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COVANTA HARRISBURG, INC.,  
Plaintiff

IN THE COURT OF COMMON  
PLEAS DAUPHIN COUNTY,  
PENNSYLVANIA

v.

No. 2010-CV-13120

CITY OF HARRISBURG and PAUL P.  
WAMBACH, TREASURER OF THE CITY  
OF HARRISBURG,

Defendants

CIVIL ACTION - LAW

**INTERVENER, RECEIVER FOR THE CITY OF HARRISBURG'S, BRIEF IN  
OPPOSITION TO COVANTA HARRISBURG, INC.'S MOTION FOR SUMMARY  
JUDGMENT**

Dated: June 7, 2013



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## I. INTRODUCTION

In the instant Motion for Summary Judgment, Plaintiff, Covanta Harrisburg, Inc. (hereinafter referred to as "Covanta" or "Plaintiff") is asking this Court to render judgment on all counts raised in the Complaint, regarding issues relating to damages suffered by Covanta due to the failure of the Harrisburg Authority to make regularly scheduled repayments on the retrofit completion funding advanced by Covanta and the failure of the Guarantor Defendant City of Harrisburg (hereinafter referred to as "the City") to make immediate payment as required under the City Guaranty Agreement.

## II. PROCEDURAL HISTORY

Covanta filed its Complaint on October 5, 2010. Plaintiff raised three counts in its Complaint: (1) Breach of Contract; (2) Specific Enforcement of the City's Covenants and Order Seeking Mandamus Relief under the Local Government Unit Debt Act to Compel Defendants to Budget For and Apply All Future Tax Monies and Other Revenues as They Are Received to Payments Due to Covanta Under the City Guaranty Agreement; and, (3) Action under the Local Government Unit Debt Act for a Priority Judgment Against City to be Applied by City Treasurer Against the Moneys Next Coming Into the City Treasury for Payments Due to Covanta under the City Guaranty Agreement. On October 26, 2010, Defendants, City and Paul P. Wambach, Treasurer for the City of Harrisburg, filed an Answer to Covanta's Complaint and raised a New Matter. Covanta filed an Answer to Defendants' New Matter on November 4, 2010.

After the pleadings had concluded, on July 19, 2011, Covanta filed a Motion for Summary Judgment and a Memorandum of Law in support thereof. On September 19, 2011, Defendants, City of Harrisburg and Paul P. Wambach, Treasurer of the City of Harrisburg, filed their Answer to Covanta's Motion for Summary Judgment and Brief in support thereof. On September 22, 2011, Covanta filed a Certificate of Readiness to indicate that its Motion for Summary Judgment was ready for disposition.

On September 26, 2011, the Honorable John F. Cherry scheduled oral argument regarding Plaintiff's Motion for Summary Judgment for November 30, 2011. On October 4, 2011, Covanta filed its Response to Defendants' Answer and Brief in Opposition to Covanta's Motion for Summary Judgment.

On October 18, 2011, Counsel for Defendants filed a Notice of Stay indicating that Defendant, City of Harrisburg, filed a Petition under Chapter 9 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Pennsylvania, which Petition was docketed in the Bankruptcy Court at Case No. 1:11-bk-06938. Counsel for Defendants asserted that as a result of the filing of the Bankruptcy Petition, and pursuant to 11 U.S.C. §§ 362 and 922, all proceedings in the above-captioned action were stayed against the Defendants until further Order from the United States Bankruptcy Court.

On November 28, 2011, Judge Cherry issued an order rescheduling the oral argument to February 13, 2012. On February 6, 2012, the Receiver for the City of Harrisburg (hereinafter referred to as "Receiver") (who at that time was David Unkovic) filed a Petition to Intervene in the above-captioned matter. On February 24, 2012, Covanta filed a response and brief in support thereof in opposition to the Petition to

Intervene filed by the Receiver. On March 9, 2012, Covanta filed a Certificate of Readiness to indicate that the Receiver's Petition to Intervene in the above-captioned matter was ready for disposition.

On March 28, 2012, this Honorable Court issued an order scheduling oral argument regarding the Receiver's Petition to Intervene for May 23, 2012. On March 30, 2012, David Unkovic resigned as the Receiver. On May 11, 2012, the Pennsylvania Department of Community and Economic Development filed a petition for appointment of a new Receiver for the City of Harrisburg in the Commonwealth Court of Pennsylvania. The Commonwealth Court had scheduled a hearing on the petition for appointment for May 24, 2012.

On May 18, 2012, counsel for the Receiver filed a Motion for Continuance of the May 23, 2012 oral argument regarding the Receiver's Petition to Intervene in the above-captioned matter. On May 21, 2012, Covanta filed its Response to the Receiver's Motion for Continuance as well as a cross motion to strike the Receiver's Motion for Continuance. On May 22, 2012, this Honorable Court issued an order granting the Receiver's Motion for Continuance. The oral argument was rescheduled to June 5, 2012.

On May 24, 2012, General William Lynch (ret.) was appointed as the Receiver. On September 5, 2012, this Honorable Court issued an order granting the Receiver's Petition to Intervene in the above-captioned matter. On January 9, 2013, Covanta filed a Certificate of Readiness with this Honorable Court indicating that its Motion for Summary Judgment was ready for disposition.

On January 22, 2013, the Receiver filed a Motion for Leave asking this Honorable Court for permission to file a Brief in Opposition to Covanta's Motion for Summary Judgment. On January 24, 2013, Covanta filed its Answer to the Receiver's Motion for Leave and a New Matter. On January 28, 2013, the Receiver filed its Answer to Covanta's New Matter. On February 22, 2013, the Receiver filed a Certificate of Readiness with this Honorable Court indicating that its Motion for Leave of Court to file a Brief Opposing Covanta's Motion for Summary Judgment was ready for disposition. On May 15, 2013, this Honorable Court granted the Receiver's Motion for Leave of Court to file a Brief Opposing Covanta's Motion for Summary Judgment.

### **III. FACTUAL BACKGROUND**

On May 29, 2007, The Harrisburg Authority (hereinafter referred to as the "Authority") and Covanta entered into a Management and Professional Services Agreement (hereinafter referred to as "Original MPS Agreement"). (Complaint ¶ 5, and the Defendants' Answer thereto). The Original MPS Agreement was amended by a First Amendment to Management and Professional Services Agreement dated as of December 27, 2007 (hereinafter referred to as the "MPS Agreement"). (Complaint ¶ 5, and the Defendants' Answer thereto). A true and correct copy of the MPS Agreement is attached hereto as Exhibit "A".

Pursuant to the MPS Agreement, "the Authority selected [Covanta] to coordinate the construction, start-up, performance testing, operation and maintenance of the [Harrisburg Materials, Energy, Recycling and Recovery Facility (hereinafter referred to as the "Facility" but commonly known as the Harrisburg Incinerator)] on a long-term



basis and to provide certain administrative services with respect to the Facility, including completion of the Retrofit.” (MPS Agreement at pp. 2).

Under the MPS Agreement, Covanta was obligated to advance to the Authority financing in an amount up to \$25,500,000.00 for the cost incurred to perform the Retrofit Completion Work as set forth in Exhibit “K” of the MPS Agreement. (MPS Agreement at K-1). The Authority is obligated to repay Covanta for all advances made by Covanta under Exhibit “K” of the MPS Agreement in payments of principal and interest. (MPS Agreement at K-1).

Section 10 of the MPS Agreement defines events constituting default of the MPS Agreement and the remedies provided in response thereto. (MPS Agreement at pp. 17-19). Section 10(B)(1)(d) specifically provides that the Authority is in default of the MPS Agreement when it fails to pay an amount due Covanta within ten calendar days after payment is due. (MPS Agreement at pp. 18-19).

The City of Harrisburg guaranteed the Authority’s obligations to repay all monetary advances made by Covanta for the Retrofit Completion Work pursuant to a City Guaranty Agreement (hereinafter referred to as “CGA”) dated December 14, 2007, which is attached hereto as Exhibit “B”. The CGA states:

The City hereby guarantees, unconditionally and irrevocably, for the benefit of the Authority and Covanta Harrisburg, the full and prompt repayment of the Reimbursement Amount by the Authority to Covanta Harrisburg when and as such shall be due and payable, in accordance with the terms and conditions of this 2007 Guaranty.

(Article III, Section 3.01 of the CGA).

Pursuant to the MPS Agreement, Covanta advanced funding for the Retrofit Completion Work on the Facility in an amount totaling \$21,736,000.00 (hereinafter

referred to as the "Advance"). (Exhibit K of the MPS Agreement). The Authority has an obligation to repay the Advance with the provision of Exhibit K to the MPS Agreement. (Exhibit K of the MPS Agreement). The Authority has failed to make the repayments on the Advance, due pursuant to Exhibit K to the MPS Agreement on April 1, 2010, July 1, 2010 and October 1, 2010. Each of the April 1, 2010 and July 1, 2010 repayments was for \$637,500.00. (Plaintiff's Request for Admissions (RFA) ¶ 13). The unpaid October 1, 2010 repayment was for \$679,794.00. (RFA ¶ 14). In addition, the Authority owes interest at the late payment rate for missed payments pursuant to Section 13 of Exhibit G to the MPS Agreement. (Exhibit G to the MPS Agreement). The total amount owed to Covanta by the Authority as of October 1, 2010 is \$1,980,117.00. (RFA ¶ 16). To date, neither the Harrisburg Authority nor the City, pursuant to the CGA, have paid this amount to Covanta.

The Receiver for the City of Harrisburg is presently engaged in negotiations with all major creditors of the City. Further, allowing Covanta to move forward with this case could impede the Receiver's ability to reach a comprehensive negotiated resolution of the City's financial problems between the Office of the Receiver and all the other major creditor of the City. Attached as "Exhibit C" is a signed statement from the Receiver.

For the purposes of Covanta's Motion for Summary Judgment, the Receiver stipulates that there are no genuine issues of material facts; however, Covanta's Motion fails because it is not entitled to judgment as a matter of law.

#### IV. QUESTIONS PRESENTED

1. **WHETHER THIS HONORABLE COURT SHOULD DENY COVANTA'S MOTION FOR SUMMARY JUDGMENT AS IT IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW?**

**Suggested answer: Yes.**

2. **WHETHER THIS HONORABLE COURT SHOULD GRANT THE RECEIVER'S REQUEST TO STAY THE PROCEEDINGS IN THIS CASE UNLESS AND UNTIL ALL SETTLEMENT NEGOTIATIONS BETWEEN THE RECEIVER AND ALL MAJOR CREDITORS FOR THE CITY OF HARRISBURG HAVE CONCLUDED?**

**Suggested answer: Yes.**

#### V. STANDARD OF REVIEW

After the close of relevant pleadings, any party may move for summary judgment in whole or in part as a matter of law under the following circumstances:

- (1) *whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or*
- (2) *if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.*

Pa. R.C.P. No. 1035.2.

The nonmoving party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion, identifying:

- (1) *one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or*

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa.R.C.P.No.1035.3(a).

The party moving for summary judgment has the initial burden of proving that no genuine issue of material fact exists. *Case v. Lower Saucon Twp.*, 654 A.2d 57 (Pa. Cmwlth. 1995). Factual issues are "material" for the purpose of summary judgment, if their resolution could affect the outcome of the case under the governing law. *Strine v. Med. Care Availability & Reduction of Error Fund*, 586 Pa. 395, 894 A.2d 733 (2006). A properly supported motion for summary judgment "may 'pierce the pleadings' and require the non-moving party to disclose the facts on which [h]is or her claim is based." *Case*, 654 A.2d at 59 [quoting *Elder v. Nationwide Ins. Co.*, 410 Pa. Super. 290, 599 A.2d 996, 1000 (Pa. Super. 1991)].

Summary judgment may be granted when, viewing all the facts in the light most favorable to the nonmoving party and resolving all doubt as to the existence of any material fact against the moving party, the moving party is entitled to judgment as a matter of law. *McCarthy v. City of Bethlehem*, 962 A.2d 1276 (Pa. Cmwlth. 2008), *appeal denied*, 603 Pa. 706, 983 A.2d 1250 (2009). Summary judgment may be granted only when the moving party's right is clear and free from doubt. *Id.*

## VI. ARGUMENT

### **A. This Honorable Court should deny Covanta's motion for summary judgment as it is not entitled to judgment as a matter of law.**

This Honorable Court should deny Covanta's motion for summary judgment as Covanta is not entitled to judgment as a matter of law.

The Receiver concedes that the facts of this case are not in dispute. The undisputed material facts of this case establish that the City and City Treasurer breached the City's Guaranty Agreement by failing to make payments on April 1, 2010, July 1, 2010 and October 1, 2010. The City's failure to make the required payments under the CGA has resulted in the total amount of \$1,912,500.00 being due and owing to Covanta. However, while the facts of the case are not in dispute, Covanta is not entitled to judgment as a matter of law.

The Municipalities Financial Recovery Act as amended (hereinafter "Act 47") was enacted in 1987 by the Pennsylvania Legislature. 53 P.S. § 11701.101. The Legislature declared it a matter of

public policy of the Commonwealth . . . to foster fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices. The failure of a municipality to do so [was] determined to affect adversely the health, safety and welfare not only of the citizens of the municipality but also of other citizens of the Commonwealth.

53 P.S. § 11701.102.

Act 47 establishes a three step process for the assistance of financially distressed municipalities. First, after a determination that a municipality is distressed within the meaning of the Act, coordinators are appointed to help the municipality develop a consensual plan to address its financial situation. Any plan must be acceptable not only to the municipality, but also to its creditors. 53 P.S. § 11701.243.

Second, if a consensual plan does not result, the Governor may declare a fiscal emergency and the municipality has a final opportunity to negotiate a consent agreement with creditors and present that consent agreement to the Pennsylvania

Department of Community and Economic Development ("DCED") for approval. 53 P.S. § 11701.607. Governor Corbett declared a fiscal emergency for the City of Harrisburg on October 24, 2011.

Finally, if no consent agreement is reached and approved, the Governor may petition for the appointment of a Receiver who is to develop and implement a plan to address the financial problems of the distressed municipality. On May 24, 2012, General William Lynch (ret.) was appointed as Receiver for the City of Harrisburg, a Third Class City, by order of the Commonwealth Court of Pennsylvania.

Section 706 of Act 47 lists the powers, duties and prohibited actions of the Receiver. Section 706(b) specifically provides that the Receiver may not:

(3) unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed city or authority, **except as otherwise ordered by a court of competent jurisdiction.**

53 P.S. § 11701.706(b)(2) (emphasis added).

Presently, Covanta is seeking the entry of judgment against the City of Harrisburg due to the City's failure to pay Covanta sums due and owing under contract law. By way of this brief, and as counsel will so do at oral argument, the Receiver is asking this Honorable Court, a court of competent jurisdiction under Act 47, for an order allowing him to impair the contract between the City of Harrisburg and Covanta. Should this court grant the Receiver the ability to impair Covanta's rights under the contract, Covanta would not be entitled to judgment as a matter of law. Failure to grant the Receiver the ability to impair Covanta's rights under the contract and allowing the case to move forward to judgment could severely impact the ongoing negotiations between the Receiver and the creditors of the City of Harrisburg.

When enacting the Receivership legislation in Act 47, the Legislature did not provide the Receiver the ability to unilaterally impair the rights of creditors. Therefore, General Lynch may not simply fail to honor contracts on his own accord. Had the Legislature wanted the Receiver to never have the ability to impair contractual obligations, it could have done so. However, Section 706(b)(2) of Act 47 does allow the Receiver, in conjunction with the order of a court of competent jurisdiction, to impair contractual obligations of the City. As such, the Receiver is asking this Honorable Court to issue an order allowing him to impair the contract between the City of Harrisburg and Covanta.

In all matters involving statutory interpretation, Pennsylvania Courts apply the Statutory Construction Act, 1 Pa.C.S. § 1501 *et seq.*, which provides that the object of interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a). A statute's plain language generally provides the best indication of legislative intent. See, e.g., *McGrory v. Dep't of Transp.*, 915 A.2d 1155, 1158 (Pa. 2007); *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. 2003); *Pa. Fin. Responsibility Assigned Claims Plan v. English*, 664 A.2d 84, 87 (Pa. 1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."). Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. 1 Pa.C.S. § 1921(c); see also *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1230 (Pa. 2004) (citing *O'Rourke v. Commonwealth*, 566 Pa. 161, 778 A.2d 1194, 1201 (Pa. 2001)); *Ramich v. Workers' Comp. Appeal Bd. (Schatz Elec., Inc.)*, 770 A.2d 318, 322 (Pa. 2001).

In this case, the Legislature clearly gave the Receiver the right to impair *contractual obligations only when combined with the order of a court of competent jurisdiction*. By way of this brief, the Receiver is asking for such an order which would *impair Covanta's contractual rights and would thus not entitle Covanta to judgment as a matter of law*.

**B. Assuming Covanta is entitled to judgment as a matter of law, this Honorable Court should nevertheless stay the proceedings in this case**

It is without question that the fact that a Receiver is appointed under Act 47 does not act as an automatic stay akin to the Bankruptcy Code. Additionally, Section 706 of Act 47 does not allow the Receiver to unilaterally impair or modify contractual obligations of the distressed City. However, the Pennsylvania Legislature gave the Receiver, *with an order of a court of competent jurisdiction*, the ability to impair or otherwise halt collection efforts. 53 P.S. § 11701.706(b)(2).

The bottom line is that the Receiver for the City of Harrisburg is tasked with the duty of implementing a financial recovery plan (which includes paying the debts of Harrisburg) while still maintaining essential city services. Individual creditors attempting to move to the front of the line (as Covanta is doing here) creates the real potential of frustrating the efforts of the Receiver and in turn harming the health, safety and welfare of the City of Harrisburg and its citizens. Failure to stay this case will impair the Receiver's global negotiations with other major creditors.

Should this Honorable Court be inclined to grant Covanta's motion for summary judgment, this Honorable Court should nevertheless stay this case unless and until negotiations are concluded between the Receiver and the major Creditors of the City of

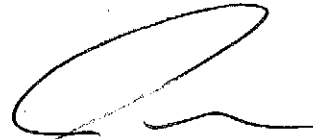


Harrisburg as failure to do so may frustrate the ongoing negotiations between the Receiver and the major creditors for the City of Harrisburg.

## VII. CONCLUSION

For the foregoing reasons, the Intervener, Receiver for the City of Harrisburg, respectfully requests that this Honorable Court deny Covanta's Motion for Summary Judgment as it is not entitled to judgment as a matter of law under 53 P.S. § 11701.706(b)(2). Alternatively, should this court grant Covanta's Motion for Summary Judgment, this Honorable Court should also grant Receiver's request to stay this case unless and until all settlement negotiations between the Receiver and major Creditors for the City of Harrisburg have concluded.

Respectfully submitted,



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Attorney for Intervener, Receiver  
for the City of Harrisburg

**CERTIFICATE OF SERVICE**

I, Joshua J. Vecchio, Esquire, counsel for Intervener, Receiver for the City of Harrisburg, in the above-captioned matter, hereby certify that I served a true and correct copy of the within **RECEIVER FOR THE CITY OF HARRISBURG'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**, by first class mail, postage paid, on the following:

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\_\_\_\_\_  
Joshua J. Vecchio, Esquire

**FIRST AMENDMENT  
TO  
MANAGEMENT AND PROFESSIONAL SERVICES AGREEMENT**

THIS FIRST AMENDMENT TO MANAGEMENT AND PROFESSIONAL SERVICES AGREEMENT (this "First Amendment"), is made and entered into as of December 27, 2007, by and among:

THE HARRISBURG AUTHORITY, an authority organized and operating pursuant to the Municipality Authorities Act of 1945, the Act of May 2, 1945, as amended (the "Authority"); and

COVANTA HARRISBURG, INC., a Delaware corporation (the "Waste Management Facility Manager").

WITNESSETH

WHEREAS, the Authority owns an existing waste-to-energy facility for the combustion of municipal solid waste and recovery of energy known as the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Facility"); and

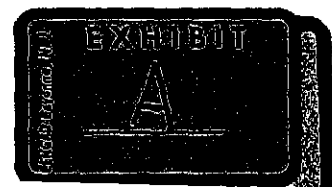
WHEREAS, since January 2, 2007, the Authority has engaged the Waste Management Facility Manager to operate the Facility on an interim basis pursuant to that certain Administrative Services and Interim Operation and Maintenance Agreement; and

WHEREAS, on May 29, 2007, the Authority and the Waste Management Facility Manager entered into that certain Management and Professional Services Agreement (the "Original O&M Agreement"), pursuant to which the Waste Management Facility Manager shall provide management and professional services to the Authority for the Facility for a term of ten (10) years in accordance with the provisions thereof, subject to the occurrence of certain conditions precedent set forth therein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and intending to be legally bound, the parties hereby amend the Original O&M Agreement as follows:

1. Capitalized terms used but not defined in this First Amendment shall have the meanings ascribed to such terms in the Original O&M Agreement.
2. Section 3.B. of the Original O&M Agreement is hereby amended and replaced in its entirety as follows:

"B. The "Commencement Date" shall occur when all of the conditions precedent set forth in Exhibit C have been satisfied, or waived by the Waste Management Facility Manager. If the Commencement Date has not occurred by January 31, 2008, then either party may terminate this Agreement by giving the other Party written notice of



termination before occurrence of the Commencement Date. The Parties shall use their best efforts, to the extent commercially reasonable, to cause timely satisfaction of the conditions precedent. Upon occurrence of the Commencement Date, the Parties shall confirm to each other in writing such occurrence."

3. A new Section 5.A.21. is hereby inserted into the Original O&M Agreement as follows:

"21. Provide all technology licenses and other intellectual property sufficient to permit the Waste Management Facility Manager to operate and maintain the Facility."

4. Section 5.H. of the Original O&M Agreement is hereby amended and replaced in its entirety as follows:

"H. Prior to December 31, 2009, the Authority shall not sell, lease, transfer or dispose of its rights to the Facility to any person or entity, other than the Waste Management Facility Manager or its designees. From January 1, 2010 until the end of the Refusal Period (defined below), the Authority shall not sell, lease, transfer or dispose of its rights to the Facility to any person or entity, except in accordance with the provisions of Section 14.J. below. From and after the end of the Refusal Period, the Authority may sell, lease, transfer or dispose of its rights to the Facility to any person or entity; provided, however, that the Authority shall pay the Waste Management Facility Manager the Early Termination Amount and all other amounts due hereunder as a condition to the consummation of any such transaction. Subject to the foregoing provisions of this Section 5.H., the Authority may issue a request for proposals to seek a qualified buyer for the Facility at any time on or after July 1, 2009."

5. A new Section 8.E. is hereby inserted into the Original O&M Agreement as follows:

"E. Dauphin County; Third Party Beneficiary Rights

1. The parties hereto acknowledge and agree that the County of Dauphin, Pennsylvania, a Third Class County of the Commonwealth (the "County") has a material and substantial interest in the performance of the duties and responsibilities of the Waste Management Facility Manager in accordance with Sections 6 and 8 (including the Exhibits referenced therein) of this Agreement, by reason of, *inter alia*, the following:

(a) The County has provided its Guaranties, secondarily to the City, with respect to certain Bonds of the Authority issued to finance costs of the Retrofit of the Waste Management Facility, and with respect to other debt of the Authority applicable to payment of certain costs of the Waste Management Facility including the payment of operation and management fees to the Waste Management Facility Manager, or its Affiliate; and

(b) The County will be requested from time to time to assist the Authority with respect to financing or refinancing other debt and obligations of the Authority related to the Waste Management Facility, including certain advances to be made by the Waste Management Facility Manager or its Affiliate to complete the Retrofit Completion Work; and

(c) The County, through its Municipal Waste Management Plan (the "Plan") adopted pursuant to the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101 of July 28, 1988 P.L. 528, has designated the Waste Management Facility as the primary facility for the processing and/or disposal of County generated, Regulated Waste pursuant to the Plan; and

(d) Accordingly, the County has committed substantial resources to and is relying upon the long term and effective operation of the Waste Management Facility as contemplated by this Agreement.

2. The County shall be a third party beneficiary of the obligations and responsibilities of the Waste Management Facility Manager as provided in Sections 6 and 8 of this Agreement (including the Exhibits referenced therein), as the same may be modified or amended from time to time, and shall have the right to enforce such obligations in the event the Authority elects not to enforce them, is unable to fulfill them or takes action which the County deems inadequate. Nothing contained herein shall require the County's consent to any modification or amendment to any part of this Agreement, other than this Section 8.E.

3. If there has been an Event of Default by the Waste Management Facility Manager of any of its obligations under Sections 6 or 8 of this Agreement (including the Exhibits referenced therein), the County may provide written notice thereof to the Authority and to the Waste Management Facility Manager and thereafter may exercise any and all of the remedies available to the Authority under the terms of this Agreement. If the Authority proceeds with the exercise of remedies or other enforcement action, which is deemed adequate to the County, the County will not take duplicate action. The provisions of this section 8 are not intended to provide the County with any rights above and beyond the rights of third party beneficiaries under the law

6. Section 14.D. of the Original O&M Agreement is hereby amended by inserting the following at the end thereof:

"If to the County, as Third Party Beneficiary:

Board of County Commissioners  
County of Dauphin  
2<sup>nd</sup> & Market Streets  
Harrisburg, PA 17101

Attention: Chairman

with a copy to the County Solicitor:

William T. Tully, Esquire  
Solicitor  
Dauphin County Board of Commissioners  
Dauphin County Court House  
Front and Market Streets  
Harrisburg, PA 17101

and, with a copy to County Special Counsel:

Charles B. Zwally, Esquire  
Mette, Evans & Woodside  
3401 North Front Street  
Harrisburg, PA 17110"

7. Exhibit B to the Original O&M Agreement sets forth the form of the Construction Management Agreement, which the parties shall cause to be executed upon satisfaction or waiver by the Waste Management Facility Manager of the conditions precedent to the Original O&M Agreement as amended by this First Amendment. Exhibit B to the Original O&M Agreement is hereby supplemented by a First Amendment to Construction Management Agreement in the form attached as Exhibit B hereto, which the parties also shall cause to be executed upon satisfaction or waiver by the Waste Management Facility Manager of the conditions precedent to the Original O&M Agreement as amended by this First Amendment.

8. Exhibit C to the Original O&M Agreement is hereby amended and replaced in its entirety by Exhibit C attached hereto.

9. Exhibit K to the Original O&M Agreement is hereby amended and replaced in its entirety by Exhibit K attached hereto.

*[Signatures appear next page]*

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this First Amendment to the Original O&M Agreement to be executed as of the date first above written.

**COVANTA HARRISBURG, INC.**

Attest:

By: Kirk J. Bily  
Title: Vice President & A.G.C.

By: [Signature]  
Title: SVP Domestic Business

**THE HARRISBURG AUTHORITY**

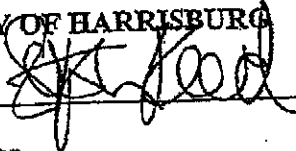
Attest:

By: Michelle V. Jones  
Title: Assistant Secretary-Treasurer

By: [Signature]  
Title: Chairman

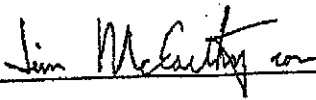
TO EVIDENCE ITS CONSENT TO THIS FIRST AMENDMENT, THE CITY OF HARRISBURG, A THIRD CLASS CITY OF THE COMMONWEALTH OF PENNSYLVANIA, EXECUTES BELOW:

CITY OF HARRISBURG



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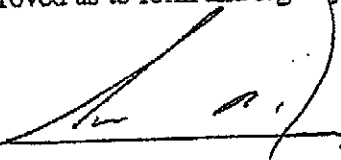
Mayor



---

City Controller

Approved as to form and legality:



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City Solicitor

(SEAL)



## MANAGEMENT AND PROFESSIONAL SERVICES AGREEMENT

THIS MANAGEMENT AND PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), is made and entered into as of the 29th day of May, 2007, among:

THE HARRISBURG AUTHORITY, an authority organized and operating pursuant to the Municipality Authorities Act of 1945, the Act of May 2, 1945, as amended (the "Authority");

COVANTA HARRISBURG, INC., a Delaware corporation (the "Waste Management Facility Manager"); and

for the purposes of Sections 5(A)(19), 5(J), 6, 12, 13 and 14 and Exhibit J, and only for such purposes, THE CITY OF HARRISBURG (the "City"), a Third Class City of the Commonwealth of Pennsylvania.

### WITNESSETH

WHEREAS, the Authority owns an existing waste-to-energy facility for the combustion of municipal solid waste with energy recovery known as the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Facility"); and

WHEREAS, before the date hereof, the Authority determined to undertake the acquisition, construction and equipping of certain alterations, additions, extensions and improvements to the Facility, including the retrofit and modernization thereof (collectively, the "Retrofit"); and

WHEREAS, the Authority determined to fund such acquisition, construction and equipping through the issuance of its \$125,000,000 aggregate principal amount of its Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds"), its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the "2003 E Bonds") and its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "2003F Bonds," and together with the 2003D Bonds and the 2003E Bonds, the "Retrofit Bonds");

WHEREAS, the Retrofit Bonds were issued under and pursuant to a certain Trust Indenture dated as of December 1, 2003, which followed the Indentures related to the 1998 and 2002 Series of Bonds for the Facility (the "Indenture") from the Authority to Commerce

Bank Pennsylvania, National Association, as trustee (the "Trustee"); and

WHEREAS, the Retrofit Bonds are secured to the extent provided in the Indenture and subordinate to certain liens as described therein; and

WHEREAS, the Authority engaged a contractor to design, construct and deliver the Retrofit project; however, the Authority terminated such contractor on or about December 31, 2006, when the Facility experienced continued delays and operating difficulties related to certain design, construction completion, operation and maintenance issues associated with the Retrofit and

WHEREAS, as of December 31, 2006, the Authority terminated the City as the operator of the Facility; and

WHEREAS, since January 2, 2007, the Authority has engaged the Waste Management Facility Manager to operate the Facility and prepare a "Construction Plan" to complete the construction of the Retrofit of the Facility under an interim contractual relationship; and

WHEREAS, an affiliate of the Waste Management Facility Manager is willing to manage the completion of the Retrofit and perform the Retrofit Completion Work described herein and the Waste Management Facility Manager is willing to operate the Facility on a long-term basis pursuant to the requirements of the Indenture; and

WHEREAS, following a public request for proposals, the Authority selected the Waste Management Facility Manager to coordinate the construction, start-up, performance testing, operation and maintenance of the Facility on a long-term basis and to provide certain administrative services with respect to the Facility, including completion of the Retrofit; and

WHEREAS, the Authority and the Waste Management Facility Manager now wish to set forth the provisions pursuant to which the Waste Management Facility Manager shall provide such management and professional services to the Authority for the Facility under a long-term agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and intending to be legally bound, the Parties agree as follows:

1. **Incorporation of Recitals and Exhibits**

A. The Recitals above and Exhibits attached hereto are incorporated herein and are made a part hereof as if fully set forth.

B. The Exhibits to this Agreement consist of:

Exhibit A	Definitions
Exhibit B	Construction Management Agreement

Exhibit C	Conditions Precedent to Commencement Date
Exhibit D	Operation and Maintenance Expenses and Responsible Party
Exhibit E	Facility Operations
Exhibit F	Performance Standards
Exhibit G	Payments to Waste Management Facility Manager for Management Services
Exhibit H	Project Agreements and Permits
Exhibit I	Facility Description and Facility Site
Exhibit J	Form of Guaranty Agreement
Exhibit K	Retrofit Completion Payment Calculations

## 2. Engagement for Services

A. The Authority hereby engages the Waste Management Facility Manager to provide certain management and professional services at and for the Facility, as more fully set forth in this Agreement and the Indenture.

B. The Waste Management Facility Manager hereby accepts the engagement by the Authority to provide certain management and professional services at and for the Facility, as more fully set forth in this Agreement and the Indenture.

C. The Waste Management Facility Manager hereby acknowledges that it has read and understands the Indenture. Further, the Waste Management Facility Manager agrees to comply with all obligations of the Waste Management Facility Manager under the Indenture. To the extent of any irreconcilable conflict between the terms of this Agreement and the Indenture with respect to the obligations of the Waste Management Facility Manager, the terms and provisions of the Indenture shall control. For the avoidance of doubt, if the Indenture is silent on any issue which this Agreement addresses, the terms and provisions of this Agreement shall control that issue.

## 3. Term of Agreement

A. The Waste Management Facility Manager shall provide management services, as more specifically described in Section 6 below, for a period of ten (10) years from the Commencement Date (the "Initial Term"), unless earlier terminated as set forth herein. If both Parties mutually agree in writing at least one hundred and eighty (180) days prior to the expiration of the Initial Term, the Agreement shall be extended for one additional ten-year term.

B. The "Commencement Date" shall occur when all of the conditions precedent set forth in Exhibit C have been satisfied, or waived by the Waste Management Facility Manager. If the Commencement Date has not occurred by December 31, 2007, then either Party may terminate this Agreement by giving the other Party written notice of termination. The Parties shall use their respective best efforts, to the extent commercially reasonable, to cause the conditions precedent to be satisfied by such date and, when satisfied, the Authority and Waste Management Facility Manager shall confirm to each other in writing the occurrence of the Commencement Date of the Agreement.

C. Upon the termination or expiration of this Agreement, the Waste Management Facility Manager agrees to cooperate with the Authority in effecting an orderly transition of the management of the Facility to the Authority, a Replacement Waste Management Facility Manager or its contractor, unless the Waste Management Facility Manager has purchased or leased the Facility.

#### 4. Representations and Warranties

A. The Authority represents and warrants to the Waste Management Facility Manager as follows:

1. The Authority is organized and exists as a municipal authority under the laws of the Commonwealth of Pennsylvania, and is duly authorized to carry on the functions and operations as contemplated by this Agreement.

2. The Authority is the owner of the Facility and is authorized to enter into this Agreement; this Agreement does not conflict with any applicable law (including any public bidding requirements), contract, lease, instrument or other obligations to which it is a party or by which it is bound; and this Agreement represents a valid and binding obligation of the Authority, enforceable in accordance with its terms.

B. The Waste Management Facility Manager represents and warrants to the Authority as follows:

1. The Waste Management Facility Manager is organized and exists as a corporation under the laws of the State of Delaware, and is authorized to carry on the functions and operations as contemplated by this Agreement.

2. The Waste Management Facility Manager is authorized to enter into this Agreement; this Agreement does not conflict with any judgment, order, law, ordinance or regulation applicable to Waste Management Facility Manager, or any contract, lease, instrument or other agreement or obligations to which Waste Management Facility Manager is bound; and this Agreement represents a valid and binding obligation of the Waste Management Facility Manager, enforceable in accordance with its terms.

#### 5. Responsibilities of the Authority

A. The Authority shall:

1. Maintain an Authority's representative ("Authority's Representative"). The Authority's Representative shall have knowledge of the Facility, and be available at all reasonable times and on reasonable notice for consultation with the Waste Management Facility Manager.

2. With the assistance of the Waste Management Facility Manager, negotiate with and prepare Waste Disposal Agreements to provide adequate Acceptable Waste to meet the projected operating requirements. The Waste Management Facility Manager hereby acknowledges that it has received and reviewed all of the existing Waste Disposal Agreements between the Authority and users of the Facility as set forth on Exhibit H.

3. Bill and collect the Total Receipts and Revenues, if any, that the Waste Management Facility Manager is not responsible for billing and collecting pursuant to this Agreement. Comply with the terms and conditions of the Indenture as it relates to the collection and disposition of Total Receipts and Revenues.

4. With the assistance of the Waste Management Facility Manager, negotiate, prepare and enter into Energy Agreements for the sale of electricity and steam generated by the Facility, and assist in the management of customer relationships and accounts and hold and maintain all Permits required for the sale and delivery of electricity and steam. The Waste Management Facility Manager hereby acknowledges that it has received and reviewed all of the existing Energy Agreements between the Authority and users of the Facility, and all Permits held by the Authority and/or the City, listed on Exhibit H attached hereto.

5. Assist the Waste Management Facility Manager by placing at its disposal all available information pertinent to the Facility.

6. Give prompt written notice to the Waste Management Facility Manager whenever the Authority observes or otherwise becomes aware of any breach of this Agreement by the Waste Management Facility Manager.

7. Limited to Total Receipts and Revenues, pay the costs of operating and maintaining the Facility, in the manner set forth in Exhibit D hereof and as described in the Indenture.

8. Limited to Total Receipts and Revenues, pay the Management Fee and Incentive Payment.

9. Limited to Total Receipts and Revenues, contract and pay for Residue disposal at the on-site Residue monofill (the "Landfill") and by supplementing the life of the Landfill and providing alternate Residue disposal capacity once the Landfill is full, in the manner specified herein, and contract and pay for all closure and post-closure requirements at the Landfill in accordance with Applicable Law.

10. Fund any adverse financial impacts affecting the Facility arising from events of Force Majeure to the extent and in the manner required by the terms and conditions of the Indenture.

11. Provide complete and exclusive possession of the Facility to the Waste Management Facility Manager during the entire term subject only to the rights of the Authority to inspect the Facility and its books, accounts and records as provided in this

Agreement and subject to the requirements of the Indenture and subject to reasonable commercial access to the Authority and its agents in accordance with the provisions hereof.

12. Enforce its rights under the Energy Agreements and Waste Disposal Agreements.

13. Provide at the Landfill or through Residue Disposal Agreements sufficient disposal capacity and rights for all Bypass Waste and pay all disposal fees for Bypass Waste.

14. Obtain all financing required to pay capital costs of changes to the Facility approved by the Authority or any changes to the Facility or the Facility Site required as a result of Force Majeure agreed to by the Parties and to the extent permitted by the Indenture and subject to the terms and conditions thereof.

15. Obtain and maintain insurance as provided in Section 7.09 of the Indenture, as supplemented by Article 9 hereof, except to the extent the Authority has exercised its option under this Agreement and/or the Construction Management Agreement for the Waste Management Facility Manager to obtain and maintain insurance coverage that meets all stipulated guidelines in these Agreements. The Waste Management Facility Manager shall obtain an appraisal of the Facility promptly to support the initial placement of all property insurances with the cost of such appraisal to be born by the Authority. The Authority shall receive a copy of the appraisal upon completion.

16. Pay all Taxes relating to the Facility and/or the performance by the Waste Management Facility Manager of its obligations under this Agreement (excluding any payroll and income Taxes and all other Taxes measured by the Waste Management Facility Manager's net income) such that the Waste Management Facility Manager shall not directly or indirectly be responsible for payment thereof and such that no Tax liens of any nature whatsoever are placed upon the Facility or the Facility Site. The Waste Management Facility Manager shall provide the Authority with invoices for such Taxes, charges and assessments, together with cost substantiation therefor, and the Authority shall pay such invoices within thirty (30) days after the receipt thereof. With regard to the City's merchantile and business privilege tax (the "City Merchantile Tax"), to the extent the rate of such tax increases by more than ten percent (10%) from the rate in effect on the date hereof, the Management Fee shall be increased in the succeeding year by the amount of City Merchantile Tax paid by the Waste Management Facility Manager in excess of the prior year.

17. Provide the Waste Management Facility Manager with copies of all Waste Disposal Agreements, Energy Agreements, Residue Disposal Agreements and Bypassed Waste Disposal Agreements to which the Authority is a party and any amendments thereto as soon as practicable after they are executed. The Waste Management Facility Manager hereby acknowledges that it has received and reviewed all of the existing Waste Disposal Agreements, Energy Agreements, Residue Disposal Agreements, and Bypassed Waste Disposal Agreements provided to it by the Authority, as listed on Exhibit H, and agrees to operate the Facility in accordance with the terms and conditions thereof.

18. Provide the Waste Management Facility Manager with information within the Authority's control as may be reasonably requested by the Waste Management Facility Manager about vehicles used by the Authority's and City's haulers to deliver Acceptable Waste to the Facility.

19 Cause to be provided to the Waste Management Facility Manager access to the City's vehicle fueling facility for fueling the rolling stock and other vehicles used to operate the Facility, and not for transportation of waste to and from the Facility Site, and charge the Waste Management Facility Manager the standard intra-municipal rate for such fueling, but in no event more than the then-applicable retail market rate for fuel.

20. Provide and pay for <sup>no</sup> water to the Facility and Facility Site; provided, however, that the Waste Management Facility Manager shall use effluent water for cooling the turbine if such use would be economically feasible, taking into consideration potential damage to the turbine and related facilities and the cost of installing and using a sand filter or other mechanism to allow for such use of effluent water.

B. While this Agreement is in effect, the Authority shall not offer employment to, or hire, any of the Waste Management Facility Manager's staff or former staff, without prior notice to and the written approval of the Waste Management Facility Manager.

C. The Authority shall perform its obligations and duties under this Agreement in a competent and business-like manner, and shall cooperate in all reasonable respects with the Waste Management Facility Manager, so that the Waste Management Facility Manager may perform its obligations under this Agreement in a proper and satisfactory manner.

D. The Parties and City acknowledge that the Authority and City may enter into a contract whereby the Authority may perform some or all of its responsibilities set forth in this Agreement through the City or City-related entities or agencies. Waste Management Facility Manager agrees in advance that performance by the Authority through the City or City-related entities or agencies is acceptable to Waste Management Facility Manager.

E. The Operating Expenses shall be defined as set forth in the Indenture and shall be paid from Total Receipts and Revenues pursuant to the terms and conditions thereof.

F. During the term the Authority shall not amend, modify, terminate or waive its rights under any Project Agreements without first consulting with the Waste Management Facility Manager.

G. The Authority shall not amend the Bond Documents or enter into new Bond Documents that would impair the priority of payment of the Management Fee and Incentive Payment or other amounts due to the Waste Management Facility Manager hereunder or impair the Authority's ability to pay such amounts without the prior written consent of the Waste Management Facility Manager.

LOFR

H. Prior to December 31, 2009, the Authority shall not sell, lease or transfer or dispose of its rights to the Facility to any person or entity, other than the Waste Management Facility Manager or its designees. From January 1, 2010 until December 31, 2012, the Authority shall not sell, lease or transfer or dispose of its rights to the Facility to any person or entity, except in accordance with the provisions of Section 14.J. below. From and after January 1, 2013, the Authority may sell, lease or transfer or dispose of its rights to the Facility to any person or entity, but if the transferee is not the Waste Management Facility Manager, then the Authority shall pay the Waste Management Facility Manager a fee of 12% of the Early Termination Amount, in addition to the Early Termination Amount and all other amounts due hereunder, as a condition to the consummation of any such transaction.

I. The Authority shall negotiate in good faith with the Waste Management Facility Manager or its Affiliate in an effort to reach agreement and close on or before December 31, 2008 the sale or long-term lease of the Facility and the Facility Site to the Waste Management Facility Manager or its Affiliate. If such sale or long-term lease from the Authority to the Waste Management Facility Manager has not closed by December 31, 2008, then the Parties shall continue so negotiating in good faith until the earlier of (i) the closing of such a transaction, (ii) termination of this Agreement, or (iii) December 31, 2009.

J. The Authority shall reimburse the Waste Management Facility Manager for the "Host Municipality Benefit Fee" paid by the Waste Management Facility Manager to the City under Section 1301, et seq. of Act 101 of 1988; provided, however, that if the City agrees to accept payment of the fee in a different form or in exchange for services at the Facility and the Waste Management Facility Manager is not obligated to pay the Host Municipality Benefit Fee to the City, then the Authority shall not be obligated to reimburse the Waste Management Facility Manager.

6 Responsibilities of Waste Management Facility Manager.

A. Retrofit Completion Work

Promptly after the Commencement Date occurs, the Waste Management Facility Manager shall cause its Affiliate to commence the Retrofit Completion Work pursuant to the Construction Management Agreement in the form attached as Exhibit B (the "Construction Management Agreement"). The costs to complete the Retrofit Completion Work shall be advanced by the Waste Management Facility Manager up to \$28,000,000 and repaid by the Authority in accordance with Exhibit K.

B. Operation and Maintenance Activity.

1. The Waste Management Facility Manager will be responsible for:

a. Scheduling and managing deliveries of Acceptable Waste to the Facility under the Waste Disposal Agreements.



b. Producing weekly, monthly, and annual reports necessary to track Facility performance and as required under the Bond Documents, including stack test results, Acceptable Waste delivered and processed or bypassed, residue disposal, energy production, scrap recovery amounts, quantities of utilities used, and Facility outages and, where applicable, the revenues associated thereto, and any other reasonable operating reports requested by the Authority.

c. Preparing and issuing invoices for tipping fees and waste disposal under the Waste Disposal Agreements, for steam deliveries and electricity sales under the Energy Agreements and scrap metal sales. All payments received by the Waste Management Facility Manager shall be submitted to the Authority and deposited in the Authority's Revenue Fund account within five (5) business days. For any payments made by check that are returned for insufficient funds, the Authority will charge a reasonable returned check fee that will be applied against the payor's account and which must be paid before the Waste Management Facility Manager may permit continued use of the Facility for transfer or disposal by that payor.

d. Scheduling and managing all scheduled unit outages to minimize Bypassed Waste.

e. Managing all unscheduled unit outages, repairs and maintenance.

f. Supplying and maintaining an adequate inventory of all necessary chemicals, consumables, reagents, parts (excluding capital improvements) and supplies necessary for the safe and reliable operation of the Facility.

g. Maintaining and replacing (when necessary) rolling stock needed to operate the Facility and the other on-site operations directly related thereto. Unless such rolling stock is leased, any replacement rolling stock will be registered or titled in the Waste Management Facility Manager's name with title passing to the Authority at termination of the Agreement upon payment by the Authority of fair market value therefor.

h. Managing the Facility in a manner that will satisfy Section 8 hereof.

i. Preparing and submitting all reports required or reasonably requested by the Authority relating to the Facility (including all environmental reports required by law, Pennsylvania Department of Environmental Protection regulations, rules, policies and orders and the environmental Permits associated with the Facility or for purposes of renewal, amendment or reissuance of all licenses, permits and approvals necessary to operate the Facility and Facility Site).

j. Operating the Facility in all material respects in compliance with all Applicable Laws and Permits.

k. Delivering or causing to be delivered all Residue to the Landfill until such time as the permitted capacity of the Landfill is exhausted.

l. Arranging for the delivery of spot waste to supplement the delivery of waste arranged by the Authority to keep the plant running at full capacity.

m. Arranging for the delivery of special waste (premium priced non-hazardous waste) to increase overall tip fee revenues.

n. Managing the sale of recovered ferrous scrap metal.

o. Arranging for the transfer of all Residue to a Residue Disposal Facility and Bypassed Waste to a Bypassed Waste Disposal Facility for disposal.

p. Operating the Facility in accordance with the terms and conditions of the Indenture.

q. Pay all payroll and income Taxes and all other Taxes measured by the Waste Management Facility Manager's payroll and net income, such that the Authority shall not directly or indirectly be responsible for payment thereof and such that no Tax liens related to such Taxes are placed upon the Facility or the Facility Site.

r. Assisting the Authority with the public dissemination of environmental operating data for the Facility, including information posted on the Authority's website regarding the Facility's stack test report results and any significant upset conditions that adversely affects operation of the Facility.

2. The Waste Management Facility Manager shall, to the extent commercially reasonable and consistent with Prudent Industry Practices, operate and maintain the Facility and Facility Site in a manner consistent with the applicable Performance Standards in accordance with Section 8 and with the Dresser-Rand manufacturer's performance curve for the Facility's turbine generator.

3. Give prompt written notice to the Authority whenever the Waste Management Facility Manager observes or otherwise becomes aware of any breach of this Agreement by the Authority.

4. The Waste Management Facility Manager shall give prompt written notice to the Authority and/or the City whenever the Waste Management Facility Manager observes or otherwise becomes aware of any breach of this Agreement by the Authority and/or the City.

5. Assist the Authority in seeking, negotiating and preparing (i) contracts with suppliers to provide waste to meet the projected operating requirements of the Facility to the extent that Waste deliveries under the existing Waste Disposal Agreements are insufficient or terminated and (ii) contracts with buyers of energy to purchase energy to meet the

projected operating requirements of the Facility to the extent the existing Energy Agreements are insufficient or terminated, and present such contracts to the Authority for consideration and execution by the Authority.

6. On an annual basis by December 1 of each year and consistent with the Authority's and the City's statutory, bond and procedural requirements for approval of a fiscal budget, the Waste Management Facility Manager shall prepare and submit to the Authority an annual Operating Expense Budget, as required in the Indenture, setting forth projected revenues and other sources of funding, projected expenses, and projected capital improvements for the succeeding three (3) years or the remaining portion of the term of this Agreement, whichever is shorter.

7. The Waste Management Facility Manager shall perform its obligations and duties under this Agreement in a competent and business-like manner, consistent with Prudent Industry Practice, and shall cooperate in all reasonable respects with the Authority.

C. Prior to December 31, 2007, to the extent positions are available, the Waste Management Facility Manager shall interview and, if qualified, give preference to City personnel to fill management and operational positions at the Facility. Waste Management Facility Manager shall consider all City personnel formerly employed at the Facility who apply for positions if such personnel, in Waste Management Facility Manager's sole discretion, are qualified. Thereafter the Waste Management Facility Manager shall not offer employment to, or hire, any of the City's employees or Authority's employees, during the Term of this Agreement without prior notice to and approval of the City and Authority.

D. A description of the expenses to be paid by the Waste Management Facility Manager from the Waste Management Facility Manager's Fee are set forth in Exhibit D.

E. The Waste Management Facility Manager shall be responsible to provide all staff, management and operational resources necessary to operate and maintain the Facility in a manner consistent with Prudent Industry Practices, and shall be responsible for all salary, fringe benefits, and related expenses payable to such employees. Waste Management Facility Manager specifically agrees to produce and diligently implement a work force diversity plan acceptable to Authority that addresses diversity in and for employment, contracting and supply of materials. Said acceptance shall not be unreasonably withheld, conditioned or delayed.

F. The City and the County shall jointly and severally guarantee the prompt payment when due of the Reimbursement Amount and the Early Termination Amount pursuant to separate guaranty agreements in the form attached hereto as Exhibit J.

G. The Waste Management Facility Manager shall perform its obligations and duties under this Agreement in a competent and business-like manner, and shall cooperate in all reasonable respects with the Authority, so that the Authority may perform its obligations under this Agreement in a proper and satisfactory manner.

H. The Waste Management Facility Manager shall negotiate in good faith with the Authority in an effort to reach agreement and close on or before December 31, 2008 the sale or long-term lease of the Facility and the Facility Site.

I. The Waste Management Facility Manager acknowledges that the City uses certain of the facilities on the Facility Site and will continue to do so without interruption or charge during the term of this Agreement, so long as it does not impair Waste Management Facility Manager's obligations under this Agreement or materially increase its costs of performance hereunder.

#### 7. Waste Management Facility Manager's Compensation

A. 1. The Waste Management Facility Manager's compensation shall be determined and paid in accordance with Exhibit G.

2. The Management Fee for each month shall be due and payable on or before the first calendar day of that month.

#### B. Operations Incentive Payment

1. Commencing on the Retrofit Completion Date and continuing thereafter throughout the remainder of the term, the Authority shall pay the Waste Management Facility Manager an annual incentive payment as described in Exhibit G (the "Incentive Payment"). The Waste Management Facility Manager shall provide a written invoice detailing the applicable revenues of the Facility for the applicable calendar year and the resulting computation of the Incentive Payment. The Authority agrees to make records available to the Waste Management Facility Manager as necessary for the confirmation of the Incentive Payment.

2. Notwithstanding any provision herein to the contrary, during any calendar year in which the amount of the Incentive Payment described in Section 7.B.1 would exceed twenty percent (20%) of the total compensation paid to the Waste Management Facility Manager for that year (the "Incentive Compensation Limit"), the Incentive Payment under Section 7.B.1 shall be reduced so that the Incentive Compensation Limit is observed for that calendar year and such excess shall not be recouped or carried over in any subsequent year and the Authority shall be entitled to retain such excess.

875  
10500  
3,000  
20% (3,100)  
2,700  
4,000/  
2,900

#### 8. Waste Management Facility Manager's Performance Standards

A. Prior to the first anniversary of the Retrofit Completion Date, the Waste Management Facility Manager shall use all commercially reasonable efforts to satisfy the Environmental Standard.

B. Beginning on the first anniversary of the Retrofit Completion Date and continuing throughout the remainder of the Term, the Waste Management Facility Manager

agrees to operate and maintain the Facility so that the Facility will meet the Performance Standards set forth in Exhibit E.

C. Determination of Breach. If the Authority believes a Performance Standard has been breached, it shall submit a claim to Waste Management Facility Manager.

D. Remedies.

1. If it is determined after the first anniversary of the Retrofit Completion Date that Waste Management Facility Manager has failed to meet a Performance Standard set forth in Exhibit E, then the Waste Management Facility Manager shall, at its own expense, complete any necessary repairs, improvements, or corrections required to enable the Facility to meet the Performance Standards.

2. Authority's Liquidated Damages.

a. If, for any Year following the first anniversary of the Retrofit Completion Date, there is a failure by Waste Management Facility Manager to meet the Annual Throughput Standard as described in Exhibit E, then the Waste Management Facility Manager shall pay liquidated Performance Damages to the Authority for such failure in the amount determined as provided in Exhibit C.

b. If, for any Year following the first anniversary of the Retrofit Completion Date, there is a failure by Waste Management Facility Manager to meet the Environmental Standard (as described in Exhibit F), then the Waste Management Facility Manager shall pay, as liquidated damages, any and all fines, fees or penalties that may be levied or assessed by the governmental authority that issues or enforces the applicable Permit against the Authority in respect of the violation of the Permit.

3. The Parties agree and acknowledge that calculation of the damages from a breach of a Performance Standard would be difficult to estimate accurately and that the Performance Damages are a reasonable approximation thereof and are intended as the fair allocation and liquidation of damages and not as a penalty against the Waste Management Facility Manager. The Parties further acknowledge and agree that the Performance Damages shall be the sole and exclusive remedy to which the Authority will be entitled for a breach of any Performance Standard, and in no event will the Waste Management Facility Manager be liable to the Authority for, nor shall the Performance Damages include, consequential, punitive or special damages, or costs of environmental remediation or natural resource damage to the extent such costs of environmental remediation or natural resource damage are insured against under the insurance policies required to be obtained by the Authority pursuant to this Agreement.

4. Applicability of Annual Liability Cap.

The amount of Authority liquidated damages payable by the Waste Management Facility Manager to the Authority as described in this Section 8 is subject to the Annual Liability Cap described in Section 14.K. Deductibles from all insurances covering the

Facility shall not count towards the Annual Liability Cap to the extent such deductibles are paid by the Authority.

9. Insurance

The Authority and the Waste Management Facility Manager shall purchase and maintain throughout the term of this Agreement insurance of the types and in the amounts described below from insurers lawfully authorized to do business in Pennsylvania, to the extent that such insurance is commercially available on reasonable terms. Coverage shall be provided by insurers with an A.M. Best rating of A- or better and a Financial Class Rating of IX or better.

A. Insurance to be maintained by the Authority:

1. The Authority shall provide and maintain continuously throughout the term, the following types and amounts of insurance at its expense, including deductibles, relating to the Facility and the Facility Site:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 per accident
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate
Comprehensive Automobile Liability	\$1,000,000 combined single limit
Environmental Impairment Liability:	

Environmental Impairment Liability including , on-site and off site clean up, and third party on site and off site bodily injury and property damage claims with limits of \$2 million per occurrence and in the aggregate.

All Risk Property Insurance Including Boiler and Machinery:

"All Risk" property insurance including boiler and machinery shall be provided on the Facility in an amount not less than the full replacement value of the Facility with a waiver of subrogation in favor of the Waste Management Facility Manager, its affiliates and their respective officers, directors, agents, and employees. The policy shall have a deductible not to exceed \$250,000 per occurrence except for wind and earthquake, which shall have deductibles not greater than 2% of insured values if coverage is being provided through the Waste Management Facility Manager's master policy. If coverage is provided through a standalone policy either by the Waste Management Facility Manager or the Authority, there shall be separate deductibles of \$250,000 for each covered exposure, including Earthquake, Wind and

Flood. Limits for Earthquake coverage shall be at least \$50,000,000. Limits for flood shall be at least \$2,500,000. Wind shall be placed with limits to full replacement value.

**Business Interruption and Extra Expense:**

Business Interruption insurance shall be purchased in conjunction with the property insurance to protect the interests of both the Authority and the Waste Management Facility Manager in an amount sufficient to protect the gross revenues of the Facility less any avoided costs. The Business Interruption coverage shall have a deductible not to exceed 15 days if provided through the Waste Management Facility Manager's master policy if available in the marketplace. Should there be a need to purchase this coverage on a standalone policy format, a Business Interruption policy with a deductible of no more than 45 days shall be purchased. Should the Waste Management Facility Manager proceed on purchasing standalone coverage, cost options will be provided to the Authority for business interruption deductibles of 15-days, 30-days and 45-days if available in the insurance marketplace. Should the Authority exercise its option to procure this coverage, since they are bearing the responsibility of the deductible, they may select the most cost effective deductible option.

2. The Waste Management Facility Manager shall be named as an additional insured on all insurance policies (except workers compensation and employer's liability) obtained and maintained by the Authority pursuant to this Section and all policies shall be endorsed to contain a waiver of subrogation in favor of the Waste Management Facility Manager. The Authority shall provide the Waste Management Facility Manager with certificates evidencing such insurance on or before the Commencement Date. Such certificates shall provide for thirty (30) days advance written notice to the Waste Management Facility Manager of cancellation, material change, reduction of coverage or non-renewal.

3. The Authority must insure or cause to be insured any property stored at the Facility that is not used at the Facility or Facility Site by the Waste Management Facility Manager to operate and maintain the Facility or Facility Site and shall indemnify the Waste Management Facility Manager against damage to such property except for the gross negligence of the Waste Management Facility Manager.

4. At the Authority's request the Waste Management Facility Manager shall procure Commercial General Liability insurance on behalf of the Authority. The cost of this insurance, including associated broker expenses shall be paid directly by the Authority. If the Waste Management Facility Manager is requested to purchase this coverage on behalf of the Authority the policy will be issued in the name of the Authority and the original policy shall be delivered directly to the Authority when issued.

5. At the Authority's request the Waste Management Facility Manager shall procure and maintain the All Risk Property Insurance and Business Interruption/Extra Expense coverage described above. Whether such coverage is placed in Waste Management Facility Manager's master program or placed on a stand-alone basis is at the sole discretion of Waste Management Facility Manager. However all efforts shall be made to obtain

the coverage at the best terms and price possible with option quotes including retention options provided to the Authority for review with right of selection as described above. If the Authority requests the Waste Management Facility Manager to purchase the property coverage and such coverage is placed in the Waste Management Facility Manager's master property insurance program the Authority will receive certificates of insurance and a broker's letter stating that the coverage is in place and in compliance with the contract terms. In addition the Authority shall also receive a comprehensive insurance summary highlighting all coverages including sublimit coverages as well as applicable deductibles and retentions. If a stand alone policy is bought a complete certified copy of the insurance policy must be provided to the Authority listing the Authority as a Named Insured. The Waste Service Facility Manager shall also make the policy terms and conditions applicable to the Facility available for review to the Authority's representative in the Waste Management Facility Manager's corporate home office upon reasonable notice.

6. If Waste Management Facility Manager does procure such insurance, pursuant to subsection 5 immediately preceding, Waste Management Facility Manager agrees to provide at least one hundred twenty (120) days written notice prior to renewal to Authority if continued procurement is not possible. Waste Management Facility Manager may opt not to place such coverage for any reason whatsoever after the first year of placed coverage. The Authority may at its option replace coverage at any time. Any short rate penalty costs incurred through this action shall be born by the Authority.

B. Insurance to be maintained by the Waste Management Facility Manager

1. The Waste Management Facility Manager shall maintain the following types and amounts of insurance throughout the Term:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 per accident
Commercial General Liability	\$2,000,000 per occurrence and \$2,000,000 aggregate
Comprehensive Automobile Liability	\$1,000,000 combined single limit
Excess Liability over the above referenced coverage's except for Professional Liability	\$25,000,000 aggregate

2. The policies for all insurance to be maintained by the Waste Management Facility Manager as provided above shall name the Authority and City as additional insureds except for Workers Compensation and Employers Liability policy. The



Waste Management Facility Manager shall provide the Authority with certificates evidencing all insurance to be maintained by the Waste Management Facility Manager as provided above after the Commencement Date. Such certificates shall provide for thirty (30) days advance written notice to the Authority of cancellation, material change, reduction of coverage or non-renewal. All such policies shall be subject to the requirements of the Indenture, and the provisions of the Indenture shall control, in the event of conflict between the provisions of this Agreement and the Indenture.

3. Commencing within 90 days after the Retrofit Completion Date, and continuing thereafter throughout the term, the Waste Management Facility Manager shall arrange for the benefit of the Authority a one-year, annually renewable performance bond or letter of credit in the amount of \$2,000,000 (the "Performance Bond") to stand as assurance for the Waste Management Facility Manager's performance of its obligations under this Agreement.

C. *Cost of Insurance.*

The cost of obtaining and maintaining the insurance required of the Authority shall be paid by the Authority. The cost of obtaining and maintaining the insurance and the Performance Bond required of the Waste Management Facility Manager shall be reimbursed to the Waste Management Facility Manager within 30 days after the Waste Management Facility Manager submits an invoice to the Authority accompanied by cost substantiation. In providing such cost substantiation, Waste Management Facility Manager shall not be required to provide any information it deems to be proprietary, including but not limited to payroll information.

D. *Waiver of Claims*

The Authority and the Waste Management Facility Manager hereby waive on behalf of themselves and any insurer any and every claim for recovery from the other for any and all loss resulting from or relating to the performance of this Agreement, which loss or damage is insured against under the insurance policies required to be obtained pursuant to this Agreement, regardless of cause or origin, including the negligence of the other Party, its Affiliates, employees, agents and contractors.

10. *Default and Remedies*

A. *Waste Management Facility Manager Default and Remedies of the Authority*

1. The following shall constitute an Event of Default by the Waste Management Facility Manager:

a. Waste Management Facility Manager breaches or fails to comply with any material provision of this Agreement and does not commence to cure such failure or breach within ten (10) days after the date set forth in the written notice from the Authority of such failure or breach, and thereafter diligently continue to cure such default; or

b. Waste Management Facility Manager becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated bankrupt, makes an assignment for the benefit of creditors, suffers a receiver to be appointed for the operation of its business, or makes a material liquidation of its assets, provided, however, that such event results in the Waste Management Facility Manager's inability to perform its obligations pursuant to this Agreement, or a modification of the terms of this Agreement without the consent of the Authority;

c. Waste Management Facility Manager pays, for each of two consecutive years, liquidated damages in an amount equal to the Annual Liability Cap for each such year or Waste Management Facility Manager fails to pay any undisputed liquidated damages in any one year within 30 days after notice that such amount is due and owing; or

d. The Construction Management Agreement is terminated by the Authority by reason of the uncured event of default of the Affiliate of the Waste Management Facility Manager in accordance with the provisions thereof.

2. In the event of an Event of Default by the Waste Management Facility Manager:

a. The Authority may, at its election, terminate this Agreement by giving Waste Management Facility Manager at least thirty (30) days advance written notice of termination and Waste Management Facility Manager shall cooperate during such 30-day period in effecting an orderly exit of its rights and responsibilities hereunder. If the property insurance for the Facility is in the Waste Management Facility Manager's master program and upon the Authority agreeing to assume all costs and expenses related to the policy and deductibles, the coverage will continue for 120 days following termination of this Agreement or until the policy expires whichever is sooner. If an agreement is not reached on costs, the coverage shall terminate upon termination of this Agreement with any return premium payable to the Authority.

b. Upon termination, the Waste Management Facility Manager shall be paid for the value of the management services performed in accordance with this Agreement up to the time of termination including prorated Incentive Payment plus the Early Termination Amount. The foregoing remedies shall be the exclusive remedies of the Authority in the event of termination pursuant to this subsection, but all obligations pursuant to Section 12 shall survive termination pursuant to this subsection.

B. Authority Default and Remedies of the Waste Management Facility Manager

1. The following shall constitute an Event of Default by the Authority:

a. The Authority breaches or fails to comply with any material provision of this Agreement (other than relating to the payment to Waste Management

Facility Manager of fees or other amounts due hereunder) and does not commence to cure such failure or breach within ten (10) days after the date set forth in the written notice of such failure or breach, and thereafter diligently continue to cure such default; or

b. The Authority becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated bankrupt, makes an assignment for the benefit of creditors, suffers a receiver to be appointed for the operation of its business, or makes a material liquidation of its assets, provided, however, that such event results in a failure to pay the Waste Management Facility Manager, or a modification of the terms of this Agreement without the consent of the Waste Management Facility Manager; or

c. The Authority's interest passes to any person or entity otherwise than as herein permitted; or

d. The Authority fails to pay an amount that the Authority is required to pay to Waste Management Facility Manager within ten (10) calendar days after the date said payment is due.

2. In the event of an Event of Default by the Authority:

a. The Waste Management Facility Manager may, at its election, terminate this Agreement by giving the Authority at least thirty (30) days advance written notice of termination; and

b. Upon termination of this Agreement, the Waste Management Facility Manager shall be paid all Management Fees up to the time of termination including prorated Incentive Payment; plus the Early Termination Amount plus materials purchased or committed, subcontractors' and vendors' cancellation charges, demobilization costs, and reasonable legal fees, provided the same are for the operation and maintenance of the Facility. The foregoing remedies shall be the exclusive remedies of the Waste Management Facility Manager in the event of termination pursuant to this subsection, but all obligations pursuant to Section 12 shall survive termination pursuant to this subsection.

11. Force Majeure

A. A Party to this Agreement shall not be in default hereunder or liable to the other Party for its failure to perform obligations under this Agreement, if such failure results from a Force Majeure. Each Party shall undertake normal and customary commercially reasonable steps to diligently overcome or remove such Force Majeure. A Party claiming the benefit of this subsection shall give a written notice of such claim to the other Party within ten (10) days of becoming aware of the occurrence of the Force Majeure and such Party shall provide the other Party with reasonably requested information concerning the nature of such event or condition, its effect on the services to be performed hereunder, and that Party's efforts to overcome or remove the Force Majeure. Force Majeure shall not affect or relieve payment obligations of any person or entity. To the extent the Parties agree on a Force Majeure event and the cost impacts thereto provided by the Waste Management Facility Manager, the Authority

shall assume the cost impacts of any Force Majeure event, including the capital cost impacts as well as any increases in operations and maintenance costs without any mark-up. Any dispute as to such event and the cost impacts thereof, shall be resolved in accordance with Article 13; provided, however, that notwithstanding any dispute brought by either party, the Waste Management Facility Manager must continue to operate and maintain the Facility and Facility Site to the extent reasonably practicable, taking into account such claimed event of Force Majeure.

B. "Force Majeure" is defined in Exhibit A.

C. Force Majeure Changes.

1. If and to the extent that the Authority has made adequate provisions for the payment of the cost thereof, the Waste Management Facility Manager, at the expense of the Authority, shall make or cause to be made any change necessary to enable the Waste Management Facility Manager or the Authority to perform its obligations under this Agreement, or to enable the Authority to perform its obligations under the Project Agreements or to comply with the requirements of Applicable Law and Prudent Industry Practices required as a result of Force Majeure. The Waste Management Facility Manager shall not be required to expend its own funds to pay the costs of any change required as a result of Force Majeure; provided, however, that the Waste Management Facility Manager has an affirmative obligation to mitigate the impacts of any Force Majeure event by using commercially reasonable efforts.

2. The Authority shall be responsible for all costs of, and pay or finance any additional capital or operating costs of changes to the Facility or the Facility Site required as a result of Force Majeure. To the extent not paid from insurance proceeds or amounts received from third parties, such as equipment vendors or tortfeasors, the amount of such additional capital or operating costs of changes to the Facility or the Facility Site required as a result of Force Majeure shall equal the reasonable direct costs to be incurred by the Waste Management Facility Manager for or with respect to such changes to the extent reviewed and approved by the Authority.

3. The Waste Management Facility Manager shall provide all detail reasonably necessary for the Authority to review a claim for Force Majeure and the cost impacts thereof, if any, and answer any reasonable inquiries of the Authority regarding the conditions caused by any Force Majeure.

D. Operational Changes Due to Force Majeures. If any Force Majeure requires operational changes in the performance by the Waste Management Facility Manager of its obligations hereunder or increases the Waste Management Facility Manager's cost of performance of its obligations hereunder, then (i) Force Majeure costs shall include all the direct costs of any such cost increase, and (ii) any other provisions of this Agreement that are reasonably and equitably required to be changed or amended to reflect such operational changes shall be so changed or amended.

E. Waste Management Facility Manager Modifications. The Waste Management Facility Manager may make any restorations, modifications, additions or alterations to the Facility or the Facility Site, or the methods of operating and maintaining the Facility otherwise employed by the Waste Management Facility Manager at its cost, to the extent necessary or desirable to perform its obligations hereunder, expressly subject to the terms and conditions of the Indenture and subject further to the consent of the Authority.

F. Title to Changes. Any restorations, modifications, additions or alterations to the Facility or the Facility Site pursuant to a change required by Force Majeure or a Waste Management Facility Manager modification shall be the sole and exclusive property of the Authority, and the Waste Management Facility Manager shall cooperate with the Authority in order to cause title to such restorations, modifications, additions or alterations to vest in or be transferred to the Authority, as reasonably specified by the Authority, upon the incorporation of any such restorations, modifications, additions or alterations into the Facility or the Facility Site.

G. Capital Improvements. The Waste Management Facility Manager shall use reasonable efforts to investigate and propose to the Authority any capital improvements that Waste Management Facility Manager believes will improve the performance and/or efficiency of the Facility. It shall be in the Authority's sole and absolute discretion as to whether to make any such capital improvement, unless otherwise permitted as a Waste Management Facility Manager modification and undertaken by Waste Management Facility Manager in its sole discretion and at its cost and subject further to the terms and conditions of the Indenture.

(12) Indemnification

A. To the fullest extent permitted by law, Waste Management Facility Manager shall defend, indemnify and hold harmless the Authority Indemnified Parties and the City Indemnified Parties from and against all claims, damages, losses, and expenses (including but not limited to court costs and reasonable attorneys' fees) which may arise as a result of Waste Management Facility Manager's acts or omissions in its performance of this Agreement, but only to the extent caused in whole or in part by negligent, willful or wanton acts or omissions of the Waste Management Facility Manager, its employees and subcontractors. The above indemnification shall not apply to any claim, damage, loss or expense to the extent caused by the breach of this Agreement by, or the negligence or willful misconduct of, one or more Authority Indemnified Parties with regard to Authority Indemnified Parties or City Indemnified Parties with regard to City Indemnified Parties.

B. To the fullest extent permitted by law, the Authority shall defend, indemnify and hold harmless the City Indemnified Parties and the Waste Management Facility Manager Indemnified Parties from and against all claims, damages, losses, and expenses (including but not limited to court costs and reasonable attorneys' fees) which may arise as a result of the Authority's acts or omissions in its performance of this Agreement, but only to the extent caused in whole or in part by negligent, willful or wanton acts or omissions, of the Authority, its employees and subcontractors. The above indemnification shall not apply to any claim, damage, loss or expense to the extent caused by the breach of this Agreement by, or the

negligence or willful misconduct of, one or more City Indemnified Parties with regard to City Indemnified Parties or Waste Management Facility Manager Indemnified Parties with regard to Waste Management Facility Manager Indemnified Parties.

C. To the fullest extent permitted by law, the City shall defend, indemnify and hold harmless the Authority Indemnified Parties and the Waste Management Facility Manager Indemnified Parties from and against all claims, damages, losses, and expenses (including but not limited to court costs and reasonable attorneys' fees) which may arise as a result of the City's acts or omissions in its performance of this Agreement, but only to the extent caused in whole or in part by negligent, willful or wanton acts or omissions, of the City, its employees and subcontractors. The above indemnification shall not apply to any claim, damage, loss or expense to the extent caused by the breach of this Agreement by, or the negligence or willful misconduct of, one or more Authority Indemnified Parties with regard to Authority Indemnified Parties or Waste Management Facility Manager Indemnified Parties with regard to Waste Management Facility Manager Indemnified Parties.

D. To the fullest extent permitted by law, the Authority shall defend, indemnify and hold harmless the Waste Management Facility Manager Indemnified Parties from and against all claims, damages, losses, and expenses (including, but not limited to court costs and reasonable attorney's fees) which may arise as a result of any alleged unauthorized disclosure or use of any trade secret, patent, copyright, license or trademark infringement relating the Facility, the Facility Site or any equipment, product, document or other item located at the Facility Site (or any component thereof) that either (1) was located at the Facility Site on or before the date of this Agreement, or (2) is delivered to the Facility Site by or on behalf of the Authority or the City.

E. Hereinafter the Party having the obligation to indemnify is referred to as the "Indemnifying Party", and the Party being indemnified is referred to as the "Indemnified Party".

F. In any and all claims against an Indemnified Party, the indemnification obligation stated above shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any applicable workers' compensation act, disability acts, or other employee benefit acts.

G. The indemnification provided in this section shall remain in full force and effect and shall survive the termination of this Agreement until the earlier of (i) the time during which a claim or cause of action may be brought is barred by the applicable statute of limitations, or (ii) the satisfaction or payment of such claim or liability and of all expenses and charges incurred by the Authority or the City or the Waste Management Facility Manager, as the case may be, relating to the enforcement of the indemnification obligations set forth in this section.

#### H. Indemnification Procedure.

1. The Indemnified Party shall give the Indemnifying Party a written notice of a claim or action within fifteen (15) days of actual knowledge by the Indemnified Party

of an ascertainable claim or of the commencement of a claim or action. The Indemnifying Party shall have no liability under this section for any claim or action for which such notice is not provided to the extent that such failure to give notice actually and materially prejudices the Indemnifying Party's ability to defend against such claim.

2. The Indemnifying Party shall have the right to assume the defense of any such claim or action with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both Indemnifying Party and the Indemnified Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, the cost of which shall be subject to indemnification under this section.

3. Should any Indemnified Party be entitled to indemnification under this section as a result of a claim or action by a third party, and should the Indemnifying Party fail to assume the defense of such claim or action, the Indemnified Party may, at the expense of the Indemnifying Party contest (or, with the prior consent of the Indemnifying Party, which shall not be unreasonably withheld or delayed, settle) such claim or action.

4. Except to the extent expressly provided herein, no Indemnified Party shall settle any claim or action with respect to which it has sought or intends to seek indemnification pursuant to this section without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

5. When one Party is indemnifying the other, the Indemnified Party shall be kept informed of the status of any claim, action, or administrative proceeding that pertains to the other Party, and the Indemnified Party shall cooperate with the Indemnifying Party by providing documents, witnesses, or other information within its control. The Indemnifying Party shall consult with and give considerations to the concerns of the Indemnified Party when making decisions about resolving any claim or action.

### 13) Dispute Resolution

A. In the event of any dispute, disagreement, controversy or claim arising under or relating to any obligation or claimed obligation under the provisions of this Agreement (a "Dispute," which term shall include any tort claim relating to or in connection with this Agreement), the Party seeking resolution of such Dispute shall give notice to the other Parties, setting forth the matters in dispute with particularity.

B. Upon receipt by a Party of a notice of the type referred to in Section 13, the Parties to such Dispute shall negotiate in good faith for 45 days to resolve any such Dispute (it being agreed that if such Dispute is not resolved by such Parties on or before the 30th day of such 45-day period, the parties shall refer such Dispute to the appropriate management level of such parties). If the Parties shall not have resolved such Dispute within such 45-day period, then

any Party may submit the Dispute to arbitration in accordance with the procedures provided for in subparagraphs (C)-(G) of this Section 13.

C. Any Dispute that is not resolved by the Parties through negotiation and mediation shall be finally settled by arbitration. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except to the extent the Rules are inconsistent with any provision of this Section 13, in which case the provisions of this Section 13 shall control. Such arbitration shall be conducted in Harrisburg, PA, or such other place as the Parties may agree mutually in writing.

D. There shall be one neutral arbitrator who shall be selected as follows. Within 10 days after the claimant gives notice that it is submitting a Dispute to arbitration hereunder, the Parties shall jointly request a list of five qualified candidates from AAA from which the arbitrator shall be selected. Within 10 days of receipt of the list, each of the Waste Management Facility Manager, on the one hand, and the Authority and/or the City on the other hand shall (i) strike no more than two of the candidates identified on the list, (ii) number the remaining candidates in order of preference, and (iii) return the list to AAA. AAA shall select the arbitrator from the candidates not stricken from the list as provided above and, to the greatest extent possible, in accordance with the mutually designated order of preference. If any arbitrator selected in accordance with this procedure should become unwilling or unable to serve as arbitrator, a new arbitrator shall be selected from a new list as provided above.

E. The Party submitting the Dispute to arbitration shall serve a statement of claim on the opposing Party or Parties within 10 days after giving notice that the claimant is submitting the Dispute to arbitration. Within 20 days of the respondent's receipt of the claimant's notice of arbitration and Statement of Claim, the respondent shall serve the claimant with its statement of defense and any counterclaims. Within 20 days of claimant's receipt of the respondent's statement of defense and counterclaims, the claimant shall serve its statement of defense to any counterclaims asserted by the respondent. After all statements of claim, defense and counterclaims have been served by the disputing Parties, copies thereof shall be submitted to the arbitrator by the disputing Parties. The arbitrator shall permit and facilitate such pre-hearing discovery and exchange of documents and information to which the claimant and respondent in writing agree or which the arbitrator determines is relevant to the Dispute and is appropriate, taking into account the needs of the disputing Parties and the desirability of making discovery expeditious and cost-effective. All discovery shall be completed within 30 days after all statements of claim, defense and counterclaims have been served by the disputing Parties. No later than 10 days prior to the hearing, the disputing Parties may file with the arbitrator and serve on the opposing Dispute Party any amendments or supplements to the statements of claim, defense of counterclaims. The hearing shall be held no later than 100 days following the service of the statement of claim. The time periods set forth in this paragraph (D) may be extended by mutual written agreement of the disputing Parties or at the discretion of the arbitrator, provided that in no event shall such hearing be later than 150 days following the service of the Statement of Claim. Any arbitration award shall be rendered in United States dollars, with appropriate interest as determined by the arbitrator.



F. The prevailing Party shall be entitled to recover its reasonable costs and fees, including but not limited to reasonable attorneys' fees and expenses, associated with the arbitration from the non-prevailing Dispute Party or Parties, on a joint and several basis. The Parties expressly agree that the arbitrator shall have no power to consider or award punitive or exemplary damages, or any other multiple or enhanced damages, whether statutory or by common law.

G. Any award shall be final and binding upon the Parties, which agree to be bound conclusively by any award, except to the extent the award is subject to being vacated or modified under Applicable Law. Any award shall be in writing and shall state the reasons upon which it is based. Judgment upon the award may be entered in the Court of Common Pleas of Dauphin County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania.

H. The provisions of this Section 13 shall constitute the exclusive and sole means for resolving Disputes.

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#### Miscellaneous

##### A. Entire Agreement; Modification

1. Except as otherwise provided herein, this Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes any prior oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.

2. This Agreement supersedes and replaces any other agreement between the Parties and merges all previous negotiations between the Parties with respect to the subject matter hereof.

3. No oral or written modification of this Agreement by any officer, agent or employee of the Authority or the Waste Management Facility Manager, after execution of this Agreement, shall be of any force or effect unless such modification is in writing and is signed by all Parties.

##### B. Severability and Waiver

1. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

2. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

C. Applicable Law; Interpretation; Venue

1. This Agreement shall be governed by and interpreted under the law of the Commonwealth of Pennsylvania, without regard to choice of law provisions. It is agreed that this Agreement was entered into in Harrisburg, Pennsylvania.

2. The headings and captions contained herein are not part of this Agreement and are included solely for the convenience of reference of the Parties, and shall not be construed as being of any significance in the construction and interpretation of the Agreement.

D. Notices and Communication

1. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and (A) delivered personally, (B) sent by certified mail, return receipt requested, (C) sent by telephonic facsimile (provided written confirmation thereof is mailed promptly thereafter), or (D) sent by a recognized overnight mail or courier service, with delivery receipt requested, to the following addresses (or such other addresses as the Parties may designate to one another, in writing, from time to time):

If to Waste Management Facility Manager:

Covanta Harrisburg, Inc.  
40 Lane Rd.  
Fairfield, NJ 07004  
Attention: Vice President, Mid-Atlantic Region

With a copy to:

Covanta Harrisburg, Inc.  
40 Lane Rd.  
Fairfield, NJ 07004  
Attention: Vice President & Associate General Counsel

If to the City:

John Lukens, Director,  
Department of Incineration and Steam Generation  
1690 South 19<sup>th</sup> Street  
Harrisburg, Pennsylvania 17104  
Telephone: (717) 255-7338  
Telefax: (717) 236-9051

With a copy to:

Andrew J. Giorgione, Esq.

Buchanan Ingersoll Rooney, PC  
17 N. Second Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17101-1503  
Telephone: (717) 237-4863  
Telefax: (717) 233-0852

If to the Authority:

The Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front and Market Streets  
Harrisburg, Pennsylvania 17101  
Attention: Robert Ambrose,  
Executive Director  
Telephone: (717) 232-3777  
Telefax: (717) 232-8590

With a copy to:

Bruce Foreman, Esq.  
Foreman & Foreman, P.C.  
6<sup>th</sup> Floor, Veteran's Building  
112 Market Street  
Harrisburg, PA 17101-2015  
Telephone: (717) 236-9391  
Telefax: (717) 236-6602

2. Notices shall be deemed delivered when received.

E. Binding Effect; Assignment

1. This Agreement shall be binding upon, and inure to the benefit of Authority, the City, the County and the Waste Management Facility Manager, and their respective successors and assigns (to the extent permitted hereunder).

2. Except as otherwise provided herein, no Party shall assign the Agreement in whole or in part without the prior written consent of the other Parties; provided, however, that: (1) the Authority may, without the prior consent of the Waste Management Facility Manager, assign this Agreement to the City or a City-related entity, so long as said assignment does not violate any covenant of the Bond Documents; and (2) Waste Management Facility Manager may, without the prior written consent of the Authority, assign the Agreement to any of the Waste Management Facility Manager Affiliates. Assignment by the Waste Management Facility Manager hereunder shall not relieve the Waste Management Facility Manager of any of its duties or obligations under this Agreement.

F. Independent Contractor, Subcontracts

1. Waste Management Facility Manager is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the Authority other than that of independent contractor, nor shall it be construed as creating any relationship whatsoever between the Authority and the Waste Management Facility Manager's employees. Neither Waste Management Facility Manager, nor any of its employees, are or shall be deemed to be employees of the Authority. Neither the City nor Authority, nor any of their employees, are or shall be deemed to be employees of the Waste Management Facility Manager.

2. Subject to the provisions of this Agreement, the Waste Management Facility Manager has sole responsibility to employ, discharge and otherwise control its employees.

3. The Waste Management Facility Manager shall accept complete responsibility for its employees, contractors and agents. The Authority will not undertake to settle any differences or disputes between or among the Waste Management Facility Manager and its employees, contractors and agents, except as set forth in this Agreement.

G. Compliance with Laws

Subject to the provisions of this Agreement, the Waste Management Facility Manager shall comply with all applicable laws in all material respects and may contest in good faith any allegations of violating applicable law.

H. Counterparts

This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original for all purposes, and all of which together shall constitute but one and the same Agreement.

I. City and Authority Right to Audit and Inspect.

During this Agreement, at any reasonable time, the City and the Authority shall have reasonable access during normal business hours to those books and records of the Waste Management Facility Manager that are germane to the operation and maintenance of the Facility including all financial records, and the right to audit those books and records that are germane to any payment hereunder.

J. Transfer of Facility.

Authority hereby grants to Waste Management Facility Manager, effective from the date of this Agreement until the date which is 90 days after the date of termination of this Agreement or December 31, 2012, whichever is sooner (the "Refusal Period"), a right of first refusal to enter into a transaction involving the sale, lease, or other disposition of the Facility (a "Facility Transfer"), on the same terms and conditions as may be proposed to the Authority by

any third party during the Refusal Period. If the Authority receives any offer with respect to a Facility Transfer (the "Facility Transfer Offer"), the Authority shall not accept such offer or consummate a Facility Transfer unless it has first made an offer to the Waste Management Facility Manager to sell, lease or contract with Waste Management Facility Manager upon the same terms and conditions as are contained in the Facility Transfer Offer and the Waste Management Facility Manager has not accepted such offer within ten (10) business days after such offer was made. Waste Management Facility Manager may exercise its right of first refusal by providing to Authority written notice of exercise within ten (10) business days after Authority has provided written notice to Waste Management Facility Manager of such Facility Transfer Offer and the terms and conditions thereof.

K. Annual Liability Cap.

1. For each Year during the Term, the liability of the Waste Management Facility Manager for contract and tort damages, indemnity payments, costs of remedial work and all other liability to the Authority under or pursuant to this Agreement shall be subject to an annual cap of \$2,000,000 (the "Annual Liability Cap") and notwithstanding any other provision of this Agreement to the contrary, (i) in no event shall the Waste Management Facility Manager's aggregate liability to the Authority for any contract and tort damages, indemnity payments, costs for remedial work and all other liability to the Authority under or pursuant to this Agreement during any Year exceed \$2,000,000 and (ii) contract and tort damages, indemnity payments, costs of remedial work and all other liability owed or incurred with respect to a Year but that are not payable due to the Annual Liability Cap cannot be carried forward to or made payable in a subsequent Year. Losses related to insurance deductibles are not included and do not erode the Annual Liability Cap to the extent such deductibles are paid by the Authority. The Annual Liability Cap shall be increased each year based on the Index in the same manner as the Management Fee (as defined and set forth in Exhibit G).

2. In the event the Waste Management Facility Manager fails to obtain or maintain any of the insurance required of it pursuant to Section 9.B., and as a result of such failure, costs or damages are required to be paid by the Waste Management Facility Manager that (a) are precluded by operation of the Annual Liability Cap (without regard to this paragraph), and (b) would have been covered by such insurance, then the Annual Liability Limit shall not apply to such costs or damages.

[Signatures appear on next page.]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be executed as of the date first above written.

COVANTA HARRISBURG, INC.

Attest:

By: Kirk J. Bely  
Title: Asst Secretary

By: [Signature]  
Title: CEO

THE HARRISBURG AUTHORITY

Attest:

By: [Signature]  
Title: Leonard L. House, Secretary

By: [Signature]  
Title: John J. Keller, Chairman

For purposes of Sections 5(A)(19), 5(J), 6, 12, 13 and 14 and Exhibit J only:  
CITY OF HARRISBURG

Approved as to Form and Legality:

[Signature]  
City Solicitor

[Signature]  
Mayor

(SEAL)

[Signature]  
City Controller

EXHIBIT A

## Exhibit A

### Definitions

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

"Claim" means a demand or assertion by one of the parties to a Contract Document seeking, as a matter of right, adjustment or interpretation of terms of any Contract Document, payment of money, extension of time or other relief with respect to the terms of any Contract Document. The term "Claim" also includes other disputes and matters in question between the Authority and any Contractor arising out of or relating to any Contract Document. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

"Contract Documents" means, collectively, this agreement, the Construction Documents, Design Documents, Drawings and Specifications.

"Contractor" means a person or entity who performs construction relating to the Retrofit Completion under one or more Construction Documents.

"Construction Contract" or "Construction Document" means any contract between the Authority and one or more Contractors for Work on the Retrofit Completion.

"Construction Cost" shall have the meaning set forth in Section 5.1.

"Construction Schedules" means the schedules for completion of a Contractor's Work that are created by the Construction Manager and submitted to and approved by the Authority.

"Design Documents" are the graphic, pictorial and technical portions of the Contract Documents showing the design, location, dimensions and construction of the Retrofit Completion, generally including plans, elevations, sections, details, schedules, diagrams and composition.



"Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

"Engineer" has the meaning set forth in the Recitals.

"Facility Management Agreement" has the meaning set forth in the Recitals.

"Facility Manager" has the meaning set forth in the Recitals.

"Final Completion" means Substantial Completion of the Work or a component thereof, plus successful completion of the performance tests applicable thereto pursuant to Section 3.22 and Exhibit D. The date of Final Completion of the entire Work is the Retrofit Completion Date under the Facility Management Agreement.

"Force Majeure" means an event or circumstance which prevents one party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming party, and which, by the exercise of due diligence, the such party is unable to overcome or avoid or cause to be avoided.

"Governmental Approvals" means all governmental licenses, permits, franchises, approvals and other authorizations (including any environmental permits and zoning or land use approvals) of, and all required registrations or filings with, any governmental authority related to the Facility, the Retrofit Completion, the Authority or the Construction Manager or the Work.

"Monthly Completion Certificate" has the meaning set forth in Section 10.1.

"Monthly Report" has the meaning set forth in Section 3.4.

"Retrofit Completion Schedule" means the schedule for implementing the Retrofit Completion work.

"Retrofit Completion" means the work described in Exhibit B.

"Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

"Substantial Completion" means the stage in the process of the construction of the Retrofit Completion when the Retrofit Completion or a designated portion thereof is sufficiently complete in accordance with the applicable Contract Documents so that the Authority can occupy or utilize it for its intended purpose.

"Work" means all the design, construction activities and services, equipment, repair, replacement, and other activities required by the Contract Documents with respect to the Retrofit Completion.

EXHIBIT B

## CONSTRUCTION MANAGEMENT AGREEMENT

This Construction Management Agreement (this "Agreement") is made as of the 29th day of May, 2007, between THE HARRISBURG AUTHORITY, an authority organized and operating pursuant to the Municipality Authorities Act of 1945, the Act of May 2, 1945, as amended (the "Authority"), and COVANTA ENERGY SERVICES, INC., a Delaware corporation (the "Construction Manager").

### RECITALS

1. The Authority owns an existing waste-to-energy facility for combustion of municipal solid waste with energy recovery known as the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Facility").

2. Before the date hereof, the Authority determined to undertake the acquisition, construction and equipping of certain alterations, additions, extensions and improvements to the Facility, including the retrofit and modernization thereof (collectively, the "Retrofit"). The Facility is experiencing certain construction completion, operation and maintenance issues associated with the Retrofit.

3. The Authority desires to undertake the completion of the Retrofit (the "Retrofit Completion") to improve the processing capacity and economics of the Facility.

4. The Authority desires to have the Construction Manager undertake (a) the determination of what changes need to be made to the Facility to cause it to meet the performance tests and (b) the design and management of the construction of the Retrofit Completion.

5. The Construction Manager has agreed to undertake the duties set forth herein with respect to the Retrofit Completion.

6. The Construction Manager has prepared a detailed preliminary scope of work for the Retrofit Completion which is attached hereto as Exhibit B.

7. In order to provide for the Retrofit Completion, the Authority will bid the work, and enter into separate construction agreements, purchase orders and other documents with separate construction companies and equipment vendors.

8. The Contractors will be procured through the Authority's competitive bidding process with the assistance of the Construction Manager. The Authority

will be responsible for all payments under the Contract Documents to the Contractors.

9. Funds for the Retrofit Completion will be furnished by an affiliate (the "Facility Manager") of the Construction Manager pursuant to the Management and Professional Services Agreement, dated as of May 29, 2007 (the "Facility Management Agreement").

10. The Authority may engage a licensed professional engineer (the "Engineer") to review the plans and specifications for the work prepared by the Construction Manager, and to provide to the Authority engineering consulting services, relating to the Retrofit Completion.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Construction Manager hereby agree as follows:

#### INCORPORATION PROVISION

The preceding Recitals are incorporated herein and made a substantive part of this Agreement in their entirety.

This Agreement includes the following Exhibits:

- Exhibit A: Definitions
- Exhibit B: Preliminary Scope of Work for Retrofit Completion
- Exhibit C: Construction Management Fee
- Exhibit D: Performance Tests

and such Exhibits attached hereto and referenced in this Agreement are incorporated herein and made a substantive part of this Agreement in their entirety.

#### ARTICLE 1 CONSTRUCTION MANAGER'S RESPONSIBILITIES

1.1 Engagement of Construction Manager. The Authority engages Construction Manager to use its skill and attention to manage and coordinate the Work for the Retrofit Completion and to provide construction management services for the Retrofit Completion to cause the Facility to meet the performance tests, all in accordance with this Agreement and all such that the Work will be timely and

properly completed in accordance with the Contract Documents. Authority shall pay Construction Manager as compensation for its services the Construction Management Fee set forth on Exhibit C attached hereto and made a part hereof.

## 1.2 Construction Manager's Services.

(a) The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants as enumerated in Article 2 and Article 3 of this Agreement.

(b) The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Authority.

(c) Construction Manager recognizes the necessity of a close working relationship with the Authority and agrees to furnish the skill and judgment of its organization in the performance of this Agreement and to cooperate with the Authority's Engineer in furthering the interests of Authority. Construction Manager shall provide Construction Manager's knowledge, ideas, experience and abilities relating to the design, engineering, preparation of scope of work and planning of the construction of the Retrofit Completion and shall furnish efficient business administration, superintendence and other services to complete the Work diligently and professionally, in accordance with Prudent Industry Practices (as defined in the Facility Management Agreement) and accepted design and engineering standards, consistent with the interests and objectives of the Authority and pursuant to the Contract Documents.

(d) Construction Manager shall (i) comply with all applicable laws related to its obligations under this Agreement, (ii) follow all reasonable work site rules of the Authority, and (iii) repair any damages to the Site caused by the Construction Manager for Work self-performed under this Agreement.

(e) Construction Manager acknowledges that the Authority will implement a mentoring/protégé program for the project, and Construction Manager shall participate in the program so long as it does not impair Construction Manager's obligations under this Agreement or materially increase its costs of performance hereunder.

(f) The parties acknowledge that time is of the essence in this Agreement.

1.3 Examination of Site. Construction Manager represents that it has field verified and inspected the Facility and Facility Site (as both are defined in the

Facility Management Agreement), and is familiar with the working conditions in and around the Facility except for conditions not apparent from visual inspection of the site.

1.4 Limitation on Scope of Services. Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act, which would constitute laboratory testing, inspection services, investigations, or the practice of architecture, certified public accounting or law. The recommendations, advice, budgetary information and schedules to be furnished by Construction Manager under this Agreement shall not be deemed to be warranties or guarantees or constitute the performance of licensed professional services (other than design and engineering), but, nonetheless, such recommendations, advice, budgetary information and schedules shall represent Construction Manager's knowledge and judgment relating to the construction of the Retrofit Completion.

1.5 Conflict with Contract Documents. This Agreement is the principal document governing the relationship between Construction Manager and Authority, and in connection with such relationship, in the event of any conflict between this Agreement and any other Contract Document as it relates to the relationship between the Construction Manager solely (and not any of its affiliates) and the Authority, this Agreement shall govern.

## ARTICLE 2 SERVICES DURING PRE-CONSTRUCTION PHASE

2.1 Evaluation. The Construction Manager has provided a comprehensive evaluation of the Work; subject to certain portions of the Work that must be finally engineered and designed prior to bidding. To this end, the Construction Manager has proposed, and the Authority has approved, a Scope of Work for Retrofit Completion attached hereto as Exhibit B, which describes the Work as estimated by the Construction Manager.

### 2.2 Construction Cost Estimate.

(a) The Construction Manager has prepared preliminary estimates of the Construction Cost for the Work. These preliminary estimates are not final and are not based on bids; however, where possible, the Construction Manager discussed the Work and obtained quotes from potential Contractors.

(b) In the event that the Construction Cost for the Work is found to exceed the \$25.7 million budget, the Authority may direct the Construction Manager to modify or delete specific proposed project components. The Construction Manager has previously identified suggested construction work, using a three tiered rating,

beginning with what is most essential, followed by eventually needed components, and with a third category reflecting work that is non-essential to assure Facility performance. Any modifications or deletions would begin with work considered as non-essential.

**2.3 Design Document Review.** The Authority acknowledges and agrees that the Construction Manager intends to satisfy its engineering, design and drawing obligations under this Agreement by engaging and directly subcontracting with a licensed professional engineer other than the Engineer. Unless otherwise waived by the Authority in writing, the Construction Manager shall cause its engineer to maintain in effect errors and omissions insurance with policy limits no less than \$5 million. The Construction Manager shall prepare, and the Authority shall expeditiously review, Design Documents. The Construction Manager shall advise on proposed site use and improvements, selection of materials, building systems, equipment and methods. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economics.

**2.4 Retrofit Completion Schedule.** The Construction Manager shall prepare and periodically update a Retrofit Completion Schedule for the Authority's review and approval. In the Retrofit Completion Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, and the Authority's responsibilities with anticipated Construction Schedules, highlighting critical and long lead-time items.

**2.5 Updating of Key Estimates.** As the Construction Manager progresses with the preparation of the Design Documents, the Construction Manager shall prepare and update, monthly or at other appropriate intervals agreed to by the Authority and Construction Manager, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each Contract Document shall be indicated with supporting detail. Such estimates shall be provided for the Authority's approval. The Construction Manager shall advise the Authority if it appears that the Construction Cost may exceed the latest approved Retrofit Completion budget and make recommendations for corrective action.

**2.6 Advice on Contract Documents.** The Construction Manager shall consult with the Authority regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules. The Construction Manager shall advise on the division of the Retrofit Completion into individual Construction Documents for various categories of Work.



including the method to be used by the Authority for selecting Contractors and awarding Construction Documents. As multiple Construction Documents are to be awarded to separate Contractors, the Construction Manager shall also review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Retrofit Completion have been assigned to the appropriate Construction Document, (3) the division of responsibility among the Contractors is clear and (4) proper coordination has been provided for phased construction. The Construction Manager shall assist the Authority in developing the forms of Construction Documents including the key terms and conditions, warranties, guarantees, payment conditions, change order processes, bonds, damages, lien waivers and other requirements. The Authority shall be responsible for providing legal support for the preparation and negotiation of the Construction Documents unless the Authority requests assistance from the Construction Manager, in which event the Authority shall reimburse Construction Manager for Construction Manager's out of pocket expenses in connection therewith.

2.7 Detailed Construction Schedule. The Construction Manager shall prepare a required Construction Schedule for each Contractor providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the requirements of the Authority. The Construction Manager shall provide the Construction Schedule applicable to each set of bidding documents.

2.8 Long Lead Time Items. The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time and so advise the Authority.

2.9 Professional Services. The Construction Manager shall assist the Authority in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Retrofit Completion.

2.10 Labor Analysis. The Construction Manager shall review the availability of appropriate categories of labor required for the Work. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

2.11 Prospective Bidders. The Construction Manager shall prepare for the Authority's approval pre-bidding qualifications for Contractors. The Construction Manager shall submit the list of qualified prospective bidders for the Authority's approval. The Authority reserves the right to (a) add bidders, subject to Construction Manager's approval, which approval shall not be unreasonably withheld, conditioned or delayed and (b) require Construction Manager to remove a proposed bidder in the Authority's reasonable discretion. Construction Manager shall comply with all laws relating to discrimination and affirmative action and will

use reasonable efforts to insure Contractors do the same. The Construction Manager acknowledges that the Authority has an MBE/WBE participation program that it will administer as it relates to the award of contracts for the Work.

**2.12 Procurement.** The Construction Manager recognizes that the Authority must comply with applicable law in connection with the procurement for the Construction Documents and shall perform services relating thereto as the Authority's consultant and as reasonably directed by the Authority. The Authority shall be responsible for all aspects of the procurement process and shall inform the Construction Manager of all legal requirements and policy limitations relating thereto. The Authority shall provide legal advice to the Construction Manager when requested concerning the requests of prospective Contractors to the Authority regarding the bidding process. The Construction Manager shall develop bidders' interest in the Retrofit Completion and establish bidding schedules. The Construction Manager shall assist the Authority in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The Construction Manager shall assist the Authority with regard to questions from bidders and with the issuance of addenda to the bidding documents. The Construction Manager shall use the tax exempt certificates of the Authority for procurement for the Work where applicable and permitted by law.

**2.13 Award of Construction Documents.** The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Authority for the Authority's award of Construction Documents to Contractors or rejection of bids; provided, however, such award shall be at the Authority's sole discretion. As soon as practicable after the issuing of a bid package, but before award of the applicable Construction Documents, Construction Manager shall submit to Authority the various bids received from prospective Contractors, all information available to Construction Manager with respect to such bids and prospective Contractors as Authority deems pertinent, and Construction Manager's opinion as to which prospective Contractor should be selected and its reasons therefor. Authority shall promptly make the final selection.

**2.14 Advice.** The Construction Manager shall assist the Authority in preparing and negotiating definitive Construction Documents with the selected Contractors and advise the Authority on the acceptability of Contractors and material suppliers. The Authority shall execute the Construction Documents.

**2.15 Revision of Construction Costs.** Following the Authority's approval of the Construction Documents, the Construction Manager shall update, monthly or at other appropriate intervals, and submit the latest estimate of Construction Cost and the Retrofit Completion Schedule for the Engineer's review and the Authority's approval.

**2.16 Permitting Assistance.** The Construction Manager shall assist the Authority in obtaining building permits and special permits for the Retrofit Completion, except for permits required to be obtained directly by the various Contractors. The Authority and the Contractor shall cooperate to identify all Governmental Approvals required to be obtained by the Authority for the Retrofit Completion. The Construction Manager shall verify that the Authority has paid applicable fees and assessments. The Construction Manager shall assist the Authority and Engineer in obtaining all required Governmental Approvals.

**2.17 Small Contracts.** In the case of contracts and purchases of materials, supplies, machinery, equipment, and rentals thereof for which the amount involved does not exceed \$10,000 and where another exemption does not apply under applicable law, the Construction Manager may conclude the contract, purchase, or rental without the approval of the Authority, in which event the Authority promptly shall be given a copy of the proposed contract or purchase order; provided, however, the Construction Manager shall provide evidence to the Authority that it sought and obtained three (3) quotes for such contracts and the basis for the award of the contract to someone other than the party offering the lowest quote.

**2.18 Safety Program.** Construction Manager shall observe and enforce all Rules and Regulations of the Occupational Safety and Health Administration of the United States Department of Labor and other applicable laws for all phases of the Work. Construction Manager shall prepare a site safety plan and submit such plan to the Authority for review and comment prior to the commencement of construction. Such plan shall identify the location of the fire safety system, alarm system, fire-fighting apparatus and exit routes. Safety head-gear shall be provided for representatives of the Authority and Engineer's personnel and all others while on site. Construction Manager shall designate a person responsible for job safety. This person shall be thoroughly familiar with Construction Manager's safety manual and shall require compliance of all applicable provisions of the manual, and all other safety authorities. The Construction Manager shall keep a copy of this manual on the job. The Construction Manager shall familiarize all Contractors on safety measures and shall take reasonable steps as necessary to ensure that the safety programs of all Contractors comply with applicable laws.

### ARTICLE 3

#### SERVICES DURING CONSTRUCTION PHASE – ADMINISTRATION OF THE CONTRACT DOCUMENTS.

**3.1 Commencement of Construction Phase.** The construction phase will commence with the issuance of a notice to proceed for the initial Construction Document and, together with the Construction Manager's obligation to provide

services under this Agreement, will end thirty (30) days after Final Completion. The services to be performed during the construction phase are described in this Article 3.

3.2 Coordination. The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager and the Authority to manage the Retrofit Completion in accordance with the latest approved estimate of Construction Cost, the Retrofit Completion Schedule and the Contract Documents. Consistent with the various Contract Documents, and utilizing information from the Contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.

3.3 Meetings. The Construction Manager shall schedule and conduct meetings no less frequently than on a monthly basis to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the Authority and Contractors.

3.4 Monthly Report. The Construction Manager shall submit to the Authority a written report on the Retrofit Completion each calendar month (the "Monthly Report"). Each Monthly Report shall contain the following information: (a) actual costs incurred and committed amounts for activities in progress with respect to the Retrofit Completion; (b) estimates for uncompleted tasks on the Retrofit Completion by way of comparison with the estimates approved by the Authority; (c) cash flow reports and forecasts for the Retrofit Completion; (d) any variances between forecast and budgeted or estimated costs and (e) any other information reasonably requested by the Authority.

3.5 Retrofit Completion Schedule Update. Utilizing the Construction Schedules for the Contractors, the Construction Manager shall update, monthly or at other appropriate intervals, the Retrofit Completion Schedule incorporating the activities of the Contractors on the Retrofit Completion, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time and procurement. The Construction Manager shall update and reissue the Retrofit Completion Schedule as required to show current conditions. If an update indicates that the previously approved Retrofit Completion Schedule may not be met, the Construction Manager shall recommend corrective action to the Authority and Engineer.

3.6 Monitor Construction Cost. The Construction Manager shall monitor the approved estimate of Construction Cost.

### 3.7 Records.

(a) The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

(b) The Construction Manager shall record the progress of the Retrofit Completion. The Construction Manager shall submit written progress reports in its Monthly Report to the Authority including information on each Contractor and each Contractor's Work, as well as the entire Retrofit Completion, showing percentages of completion. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Authority may require.

(c) The Construction Manager shall maintain at the Retrofit Completion site for the Authority one record copy of all Contracts, Drawings, Specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved shop drawings, product data, samples and similar required submittals. The Construction Manager shall make all such records available to the Engineer and upon completion of the Retrofit Completion shall deliver them to the Authority.

3.8 Payment Review. The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

### 3.9 Application for Payment.

(a) Based on the Construction Manager's inspections, observations and evaluations of each Contractors' application for payment, the Construction Manager shall review and certify the amounts due the respective Contractors.

(b) The Construction Manager's certification for payment shall constitute a representation to the Authority, based on the Construction Manager's inspections and determinations at the site and on the data comprising the Contractors' applications for payment, that the Work has progressed to the point indicated and the quality of the Work is substantially in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents upon Substantial Completion and performance testing, to results of subsequent tests and

inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager.

(c) The Construction Manager's issuance of a certificate for payment pursuant to this Section 3.9 shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's Work or procedures, or (3) verified copies of requisitions received from Contractors and material suppliers and other data requested by the Authority to substantiate the Contractor's right to payment.

(d) The Authority shall approve all certifications for payment following its review. The Authority may cause the Engineer to monitor the Construction Manager's activities on an ongoing basis to facilitate approval of all certifications for payment. The Authority shall have ten (10) business days after receipt of the Construction Manager's certificate for payment to approve or contest the payment or portions thereof.

**3.10 Safety Program.** The Construction Manager shall review the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, subcontractors, agents or employees of the Contractors or subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

**3.11 Inspection of Work.** The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, in order to guard the Authority against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Authority, to require additional inspection or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Engineer and the Authority, may reject Work which does not conform to the requirements of the Construction Documents.

**3.12 Enforcement.** The Construction Manager shall assist the Authority in enforcing the Construction Documents. The Construction Manager shall recommend courses of action to the Authority when requirements of a Construction Document are not being fulfilled.

**3.13 Sequence of Construction.**

(a) The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Construction Documents and the latest approved Retrofit Completion Schedule.

(b) With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractors' responsibilities under their respective Construction Documents. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Construction Documents. The Construction Manager shall not have control over or charge of acts or omissions of the Contractors, subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

**3.14 Interpretation of Contract Documents.** The Construction Manager shall transmit to its engineer requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist the Authority in the resolution of questions that may arise.

**3.15 Change Orders.** The Construction Manager shall review requests for changes to the Work, assist in negotiating Contractor's proposals, submit recommendations to the Engineer and Authority, and, if they are accepted, prepare change orders to the Construction Documents.

**3.16 Claims.** The Construction Manager shall assist the Authority in the review, evaluation and documentation of Claims and shall promptly provide notice to the Authority of potential Claims by or against a Contractor.

**3.17 Insurance of Contractors.** The Construction Manager shall receive and review certificates of insurance from the Contractors (as required under the Construction Documents) and insure that they are correct in form, content and amount and forward them to the Authority.

**3.18 Review of Drawings.** The Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals. The Construction Manager shall review all shop drawings, product data, samples and other submittals from the Contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Engineer those which have been approved by the Construction Manager. The Construction

Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Authority or Contractors.

3.19 Authority-Purchased Materials. The Construction Manager shall assist the Authority with the delivery, storage and protection of Authority-purchased materials, systems and equipment that are a part of the Retrofit Completion until such items are incorporated into the Retrofit Completion.

3.20 Testing. With the Authority, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems, and equipment under each.

3.21 Completion of Work. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance by a Contractor of a certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager in collaboration with the Authority shall evaluate such Contractor's completion of its portion of the Work and prepare for the Authority a punch list of any incomplete or unsatisfactory items and a schedule for their completion. When the Construction Manager in collaboration with the Authority considers each Contractor's Work or a designated portion thereof to have achieved Substantial Completion, the Construction Manager shall recommend to the Authority that the Work or such designated portion thereof is ready for final inspection. The Construction Manager shall assist the Authority in conducting final inspections.

3.22 Performance Tests.

(a) The Construction Manager shall be responsible for coordinating with the Authority, the Manager and relevant Contractors performance tests in accordance with Exhibit D. The Construction Manager shall report the results of the performance tests to the Authority and the Engineer promptly after completion thereof.

(b) If the performance test results did not satisfy the requirements of Exhibit D, the Construction Manager shall consult with the Engineer and Authority about identifying the cause(s) and possible courses of action to cause satisfaction of the performance tests, such as, without limitation, implementing corrective action and retesting and/or enforcing contractual remedies against one or more of the Construction Manager's engineer and/or the Authority's Contractors under the Construction Documents as appropriate. In instances where the Construction Manager has self-performed the Work, it shall be obligated to implement and pay for any such correction action and retesting required.



3.23 Warranties. The Construction Manager shall secure and transmit to the Authority warranties and similar submittals required by the Construction Documents for delivery to the Authority and deliver all keys, manuals, record drawings and maintenance stocks to the Authority.

3.24 Authority Under Contract Documents. Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Authority and Construction Manager. Consent shall not be unreasonably withheld.

#### ARTICLE 4 AUTHORITY'S RESPONSIBILITIES

4.1 Information. The Authority shall provide full information regarding requirements for the Retrofit Completion, including the Authority's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

4.2 Budget Approval. The Authority shall approve the overall budget for the Retrofit Completion as presented by the Construction Manager, which shall include the hard and soft Construction Cost, the Authority's other costs and reasonable contingencies related to all of these costs.

4.3 Authority's Representative. The Authority shall designate a representative authorized to act on the Authority's behalf with respect to the Retrofit Completion. The Authority, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

4.4 Engineer. The Authority may at its expense retain the Engineer, and in such case, the Construction Manager shall involve the Engineer in such matters as directed by the Authority and as otherwise contemplated in this Agreement. The Construction Manager shall not be responsible for actions or omissions of the Engineer.

4.5 Construction Documents.

(a) The Authority shall execute all Construction Documents. The Construction Manager shall not be under any obligation to execute any Construction Documents (unless the Construction Manager shall also serve as a

Contractor), performing obligations thereunder or make any payments to the Authority or applicable Contractor thereunder.

(b) The Authority shall furnish the Construction Manager with a sufficient quantity of Contract Documents.

(c) Prompt written notice shall be given by the Authority to the Construction Manager if the Authority becomes aware of any fault or defect in the Retrofit Completion or non-conformance with the Contract Documents.

(d) The Authority, as party to the Construction Documents, shall be responsible for all legal interpretations thereof and shall advise the Construction Manager of any positions of Authority with respect thereto.

(e) The Authority shall be responsible for all legal costs in connection with the preparation of bids and interpreting, negotiating or enforcing the Construction Documents.

(f) If the Authority disputes any amount for which a Contractor has made application for payment or believes that a Contractor is or may be in breach of its obligations under a Construction Document or if a Contractor has made, asserted or threatened to make or assert a Claim, the Authority shall so advise the Construction Manager thereof and shall keep the Construction Manager advised with respect thereto. The Authority shall be responsible for the enforcement of all Construction Documents and the defense of Claims arising thereunder.

4.6 Services. Information or services under the Authority's control shall be furnished by the Authority with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

4.7 Authority Communication. Authority shall have the right to communicate with Contractors during the construction period, provided that (a) Authority shall give Construction Manager a reasonable opportunity to be present at any such oral communication and shall deliver to Construction Manager a copy of any such written communication, and (b) Authority shall not direct Contractors except through Construction Manager.

4.8 Payment of Amounts Due under Construction Documents. The Authority shall establish a special fund (the "Construction Fund") to hold the proceeds of the advance provided under the Facility Management Agreement to fund the costs of the Retrofit Completion. On or before the 15<sup>th</sup> day of each month, the Authority shall submit a requisition to the Facility Manager to pay (i) all amounts due with respect to applications for payment from Contractors that have been approved by

the Construction Manager and the Authority and (ii) the Construction Management Fee then or next due. Upon receipt of the funds, the Authority shall hold the funds and promptly make payments to the Contractors and Construction Manager in accordance with the approved applications for payment; provided, however, that pursuant to this Agreement and the Contract Documents, the Authority shall hold a ten (10%) retainage until Final Completion of the Work or the applicable portion thereof, which shall be released for payment to any Contractor and the Construction Manager within thirty (30) days after Final Completion of the Work or the applicable portion thereof. Any funds held in the Construction Fund beyond the 30-day period that is not attributable to retainage, shall be deducted from the next requisition of advance proceeds. The Authority shall provide the Construction Manager with a monthly accounting of all amounts paid from the Construction Fund. The Authority shall not apply such funds to any purpose other than payment of amounts due under the Contract Documents.

4.9 Access. The Authority shall grant the Construction Manager complete and full access to the Facility and the Facility site, and shall provide office space, telephone service, and other utilities for the Construction Manager's on-site personnel.

4.10 Taxes. The Authority shall pay all taxes or other impositions (including real, personal and property taxes) on the Construction Manager in respect of the Work other than taxes on the Construction Manager's net income and payroll-related taxes.

## ARTICLE 5 CONSTRUCTION COST

### 5.1 Definition.

(a) The "Construction Cost" shall be the total cost to the Authority of all elements of the Retrofit Completion. Construction Manager currently estimates that the Construction Cost to be \$25.7 million, including the Construction Management Fee. The Construction Manager has agreed to advance the cost of construction up to \$28 million pursuant to Exhibit K in the Facility Management Agreement. If the cost of the Work exceeds \$25.7 Million, the Authority shall decide in its sole discretion whether to spend additional funds up to a total of \$28 million or to cut the scope of the Work as discussed above in Section 2.2(b).

(b) The Construction Cost shall include all payments under the Construction Documents, the cost of labor and materials furnished by the Authority and equipment designed, specified, selected or specially provided for by the

Authority or Engineer. Construction Cost shall also include the compensation of the Construction Manager and Construction Manager's consultants.

(c) Construction Cost does not include the compensation of the Engineer and other Authority consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Authority as provided in this Agreement.

## 5.2 Responsibility for Construction Cost.

(a) Evaluations of the Retrofit Completion budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's judgment of the costs for the Work as an entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Authority has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions or the Authority's selection of the Contractors or the final terms of the Construction Documents. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Retrofit Completion budget proposed, established or approved by the Authority, or from any cost estimate or evaluation prepared by the Construction Manager.

(b) No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Retrofit Completion budget.

(c) The Construction Manager shall monitor the costs of the Work against the Retrofit Completion budget and recommend changes to the scope to meet the Reimbursement Amount (as defined in the Facility Management Agreement), prioritizing those items that are necessary to maximize the operation of the Facility to meet the Performance Standards (as defined in the Facility Management Agreement).

## ARTICLE 6 OWNERSHIP AND USE OF ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

### 6.1 Ownership of Drawings.

(a) The Drawings, Specifications and other documents prepared by the Construction Manager are instruments of the Construction Manager's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by it, and shall provide a record set to the Authority upon completion of the Retrofit Completion. The Drawings, Specifications and other documents prepared by the Construction Manager are for use solely with respect to this Retrofit Completion.

(b) All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Construction Manager. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Retrofit Completion is not to be construed as publication in derogation of the Construction Manager's copyright or other reserved rights.

## ARTICLE 7 ARBITRATION

### 7.1 Arbitration.

(a) In the event of any dispute, disagreement, controversy or claim arising under or relating to any obligation or claimed obligation under the provisions of this Agreement, the party seeking resolution of such dispute shall give notice to the other party, setting forth the matters in dispute with particularity.

(b) Upon receipt by a party of a notice of the type referred to in Section 7.1(a), the parties to such dispute shall negotiate in good faith for 45 days to resolve any such dispute (it being agreed that if such dispute is not resolved by such parties on or before the 30th day of such 45-day period, the parties shall refer such dispute to the appropriate management level of such parties). If the parties shall not have resolved such dispute within such 45-day period, then any party may submit the dispute to arbitration in accordance with the procedures set forth below.

(c) Any dispute that is not resolved by the parties through negotiation shall be finally settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

7.2 Demand for Arbitration. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after

the claim, dispute or other matter in question, has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

7.3 No Joinder. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Authority, Construction Manager, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.4 Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the Court of Common Pleas of Dauphin County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania.

#### ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT

8.1 Termination for Cause. This Agreement may be terminated by a party upon not less than seven days' written notice if any of the following events (each an "Event of Default") occurs:

(a) except as provided in Section 8.1(b) below, the other party fails substantially to perform in accordance with the terms of this Agreement and such default is not caused by Force Majeure or a breach of this Agreement by the other party and the party in breach has not cured the default within thirty (30) days after receiving a written notice thereof specifying the default in reasonable detail; provided, however, if the default is not reasonably capable of being cured within such 30-day period, then the party in breach shall have an additional period to cure the breach, not to exceed an additional 90 days, provided such party promptly commences and diligently pursues the cure;

(b) failure of the Authority to make payments to the Construction Manager in accordance with this Agreement for ten days after receiving written notice thereof from the Construction Manager in reasonable detail; or

(c) the other party is Bankrupt.

8.2 Suspension of Work. If the Work is suspended by the Authority for more than sixty (60) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Retrofit Completion is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for reasonable expenses incurred in the interruption and resumption of the Construction Manager's services.

8.3 Abandonment. This Agreement may be terminated by the Authority upon not less than seven (7) days' written notice to the Construction Manager in the event that the Work is permanently abandoned by the Authority. If all or substantially all of the Work is abandoned by the Authority for more than sixty (60) consecutive days, the Construction Manager may terminate this Agreement by giving written notice.

8.4 Suspension of Services. If the Authority fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon fourteen (14) days' written notice to the Authority, suspend performance of services under this Agreement. Unless payment in full is received by the Construction Manager within fourteen (14) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Authority for delay or damage caused to the Authority because of such suspension of services.

8.5 Wind Up Costs.

(a) In the event of termination except pursuant to Construction Manager's Event of Default, the Construction Manager shall be compensated for services performed prior to termination by payment of all amounts due to the Construction Manager calculated using the amount of the Construction Costs incurred by the Authority up to the date of termination plus costs of terminating or winding up contracts or other costs of Construction Manager.

(b) The Authority shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Authority, for any equipment owned by the Construction Manager which the Authority elects to retain and which is not otherwise included in the Cost of the Work.

(c) If there is any subcontract, purchase order or rental agreement entered into by the Construction Manager and that Authority did not enter into directly, and upon termination of the Contract the Authority elects not to accept the assignment of such subcontract, purchase order or rental agreement, the Construction Manager shall terminate such subcontract, purchase order or rental

agreement and the Authority shall pay the Construction Manager the reasonable costs necessarily incurred by the Construction Manager by reason of such termination.

8.6 Contractor Default. In the event of termination due to an Event of Default of the Construction Manager, the Construction Manager shall be entitled to payment for services rendered to the date of termination, and shall pay the Authority as full and liquidated damages in respect of any and all liabilities to the Authority hereunder in an amount equal to 20% of the total compensation paid to the Construction Manager to the date of termination.

## ARTICLE 9 INSURANCE

### 9.1 Required Insurance.

(a) The Construction Manager and Authority shall purchase and maintain the insurance of the types and in the amounts described in Section 9 of the Facility Management Agreement subject to reasonable commercial availability. The coverages shall be maintained without interruption from the date of commencement of services under this Agreement until the date of termination of this Agreement.

(b) The Authority shall purchase and maintain Builder's Risk insurance for real and personal property, including all structures, machinery, fixtures, supplies and other properties constituting part of the Retrofit, advanced loss of profits/extra expense coverage and boiler and machinery coverage. Such insurance shall be continuously maintained from commencement of the Retrofit Completion through the final acceptance date, including all periods of hot and cold testing and shall contain an automatic extension clause of ninety (90) days at a pro-rated policy rate. The policy or policies shall add the Construction Manager as an additional Named Insured and the Engineer, the Construction Manager's engineer, the Contractors, subcontractors and sub-subcontractors in the Work as additional insureds.

(c) Coverage described in 9(1)(b) shall be on a builder's risk or equivalent policy form for the perils of "all-risk" and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer's, Construction Manager's, Construction Manager's engineer's, and Contractors' services and expenses required as a result of such insured loss.



Coverage shall also include resulting damages from faulty or defective workmanship, material or construction.

(d) The policy shall insure for full replacement cost of the Retrofit. The advanced loss of profits coverage shall be written on an actual loss sustained basis with at least a 24 month time period limitation on indemnity.

(e) Property damage deductibles shall not exceed \$250,000 per occurrence, except for wind and earthquake, which shall have deductibles of not greater than 2% of insured values. All efforts to obtain lower deductibles for earthquake, wind and flood shall be made in accordance with other facilities of this type. The Authority shall pay costs not covered because of such deductibles whether or not the Authority elects the option provided in 9.1(i). This insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

(f) The Authority, at the Authority's option, may purchase and maintain such insurance as will insure the Authority against loss of use of the Authority's property due to fire or other hazards, however caused. The Authority waives all rights of action against the Construction Manager for loss of use of the Authority's property, including consequential losses due to fire or other hazards however caused.

(g) Before an exposure to loss may occur, the Authority shall file with the Construction Manager a certificate of insurance and letter from placing broker stating that the insurance required by this section is in place and conforms to the requirements specified herein. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Construction Manager. Certificates shall provide for 30 days prior written notice of cancellation, non-renewal or material change in coverage.

h) The Authority and Construction Manager waive on behalf of themselves and any insurer all rights of recovery against the other for damages to the extent covered by insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. The Authority shall require of the Engineer, Engineer's consultants, separate Contractors, and the Contractors' subcontractors, agents and employees, by appropriate agreements, written if legally required for validity, similar waivers each in favor of the Construction Manager. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in any property damaged.

(i) At the Authority's request Waste Management Facility Manager shall procure and maintain the insurance described in 9(1) (b) through (e) at the Authority's cost.

(j) The Construction Manager shall carry Professional Liability insurance as follows: \$1,000,000 per occurrence; \$2,000,000 in the aggregate.

## ARTICLE 10 CONSTRUCTION MANAGER'S COMPENSATION

10.1 Simultaneously with the submission of the Monthly Report, the Construction Manager shall submit to the Authority a certificate in which the Construction Manager certifies to the Authority as to the percentage of the Retrofit Completion completed as of the date of the Monthly Report along with supporting documentation reasonably satisfactory to the Authority (the "Monthly Completion Certificate"). Within ten (10) business days of the Authority's receipt of a Monthly Completion Certificate from the Construction Manager the Authority shall pay the Construction Manager the amount due for such month pursuant to Exhibit C.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Governing Law. Unless otherwise provided, this Agreement shall be governed by the law of the Commonwealth of Pennsylvania, except for any conflict of laws provisions thereof.

11.2 Defined Terms. In addition to terms defined elsewhere in this Agreement, certain capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

11.3 No Assignment. Neither Authority nor Construction Manager shall assign this Agreement without the prior written consent of the other party.

11.4 Integration. This Agreement represents the entire and integrated agreement between the Authority and Construction Manager with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Authority and Construction

Manager. This Agreement shall not change or modify the terms of the Facility Management Agreement.

11.5 No Third-Party Beneficiary. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Authority or Construction Manager.

11.6 Hazardous Materials. Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's employees, agents or consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Facility or the Facility site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

#### 11.7 LIMITATION OF LIABILITY.

(a) THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE APPLICABLE PARTYS LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(b). NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE CONSTRUCTION MANAGER'S MAXIMUM LIABILITY HEREUNDER IS LIMITED TO THE TOTAL AMOUNT OF THE CONSTRUCTION MANGEMENT FEE PAID TO THE CONSTRUCTION MANAGER BY THE AUTHORITY HEREUNDER.

11.8 Representations and Warranties. On the date of this Agreement, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.
- (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.
- (iv) this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.
- (vi) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

11.9. Miscellaneous. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Waiver by a party of any default by the other party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement; and the parties shall use all commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for

convenience and reference purposes only. This Agreement shall be binding on each party's successors and permitted assigns.


IN WITNESS WHEREOF, this Agreement is entered into as of the day and year first written above.

AUTHORITY

CONSTRUCTION MANAGER

THE HARRISBURG AUTHORITY

By: Michelle I. V. Jones  
Name: Acting Executive Director  
Title: Michele TV Torres

By:  *KJB*  
Name: Paul Stauder  
Title: Sr. VP Bus. Mgt.

## Exhibit A

### Definitions

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

"Claim" means a demand or assertion by one of the parties to a Contract Document seeking, as a matter of right, adjustment or interpretation of terms of any Contract Document, payment of money, extension of time or other relief with respect to the terms of any Contract Document. The term "Claim" also includes other disputes and matters in question between the Authority and any Contractor arising out of or relating to any Contract Document. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

"Contract Documents" means, collectively, this Agreement, the Construction Documents, Design Documents, Drawings and Specifications.

"Contractor" means a person or entity who performs construction relating to the Retrofit Completion under one or more Construction Documents.

"Construction Contract" or "Construction Document" means any contract between the Authority and one or more Contractors for Work on the Retrofit Completion.

"Construction Cost" shall have the meaning set forth in Section 5.1.

"Construction Schedules" means the schedules for completion of a Contractor's Work that are created by the Construction Manager and submitted to and approved by the Authority.

"Design Documents" are the graphic, pictorial and technical portions of the Contract Documents showing the design, location, dimensions and construction of the Retrofit Completion, generally including plans, elevations, sections, details, schedules, diagrams and composition.

"Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

"Engineer" has the meaning set forth in the Recitals.

"Facility Management Agreement" has the meaning set forth in the Recitals.

"Facility Manager" has the meaning set forth in the Recitals.

"Final Completion" means Substantial Completion of the Work or a component thereof, plus successful completion of the performance tests applicable thereto pursuant to Section 3.22 and Exhibit D. The date of Final Completion of the entire Work is the Retrofit Completion Date under the Facility Management Agreement.

"Force Majeure" means an event or circumstance which prevents one party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming party, and which, by the exercise of due diligence, the such party is unable to overcome or avoid or cause to be avoided.

"Governmental Approvals" means all governmental licenses, permits, franchises, approvals and other authorizations (including any environmental permits and zoning or land use approvals) of, and all required registrations or filings with, any governmental authority related to the Facility, the Retrofit Completion, the Authority or the Construction Manager or the Work.

"Monthly Completion Certificate" has the meaning set forth in Section 10.1.

"Monthly Report" has the meaning set forth in Section 3.4.

"Retrofit Completion Schedule" means the schedule for implementing the Retrofit Completion work.

"Retrofit Completion" means the work described in Exhibit B.

"Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

"Substantial Completion" means the stage in the process of the construction of the Retrofit Completion when the Retrofit Completion or a designated portion thereof is sufficiently complete in accordance with the applicable Contract Documents so that the Authority can occupy or utilize it for its intended purpose.

"Work" means all the design, construction activities and services, equipment, repair, replacement, and other activities required by the Contract Documents with respect to the Retrofit Completion.



Exhibit B

Preliminary Scope of Work for Retrofit Completion

## Exhibit B Retrofit Completion Work Scope

The Retrofit Completion Work Scope outlines the technical upgrades and construction activities required for the facility to operate in accordance with the Performance Standards identified in Exhibit F. The twenty-five (25) million dollar work scope was developed during the initial technical assessment phase (January 2 – February 15, 2007) and has been and will continue to be refined and modified with the purpose of achieving the desired improvements in the most expedient and cost effective manner while adhering to Prudent Industry Practices and in maximizing the Project revenues for the Authority.

The scope and budgetary costs for the work is presented in eleven (11) generalized scope areas with the major activities identified in each.

The Retrofit Plan will be executed with the following objectives:

1. Boiler #3 will be prioritized for construction completion with the intent of returning the boiler into service with a majority of the improvements; most notably with the revised fly ash conveying system.. The availability of parts and equipment will dictate the extent of the other unit #3 modifications.
2. The Retrofit Plan will seek to minimize scheduled boiler downtime for construction related activities by coordinating the required downtime for unit "tie-ins" during the Fall 2007 scheduled maintenance outages..
3. The previously identified options for the two major process design issues which have hampered reliable full load operation (i.e., air heater performance and fly ash conveyance) will be finalized after the detailed engineering and analysis phase is completed.
4. The Retrofit work scopes that do not require scheduled outages for execution/installation will be performed over a twelve (12) month period from the Plan's commencement date with the emphasis placed on first addressing the Priority 1 items, followed by the Priority 2 items and then Priority 3 items. This does not preclude Covanta from executing lower category work scopes, at its discretion, if deemed necessary or appropriate. In general, immediate priority will be given to:
  - a. Boiler #3 completion.
  - b. Workplace Safety hazard elimination
  - c. Environmental compliance issues.
5. The Retrofit work scope does not include the required effluent water pretreatment engineering, equipment or installation costs to utilized effluent water for Cooling Tower make-up (Equipment L).

Anticipated Costs for the eleven (11) major areas (without any contingency dollars) are summarized below:

Construction	Priority 1	Priority 2	Priority 3	Total
Equipment	\$8,332,998	\$1,243,200	\$ 56,700	\$ 9,632,898
Mechanical Completion	\$1,659,220	\$ 200,000		\$ 1,859,220
Insulation & Heat Tracing	\$2,336,931			\$ 2,336,931
Structural Completion	\$ 914,880	\$ 426,175		\$ 1,341,055
Civil Concrete	\$ 349,475	\$ 199,943	\$238,365	\$ 787,783
Architectural	\$ 242,805	\$1,085,487	\$722,426	\$ 2,050,718
Electrical Completion	\$1,349,463	\$ 221,250	\$ 75,000	\$ 1,645,713
I&C Completion	\$ 281,020	\$ 445,500	\$ 50,000	\$ 776,520
Environmental	\$ 427,000			\$ 427,000
Site Work	\$ 191,420	\$ 75,000	\$ 94,099	\$ 360,519
Safety	\$ 290,000			\$ 290,000
<b>General</b>				
Plant Outfitting & Mobile Equipment	\$1,337,000	\$ 171,566	\$ 336,190	\$ 1,844,756
Home Office Support	\$1,328,170			\$ 1,328,170
Field Construction Support	\$ 745,124			\$ 745,124
<b>Total</b>	<b>\$19,785,506</b>	<b>\$4,068,121</b>	<b>\$1,572,780</b>	<b>\$25,426,407</b>

A brief description of the retrofit work scopes is summarized below. A minor overall price variance of .48% exists between the summarized table above and the individual description of work set forth below as a result of rounding and grouping certain costs in each of the eleven (11) generalized scope areas.

## EQUIPMENT

### A) Fly Ash Conveyance Modifications - \$976,000.00

The plan is to replace the existing pneumatic fly ash conveyance system with conventional screw conveyors, flapper type dump valves and new ash conditioning equipment. These modifications will reduce the incidence of blocked hoppers, premature bag replacements, and produce ash which is easier to handle and dispose. The Recycle Ash system will be removed from service as part of this modification.

### B) Air Heaters - \$4,550,000

The existing tubular air heaters are a misapplication and results in condensation causing the collection of fly ash on the surface of the tubes. The air heaters plug quickly and must be cleaned with high pressure water. The fly ash rapidly corrodes the metal requiring the replacement of the tubes. The present plan and estimate is based on the removal of the existing

air heaters and the installation of quench towers for all three units. Additionally, Air steam coils and air compressors may need to be installed to support the modifications. However, an evaluation is underway to investigate two potentially less expensive options. One option would involve the addition of additional economizer surface, and the other would switch the location of the air heaters and economizers.

C) Feed Chute Repairs - \$330,000

These improvements are necessary on all three units to eliminate leakage and increase the durability of the feed chute in high wear areas. Feed Chute modifications to include a review and re-design of the internal supports as well as provisions to accommodate thermal expansion. Modifications will also be made to the Feed Chute damper to make it open down as opposed to up.

D) Turbine/Generator - \$110,000

This work involves the modification of the piping and the platform for the rupture disk. Currently the rupture cannot be replaced as there is no safe access and the piping on either side of the disk is not independently supported. The work is needed in order to allow the rupture disk to be replaced if needed. In addition, the turbine generator required a full inspection and commissioning to ensure its safe and efficient operation that has been started but must be completed.

E) Bottom Ash Overs & Conveyors - \$1,263,850.00

Bottom ash from a waste to energy facility contains metals and other non-combustible materials that are separated from the ash and recovered or disposed. The bottom ash system installed currently at the Facility was poorly designed. The belt conveyors that currently move the ash from the basement to the outside containers are constructed of a material that cannot withstand the wear and tear of the ash material and frequently tear and require repair or replacement. In addition, the system design results in ash with a higher than desirable moisture content in the ash which makes handling and disposal more difficult and costly. Due to the location of the grizzly system, the "overs" must be hoisted out of the basement, a difficult task which requires significant manpower to accomplish.

F) Stoker and Combustion System - \$407,648.00

The Aircal combustion system relies on bursts of compressed air through holes in the stationary grates in order to agitate the waste and ensure proper combustion. Over time the holes become clogged and combustion efficiency decreases and in some cases results in unit shutdown. These events can require removal of un-combusted waste from the grates and a labor intensive process to clear the pulse air openings and headers. Covanta has also determined that the over fire air system is inadequate to provide the proper combustion control in the over fire area. In addition, the siftings removal system is such that siftings must be removed manually requiring labor intensive effort.

The improvements to the stoker system include providing access doors to allow for easier cleaning and maintenance resulting in improved combustion control and greater availability. The over fire air system modifications are necessary to ensure good mixing of secondary combustion air to ensure complete combustion and compliance with air permit requirements. A

modification of the siftings removal feed chute will reduce the labor necessary to remove siftings.

G) Air Compressors - \$535,500.00

Many systems in the plant are operated with compressed air, e.g., the Aircal combustion system and instrumentation for the air pollution controls, Bag House cleaning and other balance of plant uses. The current capacity of the compressors at the Facility is inadequate to service all of the load, and not all of the compressors are operable. The current supply of air will be inadequate to service three units operating concurrently. Due to the critical need for reliable supply of compressed air for operations, good engineering practice dictates that redundancy is required so that a loss of one compressor does not require units to be derated.

The improvements include three new 200 HP compressors; a new air dryer, three mist eliminators; new dryer control panel; rebuilding two existing compressors; two service air receivers; compressor controls; hot exhaust ductwork, air piping changes. An adequate supply of compressed air and the piping modifications to deliver the air will ensure increased availability and reliability, the ability to sustain a consistent three unit operation and improve combustion.

H) Refuse Crane Rating and Modifications - \$150,000.00

Both Refuse cranes need major work to simultaneously operate all three units at capacity. The grapples need major overhaul due to hydraulic issues, pump repairs in an attempt to increase crane speed and reduce cycle time to help the three units to be fed the required amount of waste. Numerous safety items are needed included limit setting.

I) Re-build and Relocate Urea metering skid - \$100,000.00

The Urea metering skids are currently located at the basement elevation adjacent to the wet drag chain conveyors. Access is difficult and environment is dirty and corrosive to the equipment. Repairs are on-going. It is envisioned that the skids would be rebuilt and relocated to a cleaner environment to insure proper and reliable operation.

J) Water Treatment System - \$169,200.00

The water treatment system at the facility is comprised of two (2) reverse osmosis (R/O) units. Proper water treatment is essential to maximize the life of project components such as boiler tubes. The existing R/O units require maintenance and replacement membranes to function properly. In addition, the system capacity is inadequate to supply three units under certain plant operating conditions, ie - full steam export.

The equipment improvements to the R/O system includes a pre-filtration system for the (2) RO skids currently in place, an R/O clean in place system; pressure control valve; a pre-filtration system and either a new single pass R/O unit or additional elements which will provide additional flow capabilities.

K) Boiler Fly ash system Modification - \$924,000.00

We feel it is necessary to increase the size of the boiler hopper openings to 10", redirect the first two hopper openings and modify the system out of the wet drag conveyor thereby removing the Boiler fly ash. This will minimize frequent problems with plugged boiler fly ash hoppers, resulting in labor intensive maintenance and increased down-time.

L) Re-use water pumps and screen for shredder pit- \$35,000. While not included in the retrofit completion work scope, at the Authority's request we are presently evaluating the economic feasibility of installing a waste water collection system and the conversion of the D&D building into a filtration system for the effluent water. Our preliminary estimates for this project are approximately \$465,000. The current waste water is being pumped to the D&D building which processes the water for discharge to the sewer system. This is very costly and inefficient. Adding a waster water grit screen and collection area will allow the water to be reused in the drag chains thus minimizing the discharge. We want to accomplish a zero discharge with the exception of sanitary. Additionally, converting as possible the existing D&D to accept effluent and thus verifying the water prior to supplying the cooling tower and turbine cooling.

L) Miscellaneous Equipment items - \$81, 700.00

1. Ferrous metal is removed from the ash using a magnet. An additional magnet is needed to provide a spare unit incase the in place unit were to fail. Minimizing downtime on the ferrous recovery maximizes revenue and limits the amount of unwanted material in the landfill.
2. Cooling tower level controls need to be installed to improve the performance and to allow the effluent water supply to be used.

## MECHANICAL

This category includes cost for completing in excess of 400 mechanical related punch list items previously identified by Barlow and additional punch list items compiled by Covanta since 1/2/07.

A) Punch List Items Quoted by SMS - \$792,300.00

B) Punch List Items Outside SMS Quote - \$616,920.00

C) Boiler Refractory Repairs - \$200,000.00

1. Initial refractory installation was not done properly in the boiler hoppers. This will repair/complete the necessary boiler hopper refractory.

D) Piping system deficiency remediation - \$250,000.00

1. After an evaluation of the critical piping systems (Main and Extraction Steam and Feed water) the necessary piping supports will be added to provide structural integrity to those systems.

## INSULATION AND HEAT TRACING

This work includes all of the insulation and heat tracing that was not completed on Unit 3 as well as the repair and replacement of insulation and heat tracing that was damaged on Units 1 and 2. Proper insulation and heat tracing will prevent freeze damage and allow the units to run more efficiently and reliably in cold weather.

- A) Heat Tracing Audit and Project Manager Assessment - \$25,500.00
  - 1. An audit and oversight will be completed to compile an exact list of the needed items.
- B) Remaining Insulation Work on Boiler #3 - \$879,000.00
- C) Repair/Replace Damaged and Missing Heat Tracing and Insulation on Other Areas - \$1,023,00.00
- D) Additional Insulation Covers - \$42,400.00
  - 1. Many insulation covers do not exist or are damaged beyond repair. These provide insulation and protection to hot surfaces. Over 180 pieces are identified.
- E) Installation of Baghouse Penthouses -- \$287,181.00
  - 1. The 3 baghouses penthouses are not protected from the weather. Freezing air lines cause significant hopper plugs due to erratic pulsing. Also no protection is provided to the bag area and tube sheet when the covers are removed for inspection or maintenance. All 3 units will have penthouse enclosed with siding.
- F) #3 Screw Conveyor Covers - \$79,850.00
  - 1. The screw conveyors have never been insulated and require installation to prevent conveyor plugging do to cold air in leakage.

### STRUCTURAL

- A) Structural Installation Inspection - \$42,000.00
  - 1. It is recommended that a certified steel inspector/CWI be utilized to inspect the as built condition of the structure with attention focused on member size and location, connection details, connection completeness, bolt torque, weld quality, column plumb and anchor bolt condition. Additionally a comparison should be made to the as built drawings.
- B) Structural Repairs - \$65,000.00
  - 1. It is recommended a structural repair vendor work with the inspector and repair needed items.
- C) SMS and Additional Punch List Items - \$1,239,975.00
  - 1. The Facility, particularly Unit 3, was incomplete with respect to access platforms. Access platforms are a significant safety issue, and must be completed to provide an acceptable level of worker safety. Unit 3 in its present condition cannot be safely operated and maintained until the platforms are completed. In addition, there is an extensive punch list of structural items, part of which was created by Barlow/SMS, and added to by Covanta.

### CIVIL CONCRETE

- A) Baghouse Area Concrete Paving and Drainage - \$180,000.00

1. There is currently no concrete or paving in the APC area. This creates environmental risk and needs to be addressed.
- B) Concrete Repairs to the Tipping Floor and Transfer Area - \$65,000.00
1. Both areas require concrete repairs.
- C) Curbing and Site Sidewalks and Pads - \$106,050.00
1. Several linear feet of curbing and sidewalks are needed to complete the site construction. Water containment is needed to manage storm water run off and to direct rain water to the proper locations.
- D) Basement Concrete Roof - \$69,125.00
1. The existing basement roof is incomplete. This causes numerous safety and equipment issues including freezing and water damage to equipment.
- E) Miscellaneous Other Concrete Work - \$367,608.00
1. These items include; landings at steps, basement trenches, wall repair and installation and other punch list items.

#### ARCHITECTURAL/ BUILDINGS

Numerous building issues still exist which need to be completed. Several are needed to perform everyday function's.

- A) Fire Protection and Detection - \$204,600.00
1. The fire system is incomplete. Both protection and detection need to be completed to be fully functional. This price also includes the installation of 2 fire cannons for the MSW pit at \$50,000.00.
- B) Water Treatment Lab - \$25,000.00
1. The existing water treatment lab was unusable. It has been temporarily relocated to the old employee's locker room.
- C) Elevator - \$13,205.00
1. The elevator also was never finished. To commission this, several structural issues need to be addressed.
- D) Transfer Station Enclosure - \$23,712.00
1. The addition of boiler #3 required a portion of the roof to be removed. The roof must be flashed and sealed off to keep the weather out.
- E) New Administration Building - \$125,977.00
1. The building is currently not habitable. Several items need to be completed including; plumbing, HVAC, electrical, communication and office furniture.
- F) Plant Area HVAC Evaluation and Installation - \$100,000.00



1. Upon completion of other items, the evaluation of HVAC will need to be done to ensure equipment and personnel habitability.

G) Building Siding, Roof Accesses - \$322,969.00

1. Roof access doghouses do not exist. They are needed to keep water out of the building. Additionally, siding is also needed to complete the building structure.

H) Plant Painting - \$800,000.00

1. Upon completion of the construction in each specific area, protective coatings are required for plant preservation and appearance.

I) Miscellaneous Architectural items - \$ 172,245.00

1. Several additional punch list items and building repair items are needed.

**ELECTRICAL**

Upon initial operations of this plant the electrical system was in a state of disrepairs. The initial actions we completed were to make the plant habitable and safe. We were able to install temporary lighting and remove several severe safety risks. Now we need to complete the tasks to make this plant electrically sound.

A) Electrical Field Survey and Engineering Review - \$26,250.00

B) Installation of Permanent Lighting - \$573,296.00

1. Numerous lighting fixtures must be installed to the plant and surrounding grounds.

C) Electrical Replacement For Certain Components - \$200,000.00

1. This is for the replacement of Transformer #5 and plant batteries.

D) Punch List Items - \$492,167.00

1. A punch list of several electrical issues though out the plant is developed to ensure plant reliability.

E) Lightning Protection - \$76,500.00

1. This includes the design, installation and certification of a lightning protection system which currently does not exist. This system is needed for the protection against lightning storms to minimize equipment damage.

F) Protective Relay / Functional Testing - \$90,750.00

1. This includes the addition of a backup relay

G) Grating Installation For Old Cooling Tower Pit - \$30,000.00

1. The old cooling tower pit was converted into a transformer and Motor control center area. Grating is needed to safely maneuver around.

H) Miscellaneous Electrical Items - \$206,750.00

1. Cleaning and installing electrical cable tray covers, electrical metering to the city buildings, installing a grounding resistor transformer and electrical power system control modifications must be completed.

### INSTRUMENTATION AND CONTROLS

#### A) Citech Data Acquisition System - \$50,000.00

1. This system installation allows us to track plant performance, trend all parameters to enhance the process and minimize costs, and to recreate data for event troubleshooting. Basically without this we fly blind and aren't able to hold accountability and enhance plant performance. There is no system currently installed to do this.

#### B) Sequence of Events Recorder - \$50,000.00

1. This will allow the recreation of data by the millisecond to be able to understand a plant event and to get to the root cause of an issue. No system is currently in place.

#### C) Combustion Controls - \$445,500.00

1. The control system for the boilers is completely manual at this point. Automating the controls allows us to use the computer to control production and environmental performance. The current set up is not capable of doing this due to many of the dampers are manual only. Adding positioners, cameras, flow and temperature indication and automating the controls in the DCS will increase the operation of the boiler in many ways.

#### D) Punch List Items - \$25,520.00

1. Several items need to be completed in the plant to improve indication and controls.

#### E) Miscellaneous Items - \$291,000.00

1. Several instruments need to be replaced and many need to be installed. Additionally, loop checks and calibrations need to be done to verify instrument accuracy. Already numerous issues have been found to be not done properly.

### ENVIRONMENTAL

#### A) Wind Wall Installation Around the Baghouse Area - \$75,000.00

1. Environmental requirements do not allow for fugitive emissions from the back end of the plant. To prevent this, a wind wall will be constructed to minimize the effects of wind and to contain any possible ash migration.

#### B) Trace CEMDAS System - \$58,000.00

1. This system is already installed and operating. We are waiting DEP approval.

#### C) Post Construction Storm Water Plan - \$15,000.00

1. A post construction storm water plan is required by the DEP upon completion of the construction phase.

D) Environmental Site Cleanup - \$75,000.00

1. The site currently needs a significant amount of cleanup. This must be done to be environmentally compliant. The use of vacuum trucks and personnel will clean the needed areas.

E) Installation of Additional CEMS Monitors - \$204,000.00

1. Additional opacity monitors, O<sub>2</sub> analyzers and HCL monitors are needed to properly monitor the flue gas. Due to plant configurations with one stack, the use of one opacity and HCL monitor is limiting operations significantly.

**SITE WORK**

A) Paving and Grading - \$217,689.00

1. The surrounding grounds need to be graded and paved to control storm water run off and to allow for site parking.

B) Landscaping - \$30,000.00

1. The site has not been landscaped. The addition of grass, bushes and trees is needed to improve the appearance of the site.

C) Fencing - \$22,830.00

1. Several linear feet of fence is needed to control access and partition the site off do to the site being open for city vehicle and personnel use.

D) Site Cameras and Signage - \$90,000.00

1. The plant signage is less than adequate. Numerous signs are missing. The cameras will be added for additional security purposes since the site is not controlled completely

**SAFETY**

A) Belt Conveyor and Rotating Equipment Guarding - \$100,000.00

1. Guarding is a safety requirement and is necessary for personnel safety. Especially the two major bottom ash belts. These have numerous safety point. Other equipment is lacking guarding also.

B) Emergency Safety Showers - \$110,000.00

1. Another safety requirement is the installation of safety showers for personnel protection is they were to be spray with site chemicals. 5 showers is the desired number.

C) Safety Tagging and Signage - \$80,000.00

1. To properly warn personnel, OSHA requires specific signage to address areas containing hazards and dangers. Additionally the lock out tag out process requires multiple pieces to execute the requirement properly.

### PLANT OUTFITTING AND MOBILE EQUIPMENT

#### A) Mobile Equipment - \$742,498.00

1. Several pieces of equipment are needed to operate the plant correctly. They include:
  - a. Front End Loader - \$350,000.00
  - b. Skid steer - \$30,000.00
  - c. Fork Lift - \$25,000.00
  - d. Site Pickup - \$30,000.00
  - e. Man Lift - \$25,000.00
  - f. Lull - \$80,000.00
  - g. Sweeper - \$140,000.00
  - h. Roll off containers - \$62,498.00

#### B) Communication Equipment - \$175,368.00

1. Communications are key to the plant performance. For the staff to communicate properly they must be able to use the following:
  - a. Plant radios - \$16,000.00
  - b. Gai-tronics, plant page system - \$109,068.00
  - c. Fax Machine - \$300.00
  - d. Telephone System - \$50,000.00

#### C) Warehouse Items - \$900,000.00

1. A plant inventory is needed to run the plant efficiently and safely. Certain parts must be available immediately to limit down time and loss of revenue. Additionally we need to have shelving to store these parts. Currently there is no warehouse.

#### D) Furniture - \$40,890.00

1. The new administration and the existing area need furniture for the staff to function.

#### E) Equipment Rental - \$282,195.00

1. The use of a 300 ton crane and 25 ton cherry picker will be used through out the project.

### Outside Engineering and Administration

#### A) The following support functions are needed to perform this plan:

1. A/E Engineering - \$500,000.00
2. Structural Engineering review and inspection - \$200,000.00
3. Critical Piping review -- \$131,020.00

4. Record Drawings and Plant Documentation - \$250,000.00

Exhibit C

**Construction Management Fee**

The Authority shall pay to the Construction Manager on or before the first day of each month during which the Construction Manager is to provide services under this Agreement a Construction Management Fee of \$50,000.

## Exhibit D

### Performance Tests

1. The Authority and the Construction Manager shall collaborate in good faith to establish appropriate performance tests designed to measure satisfactory performance for the following major components of the Work and incorporate such performance tests into the applicable Construction Documents:

- a. Fly ash system;
- b. Air heaters;
- c. Bottom ash conveyors system;
- d. Air compressors;
- e. Water treatment system; and
- f. Air Pollution control system (including quench tower).

2. Following Substantial Completion and satisfactory final inspection of the Retrofit Completion pursuant to Section 3.21, the Construction Manager shall schedule a performance test of the Retrofit Completion pursuant to Section 3.22. Such performance test shall require simultaneous operation of all three of the Facility's units firing on municipal solid waste (except as required for flame stabilization purposes in accordance with prudent operating practices) for a continuous period of 120 hours, subject to interruption for Force Majeure events, while maintaining environmental compliance and achieving the following:

- a. A per unit average minimum gross steam flow measured at the outlet of the boiler of 68,500 pounds per hour during the test period; and
- b. An aggregate total of 2,400 tons of municipal solid waste (at or below 5,200 Btu per pound) processed during the test period.

EXHIBIT C



EXHIBIT C

Conditions Precedent to Commencement Date

The Waste Management Facility Manager shall have received:

1. Guaranty Agreements, duly authorized and executed by each of the City and the County, guaranteeing payment by the Authority of the Reimbursement Amount and the Early Termination Payment.
2. Payment to the Waste Management Facility Manager of the first month's Management Fee and all amounts owed it under the interim operation and management agreement.
3. Evidence of the availability of technology licenses and other intellectual property sufficient to permit the Waste Management Facility Manager to operate and maintain the Facility.
4. Customary legal opinions covering such matters as the Waste Management Facility Manager may reasonably request including the validity and enforceability of the City and County Guaranty Agreements.
5. Certificates evidencing that the policies of insurance that the Authority is required to carry pursuant to the Agreement are in full force and effect.

EXHIBIT D

## EXHIBIT D

### Operation and Maintenance Expenses and Responsible Parties

#### Waste Management Facility Manager's Operation and Maintenance Cost Responsibilities

Wages & Benefits

Parts, subcontracting, major overhaul

Chemicals

Plant Supplies

Environmental Testing

Plant Equipment Rentals

Office Expenses

Building Services

Transfer station expenses

Mobile equipment maintenance: replacement

Act 101 Host Fees, subject to pass-through treatment

All other Expenses, unless identified below or otherwise provided for or contemplated as a pass through expense of the Authority in the Agreement

#### Authority's Operation and Maintenance Cost Responsibilities

##### Utilities

Non-Plant Supplied Power

Water

Sewer

Auxiliary Fuel

; provided that, subject to Force Majeure and Authority fault, the Authority shall only pay for or reimburse the Waste Management Facility Manager for the maximum amount of utility usage as follows:

(1) Non-Plant Supplied Power - in any year where there is no scheduled turbine generator outage, the maximum usage amount shall be 400 mwh per year. In any year where there is a scheduled turbine generator outage, the maximum amount shall be 1,500 mwh per year. Scheduled turbine generator outages shall only occur consistent with Prudent Industry Practice.

(2) Water - the maximum usage amount shall be 200 million gallons per year, plus water necessary for the quench towers, as metered by the Waste Management Facility Manager, and for the steam line. Consistent with the Agreement, the Waste Management Facility Manager has an affirmative obligation to use effluent where possible for cooling and quench tower purposes.

(3) Sewer - the maximum usage amount shall be 100 million gallons per year.

(4) Auxiliary Fuel - the maximum usage amount shall be 75,000 mcf's per year

Insurance  
Mandated Fees  
Landfill Costs including Post Closure Costs  
Trustee Fees  
Ash Disposal  
Ash Transportation, except to the Landfill  
Waste ByPass Transportation and Disposal  
Debt Service  
CIT Licensing Fee  
Management Fee  
Incentive Payment  
Reimbursement Amount  
Performance Bond

EXHIBIT E

## EXHIBIT E

### Facility Operations

1.1. **General.** During the Term, the Waste Management Facility Manager and the Authority shall coordinate and cooperate with each other regarding the operation of the Facility in accordance with, and subject to, the provisions of this Agreement. The Waste Management Facility Manager shall not be responsible for the operation or maintenance of the Landfill or any other Residue or Bypassed Waste Disposal Facility.

#### 1.2. **Delivery and Acceptance of Waste.**

(a) During the Term, the Authority may cause Acceptable Waste from any source to be delivered to the Facility and, subject to the provisions of this Agreement, the Waste Management Facility Manager shall accept and dispose of all Acceptable Waste so delivered in accordance with the provisions of this Agreement.

(b) The Authority has entered into the existing Waste Disposal Agreements and will from time to time become party to other Waste Disposal Agreements. The Authority hereby authorizes the Waste Management Facility Manager, as agent for the Authority (i) to enter into other Waste Disposal Agreements in the name of the Authority for the remainder of the disposal capacity of the Facility and or (ii) to cause additional Acceptable Waste to be delivered on a spot-market basis in order to utilize the full available disposal capacity of the Facility. The Waste Management Facility Manager shall not enter into any additional Waste Disposal Agreements after receipt of written directions from the Authority to cease doing so. The Waste Management Facility Manager shall not enter into any Waste Disposal Agreement that has a term in excess of 24 months or that provides for damages for wrongful rejection of waste that is in excess of the disposal fee thereunder or that has terms that are contrary to written instructions of the Authority, unless otherwise agreed to in writing by the Authority. All revenues received under any Waste Disposal Agreements shall be the property of the Authority and all payments made to counterparties under Waste Disposal Agreements shall be an Authority expense. The Waste Management Facility Manager shall keep the Authority apprised of the status of contractual arrangements for the delivery of waste to the Facility and shall use commercially reasonable efforts to identify sources of waste that will generate additional tipping fees and electric revenues. The Authority reserves the right to enter into Waste Disposal Agreements directly with haulers, generators or other sources of waste and shall provide the Waste Management Facility Manager with true and complete copies thereof.

#### 1.3. **Acceptance of Waste; Waste Screening.**

(a) The Waste Management Facility Manager shall accept and Process or otherwise dispose of all Acceptable Waste delivered to the Facility pursuant to this Agreement except the following, which the Waste Management Facility Manager may reject:

(i) Unacceptable Waste:

(ii) Acceptable Waste delivered in excess of the Facility's Permit limitation;

(iii) Acceptable Waste that is not delivered in accordance with the Facility rules and regulations pursuant to Section 1.9(a);

(iv) Acceptable Waste from any Authority hauler that has been suspended for violating the Facility rules and regulations pursuant to Section 1.9(b);

(v) Acceptable Waste delivered at hours other than Receiving Hours;  
and

(vi) Acceptable Waste if (A) the acceptance or Processing of it would cause a violation of Applicable Law, (B) it cannot be accepted due to the occurrence of a Force Majeure, or (C) the rejection of it is reasonably necessary to comply with Prudent Industry Practices.

(b) The Waste Management Facility Manager may inspect the contents of any vehicle delivering solid waste to the Facility prior to unloading the vehicle, and require the hauler delivering such material to separate and remove all Unacceptable Waste contained therein. Any load of material rejected by the Waste Management Facility Manager pursuant to this Section 1.3(b) shall be deemed Unacceptable Waste.

1.4. [Reserved].

#### 1.5. Scales and Weight Records.

(a) The Waste Management Facility Manager shall operate and maintain weighing facilities at the Facility Site. The Waste Management Facility Manager shall weigh all vehicles delivering Acceptable Waste to the Facility Site (whether or not the Waste Management Facility Manager accepts such Acceptable Waste), and shall complete a weight record with respect to each such vehicle. The weight records shall contain ticker number, gross and tare weight, date and time of delivery, waste type and origin, vehicle identification and the source or destination of such material, as applicable. The Waste Management Facility Manager shall give each vehicle Waste Management Facility Manager written confirmation of such information at the time the vehicle is weighed or shall transmit such data on a daily basis (in the form of a summary report) as and to the extent required in the Waste Disposal Agreements. The Waste Management Facility Manager shall maintain daily records of the tonnage of (i) deliveries to the Facility, (ii) Acceptable Waste accepted and, if weighed, material rejected by the Waste Management Facility Manager, (iii) Residue that is removed from the Facility Site, and any other records reasonably requested by the Authority regarding daily activities at the Facility in order

for the Authority to fulfill its obligations under the Project Agreements, the Permits and Applicable Law.

(b) The Waste Management Facility Manager may require each vehicle delivering Acceptable Waste to the Facility to present identification and its permit or license. The Waste Management Facility Manager may require at any time validation of the tare weight of any vehicle delivering Acceptable Waste to the Facility by weighing such vehicles in an unloaded condition; provided that, such validation shall occur on such regular basis that is consistent with Prudent Industry Practice.

(c) If all weighing facilities are incapacitated or are being tested or are otherwise not usable, a "scale outage" shall be deemed to occur and the Waste Management Facility Manager shall (i) reasonably estimate the quantity of Acceptable Waste delivered to the Facility by each Authority hauler on the basis of known vehicle volumes (in cubic yards) or on the basis of the amount of historic deliveries, but in no event shall such records be more than two (2) years old, and (ii) consult with the Authority as to any other effects of such scale outage. In the case of a scale outage, these volumetric calculations shall be converted to Tons pursuant to and in accordance with the requirements of the Waste Disposal Agreements, or in the absence of such requirements, reasonable conversion calculations developed by the Waste Management Facility Manager and approved by the Authority, and shall take the place of actual weighing records pursuant to Section 1.5(a) during such scale outage.

(d) The Waste Management Facility Manager shall inspect and test the weighing facilities annually or more frequently as required by Applicable Law. If the weighing facilities meet standards required by Applicable Law and the Authority requests additional tests, the Waste Management Facility Manager shall make additional tests of the weighing facilities and the cost of such additional tests shall be paid by the Authority to the Waste Management Facility Manager within 30 days after an invoice therefor. All tests of weighing facilities shall be conducted so as to minimize disruption of Facility operations.

#### 1.6. Residue and Bypassed Waste.

(a) The Waste Management Facility Manager shall provide and maintain (or cause to be provided and maintained) all equipment necessary for the handling of Residue and any Bypassed Waste at the Facility Site. The Waste Management Facility Manager shall make arrangements for the transportation and disposal of Residue and Bypassed Waste from the Facility Site to the Authority's on-site Landfill or a contracted Residue or Bypassed Waste Disposal Facility. The Waste Management Facility Manager shall cause all Residue and Bypassed Waste to be collected and loaded into vehicles for transportation and disposal at the Authority's on-site landfill in accordance with the applicable Project Agreements, the Permits and Applicable Law.

(b) The Authority shall not charge the Waste Management Facility Manager any fee for the use of its Landfill and shall pay all fees and costs for any other Residue or Bypassed Disposal Facility.



#### 1.7. Disposal of Unacceptable Waste.

(a) To the extent not directly removed by the hauler delivering the same, the Waste Management Facility Manager shall, at the Authority's expense, arrange and contract for the transportation and disposal of Unacceptable Waste delivered to the Facility Site. The Waste Management Facility Manager shall provide the Authority with copies of all contracts with respect to the transportation and disposal of Unacceptable Waste.

(b) The Authority shall reimburse the Waste Management Facility Manager for any and all costs and expenses incurred by the Waste Management Facility Manager to segregate, handle and store Unacceptable Waste delivered to the Facility, unless Waste Management Facility Manager arranged for the delivery or negligently accepted such waste for disposal at the Facility. The Authority and the Waste Management Facility Manager shall cooperate in collecting reimbursement, fines and penalties from any third parties responsible for or who caused the costs and expenses to segregate, handle, store and remove Unacceptable Waste from the Facility.

#### 1.8. Hazardous Waste.

(a) The Facility is not intended or permitted to be a Hazardous Waste disposal, storage or handling facility. The Waste Management Facility Manager has developed and shall maintain a plan for the identification, safe handling and disposal of Hazardous Waste.

(b) Upon discovering Hazardous Waste at the Facility Site or Hazardous Waste delivered to the Facility, the Waste Management Facility Manager shall promptly notify the Authority and commence execution of the Hazardous Waste plan. The Waste Management Facility Manager shall, in accordance with Applicable Law and the Hazardous Waste plan, separate and store all Hazardous Waste discovered at the Facility Site. To the extent not directly removed by the hauler delivering the same, the Authority shall arrange and contract for the loading, removal from the Facility Site, transportation and disposal of Hazardous Waste delivered to the Facility Site. The Waste Management Facility Manager, at the written request of the Authority, shall cooperate with the Authority in the Authority's efforts to enforce its rights to payments under applicable insurance policies or from other persons or entities arising from the delivery to and acceptance of Hazardous Waste at the Facility or the Facility Site. The Authority shall reimburse the Waste Management Facility Manager for any Hazardous Waste Costs incurred by the Waste Management Facility Manager as a result of the delivery of Hazardous Waste to the Facility, unless Waste Management Facility Manager negligently accepted such waste for disposal at the Facility.

(c) To the extent reasonably requested by the Waste Management Facility Manager, the Authority shall cooperate in the performance by the Waste Management Facility Manager of its obligations under the Hazardous Waste plan.

#### 1.9. Facility Rules and Regulations.

(a) The Waste Management Facility Manager has developed Facility rules and regulations for the delivery of Acceptable Waste to the Facility, and the Waste Management Facility Manager shall periodically update such Facility rules and regulations. The Facility rules and regulations shall apply to all Authority haulers and shall include any rules and regulations set forth in the Waste Disposal Agreements relating to the delivery of Acceptable Waste to the Facility. The Waste Management Facility Manager may implement additional Facility rules and regulations at the Facility Site that are not inconsistent with this Agreement or the Waste Disposal Agreements, and that apply equally to all Authority haulers. The Authority and all Authority haulers shall be subject to any such new Facility rules and regulations beginning fourteen (14) days after receipt by the Authority and the Authority haulers of a notice of such new Facility rules and regulations.

(b) The Waste Management Facility Manager may refuse to receive Acceptable Waste from any Authority hauler that violates the Facility rules and regulations, provided that the Authority reasonably approves of such action.

#### **1.10. Repairs and Maintenance.**

(a) The Waste Management Facility Manager shall operate and maintain the Facility in good condition at all times in accordance with Prudent Industry Practices. The Waste Management Facility Manager shall schedule, plan, supervise and perform all maintenance, including, without limitation, all routine, preventative and predictive maintenance, repairs and replacements at the Waste Management Facility Manager's expense required to enable the Waste Management Facility Manager to perform its obligations under this Agreement. Upon reasonable notice from the Authority, the Waste Management Facility Manager shall permit the Authority or its designees to inspect the Waste Management Facility Manager's maintenance, repair and replacement records. On the date of termination or expiration of this Agreement, the Waste Management Facility Manager shall deliver the Facility to the Authority or its designee, in good condition and repair, reasonable wear and tear excepted, and capable of processing waste and generating energy substantially at historical levels.

(b) The Waste Management Facility Manager and the Authority shall reasonably cooperate to keep the Facility and the Facility Site free from accumulations of dust, waste materials or rubbish (other than Residue) and snow. The Authority shall repair the main access road through the Facility Site.

#### **1.11. Utilities, Equipment and Supplies.**

The Waste Management Facility Manager shall furnish or cause to be furnished all tools, supplies, utilities, equipment and other materials reasonably required for the performance of its obligations under this Agreement.

#### **1.12. Waste Management Facility Manager Personnel; Subcontractors and Suppliers.**

(a) The Waste Management Facility Manager shall employ, train, supervise and maintain the qualifications of all personnel reasonably required for the performance of its obligations under this Agreement. The Waste Management Facility Manager may subcontract portions of its obligations pursuant to this Agreement to any subcontractor without approval by the Authority, but notwithstanding any subcontract or agreement with any subcontractor, as to the Authority, the Waste Management Facility Manager shall remain solely responsible for the performance of its obligations pursuant to this Agreement. All Waste Management Facility Manager personnel shall be qualified and shall meet applicable competency and qualification standards under Prudent Industry Practices and Applicable Law.

(b) The Waste Management Facility Manager shall administer all matters relating to labor relations, salaries, wages, working conditions, payroll taxes and contributions, hours of work, termination of employment, employee benefits, safety and all other matters relating to the Waste Management Facility Manager personnel.

1.13. [Reserved].

1.14. Facility Access, Inspections and Visitations.

(a) The Authority or its designees shall have the right, at reasonable times with reasonable notice during regular business hours, to conduct inspections of the Facility or the Facility Site to determine that the Facility or the Facility Site is being operated and maintained in accordance with this Agreement. The Authority shall pay all of its costs associated with such inspections. In an emergency or when the Authority receives a notice of violation for the Facility, the Authority shall have immediate access to the Facility and Facility Site to conduct an inspection. In addition, the Authority, upon prior reasonable written notice to the Waste Management Facility Manager of no less than three (3) days, shall have the right during normal business hours to tour the Facility with its invitees, including access to the Facility, Facility Site and operating and maintenance records being kept for the Authority as set forth in Section 8(B)(1)(b) of the Agreement to representatives of any competitor of the Waste Management Facility Manager if such access is requested by the Authority as part of any Authority process to procure a replacement operator of the Facility in accordance with this Agreement.

(b) Each inspection under this Section 1.14 shall be conducted without unreasonable interference with Facility operations. In no event shall the provisions of this Section 1.14 require the Waste Management Facility Manager to incur additional expenses or refuse to accept or Process Acceptable Waste during, or as a result of, such inspection. The Waste Management Facility Manager shall be relieved from the performance of any obligations under this Agreement to the extent the Waste Management Facility Manager's nonperformance is caused by or results (in whole or in part) from the conduct of any inspection pursuant to this Section 1.14. The Waste Management Facility Manager shall cooperate with the Authority and its designees during the course of inspections and shall provide all data, records and assistance reasonably required by them to conduct any of the inspections required hereunder, and the

Authority shall provide the Waste Management Facility Manager with the results of the inspection as soon as they are available.

(c) The Waste Management Facility Manager may refuse to permit visitations to the Facility by representatives of any competitor of the Authority or the Waste Management Facility Manager, except that the Waste Management Facility Manager will provide access to the Facility, Facility Site and operating and maintenance records to representatives of any competitor of the Waste Management Facility Manager's if such access is requested by the Authority as part of any Authority process to procure a replacement operator of the Facility in accordance with the provisions of this Agreement. As a condition to entering the Facility or the Facility Site with respect to such inspections, the Waste Management Facility Manager may require compliance with the Facility rules and regulations and the execution by each person so entering of a statement agreeing:

(i) to assume the risk of the visit, inspection or tour and release the Waste Management Facility Manager from any liability therefor including, without limitation, the risk of personal injury or property damage from any cause (but not the risk of injury due to the intentional or negligent acts of the Waste Management Facility Manager or any of its Affiliates, subcontractors, agents or Waste Management Facility Manager personnel); and

(ii) not to disclose or use any confidential or proprietary information of the Waste Management Facility Manager disclosed or discovered during such tour, visit or inspection other than for the purpose for which it was furnished.

#### 1.15. Assignment and Enforcement of Warranties.

The Waste Management Facility Manager shall use reasonable efforts to cause all subcontractor, supplier and manufacturer warranties provided to it to be assigned to the Authority and to its designees, successors and assigns, to the extent permitted by the terms and conditions thereof.

1.16. **Environmental Monitoring and Compliance.** The Waste Management Facility Manager shall conduct environmental testing and monitoring at the times and in the manner required by the Permits, the Project Agreements and Applicable Law.

1.17. **Permits.** The Waste Management Facility Manager shall obtain, maintain and comply in all material respects with all Permits.

1.18. **Facility Security.** The Waste Management Facility Manager shall provide security for following areas of the Facility: boiler house, tipping floor, turbine generator building, administrative building, water pre-treatment portion of the de-watering and drying building and the transfer station in order to protect and prevent damage to thereto, including, without limitation, the protection thereof from damage by the elements, theft, terrorism, or vandalism. The Waste Management Facility Manager shall report to local law enforcement authorities any security breaches it observes anywhere on the Facility Site and at or near the open portions of the Landfill.

1.19. [ Reserved ]

1.20. Project Agreements.

(a) The Waste Management Facility Manager acknowledges and agrees that the Authority has delivered to Waste Management Facility Manager a copy of each of the Project Agreements.

(b) If the Waste Management Facility Manager receives or sends any notice from or to the party or parties to any Project Agreement, other than the Authority, it shall provide the Authority with a copy thereof as soon as practicable. If the Authority receives or sends any notice from or to the party or parties to any Project Agreement, other than the Waste Management Facility Manager, it shall provide the Waste Management Facility Manager with a copy thereof as soon as practicable.

(c) The Waste Management Facility Manager shall immediately notify the Authority of, and confer with the Authority, regarding:

(i) any disputes between the Waste Management Facility Manager and any other party to any Project Agreement; and

(ii) knowledge of any event that constitutes, or would with the passage of time constitute, a default under any Project Agreement.

(d) The Authority shall immediately notify the Waste Management Facility Manager of, and consult with the Waste Management Facility Manager regarding, any negotiations, agreements or disputes between the Authority and any other party to any Project Agreement that could reasonably affect the ability of the Waste Management Facility Manager or the Authority to perform its obligations hereunder.

(e) The Authority may at any time or from time to time, amend, modify or supplement any Project Agreement or enter into any new agreement it deems necessary or desirable and designate such amendment, modification, supplement or new agreement as a Project Agreement for the purposes of this Agreement. As soon as practicable after the effective date of any amendment or supplement to any Project Agreement, the Authority shall deliver a copy thereof to the Waste Management Facility Manager.

1.21 Information Systems

(a) The Waste Management Facility Manager shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data, including all information necessary to verify calculations made pursuant to this Agreement.

EXHIBIT F

## EXHIBIT F

### Performance Standards

1.1. **General.** The Waste Management Facility Manager shall operate and maintain the Facility in accordance with Prudent Industry Practices and so as to satisfy, on an annual basis, the performance standards set forth in this Exhibit F (collectively, the "Performance Standards"); provided, however, the payment of Performance Damages (subject to the Annual Liability Cap and Section 10.A) shall be the Authority's sole remedies for the Waste Management Facility Manager's failure to meet Performance Standards.

1.2. **Annual Throughput Standard.** The Waste Management Facility Manager shall accept and Process at least 248,200 Tons of Acceptable Waste per Year ("Annual Throughput Standard"); provided, that (a) Acceptable Waste in such amounts are delivered or deemed to be delivered to the Facility in accordance with this Agreement and are not properly rejected by the Waste Management Facility Manager in accordance with this Agreement, (b) Acceptable Waste delivered to the Facility has an annual average HHV below 5,200 Btu/lb and (c) the Annual Throughput Standard shall be reduced due to the occurrence of Force Majeure or if the Authority breaches or fails to perform its obligations hereunder and such breach materially affects Waste Management Facility Manager's ability to perform its duties under this Agreement. In any Year, if the Waste Management Facility Manager requests relief from the Annual Throughput Standard because of the Btu value of the Acceptable Waste, the Authority may request that the Waste Management Facility Manager test the waste pursuant to the standards set forth in ASME PTC 4.1 and if relief is warranted because the Btu value is in excess of 5,200 Btu/lb, the Authority shall bear the reasonable expense of the test; otherwise, the Waste Management Facility Manager will bear the expense and will not be provided relief from this Standard.

1.3 **Environmental Standard.** The Waste Management Facility Manager shall operate and maintain the Facility so as to satisfy in all material respects the environmental standards of the Permits (the "Environmental Standard"); provided, however, that the Environmental Standard shall be equitably adjusted as necessary to account for (i) significant changes in the waste delivered to the Waste Management Facility Manager that adversely affect the ability of the Waste Management Facility Manager to satisfy the Environmental Standard or (ii) Force Majeure or (iii) if the Authority breaches or fails to perform its obligations hereunder and such breach materially affects Waste Management Facility Manager's ability to perform its duties under this Agreement. The Waste Management Facility Manager shall be entitled to contest in good faith any determination that it has not complied with the Environmental Standard or assert that its failure to comply with the Environmental Standard is caused by Force Majeures.

1.4 **Steam Quantity Standard.** The Waste Management Facility Manager shall produce at the Facility 1.3785 billion pounds of steam per Year ("Annual Steam Standard"); provided, that (a) Acceptable Waste in at least the amount of the Annual Throughput Standard is delivered or deemed to be delivered to the Facility in accordance with this Agreement and not properly rejected by the Waste Management Facility Manager in accordance with this Agreement, (b) Acceptable Waste delivered to the Facility has an annual average HHV above 4,680 Btu/lb and (c) the Annual Steam Standard shall be reduced due to the occurrence of Force

Majeure or if the Authority breaches or fails to perform its obligations hereunder and such breach materially affects Waste Management Facility Manager's ability to perform its duties under this Agreement. In any Year, if the Waste Management Facility Manager requests relief from the Steam Quantity Standard because of the Btu value of the Acceptable Waste, the Authority may request that the Waste Management Facility Manager test the waste pursuant to the standards set forth in ASME PTC 4.1 and if relief is warranted because the annual average of Btu value is below 4,680 Btu/lb, the Authority shall bear the reasonable expense of the test; otherwise, the Waste Management Facility Manager will bear the expense and will not be provided relief from this Standard.

1.5 **Residue Quality and Quantity Standard.** Within one (1) year after the Retrofit Completion Date, the Parties shall negotiate a yearly limit for the (i) maximum Residue amount produced as a percentage of annual throughput (the "Maximum Residue Limit") and (ii) combustible matter contained within the Residue as a percentage of the annual Residue with an appropriate adjustment to the Management Fee for achieving or not achieving these standards.



EXHIBIT 6

## EXHIBIT G

### Payments to Waste Management Facility Manager for Management Services

#### 1.1. Management Fee.

(a) "Management Fee" means \$875,000 per month escalated annually for each calendar year beginning January 1, 2007 on the basis of the Index. The base index year shall begin on January 1, 2007. For purposes of this subsection, the Consumer Price Index ("Index") shall mean the annual "Consumer Price Index, For the Northeast Urban Area, All Items," Series Id: CUUR0100SA0, Not Seasonally Adjusted, for the Northeast Urban Area, All Items, Base Period: 1982-04=100" published by the Bureau of Labor Statistics. Should said Bureau of Labor Statistics change the manner of computing said Index, and should the Bureau furnish a conversion factor designed to adjust the new Index to the one previously in use, then the adjustment to the new Index shall be made on the basis of such conversion factor. Should the publication of such Index be discontinued by said Bureau of Labor Statistics, then such other Index as may be published by such Bureau most nearly approaching said discontinued Index shall be used in making the adjustment herein provided. Should said Bureau discontinue the publication of an Index approximating the Index herein contemplated, then the parties shall agree upon a new Index. The base CPI shall be 215.0, i.e., the annual CPI for calendar year 2006.

#### (b) Adjustments to the Management Fee and Incentive Payments.

(1) "Performance Damages" shall mean, for any Year, an amount equal to the sum of Throughput Damages and Steam Quantity Damages, and damages for any failure to satisfy the Environmental Standard and Maximum Residue Limit in each case for such Year as subject to the Annual Liability Cap for such Year.

(2) "Throughput Damages" means, for any Year, an amount equal to the product of (A) the positive difference, if any, between the Annual Throughput Standard minus the number of tons of waste actually accepted during the Year by the Waste Management Facility Manager, multiplied by (B) \$50.00, which amount shall be escalated annually in the same manner as the Management Fee.

(3) "Steam Quantity Damages" means, for any Year, an amount equal to the product of (A) the positive difference, if any, between the Annual Steam Quantity Standard minus the number of thousand pounds of steam actually produced during the Year by the Waste Management Facility Manager, multiplied by (B) \$6.00, which amount shall be escalated annually in the same manner as the Management Fee.

(4) "Excess Waste Fee", for a Year, shall equal \$20.00 per ton times the excess (if any) of the number of Tons of waste Processed during the Year over the Annual Throughput Standard. The Excess Waste Fee shall be paid from available Total Receipts and Revenues in accordance with the provisions of the Indenture. The Excess Waste Fee shall be increased each year based on the Index in the same manner as the Management Fee (as defined above).

(5) "Energy Fee" means 6% of the total gross revenues received by the Authority from the sales of steam and electricity generated at the Facility in each Year, and an additional 44% of the portion of such gross revenues in excess of \$9 Million in such gross revenues during each Year. The \$9 Million threshold shall be increased each Year based on the Index in the same manner as the Management Fee and shall be equitably adjusted if energy use by the City's vehicle maintenance facility materially exceeds historic levels. The Energy Fee shall be paid from available Total Receipts and Revenues in accordance with the provisions of the Indenture.

(6) "Scrap Metal Fee" for any period equals 50% of the gross revenues from the sale of any received ferrous or non-ferrous metals and paid from available Total Receipts and Revenues in accordance with the provisions of the Indenture.

(7) "Maximum Residue Limit Fee", the yearly adjustment to the Management Fee for bettering the Maximum Residue Limit negotiated pursuant to Exhibit F.

#### 1.2. Annual Reconciliation.

(a) Within thirty (30) days following the end of each Year, the Waste Management Facility Manager shall provide to the Authority a detailed statement showing its calculation of all Performance Damages owed for the prior Year (the "Annual Reconciliation").

(b) The Waste Management Facility Manager shall pay to the Authority the amount of Performance Damages due to the Authority pursuant to each Annual Reconciliation prepared in accordance with this Section 1.2 by wire transfer in immediate funds within fifteen (15) days of calculation of the Annual Reconciliation.

(c) For calendar year 2008, the Waste Management Facility Manager shall submit an invoice within 30 days after the end of each Year for any Energy Fee, Scrap Metal Fee and Excess Waste Fee earned for the prior Year, and the Authority shall pay the invoice within thirty (30) business days of receipt thereof by wire transfer in immediately available funds and paid from available Total Receipts and Revenues in accordance with the provisions of the Indenture. For calendar years 2009 and thereafter, the Waste Management Facility Manager shall submit an invoice within 30 days after the end of each month for any Energy Fee, Scrap Metal Fee and Excess Waste Fee earned for the prior month, and the Authority shall pay the invoice within thirty (30) business days of receipt thereof by wire transfer in immediately available funds and paid from available Total Receipts and Revenues in accordance with the provisions of the Indenture.

1.3. Late Payments. Any amounts payable under this Agreement that are not paid when due shall, unless otherwise specifically provided herein, bear interest at the Late Payment Rate, compounded monthly.

1.4. Disputed Payments. If the Waste Management Facility Manager or the Authority disputes any amount asserted to be payable hereunder, the amounts asserted to be

payable shall nevertheless be paid when due without set-off and the Parties shall thereafter resolve such dispute pursuant to the dispute resolution procedures set forth in the Agreement. Immediately after the resolution of such dispute, the Party whose position does not prevail shall reimburse the other Party for the aggregate amount owed, plus interest accrued from the date originally due (as though there had been no dispute) at the Late Payment Rate.

EXHIBIT #1

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EXHIBIT H

Project Agreements and Permits

A. Project Agreements

1. December 1993 Municipal Waste Disposal Agreement between the Authority and the City;
2. August 2003 Municipal Waste Combustion Processing Disposal Agreement between the Authority and County;
3. April 1998 Solid Waste Disposal Contract between the Authority and the Cumberland County Solid Waste Authority;
4. June 1995 Municipal Waste Disposal Agreement between the Authority, City and Perry County;
5. September 1986 Power Purchase Agreement between City and Pennsylvania Power & Light Company;
6. July 2003 Steam Purchase Agreement between the Authority and NRG Steam Center Harrisburg, Inc.

B. Permits

1. Pennsylvania Department of Environmental Protection ("DEP") Solid Waste (Incinerator) Permit Number 100758 (i.e. for Municipal Waste Combustion Units and Transfer Station), issued on July 13, 1972, renewed November 30, 2002 and last modified on June 20, 2005.
2. DEP Solid Waste (Ash Landfill) Permit Number 100992 (last modified and renewed on March 18, 2004).
3. DEP Air Quality Plan Approval Number 22-05007B (i.e. for Municipal Waste Combustion Units) issued on September 10, 2003.
4. Susquehanna River Basin Commission Consumptive Water Use Permit as Docket Number 19830201, last modified on December 12, 2002.
5. City of Harrisburg, Department of Public Works, Bureau of Sewerage Industrial User Permit Number 032010-9, last modified on November 21, 2005.
6. City of Harrisburg Building and Use Permit Number 200305601-1, issued on May 19, 2003

2. Pennsylvania Department of Labor and Industry ("L&I") Occupancy Permit for Turbine and Generator Building, File Number 098103, approved September 11, 1985.

3. L&I Occupancy Permit for the Facility

9. L&I Occupancy Permit for D&D Building, File Number 200920, approved November 14, 1990.

10. Federal Communications Commission Wireless Telecommunications Bureau Radio Station Authorization, File Number 0000866918, April 30, 2002 (i.e. two-way radios and base station for facility communications).

11. DEP Air Quality Operating Permits: (1) for operation of the Facility and (b) a Title V Operating Permit.

12. L&I Occupancy Permit for Turbine and Generator Building, File Number 098103 and for the Facility.

EXHIBIT I



## EXHIBIT I

### Facility Description and Facility Site

#### Facility Description

The Resource Recovery Facility consists of three 266-ton per day furnace-boiler systems, air pollution control systems consisting of acid gas controls, baghouses selective non-catalytic reduction system for NOx control and activated carbon injection; refuse cranes, the ash handling system, and the vessels, pumps, compressors, blowers, fans and the instrumentation connected to these systems; scale house tipping floor; transfer station; pretreatment facility; turbine building housing a 24.132 megawatt turbine generator and ancillary systems; switchyard and transformer; cooling tower; steam line from the outlet of the boilers to the valve at the Facility entrance on Cameron Street.

#### Facility Site Description

ALL that certain piece or parcel of land situate in City of Harrisburg and Swatara Township, Dauphin County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point, said point being a brass disc set in concrete at the road face of a stone wall on the east right-of-way line of Cameron Street, said point also being the westerly most corner of the herein described parcel; thence along the southern line of land now or formerly the City of Harrisburg (Cameron Park) the following twelve (12) courses and distances; NORTH 45 degrees 10 minutes 00 seconds EAST a distance of 697.50 feet from an iron rod found near the base of an old wood fence post; thence NORTH 09 degrees 20 minutes 00 seconds WEST a distance of 450.00 feet to a concrete monument set; thence 424.115 feet on a curve to the right having a central angle of 90 degrees 00 minutes 00 seconds, a radius of 270.00 feet, and a chord bearing NORTH 35 degrees 40 minutes 00 seconds EAST a distance of 381.84 feet to a concrete monument set at the mid-point of a semi-circle; thence continuing 424.115 feet on a curve to the right, having a central angle of 90 degrees 00 minutes 00 seconds, a radius of 270.00 feet, and a chord bearing SOUTH 54 degrees 20 minutes 00 seconds EAST a distance of 381.84 feet to a concrete monument set; thence SOUTH 09 degrees 20 minutes 00 seconds EAST a distance of 400.00 feet to a concrete monument set; thence NORTH 79 degrees 12 minutes 00 seconds EAST a distance of 135.00 feet to a concrete monument set; thence SOUTH 40 degrees 08 minutes 00 seconds EAST a distance of 130.89 Feet to a point, said point being NORTH 20 degrees 04 minutes 10 seconds WEST a distance of 0.55 feet from a concrete monument found; thence NORTH 73 degrees 21 minutes 00 seconds EAST a distance of 219.20 feet to a concrete monument set; thence SOUTH 16 degrees 39 minutes 00 seconds EAST a distance of 100.00 feet to a concrete monument set on the beginning point of a curve; thence 240.91 feet on a curve to the left, having a central angle of 25 degrees 35 minutes 40 seconds, and a chord bearing NORTH 70 degrees 33 minutes 09 seconds EAST a distance of 233.91 feet to a concrete monument set on said curve and being at or near the boundary line between the City of Harrisburg on the west and Swatara Township on the east:

thence continuing 3° 06' feet along said curve to the left having a central angle of 40 degrees 15 minutes 18 seconds, a radius of 539.30 feet, and a chord bearing NORTH 37 degrees 37 minutes 10 seconds EAST a distance of 371.31 feet to a concrete monument set; thence NORTH 17 degrees 29 minutes 00 seconds EAST a distance of 116.40 feet to an iron rod set at a base of a tree, and being on the said western right-of-way line of 19<sup>th</sup> Street; thence along the western right-of-way line of 19<sup>th</sup> Street the following three (3) courses and distances; SOUTH 13 degrees 24 minutes 00 seconds EAST a distance of 220.00 feet to a concrete monument set at the corner of the division line between tract No. 1 and tract No. 2 in Deed Book I Volume 64, page 482; thence SOUTH 13 degrees 24 minutes 00 seconds EAST a distance of 417.89 feet to an iron rod found and replaced by a concrete monument set; thence 584.13 feet on a curve to the left, having a central angle of 33 degrees 28 minutes 00 seconds, a radius of 1,000.05 feet, and a chord bearing of SOUTH 30 degrees 08 minutes 00 seconds EAST a distance of 575.86 feet to an iron rod found and replaced by a concrete monument set where the western right-of-way line intersects the northwesterly right-of-way line of Gibson Street, said point being SOUTH 85 degrees 39 minutes 28 seconds WEST a distance of 33.90 feet from a railroad spike found, where the physical center-line of Gibson Street intersects the projection of the westerly concrete pavement edge of 19<sup>th</sup> Street; thence along the northwestern right-of-way line of Gibson Street a distance of 950.61 feet to a point being a corner of land now or formerly following two (2) courses and distances SOUTH 45 degrees 05 minutes 00 seconds WEST a distance of 88.24 feet to a concrete monument set at the easterly most corner of land now or formerly Automotive Financial Services, Inc., said point being NORTH 45 degrees 29 minutes 15 seconds EAST a distance of 152.32 feet from an iron rod found; thence along the northeastern line of land now or formerly Automotive Financial Services, Inc. NORTH 50 degrees 39 minutes 00 seconds WEST a distance of 462.33 feet to an iron pipe found in concrete; thence along land now or formerly Automotive Financial Services, Inc., and William J. Rozman in part, SOUTH 45 degrees 11 minutes 20 seconds WEST a distance of 247.30 feet to an iron rod found; thence along land now or formerly Thomas J. Flynn in part, land now or formerly Downtown Car Wash in part, and land now or formerly Thomas Maslowski in part, NORTH 51 degrees 00 minutes 13 seconds WEST a distance of 462.78 feet to an iron rod found; thence along land now or formerly Pennsylvania Power and Light Company, Inc. the following three (3) courses and distances existing well casing; thence NORTH 50 degrees 44 minutes 07 seconds WEST a distance of 385.57 feet to a concrete monument set; thence SOUTH 39 degrees 08 minutes 28 seconds WEST a distance of 50.00 feet to an iron rod found; thence along land now or formerly Pennsylvania Power and Light Company the following six (6) courses and distances; thence along the eastern right-of-way of Cameron Street the following six (6) courses and distances; NORTH 46 degrees 28 minutes 02 seconds WEST a distance of 143.11 feet to a brass disc set in concrete; thence NORTH 46 degrees 25 minutes 45 seconds EAST a distance of 32.40 feet to a concrete monument set; thence SOUTH 49 degrees 33 minutes 59 seconds WEST a distance of 106.70 feet, to a point in Spring Creek; thence NORTH 36 degrees 10 minutes 00 seconds WEST a distance of 209.90 feet to a railroad spike set in the Cameron Street entrance to the herein described parcel; thence NORTH 33 degrees 00 minutes 00 seconds WEST a distance of 44.94 feet to the point of place of beginning. Containing 59.493 acres of land more or less.

Subject to the following easements of record:

- a. A power line transmission easement as described in Deed Book 133, page 4, from the "City of Harrisburg" to "Pennsylvania Power and Light Company" dated October 23, 1930, and recorded on January 30, 1932.
- b. A power line transmission easement as described in Deed Book 745, page 21, from "City of Harrisburg" to "Pennsylvania Power and Light Company" dated February 28, 1936, and recorded on April 28, 1936.
- c. A utility power line easement, as described in Deed Book "U" volume 13, Page 514, from the "Harrisburg Incinerator Authority" to the "Pennsylvania Power and Light Company", dated October 26, 1970, and recorded on February 23, 1971.
- d. A drainage easement from the "City of Harrisburg" to "Pennsylvania Power and Light Company" as described in Deed Book 247, page 254, deed dated August 4, 1981, and recorded on October 6, 1981.
- e. A power line easement as described in a deed from the "City of Harrisburg" to "Pennsylvania Power and Light Company" in Deed Book 819, page 441, dated May 23, 1986, and recorded on September 22, 1986.

L) Re-use water pumps and screen for shredder pit- \$35,000. While not included in the retrofit completion work scope, at the Authority's request we are presently evaluating the economic feasibility of installing a waste water collection system and the conversion of the D&D building into a filtration system for the effluent water. Our preliminary estimates for this project are approximately \$465,000. The current waste water is being pumped to the D&D building which processes the water for discharge to the sewer system. This is very costly and inefficient. Adding a waster water grit screen and collection area will allow the water to be reused in the drag chains thus minimizing the discharge. We want to accomplish a zero discharge with the exception of sanitary. Additionally, converting as possible the existing D&D to accept effluent and thus verifying the water prior to supplying the cooling tower and turbine cooling.

L) Miscellaneous Equipment items - \$81,700.00

1. Ferrous metal is removed from the ash using a magnet. An additional magnet is needed to provide a spare unit incase the in place unit were to fail. Minimizing downtime on the ferrous recovery maximizes revenue and limits the amount of unwanted material in the landfill.
2. Cooling tower level controls need to be installed to improve the performance and to allow the effluent water supply to be used.

## MECHANICAL

This category includes cost for completing in excess of 400 mechanical related punch list items previously identified by Barlow and additional punch list items compiled by Covanta since 1/2/07.

A) Punch List Items Quoted by SMS - \$792,300.00

B) Punch List Items Outside SMS Quote - \$616,920.00

C) Boiler Refractory Repairs - \$200,000.00

1. Initial refractory installation was not done properly in the boiler hoppers. This will repair/complete the necessary boiler hopper refractory.

D) Piping system deficiency remediation - \$250,000.00

1. After an evaluation of the critical piping systems (Main and Extraction Steam and Feed water) the necessary piping supports will be added to provide structural integrity to those systems.

## INSULATION AND HEAT TRACING

This work includes all of the insulation and heat tracing that was not completed on Unit 3 as well as the repair and replacement of insulation and heat tracing that was damaged on Units 1 and 2. Proper insulation and heat tracing will prevent freeze damage and allow the units to run more efficiently and reliably in cold weather.

- A) Heat Tracing Audit and Project Manager Assessment - \$25,500.00
1. An audit and oversight will be completed to compile an exact list of the needed items.
- B) Remaining Insulation Work on Boiler #3 - \$879,000.00
- C) Repair/Replace Damaged and Missing Heat Tracing and Insulation on Other Areas - \$1,023,00.00
- D) Additional Insulation Covers - \$42,400.00
1. Many insulation covers do not exist or are damaged beyond repair. These provide insulation and protection to hot surfaces. Over 180 pieces are identified.
- E) Installation of Baghouse Penthouses - \$287,181.00
1. The 3 baghouses penthouses are not protected from the weather. Freezing air lines cause significant hopper plugs due to erratic pulsing. Also no protection is provided to the bag area and tube sheet when the covers are removed for inspection or maintenance. All 3 units will have penthouse enclosed with siding.
- F) #3 Screw Conveyor Covers - \$79,850.00
1. The screw conveyors have never been insulated and require installation to prevent conveyor plugging do to cold air in leakage.

### STRUCTURAL

- A) Structural Installation Inspection - \$42,000.00
1. It is recommended that a certified steel inspector/CWI be utilized to inspect the as built condition of the structure with attention focused on member size and location, connection details, connection completeness, bolt torque, weld quality, column plumb and anchor bolt condition. Additionally a comparison should be made to the as built drawings.
- B) Structural Repairs - \$65,000.00
1. It is recommended a structural repair vendor work with the inspector and repair needed items.
- C) SMS and Additional Punch List Items - \$1,239,975.00
1. The Facility, particularly Unit 3, was incomplete with respect to access platforms. Access platforms are a significant safety issue, and must be completed to provide an acceptable level of worker safety. Unit 3 in its present condition cannot be safely operated and maintained until the platforms are completed. In addition, there is an extensive punch list of structural items, part of which was created by Barlow/SMS, and added to by Covanta.

### CIVIL CONCRETE

- A) Baghouse Area Concrete Paving and Drainage - \$180,000.00

1. There is currently no concrete or paving in the APC area. This creates environmental risk and needs to be addressed.

B) Concrete Repairs to the Tipping Floor and Transfer Area - \$65,000.00

1. Both areas require concrete repairs.

C) Curbing and Site Sidewalks and Pads - \$106,050.00

1. Several linear feet of curbing and sidewalks are needed to complete the site construction. Water containment is needed to manage storm water run off and to direct rain water to the proper locations.

D) Basement Concrete Roof - \$69,125.00

1. The existing basement roof is incomplete.. This causes numerous safety and equipment issues including freezing and water damage to equipment.

E) Miscellaneous Other Concrete Work - \$367,608.00

1. These items include; landings at steps, basement trenches, wall repair and installation and other punch list items.

### ARCHITECTURAL/ BUILDINGS

Numerous building issues still exist which need to be completed. Several are needed to perform everyday function's.

A) Fire Protection and Detection - \$204,600.00

1. The fire system is incomplete. Both protection and detection need to be completed to be fully functional. This price also includes the installation of 2 fire cannons for the MSW pit at \$50,000.00.

B) Water Treatment Lab - \$25,000.00

1. The existing water treatment lab was unusable. It has been temporarily relocated to the old employee's locker room.

C) Elevator - \$13,205.00

1. The elevator also was never finished. To commission this, several structural issues need to be addressed.

D) Transfer Station Enclosure - \$23,712.00

1. The addition of boiler #3 required a portion of the roof to be removed. The roof must be flashed and sealed off to keep the weather out.

E) New Administration Building - \$125,977.00

1. The building is currently not habitable. Several items need to be completed including; plumbing, HVAC, electrical, communication and office furninre.

F) Plant Area HVAC Evaluation and Installation - \$100,000.00

1. Upon completion of other items, the evaluation of HVAC will need to be done to ensure equipment and personnel habitability.

G) Building Siding, Roof Accesses - \$322,969.00

1. Roof access doghouses do not exist. They are needed to keep water out of the building. Additionally, siding is also needed to complete the building structure.

H) Plant Painting - \$800,000.00

1. Upon completion of the construction in each specific area, protective coatings are required for plant preservation and appearance.

I) Miscellaneous Architectural items - \$ 172,245.00

1. Several additional punch list items and building repair items are needed.

### ELECTRICAL

Upon initial operations of this plant the electrical system was in a state of disrepairs. The initial actions we completed were to make the plant habitable and safe. We were able to install temporary lighting and remove several severe safety risks. Now we need to complete the tasks to make this plant electrically sound.

A) Electrical Field Survey and Engineering Review - \$26,250.00

B) Installation of Permanent Lighting - \$573,296.00

1. Numerous lighting fixtures must be installed to the plant and surrounding grounds.

C) Electrical Replacement For Certain Components - \$200,000.00

1. This is for the replacement of Transformer #5 and plant batteries.

D) Punch List Items - \$492,167.00

1. A punch list of several electrical issues though out the plant is developed to ensure plant reliability.

E) Lightning Protection - \$76,500.00

1. This includes the design, installation and certification of a lightning protection system which currently does not exist. This system is needed for the protection against lightning storms to minimize equipment damage.

F) Protective Relay / Functional Testing - \$90,750.00

1. This includes the addition of a backup relay

G) Grating Installation For Old Cooling Tower Pit - \$30,000.00

1. The old cooling tower pit was converted into a transformer and Motor control center area. Grating is needed to safely maneuver around.

H) Miscellaneous Electrical Items - \$206,750.00

1. Cleaning and installing electrical cable tray covers, electrical metering to the city buildings, installing a grounding resistor transformer and electrical power system control modifications must be completed.

### INSTRUMENTATION AND CONTROLS

#### A) Citech Data Acquisition System - \$50,000.00

1. This system installation allows us to track plant performance, trend all parameters to enhance the process and minimize costs, and to recreate data for event troubleshooting. Basically without this we fly blind and aren't able to hold accountability and enhance plant performance. There is no system currently installed to do this.

#### B) Sequence of Events Recorder - \$50,000.00

1. This will allow the recreation of data by the millisecond to be able to understand a plant event and to get to the root cause of an issue. No system is currently in place.

#### C) Combustion Controls - \$445,500.00

1. The control system for the boilers is completely manual at this point. Automating the controls allows us to use the computer to control production and environmental performance. The current set up is not capable of doing this due to many of the dampers are manual only. Adding positioners, cameras, flow and temperature indication and automating the controls in the DCS will increase the operation of the boiler in many ways.

#### D) Punch List Items - \$25,520.00

1. Several items need to be completed in the plant to improve indication and controls.

#### E) Miscellaneous Items - \$291,000.00

1. Several instruments need to be replaced and many need to be installed. Additionally, loop checks and calibrations need to be done to verify instrument accuracy. Already numerous issues have been found to be not done properly.

### ENVIRONMENTAL

#### A) Wind Wall Installation Around the Baghouse Area - \$75,000.00

1. Environmental requirements do not allow for fugitive emissions from the back end of the plant. To prevent this, a wind wall will be constructed to minimize the effects of wind and to contain any possible ash migration.

#### B) Trace CEMDAS System - \$58,000.00

1. This system is already installed and operating. We are waiting DEP approval.

#### C) Post Construction Storm Water Plan - \$15,000.00

1. A post construction storm water plan is required by the DEP upon completion of the construction phase.



D) Environmental Site Cleanup - \$75,000.00

1. The site currently needs a significant amount of cleanup. This must be done to be environmentally compliant. The use of vacuum trucks and personnel will clean the needed areas.

E) Installation of Additional CEMS Monitors - \$204,000.00

1. Additional opacity monitors, O2 analyzers and HCL monitors are needed to properly monitor the flue gas. Due to plant configurations with one stack, the use of one opacity and HCL monitor is limiting operations significantly.

SITE WORK

A) Paving and Grading - \$217,689.00

1. The surrounding grounds need to be graded and paved to control storm water run off and to allow for site parking.

B) Landscaping - \$30,000.00

1. The site has not been landscaped. The addition of grass, bushes and trees is needed to improve the appearance of the site.

C) Fencing - \$22,830.00

1. Several linear feet of fence is needed to control access and partition the site off do to the site being open for city vehicle and personnel use.

D) Site Cameras and Signage - \$90,000.00

1. The plant signage is less than adequate. Numerous signs are missing. The cameras will be added for additional security purposes since the site is not controlled completely

SAFETY

A) Belt Conveyor and Rotating Equipment Guarding - \$100,000.00

1. Guarding is a safety requirement and is necessary for personnel safety. Especially the two major bottom ash belts. These have numerous safety point. Other equipment is lacking guarding also.

B) Emergency Safety Showers - \$110,000.00

1. Another safety requirement is the installation of safety showers for personnel protection is they were to be spray with site chemicals. 5 showers is the desired number.

C) Safety Tagging and Signage - \$80,000.00

1. To properly warn personnel, OSHA requires specific signage to address areas containing hazards and dangers. Additionally the lock out tag out process requires multiple pieces to execute the requirement properly.

### PLANT OUTFITTING AND MOBILE EQUIPMENT

#### A) Mobile Equipment - \$742,498.00

1. Several pieces of equipment are needed to operate the plant correctly. They include:
  - a. Front End Loader - \$350,000.00
  - b. Skid steer - \$30,000.00
  - c. Fork Lift - \$25,000.00
  - d. Site Pickup - \$30,000.00
  - e. Man Lift - \$25,000.00
  - f. Lull - \$80,000.00
  - g. Sweeper - \$140,000.00
  - h. Roll off containers - \$62,498.00

#### B) Communication Equipment - \$175,368.00

1. Communications are key to the plant performance. For the staff to communicate properly they must be able to use the following:
  - a. Plant radios - \$16,000.00
  - b. Gai-tronics, plant page system - \$109,068.00
  - c. Fax Machine - \$300.00
  - d. Telephone System - \$50,000.00

#### C) Warehouse Items - \$900,000.00

1. A plant inventory is needed to run the plant efficiently and safely. Certain parts must be available immediately to limit down time and loss of revenue. Additionally we need to have shelving to store these parts. Currently there is no warehouse.

#### D) Furniture - \$40,890.00

1. The new administration and the existing area need furniture for the staff to function.

#### E) Equipment Rental - \$282,195.00

1. The use of a 300 ton crane and 25 ton cherry picker will be used through out the project.

### Outside Engineering and Administration

#### A) The following support functions are needed to perform this plan:

1. A/E Engineering - \$500,000.00
2. Structural Engineering review and inspection - \$200,000.00
3. Critical Piping review - \$131,020.00

4. Record Drawings and Plant Documentation - \$250,000.00

Exhibit C

**Construction Management Fee**

The Authority shall pay to the Construction Manager on or before the first day of each month during which the Construction Manager is to provide services under this Agreement a Construction Management Fee of \$50,000.

## Exhibit D

### Performance Tests

1. The Authority and the Construction Manager shall collaborate in good faith to establish appropriate performance tests designed to measure satisfactory performance for the following major components of the Work and incorporate such performance tests into the applicable Construction Documents:

- a. Fly ash system;
- b. Air heaters;
- c. Bottom ash conveyors system;
- d. Air compressors;
- e. Water treatment system; and
- f. Air Pollution control system (including quench tower).

2. Following Substantial Completion and satisfactory final inspection of the Retrofit Completion pursuant to Section 3.21, the Construction Manager shall schedule a performance test of the Retrofit Completion pursuant to Section 3.22. Such performance test shall require simultaneous operation of all three of the Facility's units firing on municipal solid waste (except as required for flame stabilization purposes in accordance with prudent operating practices) for a continuous period of 120 hours, subject to interruption for Force Majeure events, while maintaining environmental compliance and achieving the following:

- a. A per unit average minimum gross steam flow measured at the outlet of the boiler of 68,500 pounds per hour during the test period; and
- b. An aggregate total of 2,400 tons of municipal solid waste (at or below 5,200 Btu per pound) processed during the test period.

EXHIBIT J

EXHIBIT J

Form of Guaranty Agreement

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "200\_\_ Guaranty"), by and among the [CITY OF HARRISBURG, Dauphin County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania, as guarantor (the "City")][COUNTY OF DAUPHIN, Pennsylvania, a third class county and a municipal corporation of the Commonwealth of Pennsylvania, as guarantor (the "County")] and THE HARRISBURG AUTHORITY, a body corporate and politic existing under the Pennsylvania Municipality Authorities Act, as amended (the "Act"), of the Commonwealth of Pennsylvania (the "Authority") for the benefit of COVANTA HARRISBURG, INC., a Delaware corporation ("Covanta"), as the intended third party beneficiary of the guaranty.

### WITNESSETH:

WHEREAS, the City is a municipal corporation of the Commonwealth of Pennsylvania (the "Commonwealth") and is a "local government unit" under provisions of the Act of the General Assembly of the Commonwealth, as reenacted, amended and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the Authority is a body politic and corporate organized and existing under the Act; and

WHEREAS, the Authority pursuant to authority vested in it by law: (i) acquired from the City a certain mass burn solid waste disposal, resource recovery, steam generation and related facilities, including ash disposal facilities (the "Resource Recovery Facility"), and certain assets, property and machinery for the cogeneration of electric energy (the "Cogeneration Facility"); and (ii) determined to undertake the acquisition, construction and equipping of certain alterations, additions, extensions and improvements to the Resource Recovery Facility and the Cogeneration Facility, including the retrofit and modernization (the "Retrofit") thereof (collectively, the "Improvements") (the Resource Recovery Facility and the Cogeneration Facility, together with all additions, extensions and alterations and improvements, including the Improvements thereto, which may be made or acquired from time to time, are hereinafter collectively referred to as the "Facility"); and

WHEREAS, pursuant to a Solid Waste Management Agreement, dated as of December 1, 1993, as amended (the "1993 Management Agreement") between the City and the Authority, the City managed, operated and performed certain other functions with respect to the Waste Management Facility (as defined herein), including the supervision and oversight of the construction, acquisition and equipping of the Improvements; and

WHEREAS, the Authority, in order to provide funds to finance a portion of the costs of the acquisition of the Facility and the financing of a portion of the costs of the Improvements, heretofore issued its \$31,230,000, original principal amount, Guaranteed Resource Recovery Facility Revenue Bonds, Series A of 1993 (the "1993A Bonds") and its \$9,435,000, original principal amount, Guaranteed Taxable Resource Recovery Facility Revenue Bonds, Series B of 1993 (the "1993B Bonds," and together with the 1993A Bonds, collectively, the "1993 Bonds"); and



WHEREAS, in order to finance certain extraordinary repairs and capital additions to the Facility and certain working capital needs with respect to the Facility, the Authority heretofore issued its \$3,500,000, principal amount, subordinate resource recovery facility revenue note (the "1996 Note"); and

WHEREAS, the Authority refinanced the 1996 Note by the issuance of its \$3,000,000, principal amount, Guaranteed Resource Recovery Facility Revenue Note, Series A of 1997 (the "1997A Note"); and

WHEREAS, the Authority, in order to finance certain necessary capital acquisitions and improvements to the Facility, issued its \$7,943,274, principal amount, Resource Recovery Facility Revenue Note, Series of 1997 (the "1997B Note"); and

WHEREAS, the Authority used a portion of the proceeds of the 1997B Note to finance the costs of designing, acquiring, constructing and equipping a regional transfer station to bypass municipal solid waste (the "Transfer Station," and together with the Facility, the "Waste Management Facility"); and

WHEREAS, the Authority heretofore determined to issue its \$33,110,000, original principal amount, Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series of 1998 (the "1998A Bonds"), \$8,585,000, original principal amount, Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series B of 1998 (the "1998B Bonds"), \$3,815,000, original principal amount, Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series C of 1998 (the "1998C Bonds"), and its \$10,255,000, original principal amount, Guaranteed Taxable Resource Recovery Facility Refunding Revenue Bonds, Series D of 1998 (the "1998D Bonds," and together with the 1998A Bonds, the 1998B Bonds and the 1998C Bonds, the "1998 Bonds"), issued under and pursuant to a Trust Indenture, dated as of August 1, 1998 (the "1998 Indenture"), from the Authority to J.P. Morgan Trust Company, National Association, as successor trustee (the "1998 Trustee"); and

WHEREAS, pursuant to a Guaranty Agreement, dated as of August 1, 1998 (the "1998 Guaranty"), among the City, the Authority and the 1998 Trustee, the City agreed to guarantee the payment of the principal of and interest on the 1998 Bonds, when due; and

WHEREAS, the Authority applied, *inter alia*, (i) the proceeds of the 1998A Bonds to advance refund the 1993A Bonds; (ii) the proceeds of the 1998B Bonds to currently refund the 1997B Note; (iii) the proceeds of the 1998C Bonds to currently refund the 1997A Note; and (iv) the proceeds of the 1998D Bonds to advance refund the 1993B Bonds; and

WHEREAS, the Authority, in order to achieve economic efficiencies and results, undertook a project (the "2000 Restructuring Project") consisting of (i) the advance refunding of a portion of the 1998B Bonds and the 1998D Bonds; (ii) the refunding of debt service due on the 1998 Bonds; and (iii) the funding of certain working capital associated with operating the Waste Management Facility; and

WHEREAS, in order to finance the 2000 Restructuring Project, the Authority issued its Guaranteed Resource Recovery Facility Revenue Notes, Series A of 2000 (the "2000A Notes"), in the principal amount of \$4,195,000, and its Guaranteed Federally Taxable Resource Recovery Facility Revenue Notes, Series B of 2000 (the "2000B Notes," and together with the 2000A

Notes, the "2000 Notes"), in the principal amount of \$21,000,000, under and pursuant to a Trust Indenture dated as of December 1, 2000 (the "2000 Indenture") from the Authority to J.P. Morgan Trust Company, National Association, as successor trustee (the "2000 Trustee"); and

WHEREAS, the 2000 Notes were issued as debt subordinate in payment to the 1998 Bonds; and

WHEREAS, the Authority determined to undertake a project consisting of, *inter alia*, the financing of the costs of acquiring equipment and the costs of design and engineering fees and of permits relating to the Retrofit and the funding of certain capital needs of the Authority (the "2002 Project"); and

WHEREAS, the Authority determined to finance the 2002 Project by issuing its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002 (the "2002 Notes") in the principal amount of \$17,000,000 under and pursuant to a Trust Indenture dated as of August 15, 2002 (the "2002 Indenture") from the Authority to Manufacturers and Traders Trust Company, as successor trustee (the "2002 Trustee"); and

WHEREAS, the 2002 Notes are subordinate to the lien of the 1998 Indenture and the Retrofit Indenture (as hereinafter defined) and to payment into the 1998 and Retrofit Indenture funds and accounts, including payment of the 1998 Bonds and Retrofit Bonds (as hereinafter defined); and

WHEREAS, the Authority undertook a project (the "2003 Restructuring Project") consisting of, *inter alia*, the advance refunding of the 2000 Notes and the advance refunding of a portion of the 1998A Bonds and all of the 1998B Bonds, 1998C Bonds and 1998D Bonds, and financing of certain working capital needs of the Authority; and

WHEREAS, the 2003 Restructuring Project was funded by the Authority's issuance of \$22,555,000 of its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003 (the "2003A Bonds"), \$29,085,000 of its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003 (the "2003B Notes") and \$24,285,000 of its Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 (the "2003C Notes," and together with the 2003A Bonds and the 2003B and 2003C Notes, the "2003 Notes") under and pursuant to a Trust Indenture dated as of June 4, 2003 (the "2003 Indenture") from the Authority to Commerce Bank Pennsylvania, National Association, as trustee (the "2003 Trustee"); and

WHEREAS, pursuant to a Guaranty Agreement dated as of June 4, 2003 (the "2003 Note Guaranty"), among the City, the Authority and the 2003 Trustee, the City agreed to guarantee the payment of the principal of and interest on the 2003 Notes, when due, and in connection therewith the City and the Authority entered into a reimbursement agreement (the "2003 Reimbursement Agreement"); and

WHEREAS, the 2003 Notes are subordinate to the liens of the 1998 Indenture, the 2002 Indenture and Retrofit Indenture and to payment into the 1998, 2002 and Retrofit Indenture

funds and accounts, including payment of the 1993 Bonds, the 2002 Notes and the Retrofit Bonds; and

WHEREAS, the Authority undertook a project (the "Retrofit Bonds Project") consisting of, *inter alia*, the financing of the comprehensive retrofit modernization of the Facility and certain working capital needs of the Authority by the Authority's issuance of its \$125,000,000 aggregate principal amount of its Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds"), Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the "2003E Bonds") and Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "2003F Bonds," and together with the 2003D Bonds and the 2003E Bonds, the "Retrofit Bonds") under and pursuant to a Trust Indenture dated as of December 1, 2003 (the "Retrofit Indenture") from the Authority to Commerce Bank, Pennsylvania, National Association, as trustee (the "Retrofit Trustee"); and

WHEREAS, the Retrofit Bonds are subordinate to the lien and rights established under the 1993 Indenture; and

WHEREAS, pursuant to the City Bond Guaranty Agreement dated as of December 1, 2003 (the "City Retrofit Guaranty"), among the City, the Authority and the Retrofit Trustee, the City agreed to guarantee the payment of the principal of and interest on the Retrofit Bonds, when due, all as more particularly described therein; and

WHEREAS, pursuant to the County Bond Guaranty Agreement dated as of December 1, 2003 (the "County Retrofit Guaranty," and together with the City Retrofit Guaranty, the "2003 Guaranty"), among the County of Dauphin (the "County"), the Authority and the Retrofit Trustee, the County agreed to guarantee restoration of certain debt service reserve funds of the Retrofit Indenture, all as more particularly described therein; and

WHEREAS, pursuant to the Reimbursement Agreement dated as of December 1, 2003, among the City, the County and the Authority, the parties thereto defined their respective rights and obligations, including reimbursement with respect to obligations incurred under their respective guarantees; and

WHEREAS, the Authority engaged a contractor to design, construct and deliver the Retrofit Bonds Project; however, the Authority terminated such contractor on or about December 31, 2006; and

WHEREAS, as of December 31, 2006 the Authority terminated the City as the operator of the Facility; and

WHEREAS, since January 2, 2007, the Authority has engaged Covanta to operate the Facility pursuant to the terms and conditions of the Retrofit Indenture and to prepare a "construction plan" to complete, among other things, the Retrofit Bonds Project under an interim contractual relationship; and

WHEREAS, pursuant to the Management and Professional Services Agreement dated as of \_\_\_\_\_, 2007 (the "Management Agreement") by and between the Authority and an affiliate of Covanta, such affiliate of Covanta has agreed to provide management and professional services to the Authority as to the Facility as more fully described therein; and

WHEREAS, pursuant to the Construction Management Agreement dated as of \_\_\_\_\_, 2007 (the "Construction Management Agreement" and collectively with the Management Agreement, the "Management Agreements"), an affiliate of Covanta has agreed to manage the Retrofit Completion (as such term is defined in the Construction Management Agreement), and pursuant to the Management Agreement, Covanta has agreed to advance certain costs of the Retrofit Completion and the Authority has agreed to reimburse Covanta for such costs it advances in connection with Retrofit Completion, together with interest thereon, as provided in the Management Agreement (collectively, the "Reimbursement Amount"), all as more fully described in the Management Agreements; and

WHEREAS, the Authority's obligation to pay to Covanta the Reimbursement Amount constitutes the incurrence of subordinated debt of the Authority pursuant to the terms and provisions of the Retrofit Indenture, and such obligation, and the security therefor, shall be subordinate to the liens, security interests and rights under the 1998 Indenture, the 2002 Indenture and the Retrofit Indenture and to payment into the 1998, 2002 and Retrofit Indenture funds and accounts, including payment of the 1998 Bonds, the 2002 Notes and the Retrofit Bonds, all as more particularly described in the Retrofit Indenture; and

WHEREAS, the [City][County], as an inducement to the Authority and Covanta to enter into the Management Agreements, desires to enter into this 2007 Guaranty, all as permitted by and in accordance with the terms and conditions of the Debt Act; and

WHEREAS, the [County][City], as an inducement to the Authority and Covanta to enter into the Management Agreements shall enter into a Guaranty Agreement of even date herewith, all as permitted by and in accordance with the terms and conditions of the Debt Act; and

WHEREAS, the City, the County and the Authority will enter into a Reimbursement Agreement dated as of even date herewith, pursuant to which the parties thereto will define their respective rights and obligations,

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

## ARTICLE I

### Definitions

**SECTION 1.01 Terms and Phrases.** In addition to the terms and phrases which may be elsewhere defined in this 2007 Guaranty, terms and phrases defined in this Section 1.01, for all purposes of this 2007 Guaranty, as herein defined, shall have the meanings herein specified, unless the context clearly otherwise requires:

"Board" shall mean, at any given time, the governing body of the Authority.

["Board of Commissioners" or "Commissioners" shall mean the governing body of the County.]

["Council" shall mean the governing body of the City.]

"Debt Act" shall mean the Act of the General Assembly of the Commonwealth, known as the Local Government Unit Debt Act, approved April 28, 1978, Act No. 52, as re-enacted and codified by Act No. 177, approved December 19, 1996, and as amended and supplemented from time to time.

"Fiscal Year" shall mean the fiscal year of the [City][County] as provided by laws of the Commonwealth.

"Receipts and Revenues" shall have such meaning as described in the Retrofit Indenture.

## ARTICLE II

### Representations and Warranties of the [City][County]

**SECTION 2.01 Representations and Warranties.** The [City][County] represents and warrants that:

A. The [City][County] is a municipal corporation of the Commonwealth and is a "local government unit" under provisions of the Debt Act:

B. The [City][County] possesses all requisite power and authority under laws of the Commonwealth to enter into and to perform all the covenants and agreements set forth in this 2007 Guaranty;

C. The [City][County] has duly authorized all necessary action on its part to enter into this 2007 Guaranty, in accordance with laws of the Commonwealth;

D. The [City][County], in entering into this 2007 Guaranty, is acting in the public interest by endeavoring to assist the Authority in the provision of modern, environmentally sound waste recovery and cogeneration facilities at the lowest possible cost to the users of such facilities and the citizens and taxpayers of the [City][County], and by assisting in the

preservation and protection of the general health and welfare of inhabitants of the City, the County and the Commonwealth; and

E. The [City][County], in entering into this 2007 Guaranty, is incurring lease rental debt pursuant to the terms and conditions of the Debt Act; and the [City][County] has taken all proper proceedings pursuant to the Debt Act and has obtained all approvals required to be obtained in connection with the execution and delivery of this 2007 Guaranty.

### ARTICLE III

#### Covenants and Agreements of the Authority and the [City][County]

**SECTION 3.01 Full and Prompt Payment.** The [City][County] hereby guarantees, unconditionally and irrevocably, for the benefit of the Authority and Covanta, the full and prompt payment of the Reimbursement Amount by the Authority to Covanta when and as such shall be due and payable, in accordance with the terms and conditions of this 2007 Guaranty. The Reimbursement Amount guaranteed by the [City][County] pursuant to this 2007 Guaranty shall not exceed the amounts set forth in Exhibit A, attached hereto and incorporated herein. Nothing contained in this 2007 Guaranty shall in any way be construed to imply that the [City][County] shall be or become liable or responsible for any other debt or obligation of the Authority.

The Authority and the [City][County] acknowledge that the Authority's obligation to pay to Covanta the Reimbursement Amount constitutes the incurrence of subordinated debt of the Authority pursuant to the terms and provisions of the Retrofit Indenture, and such obligation, and the security therefor, shall be subordinate to the liens, security interests and rights under the 1998 Indenture, the 2002 Indenture and the Retrofit Indenture and to payment into the 1998, 2002 and Retrofit Indenture funds and accounts, including payment of the 1998 Bonds, the 2002 Notes and the Retrofit Bonds, all as more particularly described in the Retrofit Indenture; and that the [City's][County's] obligation hereunder is subordinate to its obligations under and pursuant to the 1998 Guaranty and the 2003 Guaranty and such other guaranteed obligations of the [City][County] relative to the Facility existing on or before the date hereof.

**SECTION 3.02 Costs, Fees, Expenses and Charges.** Except as may be expressly provided herein or elsewhere, the [City][County] shall not be responsible or liable to the Authority for the payment of any other costs, fees, expenses or charges arising in connection with the Reimbursement Amount, the Management Agreements, or the enforcement of any rights of the Authority against any other person.

**SECTION 3.03 Manner of Payment.** All payments required to be made by the [City][County] under this 2007 Guaranty shall be made in lawful money of the United States of America.

**SECTION 3.04 Separate Causes of Action.** Each and every default in payment of the Reimbursement Amount as and when due shall give rise to a separate cause of action under this 2007 Guaranty and separate suits may be instituted pursuant to this 2007 Guaranty, from time to time, as each cause of action shall arise.

**SECTION 3.05 Amounts to be Included in Budget.** The [City][County] covenants to (a) include the amounts payable in respect of this 2007 Guaranty for each Fiscal Year in which such sums are payable in its budget for that Fiscal Year, and (b) appropriate such amounts from its general revenues for payment of its obligations hereunder, and (c) duly and punctually pay or cause to be paid from any of its revenues or funds such amounts, payable in respect of this 2007 Guaranty, at the times and in the manner provided for herein, at the designated office of Authority, according to the true intent and meaning hereof. For such budgeting, appropriation and payment, the [City][County] pledges its full faith, credit and taxing power. As provided in the Debt Act, this covenant shall be enforceable specifically against the [City][County].

On November 1 of each Fiscal Year while the 2007 Guaranty is in effect, the Authority shall give written notice to the [City][County] of the amount of any anticipated deficiency in the Receipts and Revenues for such Fiscal Year, thereby necessitating a payment by the [City][County] of all or a portion of the Reimbursement Amount due in such Fiscal Year. The [City][County] forthwith shall include in its budget an amount equal to the deficiency in such Fiscal Year.

At any time when payments are required to be made by the [City][County] hereunder, to the extent that sufficient money shall not be available in the [City's][County's] then current budget, and if the [City][County] shall be unable to incur debt lawfully in the current Fiscal Year for the purpose of paying such Reimbursement Amount or to issue tax anticipation notes or otherwise to satisfy its obligations hereunder, the [City][County] shall include any amounts so payable in its budget for the next succeeding Fiscal Year and shall appropriate such amounts to the payment of such obligations and duly and punctually shall pay or shall cause to be paid the obligations incurred hereunder in the manner herein stated according to the true intent and meaning hereof, and for such budgeting, appropriation and payment the [City][County] does pledge its full faith, credit and taxing power. As provided in the Debt Act, this covenant shall be enforceable specifically against the [City][County].

**SECTION 3.06 Obligations of [City][County] Absolute and Unconditional.** The obligations of the [City][County] under this 2007 Guaranty shall be absolute, irrevocable and unconditional, irrespective of any other agreement or instrument to which the [City][County] shall be a party, and shall remain in full force and effect until the Reimbursement Amount due each Fiscal Year, and as described in the Management Agreements, shall have been paid, and such obligations of the [City][County] shall not be affected, modified, diminished or impaired upon the happening, from time to time, of any event, including, without limitation, any of the following (whether or not with notice to or the consent of the [City][County] in accordance with the provisions hereof):

A. The failure of the Authority to perform any obligation contained in this 2007 Guaranty or in any other agreement, for any reason whatsoever, including, without limiting the generality of the foregoing, the occurrence of an insufficiency of funds, negligence or willful misconduct on the part of the Authority or its agents, employees or independent contractors, legal action of any nature which shall prohibit the operations of the Authority, labor disputes, war, insurrection, natural catastrophe or laws, rules or regulations of any body, governmental or otherwise, having proper jurisdiction:

B. The compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the Authority under the Management Agreements;

- C. The failure of the [City][County] to receive notice of the occurrence of a default under terms and provisions of this 2007 Guaranty or the Management Agreements;
- D. The validity, enforceability or termination of the Management Agreements;
- E. The neglect or failure of the Authority to exercise or to preserve any rights or rights of action against any party, person or property;
- F. The failure of the Authority to have enforced, on prior appropriate occasions, any right or right of action against any party, person or property;
- G. The compromise, settlement, release, alteration, indulgence or any other change or modification of any obligation or liability of the Authority under the Management Agreements regardless of the nature of such obligation or liability and regardless of the extent to which such obligation or liability shall have been modified, compromised or otherwise changed;
- H. The waiver of the payment, performance or observance by the Authority or the [City][County] of any obligations, covenants or agreements contained in the Management Agreements or this 2007 Guaranty;
- I. The extension of the time for payment of the Reimbursement Amount or any part thereof owing or payable under this 2007 Guaranty or of the time for performance of any other obligations, covenants or agreements under or arising out of the Management Agreements or this 2007 Guaranty;
- J. The waiver by the [City][County], or the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement of the Authority set forth in the Management Agreements;
- K. The taking of, or the omission to take, any action referred to in the Management Agreements or this 2007 Guaranty;
- L. Any failure, omission or delay on the part of the Authority to enforce, to assert or to exercise any right, power or remedy conferred upon or vested in the Authority hereunder or under the Management Agreements, or to enforce, to assert or to exercise any other right, or rights on the part of the Authority;
- M. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustments or other similar proceedings relating to the [City][County] or the Authority or any of the assets of either, or any allegation or contest of the validity of this 2007 Guaranty in any such proceeding;
- N. The release or discharge of the [City][County], to the extent permitted by law, from performance or observance of any obligation, covenant or agreement contained in this 2007 Guaranty, by operation of law;



O. The default or failure of the [City][County] fully to perform any of its obligations set forth in this 2007 Guaranty; or

P. Any other defense normally available to a guarantor.

**SECTION 3.07 Obligations of [City][County] Not Affected by Bankruptcy, etc.** The obligations of the [City][County] hereunder shall not be affected by any bankruptcy, arrangement of creditors, reorganization or other similar proceedings of the Authority or the [City][County]; and, to the extent applicable, the [City][County] specifically waives any right or benefit which could accrue to it by reason of any such proceeding and agrees that the same shall not affect the liability of the [City][County] hereunder, regardless of the effect that such proceedings may have with respect to the obligations of the Authority.

**SECTION 3.08 Obligations of [City][County] Not Subject to Setoff, Counterclaims, etc.** The obligations of the [City][County] hereunder shall not be subject to any setoff, counterclaim or defense resulting from any breach or any alleged breach by the Authority of any obligation to the [City][County], whether said obligation arises under this 2007 Guaranty or from any other transaction between the Authority and the [City][County], regardless of the nature of such transaction, or otherwise. The obligations of the [City][County] hereunder shall not be subject to any setoff, counterclaim or defense resulting from any breach or any alleged breach by Covanta or any affiliate of Covanta under the Management Agreements or in respect of any other duty, liability, covenant, debt or obligation of Covanta or any affiliate of Covanta to the Authority, the City, the County or any other person or entity.

**SECTION 3.09 Creation of 2007 Guaranty Fund.** The Authority shall create, establish, and maintain, in accordance with the Debt Act, a special fund, named the "2007 Guaranty Fund." The Authority shall deposit in the 2007 Guaranty Fund all payments received from the City and the County under and pursuant to this 2007 Guaranty, and such payments deposited therein shall be pledged to Covanta, as more fully set forth herein, solely for the payment of the Reimbursement Amount by the Authority to Covanta and shall not be available for any other purpose. The Authority hereby pledges to Covanta and grants to Covanta a lien upon and a security interest in all moneys in the 2007 Guaranty Fund, as the obligee of the Authority. If any amount is on deposit in the 2007 Guaranty Fund and any unpaid Reimbursement Amount is due, the Authority covenants and agrees to transfer the amount on deposit in the 2007 Guaranty Fund to Covanta, without any requirement of any demand therefor. The 2007 Guaranty Fund shall be subject to the provisions of the Debt Act, and the Authority shall comply with all provisions of the Debt Act applicable to the 2007 Guaranty Fund. Upon the date of this 2007 Guaranty, the 2007 Guaranty Fund shall be held by the Authority, but upon Covanta's reasonable request, a depository may be appointed by the Authority, with the consent of the City and the County, for the 2007 Guaranty Fund. Upon Covanta's reasonable request, and at its sole cost and expense, the Authority shall file any notices or other filings required to perfect or give notice of the security interest granted hereunder.

## ARTICLE IV

### Miscellaneous

**SECTION 4.01 Increased Obligations of [City][County]; Amendment.** No amendment, change, modification, alteration or termination of the Management Agreements shall increase the obligations of the [City][County] under this 2007 Guaranty, without obtaining the prior written consent of the [City][County] (such consent to be given by the [City][County] pursuant to an ordinance duly enacted by the [Council][Board of Commissioners]).

**SECTION 4.02 Times When Obligations Arise.** Obligations of the [City][County] hereunder shall arise absolutely, irrevocably and unconditionally when the Management Agreements have been executed by the Authority and Covanta and are otherwise effective.

**SECTION 4.03 Remedies of Covanta and the Authority.** In the event of default by the [City][County] in the punctual discharge of its obligations hereunder, the Authority and Covanta shall be entitled to exercise such remedies as are provided under the Debt Act, together with any other remedies which otherwise may be provided at law or in equity or by other statutes.

**SECTION 4.04 Cumulative Remedies; Waiver.** No remedy conferred upon or reserved to the Authority and Covanta hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this 2007 Guaranty or now or hereafter existing at law or in equity or by statute. Covanta shall have no obligation to exhaust its remedies against the Authority before pursuing the [City][County] under this 2007 Guaranty. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised, from time to time, and as often as may be deemed expedient. In order to entitle the Authority and Covanta to exercise any remedy reserved in this 2007 Guaranty, it shall not be necessary to give any notice, other than such notice as herein expressly may be required. In the event any provision contained in this 2007 Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification hereof shall be established by conduct, custom or course of dealing, but shall be established solely by an instrument, in writing, duly executed by the appropriate parties. Notwithstanding any other provision hereof to the contrary, no recourse shall be had for any claim based hereon or on the Ordinance of the [City][County] authorizing and approving the execution and delivery of this 2007 Guaranty, against any member, officer or employee, past, present or future, of the [City][County] or of any successor body, as such, either directly or through the [City][County] or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, and all such liability of such members, officers or employees is released as a condition of and as consideration for the issuance of this 2007 Guaranty.

**SECTION 4.05 Entire Agreement; Multiple Counterparts.** This 2007 Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and this 2007 Guaranty may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

**SECTION 4.06 Severability.** The provisions of this 2007 Guaranty shall be severable; and in the event of the invalidity or unenforceability of any one or more phrases, sentences, clauses, Articles, Sections or parts contained in this 2007 Guaranty, such invalidity or unenforceability shall not affect the validity or enforceability of remaining portions of this 2007 Guaranty or any remaining parts thereof.

**SECTION 4.07 Amendment.** This 2007 Guaranty may be amended and/or supplemented, from time to time, by a written document duly executed by the parties hereto; provided, however, that no amendment and/or supplement shall be made which shall diminish or discontinue the obligations of the [City][Country].

**SECTION 4.08 Choice of Law.** This Agreement shall be construed in accordance with and shall be governed by the laws of the Commonwealth.

**SECTION 4.09 Term.** This 2007 Guaranty shall remain in full force and effect until the Authority's obligation to pay the Reimbursement Amount has been satisfied in full.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound, pursuant to proper authorization of their respective governing bodies, each causes this 2007 Guaranty to be executed by its respective duly authorized officer or officers and to be attested by its respective duly authorized officer and its respective official or corporate seal to be affixed to this 2007 Guaranty, all as of the day and year first above written.

**CITY OF HARRISBURG,**  
Dauphin County, Pennsylvania

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

(SEAL)

By: \_\_\_\_\_  
Controller

Approved as to Form and Legality

\_\_\_\_\_  
City Solicitor

[insert signature line for County as to its 2007 Guaranty]

**THE HARRISBURG AUTHORITY**

Attest:  
\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

(SEAL)

**COVANTA HARRISBURG, INC.**

Attest:  
\_\_\_\_\_  
(Asst.) Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

**EXHIBIT A**  
**Table of Maximum Annual Payments**

16 HARRISBURG AUTHORITY  
JVANTA LOAN PAYMENT SCHEDULE  
ESTIMATED  
Quarterly

Date	Principal	Interest	Total	Balance	Year	Annual	Max Annual including Termination
				\$700,000.00			
				\$892,400.25			
				\$1,002,322.40			
7/1/2007				28,000,000.00			
10/1/2007				28,000,000.00			
1/1/2008				28,000,000.00	2007		28,000,000.00
4/1/2008				28,000,000.00			
7/1/2008	700,000.00		700,000.00	27,300,000.00			
10/1/2008	700,000.00		700,000.00	26,600,000.00			
1/1/2009	700,000.00		700,000.00	25,900,000.00	2008	2,100,000.00	28,000,000.00
4/1/2009	700,000.00		700,000.00	25,200,000.00			
7/1/2009	700,000.00		700,000.00	24,500,000.00			
10/1/2009	700,000.00		700,000.00	23,800,000.00			
1/1/2010	700,000.00		700,000.00	23,100,000.00	2009	2,800,000.00	25,900,000.00
4/1/2010	700,000.00		700,000.00	22,400,000.00			
7/1/2010	700,000.00		700,000.00	21,700,000.00			
10/1/2010	673,616.69	218,783.56	892,400.25	21,026,383.31			
1/1/2011	680,408.22	211,992.03	892,400.25	20,345,975.09	2010	3,184,800.50	23,530,775.59
4/1/2011	691,727.62	200,672.63	892,400.25	19,654,247.47			
7/1/2011	696,396.25	196,004.00	892,400.25	18,957,851.22			
10/1/2011	620,049.01	382,273.38	1,002,322.40	18,337,802.20			
1/1/2012	632,551.92	369,770.48	1,002,322.40	17,705,250.29	2011	3,789,445.29	21,494,695.58
4/1/2012	649,187.54	353,134.86	1,002,322.40	17,056,062.75			
7/1/2012	662,135.72	340,186.68	1,002,322.40	16,393,927.03			
10/1/2012	671,748.96	330,573.43	1,002,322.40	15,722,178.06			
1/1/2013	685,294.37	317,028.03	1,002,322.40	15,036,883.70	2012	4,009,289.58	19,046,173.28
4/1/2013	705,704.42	296,617.98	1,002,322.40	14,331,179.28			
7/1/2013	716,484.08	285,838.32	1,002,322.40	13,614,696.20			
10/1/2013	727,790.46	274,531.94	1,002,322.40	12,886,904.74			
1/1/2014	742,465.91	259,856.49	1,002,322.40	12,144,438.84	2013	4,009,289.58	16,153,728.42
4/1/2014	762,780.86	239,561.53	1,002,322.40	11,381,677.98			
7/1/2014	775,312.49	227,009.91	1,002,322.40	10,606,365.49			
10/1/2014	788,451.57	213,870.82	1,002,322.40	9,817,913.91			
1/1/2015	804,350.21	197,972.18	1,002,322.40	9,013,563.70	2014	4,009,289.58	13,022,853.28
4/1/2015	824,520.59	177,801.80	1,002,322.40	8,189,043.11			
7/1/2015	838,990.25	163,332.15	1,002,322.40	7,350,052.86			
10/1/2015	854,113.11	148,209.29	1,002,322.40	6,495,939.75			
1/1/2016	871,335.77	130,986.62	1,002,322.40	5,624,603.98	2015	4,009,289.58	9,533,893.56
4/1/2016	890,138.51	112,183.88	1,002,322.40	4,734,465.46			
7/1/2016	907,892.51	94,429.89	1,002,322.40	3,826,572.95			
10/1/2016	925,151.91	77,160.48	1,002,322.40	2,901,411.04			
1/1/2017	943,817.23	58,505.17	1,002,322.40	1,957,593.81	2016	4,009,289.58	5,966,883.39
4/1/2017	963,706.85	38,615.55	1,002,322.40	993,886.97			
7/1/2017	993,886.97	19,823.28	1,002,322.40				
					2017	2,004,644.79	2,004,644.79
TOTALS	23,000,000.00	5,936,726.35	33,925,338.50			33,925,338.50	
			33,936,726.35				

EXHIBIT K

## EXHIBIT K

### Retrofit Completion Payment Calculations

A. Waste Management Facility Manager shall advance the cost incurred to perform the Retrofit Completion Work up to \$25,500,000 (the "Advance") Such Advance constitutes subordinate debt of the Authority pursuant to the provisions of Section 3.05 of the Indenture. The Authority shall reimburse the Waste Management Facility Manager the Advance (the "Reimbursement Amount") as follows:

(1) No interest on the Reimbursement Amount shall accrue until July 1, 2010, at which time simple interest shall begin to accrue at the rate of 4% per annum until July 1, 2011 and at the rate of 8% per annum thereafter. Interest shall be applied to the remaining principal balance of the Reimbursement Amount.

(2) Interest shall be payable on the Reimbursement Amount beginning on August 1, 2010 and continuing thereafter in quarterly installments due and payable on the first day of each calendar quarter.

(3) Principal shall be repaid on the Reimbursement Amount beginning on July 1, 2009 in quarterly installments due and payable on the first day of each calendar quarter based on a 10-year, mortgage-style amortization schedule. All principal and interest shall be due and payable on the last day of the initial term of this Agreement.

(4) If the Agreement is terminated for any reason before the last day of the initial term of this Agreement, then the Authority shall pay the Waste Management Facility Manager an amount equal to the unpaid principal balance of the Reimbursement Amount plus all accrued and unpaid interest thereon (the "Early Termination Amount")

(5) Notwithstanding any provision of this Agreement to the contrary, the Authority's obligation to pay each installment of the Reimbursement Amount, together with accrued interest thereon, or the Early Termination Amount, as applicable, is independent of any other obligation under this Agreement and shall not be subject to set-off, deduction, recoupment or credit for any reason, irrespective of any amount owed or alleged owed by the Waste Management Facility Manager or any of its affiliates to the Authority, the City, the County or any other person or entity.

B. Pursuant to the terms of the Indenture, the Waste Management Facility Manager acknowledges and agrees that:

(1) Security for such debt is subordinate to the lien of and security interests granted by the Indenture and is subordinate in all respects to payment of the 2003 Bonds, the Parity Obligations and the Subordinated Obligations and payment into Funds created under the Indenture;

(2) An Event of Default under this Agreement does not constitute an Event of Default under the Indenture; and

(3) Notwithstanding the occurrence of any event of default in respect of the subordinated debt, the Waste Management Facility Manager shall not be entitled to exercise any rights or remedies with respect to the Receipts and Revenues until and unless the Trustee shall have instituted proceedings to exercise its rights pursuant to the Indenture.



## CITY GUARANTY AGREEMENT

**THIS GUARANTY AGREEMENT**, dated as of the 14<sup>th</sup> day of December, 2007 (the "2007 Guaranty"), between the **CITY OF HARRISBURG**, Dauphin County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania, as guarantor (the "City") and **THE HARRISBURG AUTHORITY**, a body corporate and politic existing under the Pennsylvania Municipality Authorities Act, as amended (the "Act"), of the Commonwealth of Pennsylvania (the "Authority") for the benefit of **COVANTA HARRISBURG, INC.**, a Delaware corporation ("Covanta Harrisburg"), as the intended third party beneficiary of the guaranty.

### WITNESSETH:

WHEREAS, the City is a municipal corporation of the Commonwealth of Pennsylvania (the "Commonwealth") and is a "local government unit" under provisions of the Act of the General Assembly of the Commonwealth, as reenacted, amended and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

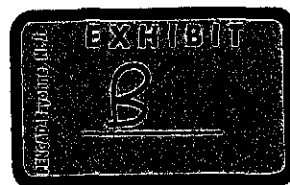
WHEREAS, the Authority is a body politic and corporate organized and existing under the Act; and

WHEREAS, in 1993, the Authority pursuant to authority vested in it by law: (i) acquired from the City a certain mass burn solid waste disposal, resource recovery, steam generation and related facilities, including ash disposal facilities (the "Resource Recovery Facility"), and certain assets, property and machinery for the cogeneration of electric energy (the "Cogeneration Facility"); and (ii) determined to undertake the acquisition, construction and equipping of certain alterations, additions, extensions and improvements to the Resource Recovery Facility and the Cogeneration Facility, including the comprehensive retrofit and modernization (the "Retrofit") thereof (collectively, the "Improvements") (the Resource Recovery Facility and the Cogeneration Facility, together with all additions, extensions and alterations and improvements, including the Improvements thereto, which may be made or acquired from time to time, are hereinafter collectively referred to as the "Facility"); and

WHEREAS, pursuant to a Solid Waste Management Agreement, dated as of December 1, 1993, as amended (the "1993 Management Agreement"), between the City and the Authority, the City managed, operated and performed certain other functions with respect to the Waste Management Facility (as defined therein), including the supervision and oversight of the construction, acquisition and equipping of the Improvements; and

WHEREAS, in 2003, the Authority undertook a project (the "Retrofit Bonds Project") consisting of, *inter alia*, the financing of the Retrofit and certain working capital needs of the Authority by the Authority's issuance of its \$96,480,000 Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds"), \$14,500,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the "2003E Bonds") and \$14,020,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "2003F Bonds," and together with the 2003D Bonds and the 2003E Bonds, the "Retrofit Bonds") under and pursuant to a Trust Indenture, dated as of December 1, 2003 (the "Retrofit Indenture"), between the Authority and Commerce Bank, National Association, successor by merger to Commerce Bank/Pennsylvania, National Association, as trustee (the "Retrofit Trustee"); and

WHEREAS, in undertaking the Retrofit Bonds Project, the Authority entered into a contract with a contractor to design, construct and deliver the Retrofit; and



WHEREAS, the Authority terminated such contractor on or about December 31, 2006 for failure to complete the Retrofit within the terms of the contract; and

WHEREAS, as of December 31, 2006 the Authority under the 1993 Management Agreement terminated the City as the operator of the Facility; and

WHEREAS, since January 2, 2007, the Authority has engaged Covanta Energy Services, Inc., a Delaware corporation ("Covanta") to operate the Facility pursuant to the terms and conditions of the Retrofit Indenture and to prepare a "construction plan" to complete, among other things, the Retrofit under the Administrative Services and Interim Operation and Maintenance Agreement, dated as of January 2, 2007 (the "Interim Agreement"), between the Authority and Covanta; and

WHEREAS, pursuant to the Management and Professional Services Agreement, dated as of May 29, 2007 (the "Long Term Management Agreement"), among the Authority, Covanta Harrisburg and the City (but only for certain purposes set forth therein); Covanta Harrisburg has agreed to provide management and professional services to the Authority as to the Facility as more fully described therein; and

WHEREAS, pursuant to the Construction Management Agreement, dated as of May 29, 2007 (the "Construction Management Agreement"), between the Authority and Covanta, in its capacity as construction manager (the "Construction Manager"), the Construction Manager has agreed to manage the Retrofit Completion (as such term is defined in the Construction Management Agreement); and

WHEREAS, the Authority has determined to undertake a project (the "Retrofit Completion Project") consisting of, among other things, financing the costs of the Retrofit Completion, funding working capital needs and reserves during the undertaking of the Retrofit Completion, and the restructuring of certain indebtedness and other obligations previously incurred by the Authority with respect to the Facility; and

WHEREAS, pursuant to the Long Term Management Agreement, Covanta Harrisburg has agreed to advance certain costs of the Retrofit Completion and the Authority has agreed to reimburse Covanta Harrisburg for such costs it advances in connection with Retrofit Completion, together with interest thereon, as provided in the Long Term Management Agreement (the "Reimbursement Amount"), all as more fully described in the Long Term Management Agreement; and

WHEREAS, the City, as an inducement to the Authority and Covanta Harrisburg to enter into the Long Term Management Agreement, desires to enter into this 2007 Guaranty, with respect to the full and prompt payment of the Reimbursement Amount by the Authority to Covanta Harrisburg, when and as such shall be due and payable, all as permitted by and in accordance with the terms and conditions of the Debt Act; and

WHEREAS, the City and the Authority will enter into a Reimbursement Agreement dated as of even date herewith, pursuant to which the parties thereto will define their respective rights and obligations.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

## ARTICLE I

### Definitions

**SECTION 1.01 Terms and Phrases.** In addition to the terms and phrases which may be elsewhere defined in this 2007 Guaranty, terms and phrases defined in this Section 1.01, for all purposes

of this 2007 Guaranty, as herein defined, shall have the meanings herein specified, unless the context clearly otherwise requires:

"Board" shall mean, at any given time, the governing body of the Authority.

"Council" shall mean the governing body of the City.

"Debt Act" shall mean the Act of the General Assembly of the Commonwealth, known as the Local Government Unit Debt Act, approved April 28, 1978, Act No. 52, as re-enacted and codified by Act No. 177, approved December 19, 1996, and as amended and supplemented from time to time.

"Fiscal Year" shall mean the fiscal year of the City as provided by laws of the Commonwealth.

"Receipts and Revenues" shall have such meaning as described in the Retrofit Indenture.

## ARTICLE II

### Representations and Warranties of the City

**SECTION 2.01 Representations and Warranties.** The City represents and warrants that:

A. The City is a municipal corporation of the Commonwealth and is a "local government unit" under provisions of the Debt Act;

B. The City possesses all requisite power and authority under laws of the Commonwealth to enter into and to perform all the covenants and agreements set forth in this 2007 Guaranty;

C. The City has duly authorized all necessary action on its part to enter into this 2007 Guaranty, in accordance with laws of the Commonwealth;

D. The City, in entering into this 2007 Guaranty, is acting in the public interest by endeavoring to assist the Authority in the provision of modern, environmentally sound waste recovery and cogeneration facilities at the lowest possible cost to the users of such facilities and the citizens and taxpayers of the City, and by assisting in the preservation and protection of the general health and welfare of inhabitants of the City and the Commonwealth; and

E. The City, in entering into this 2007 Guaranty, is incurring lease rental debt pursuant to the terms and conditions of the Debt Act; and the City has taken all proper proceedings pursuant to the Debt Act and has obtained all approvals required to be obtained in connection with the execution and delivery of this 2007 Guaranty.

## ARTICLE III

### Covenants and Agreements of the Authority and the City

**SECTION 3.01 Full and Prompt Payment.** The City hereby guarantees, unconditionally and irrevocably, for the benefit of the Authority and Covanta Harrisburg, the full and prompt payment of the Reimbursement Amount by the Authority to Covanta Harrisburg when and as such shall be due and payable, in accordance with the terms and conditions of this 2007 Guaranty. The Reimbursement Amount guaranteed by the City pursuant to this 2007 Guaranty shall not exceed the amounts set forth in Exhibit A, attached hereto and incorporated herein. Nothing contained in this 2007 Guaranty shall in any way be construed to imply that the City shall be or become liable or responsible for any other debt or obligation of the Authority.

The Authority and the City acknowledge that the Authority's obligation to pay to Covanta Harrisburg the Reimbursement Amount constitutes the incurrence of subordinated debt of the Authority pursuant to the terms and provisions of the Retrofit Indenture, and such obligation, and the security therefor, shall be subordinate to the Authority's payment of all priority obligations, including any payments with respect to the 1998A Bonds (as defined in the Retrofit Indenture) or additional bonds issued as refunding bonds under the 1998 Indenture (as defined in the Retrofit Indenture), or other payments into funds and accounts required by the 1998 Indenture, any payments made with respect to the Retrofit Bonds and additional bonds issued under the Retrofit Indenture, or other payments into funds and accounts required by the Retrofit Indenture, payments with respect to the 2002 Notes (as defined in the Retrofit Indenture) or payments into funds and accounts required by the 2002 Indenture (as defined in the Retrofit Indenture), and payments with respect to the 2003 Notes (as defined in the Retrofit Indenture) or payments into funds and accounts required by the 2003 Notes Indenture (as defined in the Retrofit Indenture).

**SECTION 3.02 Costs, Fees, Expenses and Charges.** Except as may be expressly provided herein or elsewhere, the City shall not be responsible or liable to the Authority for the payment of any other costs, fees, expenses or charges arising in connection with the Reimbursement Amount, the Long Term Management Agreement or the enforcement of any rights of the Authority against any other person.

**SECTION 3.03 Manner of Payment.** All payments required to be made by the City under this 2007 Guaranty shall be made in lawful money of the United States of America.

**SECTION 3.04 Separate Causes of Action.** Each and every default in payment of the Reimbursement Amount as and when due shall give rise to a separate cause of action under this 2007 Guaranty and separate suits may be instituted pursuant to this 2007 Guaranty, from time to time, as each cause of action shall arise.

**SECTION 3.05 Amounts to be Included in Budget.** The City covenants with the Authority for the benefit of Covanta Harrisburg that the City shall (a) include the amounts payable in respect of this 2007 Guaranty for each Fiscal Year in which such sums are payable in its budget for that Fiscal Year, and (b) appropriate such amounts from its general revenues for payment of its obligations hereunder, and (c) duly and punctually pay or cause to be paid from any of its revenues or funds such amounts, payable in respect of this 2007 Guaranty, at the times and in the manner provided for herein, at the designated office of the Authority, according to the true intent and meaning hereof. For such budgeting, appropriation and payment, the City pledges its full faith, credit and taxing power. As provided in the Debt Act, this covenant shall be enforceable specifically against the City.

On November 1 of each Fiscal Year while the 2007 Guaranty is in effect, the Authority shall give written notice to the City of the amount of any anticipated deficiency in the Receipts and Revenues, or other available moneys of the Authority, for payment of the Reimbursement Amount to become due and payable in the following Fiscal Year, thereby necessitating a payment by the City of all or a portion of the Reimbursement Amount due in such following Fiscal Year. The City forthwith shall include in its budget an amount equal to the projected deficiency in such following Fiscal Year.

At any time when payments are required to be made by the City hereunder, to the extent that sufficient money shall not be available in the City's then current budget, and if the City shall be unable to incur debt lawfully in the current Fiscal Year for the purpose of paying such Reimbursement Amount or to issue tax anticipation notes or otherwise to satisfy its obligations hereunder, the City shall include any amounts so payable in its budget for the next succeeding Fiscal Year and shall appropriate such amounts to the payment of such obligations and duly and punctually shall pay or shall cause to be paid the obligations incurred hereunder in the manner herein stated according to the true intent and meaning hereof, and for such budgeting, appropriation and payment the City does pledge its full faith, credit and



June 6, 2013

Re: Covanta v. City of Harrisburg et. al.

To Whom It May Concern:

By way of this statement, I am indicating that I am presently engaged in negotiations with all major creditors for the City of Harrisburg. Further, I declare that allowing Covanta to move forward with its case against the City of Harrisburg could impede my efforts to reach a comprehensive negotiated resolution of the City's financial problems between my office and all the other major creditors of the City of Harrisburg.

Signed,

A handwritten signature in black ink that reads 'William B. Lynch'. The signature is written in a cursive style with a large, prominent 'L'.

William B. Lynch  
Receiver for the City of Harrisburg

WBL/amm

