

**INTERJURISDICTIONAL JOINT ACTION AGREEMENT
REGARDING THE ARLINGTON / ALEXANDRIA WASTE-TO-ENERGY FACILITY**

This Interjurisdictional Joint Action Agreement Regarding the Arlington / Alexandria Waste-to-Energy Facility (hereinafter “Agreement”) is made as of the date on which it is last signed by one of the parties hereto, by and between the City of Alexandria, Virginia (hereinafter “City”), and the County Board of Arlington County, Virginia (hereinafter “County”). The City and the County may be referred to individually herein as “Jurisdiction” or collectively herein as the “Jurisdictions”.

W I T N E S S E T H :

WHEREAS, the City and the County together own in equal shares two parcels of real property in Alexandria, Virginia, identified by Alexandria tax Account Numbers 50631180 (“Parcel A”, 3.2644 acres) and 50686420 (“Parcel B”, 4,036 square feet); and

WHEREAS, pursuant to an Amended and Restated Site Lease dated October 1, 1985, as amended, and an Operating Lease Agreement dated November 1, 1998, as amended, the City and the County lease the real estate referenced above to Covanta Alexandria/Arlington, Inc. (hereinafter it or its successors or assigns may be referred to as “Contractor”); and

WHEREAS, the City and the County entered into a Waste Disposal and Service Agreement dated January 24, 2012 (hereinafter “WDSA”), with the Contractor, which provides for the Contractor’s use of the facility on the above-referenced property to incinerate solid waste provided by the Jurisdictions to the Contractor and to convert it into thermal energy; and

WHEREAS, the WDSA addresses the Jurisdictions’ relationship with the Contractor but does not address the relationship between the Jurisdictions stemming from the WDSA, and the Jurisdictions agree that a formal relationship between them is necessary regarding these matters,

further to the Amended and Restated Interlocal Joint Enterprise Agreement dated as of October 1, 1985, between the Alexandria Sanitation Authority and the Arlington Solid Waste Authority and the Amended and Restated Waste Disposal Trust Fund Cooperative Agreement dated as of October 1, 1985, between the Jurisdictions; and

WHEREAS, the Code of Virginia (Title 15.2, Chapter 13) allows for joint actions by localities,

NOW, THEREFORE, the City and the County covenant and agree as follows:

1. Duration. The duration of this Agreement (hereinafter “Term”) shall be the same as the duration of the WDSA stated in section 2.3 of the WDSA, unless otherwise agreed by the Jurisdictions in writing. If the WDSA concludes on September 30, 2025, as provided for in the WDSA, then the Jurisdictions will revisit this Agreement and negotiate any amendments or supplements to it that they deem necessary at that time. The Jurisdictions agree to commence any such negotiations not later than two years from the date on which the WDSA is scheduled to expire, insofar as the Jurisdictions are aware of that date two years before it occurs.

2. Purpose. The purpose of this Agreement is to establish a formal relationship between the Jurisdictions regarding their rights and duties under the WDSA and to describe the details of that relationship and how it will function.

3. Waste-To-Energy Facility Monitoring Group. The Jurisdictions hereby establish a Waste-To-Energy (“WTE”) Facility-Monitoring Group (hereinafter “FMG”) and agree to liaise with each other through the FMG regarding the matters discussed in this Agreement.

A. Each Jurisdiction’s chief administrative officer (the City Manager for the City and the County Manager for the County) shall appoint two (2) members to the FMG. Each chief administrative officer may remove, replace, or otherwise change their

appointees to the FMG at any time in their sole discretion. One appointee from each Jurisdiction shall have a financial-management background and the other appointee from each Jurisdiction should have a solid-waste or environmental program background. The appointees shall be department heads or senior members of the Jurisdiction's staff.

B. Each Jurisdiction's chief administrative officer may, in his or her discretion, appoint one alternate FMG member for each of the Jurisdiction's two appointees. In the event that an alternate's respective FMG member is unable to attend a FMG meeting, the alternate FMG member may attend FMG meetings and participate in the activities of the FMG as if he or she was a full-fledged member of the FMG.

C. The four members of the FMG shall elect a chairman from among them. A quorum of the FMG shall consist of four members, including alternates. The FMG shall meet at least quarterly in order to review the operations of the WTE facility. The Jurisdictions may have other staff employed by them attend meetings of the FMG, regardless of whether the staff are FMG members or alternates for members.

D. Duties & Responsibilities of the Facility-Monitoring Group.

1. The FMG shall be the single point of contact for the Contractor to deal with the Jurisdictions regarding routine operational monitoring, financial management, and facility-maintenance issues

2. The FMG shall be a forum for the Jurisdictions' staffs' discussion and evaluation of major environmental and/or capital repairs and improvements, changes in law, and other major issues that may arise.

3. Routine issues that shall be within the FMG's bailiwick include:

a. monitoring the operations of the WTE facility;

- b. monitoring the upkeep and maintenance of the facility and its compliance with environmental and other governmental regulations;
- c. maintaining records of the WTE facility's operations;
- d. maintaining and reporting tonnage records;
- e. performing any necessary financial management revenue- and cost-sharing calculations based on the WDSA and this Agreement; and
- f. responding to questions or interpreting issues related to the WDSA.

4. Other issues that may be discussed or evaluated by the FMG include:

- a. capital repairs and improvements to the WTE facility that are designed to protect the environment;
- b. capital repairs and improvements to the WTE facility that are necessary for the WTE facility's continuing operation but are not the responsibility of the Contractor under the terms of the WDSA;
- c. effects of changes in law on the WTE facility and its operations;
- d. responding to questions or interpreting issues related to the WDSA; and
- e. other issues of significance to the future operation of the WTE facility.

4. Trust Fund. The Jurisdictions hereby establish and declare a joint trust fund (“Fund”) for use by them in administering their financial obligations set forth in the WDSA and this Agreement. The Fund’s formal name shall be the Alexandria & Arlington Waste Disposal Trust Fund. Moneys held in the Fund may be paid from the Fund for one or more of the following purposes: capital costs related to the WTE facility; costs related to increases in tipping fees resulting from uncontrollable circumstances (as those terms are defined in the WDSA); fees and expenses of accountants and other professionals providing services to the Jurisdictions and the FMG related to the WTE facility or the Fund; fees and expenses related to management or administration of the Fund; and other expenditures for waste disposal, including costs related to the WTE facility.

A. One of the Jurisdictions will manage the Fund for both of them. The Jurisdiction that manages the Fund shall receive an allowance from the other Jurisdiction in exchange for the Jurisdiction’s management of the Fund. The annual allowance initially will be \$7,000.00 plus reimbursement of out-of-pocket audit and other costs. The annual allowance will be reviewed annually by the FMG and adjusted if deemed necessary by the FMG based on the managing Jurisdiction’s estimates of the costs it will incur for managing the Fund. The management allowance shall be budgeted by the Jurisdictions as a routine cost of the FMG. The Fund-managing Jurisdiction shall include the Fund’s transactions and assets in the Jurisdiction’s financial statements to the extent and in the form or forms required by generally accepted accounting principles.

B. The Jurisdiction that manages the Fund shall perform the following tasks:

1. provide (in consultation with the FMG) payments to the Contractor and other vendors providing goods and services to the Jurisdictions at or for the WTE facility according to the terms of the WDSA and this Agreement;

2. provide to the other Jurisdiction, within 30 days of the end of a given quarter, a monthly statement of payments made from the Fund during that quarter;

3. provide annual audited financial statements to the other Jurisdiction within 150 days after the end of the fiscal year, showing payments made from the Fund during the prior fiscal year and allocating those payments between the Jurisdictions according to the terms of the WDSA and this Agreement;

4. ensure that proper financial management and internal controls are in place and respond to questions of any auditor(s) engaged by either Jurisdiction; and

5. apportion any surplus money in the Fund between the Jurisdictions according to the terms of this Agreement, taking into account future anticipated expenses and the Jurisdictions' plans for paying those expenses from the Fund.

C. The Jurisdictions expect that procurement functions will be led and facilitated by the Jurisdiction that is not the Fund-managing Jurisdiction.

D. The annual contribution by each Jurisdiction to the Fund shall be in accordance with the Jurisdiction's adopted budget and based on the calculations of the FMG. Subject to appropriations, each Jurisdiction shall make payment to the Fund for

that Jurisdiction's respective share of WTE facility costs at the beginning of every fiscal year of the Jurisdiction.

E. In the event that the Fund has a positive balance remaining at the end of the then-current fiscal year and the audited financial statements are complete, then the Jurisdictions may divide the Fund between themselves in the following proportions: sixty percent (60%) to the County Board of Arlington County and forty percent (40%) to the City of Alexandria, commensurate with their respective percentages of contributions to the Fund. The Jurisdictions may elect to retain the funds in the Fund for future financial obligation of the FMG.

5. Budget.

A. This Agreement shall in no way affect the Jurisdictions' legal obligations to adopt and implement annual budgets or to fulfill their obligations in the WDSA.

B. The FMG each year shall develop a proposed operating and capital budget for the Fund for the upcoming fiscal year.

C. The FMG's proposed budget shall be submitted by the FMG to the chief administrative officers of the Jurisdictions. The chief administrative officers shall review the proposed budget and ensure that it is reviewed and submitted for approval by their respective Jurisdiction's governing body as part of its annual budget process. The FMG operating and capital budget shall not be considered approved and final until it is approved by each Jurisdiction's governing body.

D. The annual budget developed by the FMG shall address the following:

1. Costs of routine operational monitoring, financial management, and facility maintenance to be borne by the Jurisdictions. These costs may include:

a. a consultant with appropriate professional expertise who is approved by the FMG and qualified to assist in monitoring the operations of the WTE facility to ensure its proper upkeep and maintenance and compliance with environmental and other governmental regulations;

b. any professional association fees and activities necessary to maintain key knowledge of developments in the waste-to-energy industry regionally or generally, or among clients of the Contractor;

c. assistance in studying the desirability or feasibility of minor facility maintenance or repair projects, or implementing such projects. A project may be considered “minor” if the project is estimated to cost less than or equal to \$150,000 in the upcoming fiscal year; and

d. financial-management services.

2. Proposed costs for studies of the feasibility, desirability or impact of major facility repairs and improvements, or responses to changes in law, and the costs of implementing such projects. A project may be considered “major” if the project is estimated to cost more than \$150,000 in the next upcoming fiscal year;

3. The costs of major projects shall be shared by the Jurisdictions in proportions other than 60%/40% if approved by the Jurisdictions’ governing

bodies, taking into account the extent to which a project benefits each of them.

For example:

- a. aesthetic improvements (e.g., landscaping or noise-abatement actions) may be borne entirely or primarily by Alexandria; and
- b. environmental improvements of regional significance such as Low NO₂, wastewater reuse, bag house particulate emission controls, excess steam usage, and responses to future Federal or Virginia environmental requirements may be shared equally or otherwise.

E. In the event of a discrepancy between the FMG budget approved by one Jurisdiction and that approved by another, the lower approved budget amount shall control unless the Jurisdictions mutually resolve the discrepancy in writing.

6. Allocation of Expenses. Any and all expenses incurred by the Jurisdictions in the course of their fulfillment of this Agreement shall be allocated sixty percent (60%) to the County and forty percent (40%) to the City, in approximate recognition of their respective utilization of the WTE facility. In no way shall this section affect the Jurisdictions' obligations in the WDSA. The allocations set forth herein may be revised by an amendment to this Agreement.

7. Decisions Regarding Renewal or Extension of WDSA Term. The Jurisdictions acknowledge that the WDSA provides for the automatic renewal of the WDSA's Term (as that term is defined in the WDSA) on July 1, 2019, for a Renewal Term (as that term is defined in the WDSA) to September 30, 2025, and additionally provides for an optional extension of the WDSA's Term to December 31, 2038, if the Jurisdictions jointly exercise that extension right before December 31, 2024. The Jurisdictions agree to reach any decision regarding any such extension by mutual agreement between them.

8. Adjustments in Excess or Shortfall Tonnage Thresholds. The Jurisdictions acknowledge that the WDSA provides for adjustment to waste tonnage amounts - both minimum annual amounts and the threshold at which tonnage is deemed “excess” in a given year. Such adjustments must be made by the Jurisdictions no later than April 1 of a given calendar year, that being the 90th day before July 1, the first day of a new Contract Year as that term is defined in the WDSA. The Jurisdictions agree that they will, through the FMG, project their combined waste-disposal needs for the upcoming Contract Year and allocate each Jurisdiction’s share of the tonnage “band” for the upcoming year. The FMG will adjust the minimum annual amounts and the “excess” tonnage threshold accordingly and will inform the Contractor of same.

9. Allocation and Payment of Shortfall and Excess Tonnage Fees. The Jurisdictions acknowledge that the WDSA provides for the payment of fees to the Contractor if the Jurisdictions 1) do not provide the minimum tonnage amount to the Facility or 2) provide in excess of the excess annual tonnage threshold. The Jurisdictions agree that when their combined waste tonnage provided to the Contractor’s Facility fall short of the minimum amount or in excess of the excess tonnage threshold (after adjustments are made as provided by the WDSA), then the allocation of fees incurred for such shortfall or excess will be made based on each Jurisdiction’s actual tonnage compared with its projection for that Contract Year of the WDSA. Any fees for shortfall or excess paid by the Jurisdictions, through the FMG, to the Contractor shall be adjusted in the FMG’s annual close-out process and allocated to each Jurisdiction based on the portion of the shortfall or excess attributable to each Jurisdiction for that year.

10. Allocation and Use of Revenues. All taxes (including real and personal property and gross receipts) paid by the Contractor to the City will be shared by the City twice each year with the County in the following percentages: 60% to the County and 40% to the City, after

deduction of a host community fee for Alexandria based upon a formula that is to be mutually agreed upon by the Jurisdictions based on an estimate of the costs of providing City services to support the WTE facility (e.g., public safety, transportation and other public services). All other (non-tax) revenue that results from the Contractor or the operation of the WTE facility will be shared between the City and the County in the following percentages: 60% to the County and 40% to the City, regardless of which Jurisdiction receives the revenue or how it is received.

11. Allocation of the Proceeds from Sale of the Jurisdictions' WTE Property. In the event of any sale of Parcel A or Parcel B or any interest therein or sale of personal property owned by the Jurisdictions in or on Parcel A or Parcel B (including, but not limited to, pollution-control systems and equipment), the net proceeds from such sale shall be divided between the Jurisdictions in the following percentages:

A. For the sale of any such personal property, 60% to the County and 40% to the City;

B. For the sale of any such real property, 50% to the County and 50% to the City.

12. Miscellaneous.

A. This Agreement is between the County Board of Arlington County, Virginia, and the City of Alexandria, Virginia, and no other persons or entities. The City and County covenant and agree that they, and no one else, may or shall be beneficiaries of this Agreement or the rights and obligations hereunder.

B. This Agreement may be amended at any time by the Jurisdictions in writing, so long as any amendment is made with the same formality with which this Agreement was first approved and executed.

C. All funds for payments to be made by the Jurisdictions pursuant to this Agreement or the WDSA are subject to the availability of an annual appropriation for such purpose by the governing bodies of the Jurisdictions. In the event of non-appropriation of funds for such purpose by either Jurisdiction's governing body, then the Jurisdictions will collaborate, through the FMG, to wrap-up the FMG and the Fund and to terminate this Agreement.

D. This Agreement will conclude at the end of the Term as it is defined hereinabove, or sooner by mutual written agreement of the Jurisdictions.

E. This Agreement may not be assigned by either Jurisdiction to any person or entity that not a party to this Agreement unless the other Jurisdiction has agreed to such assignment in advance and in writing.

F. This Agreement and the Jurisdictions' actions performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Courts of Arlington County or the City of Alexandria, Virginia, and in no other court.

G. The failure of either Jurisdiction to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or any other right.

H. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Agreement.

I. Notwithstanding any other provision of this Agreement, nothing herein or any action taken by either Jurisdiction pursuant to this Agreement shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the Jurisdictions. The Jurisdictions intend for this provision to be read as broadly as possible.

13. Dispute Resolution. Disputes between the Jurisdictions shall be resolved as follows:

A. In the event of a dispute between them, the Jurisdictions will engage a qualified mediator to assist them in resolving the dispute. The costs of mediation will be shared equally by the Jurisdictions.

B. In the event that mediation is not successful in resolving a given dispute, then the Jurisdictions will exchange “best and final” offers with each other and will enter into non-binding arbitration. The arbitrator will be asked to choose between the two “best and final” offers and resolve the dispute. The costs of binding arbitration shall be borne by the Jurisdiction whose offer is not chosen. Notwithstanding this subsection’s terms, the Jurisdictions acknowledge that their obligations hereunder are subject to appropriations by them for the purposes stated herein.

14. Termination. This Agreement will be terminated on the sooner of 1) the termination of this Agreement by action of the Jurisdictions, confirmed by them in writing, or 2) the conclusion of the Term of this Agreement or the conclusion of the WDSA.

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IN WITNESS WHEREOF, the County and the City have caused this Agreement to be executed and delivered as their respective acts, intending to be legally bound by its terms.

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: _____

Printed Name: _____

Title: _____

Date: _____

THE CITY OF ALEXANDRIA, VIRGINIA

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Arlington County Attorney

Alexandria City Attorney