



UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

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RESOLUTION NO.: 39-2016

DATE: April 20, 2016

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
APPROVING AND AUTHORIZING THE EXECUTION OF A SUCCESSOR
AGREEMENT WITH MERCK SHARP & DOHME CORP. PROVIDING FOR
THE DISPOSAL OF ID TYPE 27 SOLID WASTE AN ALTERNATE DISPOSAL
FACILITY CONSISTENT WITH THE UNION COUNTY DISTRICT SOLID
WASTE MANAGEMENT PLAN.**

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>	X		X			X	
<i>Criscione</i>	X		X				
<i>Jackus</i>	X		X				
<i>Kahn</i>		X					
<i>Kennedy</i>		X					
<i>People</i>	X		X				
<i>Scutari</i>	X		X				
<i>Erdos, Vice Chair</i>		X					
<i>Eastman, Chair</i>	X		X				
<i>Lombardo, Alternate No. 1</i>	X		X				X
<i>McManus, Alternate No. 2</i>	X		X				

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION OF A SUCCESSOR AGREEMENT WITH MERCK SHARP & DOHME CORP. PROVIDING FOR THE DISPOSAL OF ID TYPE 27 SOLID WASTE AN ALTERNATE DISPOSAL FACILITY CONSISTENT WITH THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN.

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. (“MUA Law”), 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 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, the UCUA, in its capacity as implementing agency for the County Plan, has previously developed, implemented and financed (through the issuance of long-term revenue bonds) a solid waste management system which included the construction of the Union County Resource Recovery Facility (“UCRRF”) to provide for the processing and disposal of all 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 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, following and pursuant to a non-discriminatory procurement consistent with Atlantic Coast; and

WHEREAS, subsequent to the re-establishment of flow control over Non-Processible Waste, and in order to respond to concerns raised by some generators as to future liability pertaining to the disposal of certain Non-Processible Waste, the UCUA recommended an amendment to the County Plan allowing pharmaceutical facilities generating ID 27 Non-Hazardous Pharmaceutical Waste in the County (the “Pharmaceutical Generators”) to continue to dispose of such waste by incineration at permitted facilities and further recommended, by Resolution No. 80-99, that implementation of such

amendment shall be accomplished through written agreements between the UCUA and the individual Pharmaceutical Generators; and

WHEREAS, by Ordinance No. 508-99, the County adopted the amendment as recommended by the UCUA (the "Pharmaceutical Plan Amendment") on December 16, 1999, and received NJDEP approval of the Pharmaceutical Plan Amendment, by administrative action, on January 20, 2000, pursuant to N.J.A.C. 7:26-6.11(f); and

WHEREAS, the County subsequently adopted amendments to the County Plan to re-affirm the County's exercise of regulatory flow control over all Non-Processible Waste generated within the County and designate, most recently, the New Jersey Meadowlands Commission - now known as the New Jersey Sports and Exposition Authority ("NJSEA") -Keegan Landfill as the disposal facility to which all such Non-Processible Waste shall be directed and the amendments to the County Plan have been certified by NJDEP; and

WHEREAS, Schering Corporation (previously a wholly owned subsidiary of Merck & Co.) was a Pharmaceutical Generator and, as such, entered into a written agreement with the UCUA in or about August 2000, and entered into an amended agreement with the UCUA in or about January 2011, in accordance with the Pharmaceutical Plan Amendment; and

WHEREAS, the most recent agreement entered into by Schering Corporation (whose former facilities as described hereinabove are now owned and operated by Merck Sharp & Dohme Corp. (hereinafter "Merck")) and the UCUA has expired and the UCUA and Merck wish to enter into a successor agreement (hereinafter the "Agreement") pursuant to the requirements of the Pharmaceutical Plan Amendment.

WHEREAS, the UCUA has determined that entering into the Agreement with Merck is necessary, will advance the purposes of the SWMA, is consistent with the County Plan, and will ensure the continuity of regulatory flow control over all Non-Processible Waste.

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 Agreement is approved in substantially the form attached hereto and the Chairman and Treasurer are hereby authorized and directed to execute the Agreement.
3. A copy of this Resolution and 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.
4. This Resolution shall take effect immediately.

PHARMACEUTICAL WASTE AGREEMENT

THIS AGREEMENT is made and entered into on this 20th day of April, 2016 by and between the **Union County Utilities Authority** (the "UCUA"), a public body corporate and politic of the State of New Jersey with principal offices at 1499 Routes 1 and 9 North, Rahway, New Jersey 07065, and **Merck Sharp & Dohme Corp.** with offices at 2015 Galloping Hill Road, Kenilworth N.J., 07033.

WITNESSETH:

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the "SWMA"), each county within the State of New Jersey is designated a solid waste management district with responsibility for the development of a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district; and

WHEREAS, the Board of Chosen Freeholders of the County of Union (the "County") has adopted the Union County District Solid Waste Management Plan, as amended from time to time (the "County Plan"); and

WHEREAS, the County has designated the UCUA as the agency responsible for implementing the County Plan; and

WHEREAS, the County has adopted a series of amendments to the County Plan, certified by the NJDEP in 1998 and 1999, re-establishing mandatory regulatory 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, following and pursuant to a non-discriminatory procurement consistent with Atlantic Coast; and

WHEREAS, the County subsequently adopted amendments to the County Plan to re-affirm the County's exercise of regulatory flow control over all Non-Processible Waste generated within the County and designate, most recently, the New Jersey Meadowlands Commission - now known as the New Jersey Sports and Exposition Authority ("NJSEA") - Keegan Landfill as the disposal facility to which all such Non-Processible Waste shall be directed and the amendments to the County Plan have been certified by NJDEP; and

WHEREAS, on December 16, 2015, UCUA awarded a contract to Waste Management of New Jersey, Inc. ("Waste Management"), for the provision of solid waste disposal services at its Elizabeth, New Jersey facilities 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, by Resolution No. 60-99, the UCUA recommended an amendment to the County Plan that would allow pharmaceutical facilities generating Non-Hazardous Pharmaceutical Waste in the County (the "Pharmaceutical Generators") to continue to dispose of such waste by incineration at permitted facilities and further recommended, by Resolution No. 80-99, that implementation of such amendment shall be accomplished through written agreements between the UCUA and the individual Pharmaceutical Generators; and

WHEREAS, by Ordinance No. 508-99, the County adopted the amendment as recommended by the UCUA (the "Pharmaceutical Plan Amendment") on December 16, 1999; and

WHEREAS, the New Jersey Department of Environmental Protection (the "NJDEP") approved the Pharmaceutical Plan Amendment, by administrative action, on January 20, 2000, pursuant to N.J.A.C. 7:26-6.11 (f); and

WHEREAS, Schering Corporation (previously a wholly owned subsidiary of Merck & Co.) was a Pharmaceutical Generator and, as such, entered into a written agreement with the UCUA in or about August 2000, and entered into an amended agreement with the UCUA in or about January 2011, in accordance with the Pharmaceutical Plan Amendment; and

WHEREAS, the most recent agreement entered into by Schering (whose former facilities as described hereinabove are now owned and operated by Merck Sharp & Dohme Corp. (hereinafter "Merck")) and the UCUA in or about January 2011 has expired and the UCUA and Merck wish to enter into this Agreement pursuant to the requirements of the Pharmaceutical Plan Amendment.

NOW, THEREFORE, based upon these premises, and in consideration of the promises and mutual covenants set forth in this Agreement, and for other good and valuable consideration, the parties hereto each binding itself and its successors and assigns, do mutually covenant, promise and agree as follows:

Section 1. Incineration at Permitted Facility(s)

A. Merck understands that Non-Hazardous Pharmaceutical Waste, as that term is defined in the Pharmaceutical Plan Amendment, constitutes Type 27 Solid Waste which, except as provided for herein, is subject to regulatory flow control in accordance with the County Plan. Merck further understands that the County Plan (1) currently designates the New Jersey Meadowlands Commission - now known as the New Jersey Sports and Exposition Authority ("NJSEA") - Keegan Landfill as the disposal facility to which all such Non-Processible Waste (which includes Type 27 solid Waste) are directed, and (2) the UCUA awarded a contract to Waste Management on December 16, 2015, for the provision of solid waste disposal services at its Elizabeth, New Jersey facilities 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.

B. As an alternative to being required to dispose of Non-Hazardous Pharmaceutical Waste at the above-described NJSEA and Waste Management facilities, Merck shall be permitted to dispose of Non-Hazardous Pharmaceutical Waste by incineration at the permitted solid waste facilities identified on the attached Exhibit 1.

C. During the term of this Agreement, Merck agrees that it shall not dispose of Non-Hazardous Pharmaceutical Waste in any manner other than incineration at the facilities listed in Section 1B above, or otherwise in accordance with the County Plan, without the prior written consent of the UCUA, which consent shall not be unreasonably withheld.

Section 2. Access to Records

A. In accordance with the schedule set forth in Section 2B, below, Merck agrees to provide the UCUA Enforcement Staff with access to, and copies of, records and documents that evidence, to the reasonable satisfaction of the UCUA, at least the following:

- (1) The number of tons of all Non-Hazardous Pharmaceutical Waste generated by Merck and disposed of by incineration for a given calendar month throughout the term of this Agreement;
- (2) The site of generation of all such Non-Hazardous Pharmaceutical Waste;
- (3) The date of shipment for disposal, name of the disposal transporter and, site of disposal by incineration of all such Non-hazardous Pharmaceutical Waste, which site must be one of the sites listed in the attached Exhibit 1.

B. Within forty-five (45) days of the end of each month, Merck shall provide the records described in Section 2A above, to the UCUA for all Non-Hazardous Pharmaceutical Waste disposed of by Merck during the subject month (for example, all such records pertaining to Non-Hazardous Pharmaceutical Waste disposed of during the month of October 2016 shall be provided to the UCUA on or before December 15, 2016).

Section 3. Payment of UCUA Rate Component.

A. Within forty-five (45) days of the end of each month, Merck shall pay the UCUA an amount equal to the UCUA's Rate Component, presently, \$29.12 per ton, multiplied by the number of tons of Non-Hazardous Pharmaceutical Waste disposed of by Merck by incineration during the subject month (for example, payment of UCUA's Rate Component for Non-Hazardous Pharmaceutical Waste disposed of during the month of October 2016 shall be provided to the UCUA on or before December 15, 2016).

B. It is expressly understood by the Parties that the UCUA may, by virtue of applicable statutory and NJDEP regulatory provisions known as the Peak Rate regulations, when necessary, modify its Rate Component that could thereby result in a total increase in the overall disposal rate for Non-Hazardous Pharmaceutical Waste in effect at that time.

C. The UCUA shall provide Notice of changes in the rate for disposal for ID 27 Solid Waste in accordance with applicable New Jersey law, rule and regulation.

D. Payment as set forth in paragraph Section 2A above shall be made via wire transfer from Merck to the UCUA for which wiring instructions are set forth in Exhibit 2 attached hereto.

Section 4. Miscellaneous.

A. Unless earlier terminated as set forth in Section 4B, this Agreement shall terminate upon the termination of the UCUA's existing Solid Waste Disposal Services Agreement with Waste Management referenced in Section 1A above.

B. In the event that Merck breaches a material provision of this Agreement, including, but not limited to, a breach of its obligation to utilize the designated site(s) set forth in Section 1B and Exhibit 1 for incineration of Non-Hazardous Pharmaceutical Waste; a breach of its obligation to provide the records referred to in Section 2, above; and/or a breach of its obligation to timely pay the UCUA Rate Component referred to in Section 3, above, the UCUA may, in its sole discretion, (i) terminate this Agreement upon 30 days written notice to Merck, and/or (ii) file an action seeking damages or other relief against Merck.

C. If this Agreement is terminated, Merck shall be immediately required to comply with all the County Plan and Union County solid waste regulatory flow control directives governing the disposal of Non-Hazardous Pharmaceutical Waste.

D. Merck shall use due diligence and otherwise employ its best efforts to keep apprised of any Amendments to the County Plan that may affect the terms and conditions of this Agreement and any of Merck's other independent obligations to comply with the County Plan.

E. In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

F. Merck agrees to indemnify, defend, and hold harmless the UCUA, and its respective officers, agents, contractors, subcontractors, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, because of bodily injury, sickness, disease or death, sustained by any person or persons or injury or damages to, or destruction of, any property directly or indirectly arising out of, relating to, or in connection with this Agreement due to, the negligence or fault of Merck, its officers, agents, servants, or employees.

G. This agreement contains the entire agreement and understanding of the parties hereto with regard to the matters specifically described in this agreement.

H. This Agreement may be executed in any number of counterparts, each of which shall be executed by the UCUA and Merck, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

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

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

K. All written notices to be provided under this Agreement by the UCUA to Merck, shall be addressed as follows: Attn: Steven Wojdyla, Director, Engineering, Merck Sharp & Dohme Corp., 2015 Galloping Hill Road, Kenilworth, NJ 07033.

L. 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 regulatory flow control over all Union County-generated Non-Processible Waste, including the Non-Hazardous Pharmaceutical Waste which is the subject of this Agreement. The Parties hereby acknowledge that subsequent 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

M. All written notices to be provided under this Agreement to the UCUA by Merck, shall be addressed as follows: Attn: Daniel P. Sullivan, Executive Director, Union County Utilities Authority, 1499 Routes 1 & 9 North, Rahway, NJ 07065.

N. Merck and the UCUA knowingly and voluntarily enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused their respective corporate seals to be hereunto affixed and attested, and have caused this Agreement to be signed by their respective officers duly authorized, and to be dated as first shown above.

ATTEST:

By: Joseph C. Kicell
Clubs Secretary

Union County Utilities Authority

By: [Signature]
Chairman

By: Samuel R. Fullwa
Treasurer
EXECUTIVE DIRECTOR

ATTEST:

By: _____

Merck Sharp & Dohme Corp.

By: _____

IN WITNESS WHEREOF, the parties have caused their respective corporate seals to be hereunto affixed and attested, and have caused this Agreement to be signed by their respective officers duly authorized, and to be dated as first shown above.

ATTEST:

By: _____,
Secretary

Union County Utilities Authority

By: _____
Chairman

By: _____
Treasurer

ATTEST:

By: STEVEN WOODY/64

Merck Sharp & Dohme Corp.

By: Steven Wojdylo

Exhibit 1

Wheelabrator Technologies, Inc.

- Baltimore, MD
- Falls Township, PA
- Millbury, MA
-
- Additional Facility

- Merck West Point, West Point, PA

Exhibit 2

Wire Instructions

Bank:	Wells Fargo Bank, N.A.
ABA Routing No.:	121000248
For Credit to Account Holder:	Union County Utilities Authority
Account Holder Address:	1499 Routes 1&9, Rahway, NJ
Account Reference:	Operating Checking Account
FFC:	Union County Utilities Authority
Account No.:	200200399459-1