



UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

ORDINANCE NUMBER: *725-2011*
 DATE OF INTRODUCTION: *August 25, 2011*
 DATE OF ADOPTION: *September 15, 2011*

AN ORDINANCE AMENDING THE
 UNION COUNTY DISTRICT
 SOLID WASTE MANAGEMENT PLAN

1) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, INC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY, 2) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF TO THE LOCAL WASTE AGREEMENTS WITH THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES THEREIN AS PART OF THE UNION COUNTY SOLID WASTE SYSTEM, AND 3) REAFFIRM IMPLEMENTATION AND ENFORCEMENT OF REGULATORY WASTE FLOW CONTROL FOR PROCESSIBLE WASTE GENERATED IN UNION COUNTY

NO SUFFICIENCY OF FUNDS REQUIRED
Frank W. Radwin
 8-24-2011

INTRODUCTION				RECORD OF VOTE				FINAL ADOPTION							
FREEHOLDER	Aye	Nay	Abs	Pass	Ord	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord	Sec	NP
CARTER	X							CARTER	X						
ESTRADA	X							ESTRADA	X						
HUDAK	X							HUDAK	X						
JALLOH	X							JALLOH	X						
KOWALSKI	X							KOWALSKI	X						
SULLIVAN							X	SULLIVAN							X
WARD	X							WARD	X						
MIRABELLA VICE CHAIRMAN	X							MIRABELLA VICE CHAIRMAN	X						
SCANLON CHAIRMAN	X				X			SCANLON CHAIRMAN	X				X		

APPROVED AS TO FORM

 COUNTY ATTORNEY

I hereby certify the above is an original ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date

 CLERK

I hereby certify this is a true copy of a ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date

 _____ CLERK

AS RECOMMENDED
BY THE UNION COUNTY UTILITIES AUTHORITY

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13-1E-1 et seq., the County of Union is designated as a Solid Waste Management District and by law did develop and prepare a District Solid Waste Management Plan ("County Plan") that was adopted by the Union County Board of Chosen Freeholders on June 7, 1979, pursuant to and in accordance with the Solid Waste Management Act, N.J.S.A. 13-1E-1 et seq., and

WHEREAS, 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; and

WHEREAS, on December 11, 1986, the Union County Board of Chosen Freeholders designated the Union County Utilities Authority ("UCUA") as the agency responsible for the implementation of the County Plan, as amended from time to time, and the UCUA is empowered 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 previously recommended and the County adopted an amendment to the County Plan that was subsequently withdrawn by the County pursuant to correspondence, dated August 16, 2011, as a result of extensive discussions with NJDEP that required revisions to the amendments of the Facility Lease and Waste Disposal Agreement in order to obtain approval of the amendments from NJDEP and LGS pursuant to the McEnroe Act; and

WHEREAS, by Resolution No 57-2011, duly adopted August 17, 2011, the UCUA has re-formulated a Plan Amendment, and recommends that this Board set a public hearing for the purpose of taking public testimony on the proposed plan amendment, and review and enact said amendment that is now on file with the Clerk of this Board and available for public inspection and is made a part hereof by reference, and

WHEREAS, the subject amendment is summarized as follows:

This Plan Amendment is prepared as a result of a determination by the UCUA to extend and modify the terms of the existing Amended and Restated Waste Disposal Agreement and the Facility Lease Agreement governing the operation by Covanta Union, Inc of the UCUA's 1,540 tons-per-day resource recovery facility ("UCRRF") located in the City of Rahway, New Jersey. The proposed modifications are projected to result in substantial benefits from Covanta and the refinancing of existing debt that will be shared by all citizens of the County.

The purpose of this Plan Amendment is to incorporate the extensions of, and modifications to, the terms and provisions of the Facility Lease Agreement and the Amended and Restated Waste Disposal Agreement into the County Plan; incorporate the extensions of and modifications to the Local Waste Agreements with the County of Union and certain municipalities into the County Plan as part of the County Solid

Waste System; and to reaffirm the implementation and enforcement of regulatory waste flow control for processible waste generated in the County

WHEREAS, pursuant to the Solid Waste Management Act, the County's Solid Waste Advisory Committee ("SWAC") must be consulted with respect to amendment to the County Plan, and

WHEREAS, pursuant to and in accordance with the provisions of the Solid Waste Management Act, the Plan Amendment was presented to SWAC, and

NOW, THEREFORE, BE IT ORDAINED, by the Board of Chosen Freeholders of the County of Union, that:

- 1 The aforesaid recitals are incorporated herein as though fully set forth at length.
2. The Plan Amendment, as prepared and recommended by the Union County Utilities Authority, is hereby adopted as an Amendment to the Union County District Solid Waste Management Plan.
- 3 Any provision of the County Plan that is inconsistent with the Plan Amendment is hereby repealed to the extent of said inconsistency and the provisions of the Plan Amendment shall be fully effective and shall control
- 4 A certified copy of this Ordinance, as finally adopted, together with the Plan Amendment, shall be forwarded to the New Jersey Department of Environmental Protection, the County Clerk of the County of Union, and the Union County Utilities Authority.
- 5 The Clerk of this Board shall publish and disseminate notice of this Ordinance as provided by law.
6. The aforesaid Plan Amendment and a copy of the transcript of the public hearing to be held at such time as may be scheduled by said Board of Chosen Freeholders, and the necessary deliberations shall be submitted to the Commissioner of the New Jersey Department of Environmental Protection.
- 7 This Ordinance shall take effect in the manner prescribed by law.

It is hereby certified that at a regular meeting of the Board of Freeholders of the County of Union held on the ____ day of September 2011, the foregoing ordinance was finally adopted with ____ members voting in the affirmative and ____ in the negative

Nicole L. DiRado, Clerk
Union County Board of Chosen Freeholders

The foregoing ordinance having been duly presented to me, I hereby attest to and execute the same.

Dated: September __, 2011

AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

**Recommended by the
Union County Utilities Authority
August 17, 2011**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, INC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY AND TO THE LOCAL WASTE AGREEMENTS WITH THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES THEREIN AS PART OF THE UNION COUNTY SOLID WASTE SYSTEM, AND TO REAFFIRM IMPLEMENTATION AND ENFORCEMENT OF REGULATORY WASTE FLOW CONTROL FOR PROCESSIBLE WASTE GENERATED IN UNION COUNTY

I. INTRODUCTION

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (“Act”), 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 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 (“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.

A solid waste management plan must, by law, provide for the safe and efficient disposal of all solid waste generated in the district. N.J.S.A. 13:1E-21(b). The Act requires counties to designate a local agency to oversee implementation of the district’s plan. N.J.S.A. 13:1E-21(b)1. Accordingly, in 1986, the Union County Board of Chosen Freeholders designated the Union County Utilities Authority (“UCUA”) as the agency responsible for the implementation of the County Plan, as amended from time to time, pursuant to and in accordance with the provisions of the Act. The UCUA is empowered pursuant to the Municipal and Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in Union County (“County”). By Preliminary Order of the Board of Public Utilities, dated December 31, 1987, as thereafter amended by order of NJDEP, dated December 16, 1991, the UCUA was granted, pursuant to N.J.S.A. 48:13A-5, the exclusive right to control and provide for the disposal of solid waste generated within the geographic boundaries of the County, including all Solid Waste Types 10, 13, 23 and 27.

The centerpiece of the Union County solid waste system (“County System”) is the Union County Resource Recovery Facility (“UCRRF” or “Facility”), a waste-to-energy facility utilizing mass-burn technology and capable of processing up to 1,540 tons per day. Owned by the UCUA, the UCRRF was designed and constructed by Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc., “Covanta”). The UCRRF was included in the County Plan by a Plan Amendment adopted by the County on April 5, 1984 and certified by NJDEP on October 5, 1984, as

supplemented by a subsequent Plan Amendment adopted on September 15, 1988, which was certified by NJDEP on April 3, 1989. Commercial operation of the UCRRF commenced on or about July 1, 1994 under the operation of Covanta, pursuant to a Service Agreement approved in accordance with the requirements of Chapter 38 of the Pamphlet Laws of 1985 of the State of New Jersey and the acts amendatory thereof and supplemental thereto (N.J.S.A. 13:1E-136 et seq., commonly referred to as the "McEnroe Act").

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, revise, in part, the then-existing County Plan in order to bring it into compliance with Atlantic Coast while enabling the UCUA to continue to meet its financial obligations, including debt service on its outstanding bond indebtedness which at the time was approximately \$294 million. In pertinent part, the December 18, 1997 Plan Amendment set forth the County's new disposal strategy, which was comprised of (i) the lease of the Facility to Covanta for a term of 25 years; (ii) UCUA's guarantee, pursuant to a Waste Disposal Agreement ("Disposal Agreement"), to deliver 250,000 tons of Solid Waste Types 10 and 25 ("Processible Waste") annually to the UCRRF, with Covanta being responsible for securing, negotiating and executing contracts or making other arrangements as to the remaining UCRRF capacity; and (iii) UCUA offering voluntary contracts to County municipalities for the disposal of Processible Waste at the UCRRF pursuant to Local Waste Agreements, as a means of satisfying UCUA's delivery obligations to Covanta under the Disposal Agreement. Approximately 195,000 tons (the "Contract Waste") of the 250,000 tons of annual capacity contracted for under the Disposal Agreement was to be delivered to the UCRRF pursuant to the Local Waste Agreements.

The UCUA took several other aggressive steps to restructure and reduce its stranded debt. Specifically, it refinanced the debt to take advantage of favorable interest rates and to amortize it over a longer period; it applied funds on-hand, including debt service reserve funds and unspent bond proceeds, to the existing debt; and, in conformance with its restructured relationship with Covanta and to cut costs going forward, it reorganized its workforce, eliminated twenty-three (23) full-time positions and transferred the recycling program and solid waste enforcement functions to the County. Through all of these steps, the County's stranded debt was ultimately reduced to roughly \$80 million.

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 aspects of a proposed Environmental Investment Charge ("EIC") as a means to raise revenue and to pay off the remaining County System stranded debt), by the Certification, dated April 30, 1998, issued by the Commissioner of NJDEP. On May 21, 1998, the County adopted a supplemental Plan Amendment, responding to the issues identified by NJDEP in its April Certification. Among other things, the May 1998 Plan Amendment further identified and quantified certain cost components of the EIC. NJDEP substantially approved the supplemental Plan Amendment on July 20, 1998. In December 1998, the County adopted another Plan Amendment, eliminating the in-County weighing requirement

previously approved by NJDEP. Under this Amendment, the County proposed to utilize solid waste records required to be maintained under NJDEP's regulations (O&D forms) to assess the EIC upon actual tons of in-County generated solid waste types 10 and 25 delivered to solid waste facilities other than County designated facilities. NJDEP approved the County's alternative assessment mechanism by Certification dated May 12, 1999.

On June 22, 2000, the New Jersey Supreme Court, in IMO Passaic Co. Utilities Authority Petition Requesting Determinations of Financial Difficulty and Application for Refinancing Approval (A-19-99), determined that the imposition of an EIC was not statutorily authorized and further found that the EIC was consistent with the State's waste flow regulations that the Circuit Court in Atlantic Coast held as unconstitutional to the extent they discriminated against interstate commerce, hence the EIC was unconstitutional as well. Once again, the UCUA's financial plan was thrown into immediate jeopardy. Faced with the clear prospect of defaulting on its bonds, the UCUA immediately created a Contingency Planning Ad Hoc Committee comprised of County and UCUA representatives and financial and legal consultants to develop an appropriate Plan Amendment to address the impact of the New Jersey Supreme Court decision.

To solve for the loss of revenue anticipated by the assessment of the EIC, the UCUA and the County ultimately determined to impose regulatory flow control over the Processible Waste generated in the County, not otherwise disposed pursuant to voluntary contract with the UCUA ("Non-Contract Waste"), pursuant to a non-discriminatory procurement in accordance with Atlantic Coast. As a result, on February 13, 2002, the County Plan was amended, among other things, to reflect the inclusion of the Waste Management of New Jersey, Inc. ("Waste Management") and Automated Modular Systems, Inc. ("AMS") transfer stations, located in Elizabeth and Linden, New Jersey. Non-Contract Waste from certain designated municipalities in the County was directed to the UCRRF, and the transfer station operated by Waste Management and AMS. In a Certification issued on June 13, 2003, the Commissioner of NJDEP approved the re-establishment of regulatory flow control over Non-Contract Waste and the direction of this waste to certain designated facilities.

In anticipation of the expiration of the arrangement with Waste Management and AMS, the UCUA undertook a non-discriminatory procurement of solid waste disposal services with regard to the Non-Contract Waste. On November 8, 2007, the County Plan was amended to designate the UCRRF as the facility to which all Non-Contract Waste (Types 10 and 25) generated within the County was to be directed for disposal to Covanta, pursuant to regulatory waste flow as a result of the procurement of the disposal facility in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast. The Commissioner of NJDEP issued a Certification on April 25, 2008, approving the November 8, 2007 amendment to the County Plan and the exercise of regulatory flow control for all Non-Contract Waste generated within the County.

As described below, this Plan Amendment is intended to supplement the prior plan amendments that have been adopted since the decision of the United States Court of Appeals for the Third Circuit in Atlantic Coast. The purpose of this Plan Amendment is two-fold: 1) to incorporate

the terms and provisions for extensions of, and modifications to, the Facility Lease Agreement (“Facility Lease”) and the Disposal Agreement by and between the UCUA and Covanta governing the occupancy and operation of the UCRRF as well as to the Local Waste Agreements between the UCUA and the County of Union and Union County certain municipalities as part of the Union County solid waste system (“County System”), and 2) to reaffirm the exercise and enforcement of regulatory waste flow control for the disposal of all Processible Waste generated with the County to the UCRRF consistent with the holding of the United States Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007), that provides for a distinction between public and privately-owned disposal facilities.

II. INCORPORATION OF EXTENSIONS OF, AND MODIFICATIONS TO, THE TERMS AND PROVISIONS OF THE FACILITY LEASE AND DISPOSAL AGREEMENT BETWEEN THE UCUA AND COVANTA FOR THE OPERATION OF THE UCRRF, PURSUANT TO AND IN ACCORDANCE WITH THE MCENROE ACT, AS PART OF THE COUNTY SYSTEM

Through this Plan Amendment, the County intends to incorporate into the County Plan amendments to the Facility Lease and Disposal Agreement that, among other things as described below, effectively extend the terms of these agreements for an additional twenty-two and one-half years. Both agreements were scheduled to expire on June 14, 2023 and will be extended out through December 17, 2031. In exchange for the extension of the terms of the Facility Lease and Disposal Agreement, the UCUA will be entitled to benefits more specifically detailed in a letter amendment to the Verified Petition, attached hereto and dated July 29, 2011.

To support its waste delivery obligations under the amendment to the Disposal Agreement, the UCUA has entered into valid, binding and enforceable amendments to Local Waste Agreements, such that each amended Local Waste Agreement has a term extending at least to the final maturity of the 2011 Refunding Bonds and obligates those County municipalities to deliver Acceptable Waste to the Facility and to pay the UCUA disposal fees on a “put or pay” basis. The amendments of the Local Waste Agreements and the continued direction of Non-Contract waste to the Facility are reasonable and necessary to satisfy the UCUA’s waste delivery obligations and enable it to pay all Service Charges and other amounts due to Covanta under the amended Disposal Agreement in order to achieve the savings described herein.

Covanta presently leases and operates the Facility in accordance with the Facility Lease, and also pays, through lease payments made to the UCUA, debt service on bonds issued by the UCUA in 1998 that will mature in 2023. Simultaneous with the implementation of the proposed extensions to the Facility Lease and Waste Disposal Agreement, UCUA intends to refinance through the issuance of up to \$150 million aggregate principal amount of Solid Waste Facility Lease Revenue Bonds (“2011 Refunding Bonds”) the remaining project debt over the extension period. Covanta will continue to make rental payments to the UCUA under the Facility Lease equal to the annual debt

service and any relevant bond administration fees such as trustee fees for the extended term of the project debt.

An independent engineering review of information from Covanta was performed by R. W. Beck, Inc. ("Beck") to establish its remaining useful life of the Facility and to support the extension of the Facility Lease, and to review Covanta's plan of capital improvements associated with the Facility's useful life. Information verified from the review was used by Beck in the preparation of a report that has been submitted to Covanta and the UCUA. All expenses associated with the study were required to be paid by Covanta and the UCUA was required to cooperate at all times with Covanta and Beck during the performance of the study, including, but not limited to, the timely furnishing documents, records and data, as well as responding to any other reasonable inquiry related to the study.

The report prepared by Beck ("Report") relied upon historical data for the operation of the Facility from 2005 through 2009, including annual waste throughput, electricity generation, revenues from tipping fees and electrical sales, operation and maintenance expenses, waste processing and energy generating capabilities, plant availability and capital expenditures. Also reviewed as part of the study was Covanta's estimate of additional capital expenditures that it believes are necessary for the Facility to operate through the extension period, in addition to projections by Covanta of future operating results through the period of the extension to the Facility Lease and Disposal Agreement. The Report confirmed that the Facility is capable of operating through the extension period provided that it is properly operated and maintained and capital improvements are implemented in a timely manner, and determined that sufficient financial incentives exist and funds will be available to Covanta to properly operate and maintain the Facility and make capital investments when needed. The Report concluded that, among other things, based upon its review of the operating data and the contractual extension provisions, should Covanta operate and maintain the Facility, and make all necessary capital improvements in a timely manner, it is reasonable for the Facility to have a useful life through the extension period under the Facility Lease and Disposal Agreement.

The proposed modifications to the Waste Disposal Agreement satisfy the mandatory provisions for a contract for resource recovery services under Section 29 of the McEnroe Act. The Facility has been in operation for almost twenty years, so many of these requirements are no longer applicable (i.e. allocation of risks of financing and constructing the Facility). In addition, many of these requirements have previously been addressed and approved by the McEnroe Review Agencies and are not affected by the modifications proposed herein by the parties for approval.

The State of New Jersey has adopted a policy aimed at producing efficiencies and cost savings for governmental units through the consolidation of services offered by counties and municipalities. Declaring that the large number of local government jurisdictions in New Jersey contributed to the high property tax burden suffered by New Jersey residents, the Legislature has enacted laws streamlining the process for consolidating municipalities. More directly applicable to the area of solid waste, the Solid Waste Management Act encourages regionalized solutions to solid waste collection and disposal in an effort to avoid piecemeal solutions that are costly and fail to

implement coordinated approaches that effectively protect the health, safety and welfare of the citizens of the State and the environment.

In renegotiating the Facility Lease and Waste Disposal Agreement, the UCUA specifically considered and addressed issues of regionalized planning by accepting greater solid waste delivery obligations and responsibility for fashioning a disposal arrangement with another public entity, potentially another New Jersey county. Interlocal agreements will provide for the delivery to the Facility of 100,000 tons annually of Processible Waste, potentially reducing the need for additional transfer and/or disposal facilities in a second county while, at the same time, maximizing the effectiveness of the Facility. The citizens of the County and possibly another New Jersey county or public entity will benefit from the regionalized program as a result of the lower costs of disposal that could only be achieved through the coordinated and cooperative efforts of all parties involved in the negotiations.

The modifications to the Facility Lease and Disposal Agreement will produce substantial savings to the UCUA, the County and its respective municipalities, while placing the Facility in an improved economic and competitive position. These benefits will be achieved without any diminution of the strict requirements previously mandated in the Service Agreement and the Disposal Agreement concerning adherence to environmental and other regulatory requirements.

The proposed modifications to the Facility Lease and the Disposal Agreement, in light of the opinion of Beck in the Report concerning the useful life of the Facility, and the prior findings and approvals of the McEnroe Review Agencies, are compliant with the requirements of the McEnroe Act, consistent with State policy, and in the best interests of the citizens of not only the County, but also a second public entity through a cooperative arrangement on a regional basis. Therefore, the Facility Lease and the Disposal Agreement, as amended, as well as the conforming modifications to the Local Waste Agreements are hereby included in the County Plan.

III. WASTE FLOW DIRECTIVES

As a result of non-discriminatory procurements previously undertaken by the UCUA with respect to the disposal of Processible Waste generated within the County, as certified by NJDEP, the modifications to the Facility Lease and Disposal Agreement satisfy the mandatory provisions for a contract for resource recovery services under Section 29 of the McEnroe Act, and consistent with the holding of the United States Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, the County will continue to exert regulatory waste flow control over all Processible Waste generated within the County, as follows:

All Processible Waste generated in the County is hereby directed to the UCRRF in Rahway, New Jersey, for processing and disposal.

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 Authority'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.

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July 29, 2011

Via Electronic Mail and UPS Overnight Delivery

Commissioner Bob Martin New Jersey Department of Environmental Protection 401 East State Street P.O. Box 402 Trenton, NJ 08625-0402	Thomas H. Neff, Director Division of Local Government Services 101 South Broad Street P.O. Box 803 Trenton, NJ 08625-0803
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**Re: Union County Utilities Authority/Union County Resource Recovery Facility
Petition for Approval Pursuant to N.J.S.A. 13:1E-136 et seq.**

Dear Commissioner Martin and Mr. Neff:

As you are aware, this firm, as Special Counsel to the Union County Utilities Authority ("UCUA"), filed a Verified Petition with the Department of Environmental Protection ("Department" or "DEP") and the Division of Local Government Services within the Department of Community Affairs ("Division") on January 25, 2011, pursuant to the McEnroe Act, N.J.S.A. 13:1E-136 et seq. ("Act"), requesting approval of modifications to agreements with Covanta Union, Inc. ("Covanta") that provide for the lease and operation of the Union County Resource Recovery Facility ("Facility") primarily for the processing and disposal of certain solid waste generated within the County of Union ("County").

As a result of a series of meetings between the staff in the Department and representatives of the UCUA and Covanta, and the delivery of substantial information and documentation in response to discovery propounded by DEP staff, the UCUA and Covanta have renegotiated certain aspects of the proposed transaction to address specific concerns raised during these meetings. The purpose of this letter is to present the terms and conditions of the renegotiated transaction and to formally amend the relief sought in the Verified Petition that initiated this proceeding.

Under the Facility Lease Agreement that was approved by NJDEP and DLGS in the 2nd McEnroe Order on April 30, 1998, Covanta currently leases and operates the Facility, and pays to the UCUA lease payments in an amount equal to the debt service on bonds issued by the UCUA



in 1998 and maturing in 2023. Pursuant to the Verified Petition, the UCUA proposed to extend the Facility Lease Agreement and Waste Disposal Agreement from 2023 through 2045, with Covanta holding an option to extend the agreements for an additional five-year period through 2050. Simultaneously, the UCUA intended to refinance the remaining project debt over the thirty-five year extension period in order to correspond with the extended life of the Facility and resultant revenue stream.

After review of the requested relief, the DEP staff and counsel informally determined that the Department would not approve the proposed extension of the Facility Lease Agreement and Waste Disposal Agreement, beyond an aggregate term of forty years. DEP staff indicated that the Department would permit an extension to the Facility Lease Agreement totaling no more than forty years from the date of its original approval under the McEnroe Act in 1991. Thus the final expiration date of the Facility Lease Agreement with Covanta may extend to 2031.

The originally proposed lease extension was a key element in the negotiations that led to millions of dollars of new benefits to the citizens of the County. These benefits were secured by a re-allocation of certain resources currently held by Covanta pursuant to the 1998 restructuring transaction. As a result of higher-than-anticipated electric revenues from sale of Facility power and other factors, the original economic projections for the Facility are being exceeded. Covanta was willing to re-allocate the economics on a current basis in return for the initially proposed longer lease term. The determination from DEP staff that only a shorter lease term could be approved under the Act forced a renegotiation with Covanta in order to attempt to duplicate the earlier re-allocated benefits to the UCUA and the public sector on a current basis.

The UCUA is pleased to report that it has been able to retain many of the benefits of the original proposal through a second round of comprehensive negotiations with Covanta. At the outset, in its role as the implementing agency for the County solid waste management plan, the UCUA has maintained the previously identified reductions in solid waste disposal rates. In order to address DEP staff's concern with the rate disparity between the proposed rates for the disposal of Contract Waste and Non-Contract Waste, the UCUA has modified its original proposal to utilize the annual \$4 million lease extension payments from Covanta to provide additional rate relief to Non-Contract Waste generators. The UCUA continues to propose to utilize approximately \$1.5 million of this amount to reduce Contract Waste disposal rates, but will also dedicate \$3.00 per ton annually toward solid waste grants that will be made available to non-contract municipalities for tax rate relief. In addition, after ensuring that the UCUA's financial situation is on sound footing each year, the UCUA will send \$2 million annually to the County that will be utilized to provide further tax relief to all citizens in the County.

Insofar as the annual payments from Covanta to the UCUA, Covanta will pay a total of \$120,000,000 in lease payments and \$37,250,000 in lease extension payments. Currently, the UCUA expects the lease payments to be scheduled as an annual \$8 million payment that will be used to pay related bond debt service over the first fifteen years of the new lease term. The annual lease extension payments will include \$4 million for five years, \$3 million for one year, \$1.5 million for nine years and \$750 thousand for one year. The first lease extension payment is retroactive to January 1, 2011 based on a closing date of November 1, 2011.

In the final five years of the extended lease term - assuming Covanta exercises its lease extension option, in place of the fixed lease payments a revenue sharing formula identical to the existing revenue sharing formula will be implemented. Based upon current project economic projections, this revenue sharing formula will produce sufficient funds each of the five years to the UCUA. These funds will be used, in combination with earnings on and maturity of the debt service reserve fund, to pay for debt service in the final five years.

Covanta has agreed that UCUA, and not Covanta, will be entitled to the principal and all interest earned on the bond debt service reserve fund.

The remaining terms of the renegotiated deal are as follows:

1. Electric revenues will be shared at the 10% level to UCUA beginning in 2029 as originally proposed. These revenues will also be used to pay debt service in the final 3 years of the bond issue.
2. Covanta will also pay UCUA previously agreed upon fees throughout the term:
 - a. \$125,000 per year for flow control enforcement
 - b. \$150,000 per year as an additional host community fee for a total of \$1 million per year in host fees from Covanta
 - c. \$30,000 per year in metals recoveries fees
3. UCUA, as originally proposed, will deliver 430,000 tons of waste to the Facility. Covanta will not share in any profits that may be earned on the 100,000 tons of out-of-county waste rather than the 50/50 sharing previously proposed.
4. Covanta will remain responsible for plant operations in accordance with the original agreements; however, no additional requirements for life extension expenditures will be imposed since the lease in total is only being extended for three years to 2031. After 2031, the Facility will be redelivered in good operating order to UCUA as specified in the lease and operating agreement approved by the Department in 1998.
5. As a part of the bond financing, UCUA will borrow \$12 million and deposit the funds in a cost reduction account with the bond trustee, and all such funds and the interest earned thereon will be dedicated only to costs related to the Facility, which Covanta may draw upon during the first four years of the lease. Covanta intends to utilize the funds to reduce project costs and thus increase early year profitability. These funds are an essential benefit to Covanta, and are being offered in consideration for Covanta's re-allocation to UCUA of certain economic benefits currently allocable to Covanta under the 1998 restructuring.

The shorter lease term requires restructuring of the bond debt service to a revised principal payment schedule which obtains the desired public economic benefits on a current basis. In order to market the bonds at the lowest possible interest rate, the County will upgrade its Limited Deficiency Agreement to include an obligation to replenish any draws upon the bond

issue debt service reserve fund. The bond debt service reserve fund is established as a trustee-held fund under the UCUA bond indenture for the purpose of making bond payments in the unexpected event that project revenues should experience a shortfall in the ability to make payments.

This revised approach, derived from negotiations between the parties, delivers substantially all of the benefits desired by UCUA and the County of Union but for a much shorter time period than requested. Similar to renegotiated transaction originally proposed for consideration and approval by the Department and the Division, the proposed revised terms and consequential modifications to the Waste Disposal Agreement are consistent with the mandatory provisions for a contract for resource recovery services under the McEnroe Act. While the allocation of risks associated with the delivery of solid waste for processing at the Facility and the rates to be charged for disposal services will change, the UCUA has obtained significant pricing concessions that will benefit generators of solid waste in the County

The UCUA maintains that the renegotiated terms and proposed modifications to the Facility Lease and Waste Disposal Agreements will produce substantial savings to the UCUA, the County and its municipalities. The benefits attained from the renegotiation of the Waste Disposal Agreement and Facility Lease will result in an improved economic position on a long-term basis for the Facility and enable the UCUA to effectively compete in the solid waste disposal marketplace.

Based upon the direction from DEP staff during meetings on the relief requested in the Verified Petition and the subsequent renegotiation between the UCUA and Covanta, the UCUA hereby respectfully requests that the Department consider this letter as an amendment of the terms of the Facility Lease extension transaction set forth in the Verified Petition and issue an order approving the proposed revised modifications to the Facility Lease and the Waste Disposal Agreement as consistent with Act and will produce substantial benefits to the UCUA, the County and its municipalities.

Very truly yours,

DeCotiis, FitzPatrick and Cole, LLP

By: 

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