. All Service Charges charged by the Authority shall be subject to the required regulatory approvals, if applicable.

Notwithstanding anything contained herein to the contrary, the Authority shall not charge and collect Service Charges from the City with respect to the provision of the Sewerage System or Solid Waste System Services provided however, that the City shall be obligated to pay Solid Waste Service Charges in connection with the Authority's collection and disposal of Solid Waste that is illegally disposed on City owned property for which it arranges disposal at the direction of the City.

SECTION 203. Computation of Annual Charges. For all purposes of this Deficiency Agreement, the Annual Charge made and to be charged by the Authority to and payable by the City for or with respect to any Fiscal Year shall be the sum of money equal to the excess (if any) of:

(A) The sum of all of the amounts necessary or expended in such Fiscal Year (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, (2) to pay or provide for any interest becoming due prior to the end of such Fiscal Year on Bonds, (3) to pay or provide for the principal or redemption premium of Bonds becoming due prior to the end of such Fiscal Year, (4) to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any other municipality, any county or any person, or from any other cause, and (5) to maintain such reserves or sinking funds to provide for expenses of operation and maintenance of the Systems or for any interest on or principal or redemption premium of Bonds or for any such deficits as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds or be deemed necessary or desirable by the Authority, less -

(B) The sum of such parts (if any) of the several amounts referred to in Subparagraph (A) of this Section 203 as, prior to the end of such Fiscal Year, are properly paid and discharged or fully provided for by application, in accordance with the Act and the Authority's agreements (if any) with or for the benefit of holders of Bonds, of (1) Service Charges collected by the Authority, (2) the proceeds of Bonds received by or for account of the Authority, (3) the proceeds of insurance received by or for account of the Authority, (4) interest received on investments of funds held for the benefit or security of the Authority or the holders of Bonds, (5) contributions received by or for the account of the Authority and not under any circumstances repayable by the Authority until after the payment in full of all other obligations of the Authority including its Bonds, original or refunding or both, or (6) reserves on hand and available therefor at the beginning of such Fiscal Year.

certificate delivered in such Fiscal Year by the Authority and paid by the City to the Authority, the Authority will credit the difference between said amounts to the City against the amount of the next payment becoming due to the Authority from the City under the provisions of Paragraph (A) or Paragraph (D) of this Section 204.

SECTION 205. Enforcement and Obligation of Annual Charges. If any payment or part thereof due to the Authority from the City under this Deficiency Agreement shall remain unpaid for thirty days following its due date, the City shall be charged with and shall pay to the Authority interest on the amount unpaid from its due date until paid, at the rate of five per centum (5%) per annum. Every obligation assumed by or imposed upon the City by this Deficiency Agreement shall be enforceable by the Authority by appropriate action or proceeding, and the Authority may have and pursue any and all remedies provided by law for the enforcement of such obligation including the remedies and processes provided by the Act with respect to Service Charges.

SECTION 206. Limitation on Service Charges. The sums payable by the City to the Authority under the provisions of this Deficiency Agreement are and shall be in lieu of part of the Service Charges which the Authority would otherwise, under the provisions of the Act, charge and collect with regard to real property within the City directly or indirectly connected with or using the Systems, and, so long as the City shall not be in default in the making of payments becoming due from it under the provisions of this Deficiency Agreement, the Authority will suspend all Service Charges with regard to such real property except Service Charges computed in accordance with the provisions of Section 202 of this Deficiency Agreement, but nothing in this Deficiency Agreement shall prevent the Authority from charging and collecting, as if this Deficiency Agreement had not been made, Service Charges with regard to persons or real property within the City sufficient to meet any default or deficiency in any payments agreed herein to be made by the City. For the purposes of this Section 206, the City shall be deemed to be in default if the City, for a period of thirty days after its due date, shall fail to make in full to the Authority any payment required to be made by it under the provisions of this Deficiency Agreement.

SECTION 207. Collection of Service Charges. The Authority shall at all times pursue any and all remedies provided by law to collect and enforce prompt payment to or for it of all Service Charges prescribed, fixed, certified and charged by it in accordance with this Deficiency Agreement.

Section 208. Repayments to the City. (a) All monies paid by the City to the Authority under this Deficiency Agreement, except Service Charges charged to the City itself, shall be repaid by the Authority without interest after payments for operating costs and charges and capital and other costs and the funding of reserves of the Authority within twenty four (24) months following the payment of the Deficiency Amounts by the City.

(b) In order to (i) provide for the repayment of Deficiency Amounts to the City and (ii) protect the interests of the holders of Bonds issued to finance the construction or acquisition of the Systems, the Authority hereby covenants to establish, charge and collect Sewerage System Service Charges and Solid Waste System Service Charges that, together with other available moneys of the Authority, will be sufficient to satisfy the Authority's obligations with respect to the operation and maintenance of the Systems and debt service obligations, as well as any required reserves as may be required to be maintained by or set forth in the terms of any bond resolution adopted by the Authority, and repayment of Deficiency Amounts to the City.

ARTICLE III MISCELLANEOUS

SECTION 301. Termination of this Deficiency Agreement. At any time after the date of this Deficiency Agreement and after the payment in full of all obligations of the Authority including its Bonds, originally issued and refunding, and payment in full of its obligations under Section 208 of this Deficiency Agreement, the City or the Authority, upon notice to the other party hereto, may terminate this Deficiency Agreement and the Deficiency Agreement shall terminate as of the end of the Fiscal Year beginning next after the date of such notice.

SECTION 302. Pledge or Assignment. This Deficiency Agreement may not be assigned or pledged by either party without the consent of the other, provided, however, that, since this Deficiency Agreement is made with particular reference to the holders or prospective holders of the Bonds of the Authority for the purpose of assuring and protecting the interests of such holders, the Authority may at any time assign or pledge for the benefit and security of the holders of Bonds all of its rights under the provisions of this Deficiency Agreement and the Interlocal Agreement to receive payments from the Authority, and thereafter this Deficiency Agreement shall not be terminated, modified or changed by the Authority or the City except in the manner (if any) and subject to the conditions (if any) permitted by the terms and provisions of such assignment or pledge.

Section 304. Special Consents by Authority or City. Whenever under the terms of this Deficiency Agreement the Authority or the City is authorized to give their respective written consents, such consent may be given and shall be conclusively evidenced by a copy, certified by the Clerk or the Secretary, as the case may be, and under the applicable seal, of a resolution adopted by the applicable governing body to give such consent.

Section 305. Services Outside of City. The Authority will not permit any property located outside of the City to be connected with the System for the purpose of delivering sewage into the System, or to accept any sewage or industrial waste from, any person or property outside of the City unless written consent thereto shall have previously been given by or on behalf of the City.

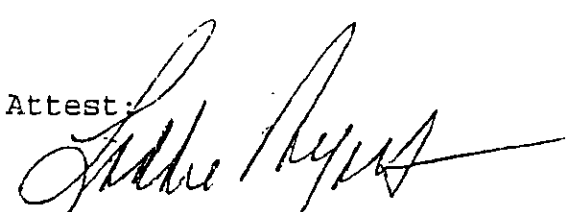
Section 306. Report as to Bonds. Forthwith upon the issuance of any Bonds, the Authority shall prepare and file in the office of the City Clerk of the City a schedule setting forth the principal amount, designation, denomination, date of issue, place of payment, maturities, rate of interest and redemption prices (if any) of such Bonds, together with a copy of the resolution of the Authority authorizing such Bonds, each certified by its Secretary and under its seal.

Section 307. Execution of Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by the Authority and the City and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

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

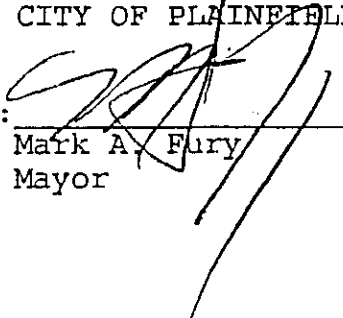
Seal

Attest:


Laddie Wyatt, City Clerk

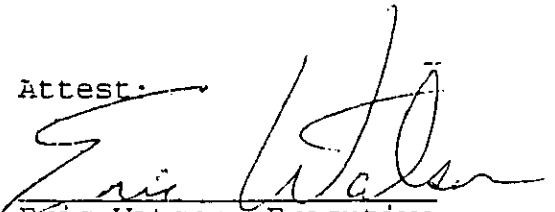
CITY OF PLAINFIELD

By:


Mark A. Fury
Mayor

Seal

Attest:


Eric Watson, Executive
Director

THE PLAINFIELD MUNICIPAL
UTILITIES AUTHORITY

By:

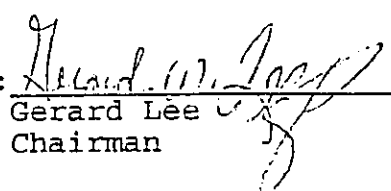

Gerard Lee
Chairman

EXHIBIT H

LIST OF LIENS OR OTHER ENCUMBRANCES; LITIGATION

- (1) Transtech Industries
- (2) Claims Resulting from Sewer Backups

EXHIBIT I

TRANSFER STATION SITE LEASE DESCRIPTION



JAMES C. ANDERSON ASSOCIATES, INC.

CONSULTING ENGINEERS, SCIENTISTS, PLANNERS,
SURVEYORS AND LICENSED DRILLERS

937 PLEASANT VALLEY AVENUE • MOUNT LAUREL NEW JERSEY 08054 • (609) 722-6700 • FAX (609) 722-0175

DESCRIPTION OF LAND
IN THE
CITY OF PLAINFIELD, COUNTY OF UNION, NJ

All that certain tract or parcel of land and premises situate, lying and being in the City of Plainfield, County of Union, State of New Jersey, bounded and described as follows:

Beginning at a point in the southwesterly line of Rock Avenue, measured N 16° 57' 20" W, 812.11' from its intersection with the northwesterly line of Myrtle Avenue and extending; thence

- 1) S 78° 02' 40" W, along the northwesterly line of Tax Map Lot 2, Block 207, 170.00' to a point; thence
- 2) S 16° 57' 20" E, along the northeasterly line of Tax Map Lot 2, Block 207, 269.33' to a point; thence
- 3) S 62° 17' 37" W, along the northwesterly line of Tax Map Lots 3 and 4, Block 207, 613.91' to a point; thence
- 4) S 19° 31' 23" E, along the southwesterly line of Tax Map Lot 4, Block 207, 201.35' to a point; thence
- 5) S 62° 17' 37" W, along the northwesterly line of First Street (66' wide), 220.00' to a point; thence
- 6) N 19° 31' 23" W, along the northeasterly line of Tax Map Plate 145, 625' more or less to a point in the centerline of Green Brook; thence
- 7) Northeastwardly and Eastwardly, along the centerline of Green Brook, be the distance what it may, to a point in the southwesterly line of Rock Avenue; thence
- 8) S 16° 57' 20" E, along the southwesterly line of rock Avenue, 325.4' more or less to the point and place of beginning.

Being Tax Map Lot 1, Block 207, Plate 146, containing 13.58 Acres of Land, more or less.

PRELIMINARY
NJ Professional Land Surveyor No. 32106

WEA:mcj

April 7, 1997

McMANIMON & SCOTLAND, L.L.C.

ATTORNEYS AT LAW

TELEPHONE
(201) 622-1800

ONE RIVERFRONT PLAZA, FOURTH FLOOR
NEWARK, NEW JERSEY 07102-5408

FAX (201) 622-7333
FAX (201) 622-3744

August 28, 1997

Lisa Love, Esq.
Corporation Counsel
City of Plainfield
515 Watchung Avenue
Plainfield, NJ 07060

Re: Deficiency Agreement and Interlocal Agreement

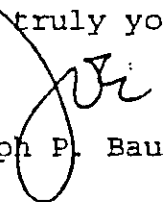
Dear Lisa:

At your request, enclosed please find two fully executed copies of the Deficiency Agreement. I have retained one copy for our files and by copy of this letter, I am forwarding one copy to the Authority for its files.

In addition, I have enclosed a new cover page and a replacement Page #10 in connection with the Interlocal Agreement. The new cover page was revised to remove our firm's name and to include the date on the Interlocal Agreement. Page #10 was changed to delete the word "sewerage" in Section 201. It is an obvious typographical error because it refers to Exhibits E-1 and F-1 to the Agreement which include assets of both the Sewerage System and Solid Waste System. We want to make sure that this typographical error is fixed in the official copies of the Interlocal Agreement that is on file with the City and the Authority. Accordingly, please have these replacement pages inserted in the official copy of the Agreement with the City Clerk's office. By copy of this letter, I am making a similar request of the Authority.

If you have any questions, please do not hesitate to call me.

Very truly yours,


Joseph P. Baumann, Jr.

JPB:ss

cc: Glenn Scotland, Esq.
Leslie London, Esq.
James Perry, Chief Financial Officer ✓
Anthony Pannella, Esq. (w/encl.)
William Mayer, Esq. (w/encl.)

DEFICIENCY AGREEMENT

PREAMBLE

THIS DEFICIENCY AGREEMENT made and dated as of the 1st day of June, 1997 (the "Deficiency Agreement"), constitutes an agreement between the CITY OF PLAINFIELD (the "City"), a municipal corporation of the State of New Jersey situated in the County of Union AND THE PLAINFIELD MUNICIPAL UTILITIES AUTHORITY ("the Authority"), a public body corporate and politic of the State of New Jersey.

WITNESSETH

WHEREAS, the Authority was created and established by virtue of an ordinance duly adopted by the City Council of the City, pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.) of the State of New Jersey as amended and supplemented (the "Act"). The Authority is a public body politic and corporate, constituting a political subdivision of the State of New Jersey and an agency of the City with all the powers, privileges, and authority conferred by the Act; and

WHEREAS, it is the purpose and policy of the Authority to (i) relieve the waters in the City of Plainfield from pollution or threatened pollution by provision of Sewage collection, treatment and disposal and (ii) to provide solid waste services and facilities that are consistent with the Solid Waste Management Act, P.L. 1970, c. 39 of the State of New Jersey Solid Waste Utility Contract Act, P.L. 1970, c. 40; and

WHEREAS, to accomplish such purposes the City and Authority recognize that it is necessary for the Authority to assume possession and operation of the existing sewage and solid waste operations now owned and operated by the City; and

WHEREAS, in the interest of public health and welfare the work and activities of the Authority, if not performed by it shall otherwise be the responsibility and obligation of the City itself; and

WHEREAS, the City and the Authority have entered into an interlocal services agreement dated as of April 11, 1997 (the "Interlocal Agreement"), to provide for the transfer of certain sewerage and solid waste assets of the City to the Authority and the assumption of sewage, collection, treatment and disposal and solid waste services for the City as provided in such Interlocal Agreement; and

WHEREAS, in order for the Authority to carry out its purposes under the Act, the Act authorizes the City to provide financial assistance through the payment of Annual Charges (as defined herein) to the Authority to provide such sum or sums of money that may be necessary to cover deficits in the revenues from the operation of the Sewerage System and Solid Waste System (as herein defined); and

WHEREAS, in consideration of the mutual promises, agreements and covenants of this Deficiency Agreement and the Interlocal Agreement, the City and the Authority have agreed to enter into this Deficiency Agreement;

NOW THEREFORE, in consideration of the promises, agreements and covenants hereinafter set forth and mutually agreed to, the Authority and the City, each for itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I DEFINITIONS

The terms set forth in this Article shall, unless otherwise indicated herein or the context clearly requires otherwise, have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular.

"Accountant" means the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey or a registered municipal accountant or a certified public accountant of the State of New Jersey.

"Base Year Revenue Calculation" shall mean the amount calculated in accordance with Exhibit B of the Interlocal Agreement.

"Bond Resolution" shall mean any bond, note, or project note resolution or indenture of trust authorizing the issuance of Bonds and determining, among other things, certain terms and conditions relative to sale, issuance and security thereof.

"Bonds" means bonds or other obligations issued or entered into by the Authority pursuant to the Act.

"Closing Date" shall mean the effective date of the Approval Ordinance.

"Deficiency Amount" shall mean the amount payable by the City to the Authority under the terms and conditions of the Deficiency Agreement.

"Fiscal Year" means the Authority's fiscal year constituting period of twelve consecutive calendar months beginning January 1 and ending December 31 with the first Fiscal Year beginning on the Closing Date and ending December 31, 1996.

"Revenue Sharing Percentage" shall mean 50% of the difference between the Authority's Gross Revenues (as defined in the Interlocal Agreement) and the Base Year Revenue Calculation, provided, however, that in the event that the City shall at any time make payments of a Deficiency Amounts to the Authority, then, in addition to the above and until the total Deficiency Amounts shall be paid in full, the Revenue Sharing Percentage shall be increased by the lesser of (i) an additional 50% of the difference between the Authority's Gross Revenues and the Base Year Revenue Calculation or (ii) an amount necessary to repay the Deficiency Amount.

"Service Charges" means rents, rates, fees or other charges for direct or indirect connection with, or the use of the services of the Sewerage System or the Solid Waste System, as the case may be.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from, or to be processed by on-site waste water systems, residences, hotels, apartments, schools, hospitals, industrial establishments, or any other public or private building, together with such surface or groundwater and industrial wastes and leachate as may be present.

"Sewerage System" means that portion of the Assets used for the collection, treatment and disposal of Sewage and the plants, structures, on-site waste water systems, and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including sewer trunks, intercepting, outlet and connection sewers, conduits, pipe lines, mains, pumping and ventilating stations, sewage treatment and disposal systems, plants, buildings, works, connections, outfalls, compensating reservoirs, boats, and other conveyances, structures and equipment and other real and personal property, and rights therein and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal of Sewage in a sanitary manner.

"Solid Waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations and from domestic and community activities, and shall include all other waste materials, including sludges, excluding chemical waste, hazardous wastes and liquids, except for Sewage conveyed to or treated in public sewage treatment plants;

"Solid Waste System" means that portion of the Assets used for the collection, transfer, processing and disposal of Solid Waste and the plants, structures, and other real and personal property acquired, constructed, operated and maintained or to be acquired, constructed, operated or maintained by the Authority or by any person to whom the Authority has extended credit including transfer stations, incinerators, recycling facilities including facilities for the generation, transmission and distribution of energy derived from the processing of Solid Waste and facilities for the composting of Solid Waste, sanitary landfill facilities or other property or plants for the collection, processing, disposal or recycling of Solid Waste and all vehicles, equipment and other real or personal property and rights therein and appurtenances necessary or useful and convenient for the collection, processing, recycling or disposal of Solid Waste in a sanitary manner.

"Systems" means collectively the Sewerage System and the Solid Waste System.

ARTICLE II

CHARGES BY THE AUTHORITY AND PAYMENTS BY THE CITY

SECTION 201. Service Charges and Annual Charges. With respect to all Sewage or other wastes delivered into the Sewerage System and for all direct or indirect connection with, and all use of and services of, the Sewerage System, and with respect to all Solid Waste collected, treated and disposed through the Solid Waste System and for all direct or indirect use of and service of the Solid Waste System, the Authority shall charge Service Charges in accordance with the Act, and shall charge to the City an annual payment (hereinafter called the "Annual Charge") computed and to be paid in accordance with this Deficiency Agreement. The Annual Charges, computed and charged by the Authority and to be paid by the City as hereinafter provided, shall include and make provision for all of the amount, not actually paid from Service Charges collected by the Authority or certain other sources as hereinafter specified, necessary (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, and the principal of, redemption premium, if any, and

interest on any and all Bonds as the same become due, (2) to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any other municipality or county or any person, or from any other cause, and (3) to maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds.

SECTION 202. Service Charges. With respect to all Sewage disposed through the Sewerage System and for all use and services of any portion of the Sewerage System, and all Solid Waste collected, treated and disposed through the Solid Waste System and for all use and services of any portion of the Solid Waste System, the Authority will charge and collect Service Charges in accordance with the terms of the Act. Such Services Charges shall be established at the rates which are estimated by the Authority to be sufficient to provide for the receipt by the Authority in each Fiscal Year (beginning with the Fiscal Year in which the Authority begins actually operating the Systems of a sum of money which is at least equal to the sum of the amounts that are necessary in such Fiscal Year (to the extent not provided from other funds or revenues of the Authority, including proceeds from debt obligations) (1) to pay or provide for all administrative, operating and maintenance expenses of the Systems and the principal of, redemption premium, if any, and interest on any and all Bonds as the same may become due, (2) to maintain such reserves or sinking funds as may be required by the terms of any Bonds, (3) to comply in all respects with the terms and provisions of any Bond Resolution and with the Act, and (4) to make repayments to the City for any amounts paid pursuant to Section 203 of this Deficiency Agreement, provided, however, that nothing contained in this Section or in this Deficiency Agreement shall prevent the Authority from charging and collecting Service Charges which shall be less than sufficient to comply with subsection (4) of this Section, if the City shall have given its prior written consent to such lesser Service Charges. All Service Charges charged by the Authority shall be subject to the required regulatory approvals, if applicable.

Notwithstanding anything contained herein to the contrary, the Authority shall not charge and collect Service Charges from the City with respect to the provision of the Sewerage System or Solid Waste System Services provided however, that the City shall be obligated to pay Solid Waste Service Charges in connection with the Authority's collection and disposal of Solid Waste that is illegally disposed on City owned property for which it arranges disposal at the direction of the City.

SECTION 203. Computation of Annual Charges. For all purposes of this Deficiency Agreement, the Annual Charge made and to be charged by the Authority to and payable by the City for or with respect to any Fiscal Year shall be the sum of money equal to the excess (if any) of:

(A) The sum of all of the amounts necessary or expended in such Fiscal Year (1) to pay or provide for the expenses of administration, operation and maintenance of the Systems, including (without limitation of the foregoing) insurance, renewals, replacements, extensions, enlargements, alterations and betterments, (2) to pay or provide for any interest becoming due prior to the end of such Fiscal Year on Bonds, (3) to pay or provide for the principal or redemption premium of Bonds becoming due prior to the end of such Fiscal Year, (4) to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any other municipality, any county or any person, or from any other cause, and (5) to maintain such reserves or sinking funds to provide for expenses of operation and maintenance of the Systems or for any interest on or principal or redemption premium of Bonds or for any such deficits as may be required by the terms of any contract of the Authority or agreement with or for the benefit of holders of Bonds or be deemed necessary or desirable by the Authority, less -

(B) The sum of such parts (if any) of the several amounts referred to in Subparagraph (A) of this Section 203 as, prior to the end of such Fiscal Year, are properly paid and discharged or fully provided for by application, in accordance with the Act and the Authority's agreements (if any) with or for the benefit of holders of Bonds, of (1) Service Charges collected by the Authority, (2) the proceeds of Bonds received by or for account of the Authority, (3) the proceeds of insurance received by or for account of the Authority, (4) interest received on investments of funds held for the benefit or security of the Authority or the holders of Bonds, (5) contributions received by or for the account of the Authority and not under any circumstances repayable by the Authority until after the payment in full of all other obligations of the Authority including its Bonds, original or refunding or both, or (6) reserves on hand and available therefor at the beginning of such Fiscal Year.

SECTION 204. Payment of Annual Charge by City. (A) For or in connection with the operation of the Systems during each Fiscal Year, the City shall pay to the Authority the Annual Charge charged by the Authority to and payable by the City for each Fiscal Year computed by the Authority as provided in this Article II. Within twenty-five days after the end of each Fiscal Year, the Authority will deliver to the City its certificate stating the amount of the Annual Charge for said Fiscal Year computed in accordance with this Deficiency Agreement accompanied by a certificate signed by an Accountant approving the statements in such certificate of the Authority. Such certificate shall be approved by resolution of the Authority and shall be supported by analysis of the Annual Charges as computed in accordance with the terms of this Agreement. The Annual Charge for each Fiscal Year shall in all events be due and payable not later than thirty-three days after the close of such Fiscal Year, but current provision for and payment of all such Annual Charges on an estimated basis shall be made by the City in accordance with the following Paragraphs of this Section 204.

(B) On or before the twenty-fifth day of each Fiscal Year, the Authority shall estimate the amount of the Annual Charge payable by the City for such Fiscal Year and, on or before the thirty-fifth day of such Fiscal Year, shall deliver to the City its certificate stating such estimated amount of the Annual Charge for such Fiscal Year. In the event that any part of any Annual Charge theretofore becoming payable by the City shall not have been paid, the Authority shall include in such certificate an additional provision separately stating the amount of such unpaid part (the "Deficiency Amount").

(C) The City will in each year make all budgetary and other provisions, appropriations, or emergency appropriations as necessary to provide for and authorize the payment by the City to the Authority during each Fiscal Year the estimated amount of the Annual Charge and the amount of the Deficiency (if any) stated in the certificate delivered in such Fiscal Year by the Authority.

(D) On or before the sixtieth (60th) day of each Fiscal Year, the City shall pay to the Authority the amount of the Deficiency (if any) stated in the certificate delivered in such Fiscal Year by the Authority. The City shall pay to the Authority the estimated amount of the Annual Charge stated in the certificate delivered in such Fiscal Year by the Authority in three equal installments on the last days of May, August and November of such Fiscal Year.

(E) In the event that the amount of the Annual Charge made and charged by the Authority to and payable by the City for any Fiscal Year computed as provided in this Article II shall be less than the estimated amount of such Annual Charge stated in the

certificate delivered in such Fiscal Year by the Authority and paid by the City to the Authority, the Authority will credit the difference between said amounts to the City against the amount of the next payment becoming due to the Authority from the City under the provisions of Paragraph (A) or Paragraph (D) of this Section 204.

SECTION 205. Enforcement and Obligation of Annual Charges.

If any payment or part thereof due to the Authority from the City under this Deficiency Agreement shall remain unpaid for thirty days following its due date, the City shall be charged with and shall pay to the Authority interest on the amount unpaid from its due date until paid, at the rate of five per centum (5%) per annum. Every obligation assumed by or imposed upon the City by this Deficiency Agreement shall be enforceable by the Authority by appropriate action or proceeding, and the Authority may have and pursue any and all remedies provided by law for the enforcement of such obligation including the remedies and processes provided by the Act with respect to Service Charges.

SECTION 206. Limitation on Service Charges. The sums payable by the City to the Authority under the provisions of this Deficiency Agreement are and shall be in lieu of part of the Service Charges which the Authority would otherwise, under the provisions of the Act, charge and collect with regard to real property within the City directly or indirectly connected with or using the Systems, and, so long as the City shall not be in default in the making of payments becoming due from it under the provisions of this Deficiency Agreement, the Authority will suspend all Service Charges with regard to such real property except Service Charges computed in accordance with the provisions of Section 202 of this Deficiency Agreement, but nothing in this Deficiency Agreement shall prevent the Authority from charging and collecting, as if this Deficiency Agreement had not been made, Service Charges with regard to persons or real property within the City sufficient to meet any default or deficiency in any payments agreed herein to be made by the City. For the purposes of this Section 206, the City shall be deemed to be in default if the City, for a period of thirty days after its due date, shall fail to make in full to the Authority any payment required to be made by it under the provisions of this Deficiency Agreement.

SECTION 207. Collection of Service Charges. The Authority shall at all times pursue any and all remedies provided by law to collect and enforce prompt payment to or for it of all Service Charges prescribed, fixed, certified and charged by it in accordance with this Deficiency Agreement.

Section 208. Repayments to the City. (a) All monies paid by the City to the Authority under this Deficiency Agreement,, except Service Charges charged to the City itself, shall be repaid by the Authority without interest after payments for operating costs and charges and capital and other costs and the funding of reserves of the Authority within twenty four (24) months following the payment of the Deficiency Amounts by the City.

(b) In order to (i) provide for the repayment of Deficiency Amounts to the City and (ii) protect the interests of the holders of Bonds issued to finance the construction or acquisition of the Systems, the Authority hereby covenants to establish, charge and collect Sewerage System Service Charges and Solid Waste System Service Charges that, together with other available moneys of the Authority, will be sufficient to satisfy the Authority's obligations with respect to the operation and maintenance of the Systems and debt service obligations, as well as any required reserves as may be required to be maintained by or set forth in the terms of any bond resolution adopted by the Authority, and repayment of Deficiency Amounts to the City.

ARTICLE III MISCELLANEOUS

SECTION 301. Termination of this Deficiency Agreement. At any time after the date of this Deficiency Agreement and after the payment in full of all obligations of the Authority including its Bonds, originally issued and refunding, and payment in full of its obligations under Section 208 of this Deficiency Agreement, the City or the Authority, upon notice to the other party hereto, may terminate this Deficiency Agreement and the Deficiency Agreement shall terminate as of the end of the Fiscal Year beginning next after the date of such notice.

SECTION 302. Pledge or Assignment. This Deficiency Agreement may not be assigned or pledged by either party without the consent of the other, provided, however, that, since this Deficiency Agreement is made with particular reference to the holders or prospective holders of the Bonds of the Authority for the purpose of assuring and protecting the interests of such holders, the Authority may at any time assign or pledge for the benefit and security of the holders of Bonds all of its rights under the provisions of this Deficiency Agreement and the Interlocal Agreement to receive payments from the Authority, and thereafter this Deficiency Agreement shall not be terminated, modified or changed by the Authority or the City except in the manner (if any) and subject to the conditions (if any) permitted by the terms and provisions of such assignment or pledge.

Section 304. Special Consents by Authority or City. Whenever under the terms of this Deficiency Agreement the Authority or the City is authorized to give their respective written consents, such consent may be given and shall be conclusively evidenced by a copy, certified by the Clerk or the Secretary, as the case may be, and under the applicable seal, of a resolution adopted by the applicable governing body to give such consent.

Section 305. Services Outside of City. The Authority will not permit any property located outside of the City to be connected with the System for the purpose of delivering sewage into the System, or to accept any sewage or industrial waste from, any person or property outside of the City unless written consent thereto shall have previously been given by or on behalf of the City.

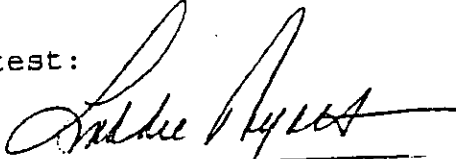
Section 306. Report as to Bonds. Forthwith upon the issuance of any Bonds, the Authority shall prepare and file in the office of the City Clerk of the City a schedule setting forth the principal amount, designation, denomination, date of issue, place of payment, maturities, rate of interest and redemption prices (if any) of such Bonds, together with a copy of the resolution of the Authority authorizing such Bonds, each certified by its Secretary and under its seal.

Section 307. Execution of Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by the Authority and the City and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

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

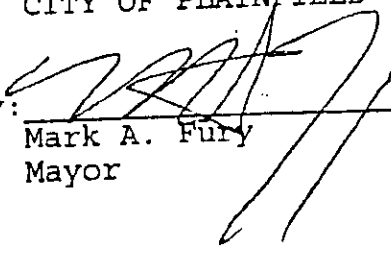
Seal

Attest:


Laddie Wyatt, City Clerk

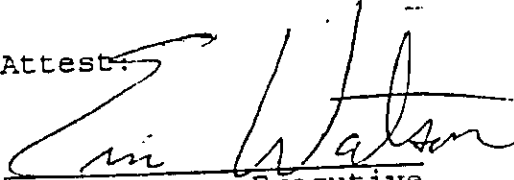
CITY OF PLAINFIELD

By:


Mark A. Fury
Mayor

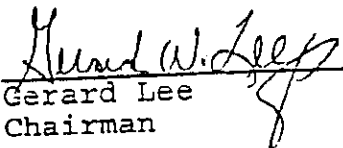
Seal

Attest:


Eric Watson, Executive
Director

THE PLAINFIELD MUNICIPAL
UTILITIES AUTHORITY

By:


Gerard Lee
Chairman