

## TRANSPORTATION AND DISPOSAL AGREEMENT

This Transportation and Disposal Agreement (this "Agreement") is entered into this 1st day of June 2012 by and between Covanta 4Recovery, L.P. (hereinafter referred to as "Contractor"), and the Mayor and City Council of Ocean City, Maryland (the "Town").

### Recitals

A. Contractor and its Subcontractors are engaged in various aspects of the waste industry, with an emphasis on operating transportation equipment, disposal sites, and supporting infrastructure;

B. In the conduct of their business, Contractor and its Subcontractors transport Acceptable Waste, and purchase disposal services on behalf of their customers from various origins to various destinations;

C. The Town desires to engage Contractor to provide transportation and disposal service of Municipal Solid Waste (MSW) to fully licensed MSW disposal facilities. Proposals with Waste-To-Energy facilities as the primary disposal site(s) will be given preference in the proposal evaluations.

### Agreement

NOW, THEREFORE, and in consideration of the mutual covenants and undertakings described in this Agreement, Contractor and the Town hereby agree as follows:

### ARTICLE I Definitions

In addition to the terms defined elsewhere in this agreement, the following terms shall have the meanings ascribed to them below when used herein:

*"Acceptable Waste"* means MSW, which is not otherwise Unacceptable Waste.

*"Confidential Information"* -- shall mean all information relating to services, financial records, processes, plants, including further processes and products, technology, and development, and their customers and other commercial information, disclosed by Contractor or its Subcontractors, directly or indirectly, or any such information that the Town acquires or receives, in writing, electronically or orally, with respect to the other party in connection with this Agreement or the services performed hereunder, subject to the Maryland Public Information Act.

*"Force Majeure"* -- shall mean any act, event or condition that has had, or may reasonably be expected to have, a material adverse effect on the ability of a party to

perform its obligations under 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 a condition required of such party under this agreement.

*"Laws"* -- shall mean all applicable federal, state, commonwealth, municipal and other laws, rules, regulations, orders, directives, permits, licenses, or common law, including judicial interpretations thereof, whether legal or equitable.

*"Unacceptable Waste"* shall mean any waste that is not Acceptable Waste.

*"Subcontractors"* -- Any subcontractor of Contractor.

## **ARTICLE II**

### **Services**

#### **Section 2.1**

(a) Delivery Rights. During the term of this Agreement as set forth below, Contractor shall have the exclusive right to haul and dispose of all MSW generated by the Town at the Transfer Station located on 65<sup>th</sup> Street in Ocean City, Maryland (the "Transfer Station").

(b) Title to Waste. The Town shall not tender Unacceptable Waste to Contractor. In the event that the Town does load Unacceptable Waste onto Contractor equipment, title to, and risk of loss and responsibility for all Unacceptable Waste shall at all times remain with the Town. Further, Contractor shall have the authority to act as the Town's agent to transport and dispose of any Unacceptable Waste loaded by the Town onto Contractor's equipment in emergency situations where in the reasonable, good faith judgment of Contractor a delay in such transport and disposal would constitute a hazard to Contractor, its employees or Subcontractors, or any person on, about or near the Unacceptable Waste. Contractor will use reasonable efforts to provide telephone notice to the Town that such emergency transport and disposal will occur.

(c) Procedures. The delivery of Acceptable Waste/and loading of Acceptable Waste at the Transfer Station shall be regulated by the operating permit issued by the Maryland Department of the Environment, and the Town may modify such procedures from time to time in a reasonable fashion in the ordinary course of business. Contractor shall provide sufficient numbers of transfer trailers to allow the Town to remove all the waste from the Transfer Station tipping floor on a daily basis. All fully loaded trailers are to be removed by the Contractor before the next day's waste begins to arrive at the Transfer Station. This is to include all seasonal variations in the waste stream. A manifest, including a weight ticket from the Transfer Station scales, will be provided by the Town for each trailer picked up by Contractor.

(d) Authorization. The Town and Contractor shall obtain or make available, as the case may be, all permits, licenses, authorizations, notifications, approvals, certificates or other similar documents or actions in connection with the transportation, shipment, delivery or disposal of waste materials to be transported and disposed of pursuant to this Agreement.

**Section 2.2** In performing the services hereunder, Contractor shall be an independent contractor of The Town and shall not be an agent, employee or partner of the Town or its Subcontractors. Contractor employees shall not be construed or deemed to be employees of the Town or its Subcontractors for any purpose. The detailed manner and method of performing the Services shall be under the exclusive control of Contractor, but shall be performed in accordance with, and subject to, the provisions of this Agreement.

### **ARTICLE III Service Fees**

**Section 3.1** The service fee for transportation and disposal services of MSW shall be \$55.50 per ton (Contract Price). The Contract Price shall include the price of diesel fuel as of the Commencement Date, June 17, 2012. Contractor shall adjust the Contract Price according to Section 3.3 below to allow for fluctuations in the price of diesel fuel. There shall be a 20-ton minimum charge for all MSW loads, except when the Contractor provides trailers that are less than forty-eight feet (48') in length. Loads in trailers less than 48' shall be charged at the agreed Contract Price for the actual scale weight. Contractor shall supply all trucks and transfers trailers necessary to perform its transportation and disposal services under this Agreement during the normal working day of the Transfer Station, 7AM to 4PM.

**Section 3.2** Contractor shall provide the Town with a weekly/monthly invoice for its services hereunder, and the Town shall pay the invoice within 21 days after its receipt thereof. Such invoice shall be organized such that it separately indicates as subtotals the account balance payable to Contractor and shall state the aggregate total for such timeframe. Invoices shall include weight tickets from the disposal facility that will be matched with the weight tickets from the Transfer Station scales. Payments shall be picked up by Contractor, sent to Contractor at the address set forth in Article XI below, via first class mail, or made by way of Electronic Transfer as mutually agreed upon.

**Section 3.3** Contractor will be entitled to an additional fuel surcharge, or the Town will be entitled to a reduction, of the Contract Price of one half percent per ton based on Central Atlantic Region PADD I, On Highway National Fuel Averages, as published weekly at [http://www.eia.doe.gov/pub/oil\\_gas/petroleum/data\\_publications/weekly\\_on\\_highway\\_diesel\\_prices/current/html/diesel.html](http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/weekly_on_highway_diesel_prices/current/html/diesel.html). The one half percent per ton fuel surcharge will be added/ subtracted when the Central Atlantic PADD I, On Highway National Fuel Averages increases or decreases by ten cents (\$.10) or more from the Initial Contract Fuel Amount (ICFA). Each \$.10 increase or decrease will cause a separate increase/ decrease of one half percent of the Contract amount. The ICFA will be the amount listed on the

Central Atlantic PADD I, On Highway National Averages for the week in which the Agreement is fully executed. Fuel prices will be reviewed weekly and invoiced with the weekly/monthly invoice from Contractor to the Town as called for in Section 3.2 above. Contractor agrees to a sliding scale on fuel surcharges, allowing for negative rate impacts as fuel declines in the same equation as stated above. The floor on the negative fuel surcharge will be \$2.00 per gallon, (negative calculations will be discontinued if the price of diesel fuel falls below \$2.00 per gallon). The Contractor may suggest an alternative fuel price surcharge that is agreed upon by both parties.

**Section 3.4** The fees to be paid to Contractor for the transportation and disposal services under this Agreement shall be adjusted annually on the anniversary of the Commencement Date to match the percentage increase/decrease determined by the published Bureau of Labor Statistics, Consumer Price index for all Urban Consumers, South (1982 — 84 = 100), of the Department of Labor for the March Consumer Price Index. The Commencement Date shall be the first day Contractor provides transportation and disposal services to the Town, expected to be June 17, 2012.

**Section 3.5** In the event that any municipal, state, federal agency passes a solid waste or transportation tax that is to be charged for waste that is hauled from transfer stations or delivered to solid waste acceptance facilities, Contractor will charge such tax in addition to the Contract Price in the exact amount of such tax to the Town.

**Section 3.6** In the event the Town incurs overtime, that is the result of the Contractors failure to provide sufficient trailers during the normal working Transfer Station hours, the Contractor shall be responsible for this overtime. This overtime payment will be deducted from the weekly invoice in which the overtime occurs. The overtime will be charged at one and one-half times the salaries of the employees affected plus thirty-three percent (33%) employee burden.

**Section 3.7** Any and all fines levied by the Maryland Department of the Environment, that are the result of the Contractors failure to provide sufficient numbers of trailers or failure to remove the waste on a daily basis, will be paid by the Contractor.

#### **ARTICLE IV Insurance and Indemnity**

**Section 4.1** The Town shall indemnify, defend and hold harmless Contractor, its Subcontractors, and their respective owners, employees and agents, from and against all claims, demands, actions, suits, proceedings, losses, damages, costs (including, without limitation, reasonable attorneys' fees and court costs), to the extent arising out of acts, omissions, pursuant to this agreement, of or by the Town, its employees, contractors and agents, including without limitation, environmental damage or liabilities arising out of the disposal of materials by Contractor or resulting from contamination of or adverse effects on the environment, or arising out of a breach by Contractor or its employees, contractors or agents of any of its or their representation/warranties or covenants

contained in this agreement. Any such indemnification shall not be construed as a waiver of any governmental immunity of the Town.

**Section 4.2** Contractor shall maintain, and furnish to the Town, certificates attesting to the existence of the following policies of insurance with companies reasonably satisfactory to the Town:

- (a) Workers' Compensation coverage providing statutory benefits;
- (b) Commercial General Liability insurance with a bodily injury, death and property damage limit of not less than \$1,000,000 per occurrence, and containing coverage for contractual liability, tortious liability, product liability, completed operations liability, and environmental and pollution liability;
- (c) Commercial Automobile Liability insurance covering bodily injury (and passenger hazard), property damage and environmental damage arising from the operation of owned, non owned, leased or rented vehicles used in the performance of Services, with limits of liability of not less than \$1,000,000 per occurrence; and
- (d) any other insurance which Contractor is required by law to provide.

## **ARTICLE V**

### **Representations and Warranties**

**Section 5.1** Contractor hereby represents and warrants to the Town as follows:

- (a) Contractor is engaged in the transportation/disposal business, has developed the requisite expertise for performing that work, has adequate resources and equipment in good working order together with fully trained and experienced personnel capable of performing the services required under this Agreement in a good and professional manner and in accordance with this agreement, and exhibits the standard of care and skill normally exercised by professional contractors performing the same type of services; and
- (b) Contractor has obtained all permits, licenses, certificates and approvals required to comply with all laws applicable to the performance of the Services. No violations thereof have been experienced, noted or recorded, that would materially affect Contractor's ability to perform the Services, and no proceeding is pending or, to the best of the Contractor's knowledge, threatened that would revoke or materially limit any of them.

In addition to and without restricting in any way any other obligations or covenants set forth herein, Contractor covenants and agrees as follows:

- (a) Contractor shall perform its services in a good, safe and workmanlike manner and in accordance with sound environmental practices.
- (b) Contractor shall promptly notify the Town of the occurrence of any legal, judicial, or regulatory proceedings affecting, and of any adverse changes in, the

business, operations or affairs of Contractor that may materially adversely affect the ability of Contractor to supply the Services;

(c) Contractor shall comply with all laws applicable to its Services, including without limitation, all US Department of Transportation laws and regulations.

#### **ARTICLE VI Confidentiality**

**Section 6.1** Contractor and the Town shall not divulge, in whole or in part, any Confidential Information to any third party without the prior written consent of the other party. Contractor and the Town each agree that the Confidential Information is a special, valuable and proprietary asset of the other party. Contractor and the Town shall use the Confidential Information only for the purpose of performance of the Services required under this Agreement, and no other use of such information shall be made without the prior written consent of the Town or Contractor.

#### **ARTICLE VII Force Majeure**

**Section 7.1** If performance becomes impossible due to Force Majeure not contemplated by the parties, then performance shall be excused during the continuance of such Force Majeure. Both parties agree to use all reasonable efforts to remedy Force Majeure and resume performance hereunder as soon as possible.

#### **ARTICLE VIII Term**

**Section 8.1** The term of this Agreement shall commence on June 17<sup>th</sup>, 2012, Commencement Date, and shall continue through June 1<sup>st</sup>, 2015. Unless written notice to the contrary is provided by either party sixty (60) days prior to the end of any term the Agreement shall automatically renew for two successive terms of three (3) years each.

#### **ARTICLE IX Assignment**

**Section 9.1** This Agreement is assignable and transferable, by Contractor to any party that will maintain all terms and conditions of this Agreement and the written consent of the Town. Written consent by the Town shall only be granted if the Town is satisfied, at its sole discretion, that the proposed assignee is financially and otherwise able to fulfill the terms of this Agreement.

#### **ARTICLE X Non-Solicitation**

**Section 10.1** The Town agrees that during the term of this Agreement and the six (6) month period after the date this Agreement ends for any reason, the Town will not, either directly or through others, solicit, induce or attempt to induce any of Contractor's Subcontractors to perform work for the Town or any person or entity acting on behalf of the Town.

**Section 10.2** The Town acknowledges and agrees that monetary damages may not be an adequate remedy for the breach or threatened breach of this Agreement. Accordingly, the Town agrees that Contractor, in addition to and not to the exclusion of any other rights and remedies at law or in equity, may be entitled to a decree of specific performance and/or injunction in order to enforce the terms of this Agreement. Contractor shall be required to show irreparable harm or actual harm resulting from the actions of the Town and to furnish a bond or other security in order to obtain injunctive relief. Should Contractor prevail in any action against the Town for violation of any provisions of this Agreement, the Town agrees to pay all costs, including attorneys' fees incurred by Contractor in pursuing such relief; and if the Town prevails, Contractor agrees to pay all costs, including attorneys' fees, incurred by the Town in defending said relief or incurred by the Town in enforcing this Agreement.

## **ARTICLE XI**

### **Notice**

**Section 11.1** Any notice under this Agreement shall be given in writing to the parties at the addresses set forth below:

Contractor: Derek Veenhof  
Senior Vice President  
Covanta 4Recovery, L.P.  
445 South Street  
Morristown, New Jersey 07960

The Town: Mayor and City Council of Ocean City, Maryland  
301 Baltimore Ave.  
Ocean City, Maryland 21842

with a copy to:  
Public Works Director  
204 65<sup>th</sup> Street, Building E  
Ocean City, Maryland 21842

## **ARTICLE XII**

### **Miscellaneous Provisions**

**Section 12.1** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, representations, offers or agreements related to the subject matter herein, either written or oral. No changes, alterations, or modifications to this agreement shall be effective unless in writing and signed by parties, which specifically references this agreement by name, parties, and date.

**Section 12.2** Waiver by either party of any breach hereunder shall not operate as a waiver of other or subsequent breaches, and any waiver of any breach or provision of this Agreement may be done only in writing and must be signed by the party giving such waiver.

**Section 12.3** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland and to the internal provisions thereof addressing conflicts of law.

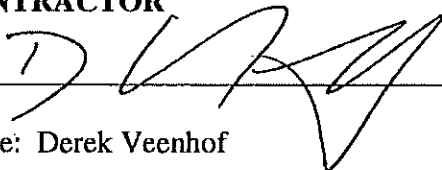
**Section 12.4** If any provision of this Agreement is held to be contrary to law and/or unenforceable, such provision shall be deleted to the extent necessary to make the remainder of the Agreement enforceable.

**Section 12.5** The provisions of Article V and VI shall survive the termination or expiration of this Agreement.

**Section 12.6** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be deemed the same instrument.

**CONTRACTOR**

By



AB/KAB

Name: Derek Veenhof

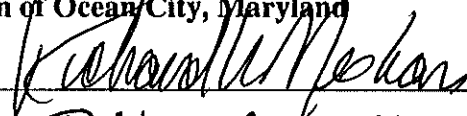
Title: Senior Vice President

Date:

5/30/2012

Town of Ocean City, Maryland

By



Name:

Richard W. Meehan

Title:

Mayor/Acting City Manager

Date:

May 31, 2012