

**DELEGATION AGREEMENT BETWEEN
CUMBERLAND COUNTY
a n d t h e
CUMBERLAND COUNTY RECYCLING & WASTE AUTHORITY**

THIS AGREEMENT, dated this 17 day of December, 2012, by and between **Cumberland County, Pennsylvania** ("County"), a political subdivision of the Commonwealth of Pennsylvania, and **Cumberland County Recycling & Waste Authority** ("Authority"), a Municipal Authority incorporated under the Act of May 2, 1945, P.L. 382, as amended, and now known as the Municipality Authorities Act of 2001.

RECITALS:

WHEREAS, by Articles of Incorporation dated April 16, 1975, the Solid Waste Authority of Cumberland County was issued a Certificate of Incorporation by virtue of Resolution No. 3-27-75 of the County of Cumberland; and

WHEREAS, by Articles of Amendment dated August 20, 2007, the Solid Waste Authority of Cumberland County amended its Articles of Incorporation to change the name of the Solid Waste Authority of Cumberland County to the Cumberland County Recycling & Waste Authority; and

WHEREAS, Section 101(b)(10) of the Municipal Waste Planning, Recycling and Waste Reduction Act, being Act 101, 1988, as approved July 28, 1988 (53 P.S. 4000.101 et. seq.), ("Act 101"), gave the County primary responsibility for planning for municipal waste management within its boundaries and the primary power to control the flow of municipal waste generated within its boundaries; and

WHEREAS, Act 101 directs the County to prepare a Municipal Waste Management Plan; and

WHEREAS, Section 303(d) of Act 101 authorizes the County to delegate to the Authority, the power to undertake to fulfill some or all of the County's responsibilities under Act 101 for municipal waste planning and implementation of the approved County plan; and

WHEREAS, the Commissioners of Cumberland County originally established the Authority, for the stated purpose to acquire, hold, construct, equip, furnish, improve, maintain, operate, own, lease, either as lessor or lessee, projects relating to the management and control of solid waste within Cumberland County; and

WHEREAS, by previous Delegation Agreement dated September 23, 1991 (the "1991 Delegation Agreement"), which terminated all prior agreements between the County and Authority, the Commissioners of Cumberland County authorized the Authority to advise and recommend to the County on all matters relating to solid waste matters, and defined the Cumberland County Solid Waste Department ("Department") as the entity to carry out all necessary functions relating to County solid waste matters; and

WHEREAS, 1991 Delegation Agreement established the Authority as an

operational authority, with specific rights and duties necessary to address all relevant solid waste and recycling matters; and

WHEREAS, the Department and the Authority are responsible for preparing the Cumberland County Municipal Waste Management Plan, ("Plan"); and

WHEREAS, the Plan provides that the Authority and Department will assume and fulfill some or all of the County's rights, duties and obligations under Act 101 for Regulated Municipal Waste planning and for implementation of the Plan; and

WHEREAS, the Plan will be effected and carried forth by a Cumberland County Ordinance ("County Ordinance") and by entering into this Delegation Agreement ("Agreement") with the Authority; and

WHEREAS, it is the intention of the parties that their rights and duties be modified hereby, notwithstanding the foregoing; and

WHEREAS, the County has adopted and approved the Plan and the County Ordinance.

NOW THEREFORE the parties expressly intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 Pa. C.S. § 6, the parties agree as follows:

I. Recitals

The Recitals above are incorporated herein by reference and made a part of this Agreement.

II. Prior Agreements of and Pertaining to the Parties

With the exception of the Articles of Incorporation dated April 16, 1975, this Agreement shall terminate and replace all other Agreements between the parties including the 1991 Delegation Agreement.

III. County Solid Waste Department

The County intends to utilize the Department to perform the acts and functions necessary to manage solid waste and recycling within the County as required by law, including, but not limited to, the following:

- A. The Department shall implement and carry out the day to day activities of the Plan.
- B. Department, at the direction of the County or the Authority, shall develop and prepare all planning recommendations, which, after acceptance by the Authority, will be presented to the County for final approval.
- C. The Department's director and/or his designee shall coordinate with, and attend all meetings of, the Authority so as to allow coordination and dissemination of information as is necessary to further the requirements of Act 101, and any applicable regulations adopted pursuant to Act 101.

IV. Definition of Responsibilities Between Parties

The County and the Authority desire by this Agreement to define and authorize responsibilities between the County (including the Department), and the Authority as to the requirements set forth in Act 101 and all other matters relating to the Authority's purpose under the Articles of Incorporation, the Plan, and the County Ordinance.

V. Delegation of Responsibility

In accordance with Section 303(d) of Act 101, which authorizes the County to enter into a Delegation Agreement with the Authority, the County does hereby delegate certain responsibilities to the Authority and additionally mandate certain responsibilities to the Authority.

- A. The County hereby delegates to the Authority, subject to the terms and provisions of this Agreement, the County's planning responsibilities under Act 101 which responsibilities are subject to the review and approval of the County.
- B. The Authority shall utilize the Department to develop recommendations necessary for its delegated planning responsibilities.
- C. The Authority shall recommend to the County for approval:
 - 1. An annual budget;
 - 2. Planning, management, and implementation strategies for all activities necessary to provide those services presently being performed by the Department and those required to carry out or implement the Plan (including any amendments or revisions thereto);
 - 3. Planning, management, and implementation strategies for all recycling programs as required under Chapter 15 of Act 101, or any other applicable law; or as provided in the Plan;
 - 4. Planning, management, and implementation strategies for administration and enforcement of the County Ordinance, Cumberland County Municipal Waste Management Hauler Regulations, or any other law or ordinance as necessary, and any amendments thereto;
 - 5. Proposed rulemaking related to any necessary law or ordinance, or any amendment thereto;
 - 6. Proposed service, maintenance, repair, and replacement actions for County and Authority equipment, including but not limited to yard waste processing equipment;

7. Proposed fees as shall be reasonable and sufficient to ensure the effective operation, management and purposes of the Authority;
 - a. Said fees shall be charged according to all then-existing federal and state laws and regulations;
 - (i) This Agreement specifically contemplates all future changes in law which would allow the County or Authority to charge fees related to the County's waste management duties and responsibilities;
8. Responses to permit applications filed with the DEP or any other applicable state or federal agency.

D. The Authority shall also be delegated the ability to:

1. Receive, on behalf of the County, copies of all Department of Environmental Protection (DEP) notices and reports with respect to Solid Waste which would otherwise be delivered to the County;
 - a. The Authority, through the Department, shall provide copies of such notices or reports to the County in a timely fashion;
2. Provide the Department with guidance and direction with regard to any grants which the Authority or County may be entitled to apply for or receive;
 - a. The Department shall follow all, then currently existing, County procedures for the application, submission, and acceptance of grants;
3. Provide the Department with guidance and direction with regard to the issuance, drafting, and/or selection of any request for proposals or other bids required for Act 101, the Plan, or to effectuate any service presently being performed by the Department;
 - a. The Department shall follow all, then currently existing, County procedures for procurement;
4. Provide the Department with guidance and direction with regard to the drafting and negotiation of any contracts which are required by Act 101, the Plan, or to effectuate any service presently being performed by the Department;
 - a. Once the framework for a contract is recommended by the Authority, the Department shall coordinate with the County solicitor for finalization of the contract;

- b. Once a contract is recommended by the County solicitor, it shall be presented to the non-County party for execution;
 - c. Once a contract is signed by the non-County party, it shall be presented to the County for final acceptance and signature;
 - 5. Subject to County budget allowance, retain special counsel to provide advice at Authority meetings as well as to the Department on an as-needed basis with regard to issues related to Act 101, the Municipal Authorities' Act, and/or other relevant legal issues.
- E. The County shall:
- 1. Otherwise retain all responsibility for the Plan and compliance with Act 101 and/or any other applicable law or regulation;
 - 2. Appoint members of the Board of the Authority to fill Board vacancies in accordance with the Articles of Incorporation of the Authority;
 - 3. Approve an annual budget, sufficient in County's sole discretion, to carry out the Plan, and the programs and services approved and authorized therein;
 - 4. Designate a County Commissioner as the liaison to the Authority and Department Staff.

VI. Severability

If any provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability shall not affect the remainder of this Agreement, and this Agreement shall be construed and enforced consistent with its express purposes as if such invalid or unenforceable provision had not been contained in this Agreement.

VII. Amendment

The Agreement shall not be modified or amended except by written instrument duly executed on behalf of the County and the Authority.

VIII. Indemnification

The Authority shall protect, indemnify and hold the County harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, expenses, suits or attorneys' fees and shall defend the County in any suit arising out of events or activities occurring in connection with this Agreement and which result, or are alleged to result from any acts or omissions of the Authority.

These indemnification provisions are for the protection of these parties only and shall not establish any rights or liabilities in any other persons. The Authority shall

have available in any civil action filed against the Authority all defenses available to the County.

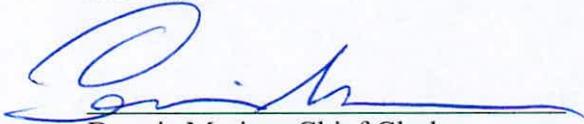
The County and the Authority, for themselves and their respective assignees, subrogees, successors and assigns, each waive the right of recovery against the other, and the other's members and commissioners, officers, employees, and business guests, and their respective heirs, administrators, executors, successors and assigns for such liabilities, actions, damages, claims, demands, judgments, losses, expenses, suits or attorneys' fees described in the coverage provisions of their respective contracts. The County and the Authority agree to request the consent of their insurers to the waiver contained in this Agreement, if such consent is required, and in the event either insurer does not consent, this paragraph shall be void and of no force or effect.

IX. Term of Agreement

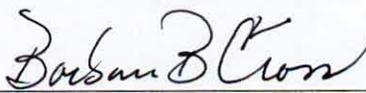
This Agreement shall become operative and binding upon the date of its execution, that being the date of the last signatory. It shall continue in full force and effect unless either the County or the Authority provides written notice to the other party at least one hundred eighty (180) days prior to its intent to change or terminate the Agreement.

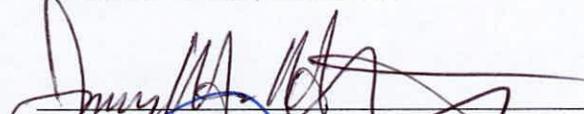
IN WITNESS WHEREOF, the County and the Authority have caused this Agreement to be executed in their respective names, have caused their respective corporate seals to be affixed hereto and have caused this Agreement to be attested by all their duly authorized officers and representatives. The County and the Authority have caused this Agreement to be dated as of the date first written above.

ATTEST


Dennis Marion, Chief Clerk

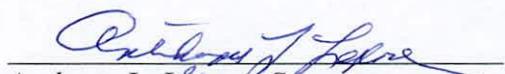
CUMBERLAND COUNTY


Barbara B. Cross, Chairman

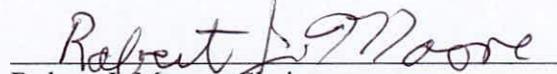

James H. Hertzler, Vice-Chairman


Gary Eichelberger, Secretary

ATTEST:


Anthony L. Lapore, Secretary

**CUMBERLAND COUNTY
RECYCLING & WASTE AUTHORITY**


Robert J. Moore, Chairman