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

DEPT: Chief Executive Office **BOARD AGENDA #** B-15

Urgent ☐ **Routine** ☒ **AGENDA DATE** June 26, 2012

CEO Concurs with Recommendation YES ☒ **NO** ☐ **4/5 Vote Required YES** ☐ **NO** ☒
(Information Attached)

SUBJECT:

Approval of an Amended and Restated Service Agreement and Amended and Restated Facility Site Lease Agreement with Covanta Stanislaus, Inc. Effective July 1, 2012 for the Operation of the Waste-to-Energy Facility and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste with Covanta Stanislaus, Inc., effective July 1, 2012 and authorize the Chief Executive Officer to sign the Agreement.

2. Approve the Amended and Restated Facility Site Lease Agreement effective July 1, 2012, and authorize the Chief Executive Officer to sign the Agreement.

Continued on Page 2

FISCAL IMPACT:

Under the New Service Agreement (Attachment A), the Contracting Communities will be required to pay Covanta a service fee of $32 per ton of Acceptable Waste processed through the waste-to-energy facility and would guarantee sending 243,300 tons to the facility annually. This service fee would escalate each July 1st based on the Consumer Price Index, "Urban Wage Earners and Clerical Workers, All items, West - Size B/C." This is the same index which is used to establish the Stanislaus County franchise maximum

Continued on Page 2

BOARD ACTION AS FOLLOWS:

No. 2012-325

On motion of Supervisor Monteith , **Seconded by Supervisor** Chiesa
and approved by the following vote,
Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

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

Christine Ferraro

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk** **File No.**

STAFF RECOMMENDATIONS: (Continued)

3. Approve Amendment No.3 to the "Agreement between the City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste" with the City of Modesto, effective July 1, 2012, regarding the disposition of the Resource Recovery Account and other operating procedure changes and authorize the Chairman of the Board to sign the Amendment.

4. Approve an increase of $32,000 in the contract with Sidley Austin LLP for legal services in developing the new Service Agreement and amended Facility Site Lease Agreement, for a revised not to exceed amount of $142,000.

FISCAL IMPACT: (Continued)

rates for solid waste collection services. For the first 10,000 tons above the guaranteed minimum, the service fee would be reduced by $2 per ton. For any acceptable waste delivered above 253,300 tons, the service fee would be reduced by $4 per ton.

The current tip fee at the Waste-to-Energy (WTE) facility is $28 per ton which consists of $22 per ton for waste processing, $3 per ton for the Assembly Bill (AB) 939 program and another $3 per ton for the Household Hazardous Waste (HHW) program. The tip fee at the WTE facility has been as high as $40.25 per ton in the past. Under the proposed terms, the tip fee at the WTE facility would need to be increased to $39 per ton to cover the $32 per ton payment to Covanta, $6 per ton for the AB 939 and HHW programs, and $1 per ton to cover administrative costs. It is important to note that absent a new agreement with Covanta, the tip fee would still need to increase a minimum of $10-$11 per ton to cover the expenses under the current service agreement, not considering any future cap-and-trade exposure. Consequently, following a May 22, 2012, public hearing, the Board of Supervisors approved an $11 per ton increase to the tip fee effective July 1, 2012.

Although the impact to customers will vary by jurisdiction, earlier rough projections indicated that as a result of the $11 per ton increase in the tip fee, the increase in the monthly garbage rate could range from $.50 to $1.50 per month for a typical residential customer. When actual calculations were more recently completed for the annual adjustment of the garbage rates for the County areas, it was determined that the increase in the monthly rate of a typical residential customer due to the WTE tip fee change, will range from $1.10 to $1.85 per month, slightly higher than originally projected.

Under the current Service Agreement, the Contracting Communities pay Covanta a service fee to operate the facility and are also responsible for all pass through costs associated with the facility (taxes, insurance, permit fees, ash disposal, etc.). In

addition, the Contracting Communities are responsible for any costs associated with unforeseen circumstances such as changes in law, major upgrades, or any acts, events or conditions that have a material adverse effect on the operation of the facility. The Contracting Communities retain the disposal fees, 90% of the electric revenue generated by the facility, 50% of metal recycling revenue, and 30% of supplemental waste revenue.

The County acts as Treasurer for the Joint Powers Authority and has established a separate fund for the operation and maintenance of the WTE facility, the Resource Recovery Account (RRA). Through a series of tip fee increases and the refinancing of the debt on the facility in 2000 at a favorable interest rate, the Contracting Communities built up this account to the point that the debt was completely paid off in 2008 and an operating reserve of over $19 million was established. The reserve has been used to cover operating losses at the facility.

A Power Purchase Agreement (PPA), which was a contractual arrangement between Covanta and PG&E for the delivery and purchase of electricity, expired on January 1, 2010. With no long term contract commitment in place, Covanta has not negotiated a new long term PPA and is currently selling electricity at Short Run Avoided Cost (SRAC) rates which are considerably less at the present time than could be obtained through a new PPA. Consequently, the electricity revenue going to the Contracting Communities has fallen dramatically resulting in an estimated average operating loss of over $300,000 per month (the actual amount varies month to month with electricity rates). The aggregate operating loss has resulted in a decline in the reserves from a cash balance on January 1, 2010, (when the PPA expired) of $19,551,851 to a cash balance on June 1, 2012, of $10,646,605.

For the fiscal year ending June 30, 2011, the Contracting Communities collected $7,030,953 in disposal fees, $5,488,362 as the 90% share of electricity revenue, $300,352 as the 50% share of metal recycling revenue, and $369,498 as the 30% share of supplemental waste revenue, for total operating revenue of $13,189,165.

For the same period, operating expenses totaled $16,689,187 with the largest expenses being $11,348,289 for the facility operations and maintenance service fee paid to Covanta and $3,397,810 in facility pass through costs. This resulted in an operating loss for the year of $3.5 million. This loss was covered through the use of Resource Recovery Account reserves. Operating losses in the current 2011/2012 fiscal year are anticipated to be approximately $5.4 million.

As indicated earlier, the RRA, a trust and agency fund of the Contracting Communities for the WTE facility, had a cash balance on June 1, 2012, of $10,646,605. It is projected that up to $1.2 million of this cash balance may be necessary to cover the current operating losses at the WTE facility until the new Service Agreement and increased tip fee at the WTE facility is in full force and effect.

If approved by the Board of Supervisors and Modesto City Council, the New Service Agreement would reduce the risk exposure of the Contracting Communities from 100% liability for unforeseen circumstance costs down to 25% liability for unforeseen circumstance costs, establish stable and predictable tipping fees for the next 15 years, assist local agencies in continuing to meet diversion requirements, preserve landfill capacity, and keep the RRA from declining further due to continued operating losses.

The Facility Site Lease Agreement has also been amended to reflect the business terms contained in the Term Sheet and the New Service Agreement. This includes continuance of the $198,000 annual rent paid to the County until the earlier of (a) the termination of the New Service Agreement, or (b) July 1, 2027. Should the Lessee choose to exercise a 15-year lease renewal option contained in the Agreement, the annual rent would be set at a market value rent for the new 15 year period.

City and County staff have been assisted in the development and review of the Term Sheet, the New Service Agreement, and the amendments to the Facility Site Lease Agreement by the legal firm Sidley Austin LLP. The fee for professional services rendered for the development of the Term Sheet was $85,622, which was paid under an existing contract with Sidley Austin LLP. Additional services at a cost of $69,414 as of March 31, 2012, have been provided for the development of the New Service Agreement by Sidley Austin LLP, which the Board of Supervisors approved on January 10, 2012, in an amount not to exceed $110,000. Given some unanticipated complexities that developed in the renegotiation of the New Service Agreement and the Facility Site Lease Agreement, especially as it relates to decommissioning, it is recommended that the contract with Sidley Austin LLP be increased by $32,000 to a revised not to exceed amount of $142,000. The expenditures for these legal services are appropriated in the Waste-to-Energy budget.

DISCUSSION:

Background

On January 10, 2012, the Board of Supervisors and the Modesto City Council approved a Term Sheet to be used in the development of a New Service Agreement with Covanta Stanislaus, Inc., for the operation of the Waste-to-Energy (WTE) facility. The Term Sheet had been proposed after several years of negotiations between Covanta and the Contracting Communities (City of Modesto and Stanislaus County collectively) to enter into a new Service Agreement. The Board also approved the related actions of directing the Chief Executive Officer to negotiate an amendment to the "Agreement between the City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste," and authorizing the Chief Executive Officer to enter into a contract with Sidley Austin LLP for legal services to develop the new Service Agreement.

The WTE facility, co-located at the Fink Road Landfill, is a mass burn, solid waste disposal, and resource recovery and electricity generation facility. The WTE facility began operation in 1989 and burns on average about 250,000 tons of municipal solid waste (MSW) per year. Waste is received from all nine cities and the unincorporated area and has a gross electrical generation capacity of 22.5 megawatts (MW). The WTE facility is owned and operated by Covanta Stanislaus, Inc., and is an integral part of Stanislaus County's solid waste disposal system providing an alternative to landfill disposal as a primary solid waste management method. Agencies delivering MSW to the facility receive up to 10% diversion credit towards their Assembly Bill (AB) 939 requirements.

The WTE facility is located on a site owned by the County and leased to Covanta through a Facility Site Lease Agreement. That Agreement was executed in 1986 and had an initial term of 35 years with an option to renew the lease for an additional 15 year period. Covanta currently pays the County $198,000 per year to lease the property.

<u>The Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste (New Service Agreement) (Attachment "A")</u>

The following staff represented the Contracting Communities in numerous meetings and telephone conferences with our counsel and Covanta to draft the New Service Agreement from the Term Sheet the Board approved:

Stan Risen, Assistant Executive Officer
Sonya Harrigfeld, Former Director of Environmental Resources
Mandip Dhillon, Solid Waste Division Manager, Department of Environmental Resources
Dee Williams Ridley, Deputy City Manager, City of Modesto
Julie Hannon, Director of Parks, Recreation and Neighborhoods, City of Modesto
Gloriette Genereux, City Finance Director, City of Modesto
Jocelyn Reed, Solid Waste Manager Recreation and Neighborhoods, City of Modesto

Eric Tashman and Martin Gold of Sidley Austin LLP represented the Contracting Communities in this process and provided valuable assistance with drafting and legal review of the New Service Agreement and Amended and Restated Facility Site Lease Agreement (New Site Lease). Covanta has been represented in this process by Chris Baker, Vice-President and Regional Business Manager – West Division, Karen Wilhelm, Business and Accounting Manager, and Kirk J. Bily, Vice President and Deputy General Counsel.

The Term Sheet provided the foundation for development of the New Service Agreement (Attachment A) and the terms of the proposed New Service Agreement are

consistent with the Term Sheet. The New Service Agreement combines language from the original Service Agreement and the Term Sheet previously approved by the City and County. Further issues addressed as part of the final negotiation, but not previously discussed in the January 10, 2012, Term Sheet agenda item, include:

1. The New Service Agreement includes language that aligns contractual obligations with current operating practice, such as with the waste receiving time and reporting procedures.

2. The New Service Agreement provides clear definitions for key business points, such as what is considered in computing energy revenues for the Excess Electric Revenues fund.

3. The Special Waste provision language in 4.03(d) has been modified to make it clear that the tons listed are not just a processing priority but also a limit on the total amount of Special Waste that can be procured.

4. Provisions are included that allow Covanta to incur any capital cost at the facility at their own cost and expense without the approval of the Contracting Communities. Capital costs in excess of $500,000 require notice to the Contracting Communities and an obligation to consider comments received to the notice in good faith.

5. Meet and confer language is included if the content of the waste delivered to the Facility causes the BTU (British Thermal Unit) heating value to fall out of a certain range.

6. Under the original Service Agreement, the Contracting Communities provided security in the event of default by entering into a rate covenant, pledging all revenues (energy, tip fee, etc...) and funding the Resource Recovery Account at a minimum threshold. These types of security provisions were typical of those provided in bond financing arrangements. The New Service Agreement is a commercial, arms-length transaction and in the event of default contains provisions typical of more standard contractual relationships. Specifically, in the event of default, the New Service Agreement contains a limit of liability of $25 million backed by the full faith and credit of the City and County, both jointly and severally.

7. The process for determining Fair Market Value of the facility is included should the Contracting Communities exercise a right to purchase the facility at the end of the Service Agreement. The Contracting Communities also retain a right of first refusal to purchase the facility on the same terms and conditions and for the same price, should Covanta offer the facility for purchase to a third party.

8. Section 7.04 of the New Site Lease was modified to allow the County one of the following two options upon the expiration of the lease term or any earlier termination of the Lease:

   - Option 1 – Take over the plant "as is" with no consideration paid; or
   - Option 2 – Covanta would decommission and remove the plant and retain all salvage rights; they would not be required to remove the pit or pilings, but would fill in the pit with clean fill and return to grade level and otherwise restore the Facility Site to the condition it was in upon commencement of the original Lease.

   Regardless of which option is exercised, Covanta is to remove or fully remediate any contamination on or in the Facility Site resulting from its acts or omissions, including any contamination in or below the storage pit or the pilings. Covanta would provide contractual environmental indemnity for any of Covanta's acts, backed by a parent guaranty.

   In exchange for these new provisions, Covanta will receive a one-time right to exit (terminate) the New Service Agreement on December 31, 2016, without damages if the Service Agreement is not making good business sense for them; the exercising of this option will require written notice prior to 12/31/2014. If exercised, there would be a simultaneous termination of the New Site Lease.

<u>The Amended and Restated Facility Site Lease Agreement (New Site Lease) (Attachment "B")</u>

In June 1986, the County of Stanislaus entered into a Facility Site Lease Agreement with the Stanislaus Waste Energy Company (now known as Covanta Stanislaus, Inc.), which contained an initial term of 35 years after the construction date, with an option to renew the lease for an additional 15 year period. The expiration of the initial term was set to expire in August 2021.

In the New Site Lease, the initial term has been extended 6 years to coincide with the expiration of the New Service Agreement. In the event that Covanta exercises the one-time December 31, 2016, termination option of the New Service Agreement, the New Site Lease will also terminate on the same date. Covanta retains a 15-year renewal option as contained in the original agreement.

The County is currently collecting $198,000 in annual rent. This rent level would continue during the New Service Agreement term. Should Covanta exercise the 15-year renewal option at the end of the New Service Agreement, the annual rent would convert to the then market rate rent for the highest and best use of the land.

A significant focus in the renegotiation of the New Site Lease was placed on improving language as it relates to the decommissioning of the facility upon the termination of the site lease. As stated in Section 8 above, the negotiated language will allow the County the option to decide whether to require Covanta to decommission the site or for the County to take over the site "as is" but free and clear of any liens or debt obligations.

Amendment to the Administration Agreement with the City of Modesto (Attachment "C")

As the Contracting Communities enter into a new contractual arrangement with Covanta, it is also important to clarify a number of areas relative to the ongoing working relationship between the County and City, such as the disposition of the Resource Recovery Account (RRA), guaranteed tonnage obligations, gate processing, notifications, etc. With this in mind, when the Board of Supervisors approved the Term Sheet, it also directed the Chief Executive Officer to concurrently negotiate an amendment to the administration agreement between the City and County and return to the Board of Supervisors for final approval to the amendment.

The above-mentioned staffs of the County and City who developed the New Service Agreement also negotiated this amendment, herein referred to as Amendment No. 3 to the existing "Agreement between City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste," which was originally entered into on December 17, 1985.

The key terms of the proposed Amendment No.3 are as follows:

1. Using the services of their contracted haulers, City and County agreed to deliver no less than the minimum of 243,300 tons of Acceptable Waste ("guaranteed tonnage") to the Facility per each fiscal year during the term of the New Service Agreement with Covanta Stanislaus, Inc. The amendment to the administration agreement clarifies that the City will be responsible for at least 58% of the guaranteed tonnage and the County will be responsible for at least 42% of the guaranteed tonnage.

2. City and County agreed to work cooperatively to ensure that other cities of Stanislaus County, since they also benefit from the use of the facility via credits for diversion to meet the State mandates and receive revenues for their jurisdiction's solid waste programs from the AB 939 fees, continue to dispose of waste at the facility in no less than their historical percentages of wastes from in-County sources, which total 33% of the waste from in-county sources.

3. Upon execution of the New Service Agreement, Covanta's tip fee will be paid from tip fee revenues charged at the scale house to the haulers for deliveries to the WTE facility. Consistent with current past practice, these revenues will be

deposited in the Resource Recovery Account from which Covanta's service fee will be paid.

4. In addition to the service fee paid to Covanta, a $3.00 per ton AB 939 Program fee and a $3.00 per ton Household Hazardous Waste (HHW) fee will continue to be charged for wastes brought to the facility, which will also be deposited in the Resource Recovery Account. The AB 939 Program fee will be distributed to the cities and County pursuant to the 1997 Memorandum of Understanding between the City and County, as amended, and shall be based on the actual tonnages delivered to the facility by each city. The HHW fee will be used to fund the operation of the HHW facility for use by all jurisdictions within the County. Such fees may be adjusted from time to time by mutual agreement of City and County.

5. An administrative tip fee of $1.00 per ton will be charged in addition to the tip fee rate mentioned above, which will also be deposited in the Resource Recovery Account. This tip fee will be for the staffing, operations, and administrative costs for the WTE portion of the scalehouse activities including computer system maintenance, administration and record keeping costs associated with the New Service Agreement, and for AB 939 Program administration, reporting, and record keeping costs.

6. To reserve against future financial risk exposure under the New Service Agreement from the 25% share of Unforeseen Circumstances costs agreed to by the City and County, $3,750,000 in the Resource Recovery Account will be set aside in a separate sub fund.

7. An additional sum of $2,000,000 from the Resource Recovery Account will be set aside in a separate sub fund for any other contingencies during the term of the New Service Agreement. The minimum balance of this contingency sum will be set at $1,000,000. In the event there is a need to replenish the contingency sum to maintain the minimum balance, the City of Modesto will contribute 58% and the County will contribute 42%, of the replenishment.

8. On January 1, 2013, the effective cash balance of the Resource Recovery Account, on record for July 1, 2012, after setting aside $3,750,000 and $2,000,000, will be apportioned 58% to the City and 42% to the County, based on the historical deliveries to the facility by each entity and the investment risk taken by the City and County in the implementation of the project for the benefit of all jurisdictions in the County.

9. In the event Covanta exercises the one-time December 31, 2016, termination option in the New Service Agreement, or upon the expiration of the lease term or any earlier termination of the Site Lease Agreement, the County will become the owner of the facility, but shall meet and confer with the City to discuss whether

the City would desire to participate in an ownership interest in the facility with all the rights and responsibilities associated with that ownership.

POLICY ISSUES:

The Board of Supervisors is asked to consider whether the proposed New Service Agreement and New Site Lease Agreement and related actions are consistent with their priorities of A Healthy Community, A Well Planned Infrastructure System, and the Efficient Delivery of Public Services. City staff will take a similar agenda item before the Modesto City Council for the Council's consideration for approval of the proposed New Service Agreement and related actions.

STAFFING IMPACTS:

Existing staff from the Chief Executive Office, County Counsel, and the Department of Environmental Resources have been involved in the negotiation of the Term Sheet and development of the New Service Agreement. Currently the Waste-to-Energy budget covers approximately $170,000-$185,000 per year of salaries and benefits costs for staff from the Department of Environmental Resources for administrative services. Upon implementation of this agreement, it is anticipated that these staff costs will be reduced to approximately $100,000-$120,000 per year.

CONTACT PERSON:

Stan Risen, Assistant Executive Officer. Telephone: (209) 342-1731

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for a cleaner world

CHIEF EXECUTIVE OFFICE
2012 JUN 22 A 9:44

Kirk J. Bily
Vice President and Deputy General Counsel

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July 1, 2012

Chairman, Stanislaus County Board of Supervisors
1010 Tenth Street
Modesto, California 95354

Mayor, City of Modesto
1010 Tenth Street
Modesto, California 95354

Re: Covanta Holding Corporation Parent Guaranty

Ladies and Gentlemen:

I am the Vice President & Deputy General Counsel of Covanta Energy Corporation. In that capacity, I provide legal advice and counsel to Covanta Holding Corporation (the "***Guarantor***") and to the Guarantor's domestic subsidiaries, including Covanta Stanislaus, Inc. (the "***Company***").

I have reviewed that certain Guaranty Agreement entered into as of the date hereof by the Guarantor (the "***Guaranty***") in connection with and as required by the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste and the Amended and Restated Facility Site Lease Agreement, each entered into by the Company as of the date hereof. In addition, I have reviewed such other instruments and documents as deemed necessary or appropriate and such laws as deemed relevant. As to certain matters of fact material to the opinions set forth below, I have relied upon certificates of public officials and officers of the Company and the Guarantor, and information received from searches of public records, and assume that all such certificates and information were properly given and remain accurate as of the date of this letter.

Based upon and in reliance on the foregoing, and subject to the assumptions and limitations hereinafter set forth, I am of the opinion that:

1. The Guarantor is a corporation duly formed and validly existing under the laws of the State of Delaware.

2. The Guarantor has the power to execute and deliver, and perform its obligations under, the Guaranty.

3. The Guarantor has taken all corporate action necessary to authorize its execution and delivery of, and its performance under, the Guaranty.

4. The Guarantor has duly executed and delivered the Guaranty.

5. The Guaranty is the valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms.

This opinion is given under the laws of the State of New York and Chapter 17 of the Delaware Code and assumes that the provisions of law that may be applied pursuant to provisions contained in the Guaranty are substantively the same as such laws herein opined under.

I assume for purposes of this opinion that: all parties to the Guaranty (other than the Guarantor) are duly organized, validly existing and in good standing under the laws of their respective jurisdictions of organization; have the requisite organizational power and authority to accept the Guaranty and enter into the underlying transaction documents and to perform their respective obligations thereunder; the underlying transaction documents have been duly authorized, executed and delivered by such parties (other than the Company); and the underlying transaction documents constitute the legal, valid and binding obligation of each of the parties thereto (other than the Company), enforceable against them in accordance with their terms.

This opinion is subject to bankruptcy, insolvency, usury and other laws affecting the rights and remedies of creditors generally and to principles of equity.

This opinion is rendered solely to you and is intended solely for your benefit in connection with the transaction described hereinabove, and may not be relied upon, referred to or otherwise used by you for any other purpose or by any other person or entity for any purpose. This opinion is given as of the date hereof, without responsibility or obligation to update this opinion for changes in law or facts or for other developments occurring after the date hereof.

Very truly yours,

Covanta Energy Corporation

By: Kirk J. Bily
Kirk J. Bily
Vice President & Deputy General Counsel

Attachment

"A"

EXECUTION COPY

AMENDED AND RESTATED SERVICE AGREEMENT FOR THE SUPPLY AND ACCEPTANCE OF SOLID WASTE

among

COVANTA STANISLAUS, INC.

And

THE CITY OF MODESTO
and
THE COUNTY OF STANISLAUS

DATED AS OF JULY 1, 2012

TABLE OF CONTENTS

Page

ARTICLE I – DEFINITIONS AND INTERPRETATION 2

1.01 Incorporation by Reference. 2
1.02 Definitions. 2
1.03 Interpretation 10

ARTICLE II – CONDITIONS PRECEDENT 10

2.01 Conditions Precedent to the Obligations and Liabilities of the Contracting Communities. 10
2.02 Conditions Precedent to the Obligations and Liabilities of the Company. 11
2.03 Satisfaction of Conditions Precedent. 11

ARTICLE III – REPRESENTATIONS 11

3.01 Representations of the County. 11
3.02 Representations of the City 12
3.03 Representations of the Company. 13

ARTICLE IV – OPERATION OF FACILITY; DELIVERY AND PROCESSING OF WASTE 14

4.01 Commitment to Deliver Waste. 14
4.02 Commitment to Accept, Process and/or Dispose of Waste. 15
4.03 Contracting Communities Right of First Use. 15
4.04 Operation of the Facility. 17
4.05 Facility Maintenance. 17
4.06 Contracting Communities' Visits and Inspections; Record Keeping and Reporting; Testing. 18
4.07 Rejection Rights 20
4.08 Receiving and Operating Hours 20
4.09 Weighing of Waste Deliveries, Etc. 20
4.10 Storage. 22
4.11 Regulation of Haulers. 22
4.12 Assistance with Water and Utilities 23

ARTICLE V – DISPOSAL OF PROCESS RESIDUE AND PROCESS REJECTS 23

5.01 Disposal. 23
5.02 Inadvertent Deliveries of Process Rejects. 23
5.03 Provision of Disposal Site. 25

ARTICLE VI – SERVICE FEE AND OTHER PAYMENTS 25

6.01 Service Fee 25
6.02 Costs and Benefits of Facility. 26
6.03 BTU Values. 27
6.04 Billing and Payments. 27
6.05 Unforeseen Circumstances. 28
6.06 No Offset or Waiver. 33
6.07 Contracting Communities' Permit Obligations. 33

ARTICLE VII – FURTHER AGREEMENTS 33

7.01 Licenses, Approvals and Permits. 33
7.02 Nondiscrimination. 33
7.03 Insurance. 34
7.04 Joint and Several Obligations. 34

ARTICLE VIII – DEFAULT AND TERMINATION 34

8.01 Events of Default by the Company. 34
8.02 Events of Default by Contracting Communities. 35
8.03 Event of Default Remedies. 35
8.04 Limit of Liability. 36
8.05 Special Termination Right. 37

ARTICLE IX – MISCELLANEOUS 37

9.01 Assignment. 37
9.02 Indemnification. 37
9.03 Effect of Termination. 38
9.04 Overdue Obligations to Bear Interest. 38
9.05 Exclusion of Liability. 38
9.06 Intellectual Property Rights. 39
9.07 Relationship of the Parties. 39
9.08 Notices. 39
9.09 No Waiver. 41
9.10 Entire Agreement; Modifications. 41
9.11 Headings. 41
9.12 Governing Law. 41
9.13 Counterparts. 41
9.14 Severability. 41
9.15 Right of First Refusal 41
9.16 Fair Market Value Purchase Option. 42
9.17 Cooperation Regarding Claims 43
9.18 Venue. 43
9.19 Further Assurances. 44
9.20 Arbitration 44

LIST OF SCHEDULES

Schedule 1	Waste Delivery Schedule
Schedule 2	Facility Site Description
Schedule 3	Amended and Restated Facility Site Lease Agreement
Schedule 4	Parent Guaranty
Schedule 5	Required Insurance
Schedule 6	Hauler Requirements

AMENDED AND RESTATED SERVICE AGREEMENT FOR THE SUPPLY AND ACCEPTANCE OF SOLID WASTE

This AMENDED AND RESTATED SERVICE AGREEMENT FOR THE SUPPLY AND ACCEPTANCE OF SOLID WASTE (this "***Agreement***") is entered into as of July 1, 2012, by and among Covanta Stanislaus, Inc., a California corporation (the "***Company***"), the County of Stanislaus, a political subdivision of the State of California, acting by and through its Board of Supervisors (the "***County***"), and the City of Modesto, a municipal corporation, acting by and through its City Council (the "***City***"). The County and City are collectively referred to herein as the "***Contracting Communities***."

Recitals

WHEREAS, the Company and the Contracting Communities are parties to that certain Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste dated as of June 1986, as amended by Amendment No. 1 to such Agreement dated as of September 27, 1988, Amendment No. 2 to such Agreement dated as of May 17, 1990, Amendment No. 3 to such Agreement dated as of February 2, 2000 and Amendment No. 4 to such Agreement dated as of May 21, 2001(as so amended, the "***Original Agreement***");

WHEREAS, pursuant to the Original Agreement, the Company has designed and built, and currently is operating and maintaining, a mass burn resource recovery facility for disposing of Acceptable Waste (defined below), producing saleable electricity and recovering other Recovered Resources (defined below), which facility is located at 4040 Fink Road, Crows Landing, California 95313 (together with all additions, replacements, appurtenant structures, improvements and equipment in connection therewith, the "***Facility***").

WHEREAS, Contracting Communities and the Company wish to amend and restate the Original Agreement in its entirety as provided herein; and

WHEREAS, the Contracting Communities and the Company intend that this Agreement become legally effective as of the date first above written (the "***Contract Date***" or the "***Service Commencement Date***"), become operative and commence governing rights, obligations, use, operation and maintenance of the Facility thereon and continue until the 15th anniversary of the Service Commencement Date, subject to earlier termination in accordance with the provisions of this Agreement (the "***Service Term***").

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and of the mutual obligations undertaken herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Company and the Contracting Communities hereby agree as follows:

ARTICLE I – DEFINITIONS AND INTERPRETATION

1.01 Incorporation by Reference.

The above Recitals are incorporated into this Agreement by this reference. Schedules 1 through 6 attached to this Agreement are incorporated into this Agreement by this reference.

1.02 Definitions.

The following terms shall have the following meaning:

"***Acceptable Waste***" means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of normal collection of Solid Waste in the Contracting Communities, such as, but not limited to: garbage, trash, rubbish, refuse, offal, beds, mattresses, sofas, bicycles, baby carriages, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and six (6) inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, Unacceptable Waste and Hazardous Waste.

"***Affiliate***" means a Person that controls, is controlled by, or is under common control with the Company.

"***Alternate Disposal Methods***" means the use of the Landfill or other reasonable methods of disposal of Acceptable Waste, other than the normal operation of the Facility, either through the use of the Facility, the Facility Site or any portion thereof, or otherwise through the use of alternate equipment or facilities (including a permitted sanitary landfill), subject to the reasonable approval of the Contracting Communities.

"***Applicable Laws***" means all applicable federal, State, County or local laws ordinances and regulations.

"***Amortized Portion***" has the meaning specified in Section 6.05(c)(4) hereof.

"***Billing Period***" means each calendar month in each Contract Year, except that (a) the first Billing Period shall begin on the Service Commencement Date and shall continue to the last day of the month in which the Service Commencement Date occurs and (b) the last Billing Period shall end on the last day of the final Contract Year.

"***Billing Period Tonnage***" means for each Billing Period that quantity of Acceptable Waste set forth for such Billing Period on Schedule 1 for delivery to the Facility (subject to

adjustments pursuant to Section 4.02(b)), the sum total of which in each Contract Year shall be equal to the Guaranteed Tonnage.

"***BTU***" means British thermal unit.

"***By-Pass Waste***" means Acceptable Waste that the Company is obligated to accept but that is rejected upon delivery at the Facility, directed by the Company to be disposed of by Alternate Disposal Methods, or that is removed from the Facility before Processing for reasons other than Contracting Communities Fault or Unforeseen Circumstances.

"***Cap & Trade Costs***" has the meaning specified in Section 6.05(c)(2)(ii) hereof.

"***Capital Cost***" has the meaning specified in Section 6.05(c)(4) hereof.

"***Change in Law***" means (a) the enactment, promulgation, amendment or official interpretation or reinterpretation by any order, decision or judgment of any federal, state or local court, administrative agency or governmental body after the Contract Date of (i) any federal statute or regulation not enacted, promulgated, amended, interpreted or reinterpreted on or before the Contract Date, as applicable, or (ii) any state, County or City statute, ordinance, or regulation that was not so enacted, promulgated, amended, interpreted or reinterpreted on or before the Contract Date, as applicable, or (b) the imposition of any material conditions in connection with the issuance, renewal, or modification of any official permit, license, or approval after the Contract Date, including any change in specific permit emission limitations pursuant to a condition in the Prevention of Significant Deterioration Permit authorizing modification of such limitations subsequent to issuance of said permit, which in the case of either (a) or (b) establishes requirements making the ownership, operation or maintenance of the Facility more burdensome than the most stringent requirements (x) in effect as of the Contract Date, (y) agreed to in any applications of the Company for official permits, licenses, or approvals, or (z) contained in any official permits, licenses, or approvals with respect to the Facility obtained as of the Contract Date; provided that except for Discriminatory Taxes (defined below), a change in federal, State, County, City, or any other tax law shall not be a Change in Law.

"***Company Indemnified Parties***" has the meaning specified in Section 9.02(b) hereof.

"***Consulting Engineer***" means a nationally recognized consulting engineering company, with demonstrated experience in the area of resource recovery facilities, which is designated in writing by the Contracting Communities.

"***Contract Date***" has the meaning specified in the Fourth Recital.

"***Contract Year***" means the fiscal year ending June 30th. The first Contract Year shall commence on the Service Commencement Date and shall end on the following June 30th. The last Contract Year shall commence on July 1 and end on the last day of the Service Term of this Agreement. Annual quantities described herein shall be ratably adjusted if the first and last Contract Years are less than three hundred sixty-five (365) days. Each Contract Year after the first Contract Year shall commence on the July 1st following the termination of the prior Contract Year.

"***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 the Company imposed under law.

"***Contracting Communities Indemnified Parties***" has the meaning specified in Section 9.02(a) hereof.

"***Cost Substantiation***" means (a) with respect to any cost incurred by the Company, delivery to the Contracting Communities of a certificate signed by the chief financial officer or principal engineering officer, as applicable, of the Company, or his or her respective designee, setting forth the amount of such cost and the reason why such cost is properly chargeable to the Contracting Communities, and stating that such cost is an arm's length and competitive price for the service or materials supplied, and (b) with respect to any cost incurred by the Contracting Communities delivery to the Company of a certificate signed by the Chief Executive Officer of the County and the City Manager or their designees, setting forth the amount of such cost and the reason why such cost is properly chargeable to the Company, and stating that such cost is an arm's length and competitive price for the service or materials supplied, and (c) in either case, such other documentation as may be reasonably necessary to properly evidence such costs.

"***Discriminatory Taxes***" has the meaning specified in Section 6.02(b) hereof.

"***Energy Revenues***" all revenues derived from the sale of electric energy, capacity or ancillary services from the Facility, including any benefit of environmental attributes reflected in the price of the foregoing, if the environmental attributes are included in the sale transaction for energy, capacity or ancillary services by operation of law and such sale transaction does not include a separate certificate evidencing the sale of such environmental attributes.

"***Event of Default***" has the meaning specified in Sections 8.01 and 8.02 hereof.

"***Excess Electric Revenues***" has the meaning specified in Section 6.05(c)(2)(ii) hereof.

"***Excess Tipping Fee Revenues***" has the meaning specified in Section 4.03(b).

"***Excess Waste***" has the meaning specified in Section 4.01(b).

"***Excess Waste Tipping Fee***" has the meaning specified in Section 6.01 hereof.

"***Facility***" has the meaning set forth in the Second Recital.

"***Facility Site***" means the real property described on Schedule 2, upon which the Facility is located.

"***Facility Site Lease Agreement***" means the Amended and Restated Facility Site Lease Agreement between the Company and the County for the Facility Site, as amended from time to time, the form of which is attached hereto as Schedule 3.

"***Fair Market Value***" has the meaning specified in Section 9.16.

"***Guaranteed Tonnage***" means 243,300 Tons of Acceptable Waste which the Contracting Communities are obligated to deliver to the Facility in each Contract Year, to be measured by calculating the sum of the Billing Period Tonnages for the Contract Year.

"***Guaranteed Tonnage Tipping Fee***" has the meaning specified in Section 6.01 hereof.

"***Hauler***" means any Person licensed by the County or the City to collect and transport waste to the Facility or, as applicable, to alternate facilities in accordance with Alternate Disposal Methods; a list of all Haulers so licensed by the County or City shall be prepared by the Contracting Communities and provided to the Company on or before each Contract Year and revised from time to time, as necessary.

"***Hazardous Waste***" means that portion of Solid Waste which, by reason of its composition or characteristics, is: (a) hazardous waste as defined in the Solid Waste Disposal Act, 42 USC §§6901 et seq., and the regulations thereunder, the California Health & Safety Code, Div. 20, Chs. 6.5, 6.7 and 6.8, the California Administrative Code, Title 22, Div. 4, Ch. 30, and any similar or substituted legislation or regulations or amendments to the foregoing; (b) any other materials which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for disposal through the Facility; and (c) any material, other than residential or commercial Solid Waste of the type historically collected by the County and the City as acceptable for disposal into non-Hazardous Waste landfills, which would result in Process Residue being Hazardous Waste under (a) or (b) above.

"***Initial UCC Termination Threshold***" has the meaning specified in Section 6.05(d) hereof.

"***Landfill***" means the Fink Road landfill located immediately adjacent to the Facility Site.

"***Landfill Tipping Fee***" has the meaning specified in Section 5.03 hereof.

"***Legal Holidays***" means those holidays observed by the Contracting Communities and specified by the Contracting Communities in a list delivered to the Company at least thirty (30) days before the beginning of each Contract Year.

"***Limit of Liability***" has the meaning specified in Section 8.04(a).

"***Martin, GmbH***" means Martin GmbH fur Umwelt and Energietechnik, a limited liability company under the laws of the Federal Republic of Germany, having an office in Munich, Germany.

"***MWH***" means megawatt hour.

"***Original Agreement***" has the meaning set forth in the First Recital.

"***Other Amounts***" has the meaning specified in Section 6.04(a)(ii)(C) hereof.

"***Overdue Rate***" means the maximum annual rate of interest permitted by the laws of the State, if applicable, or one percent (1%) per annum over the then current rate which Bank of America (or its successor) loans money to its preferred commercial borrowers and is publicly announced as its "prime rate," whichever rate is lower.

"***Parent***" means Covanta Holding Corporation and its successors and assigns.

"***Parent Guaranty***" means the guaranty agreement provided by the Parent substantially in the form of Schedule 4.

"***Person***" means a corporation, political subdivision, municipal corporation, public benefit corporation, partnership, business trust, trust, joint venture, company, firm, or individual.

"***Process Rejects***" means Unacceptable Waste and Hazardous Waste which is inadvertently accepted by Company.

"***Process,***" "***Processing,***" ***or*** "***Processed,***" as applicable, means the combustion of Acceptable Waste in the Facility.

"***Processing Capacity***" means the actual Processing capacity of the Facility but not more than 310,000 Tons per Contract Year unless the Contracting Communities consent to the establishment of a greater amount, which consent for a greater amount shall not be unreasonably withheld, conditioned or delayed if the basis for the Processing Capacity being set above 310,000 Tons per Contract Year is due to the lower heating value of the waste then being Processed at the Facility. This definition of Processing Capacity shall not alter or diminish the Company's obligation to accept the Guaranteed Tonnage.

"***Process Residue***" means bottom ash, fly ash, grate siftings, and other material derived from Acceptable Waste which remains after the combustion of Acceptable Waste.

"***Procurement Commission***" has the meaning specified in Section 4.03(b).

"***Receiving Times***" means the hours between 4:00 a.m. and 6:00 p.m. Monday through Sunday, excluding Legal Holidays, or any other times agreed upon by Company and the Contracting Communities, provided, however, that between the hours of 4:00 a.m. and 6:00 a.m. each day, and from 4:00 p.m. to 6:00 p.m. each day, and all day Sunday, an electronic ticket entry is required and there is no staffing.

"***Recovered Resources***" means (i) steam, electric energy, capacity, ancillary services, ferrous and non-ferrous metals, ash and such other materials of whatever nature or description as the Company may from time-to-time recover from Solid Waste, Process Residue or any other material, whether at the Facility or elsewhere, as determined by the Company in its sole and absolute discretion, and (ii) offsets, credits or benefits of whatever nature or description, for emissions, pollution, green house gas, renewable energy generation, investment, production, taxes or any certificate, grant or intangible entitlement relating to the Facility or its operation, exclusive of diversion credits from the State for waste processed by the Facility.

"***Scale Operators***" has the meaning specified in Section 4.09(a) hereof.

"***Second Notice***" has the meaning specified in Section 6.05(c)(1) hereof.

"***Service Commencement Date***" has the meaning specified in the Fourth Recital.

"***Service Fee***" has the meaning specified in Section 6.01 hereof.

"***Service Term***" has the meaning specified in the Fourth Recital.

"***Shortfall Payment***" has the meaning specified in Section 4.03(b) hereof.

"***Solid Waste***" means all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, but excluding sewage and other highly diluted water-carried materials or substances and those in gaseous form, or special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended.

"***Special Waste***" means Acceptable Waste requiring special handling or secure or certified destruction for Processing.

"***State***" means the State of California.

"***Subsequent UCC Termination Threshold***" has the meaning specified in Section 6.05(d) hereof.

"***Termination Avoidance Amount***" has the meaning specified in Section 6.05(d) hereof.

"***Termination Payment***" has the meaning specified in Section 6.05(e) hereof.

"***Third Party Tipping Fee***" has the meaning specified in Section 4.03(b) hereof.

"***Ton***" means a "short ton" of 2,000 pounds.

"***UCC Termination***" has the meaning specified in Section 6.05(d) hereof.

"***Unacceptable Waste***" means that portion of Solid Waste, exclusive of Hazardous Waste, such as, but not limited to: explosives, pathological and biological waste (unless sterilized and otherwise processed to permit incineration in the Facility in accordance with all applicable health and environmental requirements), radioactive materials, ashes, wet cannery waste, foundry sand, sewage sludge unless processed to permit incineration, cesspool and other human waste, human and animal remains, motor vehicles, including such major motor vehicle parts as automobile transmissions, rear ends, springs and fenders, agricultural and farm machinery and equipment, marine vessels and major parts thereof, any other large type of machinery or equipment, liquid wastes, nonburnable construction materials and/or demolition debris, or any other material which (a) may represent a substantial endangerment to public health or safety, as confirmed by an appropriate public health or safety official, or (b) which would

cause applicable air quality or water effluent standards to be violated by virtue of a change in the composition of waste which prevents the Facility from operating as designed and in accordance with applicable environmental and other permits or (c) material not normally collected as part of residential and commercial collections and which has a reasonable possibility of adversely affecting the operation of the Facility, unless such Unacceptable Waste is delivered in minimal quantities and concentrations as part of normal collections but still classified under Applicable Law as Acceptable Waste.

"***Unforeseen Circumstance***" means any act, event, or condition that has had, or, at the time of the occurrence of such act, event or condition may reasonably be expected to have, a material adverse effect on the rights or the obligations of the parties under this Agreement, or a material adverse effect on the Facility, or the ownership, possession, or operation of the Facility by the Company or its permitted assigns pursuant to Section 9.01 of this Agreement, if such act, event, or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement and is the proximate cause of such failure to perform or comply; provided that no act, event, or condition that results from the Company's failure to maintain the Facility in accordance with Article IV shall be deemed an Unforeseen Circumstance. Such acts or events may include, but shall not be limited to, the following:

(a) An act of God, including volcanic eruption, landslide, lightning, earthquake, fire, flood (but excluding reasonably anticipated weather conditions for the geographic area of the Facility); explosion, sabotage, or similar occurrence; acts of a public enemy, extortion, terrorism, war, blockade, or insurrection, riot or civil disturbance;

(b) The order and/or judgment of any federal, state, or local court, administrative agency or governmental body, excepting decisions of federal courts interpreting the federal tax laws and decisions of state courts interpreting state tax laws (or, in the case of ownership of the Facility for tax purposes, excepting the decision of or regulations promulgated by any federal, state, or local court, administrative agency or governmental body), if it is not also the result of the willful or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order and/or judgment nor the failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such party;

(c) The failure to issue, suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval essential to the ownership, operation or maintenance of the Facility, but excluding the license or consent of Martin, GmbH, provided that such act or event is the result of the imposition of standards or requirements exceeding those in effect on the Contract Date; provided further that such act or event shall not be the result of the willful or negligent action or inaction of the party relying or seeking to rely thereon but that neither the contesting in good faith of any such order nor the failure to so contest shall be construed as a willful or negligent action or inaction of such party;

(d) A Change in Law;

(e) The failure of any appropriate federal, state, County, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is

located, to provide and maintain utilities, services, water, and sewer lines and power transmission lines to the Facility Site which are required for and essential to the ownership, operation or maintenance of the Facility;

(f) The failure of any subcontractor or supplier to furnish labor, services, materials, or equipment on the dates agreed to; provided that such failure is itself caused by an Unforeseen Circumstance and materially adversely affects the Company's ability to perform its obligations, and the Company was not reasonably able to foresee such event and is not reasonably able to obtain substitute labor, services, materials, or equipment on the agreed-upon dates;

(g) The condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the Facility, the Facility Site, or any material portion or part thereof by the action of any federal, State, or local government or governmental agency or authority; or

(h) Any action or failure to act of any Hauler if at the time of such action or failure to act such Person is on the Facility Site and not under the specific direction and control of the Company or the Parent, except as provided for in Section 5.02.

It is expressly understood and agreed that, subject to Applicable Law, the following shall not constitute an Unforeseen Circumstance if not the result of any of the events or conditions specifically described in subparagraphs (a) through (h) above;

(i) adverse changes in the financial ability of any party to perform its obligations hereunder or of the Parent to perform its obligations under the Parent Guaranty;

(ii) the consequences of errors of design, construction, start up, operation or maintenance on the part of the Company or any of its employees, agents, contractors, subcontractors, suppliers or affiliates;

(iii) the failure of the Company to secure licenses or other legal rights in connection with the technology necessary to own, operate or maintain the Facility;

(iv) the lack of fitness for use, or the failure to comply with specifications or design, of any materials, equipment or parts constituting part of the Facility provided that such lack or failure shall not have been the result of the occurrence of a Change in Law;

(v) the result of changed economic circumstances, or impracticability of technology to perform;

(vi) labor disputes other than strikes, lock-outs or breaches of the peace;

"***Unforeseen Circumstance Costs***" has the meaning specified in Section 6.05(c)(4).

"***Waste Delivery Shortfall***" has the meaning specified in Section 4.03(b) hereof.

1.03 Interpretation.

In this Agreement, unless the context otherwise requires:

(a) The terms "hereof", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this entire Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number or vice versa.

(c) The terms "including" and "includes", as used in this Agreement, shall be deemed to be followed by the phrase "without limitation", whether such phrase or words of similar import actually follow or not.

(d) The term "delivered on behalf of the Contracting Communities" and similar terms shall mean delivered by Haulers under contract or franchise arrangement with the Contracting Communities or by other local governmental authorities on behalf of the Contracting Communities.

ARTICLE II – CONDITIONS PRECEDENT

The obligations and liabilities of each party hereunder shall be subject to the satisfaction of each of the conditions precedent to the obligations and liabilities of such party, as set forth in this Article II, on or prior to the Service Commencement Date.

2.01 Conditions Precedent to the Obligations and Liabilities of the Contracting Communities.

The obligations and liabilities of the Contracting Communities shall be subject to the satisfaction of each of the following conditions precedent on or prior to the Service Commencement Date:

(a) The Parent shall have entered into the Parent Guaranty for the benefit of the Contracting Communities, and the Contracting Communities shall have received a legal opinion from counsel for Guarantor as to the due authorization, execution and delivery of the Guaranty, and to its enforceability, in a form reasonably acceptable to counsel to the Contracting Communities.

(b) The representations of the Company set forth in Section 3.03 hereof shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of such date.

(c) no action, suit, proceeding, or official investigation shall have been overtly threatened, publicly announced, or commenced by any federal, state, or local governmental authority or agency, or by any party in any federal, state, or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment,

order or consent decree with respect to any party to this Agreement as a result of such party's participation or intended participation in any transaction contemplated hereby.

(d) The Amended and Restated Facility Site Lease Agreement in the form set forth in Schedule 3 hereto shall have been duly executed and delivered between the Company and the County.

2.02 Conditions Precedent to the Obligations and Liabilities of the Company.

The obligations and liabilities of the Company shall be subject to the satisfaction of each of the following conditions precedent on or prior to the Service Commencement Date:

(a) The representations of the Contracting Communities in Sections 3.01 and 3.02 hereof shall be true and correct in all material respects as of the Service Commencement Date as if made on and as of such date.

(b) No action, suit, proceeding, or official investigation shall have been overtly threatened, publicly announced or commenced by any federal, state, or local government authority or agency, or by any party in any federal, state, or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order, or consent decree with respect to any party to this Agreement as a result of such party's participation or intended participation in any transaction contemplated thereby.

(c) The Amended and Restated Facility Site Lease Agreement in the form set forth in Schedule 3 hereto shall have been duly executed and delivered between the Company and the County.

2.03 Satisfaction of Conditions Precedent.

The parties shall exercise good faith and due diligence in satisfying the foregoing conditions precedent and each party shall give prompt notice to the other party when such conditions precedent shall have been satisfied or waived in writing by the party whose obligation is conditioned thereon.

ARTICLE III – REPRESENTATIONS

3.01 Representations of the County.

The County represents that as of the Contract Date:

(a) The County is a political subdivision of the State, acting by and through its Board of Supervisors, and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement, and each other agreement or instrument entered into or to be entered into by the County pursuant to this Agreement.

(b) The County has the power, authority, and legal right to enter into and perform this Agreement, and each other agreement or instrument entered into or to be entered into by the County pursuant to this Agreement, and the execution, delivery, and performance hereof and

thereof (i) have been duly authorized, (ii) do not require the approval of any other governmental body, (iii) will not violate any judgment, order, law, or regulation applicable to the County and (iv) do not (A) conflict with, (B) constitute a default under, or (C) result in the creation in favor of any third party of any lien, charge, encumbrance or security interest upon any assets of the County under, any agreement or instrument to which the County is a party or by which the County or its assets may be bound or affected.

(c) This Agreement, and each other agreement or instrument entered into by the County pursuant to this Agreement, have been duly entered into and constitute, and each agreement or instrument to be entered into by the County pursuant to this Agreement, when entered into, will be duly entered into and will constitute, legal, valid, and binding obligations of the County, enforceable in accordance with their respective terms, except to the extent that enforceability may be limited by the operation of bankruptcy, insolvency or similar laws affecting the rights of creditors generally and to the extent that the enforceability of the Agreement is subject to general principles of equity.

(d) There are no pending or threatened actions or proceedings before any court or administrative agency which would materially and adversely affect the ability of the County to perform its obligations under this Agreement, or any other agreement or instrument entered into or to be entered into by the County pursuant to this Agreement.

3.02 Representations of the City

The City represents that as of the Contract Date:

(a) The City is a municipal corporation under State law acting by and through its City Council, and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the City pursuant to this Agreement.

(b) The City has the power, authority, and legal right to enter into and perform this Agreement, and each other agreement or instrument entered into or to be entered into by the City pursuant to this Agreement, and the execution, delivery, and performance hereof and thereof (i) have been duly authorized, (ii) do not require the approval of any other governmental body (other than the County), (iii) will not violate any judgment, order, law, or regulation applicable to the City and (iv) do not (A) conflict with, (B) constitute a default under, or (C) result in the creation of any lien, charge, encumbrance or security interest upon any assets of the City under, any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(c) This Agreement, and each other agreement or instrument entered into by the City pursuant to this Agreement, have been duly entered into and constitute, and each agreement or instrument to be entered into by the City pursuant to this Agreement, when entered into, will be duly entered into and will constitute, legal, valid, and binding obligations of the City, enforceable in accordance with their respective terms, except to the extent that enforceability may be limited by the operation of bankruptcy, insolvency or similar laws affecting the rights of creditors

generally and to the extent that the enforceability of the Agreement is subject to general principles of equity.

(d) There are no pending or threatened actions or proceedings before any court or administrative agency which would materially and adversely affect the ability of the City to perform its obligations under this Agreement, or any other agreement or instrument entered into or to be entered into by the City pursuant to this Agreement.

3.03 Representations of the Company.

The Company represents that as of the Contract Date:

(a) The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of California and has all necessary corporate power and authority to own, lease, and operate its properties and to carry on its business as now being conducted by it, and is duly qualified to do business and is in good standing in all other jurisdictions in which the nature of the Company's business or of its properties makes such qualification necessary, and is in compliance in all material respects with all laws, regulations, and requirements where failure to so comply would have material adverse effect on the Company's business.

(b) The Company has the power, authority, legal capacity, and right to enter into, and to perform, its obligations under this Agreement, and each other agreement or instrument entered into or to be entered into by the Company pursuant to this Agreement, and the execution, delivery, and performance hereof and thereof and the transactions contemplated hereby and thereby (i) have been duly authorized by the Company's Board of Directors and, if necessary, by the Company's shareholders, (ii) have the requisite approval of all governmental bodies other than permits or approvals which have been or, in due course, will be applied for, but are not yet issued, (iii) will not result in a violation of any of the terms or provisions of the Articles of Incorporation or Bylaws of the Company, of any indenture or other agreement to which the Company may be a party or by which the Company may otherwise be bound, or of any law, rule, license, regulation, judgment, order, ruling, or decree governing or affecting the operation of the Company or its business, nor will the same constitute an event permitting termination of any agreement or the acceleration of any indebtedness, (iv) do not (A) conflict with, (B) constitute a default under, or (C) result in the creation of any lien, charge, encumbrance, or security interest upon any assets of the Company under any agreement or instrument to which the Company is a party or by which the Company or its assets may be bound or affected.

(c) The Company holds, or is expressly authorized under, the necessary operating permits, patent rights, licenses, and franchises to operate the Facility consistent with, and as may be required by, this Agreement.

(d) This Agreement, and each other agreement or instrument entered into by the Company pursuant to this Agreement, have been duly entered into and constitutes, and each agreement or instrument to be entered into by the Company pursuant to this Agreement, when entered into, will be duly entered into and will constitute, legal, valid, and binding obligations of the Company, enforceable in accordance with their respective terms, except to the extent that

enforceability may be limited by the operation of bankruptcy, insolvency or similar laws affecting the rights of creditors generally and to the extent that the enforceability of the Agreement is subject to general principles of equity.

(e) No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened against the Company, the business of the Company, or any related assets before any court or administrative agency which would materially adversely affect the financial condition of the Company, or the ability of the Company to perform its obligations under this Agreement, or any other agreement or instrument entered into or to be entered into by the Company pursuant to this Agreement.

ARTICLE IV – OPERATION OF FACILITY; DELIVERY AND PROCESSING OF WASTE

4.01 Commitment to Deliver Waste.

(a) On and after the Service Commencement Date, the Contracting Communities shall deliver or cause to be delivered to the Facility or, as applicable, in accordance with Alternate Disposal Methods, on a put-or-pay basis, the Billing Period Tonnage for each Billing Period and the Guaranteed Tonnage for each Contract Year. Acceptable Waste delivered or tendered for delivery to the Facility by or on behalf of the Contracting Communities and rejected by the Company due to one or more scheduled maintenance outages during any Contract Year which aggregate more than 672 hours shall count towards such put-or-pay obligation of the Contracting Communities, in addition to other remedies, if any, applicable to such rejection under this Agreement.

(b) In addition to the Guaranteed Tonnage, the Contracting Communities may tender for delivery, and if so tendered and if Processing Capacity at the Facility is available, the Company shall accept, additional Acceptable Waste (originating within the territorial limits of the Contracting Communities) in excess of the Guaranteed Tonnage up to the Processing Capacity of the Facility ("***Excess Waste***").

(c) In order to assist the Contracting Communities and their Haulers in cost-effective routing of waste to alternative disposal sites when necessary, the Company shall continue to notify the Contracting Communities promptly of any unscheduled outage at the Facility. In addition, the Company shall continue to notify the Contracting Communities no less than 12 (twelve) hours in advance of any known or readily identifiable operational condition at the Facility, such as a quantity of waste in the pit which would cause the Facility to not meet permitted pit turnover requirements, which would cause the Facility to be unable to accept Acceptable Waste for processing and to divert such Acceptable Waste to an alternate disposal site. Said notice shall include the approximate duration of the diversion and shall be provided to both the City and the County Solid Waste Offices via e-mail or other method mutually acceptable to the parties, so that City and County can notify their Haulers to use alternative disposal sites.

(d) The Contracting Communities hereby designate the Facility as the Contracting Communities' resource recovery facility for the disposal of not less than the Guaranteed

Tonnage each Contract Year and agree to maintain such designation during the term of this Agreement.

4.02 Commitment to Accept, Process and/or Dispose of Waste.

(a) The Company shall accept and Process, and/or dispose of Acceptable Waste utilizing the Facility or Alternate Disposal Methods, in an amount at least equal to the Billing Period Tonnage for each Billing Period and in an amount at least equal to the Guaranteed Tonnage for each Contract Year.

(b) Upon either party's request, the monthly schedule of Billing Period Tonnage in Schedule 1 shall be reviewed for potential annual adjustments to accommodate scheduled maintenance and other anticipated downtime of the Facility, seasonal variations in waste generation, and maximization of electricity generation during peak electric demand periods. Such annual adjustments shall only be made upon the mutual consent of the Contracting Communities and the Company, the consent for which from each party shall not be unreasonably withheld.

(c) In the event the Facility is unable to Process any Billing Period Tonnage, or the Guaranteed Tonnage for any Contract Year and the Company is in compliance with Section 4.03 below, the Company shall be entitled to fulfill its obligations to accept, Process, and/or dispose of Acceptable Waste by using Alternate Disposal Methods, which use of Alternate Disposal Methods may include use of the Facility as a transfer station. If the Company determines to use an Alternate Disposal Method during any Billing Period, the Company shall, as promptly as practicable, notify the Contracting Communities by telephone (which notice shall be confirmed in writing within five (5) days) of such determination and shall consult with the Contracting Communities with regard to (i) the use of any Alternate Disposal Method and (ii) the amount of County or City Tons, per day, delivered by the County or City pursuant to such Alternate Disposal Methods; provided that the Company shall continue to accept Acceptable Waste at the Facility for thirty-six (36) hours after giving such telephonic notice to the extent that such acceptance will not violate any environmental permit or Applicable Laws. The Company shall give the Contracting Communities equivalent notice of its intention to terminate use of Alternate Disposal Methods and will consult with the Contracting Communities regarding the need for any additional alternate facility.

(d) The Company has the right, without any obligation to pay damages or adjustments during any Billing Period, to not Process Acceptable Waste from the Contracting Communities for up to 672 hours in each Contract Year for scheduled maintenance outages, provided that this right shall be subject to the Company's obligations under this Agreement to Process the Guaranteed Tonnage and the Company's obligations under Section 4.03 below.

4.03 Contracting Communities Right of First Use.

(a) Unused Capacity. The Contracting Communities shall have a right of first use of all Processing Capacity at the Facility in accordance with this Section 4.03. If at any time and from time to time, the Contracting Communities have not delivered sufficient Acceptable Waste to fill the Processing Capacity of the Facility, then within twenty-four (24) hours of the

Company's notice to the Contracting Communities of the existence of unused Processing Capacity at the Facility, the Company shall have the right to market, for the benefit of both the Contracting Communities and the Company, as provided in Sections 4.03(b) and (c) below, the difference between the Processing Capacity and the total of Acceptable Waste being delivered by the Contracting Communities.

(b) Shortfalls in Delivery. If the Company procures waste from third parties to mitigate a shortfall in the Contracting Communities meeting their scheduled Billing Period Tonnage and/or Guaranteed Tonnage deliveries (a "***Waste Delivery Shortfall***"), then the Company shall be entitled to, and the Contracting Communities shall owe, a procurement commission of 15% (the "***Procurement Commission***") of the tipping fee paid by third parties (the "***Third Party Tipping Fee***") for the procurement of such waste. In addition, if the Third Party Tipping Fee is less than the Guaranteed Tonnage Tipping Fee, then, in addition to the Procurement Commission, (a) the Contracting Communities shall pay to the Company the difference between the Third Party Tipping Fee and the then current Guaranteed Tonnage Tipping Fee ("***Shortfall Payment***"), but (b) the Contracting Communities shall have the right, upon forty-eight (48) hours notice to the Company, to terminate any such Company waste supply arrangement which results in net payments by the Contracting Communities and direct the Company to accept Acceptable Waste from alternative sources procured by the Contracting Communities in order to reduce the Waste Delivery Shortfall. If the Third Party Tipping Fee is greater than the then current Guaranteed Tonnage Tipping Fee, the "***Excess Tipping Fee Revenues***" derived therefrom shall be separately accounted for and used as a credit against past, present and/or future Shortfall Payments. For the purposes of this calculation, it is assumed that the Procurement Commission in such cases will be paid separately by the Contracting Communities to the Company, and the Contracting Communities may permit such Excess Tipping Fee Revenues to be applied toward such purpose. Any such Excess Tipping Fee Revenues remaining at the expiration or termination of this Agreement shall be entirely for the Company's account.

(c) Fees from Excess Waste and Special Waste. If the Company is procuring Excess Waste (other than Special Waste) from third parties, (i) the Company shall retain for its own account the portion of the Third Party Tipping Fee for such Excess Waste up to the then applicable Excess Waste Tipping Fee, and (ii) the portion of such Third Party Tipping Fee in excess of the then applicable Excess Waste Tipping Fee shall be split 60% to the Company and 40% to Contracting Communities. The Company shall retain for its own account the entire Third Party Tipping Fee for Special Waste. The Company agrees that the Contracting Communities may dispose at the Facility, free of charge, Special Waste arising out of governmental activities occurring within Stanislaus County, such as illegal drugs confiscated by law enforcement agencies.

(d) Waste Delivery Priorities. Acceptable Waste delivered by the Contracting Communities pursuant to this Agreement shall have Processing priority over any waste arranged by the Company, except that Excess Waste delivered by the Contracting Communities shall be subordinate as follows:

(i) From July 1, 2012 until January 1, 2016, up to 7,300 Tons per Contract Year of Special Waste arranged by the Company, shall have priority over Contracting Communities Excess Waste; and

(ii) From January 2, 2016 until July 1, 2027, up to 12,200 Tons per Contract Year of Special Waste arranged by the Company shall have priority over Contracting Communities Excess Waste.

Special Waste deliveries to the Facility arranged by the Company shall in no event exceed the amounts set forth in Section 4.03(d)(i) and (ii) above for the periods set forth therein.

4.04 Operation of the Facility.

(a) The Company shall operate and maintain the Facility in such manner as to ensure that the Facility is able on a continuous basis, subject to the requirements of sound operating practice, to receive and Process Acceptable Waste as required by this Agreement.

(b) (1) By the Service Commencement Date, the County and the City shall each designate in writing a person to act as the service coordinator with respect to matters which may arise during the performance of this Agreement, and such person shall have authority to transmit instructions, receive information and confer with the Company's service coordinator.

(2) By the Service Commencement Date, the Company shall designate in writing a person to act as the Company's service coordinator with respect to matters which may arise during the performance of this Agreement, and such person shall have authority to transmit instructions and receive information and confer with the County and the City service coordinators.

(3) At any time after the initial designation by either party of its service coordinator, such party may designate a successor service coordinator by notice to the other party.

4.05 Facility Maintenance.

(a) Safety of Persons and Property. The Company represents that it shall on and after the Service Commencement Date at its cost and expense: (i) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury, or loss by reason of or related to the operation of the Facility to, (A) all employees working in the Facility and all other persons who may be involved with the operation or maintenance of the Facility, (B) all materials and equipment under the care, custody, or control of the Company, and (C) other property on the Facility Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities; (ii) establish and maintain the safety procedures of the Facility at a level consistent with Applicable Law and normal boiler and electrical generating plant practice; (iii) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgation of safety regulations; (iv) give all notices and comply with all Applicable Laws, rules, and lawful orders of any public authority relating to the safety of persons or property or their protection from damage, injury, or loss; and (v) designate a qualified, responsible member of its organization at the Facility whose

duty shall be plant safety, the prevention of fires and accidents, and the coordination of related activities, as necessary with federal, State, County and City officials.

(b) Repair and Maintenance. The Company shall, on and after the Service Commencement Date and at its cost and expense, maintain the Facility and Facility Site at all times in good, clean, orderly condition, including implementing necessary repairs, purchasing necessary replacement equipment or parts for the Facility and clean-up consistent with industry standards relating to Acceptable Waste handling. The Company may at its own cost and without changing the rights and obligations of the parties hereunder incur any Capital Cost at the Facility at any time without the approval of the Contracting Communities. The Company shall, however, provide 30 days prior notice to the Contracting Communities of, and consider in good faith the comments received from the Contracting Communities during such 30-day period relating to, any proposed Capital Cost at the Facility in excess of $500,000.

(c) Staffing. The Company shall at its cost and expense staff the Facility during the entire Service Term with the appropriate number of hourly and salaried employees consistent with good management practice. The Company will make reasonable efforts to staff the Facility with residents of the County.

(d) Facility Equipment Services. The Company shall on and after the Service Commencement Date: (i) at its cost and expense, keep the Facility in good operating condition and repair, ordinary wear and tear excepted, and replace the same if necessary to enable performance consistent with this Agreement.; (ii) not permit anyone other than those adequately trained to use, repair, or overhaul the Facility; (iii) operate, at its cost and expense, the Facility in compliance with all applicable federal, State, County and City laws, rules, and regulations, including those pertaining to the environment and the federal Occupational Safety and Health Act, as amended, and the equivalent California requirements; and (iv) notify the Contracting Communities promptly if the Facility should be seriously damaged, irrespective of cause.

4.06 Contracting Communities' Visits and Inspections; Record Keeping and Reporting; Testing.

(a) The Contracting Communities and their representatives shall have (i) at any reasonable time during the term of this Agreement and upon prior reasonable notice to the Company, the right to visit and inspect, and (ii) upon reasonable notice from the Contracting Communities and the consent of the Company, which shall not be unreasonably withheld, to take visitors through the Facility, in order to observe and to permit others to observe the various services which the Company performs; provided that such visits shall be conducted in a manner so as to minimize interference with the Company's performance under this Agreement.

(b) In connection with such inspections or visits, the Contracting Communities shall, on their behalf, and on behalf of their agents and representatives, comply, and cause their agents and representatives to comply with all reasonable rules and regulations adopted by the Company, including a requirement that each person inspecting or visiting the Facility sign a statement agreeing (1) to assume the risk of being in the Facility, but not the risk of injury due to the intentional or grossly negligent acts of the Company and (2) not to disclose or use, consistent with Applicable Law, any confidential information of the Company other than for the purpose

for which it was furnished. The Company shall maintain and calibrate all Facility instrumentation at its cost and expense, except as otherwise provided in Section 4.09(b). If, upon inspection, the Contracting Communities shall discover any deficiencies in the cleanliness, repair, replacement or appearance of the Facility, the Contracting Communities may, but shall not be required to, give the Company written notification thereof.

(c) (1) The Company shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data, including all information necessary to verify calculations made pursuant to this Article IV and pursuant to Article VI.

(2) The Company shall prepare and maintain proper, accurate, and complete books and records and accounts of all transactions related to the Facility.

(3) The Company shall provide the Contracting Communities with monthly operations reports no later than five (5) working days after the close of the previous calendar month, including, but not limited to the following operating data: (A) the amount of Tons of Acceptable Waste and Excess Waste delivered by or on behalf of the Contracting Communities by truck with appropriate identification, indicating date and time of arrival; (B) the amount of Acceptable Waste delivered by third parties and not on behalf of the Contracting Communities, if any; (C) the total quantity of Process Rejects and Process Residue leaving the Facility; (D) the Tons of Contracting Communities By-Pass Waste; (E) the amount of Special Waste delivered (i) that was arranged by the Company or delivered by third parties, or (ii) by the Contract Communities; and (F) a statement of the amount of Excess Electric Revenue (defined below) and Excess Tipping Fee Revenue (defined above) received. These reports shall present the data in a form reasonably acceptable to the Contracting Communities and the Consulting Engineer.

(4) The Company shall provide the Contracting Communities, its auditors, and the Consulting Engineer with reasonable access, including compatible computer data communication links, to the scale house and Facility meters and those records necessary to substantiate the Service Fee including records relating to quantities of Acceptable Waste delivered to the Facility, Excess Electric Revenues, Excess Tipping Fee Revenues, Contracting Communities By-Pass Waste and Process Residue leaving the Facility.

(d) The Contracting Communities shall have the right to cause an independent third party to audit the books and records of the Company relating to the accounting of all revenues, costs, liabilities or expenditures that affect the rights, obligations or liabilities of the Contracting Communities under this Agreement, by providing to the Company written notice of exercise of such audit right within three years after the closing of the books for any period to be audited. The independent third party shall enter into a confidentiality agreement reasonably acceptable to the Company and the Contracting Communities before accessing such books and records of the Company. Following execution of such confidentiality agreement, the Company shall cooperate in all reasonable respects with the audit. The parties shall reconcile any discrepancy revealed by the audit within 60 days after the conclusion thereof. The Company shall maintain and calibrate all Facility instrumentation at its cost and expense.

4.07 Rejection Rights.

(a) Rejection of Deliveries. The Company may reject Acceptable Waste (i) delivered at hours other than the Receiving Times, or (ii) in excess, in any applicable period, of the number of Tons set forth on Schedule 1 applicable thereto, but subject to the Contracting Communities rights hereunder to deliver Excess Waste pursuant to Section 4.01(b) and to the Company's rights under Section 4.03. The Company may not reject any Acceptable Waste (including Excess Waste) brought by or on behalf of the Contracting Communities while it is accepting Waste from any other sources, except as otherwise provided in Section 4.03. Acceptable Waste which the Company so rejects shall not be included in the computation of the Guaranteed Tonnage or other calculations herein.

(b) Composition of Acceptable Waste. Nothing in this Agreement shall be construed to mean that the Contracting Communities guarantee the composition of any Acceptable Waste as it pertains to the proportion of any material contained therein or the energy value thereof; provided that this Section 4.07(b) shall not limit any right the Company may have to seek an equitable adjustment of the Service Fee or the Guaranteed Tonnage or the Billing Period Tonnages pursuant to Section 6.03 to reflect extensive change in the energy content of Acceptable Waste.

4.08 Receiving and Operating Hours.

(a) On and after the Service Commencement Date, the Company shall keep the Facility, and alternate facilities under the control of the Company, if any, as Alternate Disposal Methods, open for the receiving of Acceptable Waste during the Receiving Times.

(b) If the Company requests and the Contracting Communities agree, the Contracting Communities shall deliver and the Company shall accept Acceptable Waste at times other than the Receiving Times at no additional cost to the Contracting Communities.

(c) Upon the Contracting Communities' request and if permitted under Applicable Law and permit conditions, the Company shall accept deliveries of Acceptable Waste at times other than the Receiving Times upon seven (7) days' prior written notice (or such shorter notice as may be practicable in the event of the occurrence of a natural disaster or other emergency condition). If the Company accepts waste pursuant to this Section 4.08(c), or otherwise agrees to accept such waste other than pursuant to Section 4.08(b), at hours other than the Receiving Times, the Contracting Communities shall pay all additional costs, if any, incurred by the Company as a result of extending the hours of Receiving Times, upon submission of Cost Substantiation.

4.09 Weighing of Waste Deliveries, Etc. The Company shall cooperate to minimize unloading delays at the Facility during the Receiving Times.

(a) The County, on and after the Service Commencement Date, shall operate weighing facilities at the Fink Road Landfill for the purpose of determining the total Tons of Acceptable Waste delivered to the Facility and the respective Tons of all categories of materials leaving the Facility. The County shall be responsible for providing qualified County employees (the "***Scale Operators***") for the operation of the weighing facilities from 8:00 a.m. to 4:00 p.m.

Monday through Saturday, but not on Sundays or Legal Holidays. The County shall operate the scalehouse at all Receiving Times (which may be done without staff) and whenever the Contracting Communities request, pursuant to Section 4.08(c), that the Company accept deliveries of Acceptable Waste at times other than the Receiving Times. Such operation of the scalehouse shall be at the expense of the County. Upon the Company's request, the County shall operate the scalehouse at times other than the Receiving Times upon thirty (30) days prior written notice, unless a shorter time period is necessary or reasonable under the circumstances and agreed to by the County. If the County operates the scalehouse at hours other than the Receiving Times at the Company's request, the Company shall pay all additional costs, if any, incurred by the County as a result of extending the hours of Receiving Times, within thirty (30) days after submission of Cost Substantiation.

(b) The County shall be solely responsible for the compensation of the Scale Operators. The Scale Operators shall at all times be under the supervision, direction and control of the County. The County shall be responsible for and bear the cost of supplies and materials incidental to operation of the scalehouse computer system (including hardware and software), and for labor and materials required for purposes of housekeeping in the scalehouse. The Company shall be responsible for and bear the cost of the installation, maintenance and repair (other than repairs required due to the negligence or other wrongful conduct of County personnel), of such weighing facilities, including the scales and the scalehouse itself (excluding the computer and its hardware and software systems). The Company shall retain ownership of the scale, the scalehouse, the scalehouse computer system and the customary office equipment provided by the Company related thereto. The computer equipment and software shall be the sole responsibility of the County, acting in its sole discretion. Software or computer equipment changes may be proposed at any time by the Company. All determinations of whether to utilize any new equipment or software shall be made by the County and the cost thereof shall be an expense of the Contracting Communities.

(c) If at any time testing of the weighing facilities indicates that the scales do not meet the accuracy requirements of the Stanislaus County Agricultural Commission and Sealer of Weights and Measures, any adjustments of scale records actually recorded during the preceding thirty (30) days shall be negotiated by the Contracting Communities and the Company. If all weighing facilities are incapacitated or are being tested, the County, in consultation with the Company, shall estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and estimated data obtained through historical information pertinent to the Company. These estimates shall be the basis for records during the scale outage and shall take the place of actual weighing records during the scale outage.

(d) The County shall provide daily computer printouts or copies of all weight tickets or electronic delivery of the data to the City, the Company, and the applicable Hauler. Copies of all daily records and weight tickets shall be maintained by the County for a period of at least two (2) years.

(e) The Company hereby reserves the right to have its representatives present at the Facility's scalehouse during the Receiving Times, or other hours that the Facility is open to receive Acceptable Waste pursuant to Section 4.08, to monitor the County's compliance with the provisions of this Section 4.09. If the Company, during the term of this Agreement or any

extension hereof, reasonably believes the County has failed to provide satisfactory operation of the scalehouse, computer or software system, the Company shall give the County written notice of the alleged lack of satisfactory performance. The Company shall specify the nature of the alleged unsatisfactory performance and the County shall have thirty (30) days in which to cure the alleged unsatisfactory performance. If the Company substantially prevails in an action alleging such unsatisfactory performance by the County, the Company may, at its option, take over operation of the scalehouse and operate it pursuant to the provisions of this Section 4.09.

(f) In addition to the indemnification and liability provisions otherwise contained herein, the County will be responsible for and shall indemnify the Company and the City against any property damage caused by the Scale Operators while in the scalehouse or on the Facility Site or the scalehouse grounds, except to the extent such damage is due to the negligent acts or negligent omissions of the Company. This includes amounts required to repair such damage that are not covered by the insurance to be maintained by the Company in accordance with Schedule 5 hereto, including but not limited to the self-insurance and deductible portions thereof.

4.10 Storage.

After delivery to the Facility and acceptance by the Company, no waste may be stored outside the Facility structure, except during an emergency or an Unforeseen Circumstance and then only if applicable environmental and safety requirements are met.

4.11 Regulation of Haulers.

(a) On and after the Service Commencement Date, the Contracting Communities shall require that each Hauler: (i) meet the requirements of Schedule 6 for the issuance of a franchise authorizing collection and/or transportation, or (ii) apply for such franchise from the Contracting Communities in accordance with such Schedule 6 requirements and otherwise take such actions as may be necessary to comply with the requirements of Schedule 6 in respect of the issuance of such franchise; and (iii) obtain and maintain such franchise.

(b) Notwithstanding the foregoing and any provisions set forth in Schedule 6 that may specify other requirements, the Contracting Communities shall require, as a condition of the issuance and maintenance of a franchise to any Hauler that such Hauler obtain and maintain commercial general liability insurance in form sufficient to insure against damage to and loss or destruction of property and injury to persons, in an amount at least equal to $2,000,000 for each occurrence. Each policy of such insurance shall (i) name the Contracting Communities and the Company as additional insureds and (ii) provide that such policy shall not be cancelled, terminated, amended, or permitted to lapse upon less than ten (10) days' prior written notice to the Contracting Communities and to the Company.

(c) The Contracting Communities shall (i) use all reasonable efforts to enforce the requirements referred to in Section 4.11(a) above and Schedule 6, and (ii) cause the Haulers to comply with all reasonable traffic and safety rules, issued in writing by the Company, for the Facility.

4.12 Assistance with Water and Utilities.

The Contracting Communities shall, upon the reasonable request of the Company, provide assistance in obtaining access to suitable water and utilities for the operation of the Facility, including the use of existing Contracting Communities' roads, easements, and rights-of-way, but the primary responsibility shall remain with the Company.

ARTICLE V – DISPOSAL OF PROCESS RESIDUE AND PROCESS REJECTS

5.01 Disposal.

(a) The Company shall be responsible for removing from the Facility, and transporting and disposing of, all Process Residue and By-Pass Waste. Such removal, transport and disposal shall be performed in accordance with all Applicable Laws regulating such material, its transportation and disposal.

(b) The Company shall remove ferrous metals from the Process Residue and shall sell or dispose of such ferrous metal at a location other than the Landfill.

(c) The Company shall have the sole and absolute right, at the Company's option, and pursuant to such terms and conditions as the Company determines in its sole and absolute discretion, to sell, trade, donate or otherwise alienate any and all Recovered Resources, solely for the account of the Company (except as provided in Section 6.05(c)).

5.02 Inadvertent Deliveries of Process Rejects.

(a) The Contracting Communities shall use all reasonable efforts to cause only Acceptable Waste to be delivered to the Facility and in connection with the use of Alternate Disposal Methods. However, the parties agree that any inadvertent deliveries by the Contracting Communities of Process Rejects to the Facility or, as applicable, in using Alternate Disposal Methods shall not constitute a breach of the Contracting Communities' obligations hereunder. The Company shall remove from the Facility or, as applicable, any alternate facility being used by the Company as Alternate Disposal Methods, all Unacceptable Waste delivered by the Contracting Communities and transport and dispose of such, at a site or sites as directed by the Contracting Communities, at the cost and expense of the Contracting Communities based on the Company's direct costs. The removal, transport, and disposal of Unacceptable Waste shall be performed in accordance with Applicable Laws. The Company shall provide Cost Substantiation for all direct costs incurred under this Section 5.02.

(b) The Company in its sole discretion shall have the right to inspect on the Facility Site the contents of any vehicle, including the right to require the Hauler operating such vehicle to unload the contents in the receiving area for purposes of inspection, to determine the possible presence of Process Rejects. If any such vehicle is found to contain Process Rejects, the Company may reject delivery of a portion or all of the contents of such vehicle and (i) if such vehicle contains Unacceptable Waste, disposal of such Unacceptable Waste shall be the sole responsibility of the Hauler operating such vehicle or (ii) if such vehicle contains Hazardous Waste, the Company shall follow the procedures and have the obligations set forth in

paragraph (c) of this Section 5.02. The Company shall promptly notify the Contracting Communities by telephone (followed by written notification) of any Hauler delivering, or suspected of delivering, significant amounts of Unacceptable Waste or Hazardous Waste to the Facility and provide to the Contracting Communities any data collected or records prepared related to such delivery.

(c) The Contracting Communities shall be solely responsible for the storage, identification, testing, protection, containment and prompt removal from the Facility Site of Hazardous Waste delivered by or on behalf of the Contracting Communities. This includes any Haulers delivering waste pursuant to contracts or franchise arrangements with the Contracting Communities and any third party delivering waste as part of the Guaranteed Tonnage of the Contracting Communities. With regard to Hazardous Waste delivered by or on behalf of the Contracting Communities, the Company's sole obligations are as follows, at the cost and expense of the Contracting Communities:

(i) Upon discovery of Hazardous Waste delivered by or on behalf of the Contracting Communities on the Facility Site, whether such discovery is made by way of an inspection pursuant to Section 5.02(b) or otherwise, the Company shall notify the Contracting Communities of such discovery;

(ii) The Company shall follow the reasonable directions of the Contracting Communities regarding removal of such Hazardous Waste delivered by or on behalf of the Contracting Communities from the pit, tipping floor or any other location on the Facility Site and placement of such Hazardous Waste at a safe location, if any, on the Facility Site; provided that the Company shall use any reasonable methods immediately available to it to prevent Hazardous Waste from causing dangerous conditions to life or property or from violating any Applicable Laws related to Hazardous Waste prior to its removal from the Facility Site;

(iii) The Company shall cooperate with the Contracting Community with regard to the Contracting Community's obligations to store, identify, test, protect, contain and promptly transport from the Facility Site such Hazardous Waste; and

(iv) The Company shall use reasonable care with regard to Hazardous Waste when such Hazardous Waste is on the Facility Site.

(d) If Unacceptable Waste or Hazardous Waste is delivered to the Facility by or on behalf of third parties that were not engaged by the Contracting Communities, the Contracting Communities' share of the cost incurred to remedy such delivery shall be in accordance with the benefit to the Contracting Communities of the tipping fee revenue from the delivery of such waste to the Facility had it been Acceptable Waste pursuant to Section 4.03.

(e) The Company shall be excused from failure or delay in performance of its obligations under this Agreement to the extent such failure or delay is caused by the delivery of Hazardous Waste by or on behalf of the Contracting Communities but not delivery of Hazardous Waste by any third parties on behalf of the Company.

5.03 Provision of Disposal Site.

Commencing on the Service Commencement Date and continuing through the Service Term, the Contracting Communities shall provide disposal capacity at the Fink Road Landfill (the "***Landfill***") for the Company's disposal of all Process Residue, Unacceptable Waste and By-Pass Waste from the Facility. The Company may dispose of all Process Residue, Unacceptable Waste and By-Pass Waste from the Facility at the Landfill and shall pay to the Contracting Communities (collectively, the "***Landfill Tipping Fee***"): (i) a tipping fee of $26 for each Ton of Process Residue, and (ii) the then-posted gate rate at the Landfill for By-Pass Waste delivered to the Landfill. The portion of the Landfill Tipping Fee for Process Residue shall escalate annually at the same time and by the same percentage as the Guaranteed Tonnage Tipping Fee for Acceptable Waste escalates, after giving effect to the limiting parameters in the definition of such term set forth in Section 6.01 below. The Company may dispose of Unacceptable Waste delivered to the Facility by or on behalf of the Contracting Communities at the Landfill free of charge. The Contracting Communities shall not be obligated to pay to the Company any tipping fee for Unacceptable Waste delivered to the Facility by or on behalf of the Contracting Communities but shall only pay to the Company substantiated incremental handling, removal and transport costs for removing such Unacceptable Waste from the Facility, provided that the Contracting Communities make the Landfill available to the Company for disposal of such Unacceptable Waste free of charge. The Contracting Communities shall keep the Landfill open between the hours of 8:00 a.m. and 4:00 p.m., Monday through Saturday, and exclusive of Sundays and Legal Holidays. If because of an Unforeseen Circumstance, the Contracting Communities are unable to make or to continue to make the Landfill available to the Company, the Contracting Communities shall nevertheless make available to the Company other properly permitted sanitary landfills or suitable emergency disposal sites sufficient to satisfy the provisions of this Section.

ARTICLE VI – SERVICE FEE AND OTHER PAYMENTS

6.01 Service Fee.

Commencing with the first Billing Period and for each Billing Period thereafter, the Company shall be paid a Service Fee by the Contracting Communities for accepting, Processing, and/or disposing of Acceptable Waste that the Contracting Communities deliver to the Facility during each such Billing Period, but subject to Section 4.03(b) above, the aggregate Service Fee for each Billing Period shall not be less than what the aggregate Service Fee for such Billing Period would have been if the Contracting Communities had delivered the Billing Period Tonnage to the Facility during such Billing Period. Subject to the foregoing, the "***Service Fee***" shall be calculated in accordance with the following formula:

$$SF = GTTF + EWTF - LTF \pm OA$$

WHERE:

SF = Service Fee
GTTF = Guaranteed Tonnage Tipping Fee
EWTF = Excess Waste Tipping Fee
LTF = Landfill Tipping Fee
OA = Other Amounts

WHERE:

"***Guaranteed Tonnage Tipping Fee***" means $32 per Ton of Acceptable Waste in the first Contract Year; the then-current Guaranteed Tonnage Tipping Fee shall be escalated annually effective on July 1st of each Contract Year, beginning July 1, 2013, by the percentage increase, as of the immediately preceding January 1st compared to the next preceding January 1st, in the Consumer Price Index, "Urban Wage Earners and Clerical Workers, All items, West – Size B/C (1996 = 100, not seasonally adjusted)" or if no longer published, a replacement index substituted by agreement of the parties each acting in good faith. At the time of each annual escalation, the as-escalated tip fee shall be (a) no greater than 120% of the average of the posted gate rates per Ton for the landfills (whether or not owned by the County) within a geometric radius of 50 miles from the Facility; and (b) no less than $32 per Ton; and if 120% of such average is less than $32 per Ton, then the Guaranteed Tonnage Tipping Fee for such Contract Year shall nevertheless be $32 per Ton;

"***Excess Waste Tipping Fee***" means for the first 10,000 Tons per Contract Year of Excess Waste, $2.00 per Ton less than the then applicable Guaranteed Tonnage Tipping Fee, and for all further Excess Waste in such Contract Year, $4.00 per Ton less than the then applicable Guaranteed Tonnage Tipping Fee;

"***Landfill Tipping Fee***" has the meaning given it in Section 5.03 above; and

"***Other Amounts***" has the meaning given it in Section 6.04(a)(ii) below.

6.02 Costs and Benefits of Facility.

(a) Except as expressly otherwise provided herein, or in the Facility Site Lease, Covanta shall solely bear all costs and risks, and have all benefits of ownership, operation and maintenance of the Facility, including casualties, liability and Unforeseen Circumstances (except as provided in Section 6.05 with respect to Unforeseen Circumstances).

(b) Notwithstanding Section 6.02(a), the Contracting Communities shall reimburse Covanta for any taxes, assessments or fees imposed by the County, the City, or any special taxing district or authority under the control of the County or City, that are imposed on Covanta, the Facility, its operation or the solid waste industry and that are not generally applicable throughout the entire County (collectively, "***Discriminatory Taxes***"). Except for Discriminatory Taxes, Covanta will be responsible for the payment of any ad valorem taxes, personal or business taxes, and possessory interest lease or property taxes.

6.03 BTU Values.

If, in the Company's reasonable judgment, the energy content of waste delivered to the Facility shall, on a weekly average basis over any period of twelve (12) consecutive weeks or more, either be more than 5200 BTU, (HHV) per pound, or less than 3800 BTU higher heating value (HHV) per pound, the Company may propose in writing to the Contracting Communities adjustments in the Service Fee or the Billing Period Tonnages and the Guaranteed Tonnage to reflect such a change in the energy content of the waste. In its proposal, the Company shall set forth in reasonable detail the results of measurements made and tests conducted during the period in question which tests and results shall be reasonably acceptable to, and confirmed by, the Consulting Engineer, demonstrating that waste with an energy content outside the above limits was Processed through the Facility during such period. As soon as practicable after the Contracting Communities receive the Company's proposal, the Contracting Communities and the Company shall undertake discussions of such proposal in good faith.

6.04 **Billing and Payments.**

(a) (i) The Company shall render a statement to the Contracting Communities after the last day of each Billing Period which shall set forth in reasonable detail the calculation of the Service Fee for the Billing Period, including, without limitation, the Guaranteed Tonnage Tipping Fee, Excess Waste Tipping Fee, and the credit for any Landfill Tipping Fee.

(ii) Each such statement shall also include for such Billing Period:

(A) all other amounts payable by the Contracting Communities to the Company hereunder;

(B) all amounts payable by the Company to the Contracting Communities hereunder; and

(C) and with respect to items (ii)(A) and (ii)(B) above, the balance due to, or from, the Contracting Communities (the "***Other Amounts***"). Other Amounts also includes:

(1) Any amount due from the Contracting Communities for any damages paid, or credits provided, to the Contracting Communities by the Company during such Contract Year for failure to Process any Billing Period Tonnage, or portion thereof, if at the end of such Contract Year the Company has Processed the Guaranteed Tonnage, and

(2) Unforeseen Circumstance Costs, and

(3) Any other amounts payable under this Agreement by one party to the other for such Billing Period including amounts payable under Section 8.03(c).

(b) The Contracting Communities shall pay to Covanta the Service Fee (if positive) within twenty (20) days of their receipt of such statement. If the Service Fee is negative, Covanta shall pay the difference to the Contracting Communities within twenty (20) days of the date of the statement.

(c) To the extent that the actual value of any item in any Billing Period statement cannot be accurately determined at the Billing Period statement date, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Period statement next following the date on which the Company learns the exact amount of such item.

(d) Thirty days (30) prior to the end of each Contract Year, the Company shall provide to the Contracting Communities a written statement setting forth its reasonable estimate of the aggregate Service Fee for the next Contract Year, which statement shall not be binding on the Company.

(e) Within forty-five (45) days after the end of each Contract Year the Company shall deliver to the Contracting Communities an annual statement, which shall show the computation of the Service Fee and the Other Amounts for such Contract Year, including corrections to all estimated amounts, and other adjustments due to the Company or the Contracting Communities.

(f) If the annual statement reflects (i) any balance due to the Contracting Communities, then the Company shall, within thirty (30) days of delivery of the annual statement, pay such balance due to the Contracting Communities or (ii) any balance due to the Company, then the Contracting Communities shall, within thirty (30) days of receipt of the annual statement, pay to the Company such balance due.

6.05 Unforeseen Circumstances.

(a) General. The obligations of the Company and of the Contracting Communities, respectively, to perform under this Agreement (other than an obligation to pay money due and owing) shall be excused due to the occurrence of one or more Unforeseen Circumstances, and the Service Fee shall be subject to potential increase for Unforeseen Circumstance Costs (to be included in the Other Amounts component of the Service Fee), as provided in this Section 6.05.

(b) Excuse of Performance. Neither the Contracting Communities nor the Company shall be liable to the other for any failure or delay in performance of any obligation under this Agreement (other than an obligation to pay money due and owing) if such failure or delay in performance is a result of the occurrence of an Unforeseen Circumstance. The party whose performance under this Agreement has been, or is imminently expected to be, affected by an Unforeseen Circumstance shall provide prompt notice (the "***First UCC Notice***") to the other party of (i) the Unforeseen Circumstance; and (ii) in the case of the Company, a preliminary, non-binding estimate of the Unforeseen Circumstance Costs (hereinafter defined) and the ways and manner that Unforeseen Circumstance Costs might be mitigated or reduced. The Consulting Engineer shall review and ascertain for the Contracting Communities the validity of the Company's written notice that an Unforeseen Circumstance has occurred. Whenever an Unforeseen Circumstance shall occur, the party claiming to be adversely affected thereby shall,

as quickly as reasonably possible, mitigate the cause thereof, undertake alternative performance if commercially reasonable under the circumstances, and shall to the extent commercially reasonable under the circumstances, reduce costs. The affected party shall, without limitation, also pursue applicable insurance proceeds and shall resume performance under this Agreement, as quickly as reasonably possible. The parties shall limit costs incurred in anticipation of an Unforeseen Circumstance to those reasonably calculated to prevent or diminish the loss or damage. Any insurance proceeds shall be applied to offset incurred Unforeseen Circumstance Costs.

(c) Cost Recovery.

(1) Cost of Unforeseen Circumstances. Within 180 days after the occurrence of an Unforeseen Circumstance affecting the Facility, (i) the Company shall determine whether, and to what extent, the Unforeseen Circumstance is reasonably expected to permanently reduce the ability of the Facility to accept or Process Acceptable Waste, the estimated net cost of any necessary repairs or reconstruction, and the estimated net increase in any operation or maintenance costs caused by the Unforeseen Circumstance, and (ii) the Company shall provide written notice thereof to the Contracting Communities (the "***Second UCC Notice***"). Subject to the provisions of Sections 6.05(c), (d) and (e) below or termination under Section 10.01(h) of Facility Site Lease Agreement, the Company shall diligently perform the necessary repairs or reconstruction of the Facility.

(2) From July 1, 2012 until January 1, 2016:

(i) the Company shall bear 75% of Unforeseen Circumstance Costs (including Cap and Trade Costs as defined below) and the Contracting Communities shall bear 25% of such Unforeseen Circumstance Costs, subject to Cost Substantiation.

(ii) the Company shall separately account for the portion of Electric Revenues in excess of $82.50/MWH (the "***Excess Electric Revenues***"). Excess Electric Revenues shall be deemed to reduce the costs of complying with legislation or regulations imposing a cap and trade program on greenhouse gas emissions ("***Cap & Trade Costs***"), including without limitation, regulations promulgated pursuant to the Global Warming Solutions Act of 2006, if any, before the allocation between the parties described in Section 6.05(c)(2)(i) above is applied, and the Contracting Communities shall have no responsibility for Cap & Trade Costs in excess of 25% of the net amount remaining after such deemed reduction. In addition, any Cap & Trade Costs resulting from an increase in the Processing Capacity of the Facility beyond 310,000 Tons per Contract Year shall be solely the Company's responsibility, unless otherwise agreed to by the Contracting Communities. If on January 2, 2016, this Agreement remains in effect and there are any Excess Electric Revenues which have not been applied as contemplated by this Section 6.05(c)(2)(ii), then any such balance of Excess Electric Revenues shall be added to the amounts provided under Section 6.05(c)(3)(ii) below and applied as provided therein. However, if there is a termination of this Agreement before January 2, 2016, and there is any balance of Excess Electric Revenues remaining, then such balance shall be for the account of the Company.

(3) From January 2, 2016 until the termination of this Agreement:

(i) the Company shall bear 75% of Unforeseen Circumstance Costs and the Contracting Communities shall bear 25% of Unforeseen Circumstance Costs, subject to Cost Substantiation.

(ii) the Company shall separately account for Excess Electric Revenues from Electric Revenues in excess of $92.50/MWH. Such Excess Electric Revenues, together with any balance transferred in accordance with Section 6.05(c)(2)(ii) above, shall be deemed to reduce any and all Unforeseen Circumstance Costs before the allocation between the parties described in Section 6.05(c)(3)(i) above is applied, and the Contracting Communities shall have no responsibility for Unforeseen Circumstance Costs in excess of 25% of the net amount remaining after such deemed reduction. If upon expiration or termination of this Agreement on or after January 2, 2016 there is any balance of such Excess Electric Revenues remaining, then such balance shall be for the account of the Company.

(4) Unforeseen Circumstance Costs. "***Unforeseen Circumstance Costs***" means (i) the actual net increase in operation and maintenance costs of the Facility required by the Unforeseen Circumstance, and (ii) the Amortized Portion (defined below) of Capital Costs (defined below). The Contracting Communities share of Unforeseen Circumstance Costs, consistent with the foregoing provisions of this Section 6.05(c), shall be included in the amount billed for the Service Fee, commencing with the first Billing Period after the Billing Period in which any such cost increases are incurred by the Company and continuing when and for so long as such cost increases are incurred by the Company. The Company shall invoice accordingly, and the Contracting Communities shall pay such invoices as provided in Section 6.04 above. The "***Amortized Portion***" shall be the monthly debt service associated with the actual, or hypothetical (as described below), financing of the Capital Cost (defined below) of any asset or project required as a result of an Unforeseen Circumstance that has a useful life greater than one year. The "***Capital Cost***" of any such asset or project, includes without limitation or duplication, (A) the purchase price and delivery costs, and out-of-pocket (including any internal staff costs directly related to the required work but excluding overhead expenses of the Company) and installation and construction costs, (B) transaction costs of any financing thereof, and (C) capitalized interest associated with the Unforeseen Circumstance financing, less, without limitation or duplication, (X) interest earnings during construction on any funds advanced on the Unforeseen Circumstance financing, (Y) insurance proceeds actually received by the Company on account of such Unforeseen Circumstance and (Z) amounts corresponding to insurance proceeds that would have been received for any insurable Unforeseen Circumstance, to the extent of the coverage required under this Agreement but not secured by the Company. As a first step, the parties shall determine the total Capital Cost of any asset or project resulting from an Unforeseen Circumstance and its expected useful life and then apply one of the following four methods, as appropriate. For each of the four methods below, the parties agree that any financing, or hypothetical financing, shall result in approximately equal monthly debt service payments over the term of the financing. If the actual financing includes a construction loan followed by a permanent financing, then the Amortized Portion during the construction period shall be the actual interest payments on such construction loan. The parties shall utilize reasonable efforts to minimize the Capital Cost and financing costs of the Unforeseen

Circumstance, including, without limitation, the use of tax-exempt or private activity or other tax exempt bonds:

(i) If the entire Capital Cost of the asset or project is financed over a term equal to the expected useful life of the asset or project, then the Amortized Portion shall be the actual debt service associated with such financing;

(ii) If the entire Capital Cost of the asset or project is financed over a term that is less than the useful life of the asset, then the Amortized Portion shall be determined by calculating a hypothetical monthly debt service assuming the entire capital cost is financed using the actual monthly interest rate (or annual interest rate divided by 12) associated with such financing, but repaid assuming a level monthly mortgage style repayment schedule over the useful life of the asset or project;

(iii) If the Company internally funds the entire Capital Cost of the asset or project, then the Amortized Portion shall be determined by calculating a hypothetical monthly debt service which would be payable on a loan having a principal amount equal to the Capital Cost of such capital asset or project. The hypothetical loan shall assume (i) an interest rate equal to the Overdue Rate for the number of years equal to the useful life of the asset or project, and (ii) a level monthly mortgage style repayment schedule over the useful life of the asset or project; or

(iv) If a portion of the Capital Cost of the asset or project is financed and the balance is internally funded by the Company, then the Amortized Portion shall be the sum of (i) or (ii) above for the financed portion, whichever applies, and (iii) above for the Company funded portion.

The "**useful life**" of any asset shall be consistent with generally accepted accounting principles ("***GAAP***"), but if GAAP provides a range of values for the useful life of an asset, each party reserves the right to claim, as applicable, a value from such range, and the parties shall endeavor in good faith to agree on the appropriate value for the asset's useful life. In the event there is a dispute such dispute shall be resolved pursuant to Section 9.20 of this Agreement.

(d) Unforeseen Circumstance Cost Limit. If the cumulative total Unforeseen Circumstance Costs incurred from the Service Commencement Date collectively by the Company and by the Contracting Communities exceeds $15,000,000, excluding Excess Electric Revenues applied pursuant to Section 6.05(c)(2)(ii) or Section 6.05(c)(3)(ii) above (such net amount being the "***Initial UCC Termination Threshold***"), then each of the Company, on the one hand, and the Contracting Communities, acting jointly on the other hand, shall have the right to terminate this Agreement without payment of the Termination Payment (defined below) or any other termination fee (a "***UCC Termination***") by providing written notice thereof to the other within 90 days after receiving written notice that such Initial UCC Termination Threshold has been reached. The party to whom such notice of termination is given shall have the right to avoid the UCC Termination by paying to the party giving the notice, within 30 days after receipt of the notice, the amount incurred in excess of $3.75 million in the case of the Contracting Communities, and the amount incurred in excess of $11.25 million in the case of the Company (each a "***Termination Avoidance Amount***"). If neither party timely exercises an applicable UCC

Termination or if a party avoids the UCC Termination pursuant to the immediately preceding sentence, this Agreement shall continue uninterrupted and in full force and effect, unless and until additional Unforeseen Circumstance Costs, in excess of the Initial UCC Termination Threshold, incurred collectively by the Company and by the Contracting Communities exceed a cumulative total of $1,500,000 (a "***Subsequent UCC Termination Threshold***"), at which time a UCC Termination right shall arise for each party again in accordance with the foregoing provisions of this Section 6.05(d), based on a Subsequent UCC Termination Threshold amount of $1,500,000 (rather than $15,000,000) and including the termination avoidance provisions with Termination Avoidance Amounts of $375,000 for the Contracting Communities and $1,125,000 for the Company. If neither party timely exercises the UCC Termination when the Subsequent UCC Termination Threshold is reached, or if a party avoids the UCC Termination pursuant to the immediately preceding sentence, then this same process shall apply each time a new Subsequent UCC Termination Threshold is reached during the Service Term.

(e) Constructive Total Loss. In the event the Second UCC Notice states that the Unforeseen Circumstance is expected to result in aggregate Capital Costs together with net increases in operation and maintenance costs of the Facility, over the remainder of the Service Term in each case ("***Restoration Costs***") in excess of $22 million (the "***Loss Termination Threshold***"), the Company shall include clear and convincing evidence of such Restoration Costs in the Second UCC Notice. The Contracting Communities will state in their response notice, to be delivered within twenty (20) days of receipt of the Second UCC Notice, whether they agree or disagree that the Restoration Costs will exceed the Loss Termination Threshold. If the Contracting Communities do not so agree, then such disagreement will be subject to dispute resolution pursuant to Section 9.20. If the Contracting Communities state in their response notice that they agree that the Restoration Costs will be greater than the Loss Termination Threshold, or the decision delivered in the arbitration so determines, as applicable (either being a "***Restoration Cost Substantiation***"), then each of the Company and the Contracting Communities shall have the right to terminate this Agreement by providing to the other no less that 180 days and no more than 240 days written notice of termination (a "***Termination Notice***"). Such Termination Notice shall be delivered within thirty (30) days after Restoration Cost Substantiation. On or before the termination date set forth in the Termination Notice, the Contracting Communities shall pay to the Company a termination payment equal to 25% of the Capital Costs of prior Unforeseen Circumstances occurring on or after the Contract Date that were not included in any prior Amortized Portions paid by the Contracting Communities, less unapplied Excess Electric Revenues (the "***Termination Payment***"). If the calculation pursuant to the immediately preceding sentence yields a negative number, the Termination Payment shall be zero. Upon payment of the Termination Payment, the Facility Site Lease Agreement shall terminate, Section 7.04 of the Facility Site Lease Agreement will apply and neither the Contracting Communities nor the Company shall have any further rights or obligations under this Agreement, except for any rights or obligations which expressly survive termination of this Agreement.

(f) Site Lease Termination. This Agreement shall automatically terminate if the Facility Site Lease Agreement terminates in accordance with its terms, contemporaneously with such termination.

6.06 No Offset or Waiver.

The obligation of the Contracting Communities to pay the Service Fee shall not be subject to (i) any set-off, counterclaim, warranty claim, recoupment, defense or any other right which the Contracting Communities may have against the Company for any reason whatsoever whether in connection with the transactions contemplated hereby or in unrelated transactions, or (ii) the Contracting Communities at any time having immunity from suit on the grounds of sovereignty or otherwise. The payment by the Contracting Communities of the Service Fee shall neither constitute a waiver or an estoppel of any right or remedy of the Contracting Communities hereunder, nor shall it preclude the Contracting Communities from asserting any such right or remedy against the Company in a separate action.

6.07 Contracting Communities' Permit Obligations.

To the extent that any permit or license which the Company is obligated to obtain contains conditions or requirements which are capable of being satisfied only by the Contracting Communities, the Contracting Communities shall use all reasonable efforts to satisfy such conditions or requirements; provided that the cost to the Contracting Communities shall be reasonable. The Contracting Communities agree that they will not, either individually or collectively, exercise any condemnation or like power available to them to take the Facility or the Facility Site, or any portion thereof, which in the Company's reasonable judgment shall interfere with its ability to perform its obligations under this Agreement and that any such taking shall be deemed an Event of Default pursuant to Section 8.02(b) of this Agreement; provided, however, that any such taking which is required by Applicable Law or for the protection of public health and safety shall not be deemed an Event of Default but shall be an Unforeseen Circumstance.

ARTICLE VII – FURTHER AGREEMENTS

7.01 Licenses, Approvals and Permits.

The Contracting Communities shall provide all such cooperation as may reasonably be requested by the Company in connection with obtaining in a timely manner and maintaining the permits, licenses, and approvals required to be obtained and maintained by the Company in connection with the ownership, operation and maintenance of the Facility. The Company shall use all reasonable efforts to obtain and/or maintain all permits, licenses, and approvals required to be obtained and/or maintained by the Company in connection with the ownership, operation and maintenance of the Facility.

7.02 Nondiscrimination.

The Company shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, or sex. This provision prohibiting discrimination is a material term of this Agreement.

7.03 Insurance.

The Company shall maintain the insurance coverages set forth in Schedule 5 subject to each party's right to request an adjustment to existing coverage, so that the insurance coverage hereunder is consistent with that of similar facilities, provided that the adjusted coverage is available on commercially reasonable terms. The Contracting Communities shall be made additional insureds under all such property and liability insurance policies of the Company and the Contracting Communities shall be insured thereunder for any State diversion credit losses that occur as a result of a necessary diversion of waste from the Facility following a casualty insured by the required business interruption and extra expense coverages as set forth in Schedule 5. The Company shall be liable for any monetary loss caused by Unforeseen Circumstances, to the extent that any such Unforeseen Circumstance was required to be covered by insurance to be maintained by the Company pursuant to this provision, but was not, and, subject to any rights to terminate this Agreement pursuant to the terms hereof, shall be obligated to restore the Facility whether or not there are sufficient insurance proceeds therefor.

7.04 Joint and Several Obligations.

The obligations of the County and the City hereunder shall be joint and several.

ARTICLE VIII – DEFAULT AND TERMINATION

8.01 Events of Default by the Company.

The following shall constitute "***Events of Default***" on the part of the Company:

(a) Failure of the Company to accept Acceptable Waste from the Contracting Communities as required hereunder;

(b) Violation by the Company of the Processing priority provisions of Section 4.03(d);

(c) Failure of the Company to make any payment that is owed to the Contracting Communities and past due hereunder within ten business (10) days following receipt of the Contracting Communities' notice of non-payment to the Company;

(d) Persistent and repeated failure of the Company to timely perform any material obligation under this Agreement, other than as set forth in Sections 8.01(a), (b) or (c) above, such as, but not limited to, operation of the Facility in violation of the environmental standards or permits, failure to properly maintain the Facility, and disregard for laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Facility, the Facility Site, the Company or the Company's obligations under this Agreement; or

(e) (i) the Company's or the Parent's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature, or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for the Facility or for any substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency arrangement, or similar proceeding instituted by or against the

Company or the Parent under the laws of any jurisdiction, which proceeding has not been stayed or dismissed within thirty (30) days, or (iii) any action or answer by the Company or the Parent approving of, consenting to, or acquiescing in any such proceeding, or (iv) the levy of any distress, execution, or attachment upon the property of the Company or the Parent which shall substantially interfere with its performance hereunder.

8.02 Events of Default by Contracting Communities.

The following shall constitute "***Events of Default***" on the part of the Contracting Communities:

(a) failure of the Contracting Communities to make any payment that is owed to the Company and past due hereunder within ten (10) business days following receipt of the Company's notice of non-payment to the Contacting Communities;

(b) the commencement by one or both of the Contracting Communities of a proceeding for taking or condemning the Facility or the Facility Site, or any portion thereof which in the reasonable judgment of the Company shall interfere with its ability to perform its obligations under this Agreement; provided that any such taking which is required by Applicable Law or for the protection of public health and safety shall not be an Event of Default;

(c) Persistent and repeated failure of the Contracting Communities to timely perform any material obligation under this Agreement, other than the obligations described in Sections 8.02(a) and (b) above; or

(d) (i) The Contracting Communities being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency arrangement, or similar proceeding instituted by or against the Contracting Communities under the laws of any jurisdiction, which proceeding has not been stayed or dismissed within thirty (30) days, or (iii) any action or answer by the Contracting Communities approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution, or attachment upon the property of the Contracting Communities which shall substantially interfere with its performance hereunder.

8.03 Event of Default Remedies.

(a) Company Opportunity to Cure. If a Company Event of Default described in Section 8.01(a), (b) and/or (d) has occurred, the Company shall have an opportunity to cure such Event of Default by commencing to cure within thirty (30) days after the Contracting Communities have given the Company notice of such Event of Default in reasonable detail and continuing to pursue the cure with due diligence thereafter. An Event of Default described in Section 8.01(c) shall require notice and provide an opportunity to cure only as provided therein. An Event of Default described in Section 8.01(e) shall not require any notice by the Contracting Communities and shall provide an opportunity to cure only as provided in (ii) therein.

(b) Contracting Communities Opportunity to Cure. If a Contracting Communities Event of Default described in Section 8.02(b) and/or (d) has occurred, the Contracting Communities shall have an opportunity to cure such Event of Default by commencing to cure within thirty (30) days after the Company has given the Contracting Communities notice of such Event of Default in reasonable detail and continuing to pursue the cure with due diligence thereafter. An Event of Default described in Section 8.02(a) shall require notice and provide an opportunity to cure only as provided therein. An Event of Default described in Section 8.02(d) shall not require any notice by the Company and shall provide an opportunity to cure only as provided therein.

(c) Direct Damages & Termination. Events of Default shall give the non-defaulting party the right to pursue the defaulting party for direct, actual damages, subject to Section 8.04 below, and/or the right, subject to Sections 8.03(a) and (b) above, to terminate this Agreement by providing at least sixty (60) days written notice of termination.

(d) Additional Remedies/Damages in Special Circumstances.

(i) If the Company Event of Default is under Section 8.01(b), then the Contracting Communities shall have as an additional remedy the right to seek a decree of specific performance to enforce its right of Processing priority and to preliminary and permanent injunctive relief in connection therewith and/or similar remedies in equity.

(ii) If the Contracting Communities Event of Default is a failing to meet their obligations to deliver Acceptable Waste to the Facility while delivering Acceptable Waste to locations other than the Facility, then the Company shall have as an additional remedy the right to seek a decree of specific performance to enforce such delivery obligations and to preliminary and permanent injunctive relief in connection therewith and/or similar remedies in equity.

(e) The remedies described in this Section 8.03 shall be the sole and exclusive remedies of the parties for Events of Default.

8.04 Limit of Liability.

(a) Notwithstanding any other provision of this Agreement, in no event shall the Company, on the one hand, or the Contracting Communities, on the other hand, be obligated to pay damages to the other for any and all breaches and/or Events of Default under this Agreement, from and after the Contract Date, as determined by a court or an arbitration decision or agreed upon between the parties or actually paid by one party to the other, in a cumulative amount in excess of $25 million (the "***Limit of Liability***"). For purposes of determining if the Limit of Liability of a party has been reached at any time, the following amounts previously paid or then payable by such party shall not be included: (i) Unforeseen Circumstance Costs and (ii) the Guaranteed Tonnage Tipping Fee and Excess Waste Tipping Fee or the Landfill Tipping Fee, as applicable, and for disposal services rendered in each case. Also excluded from such Limit of Liability are tort claims for injury to persons or damage to property, even if pursued under a provision of contractual indemnity. For the purposes of determining if the Limit of Liability of a party has been reached at any time, any amounts received by that party from the other party as damages for any and all such breaches and/or Events of Default shall be ignored.

(b) If either party reaches the Limit of Liability, it shall give written notice thereof to the other party, and the other party shall have the right to terminate this Agreement by providing written notice thereof within sixty (60) days after receipt of the notice of reaching the Limit of Liability and such termination will be effective sixty (60) days from the date thereof. A party's obligation to pay damages arising on or before the date of or as a result of termination, up to the Limit of Liability, shall survive termination of this Agreement.

8.05 Special Termination Right.

The Company shall have a one-time right to terminate this Agreement, for its convenience and without payment of any fee or damages, effective December 31, 2016. The Company may exercise such right of termination only by providing to the Contracting Communities written notice thereof by December 31, 2014. If the Company exercises such right of termination, then the Facility Site Lease Agreement shall also terminate effective December 31, 2016 and the provisions of Section 7.04 thereof shall be applicable.

ARTICLE IX – MISCELLANEOUS

9.01 Assignment.

(a) This Agreement may not be assigned by any party without the prior written consent of the other parties, except that the Company may, without such consent, assign its interest hereunder to an Affiliate that shall assume all the obligations under this Agreement; provided that the Company shall remain principally obligated for the full performance of the Company's obligations under this Agreement, and the Parent shall acknowledge in writing the continuing effectiveness and enforceability of the Parent Guaranty.

(b) This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto pursuant to this Section 9.01. Any attempted assignment made contrary to this Section 9.01 shall be void.

(c) Notwithstanding the above, the Company may collaterally assign this Agreement as security for financings secured by the Facility in accordance with Articles 12 and 13 of the Facility Site Lease Agreement.

9.02 Indemnification.

(a) Company Indemnity. The Company agrees that it shall protect, indemnify and hold harmless the Contracting Communities and their officials, officers, members, employees, and agents (the "***Contracting Communities Indemnified Parties***") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits and attorneys' fees, and shall defend the Contracting Communities Indemnified Parties in any suit, including appeals, for personal injury or death, or loss of, or damage to, property arising out of (i) the negligent acts, negligent omissions or intentional wrongful conduct of the Company or any of its officials, agents, or employees in connection with its obligations or rights under this Agreement, or (ii) the nonperformance of the Company's obligations under this Agreement. The Company is not required, however, to reimburse or indemnify any Contracting Communities Indemnified Party for loss or claim due to the negligent acts, negligent omissions or intentional

wrongful conduct of any Contracting Communities Indemnified Party, and the Contracting Communities shall reimburse the Company for the costs of defending any related suit.

(b) Contracting Communities Indemnity. The Contracting Communities agree that they shall protect, indemnify and hold harmless the Company, the Parent, their subcontractors of any tier, and their respective officers, members, employees, and agents (the "***Company Indemnified Parties***") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and attorneys' fees, and shall defend the Company Indemnified Parties in any suit, including appeals, for personal injury or death, or loss of or damage to property of persons not parties to this Agreement arising out of (i) the negligent acts, negligent omissions or intentional wrongful conduct of the Contracting Communities or any of its officials, agents, or employees, contractors, or subcontractors in connection with the obligations or rights under this Agreement, or (ii) the nonperformance of the Contracting Communities obligations under this Agreement. The Contracting Communities are not required, however, to reimburse or indemnify any Company Indemnified Party for loss or claim due to the negligent act, negligent omission or intentional wrongful conduct of any Company Indemnified Party, and the Company shall reimburse the Contracting Communities for the costs of defending any related suit.

(c) Waiver of Subrogation. The Company and the Contracting Communities hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under the applicable party's own insurance policies.

9.03 Effect of Termination.

Upon the expiration or earlier termination of this Agreement, pursuant to the terms of this Agreement, the obligations of the Company and the Contracting Communities for the payment of money or indemnification, arising from the conduct of the parties pursuant to this Agreement prior to such expiration or earlier termination of this Agreement, shall survive such expiration or earlier termination.

9.04 Overdue Obligations to Bear Interest.

All amounts due hereunder, whether as damages, credits, revenue, or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 360-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

9.05 Exclusion of Liability.

(a) IN NO EVENT, WHETHER BECAUSE OF A BREACH, EVENT OF DEFAULT OR ANY OTHER CAUSE, WHETHER BASED IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, OR BE OBLIGATED IN ANY MANNER TO PAY, SPECIAL,

INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT.

(b) THE REMEDIES PROVIDED TO EACH PARTY IN THIS AGREEMENT SHALL BE EXCLUSIVE OF ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY; PROVIDED THAT THE PARTIES HERETO MAY ENFORCE THEIR REMEDIES PROVIDED HEREIN BY APPROPRIATE PROCEEDINGS IN COURTS OF LAW OR IN EQUITY HAVING JURISDICTION.

9.06 Intellectual Property Rights.

The Company shall pay all royalties and license fees relating to the Facility. The Company hereby warrants that the Facility and the contemplated operation of the Facility or the use of any component unit thereof, or the use of any patent, trademark or copyright, data, patented article, machine, or process, or a combination of any or all of the aforesaid, as contemplated by this Agreement shall not infringe any patent, trademark, or copyright or constitute the unauthorized use of a third person's trade secrets. The Company shall: (i) defend any claim or lawsuit brought against the Contracting Communities or any of their officials, agents, employees, or representatives for infringement of any such patent, trademark, or copyright, or for the unauthorized use of trade secrets by reason of the design, construction, or operation of the Facility, or (ii) at the Company's option, and at its sole cost, may acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life, and technical characteristics and development so that such equipment does not infringe, and the Company shall indemnify the Contracting Communities and their officials, agents, employees, and representatives against all liability, judgments, decrees, damages, interest, costs, and expenses (including reasonable attorneys' fees) recovered against the Contracting Communities, or any of its officials, agents, employees, or representatives sustained by any or all of the foregoing by reason of any actual or alleged infringement or unauthorized use. The Company is not, however, required to reimburse or indemnify any person for loss or claim due to the negligence or intentional wrongful conduct of such person.

9.07 Relationship of the Parties.

Except as otherwise expressly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party. Nothing in this Agreement shall be deemed to constitute any party a partner, franchisee, franchisor, agent, or legal representative of any other party or to create any fiduciary relationship between or among the parties. The Contracting Communities shall not have, through this Agreement or otherwise, except as provided by any applicable provision of the Facility Site Lease Agreement, (a) any title to or ownership interest in the Facility or (b) physical possession of or control over the Facility, during the term of this Agreement.

9.08 Notices.

Any notices or communication required or permitted hereunder other than notices under Article VIII hereof shall be in writing and shall be sufficiently given if (i) delivered in person,

(ii) sent by overnight courier and evidence of delivery is obtained, (iii) sent by e-mail with evidence of receipt of such email, or (iv) sent by certified or registered mail, return receipt requested, postage prepaid, in each case properly addressed as provided below. Notices under Article VIII hereof shall be in writing and shall be sufficiently given only if given as provided in clause (i), (ii) or (iv) of the immediately preceding sentence. Notice addresses for the parties are as follows:

If to the Company:

445 South Street
Morristown, NJ 07960
Attention: Sr. Vice President, Business Management
E-Mail: pstauder@covantaenergy.com

With a copy to:

Covanta Energy Corporation
445 South Street
Morristown, NJ 07960
Attention: Vice President & Deputy General Counsel
E-Mail: kbily@covantaenergy.com

If to the Contracting Communities:

Chairman, Stanislaus County Board of Supervisors
1010 Tenth Street
Modesto, California 95354
E-Mail: Ferrroc@stancounty.com

With a copy to:

Responsible person/department for County designated in Section 4.04.

and to:

Mayor, City of Modesto
1010 Tenth Street
Modesto, California 95354
E-Mail: kespinoza1@modestogov.com

With a copy to:

Responsible person/department for City designated in Section 4.04.

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party.

9.09 No Waiver.

The waiver by any party of an Event of Default or a breach of any provision of this Agreement by any other party shall not operate or be construed to operate as a waiver of any other provision or any subsequent Event of Default or breach. The making of, or the acceptance of a payment by any party with knowledge of the existence of an Event of Default or breach shall not operate or be construed to operate as a waiver of any subsequent Event of Default or breach.

9.10 Entire Agreement; Modifications.

The provisions of this Agreement, including the Schedules hereto, shall (a) constitute the entire agreement among the parties on the subject matter hereof, superseding all prior agreements and negotiations, and (b) be modified only by written agreement duly executed by the parties.

9.11 Headings.

Captions, headings, titles, the table of contents and the list of schedules in this Agreement are for ease of reference only, and do not constitute a part of this Agreement.

9.12 Governing Law.

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the State of California.

9.13 Counterparts.

This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which taken together shall be deemed a single instrument.

9.14 Severability.

In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

9.15 Right of First Refusal.

During the Service Term, the Contracting Communities shall have a right of first refusal to purchase the Facility, on the same terms and conditions and for the same price, as set forth in an offer to purchase from a third party that the Company is willing to accept. The Company shall provide notice and a copy of such offer to the Contracting Communities, and the Contracting Communities shall have a period of sixty (60) days following such notice during which to exercise their right of first refusal by irrevocably and unconditionally accepting in writing the price, terms and conditions set forth in the offer. If the Contracting Communities do

not so exercise their right of first refusal within such sixty (60) day period, then the right of first refusal shall lapse at the end of such period. The right of first refusal will not be triggered by one or more sales of equity interests in the Company or its direct or indirect parent companies.

9.16 Fair Market Value Purchase Option.

(a) At the expiration of the Service Term of this Agreement or any extension hereof, the Contracting Communities may, at their option, purchase the Facility, on an "as is" basis, at its "**Fair Market Value**," and such term is defined in subsection (b) below. The Contracting Communities shall provide notice of such purchase to the Company at least nine (9) months prior to the expiration of the Service Term. If the Contracting Communities do not timely provide notice of such purchase, then the option to purchase shall lapse.

(b) Determination of Fair Market Value.

(1) The **"Fair Market Value"** of the Facility shall be the value which would be obtained for the Facility in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell, based upon the highest and best use of the Facility utilizing generally recognized professional criteria for the appraisal of industrial real estate, as the same shall be specified by mutual agreement of the Company and the Contracting Communities, taking into account the cost to remove and/or remediate all contamination on the Facility Site, if any, and assuming a rental for the Facility Site in accordance with Section 4.01(c) of the Facility Site Lease Agreement. If the Company and the Contracting Communities cannot agree as to the Fair Market Value of the Facility within thirty (30) days after notice of such purchase, then said value shall be mutually determined in an appraisal prepared and delivered by two (2) disinterested, Master Appraisal Institute certified and licensed industrial real estate appraisers, one of which shall be appointed by the Company, and the other of which shall be appointed by the Contracting Communities, each of which appointments shall be made within sixty (60) days after notice of such purchase. If the appraisers thus appointed cannot mutually agree upon the Fair Market Value of the Facility within seventy-five (75) days of the appointment of the second appraiser, each such appraiser shall within fifteen (15) days thereafter (i) simultaneously submit in writing to the other appraiser and to the parties his or her final appraisal of the Fair Market Value of the Facility, and (ii) appoint a third disinterested, Master Appraisal Institute certified and licensed industrial real estate appraiser who shall, within sixty (60) days of his or her appointment, select one of the final appraisals so provided by the first two appraisers, which shall then become the Fair Market Value of the Facility upon such selection.

(2) If either party fails to appoint an appraiser within the time period herein provided, the other party may request the appointment of such appraiser by application to the Appraisal Institute, Chicago, Illinois or if it no longer exists, a similar institute providing qualified, disinterested real estate appraisers that is mutually acceptable to the parties.

(3) If the two appraisers fail to agree upon the appointment of a third appraiser within the time period herein provided, either party may request the appointment of such appraiser by application to the Appraisal Institute, Chicago, Illinois or if it no longer exists,

a similar institute providing qualified, disinterested real estate appraisers that is mutually acceptable to the parties.

(4) The appraiser, or appraisers as the case may be, shall give written notice to the parties stating the determination of Fair Market Value in accordance with this Section and shall furnish to each party a signed copy of such determination. In the event of the failure, refusal, or inability of any appraiser or appraisers to act, a new appraiser or appraisers shall be appointed, which appointment(s) shall be made in the same manner as hereinabove provided for the appointment of the appraiser or appraisers who failed, refused, or were unable to act. The expenses of the appraisal conducted in accordance with the provisions of this Section 9.17 shall be borne equally by the Company and the Contracting Communities.

9.17 Cooperation Regarding Claims.

If either party hereto shall receive notice or have knowledge of any claim, demand, action, suit, or proceeding that may result in either (i) a claim for indemnification by such party against the other party pursuant to Section 9.02, or (ii) an Unforeseen Circumstance as to such party, such party shall, as promptly as possible, give the other party notice of such claim, demand, action, suit, or proceeding, including a reasonably detailed description of the facts and circumstances relating to such claim, demand, action, suit, or proceeding, and a complete copy of all notices, pleadings, and other papers related thereto, and, in the case of a claim for indemnification pursuant to Section 9.02 such claim and the basis therefore in reasonable detail; provided that failure promptly to give such notice or to provide such information and documents shall not relieve the other party of any obligation of indemnification it may have under Section 9.02 except to the extent such failure shall materially diminish the ability of such other party to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit, or proceeding. The parties hereto shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit, or proceeding and, in the case of a claim for indemnification pursuant to Section 9.02, the party against whom indemnification is claimed shall, upon its acknowledgement in writing of its obligation to indemnify the party seeking indemnification, be entitled to assume the defense or to represent the interests of the party seeking indemnification in respect of such claim, demand, action, suit, or proceeding, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such party and to propose, accept, or reject offers of settlement if the sole adverse effect of any such offer of settlement is an obligation to pay damages that is being fully indemnified against hereunder.

9.18 Venue.

The Contracting Communities and the Company hereby agree that any action, suit, or proceeding arising out of this Agreement or any transaction contemplated hereby shall be brought solely in the Superior Court of California for the County of Stanislaus, and that neither the Contracting Communities nor the Company shall object to the institution or maintenance of any such action, suit, or proceeding in such court based on improper venue, forum non-conveniens or any other ground relating to the appropriate forum for such action, suit, or proceeding.

9.19 Further Assurances.

The Company and the Contracting Communities further covenant to cooperate with one another in all respects reasonably necessary to insure the successful consummation of the transactions contemplated by this Agreement, and each will take all actions within its authority to insure reasonable cooperation of its officials, officers, agents, and other third parties including, in the case of the Contracting Communities, enforcement of the terms of the franchises of the Haulers.

9.20 Arbitration.

(a) Agreement to Arbitrate. In the event any dispute arises between the Company and the Contracting Communities under this Agreement then, in such case, either party may serve written notice of such dispute on the other party and each party shall undertake in good faith to resolve the dispute. Except as may be otherwise agreed to by the parties hereto, if the parties do not resolve the dispute within fifteen (15) days after such written notice, either party may, by further written notice (an "***Arbitration Notice***") to the other party, commence an arbitration proceeding, under, and in accordance with, the provisions of Article 19 of the Facility Site Lease Agreement, except that in an arbitration under this Agreement, the City and County shall act jointly as one party and notwithstanding such provisions of Article 19, either party may at any time initiate an action in court in respect of any equitable remedy to which such party is expressly entitled pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Amended and Restated Service Agreement, as of the day and year first above written.

COVANTA STANISLAUS, INC.

By: _____ KAB

Name: Paul E. Stauder

Title: SVP Business Management

COUNTY OF STANISLAUS

By: _____

Name: Monica Nino

Title: CEO

CITY OF MODESTO

By: D. Williams-Ridley

Name: Dee Williams-Ridley

Title: Deputy City Manager

APPROVED AS TO FORM

Roland R. Stevens
Assistant City Attorney

ATTEST: _____

Stephanie Lopez, City Clerk
Reso 2012-263 June 26, 2012

SCHEDULE 1

WASTE DELIVERY SCHEDULE

The Guaranteed Tonnage of 243,300 Tons of Acceptable Waste for each Contract Year shall be appropriately prorated for any Contract Year of less than 12 calendar months. The Billing Period Tonnage for each Billing Period in any Contract Year shall be determined at least 60 days prior to the beginning of each Contract Year by the mutual consent of the Company and the Contracting Communities in the form of an annual appendix (Appendix) to this Schedule 1. In the absence of such mutual consent, the Appendix applicable for the immediately preceding Contract Year shall apply again. The sum of the Billing Period Tonnages for the Billing Periods in any Contract Year shall equal the Guaranteed Tonnage for such Contract Year.

In any event, delivery of Contracting Communities Tons shall not exceed One Thousand Seven Hundred (1,700) Tons in any one day or Five Thousand Six Hundred 5,600 Tons in any one week. The Company and the Contracting Communities may revise the Appendix for the current Contract Year at any time by mutual consent.

SCHEDULE 1 - APPENDIX

DELIVERY SCHEDULE

FOR CONTRACT YEAR

BEGINNING JULY 1 , 2012

BILLING PERIODS	BILLING PERIOD TONNAGE
JULY	22,573
AUGUST	22,573
SEPTEMBER	21,845
OCTOBER	18,392
NOVEMBER	21,845
DECEMBER	18,331
JANUARY	18,664
FEBRUARY	18,664
MARCH	18,331
APRIL	17,664
MAY	22,573
JUNE	21,845
TOTAL	**243,300**

In any event, delivery of Contracting Communities tons shall not exceed 1,700 tons in any one day or 5,600 tons in any one week. The Company and the Contracting Communities may revise the Appendix for the current Contract Year at any time by mutual consent.

SCHEDULE 2

FACILITY SITE DESCRIPTION

Is as set forth in Schedule 1 in the Facility Site Lease Agreement

SCHEDULE 3

AMENDED AND RESTATED FACILITY SITE LEASE AGREEMENT

[TO BE INSERTED]

SCHEDULE 4 – PARENT GUARANTY

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "**Guaranty**") is entered into as of the 1st day of July, 2012, by Covanta Holding Corporation, a Delaware corporation, as guarantor (the "**Guarantor**"), for the benefit of the County of Stanislaus, a political subdivision of the State of California, acting by and through its Board of Supervisors (the "**County**"), and the City of Modesto, a municipal corporation, acting by and through its City Council (the "**City**"). The County and City are collectively referred to herein as the "**Contracting Communities**."

WITNESSETH:

WHEREAS, Covanta Stanislaus, Inc. (the "**Company**") and the Contracting Communities are entering into, contemporaneously herewith, that certain AMENDED AND RESTATED SERVICE AGREEMENT FOR THE SUPPLY AND ACCEPTANCE OF SOLID WASTE (the "**Service Agreement**"), which provides for the Contracting Communities to deliver or cause to be delivered Acceptable Waste to the Facility and the Company to accept, process and/or dispose of Acceptable Waste at the Facility; Capitalized terms used but not defined in this Guaranty shall have the meanings ascribed to such terms in the Service Agreement; and

WHEREAS, the Company and the County are entering into, contemporaneously herewith, that certain AMENDED & RESTATED FACILITY SITE LEASE AGREEMENT (the "**Lease**"), which provides for the leasing of the Facility Site from the County to the Company; and

WHEREAS, as a condition of, and in accordance with, the Service Agreement and the Lease, the Company is required to cause this Guaranty to be executed and delivered to the Contracting Communities; and

WHEREAS, the Company is a wholly-owned, indirect subsidiary of the Guarantor, and the Guarantor will receive a benefit from the Company and the Contracting Communities as a result of their entering into the Service Agreement and the Company and the County entering into the Lease; and

WHEREAS, the Guarantor, as an inducement to the Contracting Communities to enter into the Service Agreement and as an inducement to the County to enter into the Lease, is entering into this Guaranty; and

WHEREAS, the term "parties," as used herein, shall mean the Guarantor and the two beneficiaries of this Guaranty, the County and the City.

NOW, THEREFORE, for the purposes described in the foregoing recitals and intending to be legally bound, the Guarantor hereby agrees as follows:

ARTICLE I –
Representations and Warranties of the Guarantor

1.01 **Representations and Warranties**. The Guarantor represents and warrants that:

(a) The Guarantor is a Delaware corporation in good standing;

(b) The Guarantor possesses all requisite power and authority under applicable laws to enter into and to perform all of the covenants and agreements set forth in this Guaranty;

(c) The Guarantor has duly authorized all necessary action on its part to enter into this Guaranty in accordance with applicable laws; and

(d) Guarantor has duly executed and delivered this Guaranty.

ARTICLE II –
Covenants and Agreements of the Guarantor

2.01 **Unconditional Guaranty**. The Guarantor hereby guarantees, absolutely, unconditionally and irrevocably, for the benefit of the Contracting Communities, the full and prompt performance of all obligations of the Company to the Contracting Communities under the Service Agreement and, for the benefit of the County, the full and prompt performance of the obligations of the Company under Section 7.04 of the Lease, each in accordance with their respective provisions, including without limitation, the obligation to pay money or damages owed by the Company for its failure to so perform such obligations (collectively, the "**Guaranteed Obligations**"). If any Guaranteed Obligation is not duly and timely performed by the Company in accordance with the Service Agreement or the Lease, as applicable, then the Guarantor shall immediately perform the same, or cause the performance thereof, itself, as if it were a party to the Service Agreement or to the Lease, as applicable.

2.02 **Manner of Payment**. All payments required to be made by the Guarantor under this Guaranty shall be made in lawful money of the United States of America.

2.03 **Obligations of Guarantor Absolute**. The obligations of the Guarantor under this Guaranty shall be absolute, irrevocable and unconditional, and, except as expressly set forth in the Service Agreement or in the Lease, as applicable, as an underlying right of the Company, shall not be subject to any set-off, counterclaim, reduction or diminution on account of any claim of Guarantor or the Company against the Contracting Communities or their assigns, or any other person, or because of any event or condition affecting the ability of the Company to perform the obligations of the Company in accordance with the Service Agreement or Lease (other than events or conditions for which, under the specific provisions of the Service Agreement or Lease, there is a discharge, release, or such performance is otherwise excused), or to any requirement in any case that the Contracting Communities (or any such assignee) first enforce any remedies that they or it may have against the Company or any other person, or seek to compel the Company to perform under the Service Agreement or Lease before proceeding against Guarantor hereunder; provided, that no such set-off, counterclaim, reduction or diminution is hereby waived or released, and any of the same may be asserted by Guarantor in a separate proceeding against the Contracting Communities or County as applicable, or any such assignee, and shall remain in full

force and effect until the Guaranteed Obligations shall have been fully performed, and the Guaranteed Obligations shall not be affected, modified, diminished or impaired upon the happening, from time to time, of any of the following events, each of which is hereby expressly waived as a defense to its liability hereunder:

(a) The failure of the Guarantor to receive notice of the occurrence of a default under the Service Agreement or under the Lease;

(b) The neglect or failure of the Company to enforce, to assert, or to exercise or preserve, any right, or rights of action, or power or remedy, against any party, person or property;

(c) The compromise, settlement, release, alteration, indulgence, waiver or any other change or modification of any obligation or liability of the Company under the Service Agreement or the Lease, except to the extent to which such obligation or liability shall have been expressly compromised, settled, released, altered, indulged, waived, changed or modified in writing by the Contracting Communities or by the County, as applicable;

(d) Any neglect or failure, omission or delay on the part of the Contracting Communities to enforce, to assert, or to exercise or preserve any right, right of action, power or remedy conferred upon or vested in the Contracting Communities hereunder or under the Service Agreement, or any neglect or failure, omission or delay on the part of the County to enforce, to assert, or to exercise or preserve any right, right of action, power or remedy conferred upon or vested in the County hereunder or under the Lease;

(e) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustments or other similar proceedings relating to the Company, or either of the Contract Communities, or any of their respective assets;

(f) The release of the Guarantor from performance or observance of any obligation, covenant or agreement contained in this Guaranty, except to the extent such may be expressly released in writing by the Contracting Communities or by the County, as applicable;

(g) The default or failure of the Guarantor fully to perform any of its obligations set forth in this Guaranty; or

(h) Guarantor's assignment or delegation by operation of law or otherwise of this Guaranty or its obligations hereunder, except as provided in Section 2.05 below.

(i) Any allegation or contest of the validity of this Guaranty in any proceeding;

(j) The invalidity, irregularity, illegality, or unenforceability of, or any defect in, the Service Agreement or the Lease;

(k) Any present or future law or order of any government or of any agency thereof, purporting to reduce, amend or otherwise affect the Service Agreement or the Lease or to vary any terms of payment or performance under the Service Agreement or the Lease;

(l) The transfer, assignment or encumbrance, or the purported or attempted transfer, assignment or encumbrance, by the Company of all or any part of its interest in the Facility or its rights under the Service Agreement or the Lease, or any failure of or defect in title with respect to the interest of the Company in the Facility or the Company's rights under the Lease, or of the interest of the County in the Facility Site;

(m) Any default or failure of Guarantor fully to perform any of its obligations under this Guaranty.

2.04 **Obligations of Guarantor Not Affected by Bankruptcy**. The obligations of the Guarantor hereunder shall not be affected by any bankruptcy, arrangement of creditors, reorganization or other similar proceedings of the Company; and the Guarantor specifically waives any right or benefit which could accrue to it by reason of any such proceeding and agrees that the same shall not affect the liability of the Guarantor hereunder, regardless of the effect that such proceedings may have with respect to the obligations of the Company.

2.05 **Change of Guarantor.** The Guarantor may assign this Guaranty and delegate its obligations hereunder (a "**Transfer**") only (i) to a transferee who (a) assumes in writing all of Guarantor's obligations under this Guaranty, and (b) posts an irrevocable and unconditional letter of credit, securing the Guaranteed Obligations in both the Service Agreement and Lease, in a form reasonably satisfactory to the Contracting Communities and in an amount equal to the Limit of Liability (as such term is defined in the Service Agreement), and (ii) if the Guarantor provides to the Contracting Communities (a) at least ten business days advance written notice of the Transfer, and (b) a fully-executed original of the written assumption described in clause (i)(a) above and the letter of credit required by clause (i)(b). Upon satisfaction of all clause (i) and (ii) requirements, the Guarantor shall automatically be released of all liability under this Guaranty. In the alternative, the transferee and the agreements effectuating the transfer may all be consented to in writing by the Contracting Communities, which consent shall not be unreasonably withheld.

ARTICLE III – Miscellaneous

3.01 **Time When Guaranty Effective**. As the Service Agreement has been fully executed and delivered by the Company and the Contracting Communities and the Lease has been fully executed and delivered by the Company and the County, as of the date hereof, the obligations of the Guarantor hereunder shall be effective as of the date hereof.

3.02 **Remedies of Contracting Communities**. In the event of default by the Guarantor in the punctual discharge of its obligations hereunder the Contracting Communities with respect to the Service Agreement, or the County with respect to the Lease, shall be entitled to enforce this Guaranty to the fullest extent provided by applicable law.

3.03 **Pursuit; Waiver**. No remedy conferred upon or reserved to the Contracting Communities or County hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity or by statute. The Contracting Communities or the County, as the case may be, shall have no obligation to pursue their remedies against the Company before pursuing the Guarantor under this Guaranty. If the Company has breached or defaulted on any obligations that are Guaranteed Obligations hereunder, Guarantor shall be obligated hereunder upon receipt of notice thereof given as provided in Section 3.06. In order to entitle the Contracting Communities or the County, as the case may be, to exercise any remedy reserved in this Guaranty, it shall not be necessary to give any notice, other than such notice. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised, from time to time, and as often as may be deemed expedient. In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification hereof shall be established by conduct, custom or course of dealing, but shall be established solely by an instrument, in writing, duly executed by the appropriate parties.

3.04 **Entire Agreement**. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

3.05 **Expenses**. Guarantor shall pay to the Contracting Communities or the County, as the case may be, all reasonable costs and expenses (including the fees and disbursements of counsel) incurred in the enforcement of their rights against Guarantor hereunder.

3.06 **Notices**. All notices or demands and other communications to Guarantor under this Guaranty shall be in writing and shall be sufficiently given if (i) delivered in person, (ii) sent by overnight courier and evidence of delivery is obtained, (iii) sent by e-mail with evidence of receipt of such email, or (iv) sent by certified or registered mail, return receipt requested, postage prepaid, and (where applicable) addressed as provided below:

To Guarantor:	445 South Street Morristown, NJ 07960 Attention: Chief Operating Officer Email: smyones@covantaenergy.com
With a copy to:	445 South Street Morristown, NJ 07960 Attention: Chief Legal Officer Email: tsimpson@covantaenergy.com

3.07 **Severability**. The provisions of this Guaranty shall be severable; and in the event of the invalidity or unenforceability of any one or more phrases, sentences, clauses, Articles,

Sections or parts contained in this Guaranty, such invalidity or unenforceability shall not affect the validity or enforceability of any remaining portions thereof.

3.08 **Choice of Law**. This Guaranty shall be construed in accordance with and shall be governed by the laws of the State of California, without regard to conflict of laws principles.

3.09 **Term**. This Guaranty shall remain in full force and effect until the Guaranteed Obligations shall have been fully performed.

3.10 **Amendment**. This Guaranty may be amended and/or supplemented, from time to time, only by a written document duly executed by all the parties hereto.

IN WITNESS WHEREOF, the Guarantor, intending to be legally bound and pursuant to proper authorization of its governing body, does hereby cause this Guaranty to be executed by its duly authorized officer, all as of the day and year first above written.

COVANTA HOLDING CORPORATION

By: Seth Myones

Name: Seth Myones

Title: Chief Operating Officer
Executive Vice President

KJB

SCHEDULE 5

REQUIRED INSURANCE

1. Required Insurance. Company shall obtain, pay for and maintain the following insurance with respect to the operation and maintenance of the Facility:

   (a) (i) Workers' Compensation Insurance Coverage in compliance with the Workers' Compensation Law of the State extended by the Broad Form All States Endorsement, the United Sates Longshore and Harborworker's Coverage Endorsement and the Voluntary Compensation Coverage Endorsement.

   (ii) Employers' Liability Insurance Coverage subject to the minimum Limit of Primary Bodily Injury Liability Insurance required to support the purchase of the Umbrella Liability Insurance set forth in subparagraph 1 (d) of this Schedule 5.

   (b) Commercial General Liability Insurance. Commercial General Liability Form covering all premises and operations including independent contractors, products, and operations, to be extended by the following endorsements:

   (i) The applicable limit of liability shall be the minimum Combined Single Limit of Primary Insurance required to support the purchase of the Umbrella Liability Insurance set forth in subparagraph 1 (d) of this Schedule 5.

   (c) Comprehensive Automobile Liability Insurance Coverage applicable to all owned, hired and non-owned vehicles subject to the minimum Combined Single Limit of Primary Insurance required to support the purchase of the Umbrella Liability Insurance set forth in subparagraph 1 (d) of this Schedule 5.

   (d) Umbrella Liability Insurance. The total Limit of Liability shall be $25 million per occurrence and, as applicable, in the aggregate.

   (e) All Risk Property Insurance.

   (i) Coverage on All Risks Basis in an amount not less than 100% of the replacement cost of the Facility to protect against loss of, damage to or destruction of the Facility.

   (f) Business Interruption and Extra Expense Insurance. Business Interruption and Extra Expense Insurance on the Facility to protect the Company and the Contracting Communities as their interests may appear covering the loss of revenues attributable to the Facility (and extra expense incurred), including the loss of any Contracting

Communities' State Diversion Credit, by reason of the total or partial suspension of, or interruption in, the operation of the Facility caused by a loss or damage to or destruction of any part of the Facility or Facility Site as a result of the perils insured against pursuant to subparagraph 1 (e) of this Schedule 5 covering a period of suspension or interruption of no less than one year and sufficient to facilitate reinstatement of the facility to its pre-loss condition and in an amount equal to the Facility's gross revenues less discontinuing expenses during any such period. All policies obtained pursuant to subparagraph 1 (e) of this Schedule 5 may be subject to normal exclusions relating to nuclear risks, war risks and such other perils as are general imposed by Insurers on similar properties and contain deductibles and sublimits that are commercially reasonable.

(g) Boilers and machinery insurance in the aggregate amount of full replacement value of the boilers and machinery.

2. Additional Insureds. The Company shall name the Contracting Communities (including their respective officers, members, employees and agents) as additional insureds (the "Additional Insureds") on all insurance policies required pursuant to this Schedule 5 (other than subparagraph 1 (a) (i) hereof) as their respective interests may appear in accordance with the contracts and agreements (related to the Facility and Facility Site) to which they are a party.

3. Special Insurance Provisions.

(a) Such coverages shall not be cancelled without giving the Contracting Communities at least sixty (60) days prior written notification thereof.

(b) The Insurers shall have no recourse against the Additional Insureds for payment of any insurance premium.

(c) If at any time the insurance set forth in this Schedule 5 shall fail to comply with the insurance requirements specified, the Company shall, upon notice to that effect, promptly apply for a new policy and when obtained, file a certificate thereof with the Contracting Communities. Failure of the Company to take out and/or maintain any required insurance shall not relieve the Company from any liability hereunder.

(d) The Company and any subcontractors shall evidence compliance with the Worker's Compensation law by supplying following attested documentation:

(i) A Workers' Compensation certificate, prescribed for proof of compliance with the Compliance law;

(ii) If the Company shall claim that it is not required to carry a Workers' Compensation Policy, a temporary permit shall be obtained by the Company,

which shall complete all requisite documentation and send one copy of the same to the Contracting Communities. The Company shall transmit the other copy of the completed documentation to the State's Workers' Compensation Board for the investigation and a report; and

(iii) If the Company shall be self-insured for Workers Compensation, it shall present a certificate from the State Workers' Compensation Board evidencing that fact to the Contracting Communities.

(e) Such liability insurance as is afforded by the insurance set forth in subparagraphs 1 (a) (ii), (b),(c) and (d) of this Schedule 5 shall be primary without the right of contribution from any other policies of insurance that are carried (or self-insured) by an Additional Insured with respect to their interests in the Facility or the Facility Site and, further, such liability insurances shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each Insured.

(f) The Company shall arrange for appropriate certificates of insurance to be issued to Additional Insured for coverage required by this Schedule 5.

(g) To the extent reasonably available, the company shall maintain the insurance set forth in this Schedule 5 with Insurers that carry an A.M. Best's "A-" or equivalent rating and a financial category size of VII or better. Further, the Company shall maintain such insurance only with companies that are authorized to do business in the State.

4. Waiver of Subrogation. The Company and the Contracting Communities hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, which loss or damage is covered by valid and collectible insurance policies to the extent that such loss or damage is recovered under said insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise) to an insurance company (or any other person), the Company and each Contracting Community agree to give to each insurance company which has issued, or may issue in the future polices of insurance, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed; if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

SCHEDULE 6

HAULER REQUIREMENTS

Pursuant to the Stanislaus County Ordinance Code and the Modesto Municipal Code, the County and City may designate the disposal site for solid waste collected, removed or transported within the City and unincorporated areas of the County by solid waste collection companies. These haulers operate under franchise agreements (in the case of the County) to collect residential, industrial and commercial solid waste within the unincorporated areas of the County, and collection agreements (in the case of the City) to collect residential, industrial and commercial solid waste within the City.

Private operators of transfer stations located in Stanislaus County receive solid waste from City collectors and certain County franchisees and transport such solid waste to approved disposal sites (the remaining County franchisees deliver their solid waste directly to such approved disposal sites). Transfer Stations must receive and adhere to solid waste facilities permits issued by the California Department of Resources Recycling and Recovery (formerly known as the California Integrated Waste Management Board). Pursuant to existing authorities of the Stanislaus County Ordinance Code and the Modesto Municipal Code, franchise agreements and collection agreements with the haulers, and the provisions of the new Service Agreement relating to the delivery and processing of wastes at the Facility, the County and City will designate the Facility as the disposal site to be used for the disposal of acceptable waste by all County franchisees and City collectors.

Attachment

“B”

EXECUTION COPY

COUNTY OF STANISLAUS, CALIFORNIA

AND

COVANTA STANISLAUS, INC.

AMENDED AND RESTATED

FACILITY SITE LEASE AGREEMENT

Dated as of July 1, 2012

TABLE OF CONTENTS

PAGE

Recitals 1

ARTICLE 1. DEFINITIONS, SCHEDULES INCORPORATED BY REFERENCE AND INTERPRETATION 3

Section 1.01. Definitions 3
Section 1.02. Schedules Incorporated by Reference 3
Section 1.03. Interpretation 3

ARTICLE 2. REPRESENTATIONS 3

Section 2.01. Representations 3

ARTICLE 3. LEASED LAND AND TERM 5

Section 3.01. Leased Land 5
Section 3.02. Initial Term 5
Section 3.03. Lessee's Right to Renew Lease 5

ARTICLE 4. RENT 6

Section 4.01. Amount and Payment of Rent 6

ARTICLE 5. TAXES 6

Section 5.01. Taxes 6

ARTICLE 6. USE 7

Section 6.01. Description of Use 7

ARTICLE 7. IMPROVEMENTS AND EQUIPMENT 8

Section 7.01. Improvements 8
Section 7.02. Utilities 8
Section 7.03. Lessor's Cooperation 8
Section 7.04. Rights and Obligations upon Termination 8
Section 7.05. Ingress and Egress During Lease Term 10
Section 7.06. Improvements and Maintenance of Routes For Ingress and Egress 10
Section 7.07. No Lessor Improvements 10
Section 7.08. Quiet Enjoyment 11

ARTICLE 8. REPAIRS 11

Section 8.01. Lessee's Duty to Maintain Premises 11

ARTICLE 9. MECHANIC'S LIENS 11

Section 9.01. Prohibition Against Mechanic's Liens — Indemnification of Lessor 11
Section 9.02. Contest by Lessee–Surety Bond 11
Section 9.03. Lessor's Right to Remove Lien 11
Section 9.04. Notices of Nonresponsibility 11

ARTICLE 10. CONDEMNATION/DAMAGE TO FACILITY 12

Section 10.01. Loss Events 12
Section 10.02. Rent Abatement 14
Section 10.03. Allocation of Taking Award during Facility Operation 14
Section 10.04. Effect of Termination 14

ARTICLE 11. INSURANCE 14

Section 11.01. Lessee's Worker's Compensation Insurance 14
Section 11.02. Lessee's Liability Insurance 14

ARTICLE 12. ASSIGNMENTS AND SUBLETTING 15

Section 12.01. Lessor's Approval Required 15
Section 12.02. Termination 16
Section 12.03. Effect of Lessor's Consent 16
Section 12.04. Written Assumption Agreement 17

ARTICLE 13. RIGHTS OF FACILITY LENDERS 17

Section 13.01. 17
Section 13.02. 17
Section 13.03. Notice to Facility Lenders 17
Section 13.04. Right of Facility Lender to Cure Lessee Defaults 18
Section 13.05. Extension of Time in the Event of Bankruptcy, Etc. 18
Section 13.06. Consequences of Cure 18
Section 13.07. No Personal Liability 18
Section 13.08. Survival 18
Section 13.09. Amendments 18
Section 13.10. Lessee Not Relieved of Obligations 19
Section 13.11. No Encumbrance on Facility Site 19

ARTICLE 14. DEFAULT AND REMEDIES 19

Section 14.01. Termination for Lessee's Defaults 19

Section 14.02. Other Remedies 19
Section 14.03. Limitation of Default 20

ARTICLE 15. SURRENDER AND REMOVAL 20

Section 15.01. 20

ARTICLE 16. BANKRUPTCY AND INSOLVENCY 20

ARTICLE 17. LESSOR'S GENERAL PROTECTION PROVISIONS 20

Section 17.01. Lessor's Right of Entry and Inspection 20
Section 17.02. Joint and Several Liability 21

ARTICLE 18. GENERAL PROVISIONS 21

Section 18.01. Conditions and Covenants 21
Section 18.02. No Waiver of Breach 21
Section 18.03. Time of Essence 21
Section 18.04. Computation of Time 21
Section 18.05. Unavoidable Delay–Force Majeure 21
Section 18.06. Successors in Interest 22
Section 18.07. Governing Law 22
Section 18.08. Entire Agreement 22
Section 18.09. Amendments or Modifications 22
Section 18.10. Partial Invalidity 22
Section 18.11. Conflict with Provisions of Service Agreement 22
Section 18.12. Relationship of Parties 22
Section 18.13. No Merger 22
Section 18.14. Attorney Fees 22
Section 18.15. Delivery of Rent and Notices–Method and Time 23
Section 18.16. Payment of Rent 23
Section 18.17. Estoppel Certificates 23
Section 18.18. Notice to Lessor 23
Section 18.19. Notice to Lessee 24
Section 18.20. Recording 24

ARTICLE 19. DISPUTE RESOLUTION 24

Section 19.01. Agreement to Arbitrate 24
Section 19.02. Contents of Arbitration Notice 24
Section 19.03. Selection of Arbitrator 25
Section 19.04. Discovery 25
Section 19.05. Continuance of Performance 25
Section 19.06. Costs of Arbitration 26
Section 19.07. Site of Arbitration 26
Section 19.08. Equitable Relief Not Precluded 26

Section 19.09. Limited Court Challenge 26

ARTICLE 20. PARENT GUARANTY 26

Section 20.01. 26

LIST OF SCHEDULES

SCHEDULE 1 Description of Facility Site and Drawing

AMENDED & RESTATED

FACILITY SITE LEASE AGREEMENT

Recitals

THIS AMENDED & RESTATED FACILITY SITE LEASE AGREEMENT (this "**Lease**" or this "**Agreement**"), made and entered into as of July 1, 2012, by and between the County of Stanislaus, having its main office at 1010 Tenth Street, Modesto, California 95354(the "**County**" or "**Lessor**"), and Covanta Stanislaus, Inc. (hereinafter the "**Company**" or "**Lessee**"), having an office at 445 South Street, Morristown, New Jersey 07960.

WHEREAS, pursuant to an Amended and Restated Service Agreement dated as of September 27, 1988, as amended prior to the date hereof (the "**Original Service Agreement**") among the City of Modesto, California, a municipal corporation, (the "**City**"), the County (collectively the "**Contracting Communities**"), and Stanislaus Waste Energy Company (the "**Original Company**"), the Original Company agreed to design, construct, startup, test, own and operate a solid waste/resource recovery facility (the "**Facility**") to be located in the County for the purpose of processing Acceptable Waste (as defined in the Original Service Agreement) and producing saleable electric energy, all in accordance with the terms of the Service Agreement; and

WHEREAS, pursuant to a new Amended and Restated Service Agreement, dated the date hereof, between the Contracting Communities and the Company (the "**Service Agreement**"), the Company agrees to accept, process and/or dispose of Acceptable Waste and the Contracting Communities agree to deliver, or cause Acceptable Waste to be delivered, to the Facility; and

WHEREAS, pursuant to the Facility Site Lease Agreement, dated as of June 1986 (the "**Lease Effective Date**"), the County entered into a site lease for the Facility with the Original Company (the "**Original Facility Site Lease**"); and

WHEREAS, the Facility site is described more particularly in Schedule 1 attached hereto (which site, together with all easements, rights of way and consents granted herein or pursuant to or in connection with this Lease, is referred to in this Lease as the "**Facility Site**"); and

WHEREAS, the Contracting Communities and the Company now wish to amend and restate in its entirety the Original Facility Site Lease as provided herein, effective as of July 1, 2012 (the "**Amended & Restated Lease Effective Date**"); and

WHEREAS, the County is empowered to enter into the transactions contemplated by this Lease and carry out its obligations hereunder and, by proper action of the members of the Board of Supervisors of the County, the County has duly authorized the execution, delivery and performance of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00), and the entering into of the New Service Agreement between the parties hereto, and other good and valuable consideration, each to the other in hand paid, and the mutual covenants contained herein, and the promises and the respective representations and agreements hereinafter contained, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby amend and restate in its entirety the Original Facility Site Lease as follows:

ARTICLE 1. DEFINITIONS, SCHEDULES INCORPORATED BY REFERENCE AND INTERPRETATION

Section 1.01. Definitions. All capitalized terms used in this Agreement, unless otherwise expressly defined herein, shall have the meanings given to such terms in the Service Agreement as in effect on the date hereof whether or not the Service Agreement shall be in effect or amended (such meanings to apply equally to all forms of such terms).

Section 1.02. Schedules Incorporated by Reference. The following Schedule is hereby incorporated by reference and expressly made a part hereof:

Schedule 1 - Description of Facility Site and Drawing

Section 1.03. Interpretation.

(1) In this Agreement, any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(2) Whenever the Lessor or Lessee is named or referred to, it shall be deemed to include its successors and assigns whether so expressed or not; provided that nothing in this Section 1.03 shall be deemed to constitute a consent to either party to the assignment of this Lease contrary to the provisions hereof. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Lessor or Lessee contained in this Agreement shall bind and inure to the benefit of such successors and assigns and shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Lessor or Lessee, or of their successors or assigns, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

(3) Nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any Person, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof.

(4) The representations and warranties contained herein shall survive the execution and delivery of this Agreement.

ARTICLE 2. REPRESENTATIONS

Section 2.01. Representations.

(a) Lessor hereby represents, warrants, and covenants as follows:

(1) Lessor holds title to the Facility Site, free and clear of liens created by the Lessor other than "**Permitted Liens**", being those described in the title report obtained by the Lessor pursuant to Section 2.04(o) of the Original Service Agreement (the "**Title Report**"). Lessor has the full right, power and authority to grant and convey to Lessee or its assignee the rights with respect thereto as are provided for in this Agreement.

(2) The Lessor is a political subdivision of the State and has the full power, authority and legal right to own or hold under lease real property and has the power, authority, and legal right to enter into this Lease, and the execution, delivery, and performance of this Agreement (i) has been duly authorized, (ii) will not violate any judgment, order, law, or regulation applicable to the Lessor, and (iii) do not (A) conflict with, (B) constitute a default under, (C) result in the creation of any lien, charge, encumbrance or security interest (other than Permitted Liens) upon the Facility Site, under any agreement or instrument to which the Lessor is a party or by which the Lessor or its assets may be bound or affected other than those contemplated hereby and by the Indenture.

(3) This Agreement constitutes a legal, valid and binding obligation of the Lessor, enforceable in accordance with its terms.

(4) Lessor has not given to any corporation, partnership, venture, person or other entity other than Lessee, any option to purchase or right of first refusal, entered or granted an option to enter into any lease, or entered into any other agreement (whether fixed or optional) granting any license, easement, other right of acquisition, use, or consideration with respect to the Facility Site, inconsistent with or which could diminish or otherwise negatively impact the rights conveyed to Lessee pursuant to this Lease, except as appears on the Title Report.

(5) The Lessor has the full right, power, and authority to grant the ingress and egress rights provided for in Section 7.05 below and shall not undertake any activities inconsistent therewith. Lessor reserves the non-exclusive right to utilize said access route on a non-exclusive basis and in a manner consistent with the foregoing rights of the Lessee.

(6) Lessor has no actual knowledge of any pending or threatened government or private proceedings against it with respect to the ownership, condition or maintenance of the Facility Site which could prohibit, restrict or otherwise negatively impact Lessor's ability to grant and convey to Lessee the rights with respect to the Facility Site as are provided for in this Lease, or the ability of the Lessee to utilize the Facility Site for the uses permitted herein.

(b) The Lessee hereby represents, warrants, and covenants as follows:

(1) The Lessee is a corporation duly organized and existing in good standing under the laws of the State of California and has the full legal and corporate right, power and authority to own or hold under lease real property and to enter into and perform its obligations under this Lease.

(2) The Lessee has the power, authority and legal right to enter into and perform each other agreement or instrument entered into or to be entered into by the Lessee in connection with the operation of the Facility on the Facility Site, and the execution, delivery and performance of this Agreement and those instruments (i) has been duly authorized, (ii) will not violate any judgment, order, law or regulation applicable to the Lessee or any provisions of the Lessee's articles of incorporation or by-laws, and (iii) do not (A) conflict with, (B) constitute a default under, or (C) result in the creation of any lien, charge, encumbrance or security interest (other than Permitted Liens) upon any assets of the Lessee, under any agreement or instrument to which the Lessee is a party or by which the Lessee or its assets may be bound or affected other than those contemplated hereby and by the Indenture.

(3) This Agreement constitutes a legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms.

(4) There are no pending or, to the knowledge of the Lessee, threatened actions or proceedings before any court or administrative agency which would have a material adverse affect on the ability of the Lessee to perform its obligations under this Agreement.

ARTICLE 3. LEASED LAND AND TERM

Section 3.01. Leased Land. Lessor leases to Lessee, and Lessee hires from Lessor, the Facility Site, located in the County, consisting of 16.55 acres more or less and all access easements, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, in front of or adjoining the Facility Site, and together with any strips and gores relating to the Facility Site, described more particularly in Schedule 1, which is attached to and made a part of this Lease.

Section 3.02. Initial Term. This Lease becomes effective on the Lease Effective Date and shall expire on the day preceding the fifteenth (15th) anniversary of the Amended & Restated Lease Effective Date (the "**Initial Term**"), subject to the right of renewal in Section 3.03.

Section 3.03. Lessee's Right to Renew Lease.

If it is the desire of Lessee to renew this Lease on the expiration of the Initial Term, Lessee shall have an option to renew for an additional period of up to fifteen (15) years from the expiration of the Initial Term (the "**Renewal Period**") on the same terms, covenants,

and conditions herein contained, except as expressly provided otherwise herein, by giving notice of the extension and the time period thereof (in full months) no less than six (6) months prior to the expiration of the Initial Term and provided Lessee is not in default beyond any applicable grace period under this Lease at the time of giving notice (the "**Renewal Option**"). (The "**Initial Term**" together with the "**Renewal Term**" shall constitute the "**Term**" of this Lease.)

ARTICLE 4. RENT

Section 4.01. Amount and Payment of Rent.

(a) For the Initial Term and provided the Service Agreement is in effect, Lessee agrees to pay to Lessor for the use of the Facility Site, in lawful money of the United States, an annual base rent ("**Annual Base Rent**") in the sum of ONE HUNDRED NINETY EIGHT THOUSAND AND NO/100THS DOLLARS, ($198,000.00), payable without notice or demand in one annual payment, in advance on or before the first day of each June during the term hereof; provided that the Rent for any No Service Agreement Period shall be determined pursuant to Section 4.01(c). As hereinafter used the term "**Rent**" shall be deemed to include Annual Base Rent and any other amounts payable by the Lessee under this Agreement ("**Additional Rent**").

(b) Except as may be expressly provided otherwise in this Lease, payment of the Rent required to be made under this Article 4, or payments to be made under any other Article of this Lease, shall be made without any set-off or counter-claim or defense, and shall be made payable to and sent to Lessor at such place as Lessor may from time to time designate by notice to Lessee; provided that during the term of the Service Agreement, the Lessee shall have a right of offset against Rent to the extent that the Contracting Communities have defaulted on their obligation to reimburse the Lessee for Unforeseen Circumstance Costs and/or Discriminatory Taxes as required by the Service Agreement. In the event of a dispute relating to whether such Rent is payable, the dispute shall be resolved pursuant to Article 19.

(c) During the Renewal Period, and at any time during the Initial Term hereof that the Service Agreement is not in effect (a "**No Service Agreement Period**"), Lessee shall pay fixed rent at a fair market rate fixed by mutual agreement of the parties or if the parties are unable to mutually agree on the fair market rate, with an appropriate adjustment mechanism to account for inflation, the fair market rate for rent, based upon the highest and best use (without consideration of the Facility, any related improvements or the Service Agreement), shall be established through the procedure set forth in Section 10.01(g), (the "**Appraisal Procedure**"), through which appraisers will determine the fair market rental therein. Such fair market rental shall then be the Annual Base Rent.

ARTICLE 5. TAXES

Section 5.01. Taxes. (a) Pursuant to California Revenue and Taxation Code Section 107.6, Lessee acknowledges that the property interest created by this Lease may be subject to property taxation, and that the Lessee will obligated to make payment of property taxes levied on such interest during the Term of this Agreement. The Lessee shall pay punctually as Additional Rent (in the same manner as Annual Base Rent) all taxes, payments in

lieu of taxes, special and general assessments, charges, and other governmental impositions and charges of every kind and nature whatsoever (collectively referred to as "**Taxes**"), and each and every installment thereof, which become due and payable, with respect to the Facility Site or any part thereof in the manner and to the place that property taxes to the County are then being paid. The obligation of the Lessee to pay such Additional Rents shall, so long as the Service Agreement is in effect, be reduced to the extent that any "Discriminatory Taxes" are levied against the Facility Site and Lessee has paid such Discriminatory Taxes, and has not been reimbursed pursuant to Section 6.02(b) of the Service Agreement. As used here "**Discriminatory Taxes**" shall mean any taxes, assessments or fees imposed by the County, the City, or any special taxing district or authority under the control of the County or City, that are imposed on the Company, the Facility, its operation or the solid waste industry and that are not generally applicable throughout the entire County.

(b) The Lessee shall be deemed to have complied with the covenants of Section 5.01(a) if payment of such Taxes (other than Discriminatory Taxes) shall have been made either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest or before the same shall become a lien upon the Facility Site, and the Lessee shall produce and exhibit to the County satisfactory evidence of such payment, if the County shall demand the same in writing.

(c) The Lessee agrees that if there shall be any refunds or rebates on account of Discriminatory Taxes paid by the Lessee which have been reimbursed to the Lessee under the Service Agreement, such refund or rebate shall be paid to the County.

(d) Lessee shall have the right, subject to applicable law, to contest, in good faith and with due diligence, the amount or validity of any Taxes by appropriate legal proceedings, provided that if the contested Tax is not paid before the start of legal proceedings, then before instituting any proceedings, Lessee shall furnish to Lessor a surety bond, cash deposit, or other security reasonably satisfactory to Lessor, in an amount sufficient to pay the Tax, together with all interest and penalties and all charges that may be assessed against the Premises in the legal proceedings, as security for the payment of the Tax. In the event of any default by Lessee to pay Taxes such will constitute a default hereunder and Lessor is authorized to use the security deposited under this Section to pay the Tax. The balance, if any, shall be paid to Lessee. Lessee shall at all times keep the Facility Site free from Tax liens by bond, payment under protest or other arrangement.

ARTICLE 6. USE

Section 6.01. Description of Use.

(a) During the Term, Lessee may use and occupy the Facility Site for operating, maintaining, modifying and improving the Facility for the purpose of accepting, storing and processing Acceptable Waste and storing Solid Waste (as such terms are defined in the Service Agreement) and for purposes necessary or incidental in connection with the foregoing, which for purposes of this Agreement shall include use of the site for a waste recovery facility and, while the Service Agreement is in effect, will use the Facility Site for no

other purpose. In connection with Lessee's permitted use, Lessee may install and construct structures, buildings, furnaces, steam turbine/generators and incidental facilities necessary to operate the Facility. Subject to the terms and provisions of the Service Agreement, all improvements to the Facility Site shall be at Lessee's sole cost and expense, and Lessee shall indemnify and hold Lessor free and harmless from any and all damages, costs, expenses, liabilities, losses, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner relate thereto (except to the extent resulting from the negligent acts, negligent omissions or intentional wrongful conduct of Lessor).

(b) All waste materials stored or kept on the Facility Site during the Term by Lessee shall be maintained in a manner so as not to cause a nuisance or violate any law, ordinance, use permit, or government regulation and shall be removed at the expiration or sooner termination of this Lease at Lessee's sole cost and expense.

(c) Lessee shall, at its own cost and expense, promptly observe and comply with all present and future federal, State, county, and city laws, ordinances, requirements, orders, directives, rules, and regulations affecting the Facility Site or improvements or structures thereon or appurtenances thereto or any part thereof, and the Lessee shall pay all costs, expenses, liabilities, losses, County damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed upon the County or the Lessee because of the failure of the Lessee to comply with the covenants of this Section 6.01 except to the extent resulting from the negligent acts, negligent omissions or intentional wrongful conduct of Lessor.

ARTICLE 7. IMPROVEMENTS AND EQUIPMENT

Section 7.01. Improvements. Lessee may improve the Facility Site at its sole cost and expense, subject to the terms and conditions of the Service Agreement when in effect, and for those permitted uses which are set forth in Section 6.01 of this Agreement.

Section 7.02. Utilities. Lessee shall determine the availability of, and is hereby authorized to cause to be installed in, on and about the Facility Site, such other facilities for its use as it may determine appropriate for supply of water, sewage, gas, electricity, telephone and other like services which may be required in Lessee's operations, all in accordance with the terms of the Service Agreement.

Section 7.03. Lessor's Cooperation. Subject to applicable law, Lessor agrees that it shall cooperate and assist Lessee in obtaining any required consents, approvals, licenses, and/or nonexclusive easements on terms which do not interfere with Lessee's rights or obligations under the Service Agreement and which are reasonably required for Lessee's proposed development and use of the Facility upon the Facility Site.

Section 7.04. Rights and Obligations upon Termination.

(a) Upon any expiration or earlier termination of this Lease in accordance with its terms, including without limitation, pursuant to Section 6.05(e) or Section 8.05 of the Service Agreement, the Lessor shall have the right, exercisable only by providing written notice

of exercise to the Lessee at least one hundred twenty (120) days prior to expiration of this Lease and no more than sixty (60) days following any earlier termination, to either (i) accept from the Lessee title to the Facility in its then "as is" condition (free and clear of all mortgages or liens securing debt arising by, through or under Lessee) without payment of consideration of any kind therefor and otherwise in accordance with the provisions of Section 7.04(b) below (the "**As-is Option**"), or (ii) instruct the Lessee to decommission the Facility in accordance with Section 7.04(c) below (the "**Decommission Option**"). The Lessee shall permit the Lessor and its representatives to inspect the Facility during such one hundred twenty (120) day period, subject to the provisions of Section 17.01 hereof. If the Lessor does not timely exercise either such right, then it shall be deemed to have exercised the As-is Option.

(b) If the Lessor has exercised (or is deemed to have exercised) the As-is Option, then the Lessee shall deliver a quit claim bill of sale for the Facility and all improvements on the Facility Site and physical possession of the Facility to the Lessor within ten (10) business days of such exercise (or deemed exercise). The Lessee may remove personal property only if it is not incorporated into the Facility and not used in its operation.

(c) If the Lessor has exercised the Decommission Option, then Lessee shall within one (1) year from such exercise date, remove any and all equipment, machinery, materials, and any other property erected or maintained by Lessee on the Facility Site (excluding the storage pit and pilings), and shall fully de-commission, demolish and remove the Facility , and shall fully restore the Facility Site to the condition it was in upon commencement of the Original Facility Site Lease, except that, subject to Section 7.04(d), the storage pit and cement bottom thereof and pilings may be left in place if filled and covered to grade level with clean soil, in compliance with applicable law. Lessor shall grant Lessee reasonable rights of access to the Facility Site for the purpose of effecting such removals during such one (1) year period. Any of Lessee's property thereafter remaining on the Facility Site after the one-year period shall become the property of Lessor without the payment of any consideration therefor. Lessee shall have any and all right of salvage for its own account (except computer equipment and scales in the scalehouse, notwithstanding that such scales may not be on the Facility Site) if Lessor has exercised the Decommission Option.

(d) Regardless of which Section 7.04(a) option Lessor has exercised (or has been deemed to have exercised), Lessee shall remove or fully remediate any contamination on or in the Facility Site resulting from any acts or omissions of Lessee, including any contamination in or below the storage pit or the pilings, and indemnify and defend Lessor from and against any claims, costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, relating thereto. Either party may engage, at its own cost and with notice to the other party, an independent environmental engineer to investigate the level of contamination, the proposed form and method of removal and/or remediation, and to provide confirmation that the Facility Site is either clean or has been fully remediated and in compliance with all applicable laws and regulations.

(e) Upon expiration or other termination of the Lease, Lessee shall provide a signed statement, in recordable form, that this Facility Site Lease Agreement has terminated. Lessee shall, however, continue to have access to the Site as reasonably required to complete its

obligations under this Section, subsequent to a termination of the Lease, if the Decommission Option has been selected. If either party so requests, the parties will in good faith and acting reasonably, enter into an access agreement to allow completion of the required work hereunder. Upon the earlier of completion of all required work under Section 7.04(c) or the end of the one year period set forth therein, Lessee agrees to execute, acknowledge, and deliver to Lessor a proper instrument in writing releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to all equipment, machinery, materials and other property, or improvements on the Facility Site free of all mortgages or liens securing debt arising by, through or under Lessee.

(f) The obligations set forth in this Section 7.04 shall survive expiration or earlier termination of this Lease, and shall be included as obligations of the Parent Company in the Parent Guaranty to be provided in accordance with Section 20.01 hereof.

Section 7.05. Ingress and Egress During Lease Term.

(a) Lessor understands and acknowledges that Lessee requires ingress and egress to and from the Facility Site over other property owned or controlled by Lessor. The Lessor hereby grants to Lessee a forty (40) foot wide non-exclusive easement for right of ingress and egress to and from the Facility Site over the County's adjacent real properties and generally following the existing roads as shown upon the routes indicated on Schedule 1 attached hereto. In the event said access route becomes impassible, the Lessor shall provide an alternate route. The Lessor agrees that this covenant shall run with its land.

(b) The Lessor also will, at the request of the Lessee, grant to other persons such rights of way or easements over, across or under, the Facility Site, or other adjacent property owned or controlled by Lessor, or grant permits or licenses with respect to the use thereof, as shall be necessary or convenient for the operation or use of the Facility Site, including but not limited to leases, easements or rights of way for utility, roadway, railroad or similar purposes in connection with the Facility Site, as well as access to such facilities or installations, or for the utilization of any real property adjacent to the Facility Site which is owned by the Lessor or leased to the Lessor. The Lessor agrees, at the cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license.

(c) No conveyance effected under the provisions of this section shall entitle the Lessee to any abatement or diminution of the rent payable hereunder or the other payments required to be made by the Lessee under this Agreement.

Section 7.06. Improvements and Maintenance of Routes For Ingress and Egress. The cost and responsibility of creating, improving, maintaining or repairing any route(s) for ingress and egress to and from the Facility Site as provided for in Section 7.05(a) shall be at the sole cost and sole responsibility of Lessor unless otherwise mutually agreed in writing between the parties.

Section 7.07. No Lessor Improvements. Except as may otherwise be provided in the Service Agreement, or such other agreement as may be in effect between the parties hereto,

the Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Facility Site during the Term of this Agreement.

Section 7.08. Quiet Enjoyment. The Lessee upon paying the Rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall have a right of quiet enjoyment of the Facility Site during the Term without hindrance or molestation by, through or under the County.

ARTICLE 8. REPAIRS

Section 8.01. Lessee's Duty to Maintain Premises. At all times during the Term of this Lease, Lessee shall keep and maintain the Facility Site and all improvements thereon in accordance with the maintenance standards set forth herein and in the Service Agreement. As long as Lessee continues to operate the Facility, whether or not under the Service Agreement, the maintenance standards as set forth in the Service Agreement then in effect (or if no Service Agreement is then in effect, the maintenance standards that were in effect at the termination of the Service Agreement) shall be followed and adhered to until there is another agreement relating to maintenance standards between Lessor and Lessee.

ARTICLE 9. MECHANIC'S LIENS

Section 9.01. Prohibition Against Mechanic's Liens — Indemnification of Lessor. Except for Permitted Liens, Lessee shall not suffer or permit to be enforced against the Facility Site, or any part thereof, any mechanic's, materialman's, contractor's, or subcontractor's liens arising from, or any claim for damage growing out of the work of, any construction, repair, restoration, replacement, or improvement, and Lessee shall (subject to Section 9.02 hereof) pay or cause to be paid all such liens, claims, or demands before any action is brought to enforce the same against the Facility Site; and Lessee agrees to indemnify and hold Lessor and the Facility Site free and harmless from all liability for any and all such liens, claims, and demands together with reasonable attorney fees and all costs and expenses in connection therewith.

Section 9.02. Contest by Lessee–Surety Bond. If Lessee shall in good faith contest the validity of any such liens or claim, then Lessee shall, at its expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Lessor or the Facility Site.

Section 9.03. Lessor's Right to Remove Lien. If Lessee fails to discharge such lien or to furnish a bond against the foreclosure thereof as required by the law of the State, Lessor may, but is not obligated to, discharge such lien or take such other action as is reasonably necessary to prevent a judgment of foreclosure upon said lien from being executed against the property, and all costs and expenses, including reasonable attorney fees incurred by Lessor, shall be repaid by Lessee upon demand, and if unpaid may be treated as Additional Rent.

Section 9.04. Notices of Nonresponsibility. Nothing in this Lease shall be deemed or construed in any way as constituting the request or assumption of responsibility by Lessor, expressed or implied, by inference or otherwise, for any contractor, subcontractor,

laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Facility Site, any buildings or improvements thereof, or any part thereof. Lessor shall have the right at all reasonable times to post and keep posted on the Facility Site such notices relating to the nonresponsibility/liability of Lessor as Lessor may reasonably deem necessary for the protection of Lessor and the fee of the Facility Site from mechanic's and materialman's liens.

ARTICLE 10. CONDEMNATION/DAMAGE TO FACILITY

Section 10.01. Loss Events.

(a) If at any time during the Term hereof the whole or a part of the Facility or the Facility Site shall be damaged or destroyed, or there shall be a taking by any governmental authority under the power of condemnation (either of which shall be called a "**Loss Event**"), then the Lessee will promptly give written notice of such Loss Event to the Lessor, generally describing the nature thereof.

(b) Upon the occurrence of any Loss Event consisting of damage to, or destruction of the Facility, Lessee shall be entitled to receive and keep all "net proceeds" that consist of insurance proceeds payable under policies it maintains pursuant to the Service Agreement or otherwise. For the purposes of this Article 10, "**net proceeds**" shall mean the total proceeds of insurance or condemnation less the costs and expenses incurred in connection with negotiating and collecting such proceeds including, without limitation, legal fees.

(c) The Lessor shall have no obligation to rebuild, replace, repair or restore the Facility at any time during the term. However, subject to Section 10.01(h) below and to Sections 6.05(c), (d) or (e) of the Service Agreement, Lessee shall restore the Facility following any Loss Event occurring while the Service Agreement is in effect whether or not Lessee receives adequate insurance or condemnation proceeds for such restoration.

(d) If a Loss Event consisting of a taking by any governmental authority under the power of condemnation shall occur, the net proceeds of such taking shall be divided between Lessor and Lessee in proportion to the fair market sales value (determined in accordance with the "**Appraisal Procedure**" in Section 10.01(g) below) of their respective interests in the Facility and/or the Facility Site so condemned or taken and in a manner consistent with the provisions of this Article 10.

(e) Any awards for a taking for a temporary period of all or part of the Facility or the Facility Site by any governmental authority under the power of condemnation or agreement in lieu thereof, so long as such taking period does not extend beyond the expiration or termination of this Lease, shall be payable solely to Lessee, and Lessee will be obligated to continue to pay the Annual Base Rent during such period.

(f) [Intentionally Omitted].

(g) As used in this Article, "**Appraisal Procedure**" shall mean the procedure specified in the succeeding sentences for determining the fair market rate for rent as provided in

Section 4.01(c), or the fair market sales value described in Section 10.01(d) or any other Section hereof that refers to this Section 10.01(g). In determining the Lessee's interest in the Facility Site under Section 10.01(d), the appraisers hereunder shall assume that the term of this Agreement includes both the Initial Term and the Renewal Period except if the period to extend such renewal has lapsed and such renewal has not been exercised. If either the Lessor or the Lessee shall give written notice to the other requesting a determination of value by appraisal in accordance with this Section 10.01(g), the Lessor and the Lessee shall consult for the purpose of appointing a mutually acceptable qualified independent appraiser. If such parties shall be unable to agree on a single appraiser within 20 days of the giving of notice, such value shall be determined by independent appraisers. One such appraiser shall be selected by the Lessee and another shall be selected by the Lessor; provided, that if either the Lessee or the Lessor shall fail to select an appraiser within 30 days after the giving of such notice, such appraiser upon application of the other party, shall be selected by the American Institute of Real Estate Appraisers (or its successor). The appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such amount or value in writing within 45 days after such appointment and such determination shall be final and binding upon the parties. If the two appraisers selected as aforesaid, after making their own written appraisal, shall fail to agree upon the required valuation within such 45 day period, the two appraisers shall select a third appraiser, and if they shall be unable to agree on a third appraiser within 10 days after each of such two appraisers shall have been selected, such third appraiser shall be selected by the American Institute of Real Estate Appraisers (or its successor) upon application of either party. The third appraiser shall select one of the other two appraisals as the final determination of the appraisers. The fees and expenses of the appraiser appointed or deemed appointed by the Lessee shall be paid by the Lessee, the fees and expenses of the appraiser appointed or deemed appointed by the Lessor shall be paid by the Lessor and the fees and expenses of the third appraiser, or of a single appraiser if only one is appointed, shall be divided equally between the Lessee and the Lessor.

(h) This Lease shall terminate upon the occurrence of the following Loss Events: (i) a taking or condemnation of the entire Facility Site or of so substantial a part thereof as to render the Facility Site incapable of being used for the purposes set forth in this Agreement, (ii) while the Service Agreement is in effect, pursuant to Section 6.05(e) of the Service Agreement, or (iii) while the Service Agreement is in effect but within one year of its stated expiration date or during a No Service Agreement Period, upon Lessee providing to Lessor at least sixty (60) days written notice of termination following such Loss Event.

(i) Unless otherwise agreed, in the event of condemnation or the threat of condemnation, settlement negotiations shall be conducted by the Lessee if the proposed taking involves the Facility, and by the Lessor and the Lessee if the proposed taking involves only the Facility Site (and no portion of the Facility) and no settlement shall be concluded in such latter case without the prior written consent of the other party. In the event the condemnation proceeding in such latter case will be going to trial in a court, both the Lessor and the Lessee shall be entitled to be represented by counsel. In the event in such latter case either the Lessor or the Lessee desires to appeal from a judgment, or the condemnor appeals, the parties agree to prosecute or defend such appeal jointly.

(j) The Lessee shall be entitled to any condemnation award attributable to ownership of the Facility (not including components owned by the Contracting Communities) and the machinery, equipment, spare parts or other property (other than computer equipment and software owned by Lessor) installed in and constituting part of the Facility or used in connection therewith.

(k) The Lessee shall not be entitled to share in any award or awards made in condemnation proceedings for the taking of any property outside of the boundaries of the Facility Site, or any rights in, under or above the streets adjoining the Facility Site, or any rights and benefits of light or air or any rights and benefits of space, below the surface of, or above the Facility Site except to the extent that such award or awards upon any such taking may represent compensation for physical damage to the Facility Site and/or the cost of repairing or restoring the Facility Site by reason of a change in grade of any adjoining public street and then only in accordance with Section 10.01 of this Agreement.

Section 10.02. Rent Abatement. If such taking shall not result in termination of this Lease pursuant to Section 10.01(h), then this Lease shall continue in full force and effect as to the remainder of the Facility Site, and the fixed rental payable by Lessee for the balance of the Term shall be reduced proportionally according to the ratio of the value of the portion of the land taken to the value of the full Facility Site. In case of an inability to agree on the appropriate reduction in fixed rent, the Appraisal Procedures in Section 10.01(g) may be invoked by either party.

Section 10.03. Allocation of Taking Award during Facility Operation. All compensation and damages awarded for the taking of the Facility Site or any portion thereof which does not include a taking of any part of the Facility shall belong to and be the sole property of Lessor. Lessee shall be entitled to any award that may be made for the taking of, or the diminished commercial utility of the Facility, or injury to the Facility or on account of any loss Lessee may sustain in the removal of Lessee's fixtures or equipment or as a result of any alterations or modifications which may be reasonably required by Lessee in order to place the remaining portion of the Facility Site not so condemned in a suitable condition for the continuance of Lessee's operation of the Facility.

Section 10.04. Effect of Termination. If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Article 10, all rentals and other charges theretofore paid hereunder by Lessee to Lessor prior to condemnor taking actual physical possession shall be retained by Lessor. All future rental payments shall be reduced as provided in Section 10.02.

ARTICLE 11. INSURANCE

Section 11.01. Lessee's Worker's Compensation Insurance. Lessee, at its expense, shall at all times during this Lease, carry full and adequate insurance against any risk or loss under the Workers Compensation Act of the State of California.

Section 11.02. Lessee's Insurance. The Lessee, at all times during the Term of this Agreement, at its expense, will procure, maintain and keep in force, (i) during the term of the

Service Agreement, the insurance described in Section 7.03 of the Service Agreement, and (ii) thereafter, (a) commercial general liability insurance for claims for personal injury, death, or property damage, occurring in or about the Facility Site, with limits equal to the limits in effect as of the date of termination of the Service Agreement, but subject to each party's right to request an adjustment to existing coverage, so that the insurance coverage hereunder is consistent with that of similar facilities, provided such adjusted coverage is available on commercially reasonable terms, and (b) property insurance for loss or damage to the Facility (in an amount equal to the cost of the Decommissioning Option under Section 7.04. The Lessee will cause to have the Lessor named as an additional insured on all such insurance policies.

Certificates of insurance for such policies will be delivered to the Lessor. The policy or policies of insurance will be issued by a company or companies licensed in the State of California and will provide that such policy or policies will not be cancelled, terminated, suspended or modified without the insurance company first giving the Lessor written notice thereof, at least thirty (30) days before any such cancellation, termination, suspension or modification shall become effective.

ARTICLE 12. ASSIGNMENTS AND SUBLETTING

Section 12.01. Lessor's Approval Required.

(a) Except with respect to (i) any collateral assignment or granting of a security interest by Lessee in connection with the financing for the Facility in accordance with Article 13, (ii) any assignment or sublease by Lessee under any management or operating agreement entered into by Lessee in connection with the Facility, and/or (iii) any assignment by Lessee in lieu of foreclosure in connection with the enforcement of the collateral assignment or security interest granted pursuant to the immediately preceding clause (i), as to which assignments or subleases Lessor hereby consents, Lessee shall not encumber, assign, or otherwise transfer this Lease, or any right or interest hereunder, and Lessee shall not assign or sublet any or all of its interests in the Facility Site in whole or in part without the prior written consent and approval of Lessor (which consent shall not be unreasonably withheld).

(b) Other than as provided in Section 12.01(a), the Lessee may not at any time assign or transfer this Agreement, or sublet the whole of the Facility Site without the prior written consent of the Lessor (which consent shall not be unreasonably withheld); provided that in the event of a permitted assignment, transfer or sublease, (i) the Lessee shall nevertheless remain liable to the extent herein provided to the Lessor for the payment of all Rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other security document related to the Facility or Facility Site to which it shall be a party and its Parent Company (as defined in Section 20.01) shall acknowledge in writing the continuing effectiveness and enforceability of the Parent Guaranty (as defined in Section 20.01), (ii) any assignee, transferee or sublessee of the Lessee shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (iii) in the opinion of counsel, such assignment, transfer or sublease shall not legally

impair in any material respect the obligations of the Lessee for the payment of Rent nor for the full performance of any and all of the terms, covenants and conditions of this Agreement, and (iv) if during the term of the Service Agreement, such sublessee, or the Facility Operator meets the standards set forth in the Service Agreement. The Lessee shall furnish or cause to be furnished to the Lessor, a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(c) The Lessee may not at any time sublet any portion of the Facility without the prior written consent of the Lessor (which consent shall not be unreasonably withheld); provided that in the event of such permitted subletting (i) such sublease shall not violate any provision of this Agreement; and (ii) in the opinion of counsel such sublease shall not legally impair or limit in any respect the obligations of the Lessee for the payment of Rent nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other security document related to the Facility or the Facility Site to which the Lessee shall be a party. The Lessee shall furnish or cause to be furnished to the Lessor a copy of any such proposed sublease in substantially final form at least thirty (30) days prior to the date of execution thereof. Any consent by the Lessor, to any act of assignment shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Lessor, consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Lessor.

(d) If this Agreement shall be assigned, the Lessor may and is hereby empowered to collect Rent from the assignee. If the Facility Site or any part thereof be sublet or occupied by any Person other than the Lessee, the Lessor, in the event of the default of the Lessee in the payment of Rent may, and is hereby empowered to, collect rent from the subtenant or occupant during the continuance of any such default. In either of such events, the Lessor may apply the net collection to the Rent reserved in this Agreement but no such assignment, subletting, occupancy or collection of rent shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the subtenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessor.

Section 12.02. Termination. Except as provided in subparagraph 12.01(a) above, should Lessee suffer to be made any such assignment, transfer, or subletting without Lessor's consent, thereupon Lessor may, at its option, terminate this Lease forthwith by written notice, and upon such termination this Lease shall cease, and end and be of no further force or effect, except as hereinafter otherwise provided.

Section 12.03. Effect of Lessor's Consent. Should Lessor consent to any such encumbrance, assignment, transfer, or subletting for which Lessor's consent is required, none of the restrictions of this Section shall be thereby waived except as to the subject of such consent, but the same shall apply to each successive assignment, transfer, or subletting hereunder, if any, and shall be severally binding upon each and every encumbrance, assignee, transferee, subtenant, and other successor in interest of Lessee.

Section 12.04. Written Assumption Agreement. In the event of any transfer or assignment as provided for herein (except as security to a Facility Lender in conjunction with financing or refinancing the Facility, in accordance with Article 13), then before such transfer or assignment becomes effective for any purpose, the transferees and assignees must, in writing, assume all the obligations of this Lease and agree to be bound by all terms of this Lease.

ARTICLE 13. RIGHTS OF FACILITY LENDERS

As used herein:

"**Facility Lender**" means any Acceptable Lender that holds a Leasehold Mortgage.

"**Acceptable Lender**" shall mean any of the following:

1. A bank, savings and loan association, investment bank, insurance company, trust company, commercial credit corporation, real estate investment trust, pension or retirement fund, or pension advisory firm or mutual fund, or

2. An investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, which is regularly engaged in the business of making or owning commercial mortgage loans of a similar type.

"**Leasehold Mortgage**" means any mortgage, deed of trust, collateral assignment or other security agreement that creates or constitutes a lien on Lessee's interest in this Lease and the leasehold estate created hereby.

To be the beneficiary of the rights provided for in this Article and be recognized as a "Secured Facility Lender", a Facility Lender shall deliver to Lessor a true or photostatic copy of its Leasehold Mortgage which Leasehold Mortgage shall comply with the provisions of this Lease (as well as with copies of all related loan documents), together with a certification by Lessee and the Facility Lender confirming that said copies include a true copy of the Leasehold Mortgage and all related documents, and the name and address of the Facility Lender and its counsel and contact information therefor in writing.

Section 13.03. Notice to Facility Lenders. Lessor shall send to each Secured Facility Lender, a copy of each notice of default given hereunder from Lessor to Lessee at the same time as such notice is sent to Lessee, addressed to such Facility lender at its address for notices last furnished to Lessor hereunder. No notice of default to Lessee hereunder shall be validly given hereunder unless and until a copy thereof shall have been so sent to each Secured Facility Lender as provided in the preceding sentence *provided, however* that in no event will Lessor be required to deliver notices to more than two Secured Facility Lenders.

Section 13.04. Right of Facility Lender to Cure Lessee Defaults. Subject to the provisions of this Article 13, Secured Facility Lenders shall have the same rights to cure defaults hereunder as are available to Lessee.

Section 13.05. Extension of Time in the Event of Bankruptcy, Etc. If Lessee shall be subject to any bankruptcy or insolvency proceedings at the time a notice of default is given under Section 13.03 hereof, or during the period within which a Secured Facility Lender or foreclosure sale purchaser shall be entitled to cure a default, or if it shall be necessary to obtain the appointment of a receiver for Lessee, or if the exercise of remedies by a Secured Facility Lender is otherwise delayed or hindered, the times for giving notices and effecting a cure of such default shall be extended by (i) the period required in order to obtain a permission of the court having jurisdiction over such proceedings necessary in order to permit the actions called for by this Article 13, or (ii) such period required for such Secured Facility Lender or foreclosure sale purchaser to obtain possession of the Facility.

Section 13.06. Consequences of Cure. If all defaults (other than a default under Article 16) shall be cured by a Secured Facility Lender or any purchaser at a foreclosure sale, any notice by Lessor advising of the existence of such default or any action of Lessor to terminate this Lease or to interfere with the occupancy, use or enjoyment of the Facility Site by reason of such default shall be deemed to be terminated, except with respect to Lessee, and this Lease shall continue in full force and effect with respect to such Secured Facility Lender or foreclosure sale purchaser. Lessee irrevocably requests Lessor to accept, and Lessor hereby agrees to accept, performance of and compliance with any of the terms hereof by a Secured Facility Lender or purchaser at a foreclosure sale if such performance is rendered in compliance with this Article 13, with the same force and effect as though kept, observed or performed by Lessee.

Section 13.07. No Personal Liability. Except as otherwise expressly agreed by the parties, no Secured Facility Lender or foreclosure sale purchaser shall become personally liable for the performance or observance of any covenants or conditions to be performed or observed by Lessee hereunder unless and until such Secured Facility Lender or foreclosure sale purchaser shall have succeeded to Lessee's interest hereunder and then only for so long as such Person owns such interest or is the operator of the Facility.

Section 13.08. Survival. The provisions of this Article 13 with respect to Secured Facility Lenders shall survive termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Article were a separate and independent contract among Lessor, Lessee and such Secured Facility Lenders.

Section 13.09. Amendments. Lessor and Lessee shall cooperate in including in this Lease, by a suitable amendment at the time of the closing of the financing with a prospective Secured Facility Lender, or a refinancing, such provisions which may reasonably be required by such prospective Secured Facility Lender for the purpose of facilitating the implementation of the protection provisions herein; *provided, however,* that no such amendment shall in any way affect the Rent or the Term of this Lease, or affect adversely in any material respect any rights or

interests of Lessor hereunder or increase in any material respect any obligations of Lessor hereunder.

Section 13.10. Lessee Not Relieved of Obligations. Nothing contained in this Article 13, or in any security agreement relating to any Leasehold Mortgage, shall be deemed or construed to relieve Lessee from the full and faithful observance and performance of its covenants, conditions and agreements contained in this Lease, or from liability for the non-observance or non-performance thereof, or to require or provide for the subordination to the lien of any security agreement of any estate, right, title or interest of Lessor in or to the Facility Site or this Lease.

Section 13.11. No Encumbrance on Facility Site. No Leasehold Mortgage or other security agreement or instrument shall create or be a lien or encumbrance on the fee simple interest of Lessor in the Facility Site or any part thereof.

ARTICLE 14. DEFAULT AND REMEDIES

Section 14.01. Termination for Lessee's Defaults. Should Lessee (i) default in the payment of any installment of Rent, or (ii) default in the performance of or materially breach any other term, covenant, condition, or restriction of this Lease herein provided to be kept or performed by Lessee, and if any such default or breach described in clause (i) shall continue for a period of ten business (10) days from and after service upon Lessee of written notice by Lessor and in the case of clause (ii) shall continue for a period of thirty (30) days thereafter and if in the case of clause (ii), the Lessor's notice is of a default of such a nature that it cannot be cured within such thirty (30) day period, but which the Lessee can establish is curable with the exercise of due diligence, then such default shall not be deemed to continue so long as the Lessee, after receiving such notice, proceeds to diligently cure the default in good faith as soon as reasonably possible, then Lessor may, at its option but subject to the rights of mortgagees provided in Article 13 hereof, terminate this Lease by giving Lessee written notice of termination. Upon the giving of such notice to Lessee, the rights of Lessee in and to the Facility Site shall cease and end, and Lessor may, without further notice or demand or legal process, re-enter and take possession of the Facility Site and all improvements thereon and oust Lessee and all persons claiming under Lessee therefrom and Lessee and all such persons shall quit and surrender possession of the Facility Site and all improvements thereon to Lessor. In the event of a termination of this Agreement, Lessee shall be entitled to rights of access to the Facility Site in accordance with the terms of Section 7.04.

Section 14.02. Other Remedies. Any termination of this Lease as herein provided shall not relieve Lessee from the payment of any sum or sums that shall then be due and payable to Lessor hereunder or any claim for damages then and theretofore accrued against Lessee hereunder, and any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums or claim for damages from Lessee for any default hereunder. All rights, options, and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver by Lessor of a breach of any of the

covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

Section 14.03. Limitation of Default. Notwithstanding anything to the contrary in this Article 14, there shall be no default of Lessee under this Agreement if any such default is caused by (i) any failure of the Contracting Communities to perform under the Service Agreement, or (ii) any default of the Contracting Communities under the Service Agreement, or (iii) any failure of the Lessor to meet its obligations under this Agreement, including its covenant to grant the Lessee quiet enjoyment herein, or (iv) by a condemnation or taking by the Lessor.

ARTICLE 15. SURRENDER AND REMOVAL

Subject to Section 7.04 hereof, upon the expiration or sooner termination of this Agreement, the Lessee shall quit and peacefully surrender the Facility Site. In the event Lessee remains in possession after expiration or termination hereof, other than as provided in Section 7.04, Lessee shall be deemed to be occupying the Facility Site as a month to month tenant at a fixed rent equal to one and half times the Annual Base Rent.

ARTICLE 16. BANKRUPTCY AND INSOLVENCY

If, after the Lease Effective Date (a) the Lessee then having the title to the leasehold estate created hereunder shall while having such title be adjudicated a bankrupt or adjudged to be insolvent; (b) a receiver or trustee shall be appointed for the property and affairs of the Lessee; (c) the Lessee shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or (d) any execution or attachment shall be issued against the Lessee or any of the property of the Lessee, whereby the Facility Site or any building or buildings or any improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than the Lessee, except as may herein be permitted, and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged, or bonded within three months after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Article 14 hereof shall become effective and the Lessor shall have the rights and remedies provided for therein; provided that any such event under clause (a), (b), (c) or (d) above shall not be an event of default as long as the Lessee continues to pay Rent and to otherwise meet or cause to be met its obligations under this Agreement.

ARTICLE 17. LESSOR'S GENERAL PROTECTION PROVISIONS

Section 17.01. Lessor's Right of Entry and Inspection. Lessee shall permit, upon reasonable notice to Lessee, Lessor or Lessor's agents, representatives, or employees to enter upon the Facility Site during normal business hours for the purpose of inspection or to determine whether agreements in this Lease are being complied with, so long as such entrances upon the Facility Site do not unreasonably interfere with Lessee's use of such Facility Site and Lessee's

performance of its obligations under the Service Agreement. Lessor shall likewise have the right to cross over or upon the Facility Site at reasonable times in conjunction with Lessor's use of other properties owned or leased by Lessor provided the same shall not unreasonably interfere with Lessee's use of the Facility Site.

In connection with such visits, the Lessor shall, on behalf of itself and its representative, comply, and cause its agents and representatives to comply, with all reasonable operating rules and regulations adopted by the Lessee, including a requirement that each person visiting the Facility Site sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts of the Lessee and (ii) not to disclose or use, consistent with applicable law, any confidential information of the Lessee other than for the purpose for which it was furnished.

Section 17.02. Joint and Several Liability. If more than one lessee or lessor shall exist under this Lease, the obligation of all such lessees or lessors shall be joint and several.

ARTICLE 18. GENERAL PROVISIONS

Section 18.01. Conditions and Covenants. All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions", as well as "covenants", as though the words specifically expressing or imparting covenant and condition status to such provisions were used in each such provision.

Section 18.02. No Waiver of Breach. No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such future breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 18.03. Time of Essence. Time is of the essence of this Lease, and of each provision.

Section 18.04. Computation of Time. The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it is also excluded. The term "holiday" shall mean all holidays specified in Sections 6700 and 6701 of the California Government Code.

Section 18.05. Unavoidable Delay–Force Majeure. As long as the Service Agreement is in effect, either party shall be excused from its performance hereunder (except for the payment of Rent) by reason of Unforeseen Circumstances as defined in the Service Agreement, but shall be excused only to the extent provided under the Service Agreement. Thereafter, if either party shall be delayed or prevented from the performance of any acts required by this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance

of such act shall be excused for the period of the delay; and the nonperformance of any such act shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay, *provided, however*, nothing in this section shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee except as may be expressly provided elsewhere in this Lease.

Section 18.06. Successors in Interest. Each and all of the covenants, rights, conditions, and restrictions in this Lease shall inure to the benefit of and be binding upon the successors in interest of Lessor, and subject to the restrictions of Article 12, the authorized encumbrances, assignees, tenants, subtenants, licensees, and other successors in interest of Lessor and Lessee.

Section 18.07. Governing Law. This Agreement and the performance thereof, shall be governed, interpreted, construed and regulated by the laws of the State of California.

Section 18.08. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

Section 18.09. Amendments or Modifications. This Agreement shall not be modified, amended, terminated or rescinded, except by written instrument executed by the parties hereto.

Section 18.10. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 18.11. Conflict with Provisions of Service Agreement. In the event any provision of this Agreement shall conflict with the provisions of the Service Agreement, the provisions of the Service Agreement shall control.

Section 18.12. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership, joint venture, or any other association between Lessor and Lessee, and neither the method of computation of rent or any other provisions contained in this Lease nor any acts of the parties shall be deemed to create any relationship between Lessor and Lessee, other than the relationship of Lessor and Lessee.

Section 18.13. No Merger. If Lessor's and Lessee's estates in the Facility Site become vested in the same owner, this Lease shall, nevertheless, not be destroyed by application of the doctrine of merger, unless a merger is expressly agreed to in writing by Lessor and Lessee.

Section 18.14. Attorney Fees. In the event either Lessor or Lessee shall bring any action or proceeding for damages for an alleged breach of any provision of this Lease, to

recover Rent, or to endorse, protect, or establish any right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings reasonable attorney fees and court costs.

Section 18.15. Delivery of Rent and Notices–Method and Time. All rents or other sums, notices, demands, or requests from one party to another shall be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

Section 18.16. Payment of Rent. All Rent and other sums payable by Lessee to Lessor shall be in lawful money delivered in person or mailed to Lessor at the following address: Department of Environmental Resources, Accounting Division, 3800 Cornucopia Way, Suite C, Modesto, California 95358.

Section 18.17. Estoppel Certificates. Either party hereto, without charge, at any time and from time to time, within ten days after receipt of written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

(a) That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of such party there are then existing any offsets or defenses in favor of such party against the enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same, and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and, if not, specifying the same; and

(c) The dates to which Rent has been paid.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contrary to those contained in the instrument.

The failure of either Lessor or Lessee to deliver such statement within such ten-day period shall constitute a default hereunder and shall be conclusive upon the requesting party or any other person, firm or corporation for whose benefit the statement was requested, that this Lease is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults on the part of the requesting party.

Section 18.18. Notice to Lessor. All notices, demands, or requests from Lessee to Lessor shall be in writing and if under Article 14, shall be delivered by registered mail, return receipt requested, by overnight carrier service with receipt of delivery, or in person to Lessor at Department of Environmental Resources, Accounting Division, 3800 Cornucopia Way, Suite C, Modesto, California 95358.

Section 18.19. Notice to Lessee. All notices, demands, or requests from Lessor to Lessee shall be in writing and if under Article 14, shall be delivered by registered or certified mail return receipt requested, by overnight carrier service with receipt of delivery, or in person to Lessee at:

445 South Street
Morristown, NJ 07960
Attention: President, Americas

with a copy to

Covanta Energy Corporation
445 South Street
Morristown, NJ 07960
Attention: Vice President & Deputy General Counsel

Other notices hereunder may be delivered by facsimile or by e-mail provided proof of receipt is obtained in each case.

Section 18.20. Recording. A memorandum of this Lease may be recorded by the Lessee in the appropriate office of the County of Stanislaus County, California.

ARTICLE 19. DISPUTE RESOLUTION

Section 19.01. Agreement to Arbitrate. In the event any dispute arises between the Lessee and the Lessor, either party may serve written notice of such dispute on the other party and each party shall undertake in good faith to resolve such dispute. Except where a dispute or issue hereunder is required to be resolved in accordance with Section 10.01(g) (Appraisal Procedure), or as may be otherwise agreed to by the parties hereto, if the parties have not resolved the dispute within fifteen (15) days after such written notice, either party may, by further written notice (an "**Arbitration Notice**") to the other party, commence an arbitration proceeding pursuant to this Article 19. Except as otherwise provided in this Article 19, the parties hereby agree to submit exclusively to arbitration any and all disputes arising under this Agreement, and the determination of the Arbitrator (hereinafter defined) shall be final and binding (the "**Award**"). The Award shall determine (i) whether each party's obligations were met and (ii) what damages or remedies are due to either the County or the Lessee under the terms of this Agreement. The agreement to arbitrate contained in this Article 19 shall be specifically enforceable under the prevailing arbitration law, and shall survive termination of this Agreement. Judgment upon the Award rendered by the arbitrator or arbitration panel may be entered in accordance with applicable law in any court having jurisdiction.

Section 19.02. Contents of Arbitration Notice. The Arbitration Notice shall be filed simultaneously with the American Arbitration Association ("**AAA**"), and shall contain a statement of the amount in controversy and a description of the dispute, and shall attach a copy of the arbitration provisions of this Agreement. The parties shall prepare in writing a statement of their positions, together with counterclaims, with supporting facts, data, and affidavits, if any, for the Arbitrator and the other party within ten (10) days after the Appointment Date

(hereinafter defined). The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the AAA (the "**Rules**").

Section 19.03. Selection of Arbitrator. The arbitration shall be conducted before a single arbitrator (the **"Arbitrator"**), who shall be neutral and impartial. Neither party to this Agreement shall have the right to remove the Arbitrator except in accordance with the Rules and as provided in this Section. The parties will attempt in good faith to agree on the selection of the Arbitrator and, in the event that the initial Arbitrator resigns, is unable to serve, or is disqualified, the successor Arbitrator. If the parties have not agreed upon the Arbitrator, whether initial or successor, as the case may be, within fifteen (15) days from either the Arbitration Notice or the date that a then-current Arbitrator resigns, is unable to serve, or is disqualified, the following procedure shall be used to select the initial Arbitrator (and all subsequent successor Arbitrators): The parties shall obtain from the AAA a list of ten (10) candidates together with full AAA disclosures on each candidate. (The date of receipt of such list and of all such disclosures is the "**Nomination Date**"). Each candidate shall be approved by AAA and deemed qualified and unbiased by AAA and be willing to serve if selected and no candidate, nor any member of his or her family, or firm or company, shall have had a prior relationship, directly or indirectly with either party. Each party also hereby represents and covenants that it will not engage an Arbitrator, or any family member, for a period of at least five years following issuance of an Award by such Arbitrator. If either party fails to submit a list of ranked candidates within ten (10) days of the Nomination Date, the third name listed on the list provided by the party submitting a list shall be deemed to be the Arbitrator.

Each party shall rank the ten candidates in its order of preference and submit the ranked list to the other party within ten (10) days after the Nomination Date; the candidate with the highest combined ranking of mutual preference shall be the Arbitrator. If there is a tie, the arbitrator with smallest difference between the rankings of the two parties (*e.g.*, if one candidate scores a 4 on each list and one scores a 1 and a 7, the candidate with two rankings of 4 shall be the one selected) shall be selected the Arbitrator and if there is still a tie, the candidate who has been an AAA arbitrator the longest shall become the Arbitrator. The parties shall promptly notify AAA of the selected Arbitrator (the **"Appointment Date"**). The Arbitrator shall serve for one arbitration unless he or she earlier resigns, is unable to serve, or is disqualified.

Section 19.04. Discovery. The parties to such arbitration shall have, for a period of ninety (90) days after the service of the Arbitration Notice, subject to extensions of such period by the Arbitrator (not to exceed sixty (60) days in the aggregate) upon a showing of good cause by either party (the "**Discovery Period**"), all rights of discovery provided in the commercial arbitration rules of the AAA, except that all responses to discovery requests shall be served within ten (10) days of such discovery request, unless such time period is extended by the parties or by the Arbitrator, provided extensions by the Arbitrator do not exceed 20 days in the aggregate.

Section 19.05. Continuance of Performance. Unless otherwise agreed in writing or as provided herein, the parties shall continue to perform their respective obligations under this Agreement during any arbitration proceedings.

Section 19.06. Costs of Arbitration. Each party shall bear its own costs for arbitration, subject to reimbursement as determined by the Arbitrator in the Award.

Section 19.07. Site of Arbitration. Arbitration shall, unless the parties otherwise agree in writing, take place in Modesto, California.

Section 19.08. Equitable Relief Not Precluded. Nothing contained in this Article 19 shall preclude, or be deemed, construed or interpreted to preclude any party from seeking interim equitable relief, except that no party shall be entitled to seek a stay of any arbitration proceeding brought hereunder.

Section 19.09. Limited Court Challenge. The Award shall not be subject to appeal to, or review by, any court or administrative body except as to (i) compliance with the requirements of this Article 19, (ii) the existence of, or a failure of the Arbitrator to have disclosed, any conflict, contacts or relationships set forth in the questions contained (as of the time the Arbitration Notice is given) in the Notice of Appointment/Disclosure Guidelines of the International Centre for Dispute Resolution (a Division of the AAA), or its successor, unless the party adversely affected shall have waived objection thereto in writing, (iii) evidence of partiality on the part of the Arbitrator, or improper contacts with the Arbitrator by a party or its representatives or witnesses between the Appointment Date and the issuance of the Award, or (iv) any of the grounds provided in Section 10.01 of the Federal Arbitration Act.

ARTICLE 20. PARENT GUARANTY

Section 20.01. Parent Guaranty. As a condition precedent to the obligations and liabilities of Lessor hereunder, Covanta Holding Corporation, its successors and assigns, (the "**Parent Company**") shall have entered into the Parent Guaranty as defined in and required by the Service Agreement for the benefit of the Contracting Communities, which Parent Guaranty shall include guaranties of Lessee's obligations under Section 7.04 of this Lease. Lessor shall receive a legal opinion from counsel for the Parent Company as to the due authorization, execution and delivery of the Parent Guaranty, and to its enforceability, in a form reasonably acceptable to counsel to the County.

IN WITNESS WHEREOF, the County of Stanislaus, California and Covanta Stanislaus, Inc. have caused this Facility Site Lease Agreement to be signed in their respective corporate names all as of the day and year first above written.

LESSOR:
COUNTY OF STANISLAUS, CALIFORNIA

By: Monica Nino
Title: CEO

LESSEE:
COVANTA STANISLAUS, INC.

KAO

By: PAUL E. STAUDER
Title: SVP Business Management

STATE OF ~~CALIFORNIA~~ New Jersey)
COUNTY OF ~~STANISLAUS~~ Morris) SS.

On June 20, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul E. Stauder, known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Vice President on behalf of Covanta Stanislaus, Inc., a California corporation, the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official stamp.

Jane Gross

Notary Public in and for
said County and State

Jane Gross
Notary Public, State of New Jersey
Passaic County
Notary No. 2097574
My Commission Expires Feb. 25, 2017

ACKNOWLEDGMENT

State of California
County of STANISLAUS)

On JULY 5, 2012 before me, THERESA A. GUNTER NOTARY PUBLIC
(insert name and title of the officer)

personally appeared MONICA NINO CEO,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/~~she/~~they~~ executed the same in ~~his/~~her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

THERESA A. GUNTER
Commission # 1893221
Notary Public - California
Stanislaus County
My Comm. Expires Jun 19, 2014

Signature _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: AMENDED AND RESTATED FACILITY/SITE LEASE AGREEMENT

Document Date: JULY 5, 2012 Number of Pages: _____

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

SCHEDULE 1

Facility Site

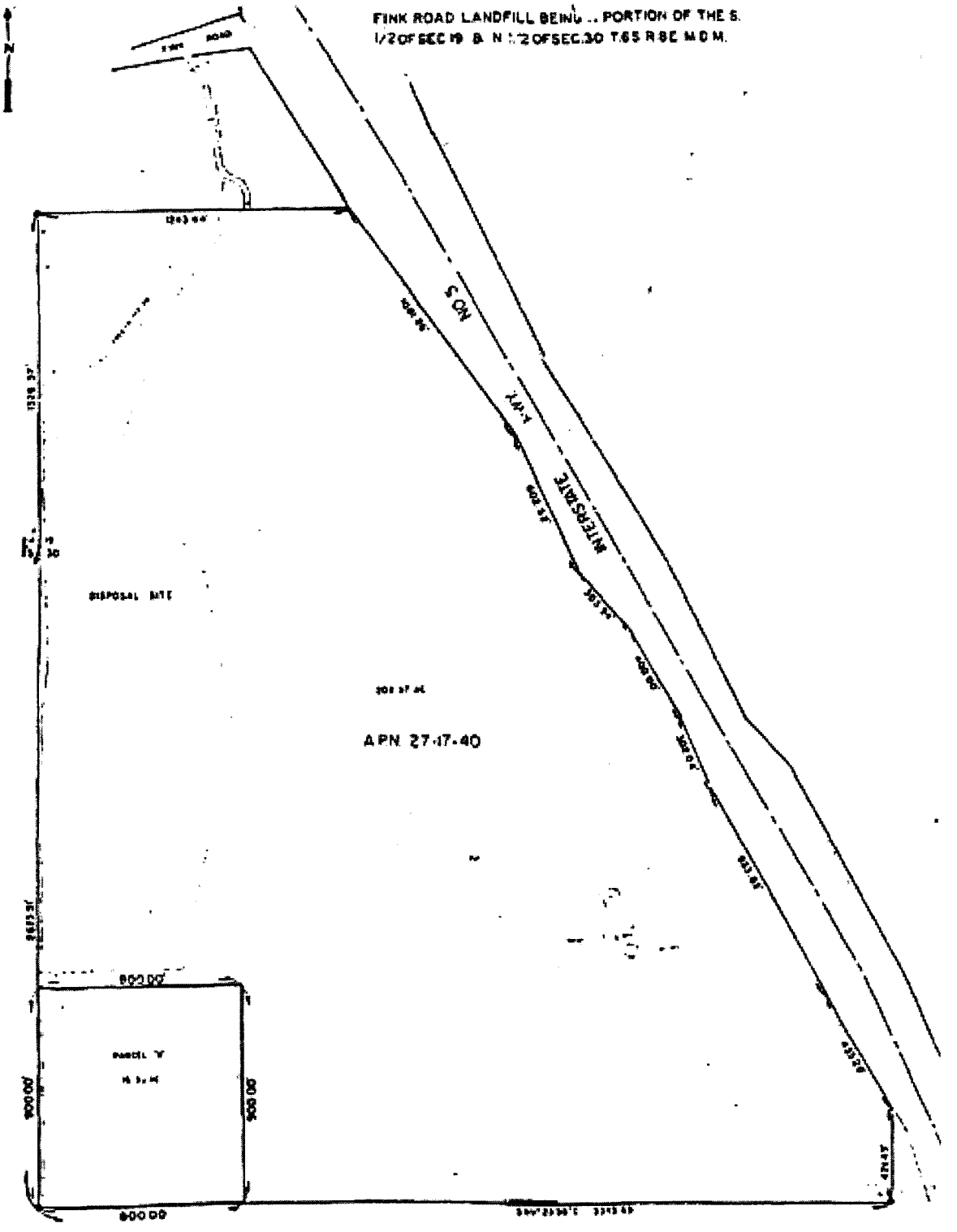
Parcel No. 1

Parcel A as shown and delineated on that certain map of a portion of the Southwest Quarter of the Northwest Quarter of Section 30, Township 6 South, Range 8 East, Mount Diablo Base and Meridian, filed June 26, 1986 in Book 38 of Parcel Maps, at page 36, Stanislaus County Records.

Reserving to Edgar Allen Bacon, Winifred Edna Bacon and Myrtle Eleanor Bacon Burr, their representatives, heirs, executors, administrators, and assigns, all minerals, oil, gas and other hydrocarbon substances lying below a level plain 500 feet below the lowest point on the surface of the described property, *provided, however*, that in no event shall they or their representatives, heirs, executors, administrators, or assigns, have the right to drill or mine from the surface of such lands or any portion of said land which lies above a level plain located 500 feet below the lowest point on the surface thereof.

Parcel No. 2

A Non-Exclusive Easement for a 40 foot road and public utilities over, under, along and across that certain access easement shown and delineated on the above referred to Parcel Map 38 PM 36 wherein said easement extends from Parcel A above referred to northerly through the Northwest Quarter of Section 30 and the Southwest Quarter of Section 19, Township 6 South, Range 8 East, Mount Diablo Base and Meridian, to the existing County Road known as Fink Road.


FINK ROAD LANDFILL BEING A PORTION OF THE S.
1/2 OF SEC 19 & N 1/2 OF SEC. 30 T.6S R.8E M.D.M.
N
APN 27-17-40
DISPOSAL SITE
PARCEL 'A'
800.00'
800.00'
800.00'

Attachment

“C”

AMENDMENT NO. 3
to
AGREEMENT BETWEEN CITY OF MODESTO AND COUNTY OF STANISLAUS
RELATING TO ADMINISTRATION OF SERVICE AGREEMENT
FOR SUPPLY AND ACCEPTANCE OF SOLID WASTE

Pursuant to Paragraph 11 of the Agreement Between City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste (the "Administration Agreement"), the City of Modesto ("City") and the County of Stanislaus ("County"), hereby modify the Administration Agreement as follows:

1. Section 3 of the Administration Agreement is deleted in its entirety, and is replaced with a new Section 3 of the Administration Agreement as follows:

   "The Solid Waste-to-Energy Executive Committee shall prepare or cause to be prepared, and shall adopt prior to July 1 of each year, a budget for the following fiscal year, commencing on July 1, for the administration of the Service Agreement hereinabove described. Upon approval by the Executive Committee, the Solid Waste-to-Energy staff shall administer the Service Agreement in accordance with said budget and pursuant to the terms of this Agreement."

2. The following paragraph is added to Section 5 of the Administration Agreement:

   "In the event Covanta Stanislaus, Inc. exercises the one-time December 31, 2016 termination option of the New Service Agreement, or upon the expiration of the lease term or any earlier termination of the Site Lease Agreement, the County shall become the owner of the facility, but shall meet and confer with the City to discuss whether City would desire an ownership interest in the facility."

3. Section 6 of the Administration Agreement is deleted in its entirety, and is replaced with a new Section 6 of the Administration Agreement as follows:

   "For the purpose of providing funds for the operation and administration of the Waste-to-Energy Facility and this Administration Agreement, City and County agree to the following:

   a. City shall be responsible to ensure delivery of at least 58% of the Guaranteed Tonnage specified in the New Service Agreement with

Covanta Stanislaus, Inc., and County shall be responsible to ensure delivery of at least 42% of the Guaranteed Tonnage. Tonnages delivered by other cities of Stanislaus County (hereinafter referred to as "Regional Agency Cities") shall be split equally between the City and the County and applied towards the respective minimum guaranteed tonnages of the City and County.

b. City and County agree to work cooperatively to ensure that the Regional Agency Cities, since they also benefit from the use of the facility via credits for diversion to meet the State mandates and receive revenues for their jurisdiction's solid waste programs from the AB 939 Program fees, continue to deliver their historical percentages of wastes from in-County sources to the Facility, which total 33% of the waste. Payments of AB939 Program fees to the Regional Agency Cities shall be based on actual tonnages that each City deliveries.

c. Upon execution of the New Service Agreement, the tip fee paid to Covanta for processing waste at the Facility shall be $32 per ton, escalated per the New Service Agreement. Revenues from tip fees charged to the haulers for wastes delivered to the Facility shall be deposited in the Resource Recovery Account and shall be used to pay Covanta the aforementioned $32 per ton. Notwithstanding subsections "b" and "c" above, savings resulting from any discounted tip fee payments to Covanta due to the Facility accepting excess waste over the Guaranteed Tonnage shall remain in the Resource Recovery Account.

d. In addition to the tip fee paid to Covanta, a $3.00 per ton AB 939 Program fee and a $3.00 per ton Household Hazardous Waste fee will continue to be charged for wastes brought to the facility, and shall be deposited in the Resource Recovery Account. The AB 939 Program fee shall be distributed to the City, Regional Agency Cities and County pursuant to the respective AB939 Memorandums of Understanding between the Regional Agency Cities, the City and County, as amended, and shall be based on the actual tonnages delivered to the facility by each city and the County. The Household Hazardous Waste fee shall be used to fund the operation of the Household Hazardous Waste facility for use by all jurisdictions within the County. Such fees may be adjusted from time to time by mutual agreement of City and County.

e. An administrative tip fee of $1.00 per ton shall be charged in addition to the tip fees mentioned in subsections "c" and "d" above, which shall also be deposited in the Resource Recovery Account. This tip fee shall

be for the staffing, operating and administrative costs for the Waste-to-Energy portion of the scale house activities including the computer system maintenance, and for administrative and record keeping costs associated with the New Service Agreement. The administrative tip fee shall be distributed from the Resource Recovery Account to the County at a rate of $0.50 per ton for the scale house activities and $0.25 per ton for the administration of the New Service Agreement, and to the City of Modesto Solid Waste Division at a rate of $0.25 per ton for the City's administration cost of the New Service Agreement, by July 15 of each year, for each fiscal year ending June 30.

f. To address the future financial risk exposure under the New Service Agreement from the 25% share of Unforeseen Circumstances costs agreed to by the City and County, $3,750,000 of the balance in the Resource Recovery Account will be set aside on the effective date of the New Service Agreement in a separate sub fund for this purpose. In the event that future Unforeseen Circumstances cost exceed the funds set aside for this contingency, City and County agree to either increase tip fees in an amount sufficient to cover any shortfall, or to negotiate some other method by which such shortfall can be addressed.

g. An additional sum of $2,000,000 from the Resource Recovery will be set aside in a separate sub fund on the effective date of the New Service Agreement for any other contingencies during the term of the New Service Agreement. A minimum balance of $1,000,000 shall be maintained in the contingency fund at all times. City and County shall review this arrangement every five years to assess the need to continue reserving this sum for contingencies. In the event it is determined by mutual agreement that the reserve is no longer needed, the remaining balance of the reserve will be distributed 58% to the City and 42% to the County.

h. On January 1, 2013, the effective beginning cash balance of the Resource Recovery Account on record for July 1, 2012 and total of any insurance or other payments received from Covanta on lost energy revenue as a result of the January 2012 turbine generator failure if not already included in the July 1, 2012 cash balance, shall be apportioned 58% to the City and 42% to the County, based on the historical deliveries to the facility by each entity and the investment risk taken by the City and County in the implementation of the project for the benefit of all jurisdictions in the County. If any remaining insurance or other payments related to the lost energy revenue are

received after January 1, 2013, these payments shall also be apportioned 58% to the City and 42% to the County.

i. Interest earned on the $2,000,000 held in the Resource Recovery Account for contingencies shall be distributed by July 31 of each year, for each fiscal year ending June 30, using a distribution ratio of 58% to the City and 42% to the County. The interest amount to be distributed shall be calculated using the County Treasurer's fiscal year average annual interest rate for the Pooled Cash of the Resource Recovery Account. Interest earned on the $3,750,000 shall remain in the sub fund.

j. Proceeds from the distribution of the Resource Recovery Account and any associated interest shall be used by each entity to stabilize disposal charges to the City's and County's residents in a manner determined by each entity and to cover City's and County's administrative costs associated with the project which are not sufficiently covered by subsection "e" above."

4. Section 7 (a) of the Administration Agreement is deleted in it's entirety, and is replaced with a new Section 7 (a) and a new Section 7 (b) of the Administration Agreement as follows:

(a) "Pursuant to established practice, County Treasurer shall act as Treasurer of the Resource Recovery Account. Beginning with the fiscal year ending June 30, 2012, and every year thereafter, City and County may audit the Resource Recovery Account as part of normal, internal auditing procedures. Upon written request by the City at least 30 days in advance, County shall make the books and records of the Resource Recovery Account available to the City for auditing purposes.

(b) All disbursements of funds from the Resource Recovery Account, including, but not limited to fees established in this Agreement, including payments of AB 939 Program Fees made to regional Agency cities, costs associated with Change in Law or Contingencies, and costs associated with any audit work or other professional services performed on behalf of the project shall be approved in writing in advance by both County and City project staff."

5. Section 8 of the Administration Agreement is deleted in its entirety, and is replaced with a new Section 8 of the Administration Agreement as follows:

"It is expressly agreed by and between the City and the County that their obligations for all liabilities with respect to this Administrative

Agreement and the New Service Agreement with Covanta Stanislaus, Inc, shall be joint and several. To this end, City and County agree that if either or both parties fails to meet their respective minimum tonnage delivery requirement per section 6 a of this Agreement, after the tonnages of other cities are applied equally among them, then any payments due to Covanta for such delivery shortfalls initially shall be made from the Contingency Fund established pursuant to Section 6 g of this agreement, up to a maximum of $1,000,000.

City and County further agree that in the event of a delivery shortfall, both the City and County shall immediately commence working cooperatively with each other to cure such shortfall within 5 days of notice of said shortfall, and shall pursue the cure with due diligence thereafter.

If the delivery shortfall is due to the failure of any of the Regional Agency cities to deliver historical tonnages to the facility, City and County shall pursue every available option to restore deliveries by said Regional Agency city. While City and County pursue such options, City and County shall also direct their respective collection companies to increase deliveries of acceptable waste to the facility to make up the shortfall.

If the delivery shortfall is due to the failure of any collection company licensed by the City or franchised by the County to deliver acceptable waste to the facility, then City and County shall pursue every available remedy available to them pursuant to the terms of their agreements with the collection companies to restore deliveries to the required levels.

If a delivery shortfall causes the balance in the Contingency Fund to fall below the $1,000,000 level established by Section 6 g of the Agreement, City and County further agree to consider an increase to the disposal fee at the facility at the time of the annual adjustment to such disposal fee to restore the fund balance to the required $1,000,000 level.

- Signatures on Following Page -

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 to the Administration Agreement in duplicate on June 26, 2012.

COUNTY OF STANISLAUS

By: _____
Chairman
Board of Supervisors

"County"

ATTEST: Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: _____
Clerk

APPROVED AS TO CONTENT:
Department of Environmental
Resources

By: _____
Jami Aggers
Interim Director

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____
John P. Doering
County Counsel

CITY OF MODESTO

By: _____
Mayor

"City"

ATTEST: Stephanie Lopez
City Clerk

By: _____
Clerk Reso 2012-265 June 26, 2012

APPROVED AS TO CONTENT:
Parks, Recreation and Neighborhoods
Department

By: _____
Julie G. Hannon
Director

APPROVED AS TO FORM:
Susanna Wood
City Attorney

By: _____
Roland R. Stevens
Assistant City Attorney

Dee Williams-Ridley, Deputy City Manager, City of Mc

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BACKGROUND

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BACKGROUND

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CURRENT CONTRACT HIGHLIGHTS

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CURRENT CONTRACT HIGHLIGHTS

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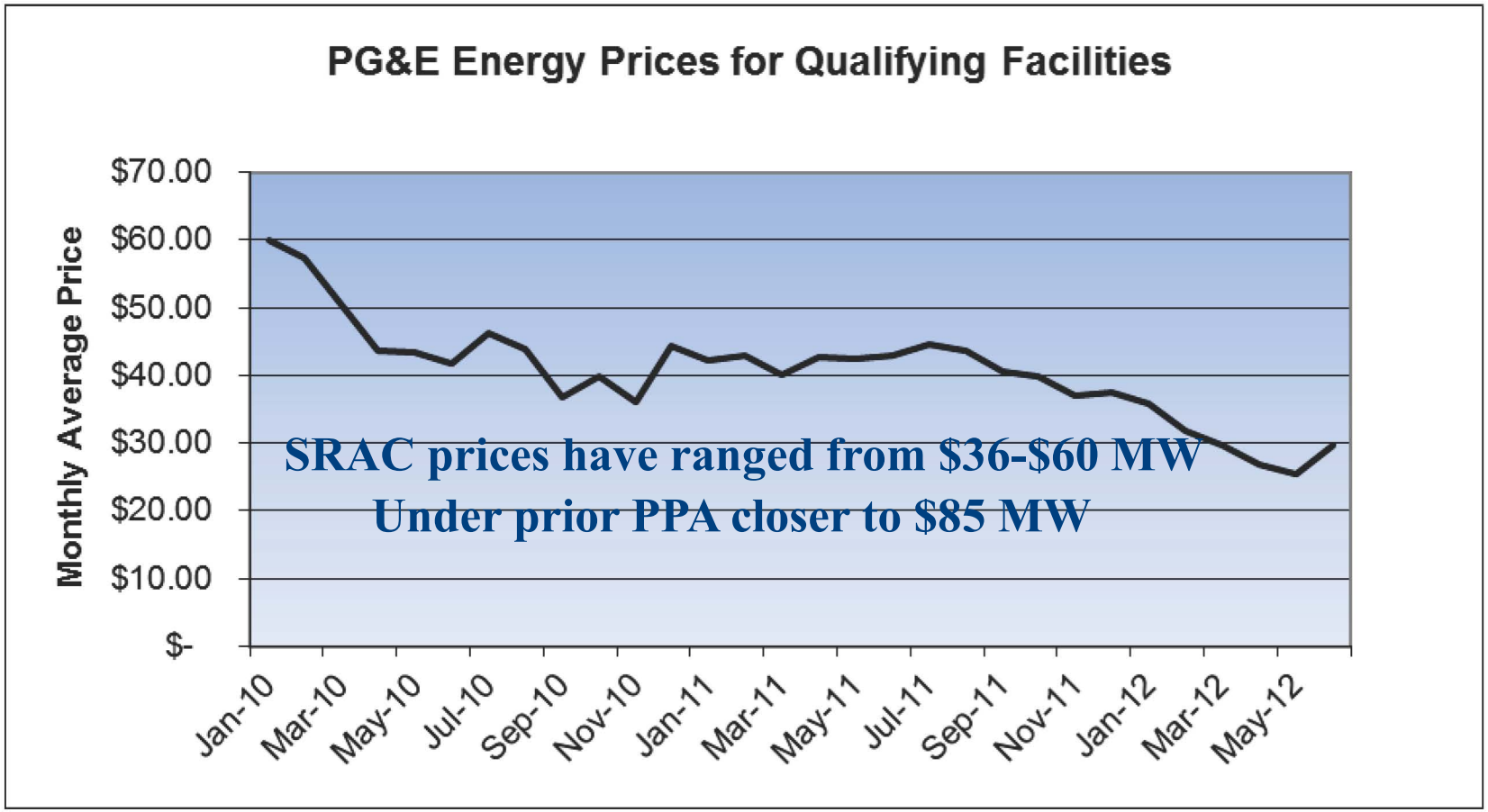

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Objective Based Approach

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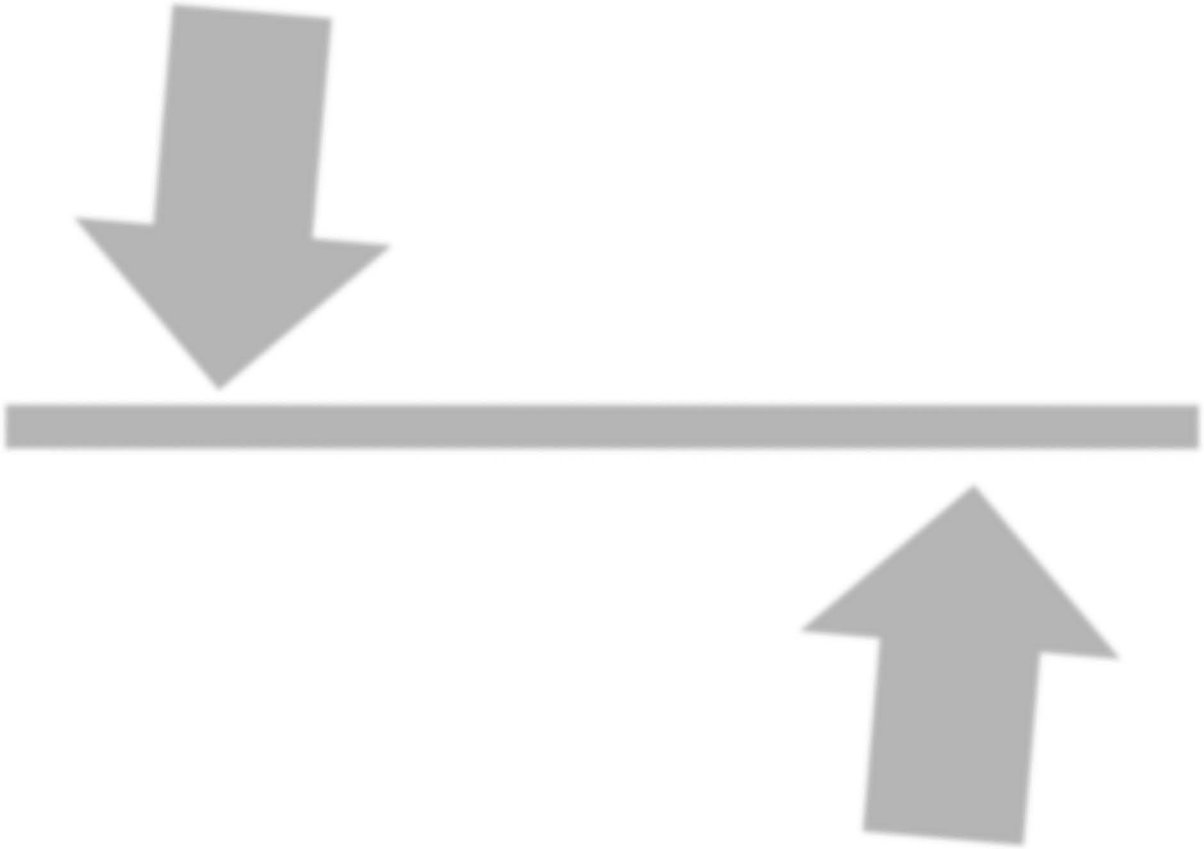


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Disposal Fees	$7,030,953
Electricity Revenues	$5,488,362
Supplemental Waste Revenue	$369,498
Metal Recovery	$300,352
Total Revenue	$13,189,165
Total Operating Expenses	$16,689,187
Operating Loss	**($3,500,022)**

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