

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2011- 274

Council Meeting Date: 10-10-2011

Date Adopted: 10-10-2011

TITLE: RESOLUTION AUTHORIZING MAYOR AND BOROUGH CLERK TO EXECUTE AGREEMENT WITH THE UNION COUNTY UTILITIES AUTHORITY AMENDING 1998 MUNICIPAL WASTE DISPOSAL AGREEMENT.

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Lesnewich.

WHEREAS, the Union County Utilities Authority (“UCUA”) and the Borough of New Providence are parties to a Municipal Waste Disposal Agreement, dated as of July 15, 1998 (the “Local Waste Agreement”), which provides for the long-term disposal of solid waste collected by or on behalf of the Borough of New Providence at the Union County Resource Recovery Facility (the “Facility”), located in Rahway, New Jersey and which is owned by the UCUA; and

WHEREAS, the Facility is leased to, and is operated by, Covanta Union, Inc. (“Covanta”), formerly known as Ogden Martin Systems of Union, Inc. (“Ogden Martin”), and the UCUA and Covanta are parties to an amended Facility Lease and Waste Disposal Agreement that, among other things, provide for the lease and long-term operation of the Facility by Covanta; and

WHEREAS, the UCUA and Covanta have recently negotiated and agreed to certain modifications to these various agreements which provide for an extension of the term of their contractual arrangement and which will result in certain financial and other benefits relative to the continued operation of the Facility and disposal rates for solid waste generated within the County; and

WHEREAS, the UCUA has offered the Borough of New Providence an opportunity, to share in these benefits, most significantly of which include an immediate decrease in the rate for the disposal of solid waste collected by or on behalf of the Borough of New Providence by a reduction of \$12.00 per ton retroactive to January 1, 2011; and

WHEREAS, at the direction of NJDEP, the UCUA and Covanta engaged in settlement discussions with NJDEP to resolve certain issues that had arisen during the course of NJDEP's review of the proposed restructuring and the Verified Petition, including a reduction of the extension of the terms of the amended Facility Lease Agreement and Waste Disposal Agreement from 2045 to 2031; and

WHEREAS, as a result of such discussions, the Authority and Covanta were required to renegotiate certain of the terms and conditions of the amended Facility Lease Agreement and Waste Disposal Agreement in order to obtain NJDEP approval of the restructured arrangement and agreements; and

WHEREAS, it is necessary for the Borough of New Providence to approve and execute an amendment to the Local Waste Agreement (the "First Amendment") in order to memorialize the benefits to be realized by the Borough of New Providence, make various conforming and other minor amendments and to reaffirm the Borough of New Providence's commitment to utilize the Facility and the guaranteed delivery of solid waste at least at current levels, recognizing that it is anticipated that such limits may be subsequently increased by, and at the discretion of, the Borough of New Providence in writing at certain designated intervals; and

WHEREAS, it is the desire of the Borough of New Providence to approve the First Amendment in substantially similar form as attached hereto.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF NEW PROVIDENCE that the First Amendment in substantially similar form as attached hereto is approved and the Mayor and other appropriate Municipal Officials be and hereby are authorized and directed to execute same; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

APPROVED, this 10th day of October, 2011.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO	X			
LESNEWICH	X			
MUÑOZ	X			
VYZAS	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of October, 2011

Wendi B. Barry, Borough Clerk

FIRST AMENDMENT TO MUNICIPAL WASTE DISPOSAL AGREEMENT, dated as of this 26th day of September 2011 (the “First Amendment”) by and between **THE UNION COUNTY UTILITIES AUTHORITY** (the “UCUA”), a public body corporate and politic of the State of New Jersey organized and existing under the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957 of the State of New Jersey and the acts amendatory thereof and supplemental thereto, and the Borough of New Providence (the “Participant”), a political subdivision of the State of New Jersey.

WITNESSETH:

WHEREAS, the UCUA owns the Union County Resource Recovery Facility (the “Facility”), located in Rahway, New Jersey; and

WHEREAS, the UCUA and Ogden Martin Systems of Union, Inc. (“Ogden Martin”), now known as Covanta Union, Inc. (“Covanta”) are parties to a Facility Lease Agreement, dated as of June 15, 1998 (the “Facility Lease Agreement”) and an Amended and Restated Waste Disposal Agreement, dated as of February 15, 1998, as amended and restated as of June 15, 1998 (the “Waste Disposal Agreement”) that, among other things, provide for the lease and long-term operation of the Facility by Covanta; and

WHEREAS, the UCUA and the Participant are parties to a Municipal Waste Disposal Agreement dated as of July 15, 1998 (the “Local Waste Agreement”) that provides for the long-term disposal of solid waste collected by or on behalf of the Participant at the Facility at a guaranteed cost; and

WHEREAS, the UCUA and Covanta negotiated and agreed to various amendments to the Facility Lease Agreement and the Waste Disposal Agreement that would extend the term of the arrangement between the UCUA and Covanta to 2045 and would result in certain financial and other benefits; and

WHEREAS, at the direction of NJDEP, the UCUA and Covanta engaged in discussions with NJDEP to resolve certain issues that had arisen during the course of NJDEP’s review of the proposed restructuring and the Verified Petition, including a reduction of the extension of the terms of the amended Facility Lease Agreement and Waste Disposal Agreement from 2045 to 2031; and

WHEREAS, as a result of such discussions, the Authority and Covanta were required to renegotiate certain of the terms and conditions of the amended Facility Lease and Waste Disposal Agreement in order to obtain NJDEP approval of the restructured arrangement and agreements; and

WHEREAS, the UCUA desires to offer the Participant an opportunity, to share in the benefits achieved through the renegotiated arrangement with Covanta, most significant of which shall be an immediate reduction in the rate for the disposal of solid

waste collected by or on behalf of the Participant resulting in significant savings to the Participant and its residents; and

WHEREAS, it is necessary to amend the Local Waste Agreement by this First Amendment to reaffirm the Participant's commitment to utilize the Facility on an ongoing basis and in order to make various conforming and other minor amendments; and

WHEREAS, UCUA and the Participant have duly authorized their respective officials to enter into and execute and deliver this First Amendment;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and of the undertakings of each party to the other, the parties hereto, intending to be bound hereby, promise and agree as follows:

Section 1. Conditions Precedent to the Effectiveness of this First Amendment.

(a) **Amendment of Other Agreements.** The UCUA agrees to obtain from Covanta amendments to the Facility Lease Agreement and the Waste Disposal Agreement, in form and substance satisfactory to each party.

(b) **Government and Other Approvals and Consents.** The UCUA shall apply for, and receive, any and all consents and approvals, and any and all federal, state and local approvals as required in order to implement the renegotiated arrangement with Covanta and this First Amendment.

(c) **Reaffirmation of Representations and Warranties.** The UCUA and the Participant shall each supply opinions of counsel, in such form as shall be reasonably requested by each party hereto, reaffirming any and all representations and warranties by, and the performance of all covenants and agreements of, such party in connection with the Local Waste Agreement and this First Amendment.

Section 2. Amendments to Section 1.01 (Certain Definitions).

(a) All references in the Local Waste Agreement to "Ogden Martin" shall be replaced with "Covanta."

(b) Section 1.01 is amended by revising the following definitions as set forth below which amendments shall be effective commencing with the Billing Year beginning on or about January 1, 2011:

"Guaranteed Tonnage" shall mean 4500 Tons per Billing Year during the period from the Commencement Date to and including the last day of the Term of this First Amendment or a pro rata amount of 4500 Tons for any Billing Year that is less than twelve (12) months. The UCUA agrees to obtain from Covanta an amendment to the Waste Disposal Agreement that requires Covanta to negotiate in good faith on five year

intervals any requested increase in the amount of Guaranteed Tonnage from the Participant.

“Term” shall mean the term of this First Amendment, including any extension, as set forth in Section 8.01 hereof.

Section 3. Amendments to Section 4.02 (Calculation of Amount of Service Charge).

Section 4.02(a) is amended to add the following new paragraph at the end of the existing text:

The Base Service Charge for the Billing Year ending on December 31, 2010 shall reflect a total decrease of no less than \$12.00 per Ton due to the UCUA having achieved a reduction to the fee for the disposal of Acceptable Waste combined with an infusion of proceeds, on an annual basis, from a rate stabilization fund to be established by the UCUA.

All other provisions in Section 4.02 remain unchanged.

Section 4. Amendments to Section 8.01 (Term of Local Waste Agreement).

(a) Section 8.01 is deleted in its entirety and replaced with the following:

Term of First Amendment. Unless terminated as a result of the occurrence of an Event of Default, this First Amendment (including the respective obligations of the parties to perform hereunder) shall commence on the Commencement Date and shall end, unless extended, on December 31, 2031.

Section 5. Miscellaneous.

(a) Capitalized terms used herein not otherwise defined in this First Amendment shall have the meaning ascribed to them in the Local Waste Agreement.

(b) Except as expressly amended herein, all other terms and provisions of the Local Waste Agreement, as previously amended, shall remain unmodified and in full force and effect.

(c) This First Amendment contains the entire agreement and understanding between the UCUA and the Participant as to the subject matter of this First Amendment and supersedes all prior agreements, representations and discussions between them concerning the subject matter of this First Amendment. The UCUA and the Participant each represent that, in entering into this First Amendment, it has not relied on any promise, inducement, representation, warranty, agreement or statement not set forth in this First Amendment.

(d) This First Amendment may not be altered or modified by either the UCUA or the Participant except by instrument in writing executed by both of them.

(e) The UCUA and the Participant each represents and warrants that the person who signs below on its behalf has authority to execute this First Amendment and that all requisite approvals to enter into, and bind the UCUA and the Participant, as applicable, to this First Amendment have been obtained.

(f) This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized officers or agents, as applicable, as of the day and year first above written.

**THE UNION COUNTY UTILITIES
AUTHORITY**

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

BOROUGH OF NEW PROVIDENCE

ATTEST:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE 4

PERMITTED REJECTION RIGHTS

	<u>Tons</u>
(a) Weekly	84 ***
(b) Monthly	468 **
(c) Annual	5625 *

* 125% of Guaranteed Tonnage

** 1/12 of annual amount

*** Calculated on the basis of the annual amount divided by 365 multiplied by 5.5 days per week