



# UNION COUNTY UTILITIES AUTHORITY

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Resolution: 51-2013

Date: August 21, 2013

## RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY AUTHORIZING FINAL PAYMENT TO COVANTA UNION, INC. IN FULL SATISFACTION OF ITS OBLIGATIONS IN 2012 PURSUANT TO THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY

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

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>	.	7	1				
<i>Eastman</i>	7		7			7	
<i>ErDOS</i>		7					
<i>Huff</i>		7					
<i>Kennedy, Secretary</i>	7		7				
<i>Kulish</i>	7		7				
<i>People, Treasurer</i>		7					
<i>Kahn, Vice Chairman</i>	7		7				7
<i>Jackus, Chairman</i>	7		7				
<i>Bonanno, Alternate No. 1</i>		7					
<i>Lombardo, Alternate No.2</i>	7		7				

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY  
AUTHORIZING FINAL PAYMENT TO COVANTA UNION, INC. IN FULL  
SATISFACTION OF ITS OBLIGATIONS IN 2012 PURSUANT TO THE  
AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT FOR THE  
OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY**

**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, 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

**WHEREAS**, on prior occasion pursuant to formal resolution, the County and the Authority authorized negotiations with Covanta to amend the Facility Lease, and Amended and Restated Waste Disposal Agreement ("Disposal Agreement") to extend their respective terms in exchange for modifications of the provisions, among other things, for annual lease payments and sharing of revenues generated at the UCRRF; and

**WHEREAS**, the Authority and Covanta successfully concluded the negotiations, resulting in amendments of the Facility Lease and Disposal Agreement, and a refunding or refinancing of certain outstanding Authority solid waste facility bonds and the issuance of new bonds as well as the extension of, and various modifications to, the Facility Lease and the Disposal Agreement; and

**WHEREAS**, on January 25, 2011, the Authority filed a Verified Petition with NJDEP and the Division of Local Government Services within the Department of Community Affairs ("Division"), pursuant to the McEnroe Act, N.J.S.A. 13:1E-136 et seq., seeking approval of modifications to agreements with Covanta that provided for the lease and operation of the Facility primarily for the processing and disposal of certain solid waste generated within the County; and

**WHEREAS**, to support its waste delivery obligations under the Disposal Agreement, as amended, the Authority entered into valid, binding and enforceable amendments to Local Waste Agreements, such that each amended Local Waste Agreement has a term extending at least to the final maturity of the 2011 Refunding Bonds and obligates those County municipalities to deliver Acceptable Waste to the Facility; and

**WHEREAS**, coincident with the modifications of the Facility Lease and Waste Disposal Agreement, the County adopted an amendment to the County Plan reaffirming regulatory flow control over the delivery of all Processible Waste generated with the County to the UCRRF for disposal consistent with the holding of the United States Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007), that permits a publicly-owned facilities to direct solid waste for disposal consistent with the Commerce Clause of the United States Constitution; and

**WHEREAS**, the revisions to the terms of the proposed restructuring of the agreements with Covanta for the lease and operation of the Facility were reviewed and approved by NJDEP and the Division in a Conditional Order of Approval issued on October 13, 2011, wherein such modifications to the agreements were deemed to be reasonable and necessary to satisfy the Authority's waste delivery obligations and enable it to pay all service charges and other amounts due to Covanta under the Disposal Agreement, as amended, in order to achieve substantial savings; and

**WHEREAS**, pursuant to the Disposal Agreement, as amended, the Authority and Covanta have correlative responsibilities for the delivery and processing of solid waste and are required to confirm payment obligations for each calendar year of their contractual relationship; and

**WHEREAS**, the Authority and Covanta have independently determined and mutually agreed that Covanta is entitled pursuant to the terms of the Disposal Agreement, as amended, to a final payment of \$626,320 as and for disposal services provided in 2012; and

**WHEREAS**, the Authority has confirmed the accuracy of the amount due through a review conducted by its independent auditor; and

**WHEREAS**, the payment of the amount due to Covanta for disposal services provided in 2012 is necessary for the Authority to fulfill its contractual obligations under the Disposal Agreement, as amended, and in order to continue to provide effective solid waste disposal services in the County at reasonable rates;

**NOW, THEREFORE, BE IT RESOLVED** by the Union County Utilities Authority as follows:

1. The terms of the Disposal Agreement, as amended, with Covanta require the payment by Authority to Covanta of \$626,320 as and for disposal services provided in 2012, which amount has been confirmed through a review conducted by the Authority's independent auditor;
2. The payment of the amount due to Covanta for disposal services provided in 2012 is necessary for the Authority to fulfill its contractual obligations under the Disposal Agreement, as amended, and in order to continue to provide effective solid waste disposal services in the County at reasonable rates;
3. The Authority hereby authorizes final payment to Covanta in the amount of \$626,320 as and for disposal services provided in 2012, and the acceptance of such amount by Covanta constitutes full satisfaction of the Authority's obligations under the Disposal Agreement, as amended, for 2012; and
4. This resolution shall take effect immediately.

