THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: ENVIRONMENTAL RESOURCES KMW

BOARD AGENDA # *B-5

Urgent _____ Routine X

AGENDA DATE June 19, 2001

CEO Concurs with Recommendation YES pht NO ____
(Information Attached)

4/5 Vote Required YES ____ NO X

SUBJECT: APPROVAL OF, AND AUTHORIZATION OF THE CHAIR OF THE BOARD TO SIGN, AMENDMENT NO. 4 TO THE AMENDED AND RESTATED SERVICE AGREEMENT AMONG THE CITY OF MODESTO, STANISLAUS COUNTY AND COVANTA STANISLAUS, INC.

STAFF RECOMMEN-DATIONS: APPROVE AND AUTHORIZE THE CHAIR OF THE BOARD TO SIGN, AMENDMENT NO. 4 TO THE AMENDED AND RESTATED SERVICE AGREEMENT.

FISCAL IMPACT: Approval of Amendment No. 4 to the Amended and Restated Service Agreement Among the City of Modesto, Stanislaus County and Covanta Stanislaus, Inc. concludes a $1,575,000 capital modification to the waste-to-energy facility, authorizes a separate operations & maintenance component related to this modification, adjustment to certain performance guarantees, and reagent charges necessary for the operation of this modification. All capital and on-going expenses have been, or will be, paid from project funds.

BOARD ACTION

No. 2001-467

On motion of Supervisor Blom , **Seconded by Supervisor** Mayfield
and approved by the following vote,
Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

1) X **Approved as recommended**
2) _____ **Denied**
3) _____ **Approved as amended**
MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk **By: Deputy**

File No. C-6-H-11

DISCUSSION:

On November 15, 1990, Congress passed the 1990 Clean Air Act Amendments. These amendments directed the Environmental Protection Agency to develop new emission guidelines to establish Maximum Achievable Control Technology (MACT) emissions levels for existing Municipal Waste Combustors (MWC's). These new guidelines, finalized in August 1997, added limits for additional pollutants including: lead, cadmium, mercury, nitrogen oxides and fugitive ash dust, and revised the emission limits and operating conditions contained in the 1991 guidelines. The final guidelines required all large (in excess of 250 tons per day) MWC's to be in compliance by December 19, 2000 or cease operations.

Covanta Stanislaus, Inc. (formerly known as Ogden Martin Systems of Stanislaus) identified mercury abatement and modifications to the air pollution control system as necessary capital improvements to comply with the Federal Emission Guidelines for MWC's. In May of 1999, Covanta proposed to retrofit the plant with a carbon injection system for mercury emissions control, and scrubber modifications to meet MACT acid gas standards for removal efficiency. The Contracting Communities consultant, HDR Engineering, Inc., concurred, suggesting that this installation was prudent "...to maintain an ample compliance margin with the...[revised] mercury limit...."

Under the terms of the Service Agreement costs attributable to a change-in-law are to be paid by the Communities. Negotiations regarding the cost of the project, an adjustment to the annual operations & maintenance expense, new pass-through expenses, and any adjustments to the performance guarantees continued until May of 2000. Because of the pending deadline (December 19, 2000) for compliance with the new guidelines, construction of the modification was initiated while negotiations were being finalized.

Construction was completed in late October of 2000, and acceptance testing of the modifications was completed concurrently with the required annual stack testing in early November. The results have been very favorable, substantially exceeding the new requirements for removal of mercury.

Any capital project, an adjustment to the annual operations & maintenance expense, the addition of new pass-through expenses, or a change in any of

the performance guarantees requires an amendment to the Service Agreement.

To conclude this project, the Communities must approve and execute the Amendment No. 4 to the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste Among the City of Modesto, Stanislaus County and Covanta Stanislaus, Inc. The Amendment No. 4 makes changes to the Service Agreement to conform its language to reflect the pending amendment.

On December 14, 2000 this project and the requirement for an amendment to the Service Agreement were reviewed and approved by the Solid Waste Executive Committee. The amendment has been reviewed and approved as to form by County Counsel and the City Attorney's Office.

Staff recommends that the Board approve the Amendment No. 4 to the Service Agreement, in the form of the attached, and authorize the Chair of the Board to sign this document.

The Board of Supervisors should determine if the Amendment No. 4 should be approved.

POLICY ISSUES: This action supports the Board's priorities of delivering excellent community services, promoting efficient governmental operations, and achieving multi-jurisdictional cooperation.

STAFFING IMPACT: There are no staffing impacts associated with this action.

AMENDMENT NO. 4
TO THE AMENDED AND RESTATED
SERVICE AGREEMENT FOR THE SUPPLY AND ACCEPTANCE OF SOLID WASTE AMONG COVANTA STANISLAUS, INC., THE CITY OF MODESTO AND THE COUNTY OF STANISLAUS

This Amendment No. 4 ("Amendment No. 4") is entered into as of the 21st day of May, 2001 among Covanta Stanislaus, Inc. (formerly known as Ogden Martin Systems of Stanislaus, Inc.), a California corporation (the "Company"), the City of Modesto, a municipal corporation (the "City") and the County Of Stanislaus, a political subdivision of the State of California (the "County" and together with the Company and the City, the "Parties"). The County and the City are collectively referred to herein as the "Contracting Communities". This Amendment No. 4 amends the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste Among the Company, the City and the County, dated as of June 1, 1986, as amended by Amendment No. 1, dated September 27, 1988, Amendment No. 2, dated May 17, 1990 and Amendment No. 3, dated February 2, 2000 (as so amended, the "Service Agreement").

BACKGROUND

A. Whereas, pursuant to Section 129 of the Clean Air Act Amendment of 1990 (the "Amendment") the United States Environmental Protection Agency ("EPA") has caused to be published in the Federal Register on December 19, 1995 final air emission guidance regulations (the "Regulations") which are applicable to the Facility and following which the Parties agree that the Facility be modified to incorporate (i) a Mercury Emissions Control ("MEC") System and (ii) Scrubber Modifications (the MEC and the Scrubber Modifications together are referenced herein as the "Modification").

B. Whereas, the Parties agree that the Modification is prudent and should be undertaken, necessitating certain changes to the Service Agreement.

C. Whereas, the Company has agreed to perform the services and provide the equipment and capital improvements necessary to complete the Modification, all pursuant to the terms set forth below in this Amendment No. 4.

D. Whereas, the Parties agree that the operation and maintenance of the Modification shall be addressed by the Service Agreement, as modified and amended by this Amendment No. 4

E. Whereas, the Company has already commenced and completed work in connection with the Modification prior to the execution of this Amendment No. 4 and accordingly, the progress payment schedule, Schedule 4 to this Amendment No. 4, includes all the payments that have been billed to the Contracting Communities as a part of the Service Invoices. Therefore, in consideration of the mutual promises contained herein, and for good and valuable consideration, the receipt of which is hereby acknowledged or provided for, and intending to be legally bound here by the Contracting Communities and the Company hereby agree as follows:

AGREEMENT

1. **Definitions**.

Defined terms used herein and not defined herein shall have the meanings given such terms in the Service Agreement. The following defined terms shall have the meanings indicated below, and Section 1.1 of the Service Agreement is hereby amended by the addition of the following terms in the appropriate alphabetical order:

"Mercury Emissions Control System" shall mean a portion of the Modification described in ***Schedule 1*** to Amendment No. 4 to this Agreement.

"Scrubber Modifications" shall mean a portion of the Modification described in ***Schedule 1*** to Amendment No. 4 to this Agreement.

"Modification" shall mean the Mercury Emissions Control System and the Scrubber Modification and other Services and operational changes related to such Systems as are necessary to achieve the Modification Acceptance Criteria.

"Modification Price" shall mean the fixed price of One Million Five Hundred Seventy Five Thousand dollars ($1,575,000.00) for the Modifications. Notwithstanding Article 4.04(b) of the Service Agreement, the Contracting Communities intend that the source of additional financing for the Modification described in this Amendment will be funds currently held by the Contracting Communities, and the Contracting Communities further agree that no equity undertaking will be required by the Company pursuant to Article 4.04(b) of the Service Agreement with respect to the Modification described in this Amendment No. 4.

"Modification Acceptance Criteria" shall mean the criteria set forth in ***Schedule 2*** to Amendment No. 4 to this Agreement.

"Modification Acceptance Date" shall mean the date on which the Modification meets the Modification Acceptance Criteria.

"Modification Performance Test" shall mean a test or tests performed by the Company in accordance with ***Schedule 3*** to Amendment No. 4 to this Agreement to demonstrate compliance with the Modification Acceptance Criteria.

"Modification Scheduled Acceptance Date" shall mean December 19, 2000, provided that such date(s) shall be extended for a period of time equal to any delay caused by Unforeseen Circumstances or Contracting Communities Fault.

"Modification Notice to Proceed Date" shall mean January15, 2000, which date was the date upon which construction of the Modifications was commenced by the Company.

"Modification Extension Period" shall mean a six (6) month period beginning on the day after the Modification Scheduled Acceptance Date.

"Contracting Communities Fault" means any act or failure to act on the part of the City or the County that constitutes a breach of its obligations under this Agreement or a violation of any duty of the City or County to Company imposed under law.

2. **Design, Construction and Testing of Modification.**

(a) The Company shall design, construct and test the Modification in accordance with good engineering and construction practice and the specifications set forth in ***Schedule 1*** to this Amendment No. 4 so that the Facility will achieve the applicable Modification Acceptance Criteria on or before the Modification Scheduled Acceptance Date. The Company will provide, at its sole cost and expense (subject to reimbursement as provided herein), all labor, materials, machinery and equipment necessary to install, start up, test, operate, and maintain the Modification.

(b) The Modification Price is based on the Modification, Modification Acceptance Criteria, Performance Guarantees and Construction Schedule set forth in this Amendment No. 4 to the Service Agreement.

(c) The Company has submitted to the Contracting Communities for their review and approval a Modification Performance Test Protocol (the "Protocol") which Protocol set forth a protocol for performing the Modification Performance Test in such a manner as to test all functionality and operational aspects of the Modification to determine compliance with the Modification Acceptance Criteria. The Company shall perform any Modification Performance Test in accordance with the Protocol. The Company shall, within forty-five (45) days after completion of any Modification Performance Test, furnish the Contracting Communities with a written report describing the test conducted and the results of the Modification Performance Test ("Company Testing Report"). The Contracting Communities may dispute the results of the Modification Performance Test in writing, setting forth the specific reasons for the dispute, within the period ending thirty (30) days after submission of the Company Testing Report. If the Company does not concur in the Contracting Communities' judgment, the matter shall be referred for arbitration pursuant to Section 11.03 of the Service Agreement. If (i) the Contracting Communities accept the results of the Modification Performance Test; (ii) the Contracting Communities do not dispute the results of the results of the Modification Performance Test within the thirty (30) day period after submission of the report; or, (iii) there is a testing results dispute that is resolved in favor of the Company, the Modification Performance Test shall be deemed to have been passed and the applicable Modification Acceptance Criteria met on the date on which the Modification Performance Test was conducted.

(d) Upon the occurrence of the Modification Acceptance Date, the Modification shall be deemed to be incorporated into the Facility.

(e) The Company, and any third parties retained by the Company to assist in the design, construction, testing and operations of the Modification shall at all times comply with all applicable federal, state and local laws, rules, ordinances and regulations.

3. **Guaranteed Schedule/ Modification Extension Period Damages Limitation.**

(a) The Company shall at all times diligently work towards completion of the Modification and shall dedicate such financial and other resources as are reasonably necessary to do so. In any event the Company shall complete the Modification and achieve the Modification Acceptance Criteria on or

prior to the Modification Scheduled Acceptance Date, except to the extent excused by Unforeseen Circumstances or Contracting Communities' Fault.

(b) If the Company fails to meet the foregoing obligation in ***Section 3(a)*** by the Modification Scheduled Acceptance Date, the Company may, by written notice to the Contracting Communities, avail itself of the Modification Extension Period. If the Company elects to utilize the Modification Extension Period, the Company shall continue to dedicate such financial and other resources as are necessary in order to achieve completion of the Modification and passage of the Modification Performance Test at the earliest possible time. During the Modification Extension Period, the Company shall, in addition to its indemnification obligations under Section 11.04 of the Service Agreement, be solely responsible for payment of any and all fines and penalties imposed by regulatory agencies as a direct result of the failure to achieve the Modification Acceptance Date. The Company shall have the sole option whether to elect to utilize the Modification Extension Period. Further, if the Company elects to utilize the Modification Extension Period, the Company shall have the sole option, at any time thereafter, to terminate such Modification Extension Period.

(c) If the Company fails to meet the foregoing obligation in ***Section 3(a)*** by the Modification Scheduled Acceptance Date and if the Company elects not to utilize the Modification Extension Period, or elects to terminate such Modification Extension Period after electing to commence it, the Company shall provide ten (10) days' prior written notice of such election to the Contracting Communities. Upon such election or termination by the Company, (i) Company shall be obligated to reimburse the Contracting Communities for any amounts previously paid by the Contracting Communities with respect to the Modification that failed to meet the Modification Acceptance Criteria, and (ii) the parties shall proceed to address the impacts of the Amendment and the Regulations as an Unforeseen Circumstance under the Service Agreement.

(d) If the Company has not terminated its performance obligations pursuant to ***Section 3(c)***, and fails to achieve the Modification Acceptance Date by the end of the Modification Extension Period, (i) the Company shall be obligated to reimburse the Contracting Communities for any amounts previously paid with respect to the Modification that failed to meet the Modification Acceptance Criteria, and (ii) the parties shall proceed to address the impacts of the Amendment and the Regulations as an Unforeseen Circumstance under the Service Agreement.

(e) If any Modification Performance Test demonstrates that any of the Modification Acceptance Criteria are not met, then from the date of such Modification Acceptance Test until the Modification Acceptance Date, the Contracting Communities shall, at the sole cost of the Company, cooperate with the Company with regard to any and all regulatory agency involvements concerning the Amendment and the Regulations; provided that such obligation to cooperate shall in no manner alter or reduce the obligation of the Company to independently take such steps and utilize such resources as are reasonably necessary to achieve completion of the Modification and passage of the Modification Performance Test at the earliest possible date subject to provisions of ***Sections 3(c)*** or ***3(d)*** above.

(f) If the Modification Acceptance Date has not occurred on or before the Modification Scheduled Acceptance Date and this results in the curtailment in processing or shutdown of the Facility ordered by any regulatory agency, such circumstance shall be deemed an Unforeseen Circumstance and the provisions of Sections 8.09 and 10.05 of the Service Agreement shall apply.

(g) The remedies and damages provided in this ***Section*** in the event of a termination of the Company's performance obligations pursuant to this ***Section 3*** are exclusive. Notwithstanding any provision herein which may be construed to the contrary, (i) neither party shall be liable to the other for any consequential, indirect, incidental or punitive damages in connection with the performance of this Amendment, (ii) the Company's failure to achieve the Modification Acceptance Date shall not constitute a breach or an Event of Default under the Service Agreement, and (iii) any disputes which arise under this Amendment No. 4 shall be referred for arbitration as provided in Section 11.03 of the Service Agreement.

4. Payment Procedures.

(a) The Contracting Communities will pay the Company the Modification Price in accordance with ***Schedule 4*** to this Amendment No. 4.

(b) The Company shall submit applications for payment ("Applications for Payment") to the Contracting Communities with respect to the Modification performed and shall be paid by the Contracting Communities for such in accordance with this ***Section 4***. Applications for Payment shall be submitted by the Company by the fifteenth (15th) day following the first (1st) day of each calendar month following the date of this Amendment No. 4 and the Contracting Communities shall make progress payments to the Company based upon such Applications for Payment pursuant to this ***Section 4*** and ***Schedule 4***.

(c) The Progress Payment Schedule set forth in ***Schedule 4*** shall be used as a basis for the Company's Applications for Payment and the Contracting Communities' review thereof. The completion of the Modification, and/or the occurrences or other events described in Schedule 4 as the milestone events, shall entitle the Company to progress payments in the aggregate amount due for each completed milestone event.

(d) Within ten (10) days after receipt of the Company Application for Payment, the Contracting Communities shall either approve such Application for Payment in the amount requested in the Application for Payment, or disapprove, to the extent provided below, all or a portion of the amount requested and notify the Company in writing of its reasons for withholding its approval of all or any portion of such Application. If the Contracting Communities does not respond in writing with an approval or disapproval of any Application for Payment within such ten (10) day period, such Application for Payment shall be deemed approved and shall be paid by the Contracting Communities.

The Contracting Communities may decline to approve the Company Application for Payment and may withhold its approval in whole or in part, to the extent reasonably necessary to protect the Contracting Communities, based on a written opinion of the Consulting Engineer in the exercise of its reasonable engineering judgment (which opinion the Contracting Communities shall deliver to the Company when payment is disapproved), where (a) the Modification has not progressed to the point claimed in the Application for Payment, (b) the quality of the Modification is not in accordance with the requirements set forth in ***Schedule 1,*** or (c) the Application for Payment exceeds the payment limitation in the Progress Payment Schedule in ***Schedule 4,*** or (d) an Event of Default has occurred under the Agreement or under this Amendment No. 4, including, without limitation, ***Section 6(a)*** of this Amendment No. 4.

When the grounds for withholding approval for payment are removed, the amounts withheld shall be paid promptly by the Contracting Communities based upon the Company's original Application for Payment.

(e) Upon successful completion of the Modification Performance Test as set forth in ***Section 2(c)***, above (or in the event of a dispute, issuance of a final arbitration award establishing that the Modification Performance Test has been completed as to the Modification) the Company shall tender to the Contracting

Communities, a written Final Notice of Completion stating that the Modification have been completed, the Modification have been installed and constructed in accordance with ***Schedule 1*** and the Modification Acceptance Criteria have been met. Within fifteen (15) business days of receipt of such Final Notice of Completion, the Contracting Communities, accompanied by representatives of the Company, shall complete a final inspection of the construction of the Modification and determine whether the Modification Acceptance Date has occurred. The Contracting Communities shall notify the Company in writing within ten (10) business days thereafter whether the Modification Acceptance Date has occurred. The failure of the Contracting Communities to timely notify the Company that the Modification Acceptance Date has **not** occurred shall result in a determination that the Modification Acceptance Date has occurred but shall not alter the Company's obligations as to "Punch List Items" as set forth in ***Section 4(f),*** below. Should the Contracting Communities timely notify the Company that the Modification Acceptance Criteria have not been met, the Company shall, at its sole cost, promptly take such action as may be necessary to remedy such failure within the shortest possible time. After the Company has completed any such corrections, the Company shall again provide the Contracting Communities with such Notice of completion and the Contracting Communities shall again have such inspection and rejection/approval rights as set forth above in this ***Section 4(e)***. Upon notification by the Contracting Communities that a Modification Acceptance Date has occurred (or upon failure of the Contracting Communities to timely object), the Modification Acceptance Date shall occur, and the Contractor may submit an Application for Payment for such milestone following the procedure for progress payments set forth in this ***Section 4***.

(f) The existence of minor tasks to be completed or minor omissions or defects in the construction of the Modification which do not adversely affect the structural integrity, capability or proper performance of the Modification ("Punch List Items") shall not be grounds for the Contracting Communities to withhold its determination that the Modification Acceptance Date has occurred. The Parties shall agree on a schedule of Punch List Items. The Company shall promptly take such actions as may be necessary to complete the Punch List Items.

5. Amendments to Service Agreement.

(a) ***Schedule 1*** of the Service Agreement shall be amended, effective upon the Modification Acceptance Date, to increase the base monthly Operation and Maintenance Expense from "$5,375,000.00 as of December, 1985" to "$5,375,000.00 as of December, 1985 ("1985 Base"), plus $137,000.00 as of July 1, 1999 ("1999 Additional Base")". Thereafter, the monthly Operation and Maintenance Expense shall be adjusted as provided in Section 8.03 of the Service Agreement and in accordance with the example provided in ***Schedule 5*** of this Amendment No. 4. So as to prevent any duplication in CPI-UP adjustments under Schedule 12 of the Service Agreement, any CPI-UP increase pursuant to Schedule 12 of the Service Agreement shall be determined by applying the Escalation Adjustment in Schedule 12 of the Service Agreement separately as to the 1985 Base and the 1999 Additional Base and the composite monthly Operation and Maintenance Expense, adjusted pursuant to Schedule 12 of the Service Agreement, shall be the sum of the such separately adjusted figures.

(b) If the Modification Acceptance Date has not occurred by the end of the Extension Period (if any), then, after the Modification Scheduled Acceptance Date, the Operation and Maintenance Expense stated in Section 8.03 of the Service Agreement shall be increased by such additional amounts as the Parties shall agree are necessary and appropriate in order to operate and maintain any portion of the Modification completed under Amendment No. 4 to this Agreement, upon the date on which such Modification Acceptance Criteria are satisfied. If the Parties are unable to agree upon such necessary and appropriate additional amounts under this ***Section 5(b)*** as of the date on which the Modification satisfy the applicable Modification Acceptance Criteria, such inability to agree shall be referred for arbitration pursuant to Section 11.03 of the Service Agreement.

(c) Schedule 13 of the Service Agreement (Pass Through Costs During Operation) is amended to add the following (new subsections (22) through (24)):

22. The cost of activated carbon reagent used in the operation of the Mercury Emissions Control System installed pursuant to Amendment No. 4 to this Agreement during construction, start-up, testing and operation of this equipment up to a total of 2.5 lbs. per ton of MSW calculated on an annual basis. The Company agrees to review any request by the Contracting Communities to utilize regenerated carbon or other substitutes available for activated carbon with the goal of utilizing same to achieve cost savings. Within ninety (90) days of receipt of such a request, the Company shall notify the Contracting Communities in writing as to: (i) the impact of use of regenerated carbon (or other available substitutes) upon the Operating and Maintenance Expense, including the gross and net savings realized as a result of substituting regenerated carbon for activated carbon, (ii) whether such use would result in a violation of any applicable law, (iii) whether such use would result in a reduction in any guaranteed performance standards for the Facility (which are not waived by the beneficiary of such guaranty), and (iv) the resulting increase or decrease in efficiencies or emissions resulting from the use of regenerated carbon. In the absence of adverse consequences, the Company agrees to comply with the request of the Contracting Communities and any savings achieved shall be passed through to the Contracting Communities by way of a reduction in the Operation and Maintenance Expense.

    Within one hundred and eighty (180) days, the Company shall initiate a program to obtain bids for the supply of the activated (or regenerated, as the case may be) carbon used at the Facility such that the supply contract is issued pursuant to a bidding process every three (3) years during the term of the Service Agreement (and any extension thereof) with the supply agreement being awarded to the qualified supplier submitting the lowest bid. The Company shall provide the Contracting Communities with a written report describing the bidding system, which report shall set forth the Company's criteria for supply and its criteria for identifying a "qualified supplier".

23. All additional environmental testing requirements including:

- Annual versus bi-annual stack testing for HCl, cadmium, lead, mercury and dioxin;
- Fugitive dust emissions; and
- Other additional testing required under state implementation of 40CFR Part 60 Subpart Cb as promulgated on December 19, 1995 and as revised on August 25, 1997.

24. Incremental Pebble lime expense if it exceeds annual feed rates of the benchmark lbs. lime per ton of municipal solid waste processed as measured and calculated on a monthly basis. A passthrough credit of 50% of the savings of pounds of lime per ton of MSW below the benchmark lbs. will be applied on a monthly basis and reconciled on an annual basis. The Company agrees to review any reasonable request by the Contracting Communities to recalculate the benchmark. It is agreed upon and understood by all parties, that the benchmark for lime usage for the purposes of

Section 5(c)(24) is calculated as the average lime usage during the three (3) year period prior to the date of this Amendment No. 4 as shown on the signature page hereof.

(d) Upon the start-up of the Mercury Emissions Control System installed pursuant to Amendment No. 4 to the Service Agreement, and following its passage of the Modification Performance Test pursuant to ***Section 3*** hereof:

i. Schedule 2, Section 2 of the Service Agreement shall be amended by reducing the Energy Recovery Guarantee to 549.5 kWh per ton.

ii. Schedule 2, Section 4 of the Service Agreement shall be amended by adding: Measurement of the Process Residue Quality Guarantee shall exclude the amount of activated carbon reagent used in connection with the Mercury Emissions Control System from the 4% combustible matter guarantee, pursuant to methodology shown in ***Schedule 6*** of this Amendment No. 4, and the 26% Process Residue quantity guarantee.

(e) Upon the Modification Acceptance Date, the Environmental Regulation Compliance Guarantee in Section 3 of Schedule 2 of the Service Agreement is amended to insert the following at the end of such Section of such Schedule.

"; provided, however that with respect to mercury emissions:

The Mercury Emissions Control System shall achieve 85% removal of mercury or an outlet emission of 80 ug/dscm (corrected to 7% 0_2), whichever is less stringent, when tested in accordance with EPA method 29, consistent with the promulgated requirements of the MWC subpart (b) Emission Guidelines, for an inlet concentration up to 1150 mg/dscm (corrected to 7% 0_2)."

6. Default Remedies.

(a) Any of the following shall constitute an Event of Default under this Amendment No. 4 by the Company:

(1) The occurrence of an Event of Default under the Service Agreement, as amended; or,

(2) The persistent or repeated failure to proceed diligently with the Modification in accordance with this Amendment, except to the extent excused by virtue of the occurrence of Unforeseen Circumstances or Contracting Communities Fault; provided that no such circumstance shall constitute an Event of Default by the Company unless and until (i) the Contracting Communities has given written notice to the Company specifying that a particular default exists which will, unless corrected, constitute a material breach of this Amendment No. 4 by the Company, and (ii) the Company has not either corrected such default or initiated reasonable action to correct such default within thirty (30) days from the date of such notice and thereafter does not diligently continue to pursue such action.

(b) The failure of the Contracting Communities to pay the Company amounts due under this Amendment shall be an Event of Default by the Contracting Communities; provided that no such failure shall constitute an Event of Default by the Contracting Communities unless and until (i) the Company has given written notice of such default to the Contracting Communities, and (ii) the Contracting Communities have not paid the amount due within thirty (30) days after such notice or within thirty (30) days following the issuance of a final arbitration award in the event the matter is the subject of arbitration pursuant to Section 11.03 of the Service Agreement.

(c) Upon the occurrence of an Event of Default by a party hereto, the other party shall be entitled to the remedies described below. Neither party shall be entitled to terminate the Service Agreement solely as a result of an Event of Default hereunder.

(i) Upon the occurrence of an Event of Default under ***Section 6(a)*** above, the Contracting Communities may terminate this Amendment No. 4, and the Company shall be obligated to reimburse the Contracting Communities for any amounts previously paid with respect to the Modification that failed to meet the Modification Acceptance Criteria and thereafter, any failure to meet such Modification Acceptance Criteria shall not be an Event of Default under the Service Agreement and the Company shall not be liable to the Contracting Communities under the Service Agreement for any such failure.

(ii) Upon the occurrence of an Event of Default under ***Section 6(b)*** above, the Company may terminate this Amendment No. 4, and the Contracting Communities shall be obligated to pay the Company for all amounts previously earned with respect to the Modification, as well as all other amounts owed to contractors performing work in connection with the Modification. The Contracting Communities agrees that the Company may obtain specific performance of the Contracting Communities' obligations in this regard.

(d) The remedies and damages provided for herein in the event of occurrence of an Event of Default under of this Amendment No. 4 are exclusive and shall in no event limit the rights of the parties upon Events of Default under the Service Agreement. Notwithstanding any provision herein, which may be construed to the contrary, (i) neither parties shall be liable to the other for any consequential, indirect, incidental or punitive damages in connection with the performance of this Amendment. The Event of Default, remedies, and damages provided for in this ***Section*** apply solely with respect to this Amendment No. 4 and do not constitute Events of Default, remedies or damages under the Service Agreement, (ii) should either party terminate this Amendment No. 4 as provided above, the parties shall proceed to address the impacts of the Amendment and the Regulation as an Unforeseen Circumstance under the Service Agreement, and (iii) any disputes which arise under this Amendment No. 4 shall be referred for arbitration as provided in Section 11.03 of the Service Agreement.

7. **Acknowledgment**. The parties acknowledge and agree that:

(a) This Amendment No. 4 applies only to the Mercury Emissions Control System and the Scrubber Modifications; and

(b) This Amendment No. 4 is not intended to impose upon the Company obligations with respect to air emissions that are more stringent than those required under the Environmental Regulation Compliance Guarantee in effect prior to the effective date of the Regulations and set forth in Section 3 of Schedule 2 of the

Service Agreement (the "Environmental Guarantee"), except as, and only to the extent, set forth in ***Section 5(e)*** of this Amendment No. 4.

8. **Amendment**. This Amendment No. 4 takes effect as an amendment and supplement to the Service Agreement.

9. **Confirmation**. Except as specifically amended and supplemented hereby, the Service Agreement remains in full force and effect. All references in the Service Agreement to "this Agreement" and "this Service Agreement" and "this Full Service Agreement" shall be deemed to refer to the Service Agreement as amended hereby. The parties hereto hereby confirm the Service Agreement, as amended hereby, in all respects.

10. **Counterparts**. This Amendment No. 4 may be signed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representative on the date above first set forth.

CITY OF MODESTO
6/26/01 Res. 2001-315

By: _____
Name: Carmen Sabatino
Title: Carmen Sabatino, Mayor

[Seal]

Approved as to form:

_____
Attorney for the City of Modesto
Roland Stevens, Assistant City Attorney

ATTEST: Joan Zahr
JOAN ZAHR, City Clerk

COVANTA STANISLAUS, INC.

By: _____
Anthony J, Orlando
Executive Vice President

Attest: _____
Name: Timothy J. Simpson
Title: Asst. Secretary

COUNTY OF STANISLAUS

By: Pat Paul
Name: Pat Paul
Title: Chair, Board of Supervisors

[Seal]

Approved as to form:

_____
Attorney for the County of Stanislaus
John P. Doering
Deputy County Counsel