



# UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

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RESOLUTION NO.: 31-2016

DATE: March 16, 2016

## RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY AUTHORIZING THE EXECUTION OF A MATERIALS RECOVERY FACILITY AGREEMENT WITH SAKOUTIS BROTHERS DISPOSAL, INC.

APPROVED AS TO FORM:

Joseph C. Bodek  
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS

YES  NO  NONE REQUIRED  
UNION COUNTY UTILITIES AUTHORITY

By: Joseph C. Bodek

By: [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>	✓		✓				
<i>Criscione</i>	✓		✓				
<i>Jackus</i>	✓		✓				
<i>Kahn</i>	✓		✓				✓
<i>Kennedy</i>	✓		✓			✓	
<i>People</i>	✓		✓				
<i>Scutari</i>	✓		✓				
<i>Erdos, Vice Chair</i>	✓		✓				
<i>Eastman, Chair</i>	✓		✓				
<i>Lombardo, Alternate No. 1</i>	✓						
<i>McManus, Alternate No. 2</i>	✓						

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY  
AUTHORIZING THE EXECUTION OF A MATERIALS RECOVERY  
FACILITY AGREEMENT WITH SAKOUTIS BROTHERS DISPOSAL, INC.**

**WHEREAS**, the Union County Utilities Authority (“UCUA”) is a public body corporate and politic of the State of New Jersey, created by the Freeholders in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. (the “Act”), by an Ordinance adopted on June 5, 1986, as amended on December 11, 1986 and which exercises essential governmental functions for the public health, benefit and welfare of the citizens of Union County (“County”); and

**WHEREAS**, the Union County District Solid Waste Management Plan (“County Plan”) was developed in accordance with the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (“SWMA”), and initially adopted by the Union County Board of Chosen Freeholders (“Freeholders”) on June 7, 1979 and certified by the New Jersey Department of Environmental Protection (“NJDEP”) on August 13, 1980, and has since been amended from time to time; and

**WHEREAS**, on December 11, 1986, the Freeholders designated the UCUA as the agency responsible for the implementation of the County Plan, pursuant to and in accordance with the SWMA as the UCUA is empowered, pursuant to the Act, to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in the County; and

**WHEREAS**, the UCUA, in its capacity as implementing agency for the County Plan, has previously developed, implemented and financed a solid waste management system which includes the construction of the Union County Resource Recovery Facility (“UCRRF”) to provide for the processing and disposal of all municipal solid waste generated within the geographic boundaries of the County; and

**WHEREAS**, following and in response to Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997), cert. den. 522 U.S. 966 (1997) (“Atlantic Coast”), the County Plan was amended on May 21, 1998 to, among other things, define the County's new disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25 (“Contract Waste”) for disposal at the UCRRF, and including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the UCRRF; and

**WHEREAS**, the County also adopted a series of amendments to the County Plan, as supplemented by an administrative action adopted by the UCUA in response to Atlantic Coast, resulting in the issuance of two certifications by the NJDEP, dated July 20, 1998 and June 1, 1999, which were subsequently clarified by the NJDEP on June 29, 1999, re-establishing mandatory flow control over all Solid Waste Types 13, 13C, 23 and 27 (“Non-Processible Waste”) generated within the County and further directing all Non-Processible Waste to the County’s designated disposal facility at that time, the Hackensack Meadowlands Development Commission 1-E Landfill, following and pursuant to a non-discriminatory procurement consistent with Atlantic Coast; and

**WHEREAS**, on July 13, 2000, the NJDEP approved, by administrative action, an amendment to the County Plan allowing NJDEP-permitted Materials Recovery Facilities (“MRFs”) to enter into agreements with the UCUA to accept and recycle Non-Processible Waste, and to deliver residual solid waste generated therefrom to the UCUA’s designated final disposal facility(ies); and

**WHEREAS**, the Authority and the County adopted an amendment to the County Plan and entered into successive agreements with the NJMC to provide for the continued uninterrupted disposal of Non-Processible Waste at the NJMC's Keegan Landfill facilities in Kearny, New Jersey (hereinafter "NJMC Keegan Landfill"), which received final approval by the NJDEP, and the latest of said agreements continues through June 18, 2016; and

**WHEREAS**, UCUA issued non-discriminatory Bid Specifications on November 16, 2015 for the provision of disposal services for Non-Processible Waste and, in response, UCUA received a single bid on December 10, 2015 from Waste Management; and

**WHEREAS**, on December 16, 2015, UCUA awarded a contract to Waste Management for the provision of solid waste disposal services for all Non-Processible Waste generated within the County over a term of three years commencing on June 19, 2016, and recommended a plan amendment to incorporate the agreement with Waste Management, among other things, which was adopted by the Freeholders after a public hearing on February 11, 2016; and

**WHEREAS**, Sakoutis Brothers Disposal, Inc. (hereinafter "Sakoutis") operates a solid waste transfer station and MRF located at 2101 Roosevelt Avenue, South Plainfield, New Jersey, (hereinafter the "Facility"); and

**WHEREAS**, the UCUA and the Sakoutis wish to enter into a MRF Agreement to allow Sakoutis to lawfully accept Non-Processible Waste, recycle portions thereof, and deliver all residual solid waste generated therefrom to the UCUA's designated final disposal facility(ies) in accordance with the County Plan, as set forth in the form of Agreement attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** by the Union County Utilities Authority as follows:

1. The aforesaid recitals are incorporated herein as though fully set forth at length.
2. The Authority hereby approves the MRF Agreement with Sakoutis and authorizes its Executive Director to execute and implement the terms of the MRF Agreement in substantially the same form as attached hereto.
3. This authorization is conditioned upon the receipt of any and all approvals that may be required by and from the NJDEP and the County to implement any of the terms of the MRF Agreement.
4. A copy of this Resolution and each agreement shall be available, upon execution by the parties, for public inspection at the offices of the Authority at 1499 Routes 1 & 9 North, Rahway, New Jersey.
5. This Resolution shall take effect immediately.

## AGREEMENT

**THIS AGREEMENT**, is entered into this \_\_\_\_ day of March 2016 by and among the Union County Utilities Authority (“UCUA”), with offices for the transaction of business at 1499 Routes 1 & 9 North, Rahway, New Jersey 07065; the Union County Office of Environmental Health (“UCOEH”), with offices for the transaction of business at 300 North Avenue East, Westfield, New Jersey 07090; and Sakoutis Brothers Disposal, Inc. (also referred to herein as the “Sakoutis”, “Facility” and “Operator”), whose mailing address is P.O. Box 84, Colts Neck, N.J. 07722 with offices for the transaction of business at 2101 Roosevelt Avenue, South Plainfield, New Jersey 07080.

### **WITNESSETH:**

**WHEREAS**, the Union County District Solid Waste Management Plan (“County Plan”) was developed in accordance with the New Jersey Solid Management Act, N.J.S.A. 13:1E-1, et seq. (“SWMA”) and initially adopted by the Union County Board of Chosen Freeholders (“Freeholders”) on June 7, 1979 and certified by the New Jersey Department of Environmental Protection (“NJDEP”) on August 13, 1980, and has since been amended; and

**WHEREAS**, the UCUA is a public body corporate and politic of the State of New Jersey, created by the Freeholders in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. (“MUA Law”), by an Ordinance adopted on June 5, 1986, as amended on December 11, 1986. The UCUA exercises essential governmental functions for the public health, benefit and welfare of the citizens of Union County (“County”) and has been designated by the County as the implementing agency for the County Plan; and

**WHEREAS**, the UCUA was granted a franchise in accordance with N.J.S.A. 48:13A-5 for solid waste disposal in the County by Order of the New Jersey Board of Public Utilities issued on or about December 31, 1987; and

**WHEREAS**, on December 11, 1986, the Freeholders designated the UCUA as the agency responsible for the implementation of the County Plan, as amended from time to time, pursuant to and in accordance with the SWMA. The UCUA is empowered, pursuant to the MUA Law, to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in the County; and

**WHEREAS**, on March 11, 1999, the Freeholders adopted an amendment to the County Plan that included the Hackensack Meadowlands Development Commission's Transfer Station and Materials Recovery Facility and 1-E North Area Landfill (now known as the "New Jersey Meadowlands Commission") (collectively the "NJMC Facilities") in the County Plan and whereby all solid waste Types 13 (including type 13C), 23 and 27 generated within the County ("Non-Processible Waste") was directed to the NJMC Facilities in North Arlington, New Jersey for disposal; and

**WHEREAS**, by Certification on June 1, 1999, the NJDEP approved the March 11, 1999 amendment to the County Plan; and

**WHEREAS**, the UCOEH was designated as the lead agency for solid waste enforcement by the Freeholders in accordance with the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. ("CEHA"); and

**WHEREAS**, the UCOEH is responsible for, among other things, enforcement of the SWMA and regulations promulgated thereunder, N.J.A.C. 7:26-1 et seq.; and

**WHEREAS**, on January 28, 1999, the NJDEP entered an Order certifying the division of County government now known as the Union County Office of Environmental Health ("UCOEH") in accordance with the County Environmental Health Act ("CEHA") as the County's lead agency for the implementation of environmental health programs, including solid waste control and the enforcement of health laws and regulations; and

**WHEREAS**, by Certification on July 13, 2000, the NJDEP approved an administrative action of the UCUA amending the County Plan, wherein the UCUA authorized NJDEP-permitted materials recovery facilities to enter into agreements with the UCUA to accept and recycle certain waste types, provided all residue generated therefrom is delivered to the NJMC Facilities for disposal; and

**WHEREAS**, in accordance with the decision of the United States District Court, District of New Jersey, Atlantic Coast Demolition & Recycling Company, Inc. v. Atlantic County Board of Chosen Freeholders, et al., the Freeholders and the UCUA determined to re-establish regulatory flow control over that portion of Solid Waste I.D. Types 10 and 25 that are not otherwise delivered to the UCRRF pursuant to voluntary contract ("Non-Contract Waste"); and

**WHEREAS**, the UCUA, upon a determination that it was necessary for its efficient operations and the health, safety and welfare of the citizens of the County, awarded a contract to Waste Management of New Jersey, Inc. ("Waste Management") for the provision of solid waste

disposal services for the Non-Contract Waste generated within certain municipalities in the County; and

**WHEREAS**, the contract awarded to Waste Management enabled the UCUA to continue to provide safe, adequate and proper disposal services for Non-Contract Waste, subject to regulatory flow control in accordance with a Plan Amendment adopted by the Freeholders by Ordinance No. 561-2003 on February 13, 2003 and approved by NJDEP in a Certification on June 13, 2003, authorizing the implementation of regulatory waste flow control over Non-Contract Waste generated in the County; and

**WHEREAS**, in anticipation of the expiration of the agreement with Waste Management, UCUA undertook a public procurement for solid waste disposal services with regard to the Non-Contract Waste and awarded a contract to Covanta Union, Inc. (“Covanta”). The County Plan was amended on November 8, 2007 to designate the UCRRF as the facility to which all Non-Contract Waste (Types 10 and 25) generated within the County was to be directed for disposal by Covanta, pursuant to regulatory waste flow as a result of the procurement of the disposal facility in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast. The Commissioner of NJDEP issued a Certification on April 25, 2008, approving the November 8, 2007 amendment to the County Plan and the exercise of regulatory flow control for all Non-Contract Waste generated within the County; and

**WHEREAS**, the contract by and between the UCUA and NJMC terminated on or about July 1, 2004 and the UCUA, consistent with a prior determination to re-establish regulatory flow control over Non-Processible Waste in accordance with the decision of the United States District Court, District of New Jersey, Atlantic Coast Demolition & Recycling Company, Inc. v. Atlantic County Board of Chosen Freeholders, et al., entered into a contract with Waste Management through a non-discriminatory procurement and a formal amendment to the County Plan certified by NJDEP for the disposal of Non-Processible Waste as a result of a non-discriminatory procurement for disposal services for these waste types; and

**WHEREAS**, the contract with Waste Management expired on July 1, 2007 and it was necessary for the UCUA to procure and award a contract for the disposal of Non-Processible Waste in order to maintain safe, adequate and proper disposal services for the citizens of the County and for the efficient operations of the UCUA; and

**WHEREAS**, the County adopted an amendment to the County Plan on February 15, 2007 (the “February 2007 Plan Amendment”) which sought to re-affirm the County’s exercise of

regulatory flow control over all Non-Processible Waste generated within the County and designated the Delaware and Hudson Railway Company, Inc., d/b/a/ Canadian Pacific Railway located within the Oak Island Rail Yard at 91A Bay Avenue, Newark, New Jersey, 07105 (hereinafter "DHRC"), selected following a non-discriminatory procurement, as the disposal facility to which all such Non-Processible Waste shall be directed; and

**WHEREAS**, the NJDEP approved the February 2007 Plan Amendment by Certification issued on September 18, 2008 and the UCUA awarded a contract to and entered into an Agreement with DHRC for Non-Processible Waste disposal services effective January 1, 2009 and continuing through December 31, 2013; and

**WHEREAS**, following DHRC's refusal to provide Non-Processible Waste disposal services and the Authority's consequential termination of its contract with DHRC, the Authority and the County adopted an amendment to the County Plan and entered into successive agreements with the NJMC to provide for the continued uninterrupted disposal of Non-Processible Waste at the NJMC's Keegan Landfill facilities in Kearny, New Jersey (hereinafter "NJMC Keegan Landfill"), which received final approval by the NJDEP, and the latest of said agreements continues through June 18, 2016; and

**WHEREAS**, UCUA issued Bid Specifications on November 16, 2015 for the provision of disposal services for Non-Processible Waste and, in response, UCUA received a single bid on December 10, 2015 from Waste Management; and

**WHEREAS**, On December 16, 2015, UCUA awarded a contract to Waste Management, for the provision of solid waste disposal services for all Non-Processible Waste generated within the County over a term of three years commencing on June 19, 2016, and a plan amendment to incorporate the agreement with Waste Management, among other things, is pending before the NJDEP; and

**WHEREAS**, on prior occasions, the UCUA, the County, the UCOEH and NJDEP-permitted solid waste transfer station/materials recovery facility ("MRF") operators have entered into agreements providing the MRF operators with the right to accept Non-Processible Waste for the purpose of materials recovery, provided that all Residual Waste (as defined herein below) be transported thereafter to the final disposal facility designated to receive such Non-Processible Waste as set forth in the then current County Plan; and

**WHEREAS**, the UCUA, the UCOEH and the Operator (collectively, the “Parties”) desire to enter into this Agreement for materials recovery services and compliance with the County Plan (hereinafter, the “Agreement”).

**NOW, THEREFORE**, intending to be legally bound, in consideration of the mutual covenants and promises made herein and to be performed by each of the Parties hereto, and for other good and valuable consideration set forth herein, the Parties hereby agree as follows:

1. The Parties agree that, commencing on the date this Agreement is fully executed, the Operator may receive, recycle and transfer Non-Processible Waste at its MRF located at 2101 Roosevelt Avenue, South Plainfield, New Jersey, in accordance with the provisions set forth herein. It is further agreed by the Parties that the Operator shall not accept at the MRF, either as part of Non-Processible Waste loads or any other loads, putrescible Type 10 or 25 waste generated in the County except for de minimus quantities that may be mixed with loads of Non-Processible Waste. For purposes of this Agreement, a “de minimis” amount equals one percent (1%) or less of the total Non-Processible Waste received at the MRF during any given operating month. The Operator represents that the MRF is a fully-permitted MRF that is authorized by the NJDEP to accept and recycle Non-Processible Waste, and further represents that, to the best of its knowledge, the MRF is not currently in violation of the County Plan.

2. The parties agree that Non-Processible Waste may be received, transferred and recyclable materials removed therefrom at the MRF with the express provision that all of the residue that remains after removal of recyclable materials from the Non-Processible Waste at the MRF (“Residual Waste”) during a particular calendar month shall be delivered to the disposal facility or facilities designated in the then-current County Plan to receive Non-Processible Waste for disposal (“Designated Disposal Facility”), in accordance with all applicable conditions contained in the MRF’s permits, within the first seven (7) days of the following calendar month. As set forth above, the Designated Disposal Facility is currently the NJMC Keegan Landfill through June 18, 2016, and thereafter Waste Management’s transfer station/materials recovery facility in Elizabeth becomes the Designated Disposal Facility. For example, all Residual Waste from Non-Processible Waste delivered to the MRF during the month of January 2016 shall be delivered to the NJMC no later than February 7, 2016. If the seventh day of the succeeding month falls on a Sunday, the Residual Waste must be delivered to the Designated Disposal Facilities on the next business day. Residual Waste for purposes of this Agreement shall mean solid waste of the same tonnage amount and type as the Non-Processible Waste that was delivered to the MRF



for processing less those tonnage amounts of recyclable materials actually removed therefrom and actually recycled by the Operator. The Operator shall be entitled to transport the Residual Waste from the MRF to the Designated Disposal Facilities in 100 cubic yard trailers, but shall be required to coordinate with the Designated Disposal Facility in advance of delivery of the Residual Waste. As required by N.J.A.C. 7:26-2.13(c), the Operator or the Operator's transporter shall designate on its Origin and Disposal ("O&D") form that the Residual Waste originated from within Union County, but shall also indicate that the origin of such waste was from the Facility.

3. The Operator shall pay the applicable tipping fee for County-generated solid waste at the Designated Disposal Facilities for each ton, or part thereof, of Residual Waste delivered by or on behalf of Sakoutis to the Designated Disposal Facilities.

4. The Operator agrees to install, maintain and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13 et seq. In addition to all other rights of the UCUA, County and UCOEH to gain access to the Operator's facilities and records under New Jersey law, the Operator agrees to provide access to, and copies of the following records, in the manner set forth below:

(A) Upon execution of this Agreement, the Operator agrees to provide the daily records, as defined in N.J.A.C. 7:26-2.13, for the Facility as to any Non-Processible Waste received on and after the date of this Agreement, in a computerized format consistent and compatible with the UCUA's electronic tracking system, which records include (i) the date of delivery, (ii) the license plate number and NJDEP registration number(s) attributable to the vehicle/solid waste collector/hauler delivering such waste (iii) the collector/hauler's time in and time out of the facility, (iv) the specific waste type delivered, (v) the number of tons thereof, (vi) the municipality of origin and percentage of the load, (vii) the scale ticket/transaction number, (viii) all NJDEP solid waste Decal numbers affixed to each vehicle transporting the load (including cabs, trailers, and single unit vehicles), and (ix) the NJDEP Decal number for the container within which the load is being transported. Additionally, the Operator agrees to include as part of the daily records to be provided, the name of the solid waste hauler/collector making each such delivery, as it appears on the O&D form collected by the Facility at the time of such delivery. Monthly Disposal and Materials Recovery Reports required to be filed by the Facility with the NJDEP pursuant to N.J.A.C. 7:26-2.13 shall be conclusive evidence as to whether the Facility received Non-Processible Waste during such period. The Operator shall provide to the UCUA the daily record data set forth within this paragraph on no less frequent than a monthly basis via an

electronic data transfer in a format acceptable to the UCUA. Such report shall be filed no later than the fifth (5<sup>th</sup>) day of the month following any month in which Non-Processible Waste is received at the Facility.

(B) During the term of this Agreement, on a monthly basis, the Operator agrees to maintain and reproduce Facility documentation including, but not limited to, receipts, invoices, scale receipts and O&D forms, that clearly demonstrates the type and tonnage of Union County-generated waste accepted and processed at the Facility and the type and tonnage of Residual Waste disposed of at the Designated Disposal Facilities by the Facility. The Operator will provide the reproduced documentation to the UCUA by the fifth (5<sup>th</sup>) day of each month. The Operator further agrees to provide the UCUA with reasonable access during business hours and a photocopier for the purposes of inspection and/or copying documentation referenced in this section. The Operator agrees to allow UCUA inspectors to access the facility for purposes of conducting unannounced compliance inspections and monitor scale house, tipping floor and record keeping operations.

(C) During the term of this Agreement, on a monthly basis, the Operator agrees to maintain at the facility documentation including, but not limited to, receipts, invoices, and O&D forms, that clearly demonstrates the tonnage, type, and origin (by county and municipality) of recyclable materials (“Recyclable Materials”) removed from the Non-Processible Waste by the Operator at the Facility. The Operator shall also maintain such documentation identifying all end markets, manufacturers or recycling centers by specific name and location to which the Recyclable Materials have been delivered by, on behalf of, or with the consent of, the Facility, the tonnage of Recyclable Materials delivered by the Facility, the type of Recyclable Materials delivered by the Facility, and the dates of delivery for that month by the Facility. End-market contracts or agreements shall be submitted as evidence of the applicant’s ability to sell the products resulting from the proposed activities of the Facility. The Operator further agrees to provide the UCUA and UCOEH with reasonable access during normal business hours to the documentation referenced in this paragraph and a copying machine for purposes of inspection and/or copying thereof. Copies of all recycling tonnage reports shall be submitted by the applicant to a) the Union County Utilities Authority, Director of Solid Waste and Recycling Enforcement and b) the County of Union Recycling Coordinator.

(D) The UCUA and UCOEH shall have an additional opportunity to inspect all relevant records for the previous calendar quarter, required by NJDEP regulations to be maintained by the Facility, and to make copies of such records if, in the sole discretion of the UCUA and/or

UCOEH, such inspection and copying is deemed necessary to the UCUA's and UCOEH solid waste enforcement and planning efforts. The UCUA, UCOEH and the Operator shall arrange a mutually convenient schedule for inspection, which schedule shall limit visitation to a reasonable time necessary to inspect such records, taking into account the volume thereof.

(E) Compliance by the Facility with the provisions of subparagraphs (A), (B), (C) and (D) hereof, shall be deemed to be evidence of the Facility satisfying its obligation to make the daily records referred to therein available for inspection by the certified county lead agency pursuant to N.J.A.C. 7:26-2.13(b).

(F) Documentation establishing that the Facility is included in the Middlesex County District Solid Waste Management Plan.

(G) A visible notice to haulers indicating that vehicles delivering materials to the facility will be inspected and, if found to be in violation of the County Plan or this Agreement, loads will be barred from offloading.

(H) By no later than the 20<sup>th</sup> day following the reporting month, Sakoutis shall deliver a full and complete copy of its Solid Waste Facility Monthly Disposal and Materials Recovery Report for the Facility, which report shall contain all information as required by the NJDEP, on the forms mandated by the NJDEP, and otherwise as in accordance with N.J.A.C. 7:26-2.13(e).

5. This Agreement between the UCUA, UCOEH and Sakoutis shall commence on the date this Agreement is fully executed and shall terminate and thereafter be unenforceable upon any of the following events:

(A) The termination of the UCUA's existing agreement with the NJMC, and the subsequent agreement with Waste Management for the disposal of Non-Processible Waste, or any renewal or extension thereof, provided that no subsequent agreement for the disposal of Non-Processible Waste is entered into with another solid waste disposal facility or facilities following the lapse or termination of the current agreement with the NJMC for Non-Processible Waste disposal services; or

(B) The termination of the successor agreement, if any, which immediately follows the lapse or termination of the current agreement with the NJMC; or

(C) Any breach by Sakoutis of the terms of this Agreement; or

(D) At the election of any of the parties to this Agreement should a court of competent jurisdiction make a final, non-appealable determination that the County Plan's

flow control requirements governing Non-Processible Waste are invalid and/or unenforceable in whole or in relevant material part.

6. As determined by the UCUA, in the event the Operator violates any material provisions of this Agreement or any material provisions of the County Plan and/or any statutes, regulations, rules and/or ordinances regarding the exercise of solid waste flow control in the County at any time subsequent to the date of the Operator's execution of this Agreement, the UCUA, in addition to all other rights afforded to it under this Agreement and available to it by law, after written notice, may declare the Operator to be in default and may terminate this Agreement upon five (5) days written notice to Operator. In the event this Agreement is terminated by the UCUA pursuant to this paragraph, the Operator hereby agrees to comply with the County Plan as it then exists, including any waste flow directives.

7. The Operator shall use due diligence and otherwise employ its best efforts to keep apprised of any amendments to the County Plan, including, but not limited to, changes in the Approved Rate Component and the designated disposal facility for Non-Processible Waste, that may affect the terms and conditions of this Agreement and Operator's other independent obligations to comply with the County Plan.

8. Nothing in this Agreement is intended, meant, nor shall it be so interpreted by the parties, to prevent or in any way limit, the UCUA's and County's ability to, currently or prospectively, regulate solid waste flow control over all County-generated solid waste, including the Non-Processible Waste which is the subject of this Agreement. The Parties hereby acknowledge that subsequent NJDEP action or NJDEP approved Amendments to the County Plan may impact, and possibly render impossible, either or both parties' ability to perform and abide by the terms of this Agreement, or may expressly require modification of the terms of this Agreement. The parties agree that, in the event that modifications to the County Plan render portions of this agreement impossible to perform, they will engage in good faith negotiations to the extent possible under the circumstances to amend this agreement to conform with such modifications.

9. This Agreement is expressly conditioned upon any approvals currently, or which may prospectively be, required by the NJDEP or any other regulatory or enforcement authority to render this Agreement valid and enforceable. To the extent that it is required to do so, the UCUA will exercise due diligence to obtain any and all such approvals to which it is subject and the Operator will cooperate to the extent required by the UCUA or the regulatory or enforcement authority in that regard. Concurrently, to the extent that it is required to do so, the Operator will

exercise due diligence to obtain any and all such approvals to which it is subject and the UCUA will cooperate to the extent required of it by the Operator or the applicable regulatory or enforcement authority in that regard.

10. This Agreement may be usable, evidential, and/or admissible in any judicial, administrative, and/or court proceeding for purposes of enforcing the terms of this Agreement.

11. Each person executing this Agreement represents and warrants that he or she has been lawfully empowered and authorized by the respective party on whose behalf he or she is acting to so execute this Agreement.

12. This Agreement shall be binding upon the Operator, its successor(s), assigns and all those persons and entities acting in concert, combination and on behalf of the Operator. This Agreement shall also be binding on the UCUA, UCOEH and their successor(s) and assigns.

13. This Agreement constitutes the entire agreement and understanding between the parties regarding the matters covered hereby. Except as expressly set forth in this Agreement, there are no representations, warranties or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or any of its conditions or terms. This Agreement supersedes all prior oral or written understandings and agreements, and may be amended only by written instrument executed by duly authorized representatives of all parties hereto.

14. This Agreement shall become effective only upon its execution by all Parties hereto. It is understood, however, that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement.

15. This Agreement shall be governed by the laws of the State of New Jersey.

16. Notice as referenced or required under this Agreement shall be made in writing and (except for those that are delivered by hand) shall be deemed given when delivered to the postal service or national overnight mail delivery service or overnight delivery or when sent by telephone facsimile, addressed to the Party entitled to notice as listed below, or at such other address as the Party to receive the notice last may have designated for such purpose by notice given to all Parties in writing:

Union County Utilities Authority:

Daniel P. Sullivan, Executive Director  
Union County Utilities Authority  
1499 Routes 1 & 9 North  
Rahway, New Jersey 07065

Sakoutis Brothers Disposal, Inc.:

Butch Sakoutis  
Sakoutis Brothers Disposal  
2101 Roosevelt Avenue  
South Plainfield, New Jersey 07080

With a copy to:

Kraig M. Dowd, Esq.  
Weber Dowd Law, LLC  
365 Rifle Camp Road  
Woodland Park, New Jersey 07424  
(973) 200-0806 (fax)  
[kraig@weberdowdlaw.com](mailto:kraig@weberdowdlaw.com)

Union County Office of Health Management:

Health Officer  
Union County Office of Health Management  
300 North Avenue East  
Westfield, New Jersey 07090  
(908) 518-5625 (fax)

With a copy to:

Steven H. Merman, Esq.  
Assistant County Counsel  
County of Union  
Union County Administration Building  
Elizabeth, New Jersey 07207  
[smerman@ucnj.org](mailto:smerman@ucnj.org)

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release by their duly authorized representatives as of the last date set forth below:

**UNION COUNTY UTILITIES AUTHORITY**

**ATTEST:**

\_\_\_\_\_

By:

\_\_\_\_\_  
Daniel P. Sullivan  
Director, UCUA

DATED: \_\_\_\_\_

**SAKOUTIS BROTHERS DISPOSAL, INC.**

**ATTEST:**

\_\_\_\_\_

By:

\_\_\_\_\_  
(Sign Name)

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

**UNION COUNTY OFFICE OF HEALTH MANAGEMENT**

**ATTEST:**

\_\_\_\_\_

By:

\_\_\_\_\_

DATED: \_\_\_\_\_

Health Officer, UCOEH