

## SOLID WASTE DISPOSAL SERVICES CONTRACT

THIS AGREEMENT, is made this 29<sup>th</sup> day of December, 2014 between **TOWNSHIP OF LOWER MERION**, 75 East Lancaster Avenue, Ardmore, Montgomery County, Pennsylvania 19003 (hereinafter "Municipality") and **COVENTA 4RECOVERY, L.P.**, 445 South Street, Morristown, New Jersey 07960 (hereinafter "Contractor").

1. **SCOPE OF WORK.** Contractor shall furnish all of the materials, and perform all work in the Contract Documents (hereinafter defined) and shall complete all work required by this Contract and the other Contract Documents to provide Lower Merion Transfer Station Hauling and Disposal Services, Contract Number: 51-59-14-29, in a good and workmanlike manner (hereinafter "Project").

2. **TERM.** The term of this Contract shall be for a five (5) year period beginning January 1, 2015 and ending December 31, 2019 ("Contract Term").

3. **TERMINATION.** This Contract may be terminated, for cause, by Municipality as set forth in the Contract Documents and as specifically provided for in Section 9 hereof.

4. **PAYMENTS AND INVOICES.**

(a) Contractor shall submit invoices and receive payments in accordance with the terms set forth in the Contract Documents.

(b) Contractor shall deliver an invoice to Municipality within seven (7) days after the last business day of each month for the transportation and disposal services performed during the prior month for the duration of the Project. Municipality shall pay invoices, or any undisputed portion thereof, within thirty (30) days of receiving the invoices from Contractor provided that Municipality has found the work performed under the invoices to be consistent with the terms of Contract Documents. Notwithstanding the foregoing, Municipality, at its sole discretion, shall have the option of withholding payments as specifically provided for in Section 7 hereof.

(c) Invoices shall be based on the tons of acceptable Waste delivered to Contractor at the Lower Merion Transfer Station as measured by Municipality at the Transfer Station scale house, multiplied by the applicable per ton transportation and disposal fee. The per ton transportation and disposal fee for the Contract Term shall be:

2015: \$ 63.75  
2016: \$ 65.03  
2017: \$ 66.33  
2018: \$ 67.65  
2019: \$ 69.01

5. **CONTRACT DOCUMENTS.** As used herein, the term "Contract Documents" shall have the same meaning as the definition of "Contract Documents" set forth in Section 6.0 ("Definitions") of the Request for Bids for Solid Waste Disposal Services on Behalf of the

Municipalities of Eastern Montgomery County dated September 2014 with a bid opening of October 24, 2014 ("Request for Bids") and shall include, but not be limited to, the Request for Bids, the Bid Proposal, General Conditions, Special Conditions, All Addenda and Specifications which are particularly referred to and made a part hereof.. The Contract Documents are incorporated by reference herein and made a part hereof as though set forth at length herein.

6. **ADDITIONAL DEFINITIONS.** Section 1.3, General Scope, of the Request for Bids provides that a further definition of "Acceptable Waste" will be provided by the Municipality. The following definitions shall supplement Section 6.0 of the Request for Bids.

"Acceptable Waste" means that portion of solid waste which can be processed and has characteristics such as that collected and disposed of as part of normal municipal collection of solid waste, such as, but not limited to, garbage, trash, rubbish, paper and cardboard, plastics, refuse, offal, beds, mattresses, sofas, bicycles, children's toys, wood, tree limbs if no more than three feet long and/or six inches in diameter, branches, leaves, twigs, grass and plant cuttings; excepting, however, Unacceptable Waste.

"Unacceptable Waste" means dirt, concrete, construction waste, demolition waste, tanks (helium, liquid propane, etc...), electronic wastes, sewage sludge, pathological waste, Hazardous Waste, Regulated Medical Waste, and large items of machinery and equipment, such as motor vehicles and major components thereof (including, but not limited to, engines, transmissions, fenders, batteries, and contaminated parts), agricultural equipment, trailers, White Goods, certain industrial wastes (uniform loads of foam rubber, dry powder solids, etc.), marine vessels and other materials, or items of waste which would be likely to pose a threat to health or safety or cause damage to or adversely affect the operation of a Transfer Station or Designated Disposal Facility.

"White Goods" means major household appliances, such as stoves, refrigerators, washers and dryers, typically finished in white enamel or a similar finish.

7. **RIGHT TO WITHHOLD PAYMENTS.** Municipality may withhold payment and/or nullify all or part of a prior payment in order to protect Municipality in the event of: (a) defective work not remedied; (b) failure of Contractor to perform any obligations under the Contract Documents; (c) third party claims; (d) failure of Contractor to properly and/or promptly pay subcontractors and/or suppliers; (e) failure of Contractor to adequately staff the Project; (f) reasonable evidence that the work cannot be completed for the unpaid contract balance, taking into account anticipated liquidated damages and/or within the contract time; (g) damage to the Municipality or a third party; or (h) failure to carry out the work in accordance with the Contract Documents. The Municipality will notify Contractor, in writing, of the amount of any sums withheld, as well as the reason for the withholding of payment and/or nullifying of prior payment within fourteen (14) days of the decision to withhold/nullify.

8. **PAYMENT AND INVOICES.** Contractor shall submit invoices and receive payments in accordance with terms set forth in the Contract Documents.

9. **TERMINATION FOR CAUSE.** Municipality may, in its sole discretion, stop the Project or terminate Contractor for cause if:

(a) Contractor institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Code or any similar or applicable Federal or state law; or if a petition under any Federal or state bankruptcy or insolvency law is filed against Contractor and such petition is not dismissed within sixty (60) days from the date of said filing; or if Contractor admits in writing its inability to pay its debts generally as they become due, or if it makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed;

(b) Contractor abandons the Project or fails, except in cases for which extension of time is provided, to prosecute promptly and diligently with the Project or fails to supply enough properly skilled workmen, proper equipment or proper materials for the Project;

(c) Contractor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;

(d) Contractor fails to make prompt payment to subcontractors or for materials or labor or otherwise breaches their obligations under any subcontract with a subcontractor; or if a mechanic's or materialmen's lien or notice of lien is filed against any part of the work or the site of the Project and not promptly bonded or insured by Contractor in a manner satisfactory to Municipality;

(e) Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Project or work performed in connection therewith;

(f) Contractor fails to furnish Municipality, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the work in compliance with all the requirements of the Contract Documents;

(g) Contractor engages in conduct that would constitute a violation of state or Federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

(h) Contractor otherwise violates any provision of the Contract Documents.

If any of the above causes exist, then Municipality may, without prejudice to any right or remedy available to Municipality under the Contract Documents or at law or in equity, and after giving Contractor and the surety under the Performance Bond and under the Payment Bond, if any, seven (7) days written notice, terminate Contractor. In case of such termination, Contractor shall not be entitled to receive any further payment for work performed on the Project through the date of termination. The Municipality's right to terminate the Contractor pursuant to this Section shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.

In the event of a termination for cause, in addition and without prejudice to all other rights, remedies and relief which the Municipality may obtain under the Contract Documents and pursuant to the law, the Municipality shall be entitled (1) to withhold any remaining sums due to Contractor pending completion of the Project; (2) to deduct from such sums any costs or expenses incurred by the

Municipality as a result of the Contractor's default including, but not limited to costs to complete and repair the work, reasonable professional fees, including attorney's fees, architectural fees, engineering fees, and consulting fees (together with reasonable expenses and disbursements incurred in connection therewith) which the Municipality may incur in connection with any legal proceedings or action (including professional fees rendered in anticipation of such proceedings or action) and (3) to payment by Contractor of all costs incurred as a result of the Contractor's default, including, but not limited to costs to complete and repair the work, reasonable professional fees, including attorney's fees, architectural fees, engineering fees, and consulting fees (together with reasonable expenses and disbursements incurred in connection therewith) which the Municipality may incur in connection with any legal proceedings or action (including professional fees rendered in anticipation of such proceedings or action) to the extent that such fees exceed amounts deducted from sums due to the Contractor. This provision shall create no right to Contractor or to any other person or entity for payment of such costs or expenses.

10. **COORDINATION.** Contractor is responsible for coordination with utility companies and other service providers, subcontractors, etc., as well as coordinating the Work with Municipality's calendar. Municipality shall not be responsible for any damages or delay based upon the actions or failures to act of a subcontractor, a utility company, supplier or other agent or the owner of any facility necessary for the Project. No damages for delay and no extensions of time will be granted for any failure of coordination.

11. **CLAIMS.** A claim is an assertion by Contractor seeking, as a matter of right, adjustment or interpretation of the Contract terms, payment of money or other relief with respect to the terms of the Contract, the Project or the Work. Claims must be initiated by written notice and the responsibility to substantiate Claims shall rest with the Contractor. Claims must be made within ten (10) days of the event giving rise to the claim or they are deemed waived.

12. **REPRESENTATIONS OF CONTRACTOR.** Contractor represents and warrants as follows: (a) Contractor is financially solvent and experienced in and competent to perform the work or to furnish the facilities, materials, supplies or equipment to be so performed or furnished by it; (b) Contractor is familiar with all Federal, State and Municipal laws, ordinances and regulations, which may in any way effect the work of those engaged herein, including, but not limited to, any special acts relating to the work or to the project of which it is a part; (c) Contractor has carefully examined the plans, specifications and site of the work and that from its own investigation it has satisfied itself as to the nature and location of the work, the character, quality and quantity of surface and sub-surface materials likely to be encountered, the character of equipment and other facilities needed for performance of the work, the general and local conditions, and all other matters which may, in any way, effect the work or its performance; and (d) all information and materials pertaining to Contractor's qualifications and services set forth in Contractor's proposal or elsewhere in connection with this Contract are true and correct.

13. **INDEPENDENT CONTRACTOR.** It is agreed that Contractor is an independent contractor and not an employee of Municipality or any of Municipality's affiliates. Contractor, and its officers, directors and employees will not represent or hold itself or themselves out to be an employee of Municipality. Nothing herein shall be construed to create an employer-employee relationship between Municipality and Contractor.

14. GOOD FAITH EFFORTS. Contractor agrees that it will perform all of its duties hereunder promptly, in good faith, with reasonable diligence, and in accordance with the customary types and levels of service provided by other individuals and entities engaged in Contractor's industry.

15. PERFORMANCE BOND. In accordance with the Request for Bids, Contractor shall furnish a bond ("Bond") to the Municipality to guarantee the faithful performance of this Contract effective for the full term of this Contract. The Bond shall be in an amount of Five Million Three Hundred Seventy-two Thousand Nineteen and Eighty-four Cents (\$5,372,019.84). Notwithstanding anything contained herein or in the Request for Bids to the contrary, Contractor shall be permitted to furnish an annual performance bond which automatically renews each year for the full term of this Contract. In the event that such bond is cancelled or terminated for any reason, Contractor shall provide the Municipality with sixty (60) days' notice of such cancellation or termination date. Within thirty (30) days of the cancellation or termination date, Contractor shall provide the Municipality with a substitute bond which satisfies the requirements of this paragraph and the Request for Bids. Failure to provide a substitute bond in accordance herewith shall be deemed a breach of this Contract, and the Municipality may terminate this Contract in accordance with Paragraph 9 above. The Bond and any substitute bond shall be satisfactory to the Municipality.

16. INSURANCE.

(a) Contractor shall maintain insurance issued by an insurance carrier satisfactory to the Municipality rated at least B+ by A.M. Best Company to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage.

(b) Such insurance shall be maintained at the sole expense of the Contractor as follows:

(i) The amounts of such insurance, without deductible:

- Against public liability due to injury or death to Persons and damages to property shall be not less than \$3,000,000.00 as to each occurrence and \$3,000,000.00 aggregate.
- Against automobile liability due to injury or death to Persons and damage to property shall be not less than \$3,000,000.00 per Person and \$3,000,000.00 per accident.
- Against pollution legal liability shall be not less than \$5,000,000.00 aggregate and \$1,000,000.00 per incident.

(ii) Workers Compensation Insurance. At all times during the term of this Contract, Contractor shall maintain a policy of worker's compensation and employer's liability insurance with limits of not less than the following, or such greater amounts as are required by law:

- \$100,000 each accident for bodily injury by accident.

- \$100,000 each employee for bodily injury by disease.
- \$500,000 policy limit for bodily injury by disease.

The aforementioned policies of insurance shall be specifically designed to protect the Municipality from all claims and damages including wrongful death claims of any kind or nature whatsoever, which may arise from the operations of the Contractor in the performance of the Contract, whether such operations be controlled by someone either directly or indirectly employed by the Contractor for the purpose of accomplishing some obligation upon the Contractor by the terms of the Contract.

All of the insurance policies herein mentioned shall be written with companies authorized to do business in the Commonwealth of Pennsylvania, and shall be obtained and properly endorsed before any operations of the Contractor are commenced for the Municipality. All policies shall remain in full force and effect until expiration of the term of the Contract or the completion of all duties to be performed hereunder by the Contractor, whichever shall occur later. The Contractor shall likewise provide the Municipality with certified copies of said policies in addition to Certificates of Insurance as required by these specifications.

The Contractor shall provide each Municipality with which it Contracts with a Certificate of Insurance naming the Municipality, and their employees, engineering consultants, and advisors employed by the Municipality in this matter as an additional insured entity.

Each and every policy of insurance herein mentioned and required pursuant to the terms of the Contract, including the Worker's Compensation policy, shall carry with it an endorsement to the effect that the insurance carrier will convey to the Municipality by certified mail written notification of any modifications, alterations, or cancellation of any such policy or policies or the terms thereof, and said written notice shall be sent to the municipal manager at least sixty (60) days prior to the effective date of any such modification, alteration or cancellation.

It shall be the responsibility of the Contractor in obtaining the aforesaid insurance coverage to obtain policies which shall protect the Municipality from any and all claims, whatsoever their nature, regardless of whether the same are directed toward the recovery of damages for either personal injuries or property damages or any other element of damage which may be incident to and include all direct or indirect employees of the Contractor and shall include policies on all vehicles and equipment utilized or in any way connected with the services to be rendered by the Contractor pursuant to the terms of the Contract.

If such insurance become unavailable commercially, the parties shall meet and confer concerning reasonable alternatives consistent with the intent of this document.

17. **DESIGNATED DISPOSAL FACILITY.** The Designated Disposal Facility and the Backup Designated Disposal Facility shall be the specific facilities listed in the Bid.

18. **RIGHT TO KNOW LAWS.** Contractor agrees that it will, when requested by Municipality, cooperate with Municipality in complying with the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq., and any other similar laws, in complying with requests for public records made under such laws. Contractor's cooperation shall include, but not necessarily be limited to, prompt

communication with Municipality regarding the existence of a record, the length of the record and other information requested by Municipality, adherence to the fee schedule issued by Municipality for any costs associated with producing or providing access to the record and promptly providing access to or copies of the record. If Contractor fails to cooperate with Municipality in response to a request for a public record, then Contractor shall indemnify Municipality for any and all costs incurred, including attorneys' fees of Municipality, as well as any costs, including any attorneys' fees of the requester, fines or other penalties imposed upon Municipality by a court of competent jurisdiction relating to Contractor's failure to cooperate with Municipality.

19. **DEFAULT.** In the event that the Contractor shall be in breach of the Contract, the Municipality may, at its option, declare the Contract in default; provided, however, the provisions set forth in the Section regarding Termination for Cause shall take precedence and control over this Section.

Upon a declaration of default, the Municipality may notify the Contractor's surety of the Contractor's default on its Performance Bond and of its obligations thereunder, and require the surety within seven (7) days of the notice to perform any one or all of the following:

1. Undertake the completion of the Contract or provide financial assistance to the Municipality to remedy the default.
2. Pay the full amount of the sum of the Performance Bond in complete discharge and exoneration of said Bond. Such options of the Municipality are cumulative to any and all other legal and/or equitable rights of the Municipality, and the Municipality may avail itself of any and all available legal and/or equitable remedies against the Contractor and/or its surety for the immediate and specific performance of the Contract and the payment of all damages sustained by reason of said breach not to exceed the sum of the Bond.

In the event of a labor stoppage, labor strike, lockout, destruction of, damage to, interruption, suspension or interference with the operation of, the Contractor's equipment caused by Acts of God, fires, explosions, or other events beyond the reasonable control of the Contractor, restraints of government, lawful orders of court, administrative agencies or governmental officers; suspension, termination or interruption of governmental licenses or Permits, then the Contractor shall be excused from the performance of the Contract; however, under such circumstance the cost of performing the work specified in the Contract shall then be charged to the Contractor and paid to the Municipalities as in the case of a default by the Contractor.

20. **ORDER OF PRECEDENCE.** Notwithstanding the incorporation of the Contract Documents by reference into this Contract, in the event that there is a conflict between the terms or conditions of the Contract Documents the following order of precedence shall apply:

1. This Contract;
2. The Notice of Award;
3. The Request for Bids;
4. The Bid; and,
5. All other Contract Documents.

21. INDEMNITY. Contractor agrees to be liable for, and to defend, indemnify and hold Municipality harmless against, any and all costs, losses, damages claims, expenses and/or injuries caused by Contractor or any of Contractor's agents or employees, or arising, in whole or in part, out of the activities performed by Contractor hereunder or in connection herewith.

22. PERMITS. Contractor shall acquire all necessary permits related to the Project from the Municipality, Commonwealth of Pennsylvania and any other regulatory agency or government unit having jurisdiction over any aspect of the Project. The costs of acquiring all applicable permits shall be borne by Contractor.

23. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all applicable laws of the Commonwealth of Pennsylvania, including the provisions of the Solid Waste Management Act (1980) and any amendments thereto and shall comply with all applicable laws of the United States and all applicable ordinances of the Municipality and all environmental protection acts.

24. ASSIGNMENT. Neither party may assign its rights or obligations under this Contract without the prior written consent of the other party.

25. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

26. JURISDICTION. The parties agree that the Court of Common Pleas of Montgomery County, Pennsylvania shall have jurisdiction over any and all disputes arising under this Contract.

27. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall constitute an original, and all of which together constitute one and the same agreement.

28. INTERPRETATION. This is the entire Contract between the parties hereto with respect to the subject matter hereof and there are no other terms, covenants, conditions, obligations, warranties, representations or statements, oral or otherwise, of any kind whatsoever other than those which are set forth herein. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Contract in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. Each party and their respective legal counsel have actively participated in the negotiation and drafting of this Contract, and in the event of any ambiguity or mistake contained herein, or any dispute among the parties with respect to any provisions hereof, no provision of this Contract shall be construed against any of the parties solely on the basis that such party or its counsel was the drafter thereof.

29. BINDING EFFECT / ASSIGNMENT. This Contract shall be binding upon, and inure to the benefit of the parties and their respective successors and/or assigns. Notwithstanding the foregoing, Contractor may not assign its rights or obligations under this Contract without the prior written consent of Municipality, which consent may be withheld in Municipality's sole discretion.

30. HEADINGS. The headings incorporated in this Contract are for convenience and reference only and are not a part of this Contract and do not in any way control, define, limit, or add to the terms and provisions hereof.



31. SEVERABILITY. Any provision in this Contract held to be inoperative, unenforceable, voidable or invalid in any jurisdiction, shall, as to that jurisdiction, be ineffective, unenforceable, void or invalid without affecting the remaining provisions in any other jurisdiction, and to this end the provisions of this Contract are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written:

**TOWNSHIP OF LOWER MERION**

By: Ernie B. McNeely (SEAL)  
Name: Ernie B. McNeely  
Title: Township Manager

ATTEST

By: Tracy L. Kelley (SEAL)  
Name: Tracy L. Kelley  
Title: Township Secretary

**COVANTA 4RECOVERY, L.P.**

By: Covanta 4Recovery I, LLC, its  
General Partner

By: Derek Beerhof  
Name: Derek Beerhof  
Title: EVP.