

UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400
FAX (732) 382-5862

RESOLUTION NO.: 47-2016

DATE: JUNE 15, 2016

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY APPROVING AND AUTHORIZING AN ADDENDUM TO THE AUTHORITY'S AGREEMENT WITH MERCK SHARP & DOHME CORP. REGARDING THE ALTERNATE DISPOSAL OF ID TYPE 13C SOLID WASTE.

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

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY APPROVING AND AUTHORIZING AN ADDENDUM TO THE AUTHORITY'S AGREEMENT WITH MERCK SHARP & DOHME CORP. REGARDING THE ALTERNATE DISPOSAL OF ID TYPE 13C 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 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, Merck Sharp & Dohme Corp. (“Merck”), a pharmaceutical corporation that maintains corporate offices at 2000 Galloping Hill Road, Kenilworth, New Jersey, is currently engaged in a large project to demolish structures on its campus (the “Kenilworth Project”) generating significant quantities of Solid Waste Type 13C (construction and demolition debris) required to be delivered to the County System for disposal; and

WHEREAS, based upon discussions by and among representatives of UCUA, Merck, and NJSEA, and NJSEA’s expectation that it would not be able to accept all of the construction and demolition debris generated by the Kenilworth Project and comply with the terms of its NJDEP Solid Waste Facility Permit for the Keegan Landfill, Merck requested authorization from the UCUA to dispose of construction and demolition debris from its Kenilworth Project at alternate disposal sites so as not to unduly delay the completion of the Kenilworth Project; and

WHEREAS, on April 20, 2016 the UCUA adopted Resolution No. 38-2016, authorizing the UCUA to enter into an agreement with Merck (the “Agreement”), allowing Merck to dispose of the construction and demolition debris from its Kenilworth Project at alternate permitted facilities, subject to Merck paying to UCUA its current debt service and administrative fee component (collectively the “rate component”) for every ton of solid waste from the Kenilworth Project delivered for disposal to the alternate disposal facilities; and

WHEREAS, the UCUA and Merck wish to modify the term of the Agreement, by way of the attached Addendum 1, to end no earlier than August 1, 2016 or the completion of the Kenilworth Project (whichever occurs first) and to reflect the County’s designation of Waste Management’s Julia Street transfer station facility located as the final designated disposal facility for Non-processible Waste effective June 20, 2016.

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. Addendum 1 to 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 Addendum.
3. A copy of this Resolution and Addendum 1 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.

ADDENDUM 1 TO AGREEMENT

It is on this ____ day of June, 2016, agreed by and among the Union County Utilities Authority (“UCUA”) and Merck Sharp & Dohme Corp. (hereinafter “Merck”), as follows:

1. Section 2 of the Agreement (a copy of which is attached hereto) of which this Addendum shall hereby become a part, is modified and shall be replaced in its entirety as follows:

“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 site and disposed of in accordance with this Agreement, or (2) September 30, 2016. This Agreement may be extended for an additional period, upon the mutual written agreement of the Parties.”

2. With respect to all Project Waste to be removed and/or disposed of from the Kenilworth Project site on or after June 20, 2016, all references to “NJSEA” in Sections 1 through 4 of the Agreement (with the exception of the last sentence of Section 1, paragraph A) shall be deemed to refer to Waste Management’s Julia Street transfer station facility located at 864 Julia Street, Elizabeth, New Jersey.
3. No other modifications to the terms of the Agreement are authorized by this Addendum 1, other than those set forth in paragraphs 1 and 2 above. All other terms of the Agreement shall remain in full force and effect.
4. This Addendum shall become effective only upon execution by all parties hereto. It is understood, however, that the Agreement and this Addendum 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 and Addendum.

<<<<< SIGNATURE PAGE FOLLOWS >>>>>

UNION COUNTY UTILITIES AUTHORITY

Dated: _____

By: _____
Roy Eastman
Chairman

Dated: _____

By: _____
Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: _____

By: _____
Signature

Name

Title

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, New Jersey, 07033, (collectively the "Parties").

WITNESSETH:

WHEREAS, Merck Sharp & Dohme Corp. (hereinafter "Merck"), a pharmaceutical corporation that maintains corporate offices at 2015 Galloping Hill Road, Kenilworth, New Jersey; 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 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, 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, Merck is currently engaged in a large project to demolish structures on its campus at 2000 Galloping Hill Road in Kenilworth (the "Kenilworth Project") that will generate significant quantities of Solid Waste Type 13C (construction and demolition debris) that will be required to be delivered to the County System for disposal (hereinafter "Project Waste"); and

WHEREAS, based upon discussions by and among representatives of UCUA, Merck, and NJSEA, it is apparent that NJSEA will not be able to accept all of the construction and demolition debris that will be generated by the Kenilworth Project and comply with the terms of its NJDEP Solid Waste Facility Permit for the Keegan Landfill, and Merck has requested authorization from the UCUA to dispose of construction and demolition debris from its Kenilworth Project at alternate disposal sites so as not to unduly delay the completion of the Kenilworth Project; and

WHEREAS, UCUA and Merck representatives have negotiated a proposed agreement between the Parties ("Agreement"), allowing Merck to dispose of the construction and demolition debris from its Kenilworth Project at alternate permitted facilities, 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 Kenilworth Project delivered for disposal to the alternate disposal facilities; and

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 13C Solid Waste.

- A. Provided that Merck first delivers on a daily basis all Project Waste that the NJSEA has agreed to accept, Merck may dispose of Project Waste at the alternate disposal facilities set forth on Exhibit A attached hereto; which Project Waste may be delivered to such facilities via the transporters set forth on Exhibit B attached hereto. For purposes of this Agreement, the Parties acknowledge that

the NJSEA has agreed to accept a maximum of thirty (30) to forty-five (45) truck loads per day (not to exceed two-hundred ten (210) total truck loads per week) of Project Waste.

- B. In the event that Merck 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 Merck shall provide the UCUA with fifteen (15) days advanced written notice of such proposed change in disposal facility(ies) and/or transporter(s). Merck 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. Merck 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), or NJSEA, for such Project Waste, Merck 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 site and disposed of in accordance with this Agreement, (2) the commencement date of the UCUA's successor agreement with Waste Management of New Jersey as the designated final disposal facility for the disposal of all Non-Processible Waste currently expected to commence on June 19, 2016, and to which all Project Waste will then be directed at that time; or (3) July 31, 2016. The Parties shall revisit the terms of this Section, and confer with each other in good faith with respect to the end date of the Term of the Agreement, by no later than June 3, 2016 in order to determine whether or not adjustments thereto are necessary to further the purposes of this Agreement. This Agreement may be extended for an additional period, upon the mutual written agreement of the Parties.

Section 3. Records.

- A. Merck, to provide the UCUA with access to, and 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 Merck, at NJSEA and those facilities set forth on Exhibit A attached hereto for the period commencing as of the date of this Agreement and continuing through completion of the Kenilworth 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, Log Books, and Proof of Delivery.
 - (2) The site of generation of ID 13C Waste produced as part of its operations and related activities.

- (3) At a minimum, Merck shall provide to the UCUA for each separate load of Project Waste removed from the 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 2, paragraph A(3) above shall be provided weekly by Merck to the UCUA in a form satisfactory to the UCUA, to be received no later than 12:00 Noon on the Wednesday following the subject week during which Project Waste is removed from the site.
 - C. Merck shall provide to the UCUA on a monthly basis, to be received no later than 12:00 Noon on the Wednesday following the close of the subject month, a written report detailing the source separation activities for recyclable materials at the Kenilworth Project during the term of this agreement. The report required under this paragraph shall include, at a minimum, the following information for each load of recyclable material removed from the project site during the subject month:
 - (1) Material type
 - (2) Tonnage/weight
 - (3) Transporter name
 - (4) Date removed from site
 - (5) Receiving facility name & address

Section 4. Payment of UCUA Rate Component

- A. Merck shall, by no later than 3:00 PM on the 30th day following the end of each week 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 NJSEA during the subject week. (For example: rate component payment for Project Waste disposed of at a non-NJSEA facility during the week ending Saturday, April 23, 2016, will be due Monday May 23, 2016; and such Project Waste disposed of during the week ending Saturday, April 30, 2016, will be due Monday, May 30, 2016; etc.).
- B. Payment as set forth in paragraph A immediately above shall be made via wire transfer from Merck to the UCUA for which wiring instructions are set forth in Exhibit C attached hereto.
- 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 13C 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 Merck, written notice, as set forth below, of changes in the rate for disposal for ID 13C 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 Merck, 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, Merck, 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 Merck, or the applicable regulatory or enforcement authority in that regard.
- B. In the event that Merck, breaches a material provision of this Agreement, including a breach of its obligation to provide the records referred to in Section 2, above; and/or a breach of its obligation to pay the UCUA Approved Rate Component referred to in Section 3, above, the UCUA may, in its sole discretion, (1) terminate this Agreement upon seven (7) days written notice to Merck, and/or (2) file an action seeking damages or other relief against Merck.
- C. Regardless of the level of compliance exercised by the UCUA as required hereinabove, Merck 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 Merck, 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 3, above, Merck, shall only be responsible for payment of the new Approved Rate Component for all Type 13C waste delivered by or on behalf of Merck the terms of this Agreement subsequent to its receipt of actual written notice of such change.
- E. 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 the Merck, its officers, agents, servants, or employees and/or any other person or persons.
- 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,

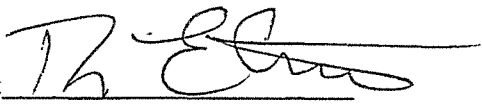
including the ID 13C Solid Waste which is the subject of this Agreement. The Parties hereby acknowledge that subsequent NJDEP approved Amendments to the County Plan may impact, and possibly render impossible, either or both Parties' ability to perform and abide by the terms of this Agreement.

- H. All written notices to be provided under this Agreement by the UCUA to Merck, shall be addressed as follows: Attn: Stephen Rupprecht, Director S&E, Merck Sharp & Dohme Corp., 2015 Galloping Hill Road, Kenilworth, NJ 07033.
- I. 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.
- J. Merck and the UCUA knowingly and voluntarily enter into 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 Merck and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.
- M. 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.
- N. This Agreement shall be governed by the Laws of the State of New Jersey.

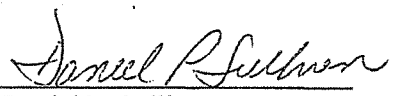
IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

Dated: 4/20/16

UNION COUNTY UTILITIES AUTHORITY

By: 
Roy Eastman
Chairman

Dated: _____

By: 
Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: _____

By: _____
Signature

Name

Title

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

UNION COUNTY UTILITIES AUTHORITY

Dated: _____

By: _____
Roy Eastman
Chairman

Dated: _____

By: _____
Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: 18 Apr 2016


By: 
Signature
STEVEN WOSYLAK
Name
DIRECTOR, ENGINEERING
Title

EXHIBIT A

DISPOSAL FACILITIES

Grand Central Sanitary Landfill (GCS)

1963 Pen Argyl Road

Pen Argyl, PA 18072

Grows North Landfill

1400 Bordentown Road

Morrisville, PA 19067

Tullytown Resource Recovery Facility (TRRF)

200 Bordentown Road

Tullytown, PA 19007

Big Run Landfill

1837 River Cities Drive

Ashland, KY 41102

JP Mascaro White Pines Landfill

515 State Route 442

Millville, PA 17846

EXHIBIT B

SOLID WASTE TRANSPORTERS

Northstar

Rebco Contracting Corp
541 Stuyvesant Ave, Lyndhurst
New Jersey 07071

Northstar

Horwith Trucks Inc
1449 North Bath Blvd
Northampton, PA 18067

J Pyskaty

New Jersey Rail Carriers
65 Central Ave
Kearny, New Jersey

Trucking Companies:

J. Pyskaty Disposal Inc., 800 Castle Road, Secaucus, NJ
A&D Logistics, Inc., 7015 Cottage Ave, Apt 3, North Bergen, NJ
Owen All Serve Co., 308 Miller Street, Newark

Clean Harbors:

J&D Trucking Inc.
3526 NW Blvd.
Vineland, NJ 08360

EXHIBIT C

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

ADDENDUM 1 TO AGREEMENT

It is on this ____ day of June, 2016, agreed by and among the Union County Utilities Authority (“UCUA”) and Merck Sharp & Dohme Corp. (hereinafter “Merck”), as follows:

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<<<<< SIGNATURE PAGE FOLLOWS >>>>>

UNION COUNTY UTILITIES AUTHORITY

Dated: _____

By: _____

Roy Eastman
Chairman

Dated: _____

By: _____

Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: _____

By: _____

Signature

Name

Title

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, New Jersey, 07033, (collectively the "Parties").

WITNESSETH:

WHEREAS, Merck Sharp & Dohme Corp. (hereinafter "Merck"), a pharmaceutical corporation that maintains corporate offices at 2015 Galloping Hill Road, Kenilworth, New Jersey; 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 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, 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, Merck is currently engaged in a large project to demolish structures on its campus at 2000 Galloping Hill Road in Kenilworth (the "Kenilworth Project") that will generate significant quantities of Solid Waste Type 13C (construction and demolition debris) that will be required to be delivered to the County System for disposal (hereinafter "Project Waste"); and

WHEREAS, based upon discussions by and among representatives of UCUA, Merck, and NJSEA, it is apparent that NJSEA will not be able to accept all of the construction and demolition debris that will be generated by the Kenilworth Project and comply with the terms of its NJDEP Solid Waste Facility Permit for the Keegan Landfill, and Merck has requested authorization from the UCUA to dispose of construction and demolition debris from its Kenilworth Project at alternate disposal sites so as not to unduly delay the completion of the Kenilworth Project; and

WHEREAS, UCUA and Merck representatives have negotiated a proposed agreement between the Parties ("Agreement"), allowing Merck to dispose of the construction and demolition debris from its Kenilworth Project at alternate permitted facilities, 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 Kenilworth Project delivered for disposal to the alternate disposal facilities; and

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 13C Solid Waste.

- A. Provided that Merck first delivers on a daily basis all Project Waste that the NJSEA has agreed to accept, Merck may dispose of Project Waste at the alternate disposal facilities set forth on Exhibit A attached hereto; which Project Waste may be delivered to such facilities via the transporters set forth on Exhibit B attached hereto. For purposes of this Agreement, the Parties acknowledge that

the NJSEA has agreed to accept a maximum of thirty (30) to forty-five (45) truck loads per day (not to exceed two-hundred ten (210) total truck loads per week) of Project Waste.

- B. In the event that Merck 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 Merck shall provide the UCUA with fifteen (15) days advanced written notice of such proposed change in disposal facility(ies) and/or transporter(s). Merck 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. Merck 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), or NJSEA, for such Project Waste, Merck 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 site and disposed of in accordance with this Agreement, (2) the commencement date of the UCUA's successor agreement with Waste Management of New Jersey as the designated final disposal facility for the disposal of all Non-Processible Waste currently expected to commence on June 19, 2016, and to which all Project Waste will then be directed at that time; or (3) July 31, 2016. The Parties shall revisit the terms of this Section, and confer with each other in good faith with respect to the end date of the Term of the Agreement, by no later than June 3, 2016 in order to determine whether or not adjustments thereto are necessary to further the purposes of this Agreement. This Agreement may be extended for an additional period, upon the mutual written agreement of the Parties.

Section 3. Records.

- A. Merck, to provide the UCUA with access to, and 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 Merck, at NJSEA and those facilities set forth on Exhibit A attached hereto for the period commencing as of the date of this Agreement and continuing through completion of the Kenilworth 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, Log Books, and Proof of Delivery.
 - (2) The site of generation of ID 13C Waste produced as part of its operations and related activities.

- (3) At a minimum, Merck shall provide to the UCUA for each separate load of Project Waste removed from the 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 2, paragraph A(3) above shall be provided weekly by Merck to the UCUA in a form satisfactory to the UCUA, to be received no later than 12:00 Noon on the Wednesday following the subject week during which Project Waste is removed from the site.
- C. Merck shall provide to the UCUA on a monthly basis, to be received no later than 12:00 Noon on the Wednesday following the close of the subject month, a written report detailing the source separation activities for recyclable materials at the Kenilworth Project during the term of this agreement. The report required under this paragraph shall include, at a minimum, the following information for each load of recyclable material removed from the project site during the subject month:
 - (1) Material type
 - (2) Tonnage/weight
 - (3) Transporter name
 - (4) Date removed from site
 - (5) Receiving facility name & address

Section 4. Payment of UCUA Rate Component

- A. Merck shall, by no later than 3:00 PM on the 30th day following the end of each week 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 NJSEA during the subject week. (For example: rate component payment for Project Waste disposed of at a non-NJSEA facility during the week ending Saturday, April 23, 2016, will be due Monday May 23, 2016; and such Project Waste disposed of during the week ending Saturday, April 30, 2016, will be due Monday, May 30, 2016; etc.).
- B. Payment as set forth in paragraph A immediately above shall be made via wire transfer from Merck to the UCUA for which wiring instructions are set forth in Exhibit C attached hereto.
- 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 13C 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 Merck, written notice, as set forth below, of changes in the rate for disposal for ID 13C 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 Merck, 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, Merck, 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 Merck, or the applicable regulatory or enforcement authority in that regard.
- B. In the event that Merck, breaches a material provision of this Agreement, including a breach of its obligation to provide the records referred to in Section 2, above; and/or a breach of its obligation to pay the UCUA Approved Rate Component referred to in Section 3, above, the UCUA may, in its sole discretion, (1) terminate this Agreement upon seven (7) days written notice to Merck, and/or (2) file an action seeking damages or other relief against Merck.
- C. Regardless of the level of compliance exercised by the UCUA as required hereinabove, Merck 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 Merck, 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 3, above, Merck, shall only be responsible for payment of the new Approved Rate Component for all Type 13C waste delivered by or on behalf of Merck the terms of this Agreement subsequent to its receipt of actual written notice of such change.
- E. 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 the Merck, its officers, agents, servants, or employees and/or any other person or persons.
- 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,


including the ID 13C Solid 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.

- H. All written notices to be provided under this Agreement by the UCUA to Merck, shall be addressed as follows: Attn: Stephen Rupprecht, Director S&E, Merck Sharp & Dohme Corp., 2015 Galloping Hill Road, Kenilworth, NJ 07033.
- I. 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.
- J. Merck and the UCUA knowingly and voluntarily enter into 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 Merck and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.
- M. 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.
- N. This Agreement shall be governed by the Laws of the State of New Jersey.

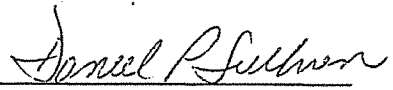
IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

Dated: 4/20/16

UNION COUNTY UTILITIES AUTHORITY

By: 
Roy Eastman
Chairman

Dated: _____

By: 
Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: _____

By: _____
Signature

Name

Title

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

UNION COUNTY UTILITIES AUTHORITY

Dated: _____

By: _____
Roy Eastman
Chairman

Dated: _____

By: _____
Daniel P. Sullivan
Executive Director

MERCK SHARP & DOHME CORP.

Dated: 18 Apr 2016


By: 
Signature
STEVEN WOSDYK
Name
DIRECTOR, ENGINEERING
Title

EXHIBIT A

DISPOSAL FACILITIES

Grand Central Sanitary Landfill (GCS)

1963 Pen Argyl Road

Pen Argyl, PA 18072

Grows North Landfill

1400 Bordentown Road

Morrisville, PA 19067

Tullytown Resource Recovery Facility (TRRF)

200 Bordentown Road

Tullytown, PA 19007

Big Run Landfill

1837 River Cities Drive

Ashland, KY 41102

JP Mascaro White Pines Landfill

515 State Route 442

Millville, PA 17846

EXHIBIT B

SOLID WASTE TRANSPORTERS

Northstar

Rebco Contracting Corp
541 Stuyvesant Ave, Lyndhurst
New Jersey 07071

Northstar

Horwith Trucks Inc
1449 North Bath Blvd
Northampton, PA 18067

J Pyskaty

New Jersey Rail Carriers
65 Central Ave
Kearny, New Jersey

Trucking Companies:

J. Pyskaty Disposal Inc., 800 Castle Road, Secaucus, NJ
A&D Logistics, Inc., 7015 Cottage Ave, Apt 3, North Bergen, NJ
Owen All Serve Co., 308 Miller Street, Newark

Clean Harbors:

J&D Trucking Inc.
3526 NW Blvd.
Vineland, NJ 08360

EXHIBIT C

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