



# UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

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RESOLUTION NO.: 46-2017

DATE: July 19, 2017

## RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY PROVIDING FOR THE ALTERNATE DISPOSAL OF ID TYPE 27 SOLID WASTE.

APPROVED AS TO FORM:  
Joseph C. Bodek, RMC  
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS  
 YES  NO  NONE REQUIRED  
UNION COUNTY UTILITIES AUTHORITY

By:

By:

PRESENT      ABSENT      AYE      NAY      ABSTAIN      MOTION      SECOND

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri, Treasurer</i>	X		X				
<i>Criscione</i>		X					
<i>Eastman, Secretary</i>	X		X			X	
<i>Jackus</i>	X		X				
<i>Kahn</i>	X		X				
<i>Pelletiere</i>	X		X				
<i>Scutari, Vice Chairwoman</i>		X					
<i>People, Chairman</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 AN AGREEMENT WITH CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY PROVIDING FOR THE ALTERNATE DISPOSAL OF ID TYPE 27 SOLID WASTE.**

**WHEREAS**, the Union County Utilities Authority (“UCUA”) is a public body corporate and politic of the State of New Jersey, created by the Union County Board of Chosen Freeholders (“Freeholders”) in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., by an Ordinance adopted on June 5, 1986, as amended on December 11, 1986, and 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 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 UCUA as the agency responsible for the implementation of the County Plan, pursuant to and in accordance with the SWMA, and UCUA has been charged with planning, acquiring, constructing, maintaining and operating facilities for the processing and disposal of County solid waste and/or the recovery of recyclable materials (“County System”); and

**WHEREAS**, UCUA has previously developed, implemented and financed (through the issuance of long-term revenue bonds) a solid waste management system that includes the construction and operation of the Union County Resource Recovery Facility (“UCRRF”) to provide for the processing and disposal of all processible solid waste generated within the geographic boundaries of the County; and

**WHEREAS**, 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 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 the real property and improvements upon which the UCRRF is constructed; 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, 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 Waste Management of New Jersey Inc. ("Waste Management") transfer facilities at Julia Street, Elizabeth, New Jersey 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**, Chevron Environmental Management Company (hereinafter "EMC"), a California corporation whose corporate office is located at 6001 Bollinger Canyon Road, San Ramon, CA 94583, is preparing to engage in a marine excavation project to remove sediment from the Rahway River at 2600 Marshes Dock Road in Linden, New Jersey (the "Project") that will generate significant quantities of Type 27 solid waste (non-hazardous, contaminated sediment) ("Project Waste") that will be required to be delivered to the County System for disposal; and

**WHEREAS**, due to the volume and character of the Project Waste, and to ensure the timely excavation, transportation and disposal of Project Waste so as not to unduly delay the completion of the Project in light of EMC's constraints in the timing of excavation and disposal of the material, EMC's representatives engaged the UCUA and Waste Management and requested that it be permitted to dispose of the Project Waste through delivery to an appropriately permitted alternate disposal location; and

**WHEREAS**, UCUA and EMC representatives have negotiated the terms for a proposed agreement between the Parties ("Agreement"), allowing EMC to dispose of the Project Waste at an alternate permitted facility, ensuring that proper environmental controls and appropriate handling are in place at all times up to and including the final disposal of the Project Waste, and providing for payment to the UCUA of its current debt service and administrative fee component (collectively the "rate component") for every ton of solid waste from the Project delivered for disposal to the alternate disposal facility; and

**WHEREAS**, UCUA has determined that approval of the Agreement with EMC is in UCUA's best interests and those of the citizens of the County, and is necessary for its efficient operations, will help provide for the proper environmental handling and disposal of the Project Waste and will ensure the continued implementation of regulatory flow control over all Non-Processible Wastes which include, but are not limited to, Type 27 solid 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 UCUA's Chairman and Executive Director 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 UCUA at 1499 US Highway 1 North, Rahway, New Jersey.
4. This Resolution shall take effect immediately.

## AGREEMENT

**THIS AGREEMENT** is made and entered into on this \_\_\_\_ day of July, 2017 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 **Chevron Environmental Management Company**, a California corporation, whose corporate office is located at 6001 Bollinger Canyon Road, San Ramon, CA 94583 (collectively the "Parties").

### WITNESSETH:

**WHEREAS**, Chevron Environmental Management Company (hereinafter "EMC"), is a corporation that maintains offices located at 1400 Smith Street, 33<sup>rd</sup> Floor, Houston, TX 77002; and

**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**, UCUA has previously developed, implemented and financed (through the issuance of long-term revenue bonds) a solid waste management system that includes the construction and operation of the Union County Resource Recovery Facility ("UCRRF") to provide for the processing and disposal of all processible solid waste generated within the geographic boundaries of the County; and

**WHEREAS**, 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 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 the real property and improvements upon which the UCRRF is constructed; 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, 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 on December 16, 2015, UCUA awarded a contract to Waste Management of New Jersey, Inc. for the provision of solid waste disposal services at its 864 Julia Street transfer station and materials recovery facilities in Elizabeth, New Jersey ("WMX Julia Street facility") for all Non-Processible Waste generated within the County over a term of three years, commencing on June 19, 2016, and an amendment to the County Plan has been certified by NJDEP to that effect; and

**WHEREAS**, EMC is preparing to engage in a marine excavation project to remove sediment from the Rahway River at 2600 Marshes Dock Road in Linden, New Jersey (the "Project") that will generate significant quantities of Type 27 solid waste (non-hazardous, contaminated sediment) ("Project Waste") that will be required to be delivered to the County System for disposal; and

**WHEREAS**, due to the volume and character of the Project Waste, and to ensure the timely excavation, transportation and disposal of Project Waste so as not to unduly delay the completion of the Project in light of EMC's constraints in the timing of excavation and disposal of the material, EMC's representatives engaged the UCUA and Waste Management and requested that it be permitted to dispose of the Project Waste through delivery to an appropriately permitted alternate disposal location; and

**WHEREAS**, UCUA and EMC representatives have negotiated the terms for a proposed agreement between the Parties ("Agreement"), allowing EMC to dispose of the Project Waste at an alternate permitted facility, ensuring that proper environmental controls and appropriate handling are in place at all times up to and including the final disposal of the Project Waste, and providing for payment to the UCUA of its current debt service and administrative fee component (collectively the "rate component") for every ton of solid waste from the Project delivered for disposal to the alternate disposal facility.

**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 received by the Parties, each party intending to legally bind itself and its successors and assigns, the Parties do mutually covenant, promise and agree as follows:

**Section 1. Disposal of ID 27 Solid Waste.**

- A. EMC may dispose of Project Waste at the alternate disposal facility set forth on Exhibit A to this agreement, which Project Waste may be delivered to such facility via the transporters set forth on Exhibit B attached hereto.
- B. In the event that EMC seeks to utilize for the transportation and disposal of Project Waste, either (1) a disposal facility not set forth on Exhibit A, or (2) a transporter not set forth on Exhibit B, then EMC shall provide the UCUA with fifteen (15) days advanced written notice of such proposed change in disposal facility(ies) and/or transporter(s). EMC shall not direct Project Waste to any such newly identified facility or direct delivery of any Project Waste via any such newly identified transporter until after receiving the UCUA's written consent regarding same.
- C. EMC represents that, in the event that it endeavors to utilize a disposal facility other than those set forth on Exhibit A attached hereto (or any successor disposal facility duly identified under this

Agreement), for such Project Waste, EMC shall ensure that such facility and any successor facility(ies) meets or exceeds the minimum local, regional, State and Federal statutory and regulatory standards applicable to the facility type and waste types disposed of pursuant to this Agreement; and shall promptly provide documentation of a technical and permit nature to the UCUA, if requested, demonstrating that all such applicable standards have been met.

## **Section 2. Term.**

This Agreement shall be in effect for a period beginning on the date of full execution hereof by all Parties and shall end on the earlier of (1) the date upon which all Project Waste has been removed from the project site and disposed of in accordance with this Agreement, or (2) December 31, 2017. This Agreement may be extended for an additional period, upon the mutual written agreement of the Parties.

## **Section 3. Records.**

- A. EMC shall provide the UCUA with copies of, records and documents demonstrating the following:
- (1) The number of tons of Project Waste produced as part of its operations and related Project activities, and caused to be disposed of by EMC, at any facility set forth on Exhibit A attached hereto for the period commencing as of the date of this Agreement and continuing through completion of the Project. Such records may include, but are not limited to, Origin and Destination (O&D) Forms, Manifests, Invoices, Scale Receipts, Delivery Receipts, Dump Tickets, Pull Tickets, Purchase Orders, Bills of Lading, and Proof of Delivery.
  - (2) The site of generation of ID 27 Waste produced as part of its operations and related activities.
  - (3) At a minimum, EMC shall provide to the UCUA for each separate load of Project Waste removed from the Project Site the following information: the date of each shipment, tonnage, waste type, name of the transporter, and site of disposal.
- B. The information set forth in Section 3, paragraph A(3) above shall be provided monthly by EMC to the UCUA in a form satisfactory to the UCUA, to be received no later than the seventh (7<sup>th</sup>) day of the month following any month during which Project Waste is removed from the site.

## **Section 4. Payment of UCUA Rate Component**

- A. EMC shall, by no later than 3:00 PM on the 30<sup>th</sup> day following the end of each month during which Project Waste is removed from the site, pay the UCUA an amount equal to the UCUA's current Approved Rate Component of \$29.12 per ton multiplied by the number of tons of Project Waste disposed of at a facility other than WMX Julia Street facility during the subject month. (For example: rate component payment for Project Waste disposed of at a non-WMX Julia Street facility during the month ending July 30, 2017, will be due August 30, 2017).
- B. Payment as set forth in paragraph A immediately above shall be made via wire transfer from EMC to the UCUA for which wiring instructions are set forth in Exhibit C attached hereto. The UCUA

agrees to complete and deliver to EMC in a timely manner, necessary tax forms to process payment.

- C. It is expressly understood by the Parties that the UCUA may, by virtue of applicable statutory and regulatory provisions known as the Peak Rate regulations, when necessary, modify its Approved Rate Component which would thereby result in a total increase in the overall disposal rate for ID 27 Solid Waste, as a component of Non-Processible Waste, in effect at that time.
- D. The UCUA shall, within fifteen (15) days of the effective date of any change, provide EMC, written notice, as set forth below, of changes in the rate for disposal for ID 27 Solid Waste and identify that portion attributable to the Approved Rate Component.

### **Section 5. Miscellaneous**

- A. This Agreement is expressly conditioned upon any approvals, which are currently or 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 EMC, 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, EMC, 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 EMC, or the applicable regulatory or enforcement authority in that regard.
- B. In the event that EMC, breaches a material provision of this Agreement, including a breach of its obligation to provide the records referred to in Section 3, above; and/or a breach of its obligation to pay the UCUA Approved Rate Component referred to in Section 4, above, UCUA shall serve a written notice of the violation on EMC, and EMC shall have seven (7) days from the date of receipt of the notice of violation, or such other reasonable period of time in excess of seven (7) days that is acceptable to UCUA (in its sole judgment), to cure the violation. In the event the violation has not been cured within seven (7) days of receipt of the notice of violation or such other time period consented to by UCUA, in addition to all other rights afforded to it under this Agreement and available to it by law, UCUA may, in its sole discretion, (1) terminate this Agreement upon seven (7) days written notice to EMC, and/or (2) file an action seeking damages or other relief against EMC.
- C. Regardless of the level of compliance exercised by the UCUA as required hereinabove, EMC 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, that may affect the terms and conditions of this Agreement and EMC, other independent obligations to comply with the County Plan.
- D. In the event that the UCUA breaches its obligation to provide written notice of a change in the Approved Rate Component referred to in Section 4, above, EMC, shall only be responsible for payment of the new Approved Rate Component for all Type 27 solid waste delivered by or on behalf of EMC under the terms of this Agreement subsequent to its receipt of actual written notice of such change.

- E. EMC agrees to indemnify, defend, and hold harmless the UCUA, and its respective Commissioners, officers, agents, contractors, subcontractors, servants and employees (the "Indemnified Parties"), 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 the EMC, its officers, agents, servants, or employees except to the extent that such claims are due to the reckless, negligent or intentional acts or omissions of the Indemnified Parties. Notwithstanding that UCUA has approved the disposal facility listed in Exhibit A hereto, EMC agrees to indemnify and hold harmless UCUA, its Commissioners, officers, agents, contractors, subcontractors, servants and employees from any and all claims and liabilities pertaining to the transportation and disposal of such Project Waste.
- F. 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 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.
- G. 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 Union County-generated Non-Processible Waste that 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.
- H. All written notices to be provided under this Agreement by the UCUA to EMC, shall be addressed as follows: Attn: Henry Stremlau, P.E., BCEE, Environmental Project Manager, Chevron Environmental Management Company, 1400 Smith Street, 33<sup>rd</sup> Floor, Houston, TX 77002.
- I. All written notices to be provided under this Agreement to the UCUA by EMC, shall be addressed as follows: Attn: Daniel P. Sullivan, Executive Director, Union County Utilities Authority, 1499 Routes 1 & 9 North, Rahway, NJ 07065.
- J. EMC and the UCUA knowingly and voluntarily enter into this Agreement and 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.
- K. This Agreement contains the entire agreement and understanding of the Parties with regard to the matters specifically described in this Agreement.



- L. This Agreement may be executed in any number of counterparts, each of which shall be executed by the UCUA and EMC and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.
  
- M. This Agreement shall be governed by the laws of the State of New Jersey. In the event of any claim or dispute between EMC and UCUA, the parties agree to file such claim or dispute only in the Superior Court of New Jersey, Union County, and submit to its jurisdiction, and that the laws of the State of New Jersey will govern any such claim or dispute.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

**Union County Utilities Authority**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Clifton People, Jr.  
Chairman

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel P. Sullivan  
Executive Director

**Chevron Environmental Management Company  
a California Corporation**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXHIBIT A**

**DISPOSAL FACILITY**

Fairless Landfill  
1000 New Ford Mill Road  
Morrisville, PA 19067

## **EXHIBIT B**

### **SOLID WASTE TRANSPORTERS**

#### **Horwith Trucks Inc**

P.O. Box 7, Route 329

1449 Nor-Bath Boulevard

Northampton, PA 18067

USEPA ID# PAD146714878

NJ Solid Waste Permit# 16627

Phone # : 610-261-2220

#### **Freehold Cartage**

PO Box 5010

825 Highway 33 East

Freehold, NJ 07728

USEPA ID# NJD054126164

NJ Solid Waste Permit # 15939

Phone # : 732-462-1001

## **EXHIBIT C**

### **WIRE INSTRUCTIONS**

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