



UNION COUNTY UTILITIES AUTHORITY

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RESOLUTION NO.: 89-2015

DATED: January 20, 2016

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING
WITH COVANTA UNION, INC. PERTAINING TO THE EXTENSION OF THE
LEASE AGREEMENT FOR THE UNION COUNTY RESOURCE RECOVERY
FACILITY**

APPROVED AS TO FORM:
Joseph C. Bodek
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: Joseph C. Bodek

By: [Signature]

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

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
AUTHORIZING THE EXECUTION OF A MEMORANDUM OF
UNDERSTANDING WITH COVANTA UNION, INC. PERTAINING TO THE
EXTENSION OF THE LEASE AGREEMENT FOR THE UNION COUNTY
RESOURCE RECOVERY FACILITY**

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 ("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 ("Authority") as implementing agency for the County Plan, in accordance with the Act; and

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

WHEREAS, on prior occasion pursuant to duly adopted resolution, the Authority and Covanta agreed to amend the Facility Lease, and Amended and Restated Waste Disposal Agreement ("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 and Disposal Agreement, and a refinancing of certain outstanding Authority solid waste facility bonds and the issuance of new bonds were approved by New Jersey Department of Environmental Protection ("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.; and

WHEREAS, coincident with the modifications of the Facility Lease and Waste Disposal Agreement, the County adopted an amendment to the County Plan reaffirming regulatory flow control over the delivery of all Processible Waste generated with the County to the UCRRF; and

WHEREAS, the Authority and Covanta have subsequently engaged in extensive discussions and negotiations intended to establish the basic terms and conditions for a further extension of the Facility Lease for an additional twenty-two years through December 15, 2053; and

WHEREAS, the Authority and Covanta have successfully finalized a Memorandum of Understanding (“MOU”), memorializing the material terms of a proposed extension of the lease for the UCRRF; and

WHEREAS, pursuant to its express terms, the MOU is intended to serve as the basis for negotiation of definitive agreements and is not binding on and enforceable by either the Authority or Covanta, and requires the parties to negotiate in good faith certain proposed material terms and provisions in the documents necessary for its implementation; and

WHEREAS, the MOU has been presented to the Authority’s Board of Commissioners for consideration and, based upon the Board’s review of the MOU, the Board is satisfied that the terms of the MOU are in the best interests of the Authority and the citizens of the County; and

WHEREAS, the Authority desires to approve and authorize the execution of the MOU in substantially similar form as attached hereto and to authorize the Executive Director and Special Counsel to proceed with any and all steps necessary in order to implement the provisions of the MOU; and

WHEREAS, the Authority believes that the terms of the MOU is necessary for its efficient operations and to continue to provide effective solid waste disposal services in the County at reasonable rates;

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 MOU is hereby approved in substantially the form attached hereto and the Chairman is hereby authorized and directed to execute the MOU.
3. The Executive Director and Special Counsel are authorized to undertake and proceed with any and all steps necessary in order to implement the provisions of the MOU and to prepare and finalize any and all documents as required.
4. The Executive Director and Special Counsel shall update the Commissioners on a regular basis as to the progress of the negotiations to finalize the documents required to implement the MOU.
5. This Resolution shall take effect immediately.

MATERIAL REVISIONS IN TERMS OF LEASING AND WASTE
DELIVERY OBLIGATIONS AS A RESULT OF MEMORANDUM
OF UNDERSTANDING WITH COVANTA UNION, INC.

1. Extends present term of Lease Agreement with Covanta from December 15, 2031 until December 15, 2053.
2. Regulatory approvals for extension of Lease Agreement, modifications to Waste Disposal Agreement, plan amendment, cap allocation from State of New Jersey, and Federal Energy Regulatory Commission of extension of Lease Agreement required by June 30, 2016; otherwise, Covanta may terminate those agreements. If not approved by September 30, 2016, either UCUA or Covanta may terminate agreements.
3. Presently, UCUA is required to deliver to Covanta 430,000 tons annually, consisting of 330,000 tons from Union County and 100,000 tons from governmental entities in New Jersey. MOU would eliminate for 2016 through end of current lease in 2031 the 100,000 ton delivery requirement while continuing 330,000 ton requirement through 2031. After December 15, 2031, UCUA's delivery obligations would cease as it would be required to publicly bid for disposal services.
4. During Lease Agreement Extension, Facility rent shall be the greater of current base rent of \$4 million per year or 30% of net income for Covanta based upon audited financial statements determined in accordance with Generally Accepted Accounting Principles.
5. Upon receipt of all regulatory approvals, Covanta to make one-time payment to UCUA of \$2.1 million as prepaid base rent, which shall be credited with interest against base rent for 2032 and 2033.
6. Covanta is to provide a calculation of its net profits and a certification by its chief accounting officer certifying to the accuracy of the calculation. UCUA may, at its expense, have an audit of Covanta's books and records by a nationally-recognized accounting firm acceptable to both parties.
7. Upon execution of Lease Agreement Extension, UCUA shall pay \$1.2 million for the shortfall in deliveries in 2013 and 2014, and upon receipt of all regulatory approvals, the balance of its shortfall obligations, including 2015.
8. The MOU is non-binding and unenforceable against either party, and will be used as the basis for negotiations of the necessary agreements to reflect the lease extension and modifications to the Waste Disposal Agreement.