

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 3225 ORDINANCE COUNCIL SERIES NO. 06-

COUNCIL SPONSOR STEFANCIK/DAVIS PROVIDED BY: ENV. SERVICES

INTRODUCED BY _____, SECONDED BY _____, ON THE _____

DAY OF _____, 2006.

AN ORDINANCE ESTABLISHING AN ENVIRONMENTAL UTILITY SERVICE AGREEMENT BY AND BETWEEN THE PARISH AND BIOREGEN SYSTEMS, LLC AS SUCH RELATES TO THE TREATMENT OF SEPTAGE AND SLUDGE; AND TO PROVIDE FOR REPEAL, SEVERABILITY, AND DATE OF ENACTMENT

WHEREAS, development has resulted in a significant burden upon (1) the capacity of central sewerage system operators to treat and dispose of the sludge resulting from the treatment of sewerage in such systems, and (2) the capacity of decentralized on-site wastewater systems to treat and dispose of septage resulting from such systems; and

WHEREAS, Bioregen Systems, LLC (Bioregen) desires to be a private provider of septage and sludge treatment in the unincorporated portion of St. Tammany Parish; and

WHEREAS, the Parish desires to protect the public health and the environment by facilitating the provision by Bioregen of cost-effective, environmentally sound, reliable, and high-quality septage and sludge treatment; and

WHEREAS, La. R.S. 33:4064.5(D)(2) sets forth that the Parish "shall have sole authority to enter into an environmental utility service agreement with any public or private provider of sewerage or water service wherein the purpose of such agreement shall be to assign to the provider certain rights of the Parish to plan, finance, construct, purchase, own, let, lease, maintain, operate, improve, or otherwise extend sewerage and water systems within the unincorporated portion of St. Tammany Parish"; and

WHEREAS, said statute further sets forth that the Parish "may adopt rules and regulations relative to the assignment of such rights, establishment of environmental utility service districts, term and requirements of said agreement, and fees associated with the application, administration, supervision, and enforcement of said agreement"; and

THE PARISH OF ST. TAMMANY ORDAINS that Kevin C. Davis, Parish President, is hereby authorized to execute any and all documents by and between the Parish and Bioregen Systems, LLC, any or all which may be necessary for considerations expressed by an Environmental Utility Services Agreement (EUSA) for Bioregen Systems, LLC to construct, maintain, operate, and improve their septage and sludge treatment operations.

THE PARISH OF ST. TAMMANY FUTHER ORDAINS that Article IV of Appendix A of the Code of Ordinances relative to Franchise Agreements be amended to include the following amendment and supplement to the Environmental Utility Service Agreement:

ARTICLE IV

SECTION A-041.00 Agreements Established

Franchisee
Bioregen Systems, LLC

Term
50

Expiration
2056

3225

ENVIRONMENTAL UTILITY SERVICE AGREEMENT

BY AND BETWEEN:

BIOREGEN SYSTEMS, LLC AND

DEPARTMENT OF ENVIRONMENTAL SERVICES
OF ST. TAMMANY PARISH

STATE OF LOUISIANA

PARISH OF ST. TAMMANY

BE IT KNOWN that on the date hereinafter set forth and in the presence of the undersigned:

BEFORE the undersigned Notary(ies) Public, duly commissioned and qualified in and for the state and parish aforesaid, and in the presence of the competent witnesses hereinafter named and undersigned, personally came and appeared:

BIOREGEN SYSTEMS, LLC, a Delaware limited liability company whose mailing address is 28 Summit Street, Englewood, NJ 07631, herein represented by Dominic Careri Kulik, its duly authorized President, pursuant to a resolution of the Board of Managers of said company, which resolution is attached hereto and made a part hereof (hereinafter referred to as "Bioregen"); and

DEPARTMENT OF ENVIRONMENTAL SERVICES OF ST. TAMMANY PARISH, a political subdivision of the State of Louisiana, created pursuant to Subpart F of Part II of Chapter 9, Title 33 of the Louisiana Revised Statutes of 1950, as amended, whose mailing address is P.O. Box 628, Covington, LA, 70434, herein appearing by and through duly authorized by an ordinance of the St. Tammany Parish Counsel, a certified copy of which is attached hereto and made a part hereof (hereinafter referred to as "DES")

WITNESSETH:

WHEREAS, rapid urban development within St. Tammany Parish has resulted in a significant burden upon (i) the capacity of the central municipal and private sewerage systems of said areas to treat and dispose of the sludge resulting from the treatment of sewerage in such systems, (ii) the capacity of the de-centralized septic tank systems of said areas to treat and dispose of the septage resulting from such systems and (iii) the capacity of the haulers that

transport septage from the de-centralized septic systems to adequately and properly dispose of such septage; and

WHEREAS, Bioregen is or prepared to be a private provider of septage and sludge treatment and monitoring services in the unincorporated portion of St. Tammany Parish; and

WHEREAS, DES desires to protect public health and the environment in said areas by facilitating the provision by Bioregen of cost-effective, environmentally sound, reliable, and high-quality septage and sludge treatment and monitoring services; and

WHEREAS, LA R.S. 33:4064.5 (D) (2) sets forth that DES "shall have sole authority to enter into an environmental utility service agreement with any public or private provider of sewerage or water service wherein the purpose of such agreement shall be to assign to the provider certain rights of DES to plan, finance, construct, purchase, own, let, lease, maintain, operate, improve, or otherwise extend sewerage and water systems within the unincorporated portion of St. Tammany Parish"; and

WHEREAS, said statute further sets forth that DES "may adopt rules and regulations relative to the assignment of such rights, establishment of environmental utility service districts, term and requirements of said agreement, and fees associated with the application, administration, supervision, and enforcement of said agreement"; and

WHEREAS, DES and Bioregen desire to enter into such an environmental utility service agreement wherein certain rights of DES to plan, finance, construct, purchase, own, let, lease, maintain, operate, improve, or otherwise facilitate a LDEQ permitted septage/sludge treatment and monitoring system within the unincorporated portion of St. Tammany Parish are assigned to Bioregen, and to provide for other matters in connection therewith.

NOW, THEREFORE, for the considerations expressed in this Environmental Utility Service Agreement (hereinafter referred to as "this Agreement"), the sufficiency of which is hereby acknowledged, the parties do hereby contract and agree as follows:

1. Nonexclusive Franchise Agreement.

A. Bioregen represents that it has heretofore entered into a nonexclusive franchise agreement with the Parish of St. Tammany (the "Parish") whereby the Parish duly recognized Bioregen as a private utility empowered to treat and monitor septage and sludge within the Parish, the terms and conditions of which are set forth in Ordinance P.C.S. No. _____ (hereinafter referred to as "the Nonexclusive Franchise Agreement").

B. DES and Bioregen acknowledge that this Agreement is ancillary to the Nonexclusive Franchise Agreement and in the event of any conflict between any term or condition in the Nonexclusive Franchise Agreement and this Agreement, this Agreement shall prevail. However, the Nonexclusive Franchise Agreement shall continue in full force and effect except as specifically modified or amended herein.

2. Environmental Utility Service District.

A. The rights of DES which are assigned herein to Bioregen shall have full force and effect only within the geographical area of the environmental utility service district which is hereby created and defined as the geographical area which comprises the unincorporated portion of the Parish, all as defined by an ordinance adopted by the governing authority of the Parish, (hereinafter referred to as "the Service Area"). DES and Bioregen may execute a letter of understanding and/or agreement, the purpose of which shall be to amend the boundary of the Service Area whenever it is necessary to revise the extent of the Service Area.

B. It is acknowledged by the parties hereto that neither this Agreement nor the establishment of the Service Area shall be construed or interpreted to grant or provide Bioregen with an exclusive franchise area or with exclusive franchise rights. Rather, the sole intent and purpose of this Agreement shall be to facilitate the provision by Bioregen of cost-effective,

environmentally sound, reliable, and high-quality septage and sludge treatment and monitoring services in the Service Area.

C. Bioregen represents that it currently owns and/or operates, or is contemplating the construction and ownership and/or operation of, or is under contract or agreement, expressed or implied, with another party to construct and/or to assume ownership and/or operation of, a treatment facility for septage and sludge which is or will be duly permitted by the LDEQ and the Louisiana Department of Health and Hospitals ("LA. DHH") and which is to be located in the Service Area.

3. Obligations of Bioregen.

A. Bioregen acknowledges that DES is assigning certain rights of DES to Bioregen for the purpose of facilitating the provision by Bioregen of cost-effective, environmentally sound, reliable, and high-quality septage and sludge treatment services to the Service Area, and Bioregen obligates itself throughout the term of this Agreement to perform accordingly.

B. Bioregen shall design, finance and develop (or contract with third parties for the development) one or more septage and sludge treatment facilities, each of which shall utilize environmentally sound treatment processes, within the Service Area. In its treatment facility or facilities, Bioregen shall treat the septage from septic tank and individual onsite treatment systems in the Service Area, and the sludge from municipal and private sewerage systems in the Service Area in a manner which is approved by LDEQ, DES and the LA DH&H/OPH.

C. DES may decide to contract with Bioregen for Bioregen to establish and maintain a monitoring system for the compliance of haulers of septage and sludge in the Service Area and for the disposal or treatment of such septage and sludge in accordance with applicable Federal, state and local environmental laws. Should DES make such a decision and contract with Bioregen in conjunction therewith, Bioregen shall develop processes for reporting the results of such monitoring activities to DES and other state and local environmental authorities. Such reporting will include information regarding any non-

compliance within the Service Area relating to the disposal or treatment of septage or sludge in accordance with applicable Federal, state and local environmental laws or regulations, either by haulers of septage or sludge or otherwise.

D. Whenever Bioregen provides septage and/or sludge treatment services in the Service Area, Bioregen obligates itself to operate and maintain the subject septage and/or sludge treatment facilities in accordance with all federal, state and local codes and regulations and in accordance with the Rules and Regulations of DES.

E. In order for DES to monitor and inspect the septage and/or sludge treatment facilities operated by Bioregen in the Service Area, Bioregen shall provide DES with an as-built drawing of any such system and, in addition thereto, Bioregen shall make available to DES for its review all monitoring data required to be furnished to the LDEQ for the treatment facility in question. Such monitoring data shall be reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1 or an approved substitute). For inspection purposes, copies of all such monitoring reports shall be kept on-site at, or in reasonable proximity to the permitted facility for a period of at least three (3) months from the date of the sample measurement or report of such measurement.

4. Obligations of DES.

A. DES shall assist Bioregen to the extent reasonable and practical to expeditiously obtain all approvals and permits of governmental authorities which are necessary for Bioregen to effect the intent and purpose of this Agreement. Without limiting the foregoing, DES shall assist Bioregen in developing plans for the construction and operation of Bioregen's treatment facilities within the Service Area and in obtaining permits to construct and operate such facilities. Further, DES and Bioregen may mutually agree to execute a letter of understanding and/or agreement, the purpose of which shall be to facilitate the provision by Bioregen of other cost-effective, environmentally sound, reliable, and high-quality septage and sludge treatment in the Service Area.

B. DES shall assist Bioregen to the extent reasonable and practical to procure from any source government or other grants or other subsidies (including loan guaranties or similar forms of financial assistance) for or in aid of the construction of the sludge and septage facility owned or operated by Bioregen or additions or extensions thereto.

C. DES shall require that sewerage systems located within the Service Area dispose of and/or handle any and all sludge arising from sewerage treatment in a manner consistent with all applicable State and Federal laws and regulations. In addition, DES shall require all licensed haulers of septage from on-site wastewater treatment systems in the Service Area to dispose of any and all septage from such systems in a manner consistent with all State and Federal Laws and regulations. If said sludge and septage is disposed of within the Service Area it shall be done at a properly LDEQ permitted facility or facilities. Bioregen shall have no obligation to perform its obligations under this agreement including, without limitation, its obligation to design, finance and develop treatment facilities within the Service Area until DES has complied with this Section 4C to the reasonable satisfaction of Biorgen. DES further acknowledges that the introduction and passage of legislation for the Parish of St. Tammany or other governmental entity may be required in order to comply with this Section 4(c) and that the passage of such legislation, if required, shall be a condition precedent to Bioregen's performance of its obligations under this Agreement.

D. DES shall inspect on a no less than a quarterly basis and at a reasonable time and in a reasonable manner any such septage and sludge treatment facility operated by Bioregen in the Service Area in order to determine that the operation of such septage and/or sludge treatment facility is conducted in accordance or compliance with applicable law. Should DES determine that there is any defect or deficiency, DES shall take any and all steps which it is empowered to take to require said defect or deficiency be cured and that the subject facility be brought into compliance, including, but not limited to, issuing a written notice of noncompliance, which notice shall prescribe a reasonable time to cure the defect, issuing of compliance orders and any and all other powers which DES is authorized to employ in the conduct of its business with

regard to any such defect or deficiency. However, notwithstanding the foregoing, the cure period provided Bioregen to remedy any such defect shall not be shorter than the time to cure provided by LDEQ.

5. Environmental Utility Service Agreement Fee. In order for Bioregen and DES to carry out their respective obligations under this Agreement, the following fees and assessments shall be required:

A. Bioregen Fees.

1. Bioregen shall be entitled to charge a fair market fee for any and all septage and/or sludge treated at any of its treatment facilities within the Service Area.

2. Furthermore, in the event that Bioregen performs monitoring services of septage and sludge producers within the Service Area, it shall be entitled to charge a fair market fee for such services.

B. DES Fees. In order to defray the costs associated with the inspection of any septage/sludge treatment facilities contemplated hereby, a recurring monthly fee will be assessed on every governed septage/sludge treatment facility owned by Bioregen within the Service Area. The amount of the monthly inspection fee shall be \$100.00 per month and shall be due and payable to DES.

7. Term. This Agreement shall become effective upon both its execution by Bioregen and the enactment of an ordinance by the St. Tammany Parish Council which adopts this Agreement and assimilates same into the Rules and Regulations of DES, and shall continue for a term of fifty (50) years thereafter with five (5)

consecutive ten (10) year renewal terms unless sooner terminated by written consent of both parties.

8. Assignment. This Agreement shall not be assigned by any party hereto without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, except that this Agreement may be assigned (i) by DES without approval to any other public entity now existing or hereinafter created succeeding to the rights of DES, and (ii) by Bioregen without approval to any of Bioregen's affiliates, including, without limitation, a special purpose affiliate or holding company formed for the specific purpose of carrying out Bioregen's obligations under this Agreement or to any successor entity in connection with the sale of all or substantially all of the assets of or the business of Bioregen. Any attempted assignment in violation of this Article shall be null and void. Any assignment shall contain the affirmative obligation of the assignee to specifically assume the obligations and other terms of this Agreement. Further, this Agreement shall be recorded in the public records of the Clerk of Court of St. Tammany Parish and shall be binding upon and enforceable against the parties hereto and their successors, transferees, or assigns. This Agreement may also be adopted as an ordinance of DES and incorporated in the Rules and Regulations of DES pursuant to LA R.S. 33:4064.5 (D) (2).

9. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to the other person or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law. The foregoing notwithstanding, should it be determined by final, non-appealable judgement of a court of competent jurisdiction in this State that any fee contemplated herein is illegal, invalid or otherwise uncollectible, then this Agreement may, at the discretion of Bioregen, be terminated as of the date of such judgement and shall be of no further force or effect and all party shall be under any obligation to the other party hereunder except those obligations which became due

and owing prior to the termination. If at any time Bioregen is prohibited by order of court from collecting any fee contemplated herein pending the court's proceedings to determine its validity, Bioregen may suspend this Agreement during the pendency of said proceedings until such time as the collection of any such fee, as applicable, is again allowed.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

11. Relationship of the Parties. Nothing in this Agreement shall be construed as creating a partnership, joint venture, corporation, or association between the parties hereto. Nothing in this Agreement shall authorize Bioregen to act for or on the behalf of DES as its agent or representative.

12. Indemnification of DES. From and after the date of execution of this Agreement, Bioregen agrees to defend, indemnify, and hold harmless DES and the St. Tammany Parish Government from and against any and all demands, causes of action, suits, liability or responsibility arising out of any action or inaction of Bioregen under this Agreement and all other indemnifiable damages of DES. For this purpose, "indemnifiable damages" of DES means the aggregate of all expenses, losses, costs, deficiencies, liabilities, and damages (including attorneys fees, witnesses fees, including expert witnesses fees, and court costs expended to enforce this indemnification provision) incurred or suffered by DES or any of its directors, agents, and employees as a result of or in connection with:

(a) Any default in the performance of any of the covenants or agreements made by Bioregen in or pursuant to this Agreement; and

(b) Any occurrence, act or omission of any shareholder, director, officer, employee, consultant, or agent of Bioregen which occurs after the effective date of this Agreement, and which causes damage to DES; and

(c) Any damages, claims, demands, etc. arising out of the construction, use, or operation of any septage/sludge treatment facility owned and/or operated by Bioregen in the Service Area.

13. Indemnification of Bioregen. From and after the date of execution of this Agreement, DES agrees to defend, indemnify, and hold harmless Bioregen from and against any and all demands, causes of action, suits, liability or responsibility arising out of any action or inaction of DES under this Agreement and all other indemnifiable damages of Bioregen. For this purpose, "indemnifiable damages" of Bioregen means the aggregate of all expenses, losses, costs, deficiencies, liabilities, and damages (including attorneys fees, witnesses fees, including expert witnesses fees, and court costs expended to enforce this indemnification provision) incurred or suffered by Bioregen or any of its managers, officers, members, agents, and employees as a result of or in connection with:

- (a) Any default in the performance of any of the covenants or agreements made by DES in or pursuant to this Agreement; and
- (b) Any occurrence, act or omission of any manager, officer, member, employee, consultant, or agent of DES, arising out of or specifically related to this Agreement, which occurs after the effective date of this Agreement, and which causes damage to Bioregen.

[INTENTIONALLY LEFT BLANK]

THUS DONE AND SIGNED in the presence of the undersigned competent witnesses, who have hereunto signed their names together with said Appearer and me, Notary Public, on the _____ day of _____, 2005.

BIOREGEN SYSTEMS, LLC

Dominic Careri Kulik, President

Witnesses:

Notary Public

THUS DONE AND SIGNED in the presence of the undersigned competent witnesses,
who have hereunto signed their names together with said Appearer and me, Notary Public, on the
____ day of _____, 2005.

DEPARTMENT OF ENVIRONMENTAL SERVICES OF ST. TAMMANY PARISH

Witnesses:

Notary Public