

CITY OF VINELAND

RESOLUTION NO. 2017- 276

RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO EXECUTE A PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT BY AND BETWEEN THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY AND THE CITY OF VINELAND FOR THE CONSTRUCTION OF A PUBLIC SAFETY BUILDING.

WHEREAS, the City of Vineland has determined it to be in the best interest of its Residents to undertake a Capital Project consisting of the construction, furnishing and equipping of a new Public Safety building due to the deteriorated condition of the present Public Safety building and the cost to renovate the same, which project shall include acquisition of real estate; and

Whereas, the Cumberland County Improvement Authority (CCIA) is a Public Body and Political Subdivision of the State of New Jersey organized and existing under the County Improvement Authorities Law, N.J.S.A. 40:37 to 44 et seq. and is authorized to provide within the County of Cumberland, public facilities for use by the State, county or any municipality in the County, more specifically is authorized to enter into and perform any lease or other agreement with the county, municipality, governmental unit or person for the lease to or used by such county, municipality, governmental unit or person; and

WHEREAS, the City has requested assistance from the CCIA for purposes of providing funding to pay for (1) the cost of the development and construction of approximately 40,000 sq. ft. Public Safety facility (Facility); (2) the acquisition of any and all property necessary for the Facility not presently owned by the City; (3) the cost of equipping the Facility; (4) all other costs and expenses necessary for or related to the development, construction and equipping of the Facility; (5) capitalized interest on any bonds, notes or other debt obligations issued by the CCIA to finance the cost thereof and (6) the cost of issuance with respect to the proposed financing; and

WHEREAS, the CCIA has offered to provide project development, project management, support and assistance to the City with respect to (1) the acquisition, development, construction, installation and equipping of the Facility; (2) facilitating the financing of the project; and

WHEREAS, City of Vineland has determined that the CCIA possesses the necessary expertise to provide project development, project management, assistance and support in connection with the development and financing of capital projects in a timely cost effective manner as demonstrated by other public projects completed by the CCIA; and

WHEREAS, City Council of the City of Vineland finds it to be in the best interest of the City to enter into a Project Development and Management Agreement to outline the duties obligations or responsibilities of each of the parties to the other.

CITY OF VINELAND

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute a Project Development and Management Agreement by and between the City of Vineland and the Cumberland County Improvement Authority substantially in the form and substance as attached hereto, subject to any changes or modifications as approved by the City Solicitor.

Adopted:

President of Council

ATTEST:

City Clerk

PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT

by and between

THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY

and

**CITY OF VINELAND
COUNTY OF CUMBERLAND, NEW JERSEY**

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PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT

THIS PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT ("Development Agreement"), shall be effective as of the ___ day of _____, 2017, by and between THE CITY OF VINELAND, COUNTY OF CUMBERLAND, NEW JERSEY ("City"), a political subdivision of the State, having its principal offices located at 640 East Wood Street, Vineland, New Jersey 08362 and THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY ("Authority"), a political subdivision of the State, having its principal offices located at 2 North High Street, Millville, New Jersey 08332.

BACKGROUND

WHEREAS, the Authority, a public body corporate and politic and a political subdivision of the State of New Jersey ("State"), organized and existing under the Act (as hereinafter defined) and created pursuant to a resolution of the Board of Chosen Freeholders of the County of Cumberland ("County") adopted on December 30, 1980, and any successor to its duties and functions, is authorized by the County Improvement Authorities Law, constituting Chapter 183 of the Laws of 1960 of the State of New Jersey, as amended and supplemented (*N.J.S.A. 40:37A-44 et seq.*) ("Act"), to provide within the County, public facilities (as defined in the Act) for use by the State, the County or any beneficiary county, or any municipality in the County, or any two (2) or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes; and

WHEREAS, the Authority is authorized by the Act, specifically *N.J.S.A. 40:37A-78*, to enter into and perform any lease or other agreement with a county, municipality, governmental unit or Person for the lease to or use by such county, municipality, governmental unit or person of all or any part of any public facility or facilities; and

WHEREAS, the City has determined to undertake a capital project consisting of the construction, furnishing and equipping of a new public safety building on a certain piece of real property currently owned in part by the City, as more fully described and as set forth in Exhibit "B" attached hereto and made a part hereof ("Project Site"); and

WHEREAS, the City has requested assistance from the Authority for purposes of providing funding to pay: (i) the acquisition of the remaining portion of the Project Site, not currently owned by the City; (ii) the costs of the development and construction of an approximately 40,000 square foot public safety facility ("Facility") on the Project Site; (iii) the costs of equipping of the Facility; (iv) all other costs and expenses necessary for or related to the development, construction and equipping of the Facility; (v) capitalized interest on any bonds, notes or other debt obligations issued by the Authority to finance the costs thereof; and (vi) the costs of issuance with respect to the proposed financing, all as further set forth in the information submitted to the Authority in connection therewith or as previously discussed among the parties (collectively, the "Project Financing"); and

WHEREAS, the Authority, in recognition of the importance of a new facility for the City, has offered to provide project development, project management, support and assistance to the City with respect to: (i) the acquisition, development, construction, installation and equipping of the Facility (the acquisition, development, construction, installation and equipping

of the Facility is referred to herein as the "Construction Project"); and (ii) facilitating the Project Financing (items (i) and (ii) shall collectively be referred to herein as the "Project"); and

WHEREAS, the Authority has demonstrated to the City's satisfaction, that it possesses the expertise to provide project development, project management, assistance and support in connection with undertaking the development and financing of capital projects such as the Construction Project in a timely and cost-effective manner; and

WHEREAS, the City has determined to accept such project development, project management, support and assistance with respect to the Construction Project and the undertaking of the Project Financing; and

WHEREAS, the entry into the Project Development Agreement by the City and the Authority, pursuant to applicable law, will allow the City to focus its time, energy and expense on its existing obligations and objectives on behalf of the citizens of the City; and

WHEREAS, the parties desire to hereby memorialize the terms of such services and assistance to be provided by the Authority, with respect to the Project.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS AND REPRESENTATIONS CONTAINED HEREIN, AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HERETO HEREBY MUTUALLY AGREE AS FOLLOWS:

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ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The following terms which are used as defined terms herein shall, unless the context requires otherwise, have the meanings set forth below.

"**Act**" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"**Architect**" means an independent architect(s) or architectural firm(s) employed with respect to the Construction Project to perform and carry out the duties imposed on and having experience with respect to the construction and operation of facilities of comparable size and character as the Facility;

"**Articles and Sections**" which are mentioned herein are the respective Articles and Sections of this Development Agreement which are so numbered;

"**Authority**" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"**Authority Resolution**" shall mean the resolution or resolutions of the Authority which shall authorize, approve and provide for, as applicable, *inter alia*: (i) the undertaking of the Project; (ii) the execution and delivery of any and all documents and agreements, including this Development Agreement, necessary or desirable to undertake and complete the Project; (iii) the issuance of any bonds, notes or other debt obligations necessary to finance the Costs (as hereinafter defined) of the Project; (iv) the fees to be charged to the City by the Authority in connection with the Project;

"**Authorized Authority Representative**" means the Chairman, the Vice Chairman, the Treasurer, the Secretary, Assistant Secretary or the Executive Director of the Authority and, when used with reference to an act or to a document, also means any other person or persons who shall be authorized by resolution of the Authority to act on behalf of the Authority or by a written certificate duly executed on behalf of the Authority by the Chairman or by the Executive Director of the Authority, which certificate shall set forth such authorization and shall contain the specimen signatures of each such person;

"**Authorized City Representative**" means the Mayor, Administrator, Chief Financial Officer, Clerk and, when used with reference to an act or to a document, also means any other person or persons who shall be authorized by resolution of the City Council to act on behalf of the City or by a written certificate duly executed on behalf of the City by the Mayor, Administrator, Chief Financial Officer and Clerk, which certificate shall set forth such authorization and shall contain the specimen signatures of each such person;

"**Bonds**" shall mean those bonds, notes or other debt obligations issued by the Authority pursuant to the Act, other applicable law, and the Authority Resolution in order to fund the Costs of the Project; and

"Business Day" means any day other than a Saturday, Sunday, legal holiday in the State or a day on which either the City or the Authority is legally authorized to close;

"City" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"City Resolution" shall mean the resolution or resolutions of the City Council which shall authorize and approve, *inter alia*: (i) the undertaking of the Construction Project and the Project Financing by the Authority; (ii) the execution and delivery of any and all documents and agreements, including this Development Agreement, necessary or desirable to undertake and complete the Construction Project and the Project Financing; and (iii) the issuance by the Authority of any Bonds necessary to finance the Costs of the Project;

"Construction Project" shall have the meaning ascribed thereto in the preamble of this Development Agreement, as the same may be amended and supplemented from time to time;

"Cost" or "Costs of the Project" shall mean and shall be deemed to include, with respect to the Construction Project and the Project Financing or any portion thereof, together with any other proper and reasonable item of cost not specifically mentioned herein, whether incurred prior to or after the date of this Development Agreement: (i) the costs of payment of, or reimbursement for, the acquisition, improvement, installation, equipping, financing and refinancing of the Construction Project including, but not limited to, environmental or remediation costs, advances or progress payments, appraisals, architects, engineers, construction managers, designs, site work, surveys, title insurance, demolition, construction and equipment costs, installation costs, administrative costs associated with the Construction Project and capital expenditures relating to the Construction Project, capitalized interest, financing payments, sales taxes, excise taxes, property taxes, costs of feasibility, environmental and other reports, inspection costs, permit fees, filing and recordation costs, printing costs for all documents, reproduction and binding costs, fees and charges of professionals and fiduciaries related to the Project Financing, financing documents, legal fees and charges, financial, accounting and other professional consultant fees, the Authority financing fees, all professional and consulting fees and charges of the Authority and the City, fees for the printing, execution, transportation and safekeeping of the Bonds, and any charges and fees in connection with any of the foregoing; (ii) all other costs which the Authority or the City shall be required to pay under the terms of any contract or contracts for the planning, acquisition, development, construction, construction management, installation and equipping of the Facility (iii) any sums required to reimburse the City for advances made for any of the above items, or for any other costs incurred and for work done, which is properly chargeable to the Construction Project and the Project Financing; (iv) the cost of contract bonds and of insurance of any kind that may be required or that may be necessary during the course of or related to the acquisition, development, construction, installation or equipping of the Facility which is not paid by the contractor or subcontractors or otherwise provided for; (v) the costs and expenses for test borings, surveys, estimates, design fees, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties which are required by or which are consequent to the proper acquisition, development, construction, installation or equipping of the Facility; (vi) cost and expenses incurred in connection with the Project Financing including administrative and legal expenses by the Authority and the City which are incurred in connection therewith, together with all costs incurred and paid by the Authority with respect to the Construction Project and the Project

Financing; (vii) all other costs which the Authority or the City shall be required to pay under the terms of any contract or contracts for the acquisition, design, development, construction, construction management, installation or equipping of the Facility or the undertaking of the Project Financing; (viii) the cost of insurance as required by Section 4.10 hereof; (ix) the costs associated with State and Federal approvals as described in Section 4.6 hereof; and (x) such other expenses which are not specified herein as may be necessary or incidental to: (a) the acquisition, design, development, construction, installation and equipping of the Facility; (b) the placing of the Facility in use and operation; and (iii) the undertaking of the Project Financing;

"County" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"Development Agreement" means this Project Development Agreement between the Authority and the City, and any and all modifications, alterations, amendments and supplements hereto which are made in accordance with the provisions hereof;

"Facility" shall have the meaning ascribed thereto in the preamble of this Development Agreement, as the same may be amended and supplemented from time to time;

"Parties" shall mean, collectively, the City and the Authority;

"Plans and Specifications" means the plans and specifications for the Construction Project and the Facility to be prepared by the Authority pursuant to Section 4.3 hereof;

"Project" shall have the meaning ascribed thereto in the preamble of the Development Agreement, as the same may be amended and supplemented from time to time;

"Project Financing" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"Project Developer" shall mean the Authority who shall be responsible for all contracts for and assumes responsibility for completing the Construction Project and hires, supervises and pays for all suppliers, **contractors**, subcontractors, professionals and persons or entities performing services on the Construction Project. The General Contractor is responsible for the satisfactory completion of the Construction Project in accordance with the Development Agreement.

"Project Site" shall have the meaning ascribed thereto in the preamble of this Development Agreement;

"Project Schedule" means the Project Schedule contemplated pursuant to Section 3.4 of this Development Agreement;

"Substantial Completion" means completion of the Facility so that: (i) the Facility can be used for its intended purposes without material interference to the intended purpose of the Facility, (ii) the only incomplete items are minor or insubstantial details of construction, mechanical adjustments, or finishing touches like touch-up plastering or painting; and (ii) certification of the Facility can be made in compliance with Section 4.11 hereof.

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ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of Authority. The Authority hereby represents and warrants to the City as follows:

(a) the Authority was duly organized and is validly existing and in good standing under all applicable State laws, including the Act;

(b) the governing body of the Authority has duly authorized the execution and delivery of this Development Agreement;

(c) the Authority has full lawful authority, staff, expertise and ability to undertake and fulfill the duties and obligations imposed upon it pursuant to and in accordance with the terms of this Development Agreement, including the issuance of the Bonds;

(d) this Development Agreement, when duly executed and delivered by the Authority, will constitute a legal, valid and binding obligation of the Authority, enforceable against the Authority pursuant to and in accordance with the terms hereof, except to the extent that the enforcement may be limited by bankruptcy, insolvency, moratorium or other applicable laws or equitable principles affecting the enforcement of creditors' rights generally ("Creditors' Rights Limitations"); and

(e) there is no litigation pending or, to the knowledge of the Authority, threatened that would impact its ability to undertake and fulfill the duties and obligations imposed upon it pursuant to and in accordance with the terms of this Development Agreement.

Section 2.2 Representations and Warranties of the City. The City hereby represents and warrants to the Authority as follows:

(a) the City has been duly created and is validly existing under and pursuant to the Constitution and statutes of the State;

(b) the City Council has duly authorized the execution and delivery of this Development Agreement;

(c) the City has full lawful authority to undertake and fulfill the duties and obligations imposed upon it pursuant to and in accordance with the terms of this Development Agreement;

(d) this Development Agreement, when duly executed and delivered by the City, will constitute a legal, valid and binding obligation of the City, enforceable against the City pursuant to and in accordance with the terms hereof, except to the extent that the enforcement may be limited by Creditors' Rights Limitations;

(e) there is no litigation pending or, to the knowledge of the City, threatened that would impact its ability to undertake and fulfill the duties and obligations imposed upon it pursuant to and in accordance with the terms of this Development Agreement.

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ARTICLE III

ENGAGEMENT OF PROJECT MANAGER; SCOPE OF SERVICES; COMPENSATION; SCHEDULING; AND COOPERATION

Section 3.1 Project Manager/Project Developer. Pursuant to and in accordance with the terms and provisions of this Development Agreement, the City and the Authority hereby agree that the Authority shall act as the project manager and Project Developer for the Construction Project and, in connection therewith, shall act as exclusive Project Developer for the Construction Project all in accordance with the Plans and Specifications (as hereinafter defined). The City shall have the right to approve or reject any material decisions made by the Authority in connection with the Project. The Authority shall timely inform the City as to all material circumstances and developments respecting the Construction Project and shall timely provide the City with all material documents concerning the Construction Project.

Section 3.2 General. The Authority as Project Developer shall use its best efforts to undertake and complete the Construction Project, as more fully described in Exhibit "A" attached hereto and made a part hereof, and implement the Project Financing in accordance with the terms, conditions and limitations set forth herein and, with respect to the Construction Project, as the same may be revised, amended, modified and altered by the Parties from time to time subsequent to the date hereof and, in particular, in accordance with the Plans and Specifications, and the City agrees to use its best efforts to assist and cooperate with the Authority, as necessary, to enable the Authority to fulfill its obligations under this Development Agreement, including, but not limited to, the undertaking of the Construction Project and the implementation of the Project Financing and the obtainment of any approvals, consents or other governmental permits necessary to effectuate the timely undertaking and completion of the Construction Project and the implementation of the Project Financing.

This Development Agreement shall not be construed to delegate any authority other than the authority necessary to perform the specific services described in this Development Agreement and necessary to: (i) complete the Construction Project; and (ii) undertake and complete the Project Financing to pay for the Costs of the Project. Neither the City nor the Authority intends by this Development Agreement to create any agency relationship other than that which may be specifically required for the limited purpose of performing the services described in this Development Agreement.

Section 3.3 Compensation. In consideration for the Authority providing the services to the City under this Development Agreement, the City shall pay the Authority:

- (i) a project management and Project Developer's fee equal 2% of the total costs associated with the construction and development of the Project, payable in such amounts and at such times as may be agreed upon by the City and the Authority by separate letter or written agreement; and
- (ii) a financing fee equal to the actual costs payable by the Authority for the Project Financing on a yearly basis.

Section 3.4 Schedule and Budget for Implementation of the Construction Project and the Project Financing. Prior to the initiation of any phase or portion of the Construction Project or the Project Financing, the Authority, or its designee, will, with input from the City, prepare a: (i) timetable ("Project Schedule"); and (ii) budget ("Project Budget"), in both cases for the completion of that portion of the Construction Project or the Project Financing, as applicable. The Progress Schedule shall indicate the estimated dates for the starting and completion of the various stages of the Construction Project and the Project Financing and shall be revised as required by the conditions of the undertaking and completion of the Construction Project and the implementation of the Project Financing. Prior to initiation of any phase or portion of actual construction of the Construction Project, the Authority shall undertake and receive approvals for Project Financing in accordance with Section 5.1 herein.

The Authority and the City will utilize their best efforts to complete each phase or portion of the Construction Project or the Project Financing, as applicable, in accordance with the Project Schedule, it being expressly understood between the parties that forces outside the control of either the Authority or the City may make compliance with said Project Schedule impractical.

Section 3.5 Project Development Meetings; Authority Communication with the City. The Authority hereby agrees to coordinate and schedule, with a frequency of not less than every ninety (90) days, working group meetings (allowing for attendance in person or by phone), said invitees to include, but not be limited to: (i) representatives of the Authority; (ii) representatives of the City; and (iii) appropriate professional consultants of each of the Parties. At such meetings, the Authority shall provide to the working group a report or reports setting forth, at a minimum, a schedule and status of the Construction Project, the schedule and status of all Bond proceeds or other funds spent on the Construction Project and the Project Financing since the prior working group meeting, including any advances which shall be separately noted, and updates on the Project Schedule and the Project Budget. Minutes of said project meetings shall be kept by the Authority and distributed promptly to all parties following each such meeting. The Authority shall make available to the representatives of the City, or their respective designees, project reports as to the Authority's activities under this Development Agreement and minutes of each meeting.

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ARTICLE IV

DEVELOPMENT AND CONSTRUCTION OF THE FACILITY

Section 4.1 Acquisition of the Project Site. As a precondition to the terms of this Development Agreement, the Authority shall acquire on behalf of the City a fee simple ownership interest in and to certain real property at the Project Site which is not currently owned by the City and all deeds shall be in the name of the City as grantee. Any costs associated with acquisition of real property by the Authority on behalf of the City shall be paid from or reimbursed to the Authority from the proceeds of the Bonds, or shall be paid or reimbursed from funds of the City in the discretion of the City.

Section 4.2 Ground Lease of the Project Site and Lease of Facility.

(a) As a precondition to the terms of this Development Agreement, the City shall agree to enter into a Ground Lease ("Ground Lease") with the Authority, which Ground Lease shall convey to the Authority a ground leasehold interest in and to the Project Site currently owned and vested in the City in accordance with Section 4.1 for a period of time not less than the term of any Bonds issued as a part of the Project Financing.

(b) During the term any Bonds issued as a part of the Project Financing remain outstanding, the Authority shall be the legal owner of the Facility. In connection therewith, the Authority shall enter into a Lease Agreement ("Lease") with the City as a part of the Project Financing, which shall in part lease to the City a sole and exclusive right to utilize the Facility for the term of such Bonds, except as such use may be limited by Creditors' Rights Limitations. Pursuant to the terms of the Lease, the City shall be obligated to make certain lease payments to the Authority in an amount sufficient to pay the debt service on any Bonds issued as part of the Project Financing and certain additional costs as shall be described therein. The Lease shall provide that at such time as all Bonds issued as part of the Project Financing have been paid in full, the ownership of the Facility shall be transferred to the City.

Section 4.3 Construction Project. Pursuant to and in accordance with the terms of this Development Agreement, the Parties hereby agree that each shall use its best efforts as follows:

(a) the Authority, in cooperation with the City, agrees that it will cause to be prepared designs, plans and specifications for the Construction Project (collectively, the "Plans and Specifications") and it will submit and approve final Plans and Specifications to the City for its final approval in a timely manner.

(b) the Authority shall use its reasonable best efforts to finalize and provide to the City the Plans and Specifications as soon as practicable, but shall incur no liability for delays related thereto except for material delays caused by direct action or inaction of the Authority not related to governmental or regulatory approvals or consents.

(c) There shall be no obligation of the Authority to undertake or complete the Construction Project or to provide for the Project Financing if the City does not provide its consent to the Plans and Specifications in a timely manner as described in Section 4.3(a) and (b)

above and the Authority shall incur no liability for any damages, costs or expenses arising from such failure.

(d) The Authority will acquire, develop, construct, install and equip the Facility and undertake the Construction Project in a diligent, efficient and workmanlike manner, in accordance with the Plans and Specifications, and, in exchange, the City agrees not to enter into any discussions with any other potential developer of the Facility during the term of this Development Agreement.

(e) The Authority, in cooperation with the City, shall serve as Project Developer and undertake and complete the Construction Project in accordance with the Plans and Specifications, and the Authority shall use its reasonable best efforts to Substantially Complete the Facility within the Project Schedule, but shall incur no liability to the City for delays related thereto except for material delays caused by direct action or inaction of the Authority not related to governmental or regulatory approvals or consents.

(f) The Authority shall take full responsibility for all aspects of the development process by directing and coordinating all necessary development services in connection with or related to the Construction Project including, but not limited to: (i) coordinating planning and development; (ii) obtaining governmental approvals, to the extent such actions are not required to be taken by the City; (iii) procurement and supervision of professionals; and (iv) overall coordination and supervision of the Construction Project. The Authority may arrange for any and all of the services for which it is responsible hereunder to be provided through the use of outside contractors or subcontractors who are approved in advance by the City.

(g) The Authority shall serve as Project Developer for purposes of the negotiating of contracts for: (i) the Construction Project; (ii) obtaining governmental approvals required for the undertaking and completion of the Construction Project; (iii) the supervision of construction; and (iv) all other matters which are incidental to the performance of the duties and powers which are expressly granted to the Authority herein in connection with the undertaking and completion of the Construction Project. In all such cases, the Authority shall be identified as the contracting entity. The final acceptance of the completed Facility or any part thereof must be approved by both the Authority and the City.

(h) The costs of any and all historical or environmental remediation shall be included in the Project Financing, or otherwise paid for by the City. The Authority shall have no obligation to assume any liability for any pre-existing historical or environmental conditions unless: (i) it is otherwise agreed upon by the City and the Authority; (ii) the condition is satisfactory to the Project Financing; and (iii) the cost of such remediation is included in the Project Financing or otherwise paid for by the City.

(i) All costs of the Authority (including, but not limited to, any acquisition, development and administrative fees), the City and their professionals with respect to proposals and any Plans and Specifications and Construction Contracts or Installation Contracts shall be paid from or reimbursed to the Authority or the City from the proceeds of the Bonds, or shall be paid or reimbursed from funds of the City, provided that the necessary appropriation is made by the City for this purpose, all as set forth in Article V hereof. The Authority shall have no

obligation to expend any funds other than those which shall be reimbursed by the proceeds of the Bonds or from a prior appropriation by the City.

Section 4.4 Award of Contracts. Pursuant to and in accordance with the terms of this Development Agreement, the Parties hereby agree that each shall use its best efforts as follows:

(a) the Authority will engage the services of a qualified Architect to provide for the preparation and completion of the Plans and Specifications related to the design, acquisition, construction and installation of the Facility, a copy of which Plans and Specifications shall be provided to the City upon completion thereof for the review and approval of the Authorized City Representatives. The Authority hereby agrees that the Architect will be selected in accordance with applicable State law.

(b) The Authority shall oversee the development and construction procurement process for the Construction Project. In connection therewith, the Authority shall undertake the appropriate process for the selection of firms (individually, a "Firm" and collectively, the "Firms") who may arrange for site control, Permits (as hereinafter defined), and the development and construction of the Facility, all in accordance with applicable State law and in accordance with the Plans and Specifications, which process may include "competitive contracting" pursuant to and in accordance with *N.J.S.A. 40A:11-1 et seq.* The City shall have the right to approve or reject any selection of Firms made by the Authority.

(c) Contracts in connection with the development, acquisition, construction and installation of the Facility, including any contracts for the equipping thereof ("Construction Contracts" and "Installation Contracts", as applicable), shall be let in accordance with applicable State law and in accordance with the Plans and Specifications in each case subject to the final approval of the City and entered into by the Authority as Project Developer.

(d) With respect to any Construction Contracts or Installation Contracts, the Parties agree that the maximum level of safeguards to reduce and eliminate liability of the Parties and Costs and liabilities related to design defects, construction cost overruns, cost overruns due to time delays or similar matters through the use of insurance, performance and payment bonds and liquidated damages shall be utilized.

(e) All decisions with respect to: (i) the selection of any firm or firms necessary to undertake the development, construction or fit-out of the Facility; (ii) the selection of the contractor or subcontractors for the award of any Construction Contract or Installation Contract; (iii) any Construction Contracts or Installation Contracts; (iv) program development and construction; and (v) change orders affecting any Construction Contract or Installation Contracts shall be subject to the approval of the Authority and the prior approval of the City.

(f) All drawings, specifications and copies thereof generated by the Architect engaged by the Authority, are and shall remain the property of the City.

Section 4.5 Assignment of Contracts. To the extent that the City has entered into any contracts or other agreements related to or necessary for the undertaking of the Construction Project and the Project Financing excepting those documents related to the acquisition of property in accordance with Section 4.2 herein, the City shall either: (i) where permitted, provide

for the assignment of the City's rights, duties and obligations under such contracts or agreements to the Authority as Project Developer; or (ii) at a minimum, allow or enable the Authority access to and the ability to rely upon such contracts or other agreements, each for the purpose of implementing the terms of this Development Agreement.

Section 4.6 Approvals and Permits.

(a) The Authority or the City, shall be the applicant for all State and County (or their respective authorities or agencies) approvals, permits and utility requirements for the Construction Project, as necessary and appropriate (collectively, the "Permits").

(b) If necessary or desirable, the Authority and the City shall cooperate in the preparation and submission of an application to the New Jersey Department of Community Affairs, Division of Local Government Service, Local Finance Board, in accordance with the requirements of the Act.

(c) If the Parties have already retained professional expertise relating to the Permits, the Parties agree to cooperate, share information and instruct professionals accordingly so that any required items and the Permits may be timely obtained.

(d) The Parties shall use their respective best efforts and shall cooperate and assist each other with the obtainment of any and all surveys, insurance, Permits and professionals necessary to effectuate the timely undertaking and completion of the Construction Project.

(e) All fees associated with surveys, title insurance, the Permits and professionals engaged for purposes of obtaining such items shall be paid or reimbursed from the proceeds of the Bonds, including any sums paid in advance by the Authority or the City.

Section 4.7 Project Oversight and Management. The Authority, or the Authority through its agent or designee, shall have the day-to-day oversight of the undertaking of the Construction Project. Any decisions which have a material impact on the Project Schedule or the Costs of construction of the Facility shall be approved by the City. The Authority shall be authorized, subject to the Project Financing requirements, to submit requisitions for payment from the proceeds of the Bonds for all invoices received from the contractor, subcontractors or any third party, provided such payments do not constitute a material deviation from the Project Budget.

Section 4.8 Due Diligence. The Authority shall perform its services in a diligent, workmanlike and efficient manner in substantial compliance with all laws, regulations and governmental restrictions applicable to the Construction Project. The Authority shall not be liable to the City, or to anyone who may claim any right due to any relationship with the City, for any acts or omissions in the performance of services by Authority or its officers, employees, legal counsel or agents, unless such acts or omissions are due to the negligence of the Authority.

Section 4.9 Default in Contractors/ SubContractors Performance. In the event of any default by any contractor or subcontractor under the terms of any contract which was made in connection with the Construction Project, the Authority will promptly proceed, either separately or in conjunction with others, to pursue the remedies which are reasonably available to the Authority,

against the contractor or subcontractor which is in default and against each surety for the performance of such contractor or subcontractor. The Authority agrees to advise the City, in writing, of the steps it intends to take in connection with any such default and to keep the City informed with respect to any action or proceeding involving such default.

Section 4.10 Insurance. The Authority shall: (i) procure and maintain all types of insurance with limits typically procured for projects of the type similar to the Construction Project including those required by applicable law; (ii) continuously maintain such insurance in full force and effect; (iii) name the City as an additional insured on all such policies; (iv) require that thirty (30) days written notice be provided to the City prior to any cancellation or lapse in insurance; and (v) provide evidence of all of the same to the City, which shall be entitled to advance funds (from a portion of the proceeds of the Authority Bonds or otherwise) to maintain any insurance that is in danger of lapsing or that has lapsed.

In addition, any Firms or subcontractors employed by the Authority or by the City shall, at the Firm or subcontractor's cost and expense, obtain and maintain insurance required under the Worker's Compensation Law of New Jersey, and shall provide and keep in full force for the benefit of the Authority and the City, general liability insurance, protecting the Authority and the City, and their respective employees, officers City Council members and board members, against any and all liability or claims or liability arising out of, occasioned by, or resulting from any accident, happening, or otherwise, in or about the Project Site or in or about the Facility for injuries to any person or persons, with limits acceptable to the Authority and the City for injuries to one person in any one accident or occurrence, and for loss or damage to property of any person or persons with limits acceptable to the Authority and the City, and will save, hold and keep harmless and indemnify the Authority and the City from and for all claims and liability for losses to persons or to any adjacent lands and property which may have been caused by the Firm, subcontractor or subcontractor's workmen, agents, employees, invitee, or licenses.

Further, to the fullest extent permitted by law, any Firms or subcontractors employed by the Authority and the City shall indemnify and hold harmless the Authority and the City and their agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from such Firm or subcontractor's performance of the Firm or subcontractor's work, provided that any such claim, damage, loss, or expense is: (i) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property; and (ii) caused in whole or in part by any negligent act or omission of the Firm or subcontractor, its agents, servants, employees or any subcontractor (including any engineer or other design professional employed or retained by subcontractor), anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 4.10.

In addition to the above insurance obligations, the Authority shall require any and all contractors and/or subcontractors obtain a performance bond in accordance with N.J.S.A. 2A:44-143 with an obligation for the performance of the Construction Project in the form required by N.J.S.A. 2A:44-147.

Section 4.11 Completion Date. The completion date of the Construction Project shall be evidenced by a certificate of an Authorized Authority Representative countersigned by an Authorized City Representative stating that development, acquisition, construction, installation and equipping of the Facility has been Substantially Completed, in accordance with the Plans and Specifications.

Section 4.12 Nature of Obligations of the Authority. The performance by the Authority and the City of any of their obligations under the terms of this Development Agreement shall be subject to the availability of funds therefor which may be available from monies advanced by the City as described in Sections 5.3 and 5.4 hereof and/or the proceeds of such Bonds as described in Section 5.1 hereof and the terms and conditions of any such financing documents related to said Bonds.

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ARTICLE V

PROJECT FINANCING

Section 5.1 Financing of Costs of the Project. It is expressly understood between the parties that all or a portion of the Costs of the Project will be financed by the issuance of one or more series of taxable or tax-exempt Bonds of the Authority. To the extent the Authority, after employing its good faith commercially reasonable efforts, cannot obtain the necessary approvals to issue the Bonds from any applicable government entity, official or otherwise, or the Authority is unable to sell the Bonds, the City may, in its sole discretion, declare this Development Agreement null and void and of no further force and affect. The Authority shall not be in default under this Development Agreement for failure to provide funding for the Construction Project, it being expressly understood by both parties that the issuance of the Bonds (and any advances made by the City in advance thereof to be reimbursed therefrom) is intended to be the primary source of funding for the Construction Project. Prior to the initiation of any phase or portion of the construction of the Construction Project, the Authority shall undertake and receive approvals for Project Financing.

Nothing in this Development Agreement shall prohibit the City from advancing its own funds in order to insure the continuation of the Construction Project with the expectation that it will reimburse itself from the proceeds of said Bonds. In furtherance thereof, the City Council has adopted, or will adopt, a resolution evidencing the intent of the City to reimburse itself from the proceeds of the Bonds in accordance with the applicable provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

Section 5.2 Conditions Precedent to Project Financing. Prior to the undertaking of the Project Financing by the Authority, the City Council, by resolution, shall have approved: (i) all architectural and design Plans and Specifications; and (ii) the expected Costs related to the undertaking and completion of the Construction Project. Additionally, the City shall have received any and all approvals from the State necessary to undertake the Construction Project and the Project Financing and obtained evidence of good title without liens or encumbrances for the Project Site.

Section 5.3 Advancement of Funds and Reimbursement to Authority. Prior to the closing of the Project Financing, the City shall: (i) pay or advance its own funds for any Costs of the Project and any costs related to the Project Financing required to be paid prior to such closing in accordance with the terms of this Development Agreement; and (ii) upon written request and submission of documentation in support thereof by the Authority, reimburse the Authority for any Costs incurred by the Authority or the Authority's agents, contractors, subcontractors, consultants and professional advisors in connection with the Authority's obligations under this Development Agreement and for any Costs of Project or costs related to the Project Financing paid or advanced by the Authority prior to such closing. The City shall also advance, upon written request and submission of documentation in support thereof by the Authority, the proceeds of any grants or other funds received by the City, which are legally allocated to the Construction Project or the Project Financing.

When and to the extent that the City pays for any Costs of the Project from funds, other than proceeds of Bonds issued by the Authority for such purpose (including any grants or other funds

provided to the City), the City shall immediately notify the Authority of the Costs to be paid, the source of such funds and the amounts thereof.

Upon the closing of the Project Financing, the City shall be entitled to reimbursement for all Costs paid in connection with the Construction Project and the Project Financing, whether paid or advanced directly for such Costs or paid to the Authority to reimburse the Authority for its Costs, in each case subject to the limitations imposed by the Internal Revenue Code of 1986, as amended.

Section 5.4 Direct City Funding to Complete Construction Project and Project Financing. Subject to the terms of this Development Agreement, provided the City has agreed to continuation of the Development Agreement in accordance with Section 5.1 and subject to the necessary appropriation being made by the City and following payment of all advances described in Section 5.3 hereof (if any), the City will pay or cause to be paid to or on behalf of the Authority, as and when needed, such monies as are necessary to fund the remaining Costs of the Construction Project and the Project Financing, it being understood by the parties that applicable law requires prompt payment by the Authority of approved Costs and that the City will cooperate with the Authority in connection therewith.

Section 5.5 Appropriations of Funds by the City to Complete Construction Project and Project Financing. To the extent that any funds are required to be paid by the City to the Authority to complete the Construction Project and Project Financing pursuant to the terms of this Development Agreement, those officers of the City responsible for preparing and presenting the budget requests for each fiscal year shall include in such budget request for any year in which such funds are owed to the Authority during the term of this Development Agreement any amounts to become due to the Authority in such fiscal year, and shall use all reasonable and lawful means to secure the appropriation of moneys to make such payments to the Authority.

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ARTICLE VI

EVENTS OF DEFAULT; REMEDIES

Section 6.1 Authority Event of Default. Any one or more of the following shall constitute an event of default by the Authority ("Authority Event of Default"):

(a) breach by the Authority of any covenant contained in this Development Agreement which shall continue for more than forty-five (45) days after written notice of such breach has been sent by the City or, if such breach is of a type that cannot be cured within forty-five (45) days, the failure of the Authority within such forty-five (45) day period to commence and diligently pursue such performance to completion;

(b) failure by the Authority to perform any other term or condition of this Development Agreement which shall continue for more than forty-five (45) days after written notice of such failure has been sent by the City or, if such failure is of a type that cannot be cured within forty-five (45) days, the failure of the Authority within such forty-five (45) day period to commence and diligently pursue such performance to completion; or

(c) the filing by the Authority of a petition in bankruptcy or the filing against the Authority of a petition in bankruptcy which is not dismissed within sixty (60) days after such filing, or if the Authority is adjudged to be bankrupt or determined to be insolvent or if the Authority seeks reorganization or liquidation under any federal or State bankruptcy law, or if the Authority makes an assignment for the benefit of its creditors.

Upon an occurrence of any Authority Event of Default, the City shall have the remedies provided in Section 6.3 hereof.

Section 6.2 City Event of Default. Any one or more of the following shall constitute an event of default by the City ("City Event of Default"; together with an Authority Event of Default, an "Event of Default"):

(a) breach by the City of any covenant contained in this Development Agreement which shall continue for more than forty-five (45) days after written notice of such breach has been sent by the Authority or, if such breach is of a type that cannot be cured within forty-five (45) days, the failure of the City within such forty-five (45) day period to commence and diligently pursue such performance to completion;

(b) failure by the City to perform any term or condition of this Development Agreement which shall continue for more than forty-five (45) days after written notice of such failure has been sent by the Authority or, if such failure is of a type that cannot be cured within forty-five (45) days, the failure of the City within such forty-five (45) day period to commence and diligently pursue such performance to completion; or

(c) the filing by the City of a petition in bankruptcy or the filing against the City of a petition in bankruptcy which is not dismissed within sixty (60) days after such filing, or if the City is adjudged to be bankrupt or determined to be insolvent or if the City seeks

reorganization or liquidation under any federal or State bankruptcy law, or if the City makes an assignment for the benefit of its creditors.

Upon an occurrence of any City Event of Default, the Authority shall have the remedies described in Section 6.3 hereof.

Section 6.3 Remedies. Whenever any Event of Default referred to in Sections 6.1 or 6.2 hereof shall have happened and shall be continuing, and provided that prior written notice of the Event of Default has been given to the defaulting party by the non-defaulting party and the Event of Default has not been cured (or attempts to cure, as provided in Section 6.1 or 6.2 hereto, have not been commenced), the non-defaulting party may, after satisfying the requirements of Section 6.4 below, take whatever action at law or in equity it deems necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of the defaulting party under the terms of this Development Agreement.

Section 6.4 Alternative Dispute Resolution. Should any dispute arise between the parties concerning the interpretation or implementation of this Development Agreement, or upon the occurrence of an Event of Default referred to in Sections 6.1 or 6.2 hereof which has not been cured, the parties shall first be required to submit their dispute to mediation. The parties shall mutually agree upon the services of a mediator, whose fees shall be borne equally by the parties. Further, in the event the parties are unable to resolve any disputes through mediation, the parties agree that the matters in dispute shall be submitted to binding arbitration in accordance with N.J.S.A 2A:23B-1 et seq.

Section 6.5 No Remedy Exclusive. No remedy which is conferred upon or which is reserved to the parties herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy which is provided under the terms of this Development Agreement or which is now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 6.6 No Additional Waiver Implied by One Waiver. In the event that any agreement which is contained in this Development Agreement should be breached by either party and thereafter such breach shall be waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be a waiver of any other breach hereunder.

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ARTICLE VII

TERM; TERMINATION

Section 7.1 Term. The term of this Development Agreement ("Term") shall commence on the execution of this Development Agreement by both parties hereto and shall continue until Substantial Completion of the Facility unless terminated earlier as hereinafter provided.

Section 7.2 Termination Due to Lack of Project Financing or Abandonment by the City. Either party may terminate this Development Agreement at any time in the event: (i) that it does not have sufficient funds available therefor or the Authority is unable to issue the Bonds described in Article V hereof; or (ii) the City determines to abandon the Project. Prior to such termination, however, the City shall pay or reimburse the Authority for all Costs incurred by the Authority with respect to the Project.

Section 7.3 Force Majeure. If the Authority or the City is unable to perform any of its obligations under this Development Agreement as a result of acts of God, catastrophes, strikes or other disasters ("Force Majeure Event") beyond the control of the Authority or the City, as the case may be, then, in that event, the provisions of this Development Agreement otherwise applicable to such non-performance shall become invalid. If a Force Majeure Event results in the delay of performance by any of the parties, then the time periods during which such performance is to be completed shall be extended to reflect such delays.

In the event of the occurrence of any Force Majeure Event, the party unable to perform its obligation shall give written notice ("Force Majeure Notice") to the other party specifying the particular provisions of this Development Agreement involved and the reasons for such non-performance. Such provisions shall be postponed or become invalid, as the case may be, thirty (30) days after the mailing of such notice and all other provisions hereof shall remain in full force and effect, provided, however, the party receiving the Force Majeure Notice may object to the postponement or cancellation of performance by the party sending the Force Majeure Notice. Written notice of the objection shall be sent to the other party within such thirty (30) day period, whereupon the parties shall attempt to resolve their differences and to execute appropriate modifications to this Development Agreement. During such thirty (30) day period, the original terms of this Development Agreement shall remain in full force and effect, unless Authority or the City cannot perform.

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ARTICLE VIII

MISCELLANEOUS

Section 8.1 Amendments. This Development Agreement may not be amended or modified for any reason without the express prior written consent of the Authority and the City.

Section 8.2 Successors and Assigns. The terms, conditions, obligations and agreements contained in this Development Agreement shall inure to and for the benefit of, and shall be binding upon, the Authority and the City and their respective successors and assigns.

Section 8.3 Severability. In the event that any provision of this Development Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof unless a court of competent jurisdiction so holds.

Section 8.4 Counterparts. This Development Agreement may be simultaneously executed in several counterparts, each of which shall constitute an original document and all of which shall constitute but one and the same instrument.

Section 8.5 Entire Agreement. This Development Agreement sets forth all the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and undertakings, inducements, or conditions, express or implied, oral or written between the parties hereto.

Section 8.6 Notices. Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto, in connection with this Development Agreement, must be in writing and may be delivered personally or by certified or registered mail and, if so mailed, shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other addresses as each party may hereafter designate to the other parties in writing:

If to Authority: Cumberland County Improvement Authority
2 North High Street
Millville, New Jersey 08332
Attention: Executive Director

If to the City: City of Vineland
640 East Wood Street
Vineland, New Jersey 08360
Attention: Chief Financial Officer

Section 8.7 Further Assurances and Corrective Instruments. The Authority and the City shall execute, acknowledge and deliver, or cause to be executed, acknowledged and

delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inconsistent or ambiguous term hereof.

Section 8.8 No Personal Liability. No covenant, condition or agreement contained in this Development Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, agent or employee of the Authority or the City, in his or her individual capacity, and neither the officers, agents or employees of the Authority or the City nor any official executing this Development Agreement shall be liable personally on this Development Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Development Agreement.

Section 8.9 Headings. The Article and Section headings in this Development Agreement are included herein for convenience of reference only and are not intended to define or limit the scope of any provision of this Development Agreement.

Section 8.10 Governing Law. The terms of this Development Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State, including the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*, and the New Jersey Tort Claims Act, *N.J.S.A. 59:1-1 et seq.*, without regard to conflict of law principles.

Section 8.11 No Assignment. No party shall assign this Development Agreement without the prior written consent of all the parties hereto.

Section 8.12 Effective Date. This Development Agreement, upon execution by the parties hereto, shall take effect the date first written above.

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IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement effective as of the day and date first above written.

CITY OF VINELAND, NEW JERSEY

By: _____

Name: _____

Title: _____

ATTEST:

**THE CUMBERLAND COUNTY
IMPROVEMENT AUTHORITY**

By: _____

GERARD VELAZQUEZ, Executive Director

ATTEST:

Exhibit "A"

Floor Plan and Elevation Map

Exhibit "B"

Site Map