

UNION COUNTY UTILITIES AUTHORITY

1499 Routes 1 & 9, North, Rahway, New Jersey 07065

(732) 382-9400

FAX (732) 382-5862

RESOLUTION NO.: 57-2013

DATED: September 18, 2013

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

APPROVED AS TO FORM:

Joseph C. Bodek
Clerk of the Authority

By:

APPROVED AS TO SUFFICIENCY OF FUNDS

YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By:

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

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY RECOMMENDING AN AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) REAFFIRM THE PRIOR INCLUSION OF THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND THE NEW JERSEY MEADOWLANDS COMMISSION FOR THE DISPOSAL OF SOLID WASTE TYPES 13, 13C, 23 AND 27 DISPOSAL SERVICES, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, 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 "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 (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 constituted a material breach of the Disposal Services Agreement, and the closure of the 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 Waste Management of New Jersey, Inc.; and

WHEREAS, subsequently, 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 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, NJMC expressed an interest in entering into an 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 the Solid Waste Disposal Services Agreement, all Non-Processible Waste will continue to be directed to the NJMC Keegan Landfill and disposal facilities (“NJMC Facilities”); and

WHEREAS, the Solid Waste Disposal Services Agreement will not otherwise alter the relationship between materials recovery facilities (“MRFs”) that have entered into an agreement with the Authority, provided that each MRF continues to deliver residue to the NJMC Facilities for disposal and pay the Authority the applicable tipping fee for each ton of residue; 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

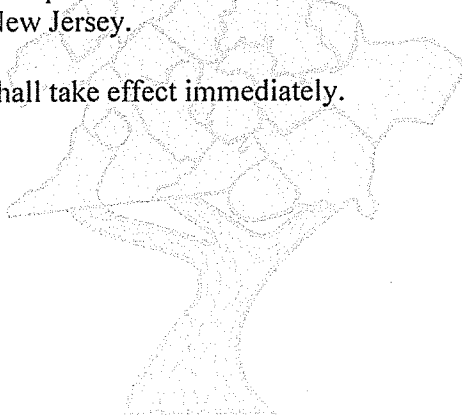
WHEREAS, the Solid Waste Disposal Services Agreement results in the continued provision of disposal services for Non-Processible Waste at per ton rates that are significantly below the per ton rates obtained by the Authority through the recent public procurement; and

WHEREAS, the Authority has determined that the Solid Waste Disposal Services Agreement will advance the purposes of the 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 desires to recommend a formal amendment to the County Plan that incorporates into the County Plan the Solid Waste Disposal Services Agreement with NJMC for the provision of disposal services for Non-Processible Waste, for a period of three years, commencing as of July 18, 2013;

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 Authority hereby recommends that the Union County Board of Chosen Freeholders adopt a formal amendment to the Union County District Solid Waste Management Plan that, among other things, incorporates the Solid Waste Disposal Services Agreement with NJMC for the provision of disposal services for Non-Processible Waste, for a period of three years, commencing as of July 18, 2013.
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 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.
5. This Resolution shall take effect immediately.



AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

**Recommended by the
Union County Utilities Authority
September 18, 2013**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) REAFFIRM THE PRIOR INCLUSION OF THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED, 2) INCLUDE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND THE NEW JERSEY MEADOWLANDS COMMISSION FOR THE DISPOSAL OF SOLID WASTE TYPES 13, 13C, 23 AND 27 DISPOSAL SERVICES, AND 3) TO DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, 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. ("Waste Management") 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 Waste Management 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 Waste Management of New Jersey, Inc. 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.

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 reaffirm the designation of the landfill and disposal facilities owned and operated by NJMC in Kearny, New Jersey, as the facilities to which 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 NJMC, pursuant to and in accordance with the Local Public Contracts Law and Oneida-Herkimer, at a price significantly lower than any price bid in the non-discriminatory procurement.

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 THE NEW JERSEY MEADOWLANDS COMMISSION CONSISTENT WITH THE LOCAL PUBLIC CONTRACTS LAW AND ONEIDA-HERKIMER

Through this Plan Amendment, the County intends to reaffirm the designation of the NJMC landfill and disposal facilities as the facilities to which all such NonProcessible Waste will be directed for recycling and disposal. Having issued Bid Specifications for the Provision of Disposal Services for Types 13, 13G, 23 and 27 Solid Waste Generated in Union County on May 3, 2013, and, in response to the Bid Specifications, received bids on June 7, 2013, 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.

Following the receipt of bids from the non-discriminatory procurement, the UCUA engaged in negotiations with NJMC in order to ensure that price for the disposal of Non-

Processible Waste through the County System was the most cost-efficient available. Having obtained significantly lower per ton pricing from NJMC than the per ton prices bid in the public, non-discriminatory procurement, a contract was awarded to NJMC for the provision of solid waste disposal services for Non-Processible Waste in accordance with the Local Public Contracts Law. As a result of the terms of the Solid Waste Disposal Services Agreement being essentially identical to the disposal services that were the subject of the non-discriminatory procurement, and the disposal price is lower than the best pricing obtained through the procurement, the County is entitled to continue to exercise regulatory flow control over Non-Processible Waste in accordance with the requirements of Atlantic Coast and Oneida-Herkimer.

The award of a contract to NJMC complies with the Local Public Contracts Law as it is awarded to a governmental entity of the State of New Jersey. Having been awarded after the completion of an open, non-discriminatory procurement of solid waste disposal services by the UCUA in its role as the implementing agency for the County Plan, at a rate more favorable to the citizens of Union County than obtained in the non-discriminatory procurement, the County intends to direct all Non-Processible Waste to the NJMC facilities 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, and the subsequent negotiations between the UCUA and NJMC leading to the authorization to execute the Solid Waste Disposal Services Agreement at pricing below the lowest prices bid in the public, non-discriminatory procurement, the County shall redirect Non-Processible Waste for disposal to the NJMC landfill and facilities, pursuant to the terms of the Solid Waste Services Agreement, as more fully described in Section III of this Plan Amendment.

III. INCLUSION OF SOLID WASTE DISPOSAL SERVICES AGREEMENT AWARDED BY UCUA TO NJMC AND THE REAFFIRMATION OF THE PRIOR INCLUSION OF LANDFILL AND DISPOSAL FACILITIES OF NJMC INTO THE COUNTY PLAN AND REDIRECTION 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 Non-Processible Waste, the UCUA conducted an open, competitive, non-discriminatory and constitutionally-permissible procurement, consistent with the requirements of Atlantic Coast, and engaged in negotiations with the NJMC 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 18, 2013, at the rate of \$57.00 per ton. The implementation of the terms of the negotiations with NJMC 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 NJMC for Non-Processible Waste disposal services is hereby included in the County Plan. The inclusion of the landfill and solid waste disposal facilities of NJMC, in accordance with the terms of the Solid Waste Disposal Services Agreement awarded by the UCUA, is hereby reaffirmed consistent with the prior Plan Amendment of the County, as the County's designated disposal facility for Non-Processible Waste.

IV. 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.

V. 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.

SOLID WASTE DISPOSAL AGREEMENT

THIS SOLID WASTE DISPOSAL AGREEMENT ("Agreement"), made this 19th day of September 2013, by and between the **Union County Utilities Authority** (hereinafter "Authority"), a public body corporate and politic of the State of New Jersey with principal offices for the transaction of business located at 1499 Routes 1 & 9 North, Rahway, New Jersey; and the **New Jersey Meadowlands Commission** (hereinafter "NJMC") a public body corporate and politic of the State of New Jersey with principal offices for the transaction of business located at One DeKorte Park Plaza, Lyndhurst, New Jersey;

WITNESSETH

WHEREAS, the Authority 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. ("MUA Law"), and exercises essential governmental functions for the public health, benefit and welfare of the citizens of Union County ("County"); and

WHEREAS, the NJMC (formerly known as the Hackensack Meadowlands Development Commission) is a public body corporate and politic of the State of New Jersey, established in, but not of, the New Jersey Department of Community Affairs, and created pursuant to and in accordance with the provisions of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq., and exercises essential governmental functions for the public health, benefit and welfare of the citizens of the State of New Jersey; and

WHEREAS, the Union County District Solid Waste Management Plan ("Union 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 Union County Board of Chosen Freeholders ("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; and

WHEREAS, on December 11, 1986, the Freeholders designated the Authority as the agency responsible for the implementation of the Union Plan, as amended from time to time, pursuant to and in accordance with the SWMA, and the Authority is empowered, pursuant to the

MUA Law, to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in the County; and

WHEREAS, the Authority, in its capacity as implementing agency for the County Plan, has previously developed, implemented and financed a solid waste management system to provide for the processing and disposal of all solid waste generated within the geographic boundaries of the County ("County System"); and

WHEREAS, the County Plan was amended on May 21, 1998 (the "May Plan Amendment") 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) to, among other things, define the County's new 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 type 13C), 23 and 27 generated within the County ("Non-Processible Waste"); and

WHEREAS, by Certification of the Commissioner of NJDEP issued on July 20, 1998, the May Plan Amendment was approved, with modifications, 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-discriminatorily bid contracts to provide for the disposal of Non-Processible Waste; and

WHEREAS, the Authority has undertaken various public procurements pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., in order to maintain regulatory waste flow control, and NJDEP has approved contracts enabling the Authority to continue to provide safe, adequate and proper disposal services for Processible and Non-Processible Waste generated within the County, subject to regulatory flow control under the County Plan; and

WHEREAS, as a result of a public procurement in 2006, the Authority awarded a contract to Delaware and Union Railway Company, Inc. d/b/a Canadian Pacific Railway Inc. ("Canadian Pacific") for the provision of solid waste disposal services for all Non-Processible Waste over a term of five years; and

WHEREAS, after the successful resolution of litigation challenging the contract award, the Authority 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, as the authorized agents and operators of the Canadian Pacific facility, TransLoad America, Inc. and TLA Newark, LLC (collectively "TLA"), notified the Authority on June 15, 2012 that TLA could not accept any solid waste for processing under the Canadian Pacific agreement and that it had "shut the gates" to the facility. TLA filed for bankruptcy on June 19, 2012 in the United States Bankruptcy Court for the District of New Jersey, Case No. 12-25683, and Canadian Pacific acknowledged that it had no means by which to re-commence performance under the Disposal Services Agreement; and

WHEREAS, the failure of Canadian Pacific to perform the services required under the Disposal Services Agreement constituted a material breach of the Disposal Services Agreement, and compelled the Authority to take immediate, interim action to make available to solid waste haulers in the County appropriate solid waste disposal facilities due to the closure of Canadian Pacific 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 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 enabled 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 the amendment to the County Plan, all Non-Processible Waste was 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, received bids on June 7, 2013,

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 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 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 Authority and NJMC have duly authorized their respective officials to enter into and execute this Agreement; and

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

NOW, THEREFORE, in consideration of the promises, the mutual covenants and agreements set forth below, and the respective undertakings of each party to the other, the Authority and the NJMC, each binding itself, its successors, and assigns, do mutually covenant, promise and agree as follows:

Section 1.1 Definitions. As used herein, the following terms shall have the meanings as set forth below:

(1) “Act of Bankruptcy” means that either party (a) shall have commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) shall have made a general assignment for the benefit of creditors, (c) shall have been adjudicated a bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors, (d) shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (e) an order, judgment or decree for relief shall have been entered in an involuntary case, without the application,

approval or consent by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, or for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days, (f) shall have filed a voluntary petition in bankruptcy, (g) shall have failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof, or (h) an order for relief shall have been entered under the provisions of the United States Bankruptcy Act, 11 U.S.C.A. §301.

(2) “Agreement” means this “Solid Waste Disposal Agreement,” including the Schedules and any written amendments or supplements hereto that has been executed by both the Authority and the NJMC.

(3) “Applicable Law” means the Permits and any statute, code, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, standard or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the NJMC, Authority, the Landfill Facilities or the Landfill.

(4) “Change in Law” means either (1) the enactment, adoption, promulgation, modification, official change in interpretation, or repeal, subsequent to the Contract Date, of any Applicable Law, (2) the material modification of or the imposition of any material conditions on the issuance or reissuance of any official permit, license or approval, or (3) the order and/or judgment of any Governmental Body, subsequent to the Contract Date, which in the case of (1), (2) or (3) above, established requirements affecting the operation of the Landfill or Landfill Facilities that are materially more burdensome than the most stringent requirements applicable to the Landfill or Landfill Facilities, or the ability of the Authority to direct Non-Processible Waste to the Landfill, and are (i) in effect on the Contract Date, as defined by both written laws and regulations, or (ii) contained in any official permits, licenses or approvals with respect to the Landfill or Landfill Facilities that have been obtained prior to the Contract Date; provided however, that if the enactment, adoption, promulgation or modification of such Applicable Law was officially proposed

or published for comment and such comment period has expired as of the Contract Date, such action shall not constitute a "Change in Law."

(5) "Commencement Date" means July 1, 2013 or such date that the Authority delivers Non-Processible Waste to the Landfill pursuant to this Agreement.

(6) "Contract Date" means the date of execution of this Agreement.

(7) "County" means the County of Union, New Jersey.

(8) "County Plan" means the Union County District Solid Waste Management Plan, relating to the collection and disposal of solid waste generated within the geographic boundaries of the Union County Solid Waste Management District, as the same has been previously amended and supplemented and as may be further amended and supplemented from time to time, to the extent that such Plan shall have been certified by the NJDEP, as required by Applicable Law.

(9) "Event of Default" means any event which is specified as such under the terms of Section 6 hereof.

(10) "Governmental Body" means, as appropriate, any one or several of: any court of competent jurisdiction, the United States of America, the State of New Jersey, or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the NJMC, the Authority, the Landfill Facilities or the Landfill.

(11) "Hazardous Waste" means (a) any material or substance which, by reason of its composition or characteristics, is either (i) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C.A. 6901 et seq., as replaced, amended, or supplemented, or any laws of similar purpose or effect, and such rules or regulations promulgated thereunder, or (ii) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954, as replaced, amended or supplemented, or any laws of similar purpose or effect, and such rules or regulations promulgated thereunder; or (b) other materials which the NJDEP or the United States Environmental Protection Agency ("EPA") or any other Governmental Body shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for disposal in the Landfill.

(12) "Landfill" means the NJMC Keegan Landfill.

(13) "Landfill Facilities" means the Landfill and all other facilities related thereto, including, without limitation, liners, protective covers, leachate collection and treatment facilities, stormwater collection and treatment facilities, erosion and sedimentation control facilities, gas vents, gas collection systems, borrow areas, offices, haul roads, truck weigh scale, equipment, gear and other tangible property used in connection with the operation of the Landfill.

(14) "LPCL" means the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the acts amendatory thereof and supplemental thereto;

(15) "MUA Law" means the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and the acts amendatory thereof and supplemental thereto;

(16) "NJDEP" means the New Jersey Department of Environmental Protection, or any successor thereof, including any agency or department to which the powers of the New Jersey Department of Environmental Protection shall be transferred.

(17) "Non-Processible Waste" means solid waste generated within the geographic boundaries of the County and consisting of Types 13 (excluding automobiles, trucks, trailers, large vehicle parts, drums, and appliances), 13C, 23 and 27 generated within the County.

(18) "Permits" means all permits, licenses or authorizations issued by any Governmental Body having jurisdiction over the construction and/or operation of the Landfill and/or the Landfill Facilities entitling the NJMC to construct and/or operate the Landfill and Landfill Facilities, including any modifications to such Permits.

(19) "State" means the State of New Jersey.

(20) "Term" means the period of time during which this Agreement shall be in force and effect as provided in Section 2.2 hereof.

(21) "Ton" means two thousand (2,000) pounds.

(22) "Uncontrollable Circumstance" means any event beyond the control of the NJMC or Authority (or any person or entity for whom the NJMC or Authority may be contractually or legally responsible) that is not due to an act or omission of the NJMC or Authority that materially and adversely delays the performance of any obligations under this Agreement and the event or effects

thereof could not have been avoided by the Authority's or the NJMC's due diligence and the use of reasonable efforts.

For the purpose of this Agreement, Uncontrollable Circumstances include, but are not limited to, acts of God, blockades, rebellions, wars, riots, acts of sabotage or civil commotion, or national strikes; fires, floods, earthquakes or other cataclysmic natural phenomena; acts of the State in its sovereign capacity or any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; or a Change in Law or the failure, or refusal, of any Governmental Body to provide the approvals necessary for either (a) the Authority to deliver or cause to be delivered Non-Processible Waste to the Landfill, or (b) the NJMC to accept any Non-Processible Waste in the manner contemplated by the terms of this Agreement. The time for performing obligations under this Agreement shall be extended commensurate with such Uncontrollable Circumstance except to the extent that such performance is limited or prevented as a result of such occurrence.

1.2 Interpretation. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and similar terms, refer to this Agreement; the term "heretofore" means before the Contract Date and the term "hereafter" means after the Contract Date. Words importing the masculine gender include the feminine gender or the neuter and vice versa, as the case may be. Words importing the singular number include the plural number and vice versa.

1.3 Rights and Obligations of the Authority and NJMC. The rights granted and obligations of the parties hereto shall be only as expressly stated herein and shall not be expanded, modified, extended or in any way changed by any subsequent change in circumstances or federal, state, county or local statutory or common law, except as expressly provided for herein; provided however, that the provisions of this Agreement shall, if required by Applicable Law of the State, be subject to the review and/or approval of the NJDEP. In the event that review and approval of this Agreement is required by Applicable Law of the State and NJDEP does not approve this Agreement, then this Agreement shall be terminated upon receipt by the Authority of an Order from NJDEP memorializing its disapproval.

1.4 NJDEP Jurisdiction. (a) In the event that the Agreement is required to be submitted to the NJDEP for review and/or approval under Applicable Law, the Authority shall be fully responsible for obtaining such review and/or approval. Notwithstanding the above, the NJMC shall cooperate with the Authority in providing information that is reasonably required by the Authority in connection with any such review and/or approval and which information is not (in the sole discretion of the NJMC) confidential or proprietary.

(b) The Authority intends to seek an amendment to the County Plan referencing and incorporating this Agreement. In the event that NJDEP denies certification of such amendment, this Agreement shall be terminated upon receipt by the Authority of such denial of certification.

1.5 Effective Date of Agreement. This Agreement shall take effect on the Contract Date.

Section 2.1 Right to Deliver Non-Processible Waste for Disposal. For and in consideration of the covenants of the Authority that are set forth herein and other good and valuable consideration, the NJMC does hereby grant to the Authority all rights to deliver Non-Processible Waste for disposal at the Landfill, whether or not such Non-Processible Waste is first delivered to the Landfill from a transfer station operating under an agreement with the Authority. Notwithstanding the above to the contrary, the parties hereto acknowledge and agree that the provisions of this paragraph shall not apply to any Non-Processible Waste that during the term of the Agreement is designated by the County as a "recyclable material" and included as such in the County Plan. Title to and responsibility for all Non-Processible Waste delivered to the Landfill for disposal pursuant to the terms of this Agreement shall pass to NJMC upon the solid waste delivery vehicles of the solid waste collectors receiving its exit ticket from the Landfill.

2.2 Term of Agreement and Termination. This Agreement shall commence on the Commencement Date and shall continue for a period of three (3) years from the Commencement Date, and expire on June 30, 2016.

(a) Termination. The Authority shall have the right to terminate this Agreement upon the occurrence of a Change in Law or determination by a court of competent

jurisdiction that limits the rights of the Authority or the NJMC to perform their respective obligations under this Agreement.

2.3 Assignment of Rights Under Agreement. Neither party shall be permitted to assign, sell, transfer or otherwise vest in any Person any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

2.4 Limitations on Rights Under Agreement. (a) The Authority shall exercise its rights and interests hereunder only in accordance with Applicable Law and in such a manner as will not cause NJMC to be in violation of Applicable Law. At a minimum, the Landfill shall be available for disposal of Non-Processible Waste during the hours from 6:00 a.m. to 4:00 p.m. on Mondays through Fridays and 6:00 a.m. to 1:30 p.m. on Saturdays, subject to existing reasonable regulations and restrictions as may be amended by NJMC from time to time upon fifteen (15) days prior written notice to Authority; provided however, such regulations and restrictions shall not in any way materially adversely affect the Authority's exercise of its rights hereunder.

(b) NJMC assumes no responsibility for the transportation or delivery of Non-Processible Waste to the Landfill. Notwithstanding the foregoing, the NJMC shall provide and shall be responsible for the provision of all necessary services at the Landfill that are required in order to receive and safely dispose of such Non-Processible Waste and NJMC shall cooperate fully with Authority with respect to matters pertaining to the receipt of Non-Processible Waste so that Authority might exercise its rights under this Agreement.

Section 3.1 Disposal Price. (a) As compensation for the performance of disposal services for Non-Processible Waste at the Landfill, or such other disposal facility as may be designated by the NJMC during the term of this Agreement, the NJMC will charge and collect a tipping fee from haulers of Non-Processible Waste in the amount of \$55.00 per ton for the period from July 1, 2013 through the earlier of January 1, 2014 or the date of NJDEP approval of this Agreement for every ton of Non-Processible Waste received for processing by NJMC. In addition to the tipping fee, NJMC will also charge and collect from haulers of Non-Processible

Waste a rate component fee of \$29.12 per ton levied by the Authority for payment of the Authority's administrative and debt charges ("Rate Component") for every ton of waste received for processing by NJMC. The tipping fee rate and Rate Component shall be charged to haulers at the same time. However, payment by the hauler for the Rate Component shall be due immediately regardless of the terms otherwise given by NJMC to haulers for the payment of tipping fees. The NJMC shall remit to the Authority on a weekly basis the total Rate Component amount charged in the preceding week. Prior to the inception of this Agreement, the Authority shall confirm with NJMC, in writing, the appropriate amount to be charged by NJMC for the Rate Component, and shall notify NJMC, in writing, of any change in the amount of the Rate Component during the term of this Agreement. Such notification shall be made at least one week in advance of any change.

(b) The initial per ton tipping fee of \$55.00 set forth in Section 3.1(a) shall increase on the earlier of January 1, 2014 or the date of NJDEP approval of this Agreement to \$57.00 per ton through December 31, 2014.

(c) On January 1, 2015, the \$57.00 per ton rate shall increase to \$59.00 per ton and remain in effect through December 31, 2015.

(d) On January 1, 2016, the \$59.00 per ton rate shall increase to \$60.00 per ton and remain in effect through June 30, 2016.

Section 4.1 Covenants of NJMC. During the Term of this Agreement, NJMC warrants and covenants to the Authority as follows:

(a) NJMC will use its best efforts to obtain and/or maintain all necessary Permits for sufficient permitted and uncommitted capacity to provide for disposal of Non-Processible Waste at the Landfill.

(b) During the Term of this Agreement, NJMC shall, at all times, comply with, and adhere in all respects to Applicable Law in its ownership and operation of the Landfill and the Landfill Facilities. NJMC shall provide to the Authority within seven (7) days of the receipt

thereof, true, correct and complete copies of any written notice of substantial non-compliance issued by any Governmental Body.

(c) Without limiting the generality of Section 4.1(a) above, during the Term of this Agreement, NJMC shall take all actions that are necessary to retain, and shall refrain from taking any actions that would materially adversely affect the retention of, all Permits in good standing. In addition, if during the Term of this Agreement additional Permits are required or compliance with additional governmental requirements is required, NJMC shall apply for such additional Permits or comply with such additional requirements on a timely basis or initiate legal proceedings to contest such additional Permits or requirements. NJMC shall provide to the Authority notice of the revocation of any Permits or the denial of any subsequently required Permits. Such notice shall be provided within forty-eight (48) hours of NJMC's receipt of notice of such revocation or denial.

(d) NJMC shall not, at any time during the Term of this Agreement, sell, lease, license or otherwise use or permit to be used, any portions of the Landfill when such sale, licensing or use would reduce the total permitted capacity of the Landfill to less than the amount required to fulfill its obligations to accept and dispose of Non-Processible Waste pursuant to this Agreement.

(e) NJMC shall continue to construct and add to the Landfill and Landfill Facilities, as and when necessary, in order to enable NJMC to accept and dispose of Non-Processible Waste pursuant to this Agreement. NJMC will maintain, at all times, the necessary manpower, equipment and capital that is required in order to be able to accept and dispose of the Non-Processible Waste.

(f) Without limiting the generality of any other covenant set forth herein, NJMC shall take all steps required by Applicable Law to bury, grade, cover and otherwise process all Non-Processible Waste deposited in the Landfill. It is agreed by the parties hereto that the Authority shall have no duties, obligations, responsibilities or rights of any nature with respect to the operation, maintenance, design, construction or management of the Landfill or the Landfill Facilities.

(g) NJMC shall diligently (1) defend itself against any and all actions and causes of action pending (or threatened) against it which, irrespective of the merits thereof, would materially

adversely affect the ability of NJMC to perform its obligations and observe its covenants hereunder, and (2) prosecute any and all claims which if waived or permitted to lapse, would materially adversely affect the ability of NJMC to perform its obligations and observe its covenants hereunder; provided however, that NJMC shall provide to the Authority notice of all such actions, causes of action and claims within seven (7) days of the receipt thereof or NJMC's filing thereof, as the case may be.

(h) NJMC shall at all times maintain all necessary insurance coverages and all policies of insurance shall contain a provision whereby the insurer agrees to provide the Authority with at least thirty (30) days prior written notice of any amendment, cancellation or non-renewal of such insurance. On or prior to the Commencement Date, and within thirty (30) days after the renewal, amendment or acquisition of additional policies of insurance, NJMC shall deliver to the Authority copies of all executed policies or certificates of insurance related to the Landfill or Landfill Facility.

(i) NJMC shall at all times maintain complete and accurate daily records of the total tons of Non-Processible Waste that it accepts each day for processing pursuant to this Agreement.

4.2 Representations of NJMC. NJMC hereby represents to the Authority as follows:

(a) NJMC is a public body corporate and politic of the State duly organized and validly existing in good standing and is duly qualified to transact business to enable NJMC to perform its obligations as provided in this Agreement. No Act of Bankruptcy has been commenced by or against the NJMC. The execution of this Agreement, and the performance of all obligations as provided in this Agreement have been authorized by all required action of NJMC, all as required by the charter, by-laws and Applicable Law that regulate the conduct of the NJMC's affairs. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any charter or by-laws of NJMC or any agreement, indenture, mortgage, contract, or other instrument to which NJMC is a party or by which NJMC is bound so that, upon execution hereof and upon satisfaction of the conditions herein contained, this Agreement, as of the Contract Date, constitutes the valid, legally binding obligations of NJMC, enforceable against NJMC in accordance with its terms, except to the extent that

enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(b) NJMC, for itself and with respect to its ownership of the Landfill or operation of the Landfill Facilities, is not currently in breach of or in default under the Permits or any other Applicable Law that would materially adversely affect NJMC's ability to perform hereunder, and has obtained all required Permits.

(c) NJMC represents that the design and construction of the Landfill meets or exceeds, in all material respects, the applicable requirements of all Applicable Law.

(d) NJMC represents, to the best knowledge of the NJMC after reasonable investigation, that the operation of the Landfill meets or exceeds, in all material respects, the applicable requirements of all Applicable Law.

(e) To the best knowledge of the NJMC after reasonable investigation, from the date when NJMC obtained ownership of the Landfill, none of the waste disposed at the Landfill since such date has contributed to any release of leachate or Hazardous Waste off of the Landfill property that is harmful to or presents danger to the person or property of any third parties. The Landfill site, or any part thereof, is not on the EPA Superfund Project List.

(f) There is no action, suit or proceeding, at law or in equity, before or by any court or similar Governmental Body against NJMC wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by NJMC of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by NJMC in connection with the transaction contemplated hereby.

(g) Without limiting the generality of the foregoing, (1) NJMC has in its possession valid permits that, pursuant to Applicable Law, will permit NJMC to receive and dispose of Non-Processible Waste in the Landfill for a minimum of three (3) years, and (2) NJMC will continue to

apply for and work diligently to obtain any necessary permits, and to have adequate equipment, manpower, Landfill Facilities and capital to perform its obligations hereunder.

(h) NJMC's ownership of the Landfill is sufficient to enable NJMC to perform its obligations under this Agreement.

(i) NJMC has sufficient uncommitted capacity to provide for disposal of the Non-Processible Waste at the Landfill.

(j) NJMC will at all times obtain and maintain adequate permitted capacity for use by the Authority at the Landfill as required for the NJMC to fulfill its obligations under the Agreement.

(k) NJMC will at all times obtain and maintain its current level of insurance coverages.

(l) NJMC has met and will continue to meet all Permit conditions relating to the Landfill, including all closure and post-closure obligations.

Section 5.1 Covenants and Representations of the Authority. The Authority represents, warrants and covenants to and with the NJMC as follows:

(a) The Authority is duly organized and existing in good standing under the laws of the State and has the power, authority and legal right, to enter into and perform the obligations set forth in this Agreement.

(b) The execution, delivery and performance of this Agreement (1) has been duly authorized by the governing body of the Authority, (2) does not require any consent, approval or referendum of voters, and (3) will not violate any judgment, order, law or regulation applicable to the Authority or any provisions of Authority's charter, ordinances or resolutions.

(c) The execution of this Agreement, and the performance of all obligations set forth herein do not conflict with, and will not, nor with the passage of time or the giving of notice, constitute a breach of or event of default under any charter, ordinances or resolutions of the Authority or any agreement, indenture, mortgage, trust, contract, instrument of Applicable Law to which the Authority is a party or by which the Authority is bound. This Agreement has been duly executed and delivered and, as of the Contract Date, constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms, except to the extent that the enforcement

thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditor's rights generally and the application of general principles of equity.

(d) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, threatened against the Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Authority of its obligations hereunder or the other transactions contemplated hereby, or that, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

(e) The Authority shall direct deliveries of only Non-Processible Waste to the Landfill, and the Authority agrees that NJMC may reject any waste delivered pursuant to direction by the Authority to the Landfill that is not Non-Processible Waste.

(f) The Authority shall direct the delivery of Non-Processible Waste to the Landfill as expressly provided in Section 2.1 hereof.

(h) The Authority will take all reasonable actions to effectuate, maintain and enforce its control over all Non-Processible Waste generated within the geographic boundaries of the County through enforcement of such waste flow orders or certifications issued by NJDEP and/or any other Governmental Body applicable to the County.

(i) The Authority shall maintain insurance appropriate to cover any employees, contractors or other persons acting on behalf of the Authority entering the Landfill.

Section 6.1 Breach of Warranties or Covenants by NJMC. If at any time during the Term of this Agreement, the NJMC shall breach any material obligation herein, including, but in no way limited to, timely remitting all Rate Component monies to the UCUA, or any covenant or warranty made by it herein, or any representation made by NJMC herein shall be (or prove to be) false in any material respect, then, upon the Authority's providing written notice thereof to the NJMC, the NJMC shall proceed with due diligence and dispatch to take all such actions as shall

reasonably be required to cure such breach and NJMC shall continue to take all such actions until such breach is cured.

6.2 Events of Default by NJMC. Subject to the provisions of Section 6.1 hereof, any one or more of the following shall constitute an Event of Default by NJMC hereunder:

(a) Failure by NJMC to cure any event described in Section 6.1 above within sixty (60) days of the occurrence of such event unless, in the sole discretion of the Authority, such cure period is extended (in writing); or

(b) Any Act of Bankruptcy on the part of the NJMC has occurred.

6.3 Breach of Warranties or Covenants by the Authority. In the event that the Authority shall breach any material obligation herein, or any covenant or warranty made by it herein, or if at any time any representation made by the Authority herein shall be or prove to be false in any material respect then, upon NJMC's providing written notice thereof to the Authority, the Authority shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required within sixty (60) days to cure such breach and the Authority shall continue to take all such actions until such breach is cured.

6.4 Events of Default by the Authority. Subject to the provisions of Section 6.3 hereof, any one or more of the following shall constitute an Event of Default by the Authority hereunder:

(a) Failure by the Authority to cure any event described in Section 6.1 above within sixty (60) days of the occurrence of such event unless, in the sole discretion of the NJMC, such cure period is extended (in writing); or

(b) Failure by the Authority to deliver Non-Processible Waste to the Landfill as and to the extent provided in Section 2.1.

6.5 Nonwaiver. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may

be exercised from time to time and as often as may be deemed expedient by the non-breaching party in its sole discretion.

No waiver of the occurrence of any Event of Default hereunder, whether by the NJMC or the Authority, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

6.6 Uncontrollable Circumstance Not a Breach or an Event of Default. The non-performance by either the NJMC or the Authority of any obligations provided under the terms of this Agreement which non-performance arises from or is caused by the occurrence of an Uncontrollable Circumstance shall not be deemed to be a breach or an Event of Default for the purposes of this Section.

6.7 Pendency of Disputes. Notwithstanding anything contained in this Agreement to the contrary, if there shall be a "dispute" concerning the right of either party to terminate this Agreement, both parties shall continue to perform their respective obligations hereunder as if the Agreement were in effect until such dispute is resolved and any appeals permitted thereunder are exhausted.

6.8 Remedies. In the Event of Default, parties may pursue any available remedies under the law.

Section 7.1 Claims. (a) Between the NJMC and UCUA, the NJMC, subject to the provisions of the New Jersey Tort Claims Act and the New Jersey Contractual Liability Act, shall be responsible for and shall, at its own expense, defend itself against any and all suits, claims, losses, demands or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the NJMC, its employees, agents or contractors, in the performance of the obligations assumed by the NJMC pursuant to this Agreement. The NJMC hereby releases the UCUA from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature whatsoever, arising under state or federal law, solely out of or in connection with the NJMC's performance of the obligations assumed by the NJMC pursuant this Agreement.

(b) Between the NJMC and UCUA, the UCUA, subject to the provisions of the New Jersey Tort Claims Act and the New Jersey Contractual Liability Act, shall be responsible for and shall, at its own expense, defend itself against any and all suits, claims, losses, demands or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the UCUA, its employees, agents or contractors, in the performance of the obligations assumed by the UCUA pursuant to this Agreement. The UCUA hereby releases the NJMC from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature whatsoever, arising under state or federal law, solely out of or in connection with the UCUA's performance of the obligations assumed by the UCUA pursuant this Agreement.

(c) The Parties further agree that each Party may pursue any claims that it may have against the other Party and seek all such remedies as are available at law or in equity.

Section 8.1 Uncontrollable Circumstance; Effect on Obligations. Upon the occurrence of an Uncontrollable Circumstance, which occurrence prevents the NJMC or the Authority from performing all or a portion of its obligations under the terms of this Agreement, the NJMC or the Authority, as the case may be, shall be relieved (to the extent that the occurrence of such Uncontrollable Circumstance shall prevent such performance) from performance of its obligations hereunder, and shall diligently endeavor to eliminate the cause of the Uncontrollable Circumstance and the NJMC shall use all reasonable efforts to accept and dispose of Non-Processible Waste.

Section 9.1 Further Assurances. Each party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other party; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

9.2 **Relationship of the Parties.** Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, joint venture participant, agent or legal representative of any other party or to create any fiduciary relationship between or among the parties.

9.3 **Waiver.** The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any other prior, continuing or subsequent default or breach. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any prior, continuing or subsequent default or breach.

9.4 **Modification.** Modifications, waivers or amendments of (or to the provisions of) this Agreement shall be effective only if set forth in a written instrument signed by both parties hereto after all corporate or other action regarding the authorization for such modifications, waivers or amendments have been taken.

9.5 **Headings.** The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

9.6 **Notices.** Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if telecopied to the telephone number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Authority: Union County Utilities Authority
1499 Routes 1 & 9 North
Rahway, New Jersey 07065
Attn: Executive Director
Tel. No.: 732-382-9400
Fax No.: 732-382-5862

If to the NJMC: New Jersey Meadowlands Commission
One DeKorte Plaza
Lyndhurst, New Jersey 07071
Attn: Executive Director
Tel. No.: 201-460-4642
Fax No.: 201-804-9620

If such notice is sent by telecopy or similar transmission, the original executed copy of such notice shall be mailed or delivered as provided above.

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party.

9.7 Subsidiaries, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective subsidiaries, successors and permitted assigns of the parties hereto.

9.8 Severability. In the event that any provision of this Agreement shall, if for any reason, be determined to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the parties hereto 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 shall, to the maximum extent practicable in light of such determination, 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.

9.9 Governing Law. The obligations of the parties under the terms of this Agreement shall be governed by, construed and interpreted in accordance with the Constitution and laws of the State of New Jersey. The NJMC in entering into this Agreement does not waive its Sovereign Immunity except as provided in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. ("the Liability Act"). The rights and benefits provided to Authority that exceed those provided by the Liability Act and the obligations established under this Agreement are contractual in nature and shall not be deemed to expand the waiver of Sovereign Immunity as set forth in the Liability Act.

9.10 Liability of Officers and Employees. Except to the extent provided by Applicable Law, no commissioner or director nor any officer, agent, representative or employee of either party

shall be charged personally by the other party or held contractually liable thereto under any term or provision of this Agreement, because of either party's execution or attempted execution or because of any breach or alleged breach thereof; provided however, that all persons remain responsible for any of their own criminal or fraudulent actions or omissions.

9.11 Merger Clause. This Agreement constitutes the entire agreement and understanding of the parties with respect to all matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

9.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the signature and seals thereto and hereto were upon the same instrument.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the Authority and the NJMC have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

[SEAL]

UNION COUNTY UTILITIES AUTHORITY

ATTEST:

By: Lisa M. da Silva

Name: Lisa M. da Silva

Title: Deputy Clerk

By:

Name:

Samuel P. Sarbon

Title:

EXECUTIVE DIRECTOR

[SEAL]

NEW JERSEY MEADOWLANDS COMMISSION

ATTEST:

By:

Lynn Johnson

Name:

LYNN JOHNSON

By:

Ally

Name:

Title: EXECUTIVE ASSISTANT

Title:

EXECUTIVE DIRECTOR