



UNION COUNTY UTILITIES AUTHORITY

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RESOLUTION NO.: 73-2014

DATED: August 20, 2014

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY AUTHORIZING
A SETTLEMENT AGREEMENT BY AND BETWEEN THE AUTHORITY,
DELAWARE AND HUDSON RAILWAY COMPANY, INC. D/B/A CANADIAN
PACIFIC RAILWAY, INC. AND BOND SAFEGUARD INSURANCE COMPANY IN
CONNECTION WITH LITIGATION INSTITUTED BY THE AUTHORITY AND
PENDING IN THE FEDERAL DISTRICT COURT OF NEW JERSEY**

APPROVED AS TO FORM:

Joseph C. Bodek
Clerk of the Authority

By: *Joseph C. Bodek*

APPROVED AS TO SUFFICIENCY OF FUNDS

YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: *Thomas W. Dwyer*

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

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**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
AUTHORIZING A SETTLEMENT AGREEMENT BY AND BETWEEN
THE AUTHORITY, DELAWARE AND HUDSON RAILWAY COMPANY,
INC. D/B/A CANADIAN PACIFIC RAILWAY, INC. AND BOND
SAFEGUARD INSURANCE COMPANY IN CONNECTION WITH
LITIGATION INSTITUTED BY THE AUTHORITY AND PENDING IN
THE FEDERAL DISTRICT COURT OF NEW JERSEY**

WHEREAS, the Union County Utilities Authority (“Authority”) is a public body corporate and politic of the State of New Jersey, organized pursuant to and in accordance with the Municipal and County Utilities Authority Law, N.J.S.A. § 40:14B-1 *et seq.*, and formed by the County of Union, New Jersey (the “County”) for the purpose of administering the County’s District Solid Waste Management Plan (“County Plan”), created in accordance with the New Jersey Solid Waste Management Act, N.J.S.A. § 13:1E-1 *et seq.* (the “Act”); and

WHEREAS, pursuant to the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1 *et seq.*) and Section 27 of the Act, the Authority is deemed a public utility of the State of New Jersey, and was granted a Certificate of Public Convenience and Necessity to engage in solid waste disposal operations by a Preliminary Order of the Board of Public Utilities that was issued on December 31, 1987; and

WHEREAS, by way of the Preliminary Order, as thereafter amended by Order of the NJDEP on December 16, 1991, the Authority was granted the exclusive right to control and provide for the disposal of solid waste generated within the geographic boundaries of the County of Union (the “County”), including all non-recycled Solid Waste Types 10, 13, 23, 25 and 27; and

WHEREAS, the County Plan was amended in response to Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997), cert. den. 522 U.S. 966 (1997) (“Atlantic Coast”) to, among other things define the County’s new disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25, and including the lease by the Authority to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the Union County Resource Recovery Facility (the “UCRRF”) and the real property and improvements upon which the UCRRF is constructed, and re-affirm the County’s disposal strategy, based upon regulatory flow control, as to Solid Waste Types 13, 13C, 23 and 27 generated within the County (“Non-Processible Waste”); and

WHEREAS, on November 9, 2006, following public bidding, the Authority resolved to award to Delaware and Hudson Railway Company, Inc., d/b/a/ Canadian Pacific Railway (“DHRC” or “Contractor”) a contract to provide solid waste disposal services for Types 13, 13C, 23 and 27 waste generated within the County of Union (hereinafter “Disposal Services Agreement”), where after DHRC and the Authority entered into the Disposal Services Agreement; and

WHEREAS, on or about January 1, 2009, BSIC, as surety, issued Performance Bond No. 5035255 on behalf of “Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (with TLA-Newark, LLC d/b/a Transload America acting as its authorized agent and contractor)”, as principal, in favor of the Authority, as obligee (the “Bond”); and

WHEREAS, the Authority contends that DHRC breached the Disposal Services Agreement; and

WHEREAS, the Authority contends it is entitled to recovery from DHRC and BSIC under the Bond and/or the Disposal Services Agreement; and

WHEREAS, the Authority filed a lawsuit in the Superior Court of the State of New Jersey, Law Division, Union County, Docket No. UNN-L-1686-13 seeking recovery from DHRC and BSIC; and

WHEREAS, the aforementioned lawsuit was subsequently removed to and remains pending in the U.S. District Court for the District of New Jersey, Civil Case No. 13-cv-3677 (CCC) (MF) (the “Action”); and

WHEREAS, DHRC and BSIC have denied liability to the Authority; and

WHEREAS, DHRC and BSIC asserted cross-claims against one another in the Action; and

WHEREAS, the Authority, DHRC and BSIC participated in mediation with a Court appointed mediator on June 4, 2014 in effort to reach an amicable resolution of the litigation; and

WHEREAS, the Parties have expressed mutual desire to settle all of the disputes between and among them relating to, in any way, the Disposal Services Agreement, the Bond and the Action, pursuant to the terms of the attached form of Settlement Agreement; and

WHEREAS, the Authority has reviewed the proposed terms of Settlement with its executive staff and legal counsel, and finds said terms to be beneficial to the Authority.

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

1. The Authority hereby approves the terms of the attached Settlement Agreement, which includes, among other things, total payments to the Authority by DHRC and BSIC of five-hundred seventy-thousand dollars (\$570,000.00), as well as mutual releases by all parties.
2. The Authority authorizes and directs the Authority’s Executive Director, with the assistance of General Counsel as needed, to execute the Settlement Agreement in substantially the same form as is attached hereto and take whatever further steps and measures may be necessary to effectuate the terms of the Settlement Agreement and the directives and intent of this Resolution.
3. This Resolution shall take effect immediately.