MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING IS ENTERED INTO THIS ___ DAY OF ____________, 2018, BY AND AMONG THE CITY OF NEW BEDFORD, BY AND THROUGH ITS DEPARTMENT OF PUBLIC INFRASTRUCTURE, THE CITY OF FALL RIVER, AND CITY OF BROCKTON

Whereas, the City of New Bedford ("New Bedford") and the cities of Fall River (Fall River) and Brockton (Brockton) (Collectively the "Parties") generate substantial amounts of sludge and related organic waste (hereinafter "Suitable Waste") that require disposal in a sanitary, efficient, and ecologically beneficial manner, and

Whereas, the Parties recognize the need to preserve space at sanitary landfills and generally maintain environmentally sustainable processes for disposal of Suitable Waste; and

Whereas, the Parties recognize the need to site and construct an Organics to Energy Facility (hereinafter the "Facility") in southeastern Massachusetts of sufficient capacity to accommodate disposal of their various Suitable Materials and locate it so as to be readily and conveniently accessible to the Parties; and

Whereas, given their interests and activities, the Parties have resolved to cooperate, collaborate, and share each other’s expertise and experience to support the Facility and thereby ensure that each does not undertake similar projects duplicative of the one contemplated under this Memorandum of Understanding, and

Whereas, New Bedford is willing to serve as the site of a Facility of sufficient capacity to process Suitable Waste generated by the Parties; and

Whereas, the Parties recognize that their best interests are served by entering into this Memorandum of Understanding (Hereinafter MOU) to memorialize their commitment to sustainable waste disposal and energy production via an organics to energy facility and establish a timeline for siting, constructing, commissioning and utilizing a state-of-the-art Facility, and

Whereas, the each Party requires the freedom to direct, manage, and finance its individual level of participation under this MOU before making infrastructure improvements or contractual or financial commitments required to actually develop and support the Facility and program contemplated hereunder.
NOW THEREFORE, the Parties agree to support development of a regional Facility and program to be located in the City of New Bedford as follows:

ARTICLE I - GENERAL TERMS

A. NO FINANCIAL OBLIGATIONS. This MOU is not a financial or funding document. It does not impose any financial commitments on any Party. Each Party will direct, manage, and finance its own participation under the terms of this MOU.

B. FURTHER DOCUMENTATION CONTEMPLATED. Nothing in this MOU shall obligate a Party to appropriate, obligate or transfer any funds. Specific work or projects that involve the transfer of funds, services, or property among the Parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

C. TERM OF MOU AND RIGHT OF TERMINATION. This MOU is effective on the last date affixed to the signature of the Parties. Any Party may withdraw from this MOU by providing 30 days notice, in writing, to the other Parties. This MOU shall expire three (3) years from the effective date of signature by all Parties and may be, by written mutual agreement, extended for additional terms as the Parties deem appropriate.

D. THIRD PARTY BENEFICIARY STATUS. This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any Party against any other Party, its agencies, its officers, or any person.

E. NO PARTNERSHIP, JOINT VENTURE, ETC. CONFERRED. Nothing contained in this MOU will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. None of the Parties has, nor may it represent that it has, any authority to act or make any commitments on any other Party’s behalf.

F. SIGNATORY AUTHORITY FOR MODIFICATION. Any modification to this MOU must be made in writing executed by an authorized representative of each Party.

G. LIMITATION OF LIABILITY. Nothing in this MOU creates any right or cause of action for any person, private entity, or governmental entity to sue any Party to this MOU for equitable relief or monetary damages for any breach of this MOU, nor shall be interpreted as an admission of any type of liability by any of the Parties hereto.

H. CONFIDENTIALITY.

(i) Each Party shall keep confidential any and all information that it may acquire in relation to the other Parties during the course of discussions or sharing of documents while drafting and negotiating the MOU, and whenever the Parties are consulting on drafting and negotiating the Contract(s).

(ii) For the purposes of this clause, ‘Confidential Information’ means all information in respect of the business of a Party including, without prejudice to the generality of the
foregoing, any ideas, business methods, finance, prices, business, financial, marketing, development or manpower plans, computer systems and software, services, and all information in respect of the Parties’ waste management arrangements.

(iii) No Party shall use any other Party’s Confidential Information for any purpose other than to perform its obligations under the MOU and subsequent contract(s). Each Party shall ensure that its officers and employees comply with the provisions of this clause. In the event of a breach of this clause, the Party in breach shall immediately disclose this to the Party whose Confidential Information has been disclosed.

I. RELATIONSHIP TO SUBSEQUENT CONTRACTS. This MOU shall not form a part of any contract(s) subsequently developed to implement the establishment and/or operation of the Facility.

J. COUNTERPARTS. This MOU may be signed in any number of counterparts, each of which so signed will be an original, but together will constitute one and the same instrument.

ARTICLE II - PURPOSE

A. WORKING GROUP. The Parties will create and participate in an MOU Working Group to be attended by an individual from each participating municipality.

B. PARTICIPATION. Each Party will designate a high-level representative from its respective municipality to serve on the MOU Working Group.

C. COOPERATION. As participants in the MOU Working Group, the Parties will work cooperatively, share information, and utilize data collected by the Parties to assist in siting, development, commissioning, and operation of the Facility.

D. MEETINGS. The MOU Working Group is an informal advisory group and shall not be considered a Public Body for purposes of the Massachusetts Open Meeting Law, M.G.L. Ch. 30A § 18-25, and the members thereof are not hereby authorized to deliberate upon any issue in any official capacity, or otherwise act in any official capacity, on behalf of their respective municipalities, it being stipulated that any such deliberations or decisions are the province of the legislative and executive branches of the respective member municipalities and have not been delegated to the members of the MOU Working Group.

E. CONCEPT. The Parties informally will agree on form of contracts, sources of revenues, and whether procedures under consideration comply with applicable state and federal procurement, environmental, municipal finance, and contract laws and regulations. In addition to informal agreement on the participation in an Organics to Energy Facility regional program, the Parties informally will agree on the general terms of the participation contracts and capacity allocations required to service the needs of each Party. Parties informally will agree on shared long-term goals for sludge and organics disposal from generation and processing to final disposal and environmentally sound reuse.
ARTICLE III – PROGRAM DETAILS

A. New Bedford intends to issue a Request for Proposals (RFP) pursuant to Massachusetts General Laws Chapter 30B to procure a private operator to design, build, operate, and maintain an integrated Organics to Energy Facility for the disposal, recycling, composting or treatment of solid waste, sewage, septage or sludge system located on city-owned property within the City of New Bedford with convenient access to Rts. 140 and 195 of sufficient size to process all of the wastewater treatment plant sludge generated by the cities of New Bedford, Fall River, and Brockton.

B. It is intended that the proposed Facility will operate for an original term of twenty (20) years with option terms available at the sole discretion of New Bedford. The proposed contract will be administered by New Bedford and secured by a removal bond. New Bedford will receive a host community fee based on dry tonnage delivered from outside sources as compensation for its acting as the host community for the Facility.

C. The initial Parties will commit 100% of their sludge production to the Vendor so as to obtain best pricing and guaranteed capacity at the Facility. Thereafter, the Parties will pay for disposal on a per dry ton basis with the dry ton price being determined by contract and not by market price, the contract rate for each Party will be negotiated with the operator of the Facility.

D. The operator of the Facility may sell to others any capacity over and above that reserved under the contracts at market rates or other contract basis. The Parties will not be responsible to the Facility operator for obtaining additional sources of sludge or other waste materials. The Facility operator will grant the Parties priority to any excess capacity at market rate or otherwise agreed upon contract rates.

E. New Bedford will be responsible for the procurement process under Chapter 30B, including final negotiations and contracting with the preferred respondent. New Bedford solely will be authorized to select the winning respondent.

F. The Parties will participate in all feasibility studies or other requests from private or public entities for documentation or sharing of data in order to obtain funds, grants, or authorizations necessary to establish the Facility so long as the data requested is not confidential or otherwise restricted from public disclosure.
WHEREFORE, in agreement with the terms and conditions of the foregoing, but for no consideration and each intending not to be bound legally to the same, the Parties, City of New Bedford, City of Brockton, and City of Fall River hereto set their respective hands, this ________ day of __________, 2018.

City of Fall River,

\[Signature\] 6/12/18

By:

TERRANCE J. SULLIVAN
ADMINISTRATOR OF COMM. UTILITIES

City of Brockton

By:

City of New Bedford

\[Signature\]

By:

Jemie Ponte
Commissioner D.P.I