

T&E COMMITTEE #1
March 22, 2012

MEMORANDUM

March 20, 2012

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: Resolution to Extend Covanta Montgomery's Service Agreement for the Resource Recovery Facility and Transfer Station

The following officials and staff are expected to participate in this meeting:

- Robert Hoyt, Director, Department of Environmental Protection (DEP)
- Dan Locke, Chief, Division of Solid Waste Services, DEP
- Chris Scags, Executive Director, Northeast Maryland Waste Disposal Authority

Background

On February 29, the County Executive forwarded a recommendation to revise and extend Covanta Montgomery, Inc.'s (Covanta) existing contract to operate and maintain Montgomery County's Resource Recovery Facility (RRF) and Transfer Station (TS). The Executive transmittal (including the resolution introduced by the Council on March 20, 2012) is attached beginning on ©1.¹ The contract (which is between the Northeast Maryland Waste Disposal Authority and Covanta) would have its termination date extended from April 1, 2016 to April 1, 2021. The newly negotiated contract provisions would take effect immediately.

As noted in the Executive transmittal, the County's Solid Waste Management Plan requires Council approval for material changes to the waste disposal and service agreements. The Council must approve or disapprove the proposed change within 30 days or two regular Council worksessions (whichever is longer), unless the Council approves a resolution extending the time allowed for Council action. If the Council takes no action during this time, the proposed change is automatically approved.

Council action is tentatively scheduled for March 27.

¹ While the County Executive's transmittal memorandum and attached documents are noted as "Confidential Information," Council legal staff have worked with County Executive staff and determined that all of the information can be reviewed and discussed in open session.

Resource Recovery Facility (RRF) Background

The County’s RRF began operation in August 1995 and consists of three 600 tons per day mass-burning, refuse-fired boiler units that produce steam for electricity generation. The Northeast Maryland Waste Disposal Authority (NMWDA) financed the cost of designing and constructing the facility and owns the facility. The debt service payments will end in April 2016 (the same time the original contract concludes), and at that time ownership of the facility will transfer to the County.

NMWDA contracts with Covanta for the operation and maintenance of the RRF, and those costs are passed along to the County.

FY12 approved RRF budget information (as of July 1, 2011) is presented in the following chart:

RRF Program Costs	
	Approved FY12
Net Debt Service	26,679,025
Operating Contract	25,433,569
Rail Engine Service Fee	2,865,712
Non-Processible Waste	187,476
Waste Processed	353,293
Electric Sales Revenue	(17,162,795)
Recycled Ferrous Revenue	(721,050)
Other NMWDA Contract Costs	4,263,024
Charges from Risk Management	758,060
Other Miscellaneous	424,192
Totals	43,080,506

The \$43 million total is a net number that reflects a reduction in costs credited to the County from electricity sales revenue (about \$17.2 million assumed for FY12). Debt service (about \$26.7 million) and the operating agreement with Covanta (\$25.4 million) are the largest expense items.

Summary of Negotiated Contract Changes

The contract changes are summarized in the County Executive transmittal memorandum and detailed in the contract change order beginning on ©7. Most of the contract changes provide additional financial benefits to the County and reflect Covanta’s interest in securing the five-year extension allowed under the existing contract. The major financial benefits include:

- A \$3.0 million invoice credit to the County as part of the abolishment of the \$5.0 million cash reserve fund (to be replaced with a letter of credit and performance bond totaling the same amount).
- Reduced County costs resulting from adding technology to add further treatment of the ash generated at the RRF, which will reduce the tonnages of ash hauled away. The

guaranteed annual savings to the County are \$635,000.

- A reduction in the fee for the NOx equipment added to the RRF several years ago. This equipment reduces NOx emissions by approximately 50 percent. The County paid about \$600,000 for the operation of this equipment in FY11. The revised contract will reduce these annual costs by an estimated \$350,000.
- The excess waste fee is also changed. The original contract requires the County to pay a higher cost per ton when annual tonnages exceed 558,450 tons. In FY11, the excess amount was \$131,000. DEP is projecting tonnages to increase in the coming years and the savings from this contract change are expected to average approximately \$540,000 per year.
- In concert with the above excess waste fee change, the county will reduce its “shortfall” credit, which kicks in when tonnages fall below 558,450 per year. DEP does not project such a shortfall over the next ten years, so there is no assumed fiscal impact from this change.
- The electricity revenue maximization pilot, which was begun a couple of years ago (whereby within operational constraints Covanta schedules trash burning during peak electricity usage times when the electricity can be sold at a higher cost) will continue in the revised contract. The County estimates about \$470,000 in revenue from this effort. Covanta’s fixed revenue share of the profits (\$960,000) from this approach would be increased by inflation.

County Options

As noted earlier, the original contract term ends in April 2016. Two five-year extensions are allowed for in the contract. The County could also choose to bid a new contract (with notice provided to Covanta by October 2015, i.e., 180 days prior to the end of the initial contract term).

The County Executive has identified the following reasons why he supports an immediate contract renewal with Covanta:

- Covanta is interested in securing an immediate contract renewal and has negotiated a number of significant financial concessions with the County to make this happen.
- There is no guarantee that the negotiated financial concessions negotiated will be offered later if the County chooses to renew closer to the end of the initial contract period.
- Frederick County recently bid the construction and maintenance of a new incinerator (with a capacity of 1,500 tons per day) and there were only three bidders and two “best and final” offers submitted (from Wheelabrator and Covanta). While Wheelabrator won the contract, its operating and maintenance costs for comparable services at the new facility are estimated to be 27 percent higher than Covanta’s costs are for Montgomery County’s RRF (\$42 per ton

processed compared to \$33 per ton processed).

While it is difficult to know for sure what results the County would achieve if it bid the operating and maintenance for its slightly larger RRF (1,800 tons per day capacity versus 1,500 tons per day capacity in the planned Frederick facility), based on there being few qualified companies available to bid on the project and the resulting unit costs associated with the winning bid in Frederick, the County Executive does not see any indication that bidding a new contract would provide a better price or better service. *NOTE: NMWDA is serving in a similar role with Frederick County's planned incinerator as it does with Montgomery County's RRF.*

- The County is pleased with Covanta's performance. The County Executive notes a number of awards the RRF has won during Covanta's tenure and also notes that Covanta works well with the surrounding community and has an excellent employee safety record.
- Finally, the revised contract maintains the County's right of termination for convenience at any time (with 180 days notice). The cost to terminate during FY12 is \$4.0 million. This amount goes down by \$1.0 million per year each of the next several years and will be zero as of the end of the current contract term (April 1, 2016). During any period after that, the County can terminate the contract at no charge.

The termination for convenience is a key provision that allows the County to pursue other potential cost savings opportunities in the future (such as bidding a new contract). Further, the County can exercise this provision at an ever-decreasing cost (zero cost after April 1, 2016). This provision also puts the County in an excellent negotiating position in the future to pursue other beneficial changes within the current contract.

Based on the beneficial contract changes noted above and the termination for convenience provision, Council Staff recommends that the Council approve the resolution supporting the contract renewal with Covanta.

Attachment

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Env. + Energy



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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

CONFIDENTIAL MEMORANDUM

February 29, 2012

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2012 MAR -9 AM 11:33

TO: Roger Berliner, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Extension of Covanta Montgomery, Inc.'s Contract to operate the Resource Recovery Facility and Transfer Station

The purpose of this memorandum is to transmit the attached resolution to revise, under more favorable terms, Covanta Montgomery Inc.'s (Covanta) existing contract to operate and maintain Montgomery County's Resource Recovery Facility (RRF) and Transfer Station (TS), including extending the termination date from April 1, 2016, to April 1, 2021. The proposed Contract including the modification and extension language is also attached to this memorandum. Council approval is required for this modification and extension by the Ten Year Solid Waste Management Plan because it represents a material change to the Service Agreement.

In November 1990, the Northeast Maryland Waste Disposal Authority (the Authority) and the County executed a Waste Disposal Agreement whereby the Authority agreed to provide certain waste disposal services to the County. At the same time, the Authority signed a Service Agreement with Covanta, formerly Ogden Martin Systems of Montgomery, Inc., to design, build, operate, and maintain the RRF and TS and process waste generated in Montgomery County. Covanta's Service Agreement obligations generally mirror those of the Authority's under the Waste Disposal Agreement.

The initial term of the Service Agreement expires on April 1, 2016. The Service Agreement includes two (2) five year extensions unless the Authority and the County provide written notice to Covanta 180 days before the end of the term stating that they do not want to extend the contract.

Earlier this year, Covanta initiated discussions with the Authority and the County to explore the possibility of extending the contract now prior to the end of the contract term in exchange for significant fiscal concessions immediately benefiting the County. After substantial negotiations, the specific revisions to the contract that Covanta is now offering will save the County approximately \$20,000,000 over the next ten years and significantly lessen projected solid waste rate increases to both residents and businesses.

Summary of negotiated contract revisions:

- a. Covanta will provide a \$3,000,000 invoice credit to the County when the extension is signed in exchange for the County agreeing to replace a cash reserve of \$5,000,000 (created during Covanta's bankruptcy in 2002) with a \$2,500,000 irrevocable Letter of Credit and a \$2,500,000 performance bond.
- b. Covanta will install new equipment that will reduce ash production by 2 percent or more, which will reduce the County's ash handling costs. Covanta will guarantee an annual average savings of \$635,000 through the use of the new equipment and the County will agree to cost-share any additional savings equally.
- c. Covanta will agree to reduce the fee to operate the NOx reduction equipment, which will result in annual average savings to the County of approximately \$350,000. NOx reduction guarantee levels remain the same and thus, there will be no impact on performance.
- d. Covanta will agree to reduce the excess waste fee for waste processed above 558,450 tons per year, which will result in annual average savings to the County of approximately \$540,000. The Department of Environmental Protection (DEP) will agree to eliminate the shortfall credit (a per ton credit if the waste processed is less than 558,450 tons per year). Based on waste projections, this shortfall credit will not be triggered during the next ten (10) years.
- e. Covanta will agree to operate the plant to maximize electricity generation during peak pricing periods. DEP estimates an average annual increase in revenues of \$474,000 from this operating incentive. This modification would make permanent the pilot project that Covanta started three years ago. In exchange, Covanta is requesting that the fixed revenue share it currently receives annually (\$960,000) be increased by inflation. It is estimated that this will cost an average of \$280,000 per year over ten (10) years.
- f. Covanta will agree to increase the amount of waste it must accept and process at the TS from 1,925 tons to 2,400 tons per day, and from 10,800 tons to 14,000 tons per week. This modification would increase the transportation guarantee for the TS to better align with the RRF through put guarantees, but has no economic impact.

Based on Covanta's recent offer, the County has the option of: (1) waiting until the end of the initial contract term to extend another five (5) years under the current terms; (2) issuing an RFP for a new contract between now and the end of the contract term; or (3) modifying and extending the current contract with Covanta under the conditions described above. In recommending the third option, the DEP considered three basic issues: (1) Covanta's performance to date; (2) the likelihood that another company at the end of the contract term would offer equal or better pricing; and (3) the short term and long term economic benefits of modifying now rather than waiting until the end of the current contract term.

Covanta's performance for the 16 years that it has been operating the RRF and TS has been excellent. Its equipment has been well maintained and Covanta has never been in a position where it was forced to refuse to process waste. Covanta has received only two Notices of Violation and these were for NPDES issues in the early days of the project. No citations have ever been issued against Covanta for

any permit violation at either the RRF or TS. Covanta has maintained air emissions at the RRF at levels far below permit limits. As a result of its excellent record, it continues to maintain a very good relationship with State regulators.

In addition and not unimportantly, Covanta participates constructively, honestly and directly with the community. With respect to employee safety, it should be noted that Covanta's operations at both the RRF and TS have received the VPP Star award. This is the highest honor granted by Maryland Occupational Safety and Health (MOSH). "VPP participants are a select group of employers or facilities that have designed and implemented outstanding safety and health management systems" (MOSH website).

The RRF is a three-time winner of the highly competitive Solid Waste Association of North America (SWANA) "Gold Waste to Energy Excellence Award" (1998, 2005, and 2010). This award considers all aspects of waste-to-energy operations and represents the highest level of excellence among the nation's nearly one hundred waste-to-energy facilities. Other awards received in the past for the County's facility include: American Society of Mechanical Engineering (ASME) - Excellence in WTE Operations, 2000; American Association of Environmental Engineers (AAEE) - Excellence in Environmental Engineering, Grand Prize for Operations/Management, 1998; and American Society of Civil Engineering (ASCE) - National Capital Section Outstanding Civil Engineering Project, 1997.

The only other company able to provide the services required at the RRF and TS is Wheelabrator (a subsidiary of Waste Management Inc.). The Authority recently issued an RFP for construction, operation and maintenance of a resource recovery facility in Frederick, Maryland. Both Covanta and Wheelabrator bid on it and the contract was awarded to Wheelabrator. The operating and maintenance costs for comparable services at the Frederick facility offered by Wheelabrator are approximately 27 percent higher than Covanta's are for the RRF. The County's costs are approximately \$33 per ton processed compared to Frederick's costs of \$42 per ton.

Therefore, there is nothing in Frederick County's experience indicating that issuing an RFP at this time will result in either a better price or better service. Another factor to consider if the County changed operators would be the time and training needed for the new operator to become familiar with Covanta's equipment and processes. Moreover, there is no indication that costs will drop between now and the contract term to warrant waiting until then to issue an RFP for a new contract. Given the economic benefits of the current contract and Covanta's excellent performance, it appears extremely likely that the County would exercise the option to extend the contract with Covanta at the end of the initial contract period in 2016.

Another factor in support of modifying now relates to Covanta's unique business needs. During the negotiations, Covanta stated that its executive board is extremely interested in extending existing contracts at this time and is willing to offer significant savings to achieve this goal. Whether these beneficial terms will continue to be offered as other contract extensions are secured is unknown, but doubtful.

Perhaps most importantly, under the proposed modification, the County does not bear the risk even if the County determines that a more advantageous contract might be available at the end of the initial term. This is because the proposed modification provides for termination for convenience on April

1, 2016, at no cost to the County. The County is, therefore, not jeopardizing its ability to pursue more favorable terms in the future even if it enters into the proposed contract modification at this time.

Savings to the County will begin immediately once the change is authorized, and will net the County approximately \$10,000,000 in the first five (5) years (which is about when the current contract expires). Over the next five (5) years (first extension 2016 to 2021), total savings to the County will be approximately \$10,000,000. If we issued an RFP and hired a new operator in 2016, the resulting contract would have to provide a discounted operating charge of \$20,000,000 over five (5) years to achieve the same benefit to the County, which is highly unlikely.

The savings that the County will immediately realize if the modification is approved will help stabilize and/or reduce rates in fiscal year 2013 and for several years to come. Specifically, the FY 2013 residential and multifamily rates will increase 0 percent, 0 percent, and 10 percent respectively versus a 6 percent, 6 percent, and 23 percent increase if the extension is not approved.

Given that there is no risk to the County and it will receive \$10,000,000 economic benefit over five (5) years and \$20,000,000 over ten (10) years, that Covanta's performance record is excellent, that it is unlikely that any other company can match this offer, and that Covanta's policy is to obtain extensions now even if it means reduced profits, we recommend that the Council approve the attached resolution to extend Covanta's contract.

If you have any questions concerning this extension, please contact Dan Locke, Chief of the Division of Solid Waste Services, at 240-777-6402 or dan.locke@montgomerycountymd.gov.

Attachments: Council Resolution
Covanta Document

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Extension of Covanta Montgomery's Service Agreement for the RRF and Transfer Station

Background

1. In November 1990, the Northeast Maryland Waste Disposal Authority ("NMWDA") entered into a Waste Disposal Agreement with the County whereby NMWDA would procure the services of a company to design, engineer, construct and operate the waste-to-energy facility known as the Montgomery County Resource Recovery Facility and Transfer Station for the County.
2. NMWDA procured the services of Ogden Martin Systems, now Covanta Montgomery, Inc. ("Covanta"), and entered into a multi-year Service Agreement with Ogden Martin Systems, now Covanta Montgomery, Inc., on November 1990 for the design, construction, operation and maintenance of the Resource Recovery Facility located in Dickerson, Maryland and the Transfer Station located in Derwood, Maryland.
3. The NMWDA is a body politic and corporate organized and existing under the laws of the State of Maryland.
4. Section 3-902 of the Natural Resources Article of the Annotated Code of Maryland provides that the NMWDA's purpose includes, but is not limited to, assisting certain political subdivisions of the State of Maryland in supplying adequate waste disposal facilities and the recovery of useable resources by providing a financial vehicle for such facilities.
5. The current term of the NMWDA Service Agreement expires on April 1, 2016, which is the 20th anniversary of the acceptance date, which can be renewed for two separate five (5) year extensions at the County's option.

6. Section 5.2.1.2.c of the County's Comprehensive Solid Waste Management Plan states in pertinent part that: "The County must not approve, or allow to take effect, under either the Waste Disposal Agreement or Service Agreement, any material change in the capacity or operation ... of the facility or the transportation system unless the Director of DEP has submitted the change to the County Council."
7. The County Council believes it to be in the best interest of the County to exercise the first of two five (5) year extensions of the Service Agreement prior to its April 1, 2016 expiration.

Action

The County Council approves the following action:

The County shall exercise its option to enter into the attached extension of the Service Agreement for the first of two (2) separate five (5) year extensions with Covanta Montgomery.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



Covanta Energy Corporation
445 South Street
Morristown, NJ 07960
Tel 862 345 5000
Website www.covantaenergy.com

CONFIDENTIAL

ATTACHMENT

December 22, 2011

Christopher Skaggs
Executive Director
Northeast Maryland Waste Disposal Authority
100 S. Charles Street
Tower II, Suite 402
Baltimore, MD 21201

Daniel Locke
Chief, Division of Solid Waste Management
Montgomery County DEP/DSWS
101 Monroe Street, 6th Floor
Rockville, MD 20850

SUBJECT: MONTGOMERY COUNTY RESOURCE RECOVERY PROJECT
Change Order No. 115 – Service Agreement Modifications and Renewal

Dear Chris and Dan:

This will confirm the agreement of the Northeast Maryland Waste Disposal Authority (the "Authority") and Covanta Montgomery Inc. (the "Company") to modify the Service Agreement between the Parties (as hereinafter defined) dated as of November 16, 1990, as supplemented and amended prior to the date hereof (the "Service Agreement"). All capitalized terms used herein that are not defined herein shall have the meanings given such terms in the Service Agreement. The Authority and the Company are individually referred to herein as a "Party" and collectively as the "Parties".

This Change Order reflects the delineation of certain rights and responsibilities of the Parties as they relate to the Company's operation and maintenance of the Montgomery County Resource Recovery Project (the "Project"). Unless otherwise provided, this Change Order will take effect on the Effective Date (as hereinafter defined in Section 1.10). Each Party and Montgomery County (the "County") shall be responsible for their respective costs associated with preparation and establishing the effectiveness of this Change Order.

1.1 Security for Extraordinary Maintenance Obligations

Section 5.9 of the Service Agreement shall be deleted and restated in its entirety, to provide as follows:

(a) The Company is obligated to perform, at its cost, the Extraordinary Maintenance items of work in the time frames all as set forth in Schedule 46 which is attached hereto and made a part hereof. The Company will, within 10 days of completing each item of work on Schedule 46, provide notice to the Authority that the item has been completed.

(b) An O&M Reserve Fund exists to secure payment by the Company of the costs of Extraordinary Maintenance as set forth in Schedule 46.

(c) After delivery of the Security instruments provided for in subsection (d) below, and receipt of the Security instruments by the Authority substantially in the forms attached hereto and made a part hereof, the O&M Reserve Fund shall be terminated and liquidated and the \$5,000,000 contained therein distributed to the County and the Company in the amounts of \$3,000,000 and \$2,000,000, respectively. The Authority and the County agree to take all actions required to effect the purposes of this Section 5.9 including, but not limited to, actions required to comply with Applicable Law, the provision of any notices and the receipt of any consents or approvals, and the taking of any actions as may be required pursuant to financing documents or other outstanding obligations.

(d) Within thirty (30) days after the Effective Date, Covanta, at its own cost, shall provide to the Authority a letter of credit in the amount of \$2,500,000 ("Extraordinary Maintenance Letter of Credit") and a performance bond in the amount of \$2,500,000 ("Extraordinary Maintenance Bond") (collectively, the "Security"). The Extraordinary Maintenance Letter of Credit shall be issued by a financial institution with a rating of (1) A2 or better by Moody's Investor Services so long as the Standard & Poor's rating is at least A-, or (2) A or better by Standard & Poor's so long as the Moody's rating is at least A3 or better, and shall be secured by assets or credits other than the Project and other than assets of the Authority or the County, and shall permit the Authority to make drawings thereunder for the costs to perform the Company's Extraordinary Maintenance obligations in Schedule 46 if the Company fails to perform these obligations and after failure to resolve any dispute about these obligations pursuant to the terms of the Service Agreement. The Extraordinary Maintenance Letter of Credit shall be substantially in the form attached hereto as Schedule 50. The Extraordinary Maintenance Bond shall be underwritten by a surety company authorized to do business in the State of Maryland, and shall permit the Authority to draw upon the bond for the costs to perform the Company's Extraordinary Maintenance obligations in Schedule 46 if the Company fails to perform these obligations and after failure to resolve any dispute about these obligations pursuant to the dispute resolution provisions of the Service Agreement. The Extraordinary Maintenance Bond shall be substantially in the form attached hereto as Schedule 51. Both the Extraordinary Maintenance Letter of Credit and the Extraordinary Maintenance Bond shall be renewed or replaced annually no later than ten (10) Business Days prior to their annual expiration dates over the full term, including any renewal terms, of the Service Agreement. The Authority shall have the right to draw on the Extraordinary Maintenance Letter of Credit to the extent it has not been renewed by midnight eastern standard time on the day which is ten (10) Business Days prior to the annual expiration of such Extraordinary Maintenance Letter of Credit. In the event the Extraordinary Maintenance Bond has not been renewed by midnight eastern standard time on the day which is ten (10) Business Days prior to its annual expiration date, each year of the full term of the Service Agreement including any renewal terms, the Authority may require the Company to elect either at the Company's option an additional Extraordinary Maintenance Letter of Credit in the \$2,500,000 amount of the expired bond, or to deposit \$2,500,000 in cash in an escrow account with the Trustee. The Authority shall have the right to draw upon the Extraordinary Letter of Credit, to its full amount, before invoking, or without invoking, the Extraordinary Maintenance Bond. If the Authority draws upon the Extraordinary

Maintenance Letter of Credit and/or invokes the Extraordinary Maintenance Bond, the Company agrees to replenish the Security such that the amount available to the Authority under this section is maintained consistently at \$2,500,000 from each Security instrument. Any such replenishment shall be accomplished no later than ten (10) Business Days after a draw or invocation exercised in accord with the terms of the Service Agreement. The Company may, in lieu of renewing or replenishing a Security instrument as aforesaid, deposit the equivalent amount in cash in an escrow account with the Trustee. If the Company creates an escrow account with the Trustee in lieu of renewing a bond or replenishing an Extraordinary Maintenance Letter of Credit or an Extraordinary Maintenance Bond, funds from such an escrow account will be released by the Trustee during any period that the Service Agreement is in effect in accord with the provisions of Section 4.09 of the Trust Indenture, as amended.

(e) Each year, on or before November 1, the Company will advise the Authority Representative regarding whether, based upon the actual condition of the Project at the time, the Company has determined that one or more items of Extraordinary Maintenance should be accelerated so that such item or items will be implemented in the immediately succeeding calendar year. If the Authority disagrees with any such determination of the Company to defer any items, it will advise the Company by December 1. The Company will implement the item of Extraordinary Maintenance in accordance with the determination of the Authority unless the Company advises the Authority by December 15 that it disagrees with the Authority's determination, in which case the Company may refer the matter to dispute resolution in accordance with Section 14.15.

(f) The Company acknowledges and agrees that the availability of the Security for the payment of the costs of Extraordinary Maintenance in no manner limits the obligation of the Company under this Agreement to maintain, repair and replace the Project at its expense as provided in this Agreement, and that such maintenance, repair and replacement obligation includes, without limitation, the payment of the costs of Extraordinary Maintenance in their entirety, including such costs, if any, in excess of the amount of the Security.

(g) The Security shall be reduced upon the Transfer System Change Effective Date to such amount as mutually agreed to by the Authority and the Company.

1.2 Ash Reduction Initiative

The Company intends to decrease the Facility's historic ash production levels by installing new ash reduction systems (the "Ash Systems") at its sole cost and expense. In connection therewith, the Company will target, though not guarantee Residue generation that annually on a wet basis, does not exceed 0.278 tons of Residue (excluding Recovered Materials) per ton of waste Processed (as adjusted to account for the actual amount of reagent injected in connection with operation of the mercury control and dolomitic lime addition systems, but in no event more than 0.022 tons of Residue on a wet basis per ton of waste Processed which is derived from a rate of 2 lbs of carbon added per ton of waste processed and 20 lbs of dolomitic lime with an equivalent amount of water added per ton of waste Processed) (the "Ash Reduction Target"). The Company's efforts to attain the Ash Reduction Target shall commence no later than September 1, 2012 with the goal of commencing reduction on July 1, 2012, if reasonably possible.

In order to confirm its commitment to annually attain the Ash Reduction Target, the Company agrees that for any Fiscal Year in which it fails to meet the Ash Reduction Target, the Company shall pay the Authority its Residue Disposal Costs, as defined below, for that Fiscal Year (prorated for any period less than a full Fiscal Year) for the difference between the actual Residue tons on a wet basis (excluding Recovered Materials) and the Ash Reduction Target (the "Ash Reduction Target Shortfall Fee"). The Company's obligation to pay the Ash Reduction Target Shortfall Fee shall begin on September 1, 2012 and shall be in effect for each subsequent fiscal year. The Ash Reduction Target Shortfall Fee shall not exceed \$500,000 for any Fiscal Year (escalated in accordance with the Operating Charge Inflation Adjustor, utilizing Fiscal Year 2012 as the Base Year and pro-rated for any period less than a full Fiscal Year). The Ash Reduction Target Shortfall Fee shall be the Authority's sole remedy for the Company's failure to achieve the Ash Reduction Target and shall be reconciled annually at the conclusion of each Fiscal Year.

The Parties acknowledge that the Ash Systems may minimally increase ash dusting within the Facility as a housekeeping matter. That notwithstanding, the Company reconfirms its commitment to comply with all Applicable Laws regarding the Facility, including the Ash Systems, as required by the Service Agreement. The Parties agree to cooperate to put into effect procedures that will minimize any increased dusting from the installation of the Ash Systems.

The Parties agree that for any Fiscal Year in which the Project generates Residue below the Ash Reduction Target, the Authority shall share all of its savings in Residue Disposal Costs associated therewith equally with the Company. In this context, the "Service Fee Adjustments" set forth in Section 5.1 of the Service Agreement shall be modified by adding the following subsection:

(vii) The Service Fee for a Fiscal Year shall increase as a result of the Facility having generated less Residue than the Ash Reduction Target. The Authority shall pay the Company fifty percent (50%) of the savings that accrue from the product of (a) the Authority's average per ton Residue hauling and disposal cost for that Fiscal Year (prorated for any period less than a full Fiscal Year) (the "Residue Disposal Costs"), and (b) the difference between the Ash Reduction Target and the Project's actual tons of Residue on a wet basis (excluding Recovered Materials). Any such savings shall be reconciled annually at the conclusion of the Fiscal Year.

1.3 Low NOx (LN) Fee

Section 1.3(E) (2) of Change Order No. 106 to the Service Agreement shall be amended and restated as follows:

(2) The Operating Charge as described in Section 5.1 of the Service Agreement, and as calculated in accordance with Schedule 40 thereto, shall be increased by the sum of (i) \$0.67 (escalated in accordance with the Operating Charge Inflation Adjustor, utilizing the 12-month period between July 1, 2007 and June 30, 2008 as the Base Year) for each ton of waste processed in a boiler for which LN Operating Dates have occurred (the "LN

Operating Fee”), and (ii) a fixed fee of \$50,000, escalated each Fiscal Year in accordance with the Operating Charge Inflation Adjustor, utilizing Fiscal Year 2012 as the Base Year (the “LN Guarantee Fee”). Fiscal Year 2012 will be adjusted to reflect the partial year. The payments described herein shall constitute the sole compensation to the Company for operation and maintenance of the LN™ Improvement.

1.4 Excess Tonnage Fee

Section 5.1(a) (ii) (B) of the Service Agreement shall be deleted and restated as follows:

(B) the following amounts (escalated in accordance with the Operating Charge Inflation Adjustor, utilizing Fiscal Year 2012 as the Base Year) multiplied by the number of tons of waste that the Company accepts and Processes during the Fiscal Year after the Company has processed 558,450 tons of waste plus the number of tons of Overs transported and Processed in accordance with Section 4.6 (adjusted pursuant to Sections 8.1, Changes in Design, Construction or Operation, and Section 9.5, Changes Necessitated by Uncontrollable Circumstances) in accordance with the following Table:

558,450 to 568,450 tons:	\$29.71/ton
568,450 to 578,450 tons:	\$27.00/ton
578,450 to 588,450 tons:	\$25.00/ton
588,450 tons and above:	\$22.00/ton

and

Part I (A) of Schedule 40 to the Service Agreement is amended to remove subheading “(A)” (but not the content therein).

Parts I (B), (C), (D) and (E) of Schedule 40 to the Service Agreement are deleted in their entirety.

1.5 Housekeeping and Maintenance

(a) The Company agrees to perform certain housekeeping items at the Facility as described and in the time frames set forth on a list to be mutually agreed upon by the Parties and the County within 90 days of the Effective Date (the “Scheduled Housekeeping List”) which list, upon such agreement, will be deemed attached hereto and incorporated herein as Schedule 53.

(b) The Parties agree to the following amendments to the Service Agreement:

(i) Section 4.11 is amended to add the following sentence: Disputes arising out of the Parties’ obligations under this Section, including but not limited to obligations set forth in Schedule 13, shall be resolved pursuant to Section 14.15 of this Agreement.

(ii) The first sentence of Section 14.15(b) is amended to read: All disputes arising under this Agreement having a design, engineering or construction issue of fact, as well as issues arising out of the Parties’ obligations under Section 4.11 of the Agreement or in connection with Section 1.5(a) of Change Order No. 115 to this Agreement, including but not

limited to obligations set forth in Schedule 13, must be resolved (with respect to these issues) pursuant to this Section 14.15 prior to resort to judicial resolution.

(iii) The first sentence of Section 14.15(k) is amended to read: All disputes arising under this Agreement having a design, engineering or construction issue of fact, as well as issues arising out of the Parties' obligations under Section 4.11 of the Agreement or in connection with Section 1.5(a) of Change Order 115 to this Agreement, including but not limited to the obligations set forth in Schedule 13, must be resolved (with respect to these issues) pursuant to this Section 14.15 prior to resort to judicial resolution.

(c) In furtherance of the obligation under Section 14.15(a) of the Service Agreement, requiring that the Parties must in good faith attempt to resolve any dispute or matter in controversy, it is agreed that the Parties will first attempt to resolve any matter in dispute or controversy, at the Covanta Facility Manager/Authority representative/County Representative level, and that failing resolution at that level, either Party may elevate the matter for resolution to the Covanta Regional Vice President/Authority management representative/County Representative by placing the issue on the agenda for the next jointly attended monthly Facility meeting. If the Parties are unable to resolve the dispute at the monthly Facility meeting, resolution of the dispute will be in accord with Section 14.15 (b) through (k) of the Service Agreement.

1.6 Adjustment to Energy Revenue Sharing

No later than each March 1st during the initial Term of the Service Agreement or any renewal thereof, the Parties will mutually determine the appropriate energy production strategy to be applied in the succeeding Fiscal Year, taking into account the then current energy contract and the anticipated Facility waste volumes. The Parties may implement an Energy Revenue Optimization Incentive Agreement in the form of Schedule 52 to this Change Order or continue with the Guaranteed Kilowatt Production ("GKP") approach that is outlined in Section 5.4.2 of Schedule 5 to the Service Agreement.

The Parties agree that the Company will be entitled to relief of the GKP for Permissible Turbine Downtime. The definition of "Annual Electricity Liquidated Damages" in Schedule 42 of the 3rd Amendment to the Service Agreement shall be amended and restated in its entirety, as follows:

(b) "Annual Electricity Liquidated Damages" means 12.5% of the Company share of Electricity Revenues for the Fiscal Year.

Annual Electricity Liquidated Damages shall be payable if the Company does not generate the lesser of (i) the number of Net Kilowatt hours per ton of waste Processed specified in the table which is part of Section 5.4.2 of Schedule 5 as adjusted pursuant to that section; or (ii) the number of Net Kilowatt hours per ton of waste Processed specified in the table which is part of Section 5.4.2 of Schedule 5, appropriately adjusted to reflect declines in electricity production due to Permissible Turbine Downtime and otherwise adjusted as provided in Section 5.4.2 of Schedule 5.

Additionally, the parties agree that effective beginning with the County's 2013 Fiscal Year, subsection (i) of the definition of Revenue Credits in Section 5.1 of the Service Agreement shall be amended and restated to read as follows:

- (i) Company share of Electricity Revenues means 8% of Annual Electricity Revenues, up to an annual maximum Company share of \$960,000 escalated in accordance with the Operating Charge Inflation Adjustor, utilizing Fiscal Year 2012 as the Base Year.

1.7 Service Agreement Renewal

The Authority agrees that the Service Agreement will automatically extend for an additional term of 5 years until April 1, 2021 ("First Renewal Term") as described in Section 12.2 of the Service Agreement, at the Service Fee calculated and paid as provided in Section 5 of the Service Agreement. The Company agrees to waive the condition precedent to an automatic renewal in Section 12.2 which states "provided however that in order to exercise the renewal options described in this Section, the Authority must renew or extend the Railroad Transportation Agreement or direct new transportation arrangements pursuant to an Authority Change," and this provision is deleted from Section 12.2(a). Notwithstanding the foregoing, the Authority and the County acknowledge that it is solely their obligation to renew or extend the Railroad Transportation Agreement or direct new transportation arrangements pursuant to an Authority Change.

1.8 Conforming Transfer Station and Facility Tonnage Obligations

Section 4.2 (a) of the Service Agreement is amended and restated as follows:

(a) Extent of Refusal Rights

The Company, after the County or the Authority weighs the vehicles as required by Section 4.5, may reject deliveries of (i) Unacceptable Waste, (ii) Acceptable Waste that the Company is entitled to reject pursuant to Sections 4.2(c) and 4.9, (iii) Acceptable Waste to the extent the Company is prevented from accepting it at the Transfer Station or any Alternate Transfer Station by an Uncontrollable Circumstance, (iv) Acceptable Waste delivered at hours other than Receiving Hours or such other hours established under Section 4.4, (v) Processible Waste if the Company (a) has accepted at least 2,400 tons of Processible Waste at the Transfer Station during the previous 24 hours, (b) has accepted at least 14,000 tons of Processible Waste at the Transfer Station during the previous seven consecutive days, (c) has accepted at least 47,880 tons of Processible Waste at the Transfer Station during the previous 28 consecutive days; or (d) the Company has accepted Processible Waste at the Transfer Station at least equal to the amount of the Guaranteed Throughput Capacity during the Fiscal Year; (vi) Processible

Waste to the extent that the receipt, storage, transportation or disposal of such waste would cause the Company to violate Applicable Law or the provisions of any agreement between the County and a third party regarding the transportation of waste to or the disposal of waste at the Designated Landfill; and (vii) Nonprocessable Waste if the Company has accepted at least 400 cubic yards of Nonprocessable Waste at the Transfer Station during the previous 24 hours; provided, however, that the Company must not reject Processible Waste solely because the limits set forth in clause (v), (vi) or (vii) above have been reached if the Company is able to accept additional waste consistent with normal Transfer Station operating hours, Applicable Law and the Company's maintenance obligations under this Agreement. Waste rejected by the Company in accordance with this Section 4.2(a) constitutes Permissible Diverted Waste. Waste rejected by the Company for any reason other than as provided in this Section 4.2(a) constitutes Wrongfully Diverted Waste.

1.9 Guarantor Security Letter of Credit

Section 7.3(a) of the Service Agreement is amended to require the same ratings criteria for a financial institution issuing a Guarantor Security Letter of Credit as the ratings criteria required by Section 1.1(d) of this change order for an Extraordinary Maintenance Letter of Credit. Section 7.2 of the Service Agreement is further amended to provide that, in lieu of renewing or replenishing the Guarantor Security Letter of Credit, the Company may deposit the cash equivalent in an escrow account with the Trustee. If the Company creates an escrow account with the Trustee in lieu of renewing or replenishing the Guarantor Security Letter of Credit, funds from such an escrow account will be released by the Trustee in accord with Section 4.09 of the Trust Indenture, as amended, in accord with and until the expiration date of the required Guarantor Security as set forth in Schedule 43 to the Third Amendment to the Service Agreement.

1.10 Effective Date

This Change Order will take effect on January 1, 2012 (the "Effective Date.")

1.11 DEFINITIONS

Schedule 16 to the Service Agreement is hereby amended to include the following new definitions where they would appear in alphabetical order;

"Extraordinary Maintenance Bond" has the meaning set forth in Section 1.1d of Change Order No. 115.

"Extraordinary Maintenance Letter of Credit" has the meaning set forth in Section 1.1d of Change Order No. 115.

"Security" means collectively, the Extraordinary Maintenance Bond and the Extraordinary Maintenance Letter of Credit.

“Ash Systems” has the meaning set forth in Section 1.2 of Change Order No. 115

“Residue Disposal Cost” has the meaning set forth in Section 1.2 of Change Order No. 115.

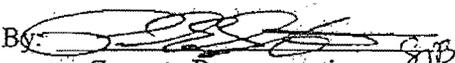
“Ash Reduction Target” has the meaning set forth in Section 1.2 of Change Order No. 115.

“First Renewal Term” shall have the meaning set forth in Section 1.7 of Change Order No. 115.

ACKNOWLEDGED AND AGREED to this Change Order No. 115

COVANTA MONTGOMERY, INC.

Date: December 22, 2011

By: 
Covanta Representative

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Date: _____

By: _____
Authority Representative

On behalf of Montgomery County, Maryland, I hereby approve the execution of this Change Order by the Authority pursuant to Section 6.2 (B) of the Waste Disposal Agreement between the Authority and the County dated November 16, 1990, as amended.

Date: _____

By: _____
County Representative

Schedule 46
To Service Agreement

EXHIBIT 1 (2005 MODIFICATIONS - Revision No. 1)
MONTGOMERY COUNTY RESOURCE RECOVERY PROJECT
EXTRAORDINARY MAINTENANCE SCHEDULE

SYSTEM EQUIPMENT	1,000's of Dollars (1) Allocated Each Calendar Year															Total
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015		
	Fiscal Year Inflation Adjustor % Inc to Baseline	Baseline	2.16%	7.11%	11.67%	17.84%	unescalated									
Facility																
Stoker Stop Replacement	150	\$153	161				150	150	150				150	150	\$1,214	
Boiler Tube Replacement			169	103	294	250				250	250	260			\$1,568	
Scaffold/UT Test/Replate Scrubber Walls	185	\$189	129							185	185	185			\$1,058	
Roline Clarifier		\$0	107							50	50				\$207	
APC Expansion Joint Replacement		\$51	54	56						50	50	50			\$310	
Replace Incline Belt			27									25			\$52	
Replace Screw Conveyor Flight			129		141							80	80	80	\$510	
Paint Stack				33										30	\$63	
Rebuild Diesel Fire Pump				28										25	\$53	
Rebuild Ash Dischargers						40	40	40							\$120	
Feed Table Replacement						80	80	80							\$240	
Repair Superheater Hopper & Exp Joints					59	50	50								\$159	
Turbine Overhaul							450							450	\$900	
F150 Pick-up Truck		\$31								30					\$61	
938 Loader								200							\$200	
Rails/Switches			18	17	18	15	15	25	25	25	25	25	25	75	\$305	
Paving				45					40					40	\$125	
Subtotal	\$335	\$424	\$790	\$281	\$512	\$435	\$785	\$495	\$215	\$590	\$560	\$615	\$255	\$850	\$7,143	
Transfer System																
F150 Pick-up Truck	30								30						\$60	
F250 Pick-up Truck					35								30		\$65	
Forklift	15						15							15	\$45	
Intermodal Containers	515	\$411 *	431 *		1320 *							425 *	425 *	425 *	\$3,852	
Bobcat		\$36					35					35			\$108	
Rebuild 2 M/Jack Engines - RRF		\$15	16				15	15				15	15	15	\$81	
Rebuild 2 M/Jack Engines - TS			16	17			15	15			15	15			\$93	
938 Loader			214												\$214	
950 Loader					294										\$294	
Sideload Engine Rebuild - RRF		\$31				30									\$61	
Sideload Engine Rebuild - TS				22											\$22	
Paint Railcars				140										125	\$265	
Refurbish Compactors					650	550	550			200	200	200			\$2,350	
Rebuild Dozer									150						\$150	
Dozer													400 *		\$400	
Rails/Switches			16	17	18	15	15	25	25	25	25	25	25	25	\$305	
Paving				87					60						\$187	
Sweeper										150 *					\$150	
Water Truck											150 *				\$150	
Subtotal	\$560	\$463	\$694	\$282	\$2,317	\$595	\$845	\$55	\$265	\$375	\$375	\$700	\$910	\$715	\$8,961	
TOTAL	\$895	\$917	\$1,484	\$544	\$2,829	\$1,030	\$1,430	\$550	\$480	\$965	\$935	\$1,315	\$1,165	\$1,565	\$18,103	

Notes: This listing of major equipment refurbishment and replacement does not excuse Covanta from replacing and maintaining all other equipment at the RRF and the Transfer Station - this includes Covanta's own equipment.

- All costs are based on FY 2002 costs and will be adjusted for inflation for future years based on the percentage change in the Inflation Adjustor. The value of the Inflation Adjustor for FY 2002 is 1.3210.
- All items marked * will be replaced on schedule.
- This schedule shows the estimated timing and costs for refurbishment/replacement of major equipment for the Project other than items identified by asterisk and mentioned in (2). The actual condition of the equipment will determine when it is to be replaced/refurbished. In accordance with Section 5.9 (b) NEM/MDA/Covanta will agree on the timing and replacement items for the following calendar year.
- Year 2016 assumes a full year of operation.
- The Company will be responsible to dispose of replaced equipment and is entitled to all scrap or residual value for the equipment replaced.
- 2003 Revision No. 1: Rebuild 1 M/Jack Engine at RRF in 2003 and 1 M/Jack engine rebuild in 2006. Moved Sideload engine rebuild at RRF from 2005 to 2003.
- 2003 Revision No. 2: Refine both Clarifiers in 2003 instead of 1 in 2003 and 1 in 2004. Revised Intermodal container purchases to reflect accelerated purchase schedule from 2002 forward.
- 2004 Revision No. 1: Boiler Tube Replacement: Move \$158,000 (unescalated) from 2005 into 2004. Leave balance of boiler tube replacement (\$92K unescalated) in 2005.
- 2004 Revision No. 2: Refine both Clarifiers in 2004 instead of 1 in 2003 and 1 in 2004.
- 2004 Revision No. 3: Adjust Screw Conveyor Flight replacement in 2004-06; Adjust long-term Rail/Switch Repairs at RRF & TS; Adjust timing of M/Jack engine rebuilds at RRF & TS. Refer to Sept. 3, 2004 letter for justification.
- 2005 Revision No. 1: Adjust Intermodal container purchases in '05-07; adjust compactor refurbishment in '06-'08 and reestablish 5-year intervals in '11-'13. Refer to Sept 2005 letter for justification.
- 2006 Revision No. 1: Adjust Superheater Hopper and Expansion Joint Repairs forward by one year.

14

Extraordinary Maintenance Letter of Credit Example

IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXXXX

DATE: [ISSUE DATE]

BENEFICIARY:
[BENEFICIARY NAME]
[BENEFICIARY ADDRESS]

LADIES AND GENTLEMEN:

BY THE ORDER OF:

APPLICANT:
COVANTA ENERGY CORPORATION
ON BEHALF OF
[COVANTA SUBSIDIARY]
445 SOUTH STREET
MORRISTOWN, NJ 07960

AMOUNT: US \$XX,XXX.XX (00/100 U.S. DOLLARS)

EXPIRATION DATE: _____, [OR ANY AUTOMATICALLY
EXTENDED EXPIRATION DATE]

WE, [APPLICANT BANK NAME AND ADDRESS], ("BANK") HEREBY ISSUE OUR
IRREVOCABLE STANDBY LETTER OF CREDIT NO: XXXXXX IN FAVOR OF
[BENEFICIARY NAME] FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE
AGGREGATE US \$XX,XXX.XX (00/100 U.S. DOLLARS) PURSUANT TO [CONTRACT
NAME] ("AGREEMENT").

ONLY YOU, [BENEFICIARY NAME], MAY MAKE A DRAWING UNDER THE LETTER
OF CREDIT. UPON THE PAYMENT BY THE BANK OF THE TOTAL AMOUNT
SPECIFIED, THE BANK SHALL BE FULLY DISCHARGED OF ITS OBLIGATION
UNDER THE LETTER OF CREDIT FOR THE AMOUNT OF SUCH PAYMENT AND
SHALL NOT THEREAFTER BE OBLIGATED TO MAKE ANY FURTHER PAYMENTS
UNDER THIS LETTER OF CREDIT. WE MAKE NO REPRESENTATION AS TO THE
CORRECTNESS OF THE AMOUNT DEMANDED.

ALL DEMANDS FOR PAYMENT HEREUNDER MAY BE MADE IN WHOLE OR IN PART
FROM TIME TO TIME BY PRESENTATION TO THE BANK OF ONE OR MORE DRAFTS
AT SIGHT, EACH OF WHICH SHALL BE IN THE FORM OF EXHIBIT A ATTACHED
HERETO, ACCOMPANIED BY A DRAWING CERTIFICATE SIGNED BY AN OFFICER

OF THE [BENEFICIARY NAME] (OR ONE DESCRIBING HIMSELF/HERSELF THEREIN AS SUCH) IN THE FORM OF EXHIBIT B ATTACHED HERETO. THE AMOUNT AVAILABLE FOR DRAWING UNDER THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED BY THE AMOUNT OF ANY PAYMENTS MADE HEREUNDER. ALL SUCH DRAFTS HEREUNDER TOGETHER SHALL NOT EXCEED US \$XX,XXX.XX (00/100 U.S. DOLLARS)

ALL DRAWINGS SHALL BE MADE BY PRESENTATION OF EACH DRAFT BY FACSIMILE (AT FACSIMILE NUMBER (312) 233-2264 OR ALTERNATELY TO (312) 233-2266), ATTENTION: STANDBY LETTER OF CREDIT UNIT, WITHOUT FURTHER NEED OF DOCUMENTATION, INCLUDING THE ORIGINAL OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT EACH DRAFT SO SUBMITTED IS TO BE THE SOLE OPERATIVE INSTRUMENT OF DRAWING. YOU SHALL USE YOUR BEST EFFORTS TO GIVE TELEPHONIC NOTICE OF A DRAWING TO THE BANK AT ITS STANDBY SERVICE UNIT, (AT: (312) 954-1910 OR ALTERNATELY TO 1-800-634-1969, OPTION 1) ON THE BUSINESS DAY PRECEDING THE DAY OF SUCH DRAWING (BUT SUCH NOTICE SHALL NOT BE A CONDITION TO DRAWING HEREUNDER AND YOU SHALL HAVE NO LIABILITY FOR NOT DOING SO).

IF A DRAFT IS PRESENTED BY YOU HEREUNDER AT OR PRIOR TO 11:00AM, NEW YORK TIME, ON A BUSINESS DAY, AND PROVIDED THAT SAID DOCUMENT CONFORMS TO THE TERMS AND CONDITIONS HEREOF, PAYMENT SHALL BE MADE TO YOUR ACCOUNT AS DESIGNATED BY YOU, OF THE AMOUNT SPECIFIED, IN IMMEDIATELY AVAILABLE FUNDS, NOT LATER THAN 4:00PM NEW YORK TIME, ON THE SAME BUSINESS DAY. IF A DRAFT IS PRESENTED BY YOU HEREUNDER AFTER 11:00AM, NEW YORK TIME, ON A BUSINESS DAY AND PROVIDED SAID DOCUMENT CONFORMS TO THE TERMS AND CONDITIONS HEREOF, PAYMENT SHALL BE MADE TO THE ACCOUNT NUMBER DESIGNATED BY YOU OF THE AMOUNT SPECIFIED, NOT LATER THAN 4:00PM, NEW YORK TIME, ON THE NEXT BUSINESS DAY. "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH THE ISSUING OFFICE OF THE BANK, IS REQUIRED OR AUTHORIZED BY LAW TO REMAIN CLOSED, OR A DAY OTHER THAN A DAY ON WHICH THE FEDERAL RESERVE SYSTEM IS CLOSED.

OUR STANDBY LETTER OF CREDIT EXPIRES AT: JPMORGAN CHASE BANK, N.A., 300 S. RIVERSIDE PLAZA, MAIL CODE IL1-0236, CHICAGO, IL 60606-0236, ATTN: STANDBY LETTER OF CREDIT UNIT, WITH OUR CLOSE OF BUSINESS ON _____ [IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF OR ANY FUTURE EXPIRATION DATE UNLESS, AT LEAST FIFTEEN (15) DAYS PRIOR TO SUCH EXPIRATION DATE, WE SEND NOTICE TO YOU BY CERTIFIED MAIL OR HAND DELIVERED COURIER, AT THE ADDRESS STATED ABOVE, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. IN NO EVENT WILL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED PAST _____]

WE ENGAGE WITH YOU THAT DRAFTS PRESENTED UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRATION AS HEREIN ABOVE SET FORTH.

THIS LETTER OF CREDIT MAY BE CANCELLED PRIOR TO ANY EXPIRATION DATE, PROVIDED WE RECEIVE A CERTIFICATE SIGNED BY A DULY AUTHORIZED OFFICER OF [BENEFICIARY NAME] STATING THAT THE ATTACHED LETTER OF CREDIT IS NO LONGER REQUIRED AND IS BEING RETURNED TO THE BANK FOR CANCELLATION.

TO THE EXTENT NOT CONSISTENT WITH THE EXPRESS TERMS HEREOF, THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"). AS TO MATTERS NOT GOVERNED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND, INCLUDING WITHOUT LIMITATION THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF MARYLAND, WITHOUT REGARD TO PRINCIPALS OF CONFLICT OF LAWS.

ALL PAYMENTS MADE BY US HEREUNDER SHALL BE MADE FROM OUR FUNDS AND NOT WITH THE FUNDS OF ANY OTHER PERSON.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN EXCEPT ONLY EXHIBIT A AND EXHIBIT B HERETO; AND ANY SUCH REFERENCE SHALL BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT OR AGREEMENT EXCEPT AS SET FORTH ABOVE.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF THE STANDBY LETTER OF CREDIT UNIT, 300 S. RIVERSIDE PLAZA, MAIL CODE IL1-0236, CHICAGO, IL 60606-0236, INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT THE STANDBY CLIENT SERVICE UNIT AT 1-800-634-1969, SELECT OPTION 1, AND HAVE THIS LETTER OF CREDIT NUMBER AVAILABLE.

VERY TRULY YOURS,

[BANK NAME]

BY: _____
NAME:
TITLE:

EXHIBIT A

[LETTERHEAD OF BENEFICIARY]

[DATE]

JPMORGAN CHASE BANK, N.A.
300 S. RIVERSIDE PLAZA, MAIL CODE IL1-0236
CHICAGO, IL 60606-0236
ATTN: STANDBY LETTER OF CREDIT UNIT

RE: DRAW REQUEST - LETTER OF CREDIT NO. _____

DEAR SIRs:

THIS LETTER CONSTITUTES A DEMAND FOR PAYMENT UNDER THE ABOVE REFERENCED LETTER OF CREDIT. ATTACHED HERETO IS THE ORIGINAL DRAWING CERTIFICATE REQUIRED BY THE LETTER OF CREDIT.

DRAFT AMOUNT: \${INSERT DRAWDOWN AMOUNT}

PLEASE IMMEDIATELY WIRE TRANSFER DRAW PROCEEDS IN THE ABOVE AMOUNT AS FOLLOWS:

PAYEE: [BENEFICIARY NAME]

BANK: [INSERT NAME AND ADDRESS OF BENEFICIARY'S BANK]

ABA NUMBER: _____

CREDIT TO: [INSERT NAME OF BENEFICIARY'S BANK ACCOUNT]
ACCOUNT NO: _____

NOTIFICATION PLEASE NOTIFY [INSERT NAME OF BENEFICIARY'S CONTACT PERSON],

CONTACT PHONE: _____, WHEN WIRE IS SENT.

PLEASE CONTACT THE UNDERSIGNED IF YOU HAVE QUESTIONS.

SINCERELY,

NAME:

EXHIBIT B

DRAWING CERTIFICATE

[BENEFICIARY NAME] HEREBY DEMANDS PAYMENT IN THE AMOUNT OF _____ DOLLARS (\$ _____) UNDER IRREVOCABLE LETTER OF CREDIT NO. _____ ISSUED BY JPMORGAN CHASE BANK, N.A. AND DATED _____. THE TOTAL AMOUNT OF ALL PRIOR DRAWS UNDER SAID LETTER OF CREDIT ("LOC") IS \$ _____, WHICH, TOGETHER WITH THIS DRAW, DO NOT EXCEED THE MAXIMUM AMOUNT OF THE LOC.

- [BENEFICIARY NAME] IS MAKING A DRAWING UNDER AND PURSUANT TO SECTION 5.9 OF THE SERVICE AGREEMENT FOR COMPANY'S FAILURE TO COMPLETE CERTAIN EXTRAORDINARY MAINTENANCE ITEMS FOR THE MONTGOMERY COUNTY WASTE-TO-ENERGY PROJECT ("THE PROJECT") AS SET FORTH ON SCHEDULE XX OF THE SERVICE AGREEMENT AFTER NOTICE AND AFTER FAILURE TO RESOLVE ANY SUCH DISPUTES REGARDING EXTRAORDINARY MAINTENANCE OF THE PROJECT IN ACCORDANCE WITH THE TERMS OF THE SERVICE AGREEMENT

OR

- THE LETTER OF CREDIT'S EXPIRY DATE WILL OCCUR WITHIN 10 DAYS OF THE DATE HEREOF AND THE LETTER OF CREDIT HAS NOT BEEN EXTENDED OR REPLACED.

IN WITNESS WHEREOF, THE UNDERSIGNED DULY AUTHORIZED OFFICER OF THE [BENEFICIARY] HAS EXECUTED THIS CERTIFICATE AS OF THE DATE SET FORTH BELOW.

[BENEFICIARY NAME]

DATE: _____

BY: _____

NAME:
AUTHORIZED OFFICER

Extraordinary Maintenance Bond Example

FORM OF PERFORMANCE BONDS

PERFORMANCE BOND

Principal

Business Address of Principal

Surety

A corporation of the State of _____ and authorized to do business in the State
of Maryland.

Obligee
Northeast Maryland Waste Disposal Authority, Maryland

Penal Sum of Bond
(express in words and figures)

Date of Contract: _____, 200__
Date Bond Executed: _____, 200__

Contract Number:

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bond ourselves our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority, (the "Authority"), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Agreement."

NOW, THEREFORE, during the term of said Agreement, this Performance BOND shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Extraordinary Maintenance obligations under the Contract; and
2. Principal and Surety shall comply with the terms and conditions in the Performance Bond.

Provided, however, that this bond is subject to the following conditions and provisions:

1. This bond is for the term beginning _____ and ending _____.
2. The bond may be extended for additional terms at the option of the Surety, by Continuation Certificate executed by the Surety and the Principal but regardless of the number of extensions for additional terms and the number of premiums which shall be payable or paid, the liability of the surety hereunder shall not be cumulative from year to year nor period to period.
3. In the event of default by the Principal in performance of the Extraordinary Maintenance obligations under this contract during the term of this bond, the Surety shall be liable only for the loss to the Obligee due to actual excess costs of performance of the contract up to the termination of the term of this

bond and in no event shall the liability of the Surety exceed the penal sum of this bond.

4. Neither non-renewal by the Surety, nor failure or inability of the Principal to file a replacement bond shall constitute loss to the Obligee recoverable under this bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder of the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor, If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal of Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporations' seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date or Bond shown above.

In Presence of:

Individual Principal

_____ as to _____ (SEAL)
Witness

In Presence of:
Witness

Partnership Principal
_____ (SEAL)

Name of Partnership
_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

Corporate Secretary

President

AFFIX
CORPORATE
SEAL

(Surety)

Attest:

Signature

By: _____

Title:

AFFIX
CORPORATE
SEAL

Business Address of Surety

Bonding Agent's name:

Agent's Address:

Form of Energy Revenue Optimization Incentive Agreement

- 1) The Company will operate the Resource Recovery Facility in a manner to maximize energy revenue by:
 - a. Burning the maximum amount of trash during On-Peak hours while conserving trash during Off-Peak hours
 - b. Minimizing unscheduled down time of the turbine and boilers during On-Peak hours
 - c. Properly maintaining or even improving the efficiency of the boilers and/or turbine
- 2) A Revenue Sharing Guarantee in \$/MWh for each month is shown in Paragraph 12.
- 3) If the Company performs such that the Average \$/MWh in a month is greater than the Revenue Sharing Guarantee for that month, the Company will receive an energy incentive in that month equal to [sharing % TBD] of the additional revenue that was generated as a result of the performance.
- 4) The additional revenue generated above the Revenue Sharing Guarantee will be calculated as follows:

Company Incentive = (Average \$/MWh of actual sales – Revenue Sharing Guarantee) * Actual MWh sold for the month * [sharing % TBD]

Where the “Actual MWh sold for the month” is the MWh sold as stated by the purchaser of electricity

The Average \$/MWh of actual sales is the total energy revenue for Energy, not inclusive of any revenues from the sale of capacity, renewable energy credits or any other environmental attribute, divided by the “Actual MWh sold for the month”

- 5) If the Company fails to meet the Revenue Sharing Guarantee in a month, the Company will pay damages equal to the shortfall in that month as calculated as follows:

Company Shortfall = (Revenue Sharing Guarantee – Average \$/MWh of actual sales) * Actual MWh sold for the month

- 6) The Company Incentive will be paid to the Company on a monthly basis after the Authority receives its electricity revenues from the purchaser of the electricity.
- 7) The Company Shortfall will be calculated and paid on a monthly basis.
- 8) The current Company Share of Electricity Revenue shall remain the same (Section 5.1 of the Service Agreement - Company receives 8% of the revenue up to \$960,000, escalated, per year) and the Company Incentive or Company Shortfall will be calculated independently from the Company Share of Electricity Revenue.
- 9) This Energy Revenue Optimization program will be conducted from [Fiscal Year start and end dates to be determined on a year to year basis].
- 10) During the time period of the Energy Revenue Optimization program, the Company will not be responsible for meeting the existing contract terms for the Guaranteed Kilowatt Production (Section 5.4.2 of Schedule 5 of the Service Agreement).
- 11) All terms and conditions of the Service Agreement, including the Performance Standards, that are not expressly modified under the terms of this agreement, shall remain in place.
- 12) Revenue Sharing Guarantee - After each month the Monthly Average Pricing Based on Flat Generation shall be calculated as the revenue which would have been generated had the total actual MWHs sold been generated in equal amounts during each hour in the month and the pricing schedule in the Electric Sales Agreement Exhibit A [Exhibit A will be provided by the Authority based upon its agreement with a power marketer] were applied to on-peak and off-peak hours, divided by the total MWHs generated for the month. The Revenue Sharing Guarantee shall be [percentage TBD] higher than the Monthly Average Pricing based on Flat Generation.

All capitalized terms used herein that are not defined herein have the meanings given such terms under the Service Agreement dated November 16, 1990 between the Authority and the Company (as amended and supplemented the "Service Agreement").

Scheduled Housekeeping List

To Be Completed