

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made this August 15, 2014 by and between the Union County Utilities Authority ("UCUA"), Delaware and Hudson Railway Company, Inc. t/a Canadian Pacific Railway ("DHRC") and Bond Safeguard Insurance Company ("BSIC"), the signatories hereto each a "Party" and, collectively the "Parties."

WITNESSETH:

WHEREAS, on or about November 9, 2006, DHRC and UCUA entered into an agreement for DHRC to provide solid waste disposal services (the "Disposal Services Agreement"); and

WHEREAS, on or about January 1, 2009, BSIC, as surety, issued Performance Bond No. 5035255 on behalf of "Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (with TLA-Newark, LLC d/b/a Transload America acting as its authorized agent and contractor)", as principal, in favor of UCUA, as obligee (the "Bond"); and

WHEREAS, UCUA contends that DHRC breached the Disposal Services Agreement; and

WHEREAS, UCUA contends it is entitled to recovery from DHRC and BSIC under the Bond and/or the Disposal Services Agreement; and

WHEREAS, UCUA filed a lawsuit in the Superior Court of the State of New Jersey, Law Division, Union County, Docket No. UNN-L-1686-13 seeking recovery from DHRC and BSIC; and

WHEREAS, the aforementioned lawsuit was subsequently removed to the U.S. District Court for the District of New Jersey, Civil Case No. 13-cv-3677(CCC) (MF) (the "Action"); and

WHEREAS, DHRC and BSIC have denied liability to UCUA; and

WHEREAS, DHRC and BSIC asserted cross-claims against one another in the Action;
and

WHEREAS, the Parties conducted mediation with a Court appointed mediator on June 4,
2014; and

WHEREAS, the Parties have agreed to settle the disputes between and among them relating to, in any way, the Disposal Services Agreement, the Bond and the Action, subject only to approval of this Agreement by UCUA's governing body as required by law.

NOW, THEREFORE, in reliance upon the above recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The recitals above are incorporated herein by reference as if fully set forth at length.

2. The effective date of this Agreement shall be five (5) business days after approval of this Agreement by UCUA's governing body, even if this Agreement has been signed before that time by DHRC and/or BSIC. If this Agreement has been signed by DHRC and/or BSIC prior to a lawfully held meeting of the UCUA's governing body, and the Agreement is subsequently not approved by the UCUA's governing body, no Party that previously signed this Agreement shall be bound thereby and this Agreement shall be null and void and of no effect whatsoever, with all Parties therefore reserving their rights vis-à-vis one another with respect to the Disposal Services Agreement, the Bond and the Action.

3. The Parties acknowledge this Agreement must be approved by UCUA's governing body as required by law. Execution of this Agreement by UCUA shall constitute a

representation by UCUA that this Agreement has been approved and that an appropriate resolution has been lawfully passed by UCUA's governing body authorizing the execution of this Agreement by UCUA. Upon request by either DHRC or BSIC, UCUA shall provide a certified copy of any such resolution.

4. UCUA, by its counsel, shall, with reasonable promptness, advise DHRC and BSIC, by their respective counsel, of the approval or disapproval by the UCUA's governing body of this Agreement.

5. Any notices required to be given under the terms of this Agreement shall be deemed made if any Party transmits such notice via facsimile or e-mail and regular mail to counsel of record in the Action for the other Parties (Guido Weber, Esq. for UCUA, David Parry, Esq. for DHRC, and Jonathan Bondy, Esq. for BSIC).

6. Within thirty (30) days of the effective date of this Agreement, BSIC shall pay UCUA the sum of \$100,000.00, said payment to be made by check issued to the Union County Utilities Authority and delivered to counsel for UCUA in the Action.

7. Within thirty (30) days of the effective date of this Agreement, DHRC shall pay UCUA the sum of \$470,000.00, said payment to be made by check issued to the Union County Utilities Authority and delivered to counsel for UCUA in the Action.

8. If requested by either DHRC or BSIC, UCUA shall provide BSIC's counsel and DHRC's counsel with an IRS form W-9 so as to allow for BSIC and DHRC to make the payments required of them hereunder.

9. Counsel for UCUA shall advise counsel for DHRC and for BSIC when the checks referenced in Paragraphs 6 and 7 have cleared UCUA's account.

10. In the event that any Party fails to make a payment required of it hereunder, UCUA (or its counsel) may send written notice thereof to counsel for the non-paying Party, giving such non-paying Party ten (10) days to cure its failure to make payment. If upon the expiration of such ten-day period the non-paying Party has not tendered such Party's payment to UCUA's counsel, then such non-paying Party shall be deemed to be in default of its obligations under this Agreement and shall be deemed to be a "Defaulting Party."

11. If DHRC has made the payment required of it under Paragraph 7 of this Agreement, and such payment has cleared UCUA's account, but BSIC is a Defaulting Party, UCUA shall retain the payment made by DHRC and shall be entitled to, on one day's notice to counsel for the Parties, apply to the Court in which the Action is pending (the "Court") for the summary entry of judgment in favor of UCUA and against BSIC for the sum of \$100,000.00, and shall be entitled to post-judgment interest and reasonable legal fees incurred as a result of enforcing UCUA's rights hereunder and in enforcing such judgment against BSIC.

12. If BSIC has made the payment required of it under Paragraph 6 of this Agreement, and such payment has cleared UCUA's account, but DHRC is a Defaulting Party, then UCUA, in its sole and absolute discretion, shall either (a) retain the payment made by BSIC and, on one day's notice to counsel for the Parties, apply to the Court for the summary entry of judgment in favor of UCUA and against DHRC for the sum of \$470,000.00, and shall be entitled to post-judgment interest and reasonable legal fees incurred as a result of enforcing UCUA's rights hereunder and in enforcing such judgment against DHRC, or (b) declare this Agreement to be void *ab initio* and proceed with the Action as though this Agreement had never been entered into by the parties, provided only that UCUA (i) has advised counsel for the Parties of its election of remedies under this paragraph within ten (10) days of DHRC's becoming a

Defaulting Party, and (ii) returned to BSIC any payments previously made by BSIC to UCUA pursuant to this Agreement.

13. If both DHRC and BSIC have both made the payments, in good funds, required of them hereunder, then UCUA forever releases, relinquishes, acquits, waives and forever discharges DHRC and BSIC, and their respective members, corporate parents, subsidiaries, affiliates, officers, agents, representatives, heirs, executors, devices and/or assigns from any and all claims, rights, demands, actions or causes of action, known or unknown, asserted or unasserted, of whatsoever kind or nature that UCUA may have, has or may ever have which arise out of or relate in any way to the Disposal Services Agreement, the Bond and the Action, including any such claims which are attributable to either DHRC and/or BSIC as a result of any action or inaction taken by TLA-Newark, LLC and/or TransLoad America, Inc.

14. If DHRC has made the payment required of it hereunder, but BSIC is a Defaulting Party, then the release described in Paragraph 13 from UCUA shall extend only to DHRC.

15. If BSIC has made the payment required of it hereunder, but DHRC is a Defaulting Party, then the release described in Paragraph 13 from UCUA shall extend only to BSIC, unless UCUA declares this Agreement to be void *ab initio* in accordance with Paragraph 12 of this Agreement, in which event such release in favor of BSIC shall also be void *ab initio*. If, however, UCUA exercises option (a) as set forth in Paragraph 12 and retains the payment made by BSIC, the release from UCUA to BSIC remains in full force and effect.

16. As of the effective date of this Agreement, BSIC and DHRC mutually release one another, and their respective members, corporate parents, subsidiaries, affiliates, officers, agents, representatives, heirs, executors, devices and/or assigns from any and all claims, rights, demands, actions or causes of action, known or unknown, asserted or unasserted, of whatsoever kind or

nature that either BSIC and/or DHRC may have, has or may ever have against one another which arise out of or relate in any way to the Disposal Services Agreement, the Bond and the Action.

17. If BSIC is a Defaulting Party and DHRC is not a Defaulting Party, the mutual releases described in Paragraph 16 remain in full force and effect. If, however, (a) DHRC is a Defaulting Party and BSIC is not a Defaulting Party, and (b) UCUA elects to reinstate the Action in accordance with Paragraph 12, the release from BSIC to DHRC (but not the release from DHRC to BSIC) is deemed to be void *ab initio*.

18. If both DHRC and BSIC have made the payments required of them hereunder, then within ten (10) days of said payments clearing UCUA's account, UCUA shall deliver to BSIC's counsel the original Bond.

19. If both DHRC and BSIC have made the payments, in good funds, required of them hereunder, then within 15 days of delivery to UCUA's counsel of the latter of the two payments required hereunder, counsel for the Parties shall execute and submit to the Court a Stipulation of Dismissal with Prejudice, which shall serve to dismiss the action with prejudice and without an award of costs or attorneys' fees to any Party.

20. If BSIC is a Defaulting Party and DHRC is not, then within 15 days of BSIC's becoming a Defaulting Party, counsel for the Parties shall execute and submit to the Court a Stipulation of Dismissal with Prejudice, which shall serve to dismiss the action with prejudice as to DHRC only, including any cross-claims between DHRC and BSIC, without an award of costs or attorneys' fees to any Party.

21. If DHRC is a Defaulting Party and BSIC is not, then within 15 days of DHRC's becoming a Defaulting Party, counsel for the Parties shall execute and submit to the Court a Stipulation of Dismissal with Prejudice, which shall serve to dismiss the action with prejudice as

to BSIC only, including any cross-claims between DHRC and BSIC, without an award of costs or attorneys' fees to any Party; however, if UCUA has elected, in accordance with Paragraph 12, to declare this Agreement void *ab initio*, then the Action shall proceed as if this Agreement had never been executed and no stipulation of dismissal of any kind shall be filed.

22. Thus Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. Any modification of this Agreement shall be void unless contained in a written document executed by the Parties.

23. Any disputes arising out of this Agreement shall be resolved in the Court and will be interpreted in accordance with the laws of the State of New Jersey, without any consideration given to conflict of law principles. All Parties consent to the jurisdiction of the Court for the purposes of adjudicating any disputes relating to this Agreement. THE PARTIES EACH IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT.

24. In the event that any provision of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

25. It is understood and agreed by the Parties that this Agreement shall be construed without any regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

26. Each Party represents it has (i) read this Agreement, (ii) had the opportunity to confer with legal counsel concerning its terms, and (iii) agrees to be bound by its terms and

conditions. The Parties further agree that each Party has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

27. Nothing herein shall serve to amend or alter any prior agreements that any of the Parties have made with anyone else not a party to this Agreement.

28. To the extent not otherwise expressly released, BSIC and DHRC each expressly reserve any claims either may have against TLA-Newark, LLC and/or TransLoad America, Inc.

29. This Agreement binds the parties and their respective successors and assigns.


30. This Agreement shall be executed by an officer of each Party.

31. This Agreement may be executed in counterparts, and any number of duplicate originals, all of which shall constitute one and the same document. The executed Agreement may be delivered by facsimile or electronic mail. Counterparts and duplicate originals shall be deemed original instruments, and facsimile or electronic signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.


Union County Utilities Authority

Bond Safeguard Insurance Company

By: 
Name: Daniel P. Sullivan
Title: Executive Director

By: 
Name: DAVID CAMPBELL
Title: PRESIDENT

Delaware and Hudson Railway Company, Inc.

By: 
Name: William M. Tuttle
Title: Vice President Corporate