

UNION COUNTY UTILITIES AUTHORITY

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

(732) 382-9400

FAX (732) 382-5862

RESOLUTION NO.: 63-2013

DATED: October 16, 2013

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
APPROVING AND AUTHORIZING THE EXECUTION OF A
SETTLEMENT AGREEMENT WITH SOUTH PLAINFIELD TRANSFER
AND RECYCLING, INC.**

APPROVED AS TO FORM:

Joseph C. Bodek
Clerk of the Authority

By: Joseph C. Bodek

APPROVED AS TO SUFFICIENCY OF FUNDS

[] YES [] NO [X] 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>Jackus</i>		✓					
<i>Kahn</i>	✓		✓			✓	
<i>Kennedy</i>		✓					
<i>Kulish</i>		✓					
<i>People</i>	✓		✓				
<i>Bonanno, Alternate No. 1</i>	✓		✓				
<i>Lombardo, Alternate No. 2</i>	✓		✓				

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WHEREAS, the Union County Utilities Authority (“UCUA”) is a public body corporate and politic of the State of New Jersey, created by the Freeholders in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. (“MCUA Law”), by an Ordinance adopted on June 5, 1986, as amended on December 11, 1986 and which exercises essential governmental functions for the public health, benefit and welfare of the citizens of Union County (“County”); and

WHEREAS, the Union County District Solid Waste Management Plan (“County 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 from time to time; and

WHEREAS, on December 11, 1986, the Freeholders designated the UCUA as the agency responsible for the implementation of the County Plan, pursuant to and in accordance with the SWMA as the UCUA is empowered, pursuant to the MCUA 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 UCUA, in its capacity as implementing agency for the County Plan, has previously developed, implemented and financed a solid waste management system which included the construction of the Union County Resource Recovery Facility (“UCRRF”) to provide for the processing and disposal of all solid waste generated within the geographic boundaries of the County; and

WHEREAS, following and 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”) the County Plan was amended on May 21, 1998 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”) for disposal at the UCRRF, and including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the UCRRF; and

WHEREAS, the County also adopted a series of amendments to the County Plan as supplemented by an administrative action adopted by the UCUA in response to Atlantic Coast resulting in the issuance of two certifications by the NJDEP dated July 20, 1998 and June 1, 1999 which were subsequently clarified by the NJDEP on June 29, 1999, re-establishing mandatory flow control over all Solid Waste Types 13, 13C, 23 and 27 (“Non-Processible Waste”) generated within the County and further directing all Non-Processible Waste to the County's designated disposal facility at that time, the Hackensack Meadowlands Development Commission, following and pursuant to a non-discriminatory procurement consistent with Atlantic Coast; and

WHEREAS, on July 13, 2000, the NJDEP approved, by administrative action, an amendment to the County Plan allowing NJDEP-permitted Materials Recovery Facilities ("MRF"s) to enter into agreements with the UCUA to accept and recycle solid waste Types 13 (including type 13C), 23, and 27 generated in Union County; but to deliver residual solid waste generated therefrom to the NJMC facilities; and

WHEREAS, in or about June 2005, UCUA and South Plainfield Transfer and Recycling, Inc. (hereinafter "SPT&R") entered into an agreement that permitted SPT&R to receive, recycle and transfer solid waste 13 (including type 13C), 23 and 27 generated within Union County ("Regulated Waste") at its transfer station/materials recovery facility ("MRF") at 2101 Roosevelt Avenue, South Plainfield, New Jersey; and

WHEREAS, as a condition of the 2005 agreement, SPT&R was required to deliver all non-recycled wastes that remained after the removal of recyclable materials from the Regulated Waste ("Residual Waste"), or a like kind and amount of Residual Waste, to the County's then current designated final disposal facility; and

WHEREAS, as a result of numerous investigations conducted by the UCUA, the UCUA issued formal notices to, and engaged in meetings with representatives of, SPT&R for alleged violations of the requirements of the County Plan's Regulated Waste waste-flow requirements. The correspondence alleged that SPT&R violated the County Plan and its agreement with the UCUA by collecting and receiving Regulated Waste at its facilities and failing to transport the waste to either a designated final disposal facility or a materials recovery facility ("MRF") approved by the UCUA to accept such waste types under the then current Union County District Solid Waste Management Plan and by failing to deliver residual waste back to the County's designated disposal facility in violation of the law; and

WHEREAS, On April 10, 2012, the UCUA filed an action against the SPT&R in the Superior Court of New Jersey entitled, Union County Utilities Authority et al. v. South Plainfield Transfer and Recycling, Inc. et al., Docket No.: UNN-1-1360-12 ("the State Litigation") to enforce the violations which were the subject of the above described formal notices; and

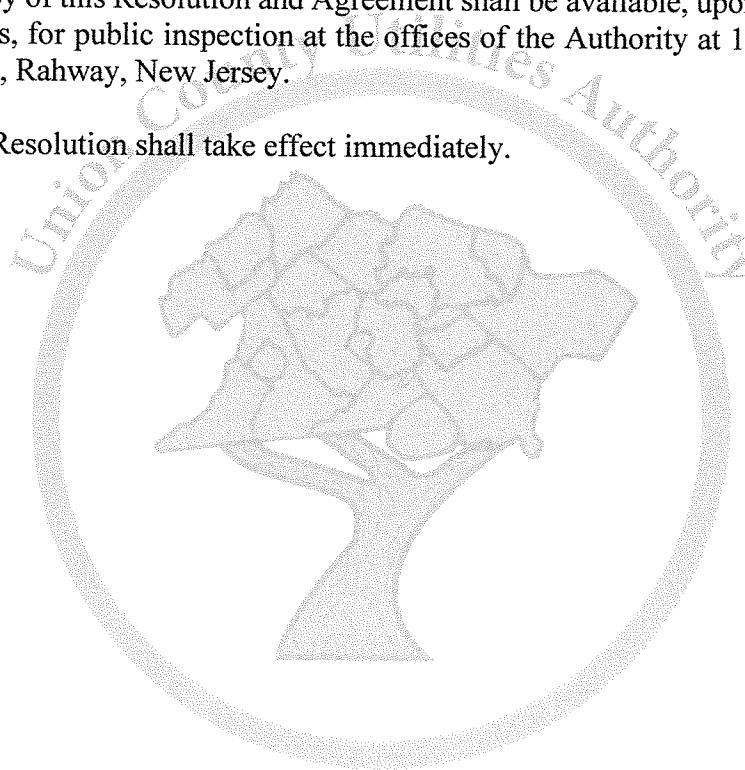
WHEREAS, On January 11, 2013, SPT&R filed a Voluntary Petition in the United States Bankruptcy Court for the District of New Jersey under Chapter 11 of the Bankruptcy Code entitled In re: South Plainfield Transfer and Recycling Corporation, Case No.: 13-10605-KCF ("the Bankruptcy Case") in response to which on July 18, 2013, the UCUA filed a Proof of Claim setting forth a general unsecured claim in the amount of \$1,292,258.29 (hereinafter "Original Claim"); and

WHEREAS, the UCUA has engaged in ongoing discussions with SPT&R representatives in an effort to amicably resolve the parties' disputes in the State Litigation and the Bankruptcy Case without further cost to the parties; and

WHEREAS, as a result of the aforementioned discussions, the parties have agreed to the terms of a settlement as set forth in the proposed form of Settlement Agreement attached hereto ("Agreement"). The Agreement's provisions include, among other things, the lump sum payment of \$325,000.00 by SPT&R to the UCUA on the date of the closing of the sale of the SPT&R's assets, as though the UCUA's claim was "secured" rather than unsecured, and is conditioned upon the Bankruptcy Court accepting the terms of the Agreement.

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

1. The aforesaid recitals are incorporated herein as though fully set forth at length.
2. The Agreement is approved in substantially the form attached hereto and, subject to the conditions set forth herein below, the Executive Director is hereby authorized and directed to execute the Agreement.
3. General Counsel is hereby authorized and directed to prepare and submit, at the appropriate time as necessary, any petitions and/or documentation to the NJDEP in connection with the Agreement.
4. A copy of this Resolution and Agreement shall 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.



SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is made between

Union County Utilities Authority
1499 Routes 1 & 9 North
Rahway, New Jersey 07065
(hereinafter "UCUA")

- and -

South Plainfield Transfer and Recycling Corporation
2101 Roosevelt Avenue
South Plainfield, NJ 07080
(hereinafter "Debtor")

NOW, THEREFORE, it is hereby agreed:

1. **Recitals.** The following Recitals are incorporated into this Agreement.
 - a. On April 10, 2012, the UCUA filed an action against the Debtor in the Superior Court of New Jersey entitled, *Union County Utilities Authority et al. v. South Plainfield Transfer and Recycling, Inc. et al.*, Docket No.: UNN-L-1360-12 ("the State Litigation").
 - b. On January 11, 2013, the Debtor filed a Voluntary Petition in the United States Bankruptcy Court for the District of New Jersey under Chapter 11 of the Bankruptcy Code entitled *In re: South Plainfield Transfer and Recycling Corporation*, Case No.: 13-10605-KCF ("the Bankruptcy Case").
 - c. On July 18, 2013, the UCUA filed a Proof of Claim setting forth a general unsecured claim in the amount of \$1,292,258.29 (hereinafter "Original Claim").
2. **Settlement.** The UCUA agrees to adjust its claim down to \$325,000.00 provided that the UCUA is paid that amount in full on the date of the closing of the sale of the Debtor's assets, as though the UCUA's claim was "secured" rather than unsecured (hereinafter "the Settlement").
3. **Contingencies.** If the Settlement is not effectuated, the UCUA's claim is not limited to \$325,000.00, and the UCUA is entitled to assert its Original Claim against the Debtor.
4. **No Waiver.** The acquiescence or failure of one Party to enforce a term of this Agreement against another Party shall not operate, or be construed, as a waiver of any rights by the non-breaching Party, or as a waiver of any subsequent breach or violation of the Agreement, or as a modification of the terms of this Agreement.
5. **No Modification and/or Discharge unless Written.** This Agreement may not be changed, altered, or modified except in a writing signed by the Parties. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

6. **Full Expression of Settlement.** This Agreement is the entire agreement between the Parties with respect to the subject-matter set forth herein.

7. **No Admissions and No Fault.** Nothing contained or expressed herein, nor the consummation of this Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of either of the Parties. Furthermore, the Parties have entered into this Agreement to avoid further disputes and litigation with their attendant inconveniences and expenses. This provision is limited solely to the making of this Agreement and does not relate to admissions or representations made prior to, or after the entry of, this Agreement. Except as provided herein, all parties reserve their rights.

8. **Severability.** If any of the provisions of this Agreement are determined to be invalid under any applicable state or federal laws or by an order of a Court having legal and appropriate jurisdiction over this matter, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable, and shall remain in full force and effect.

9. **Binding.** This Agreement is binding on each of the Parties' respective assigns, heirs, successors-in-interest, agents, attorneys, Commissioners, officers, members, shareholders, and partners.

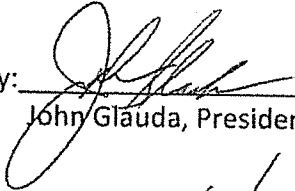
10. **Execution.** This Agreement shall become effective only upon its execution by all parties hereto. It is understood, however, that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement.

11. **Agreement subject to Approval by the Governing Body of the UCUA.** This Agreement is subject to approval, and has no force or effect unless approved, by formal action of the Commissioners of the UCUA.

12. **Bankruptcy Court Approval.** This agreement is subject to Bankruptcy Court approval after notice to creditors and parties in interest in the Bankruptcy Case.

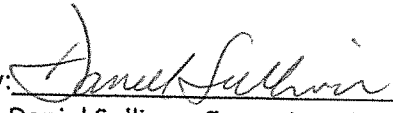
**** Authorized Signatures on the Following Pages ****

South Plainfield Transfer and Recycling Corporation

By: 
John Gláuda, President

Dated: 10/14/13

Union County Utilities Authority

By: 
Daniel Sullivan, Executive Director

Dated: 10/22/13