

Amended WASTE DELIVERY/DISPOSAL AGREEMENT
FAIRFAX COUNTY VIRGINIA AND THE DISTRICT OF COLUMBIA

This Amended Agreement dated 4/26, 2012, ("Agreement") is to the Waste Delivery/Disposal Agreement dated December 5, 2008, as amended on May 1, 2010, between Fairfax County, Virginia (the "County") and the District of Columbia, (the "District"); and

WHEREAS, the County and the District have had a mutually beneficial relationship in the shared use of solid waste management facilities since 1971; and

WHEREAS, the County has developed an Energy/Resource Recovery Facility (E/RRF) on property in Lorton, Virginia; and

WHEREAS, the District operates two solid waste transfer facilities; and

WHEREAS, the District hierarchy for waste disposal options identifies resource recovery as a preferred option to land disposal of waste; and

WHEREAS, the County finds it beneficial to make certain capacity at the E/RRF available to the District; and

WHEREAS, the County and the District have previously worked together to mutually resolve solid waste issues and agree to take all necessary and appropriate action in cooperation with one another, to carry out and be bound by this Agreement to the extent permitted by law.

NOW, THEREFORE, the parties agree as follows:

1. The District, and firms authorized as acting on behalf of the District in accordance with the terms of this Agreement, will use the E/RRF for the disposal of acceptable waste. "Acceptable Waste" means solid waste which can be processed in the E/RRF and is not one of the "Unacceptable Wastes" as listed in Schedule 3. Acceptable Waste shall also include only the types of waste allowed by the Virginia Department of Environmental Quality. The District will inform the County in writing of the names of the firms authorized to act on the District's behalf for the purposes of disposing Acceptable Waste provided that the District shall pay the disposal fees for such waste and such designation of private haulers shall not relieve the District of its obligations under this Agreement.

2. Vehicles delivering Acceptable Waste pursuant to this Agreement will access the E/RRF via U.S. Route 1 and Furnace Road. The County shall specify reasonable alternative means of access if these routes become impassable for any reason. Lorton Road, Route 624, shall not be used without prior County authorization.

3. The disposal fees charged to the District will be in accordance with Schedule 1 of this Agreement. Disposal fees established under this Agreement will be adjusted to reflect any state or federally imposed surcharge, tax or fee on solid waste management or disposal which become effective after the date of this Agreement.

4. The County will invoice the District monthly for the disposal service provided at the E/RRF. The District shall pay the County within 45 days of the date of the invoice. The District will pay interest penalties on amounts due to the County under the Quick Payment Act, D.C. Official Code § 2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a.) the 3rd day after the required payment date for meat or a meat product;
- b.) the 5th day after the required payment date for an agricultural commodity; or
- c.) the 15th day after the required payment date for any other item.

Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount. Failure to make payment when due may result in the suspension of services.

5. The County will make capacity at the E/RRF available to the District for disposal of Acceptable Waste on an as available basis. The District will divert all waste under its control to the E/RRF unless requested not to by the County. It is anticipated that the County will be able to accommodate up to 250,000 tons per year of Acceptable Waste.

6. If and to the extent events or circumstances beyond the County's reasonable control, excluding routine emergency and planned maintenance, cause the E/RRF to be unable to accept any of the District's Acceptable Waste to be delivered pursuant to paragraph 5, the County may redirect District Acceptable Waste to an alternate disposal site without notice. The County will pay disposal costs at the alternate site and include those diverted tonnages in the month billing to the District at the price in this Agreement. The District will pay its contractor any increased haul cost.

7. Delivery of Acceptable Waste to the E/RRF will be in accordance with the rules and regulations established by the County and by Covanta Fairfax, Inc. ("Covanta"), the owner/operator of the E/RRF. Any driver who does not abide by the rules and regulations may be restricted from making deliveries. The normal delivery hours will be in accordance with the Receiving Schedule provided in Schedule 2 of the Agreement.

8. a.) For waste hauling contracts already in place prior to the execution of this Agreement, the District shall require any contractor who delivers waste under this Agreement to the E/RRF or County facility to have (a) insurance with minimum per Person/Occurrence limits of \$300,000.00/\$600,000.00 for bodily injury and Occurrence/Aggregate limits of \$150,000.00/\$300,000.00 for property damage; and (b) motor vehicle insurance with per Person/Occurrence limits of \$200,000.00/\$500,000.00 for bodily injury and Occurrence/limits of \$30,000.00 for property damage. The contractor's insurance shall cover all owned, hired, or non-owned motor vehicles used during the term of the contract.

b.) For waste hauling contracts executed subsequent to the effective date of this Agreement, the District shall require any contractor who delivers waste under this Agreement to the E/RRF or County facility to have (a) insurance with minimum per Person/Occurrence limits of \$500,000.00/\$1,000,000.00 for bodily injury and Occurrence/Aggregate limits of

\$500,000.00/\$1,000,000.00 for property damage; and (b) motor vehicle insurance with per Person/Occurrence limits of \$500,000.00/\$1,000,000.00 for bodily injury and Occurrence/limits of \$100,000.00 for property damage. The contractor's insurance shall cover all owned, hired, or non-owned motor vehicles used during the term of the contract.

9. The administrators of this Agreement will be:

For the County:

Director, Division of Solid Waste Disposal and Resource Recovery
Suite 458
12000 Government Center Parkway
Fairfax, Virginia 22035

For the District:

Administrator, Solid Waste Management Administration
D.C. Department of Public Works
2750 South Capitol Street, S.E.
Washington, D.C. 20032

with a cc to:

General Counsel
D.C. Department of Public Works
2000 14th Street, N.W.
Washington, DC 20009

All notices, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be sent by facsimile, delivered by hand or mailed by first class registered or certified mail, return receipt requested, and shall be addressed to the Administrators at the above addresses.

10. The County and the District may provide support for each other on solid waste related special projects, emergency support, or other needs. Disposal fees for certain other materials, in addition to Acceptable Waste, are listed on Schedule 1. The cost of other support will be based on hourly rates for labor and equipment which will be exchanged prior to the start of each contract year.

11. The term of this agreement is effective upon execution through December 31, 2015. The annual charge will not exceed a ceiling of \$8,750,000. On or before June 5, 2015, the County will advise the District of its future ability to continue providing disposal service, based on waste quantities, E/RRF capability, and County access to the capacity of the E/RRF. This agreement may be extended beyond December 31, 2015 on terms mutually agreeable to the County and the District if, by June 5, 2015, the County advises the District of its ability to continue to provide service, and the District indicates its willingness to continue by October 31, 2015.

12. Either party may terminate this Agreement for any reason by giving 90 days advance notice in writing to the other party. Should the County not have a Service Agreement with Covanta Fairfax Inc., or should an unforeseen event occur which would prevent either party from complying with this contract, then this contract may be terminated with 60 days notice by either party.

13. The obligations of the County and the District under this Agreement are contingent upon the appropriation for each fiscal year for payments and services under this Agreement.

14. This Agreement may not be assigned by either party without the prior written consent of the other party.

15. From the effective date, this Agreement constitutes the entire and complete agreement of the parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous understandings, arrangements, commitments, and representations, all of which, whether oral or written, are merged into this Agreement. The terms of the Waste Delivery/Disposal Agreement dated May 1, 2010, govern performance prior to the effective date of this Agreement.

16. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any permitted successor or assignee.

17. In the event irreconcilable differences arise between the County and the District the matter shall be referred to a mutually agreeable impartial arbitrator whose decision shall be binding. The County and District shall share in the cost of any arbitration.

18. The laws of the State of Virginia shall govern the validity, interpretation, construction, and performance of this Agreement.

19. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

20. If any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable, the Parties shall make good faith efforts to modify this Agreement in a manner to implement the intent of the Parties as embodied herein. Any resulting modification and the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. This Agreement may be amended by the written agreement of both parties. No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party and nothing in this Agreement shall be deemed to constitute one party a partner, agent, or legal representative of the other party or to create any fiduciary relationship between the parties.

FAIRFAX COUNTY, VIRGINIA

By AK Griffin
Anthony H. Griffin
County Executive

3/27/12
Date

DISTRICT OF COLUMBIA

By William O. Howland, Jr.
William O. Howland, Jr., Director
Department of Public Works

4-26-2012
Date

By Nancy Hapeman for
James D. Statch, Jr., Chief Procurement Officer
Office of Contracting and Procurement

4/26/12
Date

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**SCHEDULE 1
DISPOSAL FEE SCHEDULE**

The disposal fees charged to the District pursuant to the Agreement will be as follows:

Acceptable Waste Disposal Fee

- The District shall pay the County a disposal fee for Acceptable Waste of (\$29.00 per ton through June 30, 2012).

This fee will be escalated annually thereafter, as of July 1st, per Operations and Cost Adjustor in Schedule 9 to the Service Agreement between County and Covanta (attached).

The disposal fees charged to the District for other materials delivered to the County's I-95 Complex adjacent to the E/RRF will be as follows through June 30, 2012. The charge for future years will be determined by the County and provided to the District by July 1st of each year.

Tires (standard vehicle size/no rims)	\$97.50/ton
Rim surcharge	\$ 5.00/rim
Dirty Load surcharge	\$15.00/ton
Brush	\$32.00/ton

The total expenditure under this agreement, inclusive of all the items referenced in this schedule, shall not exceed \$8,750,000 per year.

4/26/12
Agreement Date

**SCHEDULE 2
RECEIVING SCHEDULE**

Normal delivery hours at the E/RRF are:

Monday through Friday	5:00 AM to 7:00 PM
Saturday	5:00 AM to 4:00 PM
Sunday	Closed

Holiday Schedule:

Thanksgiving	Early closing at 2:00 PM
Christmas Eve	Early closing at 4:00 PM
Christmas Day	Closed
New Year's Eve	Early closing at 4:00 PM
Other Holidays	Open regular hours

**SCHEDULE 3
UNACCEPTABLE WASTE**

The District of Columbia and its contractors will comply with the Covanta Fairfax, Inc. rules and regulations for operating on the Covanta tipping floor. A copy of the rules will be provided by the County or Covanta separately.

Unacceptable Waste at the E/RRF shall mean materials that are not acceptable by the operating permits required for the E/RRF and/or Virginia DEQ and that:

- A) 1) in the reasonable judgment of the E/RRF operator,
- a) would pose a threat to employee or public health or safety, or
 - b) would result in Residue being a material or substance described in clause (a) or (b) of the definition of "Hazardous Waste," or
 - c) are so large or bulky as to present a risk of blocking the waste feed chutes, or
- 2) are present in concentrations or quantities exceeding those normally found in Solid Waste generated in residences or non-industrial commercial establishments and, in the reasonable judgment of the operator, would either
- a) pose a reasonable possibility of adversely affecting the operation of the E/RRF in any material respect, or
 - b) cause applicable air quality or water effluent standards to be violated by the normal operation of the E/RRF; and
- B) Are listed on this schedule 3 or included in a written notice provided by the operator to the County stating that the material constitutes Unacceptable Waste.

A. Explosives

Dynamite
Hand Grenades
Blasting Caps
Shotgun Shells
Fireworks
Any Other Explosives

B. Liquid Wastes

Gasoline	Alcohol
Kerosene	Acids
Turpentine	Hydraulic Oil
Waste Oil	Petroleum
Ether	Caustics
Naphtha	Sewage or Process Wastewaters
Acetate	Leachate

Solvents
Paints

Sewage Sludge
Inflammable or Volatile Liquids

- C. Demolition Debris
Aggregate
Brick
Stone
Cement
Gravel
Sand
Structural Clay Products
Soil
Asbestos
Roofing Materials
Plaster
Other Noncombustible Demolition Debris
- D. Miscellaneous Materials
Pathological and Biological Waste
Autoclaved Waste
Ashes
Radioactive Materials
Human or Animal Remains
Agricultural and Farm Machinery and Equipment
Tar
Asphalt
Sealed Drums
Pressurized Containers
- E. Tires
Tires mounted on Rims
Tires whose rims exceed 16-1/2"
- F. White Goods
Refrigerators
Washing Machines
Other Large Metal Objects
- G. Motor Vehicles and Motor Vehicle Parts
Motor Vehicles
Transmissions
Rear Ends
Springs
Fenders
Other large Motor Vehicle Parts

Schedule 9
To
Service Agreement
(As amended as of 2/28/2000 and
Updated as of 9/16/2005)

Operations Adjustor and Cost Adjustor

Any amount set forth in this Agreement which is subject to adjustment by the Operations Adjustor or the Cost Adjustor (each, an "Adjustor") shall be calculated for each Fiscal Year by multiplying such amount as in effect for the previous Fiscal Year by the Adjustor for the respective year.

The Adjustor for each Fiscal Year shall be equal to the greater of (a) one (1.0) or (b) a fraction the numerator of which is the Base Index for such Fiscal Year, and the denominator of which is the highest Base Index for any previous Fiscal Year since Fiscal Year 2005.

The Base Index for each Fiscal Year shall be an amount equal to the sum of:

- (i) The product of (A) two and a half tenths (0.25), and (B) a fraction the numerator of which is the Materials Index for the Measurement Period for such Fiscal Year, and the denominator of which is the Materials Index for the Base Period,
- (ii) The product of (A) two and a half tenths (0.25), and (B) a fraction the numerator of which is the Consumer Price Index for the Measurement Period for such Fiscal Year, and the

denominator of which is the Consumer Price Index for the Base Period,

- (iii) The product of (A) two and a half tenths (0.25), and (B) a fraction the numerator of which is the Producer Price Index for the Measurement Period for such Fiscal Year, and the denominator of which is the Producer Price Index for the Base Period; and
- (iv) The product of (A) two and a half tenths (0.25), and (B) a fraction the numerator of which is the National Employment, Hours, and Earnings Index for the Measurement Period for such Fiscal Year, and the denominator of which is the National Employment, Hours, and Earnings Index for the Base Period.

For the purposes of calculating the Base Index, "Measurement Period": shall mean the last publication date of each of the four components of the Base Index, described above, immediately prior to July 1 of that Fiscal Year.

For the purposes of calculating the Base Index, Base Period shall mean:

Consumer Price Index (CPI) - The May 2004 index (118.40) of CPI Series CWURA311SA0. Washington-Baltimore, DC-MD-VA-WV, not seasonally adjusted.

Materials Index (MI) – The June 2004 index (2344.60) of the Engineering News Record 20 City Average Index for Material Costs

Producer Price Index (PPI) –The June 2004 index (170.50) of the PPI Series 333994333994, Industrial process furnace & oven mfg, Industrial process furnace & oven mfg

National Employment, Hours and Earnings Index (NEHEI) -- The June 2004 index (25.34) of the NEHEI, Series CEU4422000006, Utilities, Utilities - Average Hourly Earnings of Production workers.

For the purpose of illustration, the calculation of the Operations Adjustors for the Fiscal Years 2005 (Base Period) and 2006 (estimate) are shown on Attachment A of Schedule 9. Additionally, the Operations and Maintenance Costs for Fiscal Year 2005 is \$22,818,120. This amount includes the Operations and Maintenance Costs per the Clean Air Act Agreement (dated May 18, 2000) and per the letter agreements concerning the Brominator System change (dated March 20, 1991), the Landfill Leachate tie in to OMSF Pump House (dated May 13, 1991), the Oversize and Bulky Waste Shredder (dated April 22, 1992); and the Operations and Maintenance fee per the Dolomitic Lime System Agreement (dated October 21, 2004).

COUNTY OF FAIRFAX

By: 

Name: Joyce Doughty

Title: Director, DSWDRR

COVANTA FAIRFAX, INC.

By: 

Name: Paul Stauder

Title: Regional Business Manager

FAIRFAX COUNTY SOLID WASTE
AUTHORITY

By: 

Name: Joyce Doughty

Title: Authority Representative