

## TRANSPORTATION AND DISPOSAL AGREEMENT

This Transportation and Disposal Agreement, (this "Agreement") is entered into this 1st day of January 2022, by and between Covanta Sustainable Solutions, LLC (hereinafter referred to as "Contractor"), and the Mayor and City Council of Ocean City, Maryland (the "Town").

### Recitals

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

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

C. The Town desires to engage Contractor to provide transportation and disposal services, and Contractor desires to provide said services; and

D. The Town requires Contractor to provide transportation and disposal service of Municipal Solid Waste ("MSW") to fully licensed Energy-from-Waste disposal facilities.

### Agreement

NOW, THEREFORE, in consideration of their mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Contractor and the Town hereby agree as follows:

### ARTICLE I Definitions

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

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

*"Confidential Information"* means all information relating to services, financial records, processes, plants, including further processes and products, technology, and development, and their customers and other commercial information, disclosed by Contractor or its Subcontractors, directly or indirectly, or any such information that the Town acquires or receives, in writing, electronically or orally, with respect to the other

party in connection with this Agreement or the services performed hereunder, subject to any required disclosure in the Maryland Public Information Act.

*"Force Majeure"* means any act, event or condition that has had, or may reasonably be expected to have, a material adverse effect on the ability of a party to perform its obligations under this Agreement, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with a condition required of such party under this Agreement.

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

*"Unacceptable Waste"* means any waste that is not Acceptable Waste.

*"Subcontractors"* means any subcontractor of Contractor.

## ARTICLE II Services

### Section 2.1

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

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

(c) Procedures. The delivery of Acceptable Waste and loading of Acceptable Waste at the Transfer Station shall be regulated by the operating permit issued by the Maryland Department of the Environment, and the Town may modify such procedures from time to time in a reasonable fashion in the ordinary course of business. Contractor shall provide sufficient numbers of transfer trailers to allow the Town to remove all the waste from the Transfer Station tipping floor on a daily basis. All fully loaded trailers are to be removed



by the Contractor before the next day's waste begins to arrive at the Transfer Station. This is to include all seasonal variations in the waste stream. A manifest, including a weight ticket from the Transfer Station scales, will be provided by the Town for each trailer picked up by Contractor. All Acceptable Waste shall be delivered to an Energy-from-Waste facility.

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

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

### **ARTICLE III Service Fees**

**Section 3.1** The service fee for transportation and disposal services of MSW shall be referred to as the "Contract Price" and shall be as follows:

In 2022, \$88.00 per ton.

In 2023, \$90.20 per ton.

Thereafter, if the Agreement is extended by mutual agreement, the rates in 2024 shall be \$92.46 per ton, in 2025, \$94.77 per ton and in 2026, \$97.14 per ton.

The Contract Price shall include the price of diesel fuel. There shall be a 20-ton minimum charge for all MSW loads, except when the Contractor provides trailers that are less than forty-eight feet (48') in length. Loads in trailers less than 48' shall be charged at the agreed Contract Price for the actual scale weight. Contractor shall supply all trucks and transfer trailers necessary to perform its transportation and disposal services under this Agreement during the normal working day of the Transfer Station, which is 7AM to 4PM.

**Section 3.2** Contractor shall provide the Town with a weekly/monthly invoice for its services hereunder, and the Town shall pay the invoice within twenty-one (21) days after its receipt thereof. Such invoice shall be organized such that it separately indicates as subtotals the account balance payable to Contractor and shall state the aggregate total for such timeframe. Invoices shall include weight tickets from the disposal facility that will be matched with the weight tickets from the Transfer Station scales. Payments shall

be picked up by Contractor, sent to Contractor at the address set forth in Article XI below, via first class mail, or made by way of electronic transfer as mutually agreed upon.

**Section 3.3** In the event that any municipal, state, or federal agency passes a solid waste or transportation tax that is to be charged for waste that is hauled from transfer stations or delivered to solid waste acceptance facilities, Contractor will charge such tax in addition to the Contract Price in the exact amount of such tax to the Town.

**Section 3.4** In the event the Town incurs overtime that is the result of the Contractor's failure to provide sufficient trailers during the normal working Transfer Station hours, the Contractor shall be responsible for the cost of this overtime. This overtime payment will be deducted from the weekly invoice in which the overtime occurs. The overtime will be charged at one and one-half times the hourly rate of the employees affected, plus thirty-three percent (33%) to cover the employee burden.

**Section 3.5** Any and all fines levied by the Maryland Department of the Environment, that are the result of the Contractor's failure to provide sufficient numbers of trailers, or failure to remove the Acceptable Waste on a daily basis, will be paid by the Contractor.

**Section 3.5** Contractor shall have the right to increase the Contract Price from time to time by the pro-rata amount (determined by relative tonnage of Acceptable Waste delivered by the Town and accepted by Contractor divided by the total tonnage processed at the disposal facility) of any increase in operating costs or capital costs of the disposal facility as a result of a change in applicable laws ("CIL Increase"); provided, however, that Contractor shall absorb the first \$5.00 per ton of the aggregate of all CIL Increases and the Town shall pay CIL Increases in excess of such \$5.00 per ton. Any such CIL Increase shall be effective immediately upon written notice by Contractor to the Town. On or about December 31st of each year, Contractor shall provide the Town with email notice of any CIL Increases that will be applied toward the initial \$5.00 per ton to be absorbed by Contractor, including reasonably cost substantiation. Notwithstanding anything stated in this Agreement to the contrary, if the Town does not agree to a CIL Increase, the Town may terminate this Agreement by providing Contractor written notice of such termination within thirty (30) days of receipt of notice of a CIL Increase and termination will be effective twelve (12) months from the date of the notice of a CIL Increase; if the Town elects to so terminate, the Town shall pay the CIL Increase for tons delivered during the twelve month period prior to the termination date.

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

**Section 4.1** The Town shall indemnify, defend (through legal counsel selected by the Town) and hold harmless Contractor, its Subcontractors, and their respective owners, employees and agents, from and against all claims, demands, actions, suits, proceedings,



losses, damages, costs (including, without limitation, reasonable attorneys' fees and court costs), to the extent arising out of acts or omissions, pursuant to this Agreement, of or by the Town, its officials, directors, employees, contractors and agents, including without limitation, environmental damage or liabilities arising out of the disposal of Unacceptable Waste by the Town, or resulting from contamination of or adverse effects on the environment by the Town, or arising out of a breach by the Town or its officials, directors, employees, contractors or agents of any of its or their representation, warranties or covenants contained in this Agreement. Any such indemnification shall not be construed as a waiver of any governmental immunity of the Town.

Contractor shall indemnify, defend and hold harmless the Town, its officials, directors, employees, contractors, invitees and agents, from and against all claims, demands, actions, suits, proceedings, losses, damages, costs (including, without limitation, reasonable attorneys' fees and court costs), to the extent arising out of acts or omissions, pursuant to this Agreement, of or by Contractor, its owners, employees, Subcontractors and agents, including without limitation, environmental damage or liabilities arising out of the disposal of the Town's Acceptable Waste by Contractor, or resulting from contamination of or adverse effects on the environment by Contractor, or arising out of a breach by Contractor or its owners, employees, Subcontractors or agents of any of its or their representation, warranties or covenants contained in this Agreement.

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

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

The Town shall be listed as an additional insured on Contractor's liability insurance policies.

## ARTICLE V

### Representations and Warranties

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

(a) Contractor is engaged in the transportation/disposal business, has developed the requisite expertise for performing that work, has adequate resources and equipment in good working order, together with fully trained and experienced personnel capable of performing the services required under this Agreement in a good and professional manner and in accordance with this Agreement, and exhibits the standard of care and skill normally exercised by professional contractors performing the same type of services; and

(b) Contractor has obtained all permits, licenses, certificates and approvals required to comply with all Laws applicable to the performance of the Services. No violations thereof have been experienced, noted or recorded, that would materially affect Contractor's ability to perform the Services, and no proceeding is pending or, to the best of the Contractor's knowledge, threatened that would revoke or materially limit any of them.

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

(1) Contractor shall perform its services in a good, safe and workmanlike manner and in accordance with sound environmental practices;

(2) Contractor shall promptly notify the Town of the occurrence of any legal, judicial, or regulatory proceedings affecting, and of any adverse changes in, the business operations or affairs of Contractor that may materially adversely affect the ability of Contractor to supply the Services; and

(3) Contractor shall comply with all Laws applicable to its Services, including without limitation, all U.S. Department of Transportation laws and regulations.

## **ARTICLE VI**

### **Confidentiality**

**Section 6.1** Contractor and the Town shall not divulge, in whole or in part, any Confidential Information to any third party without the prior written consent of the other party. Contractor and the Town each agree that the Confidential Information is a special, valuable and proprietary asset of the other party. Contractor and the Town shall use the Confidential Information only for the purpose of performance of the Services required under this Agreement, and no other use of such information shall be made without the prior written consent of the Town or Contractor. Contractor expressly recognizes and acknowledges that, since the Town is a municipality, it is subject to the Maryland Public Information Act and that nothing contained in this section or elsewhere, shall limit or regulate or affect in any way the Town's duties and obligations under the Act and that this Agreement is public information and can be disclosed without permission of Contractor.



## **ARTICLE VII Force Majeure**

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

## **ARTICLE VIII Term**

**Section 8.1** The term of this Agreement shall commence on January 1, 2022, "Commencement Date", and shall continue through December 31, 2023. Thereafter, the term of this Agreement may be extended for up to three terms of one year each upon the written mutual agreement of the parties.

## **ARTICLE IX Assignment**

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

## **ARTICLE X Non-Solicitation**

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

**Section 10.2** Should a party prevail in any action against the other party for violation of any provisions of this Agreement, the losing party agrees to pay all costs, including attorneys' fees incurred by the party pursuing such relief.

## **ARTICLE XI Notice**

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

Contractor:

Covanta Sustainable Solutions, LLC  
445 South Street

Morristown, New Jersey 07960  
Attn: Executive Vice President

With a copy to:

Covanta Energy, LLC  
445 South Street  
Morristown, NJ 07960  
Attn: General Counsel

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

with a copy to:  
Public Works Director  
224 65<sup>th</sup> Street  
Ocean City, Maryland 21842

## ARTICLE XII Miscellaneous Provisions

**Section 12.1** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, representations, offers or agreements, related to the subject matter herein, either written or oral. There are no representations, warranties, promises, covenants, or undertakings other than those expressly set forth herein. No changes, alterations, or modifications to this Agreement shall be effective unless in writing and signed by parties, which specifically references this Agreement by name, parties, and date.

**Section 12.2** The waiver by either party of, or the failure of either party to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same or any other term, covenant, or condition therein contained. Any waiver of any breach or term, covenant or condition of this Agreement may be done only in writing and must be signed by the party giving such waiver.

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

**Section 12.4** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without



invalidating the remainder of such provision or the remaining provisions of this Agreement, unless the consummation of the transactions contemplated by this Agreement is adversely affected thereby.

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

**Section 12.6** No questions of interpretation concerning this Agreement shall be construed for or against any party based on the consideration of authorship.

**Section 12.7** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be deemed the same instrument.

**IN WITNESS WHEREOF**, we hereunto execute this Agreement, consisting of 9 pages, the day and year first above written.

**CONTRACTOR**

By: 

Name: Daniel J. Carro

Title: Vice President + General Manager

**MAYOR AND CITY COUNCIL OF OCEAN CITY, MARYLAND**

By: \_\_\_\_\_

Name: Douglas R. Miller

Title: City Manager