



UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

FAX (732) 382-5862

RESOLUTION NO.: 82-2015

DATED: December 16, 2015

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY RECOMMENDING AN AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) INCLUDE THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED FOR DISPOSAL, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND WASTE MANAGEMENT OF NEW JERSEY, INC. FOR THE PROVISION DISPOSAL SERVICES FOR SOLID WASTE TYPES 13, 13C, 23 AND 27, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

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

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

By: Joseph C. Bodek

By: [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>	✓		✓			✓	
<i>Criscione</i>		✓					
<i>Jackus</i>	✓		✓				
<i>Kahn</i>	✓		✓		✓		
<i>Kennedy (Secretary)</i>	✓		✓				
<i>People (Treasurer)</i>	✓		✓				
<i>Scutari</i>		✓					
<i>Erdos (Vice-chair)</i>	✓		✓				✓
<i>Eastman (Chairman)</i>	✓		✓				
<i>Bonanno (Alternate)</i>	✓		✓				
<i>Lombardo, (Alternate)</i>	✓		✓				

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY RECOMMENDING AN AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) INCLUDE THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED FOR DISPOSAL, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND WASTE MANAGEMENT OF NEW JERSEY, INC. FOR THE PROVISION DISPOSAL SERVICES FOR SOLID WASTE TYPES 13, 13C, 23 AND 27, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the "Act"), 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 County of Union ("County") has previously developed the Union County District Solid Waste Management Plan (the "County Plan") in accordance with the Act for the purpose of, among other things, managing the disposal and/or recycling of solid waste generated within the County; and

WHEREAS, the Union County Board of Chosen Freeholders ("Freeholders") has designated the Union County Utilities Authority (the "Authority") as implementing agency for the County Plan, in accordance with the Act; and

WHEREAS, the County Plan was amended 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") to, among other things, define the County's disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25, and including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the Union County Resource Recovery Facility (the "UCRRF") and the real property and improvements upon which the UCRRF is constructed, and re-affirm the County's disposal strategy, based upon regulatory flow control, as to Solid Waste Types 13 (including 13C), 23 and 27 generated in the County ("Non-Processible Waste"); and

WHEREAS, the County Plan was further amended on May 21, 1998 (the "May Plan Amendment"), in pertinent part, to re-establish regulatory flow control over Non-Processible Waste, pursuant to a public, non-discriminatory procurement in accordance with Atlantic Coast; and

WHEREAS, by Certification of the New Jersey Department of Environmental Protection ("NJDEP") on July 20, 1998, the May Plan Amendment was approved with modification contingent upon receipt and approval by the NJDEP of a subsequent Plan Amendment documenting the completion of a non-discriminatory procurement process and award of non-discriminatory bid contracts to provide for recycling and disposal of Non-Processible Waste and

WHEREAS, the Authority subsequently completed a public procurement process and awarded a non-discriminatory bid contract to the Hackensack Meadowlands Development Commission ("HMDC") as the lowest responsible bidder for the recycling and disposal of Non-Processible Waste; and

WHEREAS, as a result of the contract award to the HMDC and in accordance with the NJDEP's July 20, 1998 Certification, the Authority recommended a Plan Amendment to the Freeholders for consideration, which was adopted by the County and approved by NJDEP; and

WHEREAS, in anticipation of the expiration of the contract with the HMDC, the Authority undertook a public procurement process in 2003 and awarded a non-discriminatory bid contract to Waste Management of New Jersey, Inc. ("WMI") as the lowest responsible bidder for the disposal of Non-Processible Waste; and

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

WHEREAS, on September 25, 2006, the Authority issued Bid Specifications for the provision of disposal services for Non-Processible Waste and, in response to said Bid Specifications, the Authority received six bids from various entities in the solid waste disposal business, with the lowest ostensible bidder being the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway Inc. ("Canadian Pacific") and, on November 9, 2006, awarded a contract to Canadian Pacific at the prices bid as the lowest complying and responsible bidder, in accordance with the Local Public Contracts Law, for the provision of solid waste disposal services for Non-Processible Waste; and

WHEREAS, on or about December 28, 2006, WMI filed suit in the Superior Court of New Jersey, Law Division, against the Authority, challenging the bid award to Canadian Pacific, in the matter entitled Waste Management of New Jersey, Inc. v. Union County Utilities Authority, et als., Docket No. UNN-L-4449-06; and

WHEREAS, the County adopted an amendment to the County Plan on February 15, 2007 (the "February 2007 Plan Amendment") that re-affirmed the County's exercise of regulatory flow control over all Non-Processible Waste and, as a result of a non-discriminatory procurement process, designated Canadian Pacific, located within the Oak Island Rail Yard at 91A Bay Avenue, Newark, New Jersey, 07105 (the "Rail Facility"), as the disposal facility to which all such Non-Processible Waste was directed; and

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

WHEREAS, in communications with General Counsel for the Authority, Canadian Pacific advised the Authority that it had filed for Chapter 7 Bankruptcy on June 19, 2012 in the United States Bankruptcy Court for the District of New Jersey, Case No.: 12-25683, could not accept any solid waste for processing under the agreement with the Authority, and that it had "shut the gates" to the Rail Facility; and

WHEREAS, the failure of Canadian Pacific to perform the services required constituted a material breach of the agreement for Non-Processible disposal services, and the closure of the Rail Facility compelled the Authority to take immediate, interim action to make available to solid waste haulers in the County appropriate solid waste facilities in order to preserve the public health, safety and welfare; and

WHEREAS, the Authority expeditiously engaged in negotiations and entered into an agreement with the New Jersey Meadowlands Commission ("NJMC") as to the terms for a possible emergent interim agreement for the provision of disposal services for Non-Processible Waste, for a period not exceeding 12-months commencing no earlier than June 21, 2012 ("Interim NJMC Agreement"); and

WHEREAS, on July 19, 2012, the Freeholders formally adopted an amendment to the County Plan to incorporate the Interim NJMC Agreement and its inclusion in the County Plan enabled the Authority to ensure regulatory flow control over Non-Processible Waste on an interim basis and provide for uninterrupted disposal of such waste generated within the County while the Authority initiated the process of preparing for a public non-discriminatory procurement of long-term disposal services for Non-Processible Waste. Pursuant to the Interim

NJMC Agreement and NJDEP's December 10, 2012 Certification of an amendment to the County Plan, all Non-Processible Waste was directed to the NJMC Keegan Landfill and related disposal facilities; and

WHEREAS, on May 3, 2013, the UCUA issued Bid Specifications for the provision of disposal services for Non-Processible Waste and, in response to said Bid Specifications, on June 7, 2013, received bids from the following companies involved in the solid waste disposal industry: Advanced Environmental Recycling, Inc. and WMI; and

WHEREAS, subsequently, the Authority, in an attempt to obtain the most cost-efficient and effective services for the disposal of Non-Processible Waste, engaged in negotiations and entered into an agreement with NJMC for the provision of disposal services for Non-Processible Waste, for a period of thirty-six months commencing on July 18, 2013, at the rate of \$55 per ton, which rate was substantially lower than the rates received through public bidding for the services; and

WHEREAS, pursuant to a plan amendment adopted by the Union County Board of Chosen Freeholders on July 19, 2012 and approved by Certification of NJDEP issued on December 10, 2012, the NJMC Facilities were included in the County Plan; and

WHEREAS, in anticipation of the closure of the NJMC disposal facilities in June 2016, the Authority issued Bid Specifications on November 15, 2015 for the provision of disposal services for Non-Processible Waste; and

WHEREAS, in response to Bid Specifications, on December 10, 2015, the Authority received a single bid from WMI; and

WHEREAS, by resolution duly adopted on December 16, 2015, the Authority awarded a contract for a period of three years to WMI for the provision of disposal services for Non-Processible Waste; and

WHEREAS, under the Solid Waste Disposal Services Agreement, all Non-Processible Waste will be directed to the WMI disposal facilities in Elizabeth, New Jersey ("WMI Facilities"); and

WHEREAS, the Solid Waste Disposal Services Agreement results in the continued provision of disposal services for Non-Processible Waste at per ton rates that are competitive in the solid waste marketplace; and

WHEREAS, the Authority has determined that the Solid Waste Disposal Services Agreement will advance the purposes of the Act and fulfill its responsibility as the implementing agency for the County Plan, will ensure the continuity of regulatory flow control over Non-Processible Waste, and will result in the provision of Non-Processible Waste disposal services at the lowest possible rates; and

WHEREAS, the Authority desires to recommend a formal amendment to the County Plan (appended hereto as Appendix A) that incorporates into the County Plan the Solid Waste Disposal Services Agreement with WMI for the provision of disposal services for Non-Processible Waste, for a period of three years, commencing as of June 20, 2016; and

WHEREAS, the Solid Waste Disposal Services Agreement will not otherwise alter the relationship between materials recovery facilities that have entered into an agreement with the Authority, provided that each materials recovery facility continues to deliver residue after recycling to the WMI Facilities for disposal and pay the Authority the applicable tipping fee for each ton of residue; and

WHEREAS, the procurement of capacity for the proper disposal of Non-Processible Waste is an issue that significantly affects the health, safety and welfare of the citizens of the County;

NOW, THEREFORE, BE IT RESOLVED by the Union County Utilities Authority that:

The aforesaid recitals are incorporated herein as though fully set forth at length.

2. The Authority hereby recommends that the Union County Board of Chosen Freeholders adopt a formal amendment to the Union County District Solid Waste Management Plan (appended hereto as Appendix A) that, among other things, incorporates the Solid Waste Disposal Services Agreement with Waste Management of New Jersey, Inc. for the provision of disposal services for Non-Processible Waste, for a period of three years, commencing as of June 20, 2016.
3. The Authority hereby authorizes and directs its Executive Director and/or its Special Counsel to forward a copy of this Resolution and all other supporting materials to the Union County Board of Chosen Freeholders in accordance with the Solid Waste Management Act.
4. A copy of this Resolution, together with a copy of the executed contract, shall be forwarded to the Clerk of the County for public inspection, and this Resolution and contract authorized hereunder shall also available, upon execution by the parties, for public inspection at the offices of the Authority at 1499 Routes 1 & 9 North, Rahway, New Jersey.
5. This Resolution shall take effect immediately.

AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

Recommended by the
Union County Utilities Authority
December 16, 2015

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) INCLUDE THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED FOR DISPOSAL, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND WASTE MANAGEMENT OF NEW JERSEY, INC. FOR THE PROVISION DISPOSAL SERVICES FOR SOLID WASTE TYPES 13, 13C, 23 AND 27, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

I. INTRODUCTION

The Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.*, in pertinent part, designates each of the State's twenty-one (21) counties and the Hackensack Meadowlands Development Commission (now known as the New Jersey Meadowlands Commission) as a solid waste management district and further requires that each solid waste management district (including the County of Union) develop a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district. The Union County District Solid Waste Management Plan (the "County Plan") was approved, with modifications, by the Department of Environmental Protection ("NJDEP") on August 13, 1980, and has since been amended and modified from time to time, including the designation of the Union County Utilities Authority ("UCUA") as the implementing agency for the County Plan.

The County Plan was amended on December 18, 1997, 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") to, among other things define the County's new disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25 ("Contract Waste"), and including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the Union County Resource Recovery Facility (the "UCRRF") and the real property and improvements upon which the UCRRF is constructed (collectively, the "System Restructuring"), and re-affirm the County's disposal strategy, based upon regulatory flow control, as to Solid Waste Types 13, 13C, 23 and 27.

The December 18, 1997 Plan Amendment was approved in part (as the System Restructuring), modified in part (as to the re-establishment of regulatory flow control as to Solid Waste Types 13, 13C, 23 and 27), and remanded in part (as to certain matters relating to the EIC), by the NJDEP's Certification dated April 30, 1998. The Certification rejected the County's re-establishment of regulatory flow control as to Types 13, 13C, 23 and 27 on the grounds that the procurement process resulting in the initial selection of the J&J Facilities and Linden Landfill had not met all of the requirements for re-establishing regulatory waste flow pursuant to Atlantic Coast (i.e., that it was open, competitive and did not discriminate against interstate commerce).

The County Plan was amended and clarified on March 11, 1999 and June 16, 1999, respectively, and approved by the NJDEP on June 1, 1999 and June 29, 1999, to, in pertinent part, direct all solid waste Types 13, 13C, 23 and 27 generated in the County of Union, to the Hackensack Meadowlands Development Commission's ("HMDC") Solid Waste Transfer Station and Materials Recovery Facility, located at 100 Baler Boulevard, North Arlington, New Jersey for recycling and to the HMDC 1-E North Area Landfill, located at 100 Baler Boulevard, North Arlington, New Jersey for the disposal of residue remaining after such recycling of solid waste Types 13, 13C, 23 and 27 Solid Waste generated within Union County, all pursuant to a non-discriminatory procurement in accordance with Atlantic Coast.

The County Plan was subsequently amended on June 17, 2004, and approved by NJDEP on October 25, 2004, to direct all solid waste Types 13, 13C, 23 and 27 generated in the County of Union, to the Waste Management of New Jersey, Inc. ("WMI") transfer stations, located in Elizabeth and Linden, New Jersey, for recycling and disposal of residue remaining after such recycling of solid waste Types 13, 13C, 23 and 27 Solid Waste generated within Union County, all pursuant to a non-discriminatory procurement in accordance with Atlantic Coast.

As a result of the UCUA's non-discriminatory procurement of solid waste disposal services with regard to the Non-Processible Waste, the County Plan was amended on February 15, 2007 to designate the transfer station owned and operated by the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway Inc. ("Canadian Pacific") in the City of Newark as the facility to which Solid Waste Types 13, 13C, 23 and 27 generated within the County of Union ("Non-Processible Waste") were to be directed for recycling and disposal pursuant to regulatory waste flow as a result of the procurement of the disposal facilities in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast.

Subsequently, a complaint was filed on December 26, 2006 by WMI in the Superior Court of New Jersey, Law Division, Union County (Waste Management of New Jersey, Inc. v. Union County Utilities Authority, et als., Docket No. UNN-L-4449-06), challenging the contract award by the UCUA to Canadian Pacific. The Honorable Marianne Espinosa, J.S.C., issued a decision on May 25, 2007 permanently enjoining the UCUA from implementing its contract award to Canadian Pacific. An appeal of the decision was filed with the Superior Court of New Jersey, Appellate Division, and on April 7, 2008, the Appellate Division rendered a decision, vacating the permanent injunction and remanding the matter back to the Superior Court, Law Division for further proceedings. In the Superior Court, the parties to the proceeding agreed that procedurally the next step was to give NJDEP the opportunity to consider the Canadian Pacific contract and plan amendment. NJDEP approved the February 2007 Plan Amendment by Certification issued on September 18, 2008, and the UCUA awarded a contract to and entered into an agreement with Canadian Pacific for Non-Processible Waste disposal services effective January 1, 2009 and continuing through December 31, 2013 (the "CP Disposal Services Agreement").

Authorized agents and operators of the Facility, TransLoad America, Inc. and TLA Newark, LLC (collectively "TLA"), notified the UCUA on Friday, June 15, 2012, for the first time that TLA could not accept any solid waste for processing under the CP Disposal Services Agreement and that it had "shut the gates" to the Canadian Pacific Facility. During communications with General Counsel for the UCUA, TLA advised the UCUA that it had filed for Chapter 7 Bankruptcy on June 19, 2012 in the United States Bankruptcy Court for the District of New Jersey, Case No.: 12-25683. In subsequent communications with the UCUA, Canadian Pacific acknowledged that TLA was its sole operator of the Facility, that TLA was apparently insolvent, and that at this time DHRC had no means by which to re-commence performance of the CP Disposal Services Agreement.

The failure of Canadian Pacific and TLA to perform the services required under the CP Disposal Services Agreement constituted a material breach of the agreement, and the breach of the agreement compelled the UCUA to take immediate, interim action to make available to solid waste haulers in the County appropriate solid waste facilities due to the closure of Contractor's Facility in order to preserve the public health, safety and welfare. The UCUA expeditiously engaged in negotiations with the New Jersey Meadowlands Commission ("NJMC") as to the terms for a possible emergent interim agreement for the provision of disposal services for Non-Processible Waste, for a period not exceeding 12-months commencing no earlier than June 21, 2012, at the rate of \$52 per ton, which together with the UCUA's current rate component of \$29.12, equals a total tipping fee of \$81.12 per ton ("Interim NJMC Agreement").

After a subsequent approval of the Interim NJMC Agreement by the UCUA, on July 26, 2012 the Freeholders formally adopted an amendment to the County Plan to incorporate the Interim NJMC Agreement. The Interim NJMC Agreement and its inclusion in the County Plan enabled the UCUA to ensure adequate flow control over Non-Processible Waste on an interim basis and provide for uninterrupted disposal of such waste generated within the County while the UCUA undertook a public, non-discriminatory procurement of long-term disposal services for Non-Processible Waste. Pursuant to the Interim NJMC Agreement and NJDEP's Certification of an amendment to the County Plan, all Non-Processible Waste is directed to the NJMC Keegan Landfill and disposal facilities.

The Plan Amendment reaffirmed the prior inclusion in the County Plan of the landfill and disposal facilities owned and operated by the NJMC in Kearny, New Jersey, as the facilities to which Non-Processible Waste are directed for recycling and disposal pursuant to regulatory waste flow, consistent with the holdings of

the United States Supreme Court in Atlantic Coast and United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007) ("Oneida-Herkimer"), and a Solid Waste Services Agreement entered into between the UCUA and the NJMC pursuant to and in accordance with the Local Public Contracts Law. The NJDEP issued a Certification of the July 2012 Plan Amendment on December 12, 2012, approving both the Agreement with NJMC and inclusion in the County Plan of the NJMC Keegan Landfill.

On May 3, 2013, the UCUA issued Bid Specifications for the provision of disposal services for Non-Processible Waste and, in response, received bids on June 7, 2013, from the following companies involved in the solid waste disposal industry: Advanced Environmental Recycling, Inc. and WMI. In an effort to obtain the most cost-efficient and effective services for the disposal of Non-Processible Waste, entered into negotiations with the NJMC and obtained the following per ton pricing: Year 1 - \$57.00; Year 2 - \$59.00; and Year 3 - \$60.00. The pricing negotiated with NJMC is more than \$10 per ton less expensive in each year than the bids received from Advanced Environmental Recycling, Inc. and Waste Management of New Jersey, Inc. The UCUA also determined that utilization of NJMC for disposal services will provide continuity of such services within the County system since June 2012.

The Freeholders formally adopted an amendment to the County Plan on December 5, 2013 to incorporate the Solid Waste Disposal Agreement with NJMC. The NJMC Agreement and its inclusion in the County Plan enabled UCUA to ensure adequate flow control over Non-Processible Waste and provide for uninterrupted disposal of such waste generated within the County. The Plan Amendment reaffirmed the prior inclusion in the County Plan of the landfill and disposal facilities owned and operated by the NJMC in Kearny, New Jersey, as the facilities to which Non-Processible Waste are directed for recycling and disposal pursuant to regulatory waste flow, consistent with the holdings of the United States Supreme Court in Atlantic Coast and Oneida-Herkimer, and the Agreement entered into between the UCUA and the NJMC. Pursuant to the NJMC Agreement and NJDEP's March 26, 2014 Certification of Plan Amendment, all Non-Processible Waste is directed to the NJMC Keegan Landfill and disposal facilities through June 19, 2016.

In anticipation of the closure of the NJMC disposal facilities in June 2016, UCUA issued Bid Specifications on November 15, 2015 for the provision of disposal services for Non-Processible Waste. The Authority received a single bid from WMI on December 10, 2015 in response to Bid Specifications. By resolution duly adopted on December 16, 2015, the Authority awarded a contract for a period of three years to WMI, as the lowest, complying and responsible bidder, for the provision of disposal services for Non-Processible Waste. Under the Solid Waste Disposal Services Agreement, all Non-Processible Waste will be directed to the WMI disposal facilities on Julia Street, Elizabeth, New Jersey.

As described below, this Plan Amendment is intended to supplement the prior plan amendments that have been adopted since the decision of the federal court in Atlantic Coast. The purpose of this Plan Amendment is to include the disposal facilities owned and operated by WMI in Elizabeth, New Jersey, as the facilities to which all Non-Processible Waste is to be directed for recycling and disposal pursuant to regulatory waste flow control as a result of the open, competitive, non-discriminatory and constitutionally-permissible procurement conducted by the UCUA, consistent with Atlantic Coast, and a Solid Waste Disposal Services Agreement entered into by the UCUA and WMI, pursuant to and in accordance with the Local Public Contracts Law.

II. THE CONTINUATION OF REGULATORY FLOW CONTROL OVER NON-PROCESSIBLE WASTE AS A RESULT OF A CONSTITUTIONALLY ACCEPTABLE, PUBLIC, NON-DISCRIMINATORY PROCUREMENT IN ACCORDANCE WITH THE SOLID WASTE MANAGEMENT ACT AND ATLANTIC COAST, AND THE EXECUTION OF A SOLID WASTE DISPOSAL SERVICES AGREEMENT WITH WASTE MANAGEMENT OF NEW JERSEY, INC. CONSISTENT WITH THE LOCAL PUBLIC CONTRACTS LAW

Through this Plan Amendment, the County intends to include the WMI disposal facilities in Elizabeth, New Jersey, as the facilities to which all such Non-Processible Waste will be directed for recycling and disposal. Having issued Bid Specifications for the Provision of Disposal Services for Types 13, 13C, 23 and 27 Solid Waste Generated in Union County on November 16, 2015, and, in response to the Bid Specifications, received a bid from WMI on December 10, 2015, and having advertised the solicitation of bids locally in The Local Source, throughout the State of New Jersey utilizing The Star Ledger, and nationally utilizing Waste Recycling News, a trade magazine circulated to solid waste industries and related entities throughout the country, the procurement was open to all bidders, regardless of geographical location, and was, in the County's view, consistent with the requirements set forth in Atlantic Coast.

The award of a contract to WMI complies with the Local Public Contracts Law as it is awarded to the lowest, complying and responsible bidder as a result of a public, non-discriminatory procurement of solid waste disposal services, in accordance with the requirements of the Solid Waste Management Act and Atlantic Coast. Having been awarded by the UCUA in its role as the implementing agency for the County Plan, the County intends to direct all Non-Processible Waste to the WMI facilities in Elizabeth, New Jersey, for disposal. The implementation of the contract is necessary to ensure the continuous provision of solid waste disposal services in Union County at the lowest possible cost and is, therefore, in the best interests of the citizens of Union County.

Accordingly, based upon the terms and provisions of the public, non-discriminatory procurement by the UCUA of solid waste disposal services, the award of a contract and authorization to execute the Solid Waste Disposal Services Agreement with WMI, the County shall redirect Non-Processible Waste for disposal to the WMI disposal facilities, pursuant to the terms of the Solid Waste Services Agreement, as more fully described in Section IV of this Plan Amendment.

III. INCLUSION OF SOLID WASTE DISPOSAL SERVICES AGREEMENT AWARDED BY UCUA TO WMI AND THE INCLUSION OF THE WMI DISPOSAL FACILITIES INTO THE COUNTY PLAN FOR DISPOSAL OF NON-PROCESSIBLE WASTE

In order to ensure continuous Non-Processible Waste disposal services to the citizens of Union County and also provide for effective waste flow control over all Non-Processible Waste, the UCUA conducted an open, competitive, non-discriminatory and constitutionally-permissible procurement, consistent with the requirements of Atlantic Coast, and awarded a contract to WMI as the lowest, complying and responsible bidder for the terms for an agreement for the provision of disposal services for Non-Processible Waste, for a period of three years commencing as of July 20, 2016. The implementation of the terms of the Solid Waste Disposal Services Agreement with WMI is necessary to ensure the continuous provision of solid waste disposal services in Union County at the lowest possible cost and is, therefore, in the best interests of the citizens of Union County.

Therefore, the Solid Waste Disposal Services Agreement by and between the UCUA and WMI for Non-Processible Waste disposal services is hereby included in the County Plan. The inclusion of the WMI disposal facilities on Julia Street, Elizabeth, New Jersey, in accordance with the terms of the Solid Waste Disposal Services Agreement awarded by the UCUA is hereby authorized as the County's designated disposal facility for Non-Processible Waste.

IV. WASTE FLOW DIRECTIVES

As a result of non-discriminatory procurement previously undertaken by the UCUA with respect to solid waste disposal services for all Non-Processible Waste as set forth herein decision consistent with the Local Public Contracts Law, the Solid Waste Management Act, and Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, the County will continue to exert regulatory waste flow control over all Non-Processible Waste generated with Union County, as follows:

As of June 20, 2016, all Non-Processible Waste generated in Union County is hereby directed to the WMI disposal facilities on Julia Street in Elizabeth, New Jersey, for processing, recycling, and disposal.

V. SCOPE OF PLAN AMENDMENT

This Plan Amendment incorporates by reference, as if set forth herein at length, the Union County District Solid Waste Management Plan, as certified by the NJDEP on August 13, 1980, and all subsequent Plan Amendments so certified, to the extent that they are not inconsistent with this Plan Amendment. A copy of the Union County District Solid Waste Management Plan, along with all subsequent Amendments and NJDEP Plan Certifications, is available for review at the offices of the Union County Utilities Authority, 1499 Routes 1&9 North, Rahway, New Jersey, during normal business hours, for public review and inspection. Copies of the County Plan, Plan Amendments and NJDEP Plan Certifications are available in accordance with the UCUA's policy with respect to photocopying and at the offices of the Clerk of the Union County Board of Chosen Freeholders.

If any clause, provision, subsection, section or article of this Plan Amendment shall be ruled invalid by any court of competent jurisdiction, or administrative agency, the invalidity of such clause, provision, subsection, section or article, shall not affect any of the remaining provisions, unless such ruling adversely impacts the purpose and effect of the remaining portions of this Plan Amendment.

VI. EFFECTIVE DATE

This Plan Amendment shall become effective upon adoption by the Board of Chosen Freeholders of the County of Union, and certification by the Commissioner of the New Jersey Department of Environmental Protection.