



UNION COUNTY UTILITIES AUTHORITY

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Resolution: 45-2013

Date: July 17, 2013

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
REJECTING ALL BIDS AND AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH THE NEW JERSEY MEADOWLANDS COMMISSION
FOR THE PROVISION OF DISPOSAL SERVICES FOR SOLID WASTE TYPES
13, 13C, 23 AND 27 GENERATED IN UNION COUNTY**

APPROVED AS TO FORM:

Joseph C. Bodek
Clerk of the Authority

By: *Joseph C. Bodek*

APPROVED AS TO SUFFICIENCY OF FUNDS

YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: *[Signature]*

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>	✓		✓				✓
<i>Eastman</i>	✓		✓			✓	
<i>Erdos</i>	✓		✓				
<i>Huff</i>	✓		✓				
<i>Kennedy, Secretary</i>	✓		✓				
<i>Kulish</i>		✓					
<i>People, Treasurer</i>	✓		✓				
<i>Kahn, Vice Chairman</i>	✓		✓				
<i>Jackus, Chairman</i>	✓		✓				
<i>Bonanno, Alternate No. 1</i>	✓		✓				
<i>Lombardo, Alternate No.2</i>	✓						

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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; 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 Solid Waste Types 13 (including 13C), 23 and 27, 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 Solid Waste Types 13 (including 13C), 23 and 27; and

WHEREAS, the Authority subsequently completed a public procurement process and awarded non-discriminatory bid contracts to the Hackensack Meadowlands Development Commission as the lowest responsible bidder recycling and disposal of Solid Waste Types 13 (including 13C), 23 and 27; 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 Union County Board of Chosen 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 Solid Waste Types 13 (including 13C), 23 and 27; 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 Solid Waste Types 13, 13C, 23 and 27 generated in the County ("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, in or around 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") which sought to re-affirm the County's exercise of regulatory flow control over all Non-Processible Waste generated within the County and, following a non-discriminatory procurement process, designated Canadian Pacific, located within the Oak Island Rail Yard at 91A Bay Avenue, Newark, New Jersey, 07105 (the "Facility"), as the disposal facility to which all such Non-Processible Waste shall be 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 (the "Disposal Services Agreement"); 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 Disposal Services Agreement and that it had "shut the gates" to the Facility; and

WHEREAS, the failure of Canadian Pacific to perform the services required under the Disposal Services Agreement constituted a material breach of the Canadian Pacific agreement, and compelled the Authority to take immediate, interim action to make available to solid waste haulers in the County appropriate solid waste facilities due to the closure of the Facility 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 26, 2012, the Freeholders formally adopted an amendment to the County Plan to incorporate the Interim NJMC Agreement and its inclusion in the County Plan will enable the Authority 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 Authority initiates 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 Certification of an amendment to the County Plan, all Non-Processible Waste will be directed to the NJMC Keegan Landfill and 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 Waste Management of New Jersey, Inc.; and

WHEREAS, the Authority, in an attempt to obtain the most cost-efficient and effective services for the disposal of Non-Processible Waste, entered into negotiations with the NJMC; and

WHEREAS, the Local Public Contracts Law, and specifically N.J.S.A. 40A:11-5(2) authorizes the award of a contract without public bidding when such a contract is to "be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency or authority thereof or any other state or subdivision thereof;" 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;

WHEREAS, the NJMC has expressed an interest in entering into a shared services agreement with the Authority 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 is substantially lower than the rates received through public bidding for the services; and

WHEREAS, under a shared services agreement, all Non-Processible Waste will continue to be directed to the NJMC Keegan Landfill and disposal facilities ("NJMC Facilities"); and

WHEREAS, the proposed shared services agreement will not otherwise alter the relationship between MRFs that have entered into an agreement with the Authority, provided that each MRF

continues to pay the Authority the applicable tipping fee for each ton of residue delivered to the designated County facilities for disposal; 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, and remain a part of the County Plan; and

WHEREAS, the execution of the foregoing agreement is exempt from public bidding pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-5(2); and

WHEREAS, the proposed agreement results in the continued provision of disposal services for Non-Processible Waste at per ton rates that are significantly below the per ton rates obtained by the Authority through the recent public procurement; and

WHEREAS, the Authority has determined that the shared services agreement will advance the purposes of the Solid Waste Management Act, will ensure the continuity of regulatory flow control over Non-Processible Waste, and will provide for the continuity of Non-Processible Waste disposal at the lowest possible rates; and

WHEREAS, the Authority deems it necessary and in the best interest of solid waste operations in the County and the citizens of the County to reject all bids for Non-Processible disposal services pursuant to the reservation of right contained in the bid specifications, and to authorize the execution of the attached shared services agreement with the NJMC;

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

1. The aforesaid recitals are incorporated herein as though fully set forth at length.
2. The bids submitted by Advanced Environmental Recycling, Inc. and Waste Management of New Jersey, Inc. in response to the Authority's public procurement of Non-Processible Waste disposal services are hereby rejected in accordance with the reservation of right to enter into a shared services agreement as contained in the Bid Specifications.
3. The bid security of the bidders for Non-Processible Waste disposal services is hereby authorized to be returned to all bidders.
4. The Executive Director of the Authority is hereby authorized and directed to execute the attached shared services agreement with the New Jersey Meadowlands Commission, and Special Counsel is hereby authorized and directed to prepare and submit any petitions to the New Jersey Department of Environmental Protection that may be necessary for approval of the shared services agreement.
5. The performance of the agreement is expressly contingent upon Authority's receipt of all necessary approvals of the agreement from the New Jersey Department of Environmental Protection.

6. Notice of this action shall be published as required by law.
7. 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.
8. This Resolution shall take effect immediately.

