

## **MUNICIPAL SOLID WASTE DISPOSAL AND ENERGY RECOVERY AGREEMENT**

This Municipal Solid Waste Disposal and Energy Recovery Agreement (this “**Agreement**”) is entered into as of October 18th, 2016. The effective date shall be December 1, 2016 (“**Effective Date**”), by and between Covanta Tulsa Renewable Energy, LLC, a Delaware limited liability company (“**Covanta**”), and the Broken Arrow Municipal Authority, an Oklahoma public trust of which the City of Broken Arrow is the sole beneficiary (“**BAMA**”). Covanta and BAMA are sometimes referred to individually as a “**Party**,” and collectively as the “**Parties**.”

### **Recitals**

WHEREAS, Covanta operates an energy-from-waste facility located at 2122 S Yukon Avenue, Tulsa, Oklahoma 74107 (the “**Recovery Facility**”);

WHEREAS, Covanta has entered into that certain agreement with the Tulsa Authority for Recovery of Energy as of May 17, 2012 (the, “**TARE Agreement**”); and BAMA desires to deliver, and Covanta desires to accept for disposal and energy recovery at the Recovery Facility, certain quantities of Acceptable Recovery Facility Waste (hereinafter defined), in accordance with and subject to the provisions of this Agreement and on the same pricing terms contained within that certain **TARE Agreement**.

### **Agreement**

NOW, THEREFORE, in consideration of the premises and of the mutual obligations undertaken herein, and intending to be legally bound, the parties hereby agree as follows:

## **ARTICLE 1 – CERTAIN DEFINATIONS**

As used in this Agreement, the following terms shall have the meanings as set forth below:

“**Acceptable Recovery Facility Waste**” means mixed household solid waste generated within the boundaries of the City of Broken Arrow by residents and (i) which has the characteristics of solid waste normally collected or disposed of by residences, schools, churches and municipal offices and (ii) which is permitted under Applicable Law to be accepted at and processed by the Recovery Facility and which is not Unacceptable Recovery Facility Waste. Acceptable Recovery Facility Waste must be of a size and composition such that the Recovery Facility is able to process it.

“**Acceptance Fee**” means the rates and adjustments contained within that certain TARE Agreement. The fee adjustment will be reviewed by BAMA for adjustment pursuant to the terms of the TARE Agreement, effective each July 1<sup>st</sup> for the term of this Agreement. The annual rate adjustment shall not exceed five percent (5.00%) per year, *provided that* any Change in Law Costs associated with changes in pricing for sewer and water utilities shall be calculated separately and excluded from the adjustment limitation contained herein. Any adjustment to the rate must be approved by BAMA. In the event that BAMA does not approve the rate adjustment prior to the July 1st effective date, an adjustment approved after that date will be retroactive to July 1.

Acceptance Fee includes an annual escalation rate substantially similar to the example below plus applicable ODEQ (hereinafter defined) fees, and any Change in Law Costs due to a Change in Law that comes into effect after the effective date.

**Example:** Assume that the CPI-All Urban Consumers, Item: All items unadjusted Index for June 2016 is 114.5 and on June 2015 it was 105.5. The calculation for the annual rate adjustment to be applied on July 1, 2017 is as follows:

$$\frac{114.5 - 105.5}{105.5} = 8.06\%$$

and

**Total Annual Adjustment = 5.00 %**

**Then**

**Total annual adjustment applied to the rate = 5.00% of effective July 1, 2017**

**“Affiliate”** shall mean Covanta Holding Corporation and/or any entity, fifty percent (50%) or more of which is owned, directly or indirectly, or controlled by Covanta Holding Corporation.

**“Applicable Law”** means each and every applicable Federal, state, county, city or local law, statute, charter, ordinance, rule, regulation, order, Consent, permit, license or approval of any governmental, quasi-governmental, regulatory or administrative agency or authority or court or other tribunal having jurisdiction.

**“Billing Period”** means each calendar month during the Delivery Term.

**“Change in Law”** means (A) the adoption, promulgation, issuance, modification, or official change in interpretation, after the Effective Date, of any federal, state, or local law, bylaw, ordinance, code, regulation, rule, or ruling; (B) the imposition, after the Effective Date, of any condition on the issuance, reissuance, or continued effectiveness of any permit, license, or approval relating to the Recovery Facility which establishes requirements more burdensome than those (i) imposed as of the Effective Date or (ii) proposed in any application for permits, licenses, or approvals relating to the Recovery Facility or those pending before any regulatory authority of the Effective Date; (C) any change in the price of municipal sewer and water utilities that the City of Tulsa charges to Covanta as documented through an adjustment(s) in the TARE Agreement; or (D) the order or judgment or other action of any federal, state or local court, administrative agency, or governmental body relating to the Recovery Facility, including the suspension, termination, interruption, or non-renewal of any permit, license, consent, authorization, or approval affecting the acquisition, design, construction, equipping, start-up, operation, maintenance, ownership, use, or possession of any part of the Recovery Facility, if not the result of Covanta’s willful or negligent

action or the failure of Covanta to act in accordance with this Agreement or Applicable Law in effect as of the Effective Date; provided, however, that the contesting in good faith of any such suspension, termination, interruption or non-renewal shall not constitute or be construed to constitute a willful or negligent action or inaction; provided, further, that for purposes of clause (A) above, no pending legislation or proposed or draft law, by-law, ordinance, code, regulation, rule, or ruling circulated or published for review and comment, or official announcement of anticipated changes in rules, regulations or interpretive position, which by its terms or by operation of law is not immediately effective, shall be considered to have been adopted, promulgated, or issued, and no announced modification or official change in interpretation similarly not immediately effective shall be deemed to have occurred, prior to the date that it becomes effective, either temporarily or permanently, notwithstanding the existence of provisions therein purporting to make such law, by-law, ordinance, code, regulation, rule or ruling or modification or change in interpretation thereof effective retroactively as of some earlier date.

**“Change in Law Costs”** means, for any twelve-month period, the sum of:

- (i) the amount, if any, of the estimated decreased revenues from:
  - (A) the sale of steam or electricity generated by the Recovery Facility,
  - (B) the disposal of solid waste at the Recovery Facility, and
  - (C) the sale of metals recovered by the Recovery Facility, resulting from a Change in Law, and
- (ii) the amount, if any, of the estimated increased operating and capital costs of the Recovery Facility resulting from a Change in Law; provided, however, that Change in Law Costs shall not include any costs resulting from increases in the amount of any income tax payable by or on behalf of Covanta or any affiliated entity (other than a new or increased tax specifically imposed upon or borne by solid waste disposal facilities, electric generation facilities, resource recovery facilities or other similar facilities, or by the owners or operators of any such facilities). For purposes of this definition, the annual amount of increased capital costs shall include the projected annual debt service on indebtedness incurred to finance such capital costs and, to the extent Covanta financed costs thereof without incurring debt, amortization of the cost thereof at an assumed interest rate equal to the Prime Rate at the time the capital cost is incurred over the useful life of the improvements with respect to which such capital costs were incurred.
- (iii) Any Change in Law Costs associated with changes to utilities pricing shall be on a pro rata basis and documented via adjustment(s) to the TARE Agreement.

**“Consent”** means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any governmental, quasi-governmental, regulatory or judicial body, entity, authority or tribunal.

**“Construction and Demolition Waste”** means wastes from construction and demolition operations and shall include, but shall not be limited to concrete, bricks, plumbing fixtures, plastics, and lumber.

**“Delivery Term”** means the period of time commencing of the Effective Date and lasting as long as the TARE Agreement shall be in effect, but in no event shall such period extend beyond June 30, 2022 at 11:59 p.m. Notwithstanding the foregoing, if the parties to the TARE Agreement renew the TARE Agreement, this Agreement shall so renew for an equal period of time subject to the Parties’ mutual agreement. If the TARE Agreement shall no longer be in full legal effect, then this Agreement shall terminate. In this event, both parties reserve the right to establish a new contract or reestablish the existing contract

**“Eligible Disaster Debris”** means Eligible Disaster Debris shall mean vegetative waste, qualifying for and meeting the most current stipulated requirements for debris removal reimbursement as stipulated by Federal Emergency Management Agency.

**“FOB”** means freight on board.

**“Hazardous Waste”** shall have the meaning set forth in Oklahoma Statutes §27A-2-7-103, as amended from time to time.

**“Indemnifying Party,” “Indemnified Party,” and “Indemnified Parties”** have the meanings specified in Section 5.02 hereof.

**“Loss” and “Losses”** have the meanings specified in Section 5.02 hereof.

**“ODEQ”** means the Oklahoma Department of Environmental Quality.

**“Recovery Facility Receiving Times”** means Monday through Friday from 5:30 am to 5:30 pm CENTRAL TIME, exclusive of Holidays, or such other times as specified by Covanta upon thirty (30) days prior to written notice when Covanta will staff the scale house. For the purpose of this Agreement, a Holiday means the following:

- a. New Year’s Day;
- b. Memorial Day;
- c. Independence Day;
- d. Labor Day;
- e. Thanksgiving Day; and
- f. Christmas Day.

If a Holiday occurs on a Monday through Friday, Covanta shall operate the Recovery Facility on Saturday from 6:00 am, Central Time to 2:00 pm, CENTRAL TIME. Notwithstanding the previous, the Recovery Facility shall not receive Acceptable Solid waste during scheduled Recovery Facility outages for which Covanta has given the BAMA at least thirty (30) days advance written notice.

BAMA will be assigned Driver Assisted Terminal (DAT) cards for each vehicle which will allow twenty-four (24) hour per day access to the Recovery Facility.

**“Term”** has the meaning specified in Section 7.01 hereof.

**“Ton”** means a “short ton” of 2,000 pounds.

**“Unacceptable Recovery Facility Waste”** means: Unacceptable Waste shall mean Eligible Disaster Debris; Hazardous Waste; Construction and Demolition Waste; poisons; acids; caustics; explosives; body wastes not contained within garbage bag(s); automobile frames; materials which may cause damage to the Recovery Facility or Recovery Facility personnel; animal excreta or any article or substances soiled by human or animal excreta that has not been wrapped and tightly sealed in moisture proof paper or wrapping; refuse which has been combined or mixed with any of the above-mentioned items; and any materials which cannot be processed at the Recovery Facility, which can cause the Recovery Facility operations problems, which would have a reasonable possibility of causing injury to health, safety, or property, or are prohibited by Applicable Law or Recovery Facility Consent requirements.

**“Uncontrollable Circumstance” or “UCC”** means any act, event or condition, occurring on or after the Effective Date, that has had, or may reasonably be expected to have, a material adverse effect on the rights or the obligations of a Party under this Agreement, or a material adverse effect on the Recovery Facility, 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 any condition required of such Party under this Agreement. UCC’s may include, but shall not be limited to, the following:

- (a) an act of God, landslide, lightning, earthquake, fire, explosion, flood, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance or any similar occurrence;
- (b) the order and/or judgment of a federal, state or local court, administrative agency or governmental body;
- (c) the suspension, termination, interruption, denial or failure of renewal of any Consent essential to the operation of the Recovery Facility;
- (d) a labor dispute, strike, work slowdown or work stoppage involving essential employees or contractors;
- (e) a Change in Law;
- (f) the partial or entire loss of, inability to obtain, or delay in the provision of any utility services, including water, sewage, fossil fuels and electric power, necessary for operation of the Recovery Facility or blockage of access to the Recovery Facility;
- (g) the inability of Covanta to obtain required supplies from anywhere within the continental United States; or

(h) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Recovery Facility or any portion thereof by action of any federal, state, county or local governmental, quasi-governmental or regulatory agency or authority.

## **ARTICLE II – DELIVERY AND ACCEPTANCE OF WASTE**

**2.01 Acceptable Recovery Facility Waste.** Subject to the provisions of Section 2.05, during the Delivery Term, BAMA shall make Covanta its primary disposal option, and may deliver or cause to be delivered FOB to the Recovery Facility, and Covanta shall accept, Acceptable Recovery Facility Waste generated within the municipal boundaries of the City. BAMA shall deliver or cause to be delivered Acceptable Recovery Facility Waste to the Recovery Facility during Recovery Facility Receiving Times or via DAT, and shall comply with the hauler's rules and regulations of the Recovery Facility, as those rules and regulations are generally applied and are amended from time to time by Covanta, in the delivery and disposal of Acceptable Recovery Facility Waste at the Recovery Facility. BAMA will advise Covanta regarding anticipated Acceptable Recovery Facility Waste tonnage changes associated with implementation of recycling or other causes that could increase or decrease deliveries so that Covanta can effectively plan Recovery Facility operations.

### **2.02 Exception for Recyclables**

Any recyclable material collected by BAMA under any future recycling program is exempt from this agreement. Recycling program rejects, which shall mean the municipal solid waste material that is not recyclable but rejected from the recycling process, will be delivered to the Recovery Facility. Diverting recyclable materials collected by BAMA to Covanta may be implemented with prior approval from Covanta.

**2.03 Weighing of Waste Deliveries.** Covanta shall cause to be maintained weighing facilities at the Recovery Facility for the purpose of determining the total tonnage of Acceptable Recovery Facility Waste delivered to the Recovery Facility. The weighing facilities at the Recovery Facility shall be tested for accuracy at least once each calendar year, at the expense of the Recovery Facility of such weighing facilities, and a copy of the most recent test results shall be disclosed to the other Party upon request.

### **2.04 Inadvertent Deliveries of Unacceptable Recovery Facility Waste; Removal of Same; Title.**

Covanta may inspect each delivery to the Recovery Facility made by or on behalf of BAMA and may weigh the delivery vehicle both before and after it is unloaded. Subject to Applicable Law, Covanta may reject any portion of a delivery by or on behalf of BAMA that Covanta determines does not constitute Acceptable Recovery Facility Waste, either before or after said delivery has been emptied from the delivery vehicle, and in conjunction with such rejection, Covanta may also reject the entire contents of a delivery vehicle if Covanta determines that a portion is Unacceptable Recovery Facility Waste. Covanta further may remove from the Recovery Facility, transport and dispose of all Unacceptable Recovery Facility Waste from BAMA, transport and dispose of all Unacceptable Recovery Facility Waste delivered by or on behalf of BAMA, as BAMA's agent to BAMA's alternative location, Waste Management's Quarry Landfill. The fee for disposal shall

be no more than the fee charged to BAMA under the agreement between BAMA and Waste Management for Solid Waste Disposal. The fee for disposal shall be billed directly to BAMA. Removal, transport and disposal of Unacceptable Recovery Facility Waste shall be accomplished in accordance with Applicable Laws. Title to Unacceptable Recovery Facility Waste never shall pass to Covanta; title to Acceptable Recovery Facility waste shall pass to Covanta after inspection and acceptance at the Recovery Facility by Covanta.

#### **2.05 Priority Access.**

During all hours Covanta shall provide priority access to BAMA vehicles ahead of vehicles discharging materials on behalf of Covanta's other customers, the same as provided for the other regional cities served by Covanta other than the City of Tulsa vehicles or those vehicles working on behalf of the City of Tulsa.

#### **2.06 Diversion of Waste Deliveries.**

Covanta may divert Acceptable Recovery Facility Waste due to facility outage or other reason. In the event of such diversion, Covanta may divert, and BAMA may deliver, such Acceptable Recovery Facility Waste to BAMA's alternative location, or other mutually agreeable alternative location. Covanta shall be responsible for any cost for the disposal at the alternative site and shall invoice BAMA pursuant to the rates in this Agreement. Covanta shall immediately notify BAMA by telephone in the event Covanta elects to divert BAMA deliveries.

BAMA may divert, due to excessive wait times from Recovery Facility delays and/or excessive wait times from high set outs due to holiday pick up schedules. BAMA shall make all reasonable efforts to cause all such Acceptable Recovery Facility Waste to be delivered to the Recovery Facility throughout the year, subject to seasonal fluctuations in waste flow and holidays. In the event total wait times (turnaround time plus wait time in line to get to scales) at Covanta exceeds 45 minutes, BAMA may elect to divert its Acceptable Recovery Facility Waste to BAMA's alternative location. BAMA shall immediately notify Covanta by telephone in the event BAMA elects to divert BAMA deliveries due to excessive wait times. Covanta will communicate Recovery Facility operational conditions which could create wait times as far in advance as possible. Covanta shall not be responsible for any BAMA cost for the disposal at the alternative site if BAMA elects to divert due to excessive wait times.

For the purpose of this Agreement, high set outs typically occur:

- a. The Monday and Tuesday following Thanksgiving Day weekend;
- b. The next two pick up days following Christmas Eve and Christmas Day;
- c. The Monday following a Thursday holiday;
- d. The Tuesday following a Friday holiday;
- e. Two weeks following a major storm event;

For the purpose of this Agreement, BAMA refuse Holidays include the following:

- a. New Year's Day;

- b. Martin Luther King Day;
- c. Good Friday;
- e. Memorial Day;
- f. Independence Day;
- g. Labor Day;
- h. Veterans Day;
- e. Thanksgiving Day and the day following;
- f. Christmas Eve and Christmas Day

**2.07 Optional Renewal.** After the sixth (6<sup>th</sup>) anniversary of the Effective Date, BAMA shall have the option to renew this Agreement for up to two (2) additional two (2) year optional renewal terms, provided that the TARE Agreement has been so renewed. Covanta may prohibit BAMA from exercising an optional renewal terms by providing written notice on or before twelve (12) months preceding the scheduled date of expiration of the term or the then current optional renewal term of this Agreement. If Covanta does not provide such written notice to BAMA, BAMA may upon written notice to Covanta not later than one hundred twenty (120) calendar days preceding such date or the then current optional renewal term of the Agreement exercise such optional renewal term by such notice. This provision in no way limits BAMA'S right to terminate this Agreement at any time during the Delivery Term.

### **ARTICLE III – SERVICE AND TIP FEE PAYMENTS**

**3.01 Service and Tip Fees.** As compensation for the services to be rendered hereunder, for which Covanta shall invoice BAMA on a monthly basis as provided in Section 3.02: BAMA shall pay to Covanta the Acceptance Fee as written herein.

**3.02 Billing.** Covanta shall provide to BAMA an invoice for each calendar month during the Term for any amounts owed hereunder by BAMA to Covanta within ten (10) days of the end of such calendar month, and BAMA shall pay, reasonably dispute or partially pay and partially reasonably dispute the invoice within thirty (30) days after its receipt thereof. Covanta shall invoice BAMA at the address set forth in Article VII in accordance with the following to the Recovery Facility.

(a) The invoice shall set forth the total tonnage of Acceptable Recovery Facility Waste delivered by or on behalf of BAMA to Recovery Facility as weighed upon delivery to the Recovery Facility.

(b) The invoice shall set forth a calculation showing the Acceptance Fee multiplied by the number of tons of Acceptable Recovery Facility Waste and the calculation and a reasonably-detailed description of any other amounts claimed to be due to Covanta from BAMA hereunder.

(c) All such invoices submitted shall be generated on the basis of the official weigh scale records or tickets as of the delivery to the Recovery Facility. A detailed report substantiating the invoice shall include gross weight, tare weight, net weight, date, time and vehicle identification of each BAMA vehicle delivery included in the invoice.



(d) The Parties shall provide to each other copies of all delivery and weight records in their possession and control of all hauling vehicles used in the performance of the services hereunder and a monthly data file of all transactions. Copies of all such daily delivery and weight records shall be maintained by the Parties for at least one (1) year beyond the termination or expiration of the Agreement.

(e) Covanta shall provide any other documentation reasonably requested by BAMA to substantiate each invoice.

**3.03 Books and Records.** Each Party shall cause those of its books and records relating to the quantity of Acceptable Recovery Facility Waste delivered by or on behalf of BAMA and accepted by Covanta to be available to representatives of other Party for inspection upon reasonable notice and during normal business hours. All such inspections shall be conducted in such manner as not to cause interference with the operations of the Recovery Facility and such representatives shall comply with all reasonable rules adopted by the Party whose books and records are being inspected, or the owners of the location where such books and records are made available, including rules relating to maintaining the safety of those persons present on the site where the books and records are located.

#### **ARTICLE IV: REPRESENTATIONS AND COVENANTS**

**4.01 BAMA Representations.** BAMA hereby represents and warrants to Covanta as follows:

(a) BAMA has developed the requisite expertise for performing the work required of it hereunder (including but not limited to the delivery of Acceptable Recovery Facility Waste to the Recovery Facility), has adequate resources and equipment in good working order together with fully trained and experienced personnel capable of performing the services required of it hereunder 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. BAMA has obtained all Consents required to comply with all Applicable Law in performance of the services required of it hereunder, and such Consents are valid and in full force and effect.

(b) Neither the execution nor the delivery by BAMA of this Agreement nor the performance by BAMA of its obligations hereunder (1) conflicts with, violates or results in a breach of any Applicable Law, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement, order or instrument to which BAMA is a party or by which BAMA is bound, or constitutes a default under any such judgement, decree, agreement order or instrument.

**4.02 Covanta Representations.** Covanta hereby represents and warrants to BAMA as follows:

- (a) Covanta is engaged in the solid waste 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 of it hereunder 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. The Recovery Facility is in compliance in all material respects with all Applicable Law. Covanta has obtained all Consents required to comply with all Applicable Law to the performance of the services required of it hereunder, and such Consents are valid and in full force and effect.
- (b) Neither the execution nor the delivery by Covanta of this Agreement nor the performance by Covanta of its obligations hereunder (1) conflicts with, violates or results in a breach of any Applicable Law, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement, order or instrument to which Covanta is a party or by which Covanta is bound, or constitutes a default under any such judgment, decree, agreement, order or instrument.

**4.03 BAMA Covenants.** In addition to and without restricting in any way any other obligations or covenants set forth herein, BAMA covenants and agrees as follows:

- (a) BAMA shall perform its obligations hereunder in a good, safe and workmanlike manner and in accordance with sound environmental practices.
- (b) Upon reasonable written notice, BAMA shall provide to Covanta copies of all Consents issued to BAMA which are applicable to the services to be provided by BAMA hereunder.
- (c) BAMA shall comply with all Applicable Law applicable to the services to be provided by BAMA hereunder.
- (d) BAMA shall promptly notify Covanta of the occurrence of any event, condition, or occurrence, or legal, judicial, or regulatory proceedings that may result in: (1) the material noncompliance with any Applicable Law, but only if such noncompliance materially affects the ability of BAMA to provide the services to be provided by BAMA hereunder; (2) any material inaccuracy of, or material noncompliance with, any representations, warranties or covenants by BAMA in this Agreement; or (3) a material adverse effect upon the business, operations or affairs of BAMA or that may materially adversely affect the ability of BAMA to supply the services to be provided by BAMA hereunder.

**4.04 Covanta Covenants.** In addition to and without restricting in any way any other obligations or covenants set forth herein, Covanta covenants and agrees as follows:

(a) Covanta shall perform its obligations hereunder in a good, safe and workmanlike manner and in accordance with sound environmental practices.

(b) Upon reasonable written notice, Covanta shall provide to BAMA copies of all Consents issued to Covanta which are applicable to the Recovery Facility or the services to be provided by Covanta hereunder.

(c) Covanta shall (and shall cause the Recovery Facility to) comply with all Applicable Law applicable to the services to be provided by Covanta hereunder.

(d) Covanta shall promptly notify BAMA of the occurrence of any event, condition, or occurrence, or legal, judicial, or regulatory proceedings that may result in: (1) the material noncompliance with any Applicable Law, but only if such noncompliance materially affects the ability of Covanta to provide the services to be provided by Covanta hereunder; (2) any material inaccuracy of, or material noncompliance with, any representations, warranties or covenants by Covanta in this Agreement; or (3) a material adverse effect upon the business, operations or affairs of Covanta or that materially affects the ability of Covanta to provide the services to be provided by Covanta hereunder.

## **ARTICLE V – INSURANCE & INDEMNITY**

### **5.01 Insurance.**

(a) Covanta shall obtain and maintain continuously at its own expense through the Delivery Term, and furnish to the other Party certificates attesting to the existence of, the following minimum insurance:

- (i) Worker's Compensation Insurance as prescribed or permitted by Applicable Law; Employers liability in the amount of \$1,000,000 each accident
- (ii) Commercial General Liability and Property Damage Insurance, with Contractual Liability and Products/Completed Operations coverage, with Primary limits of liability of \$1,000,000, combined occurrence, for bodily Injury and property damage
- (iii) Commercial Automobile Liability Insurance as required by Applicable Law, but with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage, combined single limit
- (iv) Commercial Pollution Legal Liability Insurance with limits of liability as follows: Covanta - \$5,000,000 per claim
- (v) Excess Liability Insurance with limits of not less than \$5,000,000 per occurrence, supplementing the primary insurances required by (i), (ii) and (iii) above

(b) BAMA is self-insured and shall maintain sufficient reserves to pay claims up to the limit of liability set forth in the Oklahoma Governmental Tort Claims Act.

**5.02 Indemnity.** To the fullest extent permitted by Applicable Law, each Party (the “**Indemnifying Party**” shall indemnify, defend and hold harmless the other Party, its parent companies, partners, affiliates and subsidiary companies and their respective directors, officers, employees, agents, contractors, subcontractors, representatives, successors and assigns (each of the foregoing, an “**Indemnified Party**” and, collectively, the “**Indemnified Parties**”), from and against any and all claims, losses, liabilities, damages, fines, penalties, taxes, interest, fees, costs, or expenses (including, without limitation, reasonable attorneys’ fees) (each, a “**Loss**” and collectively the “**Losses**”) to the extent resulting or arising from (i) the acts, errors or omissions of the Indemnifying Party, its employees, agents, directors, officers, trustees, contractors or subcontractors; (ii) the breach of any representation, warranty, covenant or agreement of the Indemnifying Party under this Agreement; and/or (iii) the enforcement of this indemnity; provided, however, that the Indemnifying Party shall not be obligated to provide the indemnification hereunder to the extent that a Loss is caused by the negligence or willful misconduct of the Indemnified Party seeking indemnification. Neither Party shall have any liability to the other under this Agreement for any special, consequential, punitive, indirect or incidental damages, including loss of use, loss or delayed receipt or revenues, loss of anticipated profits, cost of capital loss of goodwill or similar damages.

## **ARTICLE VI – DEFAULT AND TERMINATION**

**6.01 Covanta Events of Default.** Each of the following shall constitute an “**Event of Default**” by Covanta:

(a) Covanta shall fail to accept from BAMA the Acceptable Recovery Facility Waste Covanta has committed to accept hereunder;

(b) Covanta shall breach any material representation, warranty, covenant or agreement under this Agreement or shall fail to timely perform any other material obligation under this Agreement; or

(c) Covanta shall be or become bankrupt or make an arrangement with or for the benefit of its creditors or consent to or acquiesce in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency arrangement or similar proceeding shall be instituted by or against Covanta under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer shall be taken or filed by Covanta approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of Covanta which shall substantially interfere with its performance hereunder.

**6.02 BAMA Events of Default.** Each of the following shall constitute an “Event of Default” by BAMA:

(a) BAMA shall fail to pay amounts owed to Covanta under this Agreement within thirty (30) days following receipt of an invoice from Covanta therefor;

(b) BAMA shall breach any material representation, warranty, covenant or agreement under this Agreement or shall fail to timely perform any other material obligation under this Agreement; or

(c) BAMA shall be or become bankrupt or make an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency arrangement or similar proceeding shall be instituted by or against BAMA under the laws of any jurisdiction, which proceeding has not been dismissed within ninety (90) days, or (iii) any action or answer shall be taken or filed by BAMA approving of, consenting to, or acquiescing in such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of BAMA which shall substantially interfere with its performance hereunder.

**6.03 Remedies.** An Event of Default described in Section 6.01 and 6.02 shall become a “Default” under this Agreement if not cured within forty-five (45) days after written notification to the defaulting Party from the other Party describing in reasonable detail the nature of the Event of Default; provided, however, that such forty-five-day period shall be extended for up to an additional ninety (90) days so long as the breaching Party is actively and continuously pursuing good faith efforts to cure the Event of Default; provided, further, that an Event of Default of the character described in Sections 6.01(c) and 6.02(c) shall be a “Default” immediately, with or without delivery of such notice.

(a) **Terminations by BAMA.** BAMA shall have the right to terminate this Agreement by delivering written notice to Covanta if: (i) Covanta shall be in Default under Sections 6.01 and 6.03 (BAMA shall also be permitted to recover actual damages resulting from any such Default); or (ii) there is one or more UCCs; or (iii) there is one or more Changes in Law, or a surcharge or surcharges based upon one or more Changes in Law (but only if the aggregate amount of the surcharge(s) over the Term would total at least five hundred thousand dollars (\$500,000), affecting BAMA, by delivering a written notice to Covanta. This Agreement shall terminate on the forty-fifth (45<sup>th</sup>) day following the date of such notice; provided, however, that a Default described in Section 6.01 (c) shall not require notice by BAMA and shall terminate this Agreement forthwith.

(b) **Termination by Covanta.** Covanta shall have the right to terminate this Agreement by delivering written notice to BAMA if: (i) BAMA shall be in Default under Section 6.02 and 6.03 (Covanta shall also be permitted to recover actual damages resulting from any such Default); (ii) there is a UCC affecting Covanta, the Recovery Facility, and/or the Affiliates; or (iii) there is a Change in Law affecting Covanta, the Recovery Facility, and/or the Affiliates. This Agreement

shall terminate on the forty-fifth (45<sup>th</sup>) day following the date of such notice; provided, however, that a Default described in Section 6.02(c) hereof shall not require notice by Covanta and shall terminate this Agreement forthwith.

(c) **Damages.** Except as otherwise provided in this Article VI, neither Party shall have the right to terminate this Agreement or to require specific performance by the other Party and damages shall ordinarily be considered an adequate remedy for a Default by either Party under this Agreement.

#### **6.04 General.**

(a) Articles V, VI and VII shall survive the termination or expiration of this Agreement.

(b) The waiver of any Default by either Party, or the failure to give notice of any Event of Default in accordance with the first paragraph of Section 6.03, with respect to any Default or Event of Default shall not constitute a waiver of that or any subsequent Default or Event or Default or be deemed to be a failure to give such notice with respect to any subsequent Event of Default.

**6.05 No Liability for UCC.** Except for any obligation to pay money, neither Party Shall be liable to the other for any failure or delay in performance of any obligation under this Agreement due to the occurrence of a UCC. The Party whose performance under this Agreement has been affected by a UCC shall provide prompt notice of the commencement and the cessation of such UCC to the other Party. Whenever a UCC shall occur, the Party claiming to be adversely affected thereby shall perform in accordance with this Agreement to the extent not adversely affected by such UCC (subject to the requirements of other contracts effective prior to the date hereof) and shall, as quickly as reasonably possible, attempt to eliminate the cause therefor, reduce costs and resume performance under this Agreement.

### **ARTICLE VII – MISCELLANEOUS**

**7.01 Term.** Unless sooner terminated in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue in effect until the end of the Delivery Term (the “Term”).

**7.02 Assignment and Subcontracting.** This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either Party may assign this Agreement, without the prior written consent of the other Party, whether by operation of law, merger or otherwise, to any Affiliate, subsidiary, parent, or successor; provided, further, that no such assignment shall release the assigning Party from its obligations under this Agreement, unless the other Party expressly releases the assigning Party in writing.

**7.03 Further Assurances.** Each Party agrees to execute and deliver any instrument and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement.

**7.04 Relationship of the Parties.** Except as otherwise explicitly provided herein, no Party shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent or legal representative of any other Party nor to create any fiduciary relationship between or among the Parties.

**7.05 Notices.** Except as otherwise expressly provided in this Agreement, any notices or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, by commercial overnight courier, by telecopy (receipt confirmed) or by electronic mail as follows:

If to Covanta:

Covanta Tulsa Renewable Energy, LLC  
Tulsa, OK 74107  
Phone: 918-699-0011  
Fax: 918-699-0017  
Attn: Matthew Newman  
Email: [MNewman@Covanta.com](mailto:MNewman@Covanta.com)

With a copy to:

Covanta Energy Corporation  
445 South Street  
Morristown, New Jersey 07960  
Phone: (862) 345-5148  
Fax: (862) 345-5140  
Attn: Christopher Cunico  
Email: [ccunico@Covanta.com](mailto:ccunico@Covanta.com)

If to BAMA via United States Postal Service mail/telecopy/electronic mail:

City of Broken Arrow  
Attn: General Services Department  
P.O. Box 610  
Broken Arrow, OK 74013

If to BAMA via commercial overnight courier:

City of Broken Arrow  
Attn: General Services Department

220 S 1<sup>st</sup> St  
Broken Arrow, OK 74012

With a copy to:

City of Broken Arrow  
Attn: City Attorney  
220 S 1<sup>st</sup> St  
Broken Arrow, OK 74012

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

**7.06 Waiver.** The waiver by either Party of a default or a breach of any provision of this agreement by the other Party shall not operate or be construed to operate as a waiver of any other provision or subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of that or any subsequent default or breach.

**7.07 Modifications.** The provisions of this Agreement shall (a) constitute the entire agreement between the Parties, and (b) be modified only in writing duly executed by the Party to be bound.

**7.08 Headings.** Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

**7.09 Governing Law/Dispute Resolution.** This Agreement and any question concerning its validity, construction or performance shall be governed by Oklahoma law, irrespective of the principles of conflicts of law. The Parties agree that any controversy, dispute or claim arising out of or relating to this Agreement or a breach of any of the terms or conditions of this Agreement, which cannot be resolved by the Parties within thirty (30) days after written notice by either party, shall be submitted to non-binding arbitration by a single arbitrator in Tulsa, OK as provided by the American Arbitration Association or, if mutually agreed to by the Parties, other organization or body. The cost of any arbitration proceeding under this provision shall be shared equally by the parties, and each Party shall be responsible for its own attorney's fees. The Parties agree that all of the negotiations and arbitration proceedings relating to such disputes and all testimony, transcripts and other documents relating to such arbitration shall be treated as confidential and will not be disclosed or otherwise divulged to any other person except as necessary in connection with such negotiations and arbitration proceedings or as required by Applicable Law. Notwithstanding anything to the contrary in this Section, the Parties shall have the right to seek temporary,



preliminary and permanent equitable relief including, without limitation, injunctive relief and specific performance, to prevent any breach or threatened breach of this Agreement.

**7.10 Venue of Actions.** The Parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the district court of Tulsa County.

**7.11 Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which shall be deemed the same instrument. Facsimile and portable document format (PDF) copies of signatures shall be deemed original signatures.

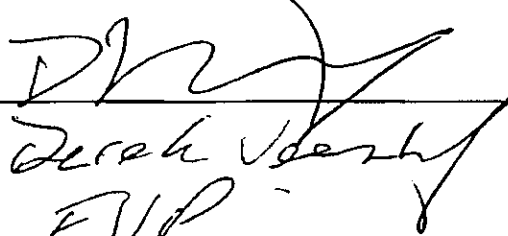
**7.12 Severability.** If any provision of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

**7.13 Interest on Overdue Payments.** All payments to be made under this Agreement outstanding after the applicable due date shall bear interest at the maximum lawful rate, or 1.5% per month, whichever rate is lower.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as an instrument under seal by their duly authorized representatives as of the day and year first above written.

**COVANTA TULSA RENEWABLE ENERGY, LLC**

By:   
Name: Derek Veeney  
Title: EVP

**BROKEN ARROW MUNICIPAL AUTHORITY**

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

Name:

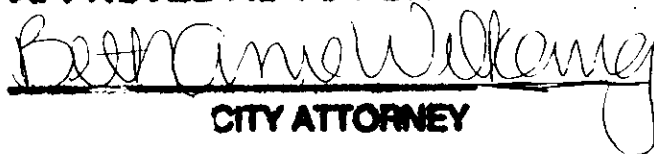
Title: Chairman

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

Name:

Title: City Clerk

**APPROVED AS TO FORM:**

  
**CITY ATTORNEY**

[Signature page to Municipal Solid Waste Disposal Agreement dated as of October 18, 2016.]