



UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

ORDINANCE NUMBER: 77-2016
DATE OF INTRODUCTION: 2/4/2016
DATE OF ADOPTION: 2/18/2016

2/4/2016

AN ORDINANCE TO AMEND THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO MODIFY THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN BY MODIFYING THE FACILITY LEASE AGREEMENT AND WASTE DISPOSAL AGREEMENT BETWEEN THE UNION COUNTY UTILITIES AUTHORITY (UCUA) AND COVANTA UNION, LLC (COVANTA) BY EXTENDING THE TERM OF THE FACILITY LEASE AGREEMENT FOR A PERIOD OF TWENTY-TWO (22) YEARS FROM DECEMBER 15, 2031 TO DECEMBER 15, 2053, RESULTING IN SUBSTANTIAL SAVINGS TO THE UCUA THROUGH THE ELIMINATION OF THE WASTE DELIVERY OBLIGATION FOR 100,000 TONS ANNUALLY FROM GOVERNMENTAL ENTITIES OUTSIDE OF THE COUNTY OF UNION.

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

*No Supporting Agreement
M Zick*

Continued...

INTRODUCTION					RECORD OF VOTE					FINAL ADOPTION						
FREEHOLDER	Aye	Nay	Abs	NP	Pass	Ord.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP
CARTER	X								CARTER		X					
ESTRADA	X								ESTRADA		X					
HUDAK	X					X			HUDAK	X				X		
JALLOH	X								JALLOH	X						
KOWALSKI	X								KOWALSKI	X						
MIRABELLA	X						X		MIRABELLA	X					X	
WRIGHT	X								WRIGHT	X						
GRANADOS VICE CHAIRMAN	X								GRANADOS VICE CHAIRMAN							X
BERGEN CHAIRMAN	X								BERGEN CHAIRMAN	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

PAGE 2... AMEND THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

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 UCUA has 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:

- 1) **TO MODIFY THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN BY MODIFYING THE FACILITY LEASE AGREEMENT AND WASTE DISPOSAL AGREEMENT BETWEEN THE UNION COUNTY UTILITIES AUTHORITY (UCUA) AND COVANTA UNION, LLC (COVANTA) BY EXTENDING THE TERM OF THE FACILITY LEASE AGREEMENT FOR A PERIOD OF TWENTY-TWO (22) YEARS FROM DECEMBER 15, 2031 TO DECEMBER 15, 2053, RESULTING IN SUBSTANTIAL SAVINGS TO THE UCUA THROUGH THE ELIMINATION OF THE WASTE DELIVERY OBLIGATION FOR 100,000 TONS ANNUALLY FROM GOVERNMENTAL ENTITIES OUTSIDE OF THE COUNTY OF UNION.**

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, by Resolution No. 90-2016, duly adopted February 3, 2016, the UCUA approved the Plan Amendment and recommended that the Plan Amendment be approved by the Board of Chosen Freeholders of the County, after public hearing in accordance with the Solid Waste Management Act; and

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

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.

**AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN**

**Recommended by the
Union County Utilities Authority
February 2016**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO INCORPORATE MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, LLC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY TO EXTEND THE LEASE TERM AND REDUCE THE AUTHORITY'S WASTE DELIVERY OBLIGATIONS

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 Sports and Exposition Authority) 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 on August 13, 1980, with modifications, by the Department of Environmental Protection ("NJDEP"), 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, LLC., "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 N.J.S.A. 13:1E-136 et seq. and the

acts amendatory thereof and supplemental thereto (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 that, 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 an Amended and Restated Waste Disposal Agreement (“Waste 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 Waste Disposal Agreement. Approximately 195,000 tons (“Contract Waste”) of the 250,000 tons of annual capacity contracted for under the Waste Disposal Agreement was to be delivered to the UCRRF pursuant to the Local Waste Agreements. The Department approved the market-based strategy for Processible Waste in a Certification issued by NJDEP on April 30, 1998.

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 NJDEP. On May 21, 1998, the County adopted a supplemental Plan Amendment, responding to the issues identified by NJDEP in its April 1998 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.

In order to implement the “restructured system” and, specifically, to address the impacts of the loss of regulatory waste flow control, UCUA and Covanta substantially renegotiated the rights and obligations under the Service Agreement. The terms and conditions of the renegotiation between the parties were incorporated in the Waste Disposal Agreement. As a result of the satisfaction of various conditions, the Waste Disposal Agreement took the place of the existing Service Agreement and governed the relationship of the parties pertaining to (i) utilization of the Facility by (or on behalf of) UCUA, and (ii) Covanta’s obligations with respect to the operation and

maintenance of the Facility and its rights to market, and execute contracts for use of, the permitted and uncommitted processing capacity of the Facility. The Waste Disposal Agreement had an initial term of twenty-five (25) years, terminating in 2023.

In addition to a reallocation of the risks, duties, obligations and benefits of the parties with respect to the Facility, the restructured system also included the execution of a Facility Lease Agreement between the UCUA and Covanta pursuant to which the UCUA leases the Facility and the Facility Site to Covanta for an initial lease term of twenty-five (25) years. Covanta had a unilateral right to extend the term of the Facility Lease Agreement for a period of an additional five (5) years. Under the terms of the Facility Lease Agreement, Covanta pays “fixed annual rent” to the UCUA in an amount that is sufficient to make payment of the principal of and interest on long-term lease revenue bonds issued by the UCUA.

As consideration for Covanta’s obligation under the Waste Disposal Agreement to operate and maintain the Facility, and to accept and dispose of all Processible Waste delivered to the Facility, the UCUA was obligated to deliver at least 250,000 tons of Processible Waste to the Facility annually. To satisfy its obligation in this regard, the UCUA negotiated and executed Local Waste Agreements with, among others, municipalities located within the County with respect to the utilization of UCUA’s rights to use the Facility, as contained in the Waste Disposal Agreement, by (or on behalf of) the municipalities. Pursuant to a Local Waste Agreement, a municipality agreed to deliver (or cause to be delivered) to the Facility a guaranteed tonnage of Processible Waste generated within its boundaries and pay to the UCUA a service charge for each ton of Processible Waste delivered (or on the guaranteed tonnage if less Processible Waste is actually delivered to the Facility). The service charge revenues are then paid by the UCUA to Covanta pursuant to the Waste Disposal Agreement.

The UCUA filed a petition on March 4, 1998 with the NJDEP and the Department of Community Affairs, Division of Local Government Services (“McEnroe Review Agencies”), seeking approval of the proposed Waste Disposal Agreement with Covanta for the operation of the Facility. After engaging in significant discovery as to the renegotiation of the Service Agreement that led to the execution of the Waste Disposal Agreement, the McEnroe Review Agencies issued an Order Conditionally Approving the Waste Disposal Agreement on April 30, 1998 (the “2nd McEnroe Order”). The 2nd McEnroe Order discussed the steps taken by the State to achieve self-sufficiency in waste disposal in order to meet its needs and avoiding the rapidly changing policies of other states and the federal government. Citing the reliance of the State’s self-sufficiency policy and, particularly, the implementation of resource recovery initiatives on underlying waste flow orders, the McEnroe Review Agencies acknowledged the impact that the federal court decisions in Carbone and Atlantic Coast had upon partnership strategies formed within the framework of a statutory process that necessitated long-term planning.¹

¹ In a supplementary Order issued on July 22, 1998, the McEnroe Review Agencies found that, based upon documentation submitted by the UCUA as part of a Supplemental McEnroe Petition, the conditions in the 2nd McEnroe Order had been satisfied, effectively completing the McEnroe review process.

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. To address the loss of revenue anticipated by the assessment of the EIC, UCUA and the County proposed 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 public 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 by 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.

In early-2011, UCUA and Covanta agreed to extend the terms of the Facility Lease and the Waste Disposal Agreement twenty-two and one-half years from June 14, 2023 to December 31, 2045, and filed a Verified Petition with the McEnroe Agencies pursuant to the McEnroe Act. Representatives of the Department and the UCUA met several times to discuss the parameters of the proposed transaction as part of the Department's comprehensive review of the Verified Petition. In response to concerns expressed by the Department and, in particular, an opinion of the Division of Law in the Department of Law and Public Safety with respect to the extended term of the proposed extension of the Facility Lease Agreement and Waste Disposal Agreement, the UCUA engaged in further negotiations with Covanta to address the terms of the extension of the Lease Agreement.

In July 2011, UCUA filed with the McEnroe Agencies a letter amendment to the Verified Petition, reflecting the renegotiation of certain aspects of the proposed transaction to address specific concerns raised during meetings with the Department. 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, 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. Because Department staff indicated it could approve an extension to the Waste Disposal Agreement that totaled no more than forty years from the applicable date of its original approval under the McEnroe Act at the beginning of the resource recovery project in 1991, the amendment to the Verified Petition included renegotiated terms to reflect a forty-year period ending in 2031 in an attempt to duplicate the earlier re-allocated benefits to the UCUA and the public sector on a current basis. The McEnroe Review Agencies issued a Conditional Order of Approval on October 13, 2011, authorizing the modifications to the Facility Lease Agreement and Waste Disposal Agreement.

Pursuant to the then-extension of the Facility Lease and amendment to the Waste Disposal Agreement, UCUA receives a Facility Lease extension payment of \$4.0 million annually from Covanta through 2031, plus another \$125,000 per year to offset the cost of solid waste flow control enforcement. UCUA will also receive 10% of revenues derived from sales of energy produced at the Facility. In addition, Covanta sells Class II Renewable Energy Certificate (“RECs”) (as defined in N.J.A.C. 12.8-1.2 and 2.2) that are generated by the Facility. Covanta has agreed that if the energy generated by the Facility becomes eligible to receive Class I RECs (as defined in N.J.A.C. 12.8-1.2 and 2.2), then the UCUA shall own fifty percent (50%) of the Class I RECs generated by the Facility and Covanta Union shall own fifty percent (50%) of the Class I RECs generated by the Facility. Lastly, UCUA and Covanta have agreed to cooperate in the review alternatives to sell steam, hot water, or electricity to third parties located in the City of Rahway.

All costs associated with such project and revenue sharing arrangements will be allocated pursuant to the existing Fourth Amendment to Host Agreement between the County, the City of Rahway and UCUA or alternative revenue sharing as negotiated between the parties and memorialized in an amendment to the Host Agreement entered into at the same time as the Facility Lease extension. UCUA and the City of Rahway have agreed to publicly support and cooperate with Covanta to obtain a permit and any other regulatory approvals necessary for the addition of a fourth boiler at the Facility. Similar to any alternative revenue sharing arrangements under an amendment to the Host Agreement, issues related to ownership, pricing, delivery commitments, host fees and tipping fees will be have to negotiated by the County, UCUA, Covanta and the City of Rahway and memorialized in a further amendment to the Host Agreement. Pursuant to the Host Agreement, Covanta is required to pay to Rahway through 2028 a fixed annual payment of \$1,000,000 and extends to Rahway a \$1 per ton discount on disposal fees.

In exchange for the extensions and amendments of the Facility Lease Agreement and Waste Disposal Agreement, the UCUA committed to deliver 430,000 tons of Processible Waste annually to the Facility on a “put or pay” basis. UCUA’s annual “put or pay” obligation is to be satisfied through the delivery of 330,000 tons of Processible Waste generated within the County resulting from, among other things, amendments to the Local Waste Agreements, and the remaining 100,000 tons pursuant to an interlocal agreement with a governmental entity outside of the County, starting on July 20, 2013 and prorated for the balance of 2013. Covanta is obligated to utilize reasonable commercial efforts to mitigate any delivery shortfalls and the

amount of any shortfall payments by the UCUA to Covanta shall be calculated in accordance with the formula in the Waste Disposal Agreement, as amended.

The County Plan was amended on September 15, 2011 to incorporate the extension of, and modification to, the Facility Lease Agreement, Waste Disposal Agreement, and Local Waste Agreements with certain municipalities in the County, and to reaffirm the implementation and enforcement of regulatory waste flow control for Processible Waste generated in the County. The Department approved the September 15, 2011 Amendment to the County Plan in a Certification issued by NJDEP on November 8, 2011.

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 to incorporate the terms and provisions for modifications to the Facility Lease Agreement and the Waste Disposal Agreement by and between the UCUA and Covanta governing the occupancy and operation of the UCRRF.

II. INCORPORATION OF MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT BETWEEN THE UCUA AND COVANTA FOR THE OPERATION OF THE UCRRF

Through this Plan Amendment, the County intends to incorporate into the County Plan amendments to the Facility Lease Agreement and Waste Disposal Agreement that, among other things as described in a Memorandum of Understanding between the UCUA and Covanta, effectively extend the term of the Facility Lease Agreement for a period of twenty-two (22) years from December 15, 2031 to December 15, 2053. In exchange for the extension of the term of the Facility Lease Agreement, Covanta will pay the UCUA as Facility Rent during the lease extension period an annual amount equal to the greater of (1) Minimum Rent of \$4 million annually in monthly installments of \$333,333.33 or (2) 30% of UCRRF net profits. Furthermore, effective January 1, 2016, the obligation of the UCUA to deliver 100,000 tons of Processible Waste generated outside of the County will be eliminated through a reduction of the guaranteed annual tonnage from 430,000 tons per year to 330,000 tons per year.

Under the terms of the currently-effective Waste Disposal Agreement, the UCUA committed to deliver 430,000 tons of Processible Waste annually to the Facility on a “put or pay” basis. UCUA’s annual “put or pay” obligation is to be satisfied through the delivery of 330,000 tons of Processible Waste generated in the County resulting from, among other things, amendments to the Local Waste Agreements, and the remaining 100,000 tons pursuant to an interlocal agreement with a governmental entity outside of the County, starting on July 20, 2013 and prorated for the balance of 2013. In the event of any delivery shortfalls by UCUA, Covanta is obligated to utilize reasonable commercial efforts to mitigate such shortfalls and the amount of any shortfall payments by the UCUA to Covanta shall be calculated in accordance with the formula in the Waste Disposal Agreement, as amended.

UCUA experienced shortfalls in its waste delivery obligations, primarily with regard to the requirement for delivery of 100,000 tons from New Jersey governmental entities outside of the County. As a result, the UCUA incurred shortfall payment obligations in calendar years 2013 through 2015. UCUA paid to Covanta the undisputed portions of the shortfall payments for 2013 and 2014, formally disputed the balance of the shortfall payments amounts for each year, and placed funds in escrow pending further negotiations between the parties.

It has been agreed by UCUA and Covanta as part of the negotiations for the lease extension that UCUA shall pay to Covanta the balance of the amounts due for shortfalls in waste deliveries for calendar years 2013 and 2014 in full satisfaction of UCUA's delivery obligations for those years. Additionally, because UCUA did not fulfill its waste delivery obligation for 2015, it will make the appropriate shortfall payment to Covanta for 2015 based upon the methodology set forth in the Waste Disposal Agreement. These payments will be made on the date when all approvals are received from the regulatory agencies of the modifications to the Facility Lease Agreement and the Waste Disposal Agreement, which are the subject of this Plan Amendment.

UCUA shall have the continuing obligation to deliver 330,000 tons annually of Processible waste generated within the County, until the termination of the Waste Disposal Agreement on December 15, 2031. Upon the expiration of the Waste Disposal Agreement, UCUA will be required to publicly procure in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., disposal capacity for Processible Waste generated within the County, which may include a disposal contract awarded to Covanta as a result of an open, competitive, non-discriminatory and constitutionally-permissible procurement, consistent with Atlantic Coast.

The requirements set forth in the Waste Disposal Agreement for waste delivery shortfall payments by the Authority to Covanta is modified to reflect calculation of the mitigation amount used to determine the amount of the payment for the first 10,000 tons of any annual shortfall to be based on the weighted average (not the highest nor the lowest) tonnage price of waste processed at the Facility, subject to the exclusion of certain tons as provided in the current Waste Disposal Agreement. The shortfall fee for the remaining portion of any delivery shortfall shall be computed on the basis of the weighted average tipping fee for the lowest corresponding number of tons processed during the year. UCUA shall have the right to mitigate any remaining delivery shortfall by contracting with governmental entities at prices in excess of the fees for mitigation waste secured by Covanta.

The modifications to the Facility Lease Agreement and Waste Disposal Agreement will produce substantial savings to the UCUA through the elimination of the waste delivery obligation for 100,000 tons annually from governmental entities outside of the County and any required payments for this waste delivery shortfall, while placing UCUA in a position to receive assured levels of Facility Rent payments with potential upside during the lease extension period. These benefits will be achieved without any diminution of the strict requirements previously mandated in the Waste Disposal Agreement concerning adherence to environmental and other regulatory requirements.

The proposed modifications to the Facility Lease Agreement and Waste Disposal Agreement are consistent with State solid waste policy, and in the best interests of the citizens of the UCUA and the citizens of the County. Therefore, the Facility Lease Agreement and Waste Disposal Agreement, as amended, are hereby included in the County Plan.

III. WASTE FLOW DIRECTIVES

There are no changes to the waste flow directives currently contained in the County Plan and certified by NJDEP with respect to the disposal of Processible Waste generated within the County as a result of the amendments to the Facility Lease Agreement and Waste Disposal Agreement. The Authority will continue to exert regulatory waste flow control over all Processible Waste generated within the County.

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 and inspection at the offices of the Union County Utilities Authority, 1499 Routes 1&9 North, Rahway, New Jersey, during normal business hours. Copies of the County Plan, Plan Amendments and NJDEP Plan Certifications are available in accordance with the Open Public Records Act 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.



UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

FAX (732) 382-5862

RESOLUTION NO.: 90-2015

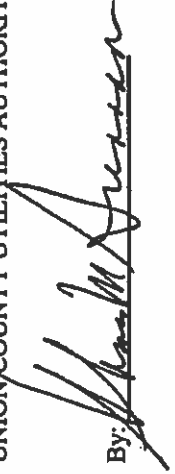
DATED: February 3, 2016

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY RECOMMENDING AN AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO INCORPORATE MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, LLC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY TO EXTEND THE LEASE TERM AND REDUCE THE AUTHORITY'S WASTE DELIVERY OBLIGATIONS

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	AVE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>	7		7				
<i>Criscione</i>	7		7				
<i>Jackus</i>		7					
<i>Kahn</i>	7		7				
<i>Kennedy (Secretary)</i>	7		7			7	
<i>People (Treasurer)</i>	1		7				
<i>Scutari</i>	7		7				7
<i>Erdos (Vice-chair)</i>	7		7				
<i>Eastman (Chairman)</i>	7		7				
<i>Lombardo (Alternate No. 1)</i>	7		7				
<i>McManus, (Alternate No. 2)</i>	7						

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY RECOMMENDING AN AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO INCORPORATE MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, LLC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY TO EXTEND THE LEASE TERM AND REDUCE THE AUTHORITY'S WASTE DELIVERY OBLIGATIONS

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 on December 18, 1998 in response to Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997), cert. den. 522 U.S. 966 (1997) ("Atlantic Coast") to, among other things, define the County's disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25, including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, LLC.) of the Union County Resource Recovery Facility (the "UCRRF") and the real property and improvements upon which the UCRRF is constructed; and

WHEREAS, the December 18, 1997 Plan Amendment was approved by the Certification issued by New Jersey Department of Environmental Protection ("NJDEP") on April 30, 1998; and

WHEREAS, the County Plan was further amended on November 8, 2007 to designate the UCRRF as the facility to which all Solid Waste Types 10 and 25 generated within the County that was not the subject of voluntary contracts with municipalities and the County ("Non-Contract Waste") was to be directed for disposal pursuant to regulatory waste flow as a result of Covanta's successful bid for the procurement of disposal services of approximately 210,000 tons annually of Non-Contract Waste in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast; and

WHEREAS, 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; and

WHEREAS, in 2010, the Authority and Covanta subsequently agreed to amend the Facility Lease Agreement, and the Amended and Restated Waste Disposal Agreement ("Waste Disposal Agreement") to extend their respective terms in exchange for modifications of the provisions, among other things, for annual lease payments and sharing of revenues generated at the UCRRF; and

WHEREAS, the amendments of the Facility Lease Agreement and Waste Disposal Agreement, and a refinancing of certain outstanding Authority solid waste facility bonds and the issuance of new bonds were approved by NJDEP and the Division of Local Government Services within the Department of Community Affairs, pursuant to the McEnroe Act, N.J.S.A. 13:1E-136 et seq., in a Conditional Order of Approval issued on October 13, 2011 and

PUBLIC NOTICE

PLEASE TAKE NOTICE that a Public Hearing will be held by the Union County Board of Chosen Freeholders on February 18, 2016, at 7:45 p.m. or as soon thereafter as said matter can be reached at the Union County Administration Building 6th Floor, Elizabethtown Plaza, Elizabeth, New Jersey or at such other time as may be scheduled by said Board of Chosen Freeholders, for the purpose of hearing persons interested in, or who are affected by, the adoption of an Amendment to the Solid Waste Management Plan of the Union County Solid Waste Management District. The name and address of the Union County District Solid Waste Coordinator is Daniel P. Sullivan, Executive Director c/o Union County Utilities Authority, 1499 Routes 1&9 North, Rahway, NJ. The Plan Amendment that is the subject of the Hearing has been prepared in accordance with the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) For the purpose of providing that:

THE PURPOSE OF THIS PLAN AMENDMENT IS TO MODIFY THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN BY MODIFYING THE FACILITY LEASE AGREEMENT AND WASTE DISPOSAL AGREEMENT BETWEEN THE UNION COUNTY UTILITIES AUTHORITY (UCUA) AND COVANTA UNION, LLC (COVANTA) BY EXTENDING THE TERM OF THE FACILITY LEASE AGREEMENT FOR A PERIOD OF TWENTY-TWO (22) YEARS FROM DECEMBER 15, 2031 TO DECEMBER 15, 2053, RESULTING IN SUBSTANTIAL SAVINGS TO THE UCUA THROUGH THE ELIMINATION OF THE WASTE DELIVERY OBLIGATION FOR 100,000 TONS ANNUALLY FROM GOVERNMENTAL ENTITIES OUTSIDE OF THE COUNTY OF UNION.

You may appear in person, or by agent, or by attorney, and present comments relative to the Plan Amendment. A copy of the Plan Amendment is available for public inspection at the offices of each Municipal Clerk in the County of Union, at the office of the Clerk of the Board of Chosen Freeholders of the County of Union, at the address stated above, during regular business hours and at the Offices of the Union County Utilities Authority, 1499 Routes 1 & 9 North, Rahway, New Jersey during regular business hours.

James Pellettiere, Clerk of the Board of Chosen Freeholders.