



UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

(732) 382-9400

FAX (732) 382-5862

RESOLUTION NO.: 19-2016

DATE: February 10, 2016

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION OF A THIRD AMENDMENT TO THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT AND A SECOND AMENDMENT TO THE FACILITY LEASE AGREEMENT BY AND BETWEEN THE AUTHORITY AND COVANTA UNION, LLC.

APPROVED AS TO FORM:
Joseph C. Bodek
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: Joseph C. Bodek

By: [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Badri</i>		✓					
<i>Criscione</i>	✓		✓				
<i>Eastman</i>	✓		✓				
<i>Erdos</i>	✓		✓				✓
<i>Jackus</i>		✓					
<i>Kahn</i>	✓		✓			✓	
<i>Kennedy</i>		✓					
<i>People</i>	✓		✓				
<i>Scutari</i>	✓		✓				
<i>Lombardo, Alternate No. 1</i>	✓		✓				
<i>McManus, Alternate No. 2</i>	✓		✓				

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
APPROVING AND AUTHORIZING THE EXECUTION OF A THIRD
AMENDMENT TO THE AMENDED AND RESTATED WASTE DISPOSAL
AGREEMENT AND A SECOND AMENDMENT TO THE FACILITY
LEASE AGREEMENT BY AND BETWEEN THE AUTHORITY AND
COVANTA UNION, LLC.**

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the “Act”), each county within the State of New Jersey is designated a solid waste management district with responsibility for the development of a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district; and

WHEREAS, in accordance with the Act, the County of Union (“County”) has previously developed the Union County District Solid Waste Management Plan (the “County Plan”) for the purpose of, among other things, managing the disposal and/or recycling of solid waste generated within the County and has designated the Union County Utilities Authority (the “Authority”) as implementing agency for the County Plan; and

WHEREAS, the Authority is the owner of the Union County Resource Recovery Facility, a 1,540 tons per day waste-to-energy facility, located in the City of Rahway, New Jersey (the “UCRRF”), which has been leased to and is operated by Covanta Union, LLC. (“Covanta”), formerly known as Ogden Martin Systems of Union, Inc., as part of a restructuring undertaken by the Authority in 1998 following the decision in Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al., 112 F.3d 652 (3d Cir. 1997), cert. den. 522 U.S. 966 (1997), pursuant to the terms of a Facility Lease Agreement, dated as of July 15, 1998 (the “Facility Lease”), an Amended and Restated Waste Disposal Agreement, dated as of February 15, 1998, as amended and restated as of June 15, 1998 and a First Amendment thereto, dated as of July 18, 2003; and

WHEREAS, on prior occasion pursuant to duly adopted resolution, the Authority and Covanta agreed to amend the Facility Lease Agreement, and Amended and Restated Waste Disposal Agreement to extend their respective terms in exchange for modifications of the provisions, among other things, for annual lease payments and sharing of revenues generated at the UCRRF; and

WHEREAS, the amendments of the Facility Lease Agreement and Disposal Agreement, and a refinancing of certain outstanding Authority solid waste facility bonds and the issuance of new bonds were approved by New Jersey Department of Environmental Protection (“NJDEP”) and the Division of Local Government Services within the Department of Community Affairs, pursuant to the McEnroe Act, N.J.S.A. 13:1E-136 et seq.; and

WHEREAS, coincident with the modifications of the Facility Lease Agreement and Amended and Restated Waste Disposal Agreement, the County adopted an amendment to the

County Plan reaffirming regulatory flow control over the delivery of all Processible Waste generated with the County to the UCRRF; and

WHEREAS, the Authority and Covanta have subsequently engaged in extensive discussions and negotiations intended to establish the basic terms and conditions for a further extension of the Facility Lease Agreement and modification of the Authority's waste delivery obligations under the Amended and Restated Waste Disposal Agreement; and

WHEREAS, on prior occasion pursuant to duly adopted resolution, the Authority approved and authorized the execution of a Memorandum of Understanding ("MOU") with Covanta, memorializing the material terms of a proposed extension of the Facility Lease Agreement for the UCRRF for an additional twenty-two years through December 15, 2053; and

WHEREAS, pursuant to its express terms, the MOU is intended to serve as the basis for negotiation of definitive agreements and is not binding on and enforceable by either the Authority or Covanta, and requires the parties to negotiate in good faith certain proposed material terms and provisions in the documents necessary for its implementation; and

WHEREAS, the Authority and Covanta have successfully concluded negotiations lead to amendments of the Facility Lease Agreement and Amended and Restated Waste Disposal Agreement, the amended agreements have been presented to the Authority for consideration and, based upon the Authority's review of the amendments to the Facility Lease Agreement and Amended and Restated Waste Disposal Agreement, the Authority is satisfied that the amended terms are in the best interests of the Authority and the citizens of the County; and

WHEREAS, the Authority desires to approve and authorize the execution of the Second Amendment to the Facility Lease Agreement, and the Third Amendment to the Amended and Restated Waste Disposal Agreement, in substantially similar form as attached hereto, and to authorize the Executive Director and Special Counsel to proceed with any and all steps necessary in order to obtain all necessary approvals from NJDEP implement the provisions of the amended agreements; and

WHEREAS, the Authority believes that the terms of the Second Amendment to the Facility Lease Agreement, and the Third Amendment to the Amended and Restated Waste Disposal Agreement, are necessary for its efficient operations and to continue to provide effective solid waste disposal services in the County at reasonable rates;

NOW, THEREFORE, BE IT RESOLVED, by the Union County Utilities Authority, as follows:

1. The aforesaid recitals are incorporated herein as though fully set forth at length.
2. The Second Amendment to the Facility Lease Agreement, and the Third Amendment to the Amended and Restated Waste Disposal Agreement are approved in substantially

the form attached hereto, and the Chairman is authorized and further directed to execute the Second Amendment to the Facility Lease Agreement and the Third Amendment to the Amended and Restated Waste Disposal Agreement, which may include any and all non-material revisions as may be necessary and as are approved by the Chairman after consultation with the Executive Director and Special Counsel.

3. The enforceability of the Second Amendment to the Facility Lease Agreement and the Third Amendment to the Amended and Restated Waste Disposal Agreement is contingent upon the satisfaction of all of the conditions precedent recited therein.

4. The Executive Director and Special Counsel are hereby authorized to take such actions as are deemed necessary to obtain all necessary approvals of the Second Amendment to the Facility Lease Agreement, and the Third Amendment to the Amended and Restated Waste Disposal Agreement to implement their respective provisions.

5. This resolution shall take effect immediately.

**THIRD AMENDMENT TO
AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT (the "Third Amendment") dated as of-----, 2016, is entered into between the Union County Utilities Authority (the "UCUA"), a public body corporate and politic created and existing under the laws of the State of New Jersey, and Covanta Union LLC, ("Covanta Union"), a limited liability company organized and existing under the laws of the State of Delaware .

WITNESSETH:

WHEREAS, the UCUA and Covanta Union are parties to an Amended and Restated Waste Disposal Agreement, dated as of February 15, 1998, as amended and restated as of June 15, 1998 (the "Agreement");

WHEREAS, the UCUA and Covanta Union amended the Agreement by a First Amendment to Amended and Restated Waste Disposal Agreement, dated as of July 18, 2003 (the "First Amendment");

WHEREAS, the UCUA and Covanta Union amended the Agreement by a Second Amendment to Amended and Restated Waste Disposal Agreement, dated as of December 30, 2010 which was superseded by an Amended and Restated Second Amendment to Amended and Restated Waste Disposal Agreement dated December 15, 2011which, among other things, extended the term of the Agreement to December 15, 2031 (the "Second Amendment");

WHEREAS, the UCUA and Covanta Union are parties to a Facility Lease Agreement, dated as of June 15, 1998 (as amended to date, the "Facility Lease Agreement") and have entered into a Second Amendment to the Facility Lease Agreement of even date extending the term thereof until December 15, 2053 (the "2016 Facility Lease Amendment")t.;

WHEREAS the parties hereto desire to amend the Agreement in order to reduce the Guaranteed Tonnage from 430,000 tons per year to 330,000 tons per year and to make certain other related changes.

NOW THEREFORE, in consideration of the mutual covenants contained herein and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Conditions Precedent to Effectiveness of this Third Amendment. The effectiveness of Sections 2 through 7 inclusive (but excluding Section 7(h)) of this Third Amendment shall be conditioned on the occurrence of the Regulatory Approval Date as defined in the 2016 Facility Lease Amendment .

Section 2. Amendments to Section 1.01 (Definitions).

(a) Section 1.01 is amended by revising the following definitions as set forth below:

(38) “Guaranteed Tonnage” means, 330,000 Tons per Billing Year. Guaranteed Tonnage shall be pro rated for any Billing Year that is less than twelve (12) months.

Section 3. Amendments to Section 2.03 (Rejection of Deliveries).

Section 2.03, as amended by the First Amendment and the Second Amendment, is amended, by replacing the amount “450,000” each place it appears by the amount “350,000”.

Section 4. Amendments to Section 3.01(b) (UCUA Waste Delivery Obligations).

Section 3.01(b) is deleted in its entirety and replaced with the following:

(b) For each Billing Year, commencing with the Billing Year beginning on January 1, 2012, the Parties expect that Municipal Deliveries plus Program Deliveries will at least equal the Guaranteed Tonnage. Each party shall monitor on a monthly basis the actual year-to-date Program Deliveries and the projected Program Deliveries for the remainder of such Billing Year and shall share such information upon request with the other party. If at any time during a Billing Year, UCUA determines that an overall shortfall in deliveries by UCUA hereunder is likely for such Billing Year, despite UCUA’s compliance with Section 3.07, UCUA shall give Covanta Union prompt notice of such Projected Delivery Shortfall for the Billing Year. Covanta Union shall then use commercially reasonable efforts to increase the amount of Acceptable Waste that Covanta Union accepts from sources other than the UCUA so as to mitigate any Projected Delivery Shortfall and/or minimize or eliminate the Shortfall Amount (as defined in Section 4.03(c) hereof). In order to enhance Covanta Union’s ability to mitigate a Projected Delivery Shortfall, UCUA may, on or before October 1 of a Billing Year (including the current Billing Year), give Covanta Union written notice of the amount of a Projected Delivery Shortfall which the UCUA desires Covanta Union to use commercially reasonable efforts to fill on a non-interruptible basis during the following Billing Year.

Section 5. Amendments to Section 3.07 (Special Program).

Schedule 12 shall be amended in the manner set forth attached hereto.

Section 3.07(d), as added by the First Amendment and amended by the Second Amendment, is amended by replacing the amount “430,000” each place it appears by the amount “330,000”, and by replacing the amount “450,000” each place it appears by the amount “350,000”.

Section 6. Amendments to Modify the Definition of Mitigation Revenues.

Part (52) of Section 1.01, the definition for Mitigation Revenues is amended to read as follows:

(52) "Mitigation Revenues" means the sum of:

(A) the product of (1) (i) 10,000 tons or the actual Shortfall, whichever is less, for the Billing Year multiplied by (2) the weighted average of the per Ton disposal fees received by Covanta Union for all Acceptable Waste processed at the Facility (i.e., not the highest and not the lowest disposal fees), excluding (x) Acceptable Waste delivered by on behalf of the UCUA pursuant to this Agreement and (y) the 50,000 Tons per year of Solid Waste (not delivered by or on behalf of the UCUA) with the highest per Ton disposal fees;

Plus

(B) the product of (1) the excess, if any, of the Shortfall over 10,000 tons for the Billing Year multiplied by (2) the lowest weighted average of the per Ton disposal fees received by Covanta Union for the number of Tons of Acceptable Waste described in (1), during the Billing Year during which Covanta Union has Processed Solid Waste in mitigation of UCUA's waste delivery obligations hereunder.

Minus

(C) if, during the Billing Year, the Facility Processes less than 517,000 Tons of Solid Waste, then the Mitigation Revenues shall be reduced by an amount equal to the product of (i) the excess, if any, of 517,000 over the number of Tons of Solid Waste Processed at the Facility during the Billing Year and (ii) the amount set forth in subsection (A)(2), above.

Schedule 10 shall be replaced with the Schedule 10 attached hereto, which shall be an integral part of the calculations of Mitigation Revenues

Section 7. Amendments to Section 4.01(b)(3) (Excess Waste Rate).

Section 4.01 is amended by deleting subsection (b)(3) in its entirety and replacing it with the following,:

(3) If during any Billing Year, Covanta Union, in its sole discretion, accepts any waste in excess of the Guaranteed Annual Tonnage plus 20,000 Tons (the "Excess

Waste”), the service charge applicable to such Excess Waste shall be an amount equal to 110% of the Service Charge in effect for such Billing Year (the “Excess Waste Rate”).

Section 8. Miscellaneous.

(a) Capitalized terms used herein not otherwise defined in this Third Amendment shall have the meaning ascribed to them in the Agreement.

(b) Except as expressly amended herein, all other terms and provisions of the Agreement, as previously amended, shall remain unmodified and in full force and effect.

(c) This Third Amendment contains the entire agreement and understanding between the UCUA and Covanta Union as to the subject matter of this Third Amendment and supersedes all prior agreements, representations and discussions between them concerning the subject matter of this Third Amendment. Deliveries before the Regulatory Approval Date and amounts due in respect thereof shall not be affected even if the payments therefor or the true-up amounts are to be made after the Regulatory Date; provided that so long as the payments provided for in Section 7(c) of the 2016 Lease Amendment are made the reduction of the Guaranteed Tonnage shall be effective on January 1, 2016 and if such payments are not made in accordance with Section 7(c) of the 2016 Lease Amendment, the reduction shall not be effective until January 1, 2017. The UCUA and Covanta Union each represent that, in entering into this Third Amendment, it has not relied on any promise, inducement, representation, warranty, agreement or statement not set forth in this Third Amendment.

(d) This Third Amendment may not be altered or modified by either the UCUA or Covanta Union except by instrument in writing executed by both of them.

(e) The UCUA and Covanta Union each represents and warrants that (i) the person who signs below on its behalf has authority to execute this Third Amendment on its behalf without the further concurrence or approval of any person, entity or court, (ii) all requisite approvals to enter into, and bind the UCUA and Covanta Union, as applicable, to this Third Amendment have been obtained and (iii) this Third Amendment is a valid and binding obligation of such party enforceable against such party in accordance with its terms except to the extent that enforceability thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or limiting creditors’ rights generally and the application of the principles of equity

(f) This Third Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

(g) If the 2016 Facility Lease Amendment is terminated then this Third Amendment shall automatically terminate. .

DRAFT
28 JANUARY 2016

[Remainder of page intentionally left blank. Signature page follows.]

DRAFT
28 JANUARY 2016

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed by their duly authorized officers or agents, as applicable, as of the day and year first above written.

THE UNION COUNTY UTILITIES AUTHORITY

By: _____
 , Chairman

COVANTA UNION, LLC.

By: _____

SCHEDULE 9

PERMITTED REJECTION RIGHTS

Schedule 9 shall be deleted in its entirety and replaced with the following:

SCHEDULE 9

PERMITTED REJECTION RIGHTS

Covanta Union shall (after giving effect to the provisions of Section 2.03(a)(4) of the Amended Disposal Agreement) have the right to reject Acceptable Waste delivered by (or on behalf of) the UCUA to the extent that the amount of Acceptable Waste so delivered exceeds the limits set forth below:

- (a) Weekly 6,730 tons per week,.
- (b) Monthly the anticipated monthly deliveries agreed to by the parties prior to each Billing Year, as provided in Section 3.01 of the Amended Disposal Agreement,.
- (c) Annual Guaranteed Annual Tonnage plus 20,000 tons.

DRAFT
28 JANUARY 2016

SCHEDULE 10

MITIGATION REVENUES SAMPLE CALCULATIONS

DRAFT
28 JANUARY 2016

DRAFT
28 JANUARY 2016

DRAFT
28 JANUARY 2016

**SECOND AMENDMENT TO
FACILITY LEASE AGREEMENT**

THIS SECOND AMENDMENT TO FACILITY LEASE AGREEMENT (the "Second Amendment") dated as of [January--,] 2016, is entered into between the Union County Utilities Authority (the "UCUA"), a public body corporate and politic created and existing under the laws of the State of New Jersey, and Covanta Union, LLC ("Covanta Union"), a limited liability company organized and existing under the laws of the State of Delaware.

WITNESSETH:

WHEREAS, the UCUA and Covanta Union are parties to a Facility Lease Agreement, dated as of June 15, 1998, which was amended by a First Amendment to Facility Lease Agreement dated as of December 15, 2011 and extended the Lease Term to December 15, 2031 (as so amended, the "Facility Lease Agreement").

WHEREAS, the UCUA has issued certain Bonds under the Bond Resolution whose final maturity is December 15, 2031 and such Bonds are outstanding.

WHEREAS, the Facility Lease Agreement has been assigned by UCUA under a Consent dated December 15, 2011 to secure part of the payments under such Bonds and the Company has entered into the Pledge, Assignment and Security Agreement dated December 15, 2011 (the "Company Security Agreement") in connection with the Bonds.

WHEREAS, the UCUA and Covanta Union wish to amend the Facility Lease Agreement by this Second Amendment in order (i) to extend the Lease Term from December 15, 2031 to December 15, 2053 and (ii) to provide for rentals to be paid during such period without modifying the Lease Payments to be made prior to December 15, 2031.

NOW THEREFORE, in consideration of the mutual covenants contained herein and in the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Conditions Precedent to this Second Amendment.

(a) The changes to the Facility Lease Agreement provided for in Section 2 of this Second Amendment shall become effective only if each of the following conditions occurs or is waived in writing by both parties hereto (such waiver to be with in the sole discretion of the respective parties):

- (1) The UCUA shall have applied for, and received, all consents and approvals of all Governmental Authorities required for the transactions contemplated hereby the Third Amendment to the Amended and Restated

Waste Disposal Agreement of even date herewith (the “2016 WDA Amendment”), including without limitation: (i) approval of this Second Amendment and the 2016 WDA Amendment by the New Jersey Department of Environmental Protection(“NJDEP”), (ii) an award of the New Jersey State Volume Cap for the Bonds under NJSA 49:2a et seq. in the amount of [\$_____]and (iii) approval by the County of the solid waste plan amendment that approves this Second Amendment and the certification by NJDEP of the solid waste plan amendment, which consents and approvals shall be in full force and effect and final and not subject to appeal and in form and substance acceptable to Covanta Union.

- (2) Covanta Union shall have secured the approval of this Second Amendment by the Federal Energy Regulatory Commission, which approval shall be in full force and effect and final and not subject to appeal and in form and substance acceptable to Covanta Union and UCUA.
- (3) Covanta Union shall have submitted to the Trustee and the UCUA the officer’s certificate (and Consulting Engineer’s confirmation) required under Section 12(l) of the Company Security Agreement, which certificate shall be in form and substance acceptable to the UCUA.
- (4) The UCUA shall have delivered to the Trustee the opinion of Bond Counsel required by Section 606 of the Bond Resolution.

(b) The date on which the conditions set forth in Section 1 are satisfied or waived is the “Regulatory Approval Date”. The parties agree that if the Regulatory Approval Date shall not have occurred on or before June 30, 2016, Covanta Union may terminate this Second Amendment and the 2016 WDA Amendment by giving five Business Day’s written notice to the UCUA. If the Regulatory Approval Date shall not have occurred on or before September 30, 2016, either party may terminate this Second Amendment and the 2016 WDA Amendment by giving five Business Day’s written notice to the other party.

(c) Each party shall undertake to expedite the issuance of the regulatory approvals and the satisfaction of the conditions set for the in Section 1(a). Each party shall cooperate with the other in securing the approvals and both parties and their counsel shall be entitled to participate in meetings and conference calls with regulators, to review submissions to regulators and to receive copies of communications from regulators.

Section 2. Amendments to Definitions and Usage of Terms

(a) Section 1.01 of the Facility Lease Agreement, entitled “Certain Definitions”, shall be amended by (i) replacing the definitions of “Additional Rent”, “Annual Revenue Share”, “Basic Rent”, “Covanta Union”, “Disposal Agreement”, “Facility Lease Agreement”, “Imposition” and “Lease Payments”, contained therein, with the definitions indicated below, and

DRAFT
28 JAN 2016

(ii) inserting the definition of “Facility Rent” and “Minimum Rent” provided below, in the appropriate alphabetical order,

(4) "**Additional Rent**" shall mean the Non-Ferrous Extraction Fee and the Flow Control Enforcement Fee and the Annual Revenue Share (if any) payable pursuant to Section 3.01A and is a component of the Lease Payment for the portion of the Lease Term ending on December 15, 2026.

(6A) "**Annual Revenue Share**" shall have the meaning assigned thereto in Schedule 4 and is a component of the Lease Payment for the portion of the Lease Term ending on December 15, 2026.

(9) "**Basic Rent**" means collectively, the amounts provided in Section 3.01(a) (i) and is a component of the Lease Payment for the portion of the Lease Term ending on December 15, 2026.

(14A) "**Covanta Union**" means Covanta Union LLC a Delaware limited liability company (which is the successor to Covanta Union, LLC. a corporation (formerly known as Ogden Martin Systems of Union, LLC.), organized and existing under the laws of the State of New Jersey) and its successors and assigns, to the extent permitted under Section 14.01 hereof and Section 8.03 of the Disposal Agreement.

(17) "**Disposal Agreement**" means the agreement by and between the UCUA and Covanta Union entitled, Amended and Restated Waste Disposal Agreement dated as of February 15, 1998, as amended and restated as of June 15, 1998 and further as amended by the “Amended and Restated Second Amendment to Amended and Restated Waste Disposal Agreement”, dated as of December 15, 2011, and the “Third Amendment to Amended and Restated Waste Disposal Agreement” dated as of -----2016 including the Schedules thereto, as amended or supplemented. A copy of the Disposal Agreement is attached hereto as Schedule 1 and by this reference is made a part hereof as if set forth in full herein.

(25) "**Facility Lease Agreement**" means the Facility Lease Agreement, dated as of June 15, 1998, as amended by the First Amendment to Facility Lease Agreement, dated December 15, 2011, and this Second Amendment to Facility Lease Agreement, dated ----15, 2016, including the Schedules hereto, as amended or supplemented.

(25A) "**Facility Rent**" has the meaning set forth in Schedule 5 and constitutes the sole component of the Lease Payments for the portion of the Lease Term beginning on December 16, 2031 and ending on December 15, 2053.

(30) "**Imposition**" means all assessments against the Facility or the Facility Site for local improvements and/or public charges, ordinary or extraordinary, foreseen or unforeseen which are levies or assessed against the Facility of the Facility Site during the Lease Term of this Facility Lease Agreement provided however property taxes, real estate taxes and/or payments made in lieu thereof and assessments or charges of or by the UCUA, the City of Rahway of the

County or any amount that constitutes a Special Pass Through Cost as defined in the Disposal Agreement (regardless of whether the Disposal Agreement is in effect) shall not constitute "Impositions.

(33A) "**Lease Extension Payment**" has the meaning given in Section 3.01A and is a component of the Lease Payment for the Term ending on December 15, 2026.

(34) "**Lease Payments**" means the Basic Rent, Additional Rent, Lease Extension Payment and the Facility Rent.

(37A) "**Minimum Rent**" has the meaning set forth in Schedule 5 and is a component of the Facility Rent for the portion of the Lease Term beginning on December 16, 2031 and ending on December 15, 2053.

(b) All references to Ogden Martin contained in the Facility Lease Agreement, as amended hereby, shall be interpreted to refer to Covanta Union.

Section 3. Amendments to Section 3.01(a) (Rent).

Section 3.01(a) of the Facility Lease Agreement shall be amended and restated in its entirety to provide as follows:

Section 3.01 Lease Payments.

(a) **Basic Rent and Facility Rent.** Covanta Union covenants and agrees to pay (or cause to be paid) Lease Payments to the UCUA for the use of the Facility and the Facility Site, as herein described:

- (i) Basic Rent from December 16, 2011 through December 31, 2026. For the period from December 16, 2011 through December 15, 2026, Covanta Union shall make payment to the Trustee of Basic Rent in the amount and on the date(s) set forth on Schedule 3 hereto.
- (ii) Facility Rent from December 16, 2031 through December 15, 2053. For the period from December 16, 2031 through December 15, 2053, Covanta Union shall make payment of the Facility Rent to UCUA in the amounts and on the dates set forth on Schedule 5 hereto.

Section 4. New Section 3.01A(f) .

A new Section 3.01A(f) shall be added to Section 3.01A of the Facility Lease Agreement, which provides as follows:

(f) Notwithstanding any other provision of this Facility Lease Agreement, the amounts provided for in this Section 3.01A shall not be applicable to any portion of the Lease Term of the Facility Lease Agreement that begins after December 16, 2031.

Section 5. Amendments to Section 4.01 (Lease Term).

Section 4.01 of the Facility Lease Agreement shall be amended and restated to provide as follows:

Section 4.01. Lease Term. The Lease Term of this Facility Lease Agreement shall commence upon the Lease Term Commencement Date and, unless earlier terminated under the provisions of this Facility Lease Agreement, shall continue until the close of business on December 15, 2053. The parties expressly understand and agree that this Facility Lease Agreement shall not be coterminous with, and shall not terminate upon the termination of, the Disposal Agreement. Neither Party shall have an option to extend this Facility Lease Agreement.

Section 6. Technical Amendments

(a) Schedule 5 shall be added to the Facility Lease Agreement in the form set forth in Exhibit A.

Section 7. Certain Payments.

(a) Upon the Regulatory Approval Date, Covanta Union shall immediately make a one-time payment to the UCUA in the amount of \$2,100,000.00 as prepaid Minimum Rent (the "Rent Prepayment"). The amount of the Rent Prepayment shall accrue interest at an annual rate of 6% compounded annually until [December 16, 2031] (producing a balance of Rent Prepayment of approximately \$5.2 million as of the first day of the Second Lease Extension Period). Beginning on January 1, 2032, \$4.0 million of the Rent Prepayment shall be credited against the Minimum Rent payment due for calendar year 2032 and the remaining \$1.2 million portion of the Rent Prepayment shall be credited against the first two installments of the Minimum Rent due in calendar year 2033.

(b) The failure of the Authority to meet that delivery obligation in 2013 and 2014 has resulted in shortfall payments owed to Covanta Union for those years and has further

resulted in a total of \$[1,820,241.53 (as of 12/31/15)] being deposited in escrow with the Bond Trustee. An amount equal to \$1,200,000 was released from escrow on the date hereof and paid to Covanta Union and such payment shall not be attributable to the Shortfall Amount for any particular year and shall not be refundable to the UCUA even if this Second Amendment and the 2016 WDA Amendment are terminated. On the Regulatory Approval Date, the balance of those sums held in escrow shall be released and paid over to Covanta Union in full satisfaction of the Shortfall Fees owed by the UCUA for calendar years 2013 and 2014. On the date hereof, in order to provide for the release and payment provided for in the immediately preceding sentence UCUA and Covanta Union have given irrevocable instructions to the Bond Trustee, to release the balance of such escrowed funds to Covanta Union on the Regulatory Approval Date.

- (c) UCUA agrees that on the Regulatory Approval Date it will pay Covanta Union \$2,093,446 in respect of Shortfall Fees owed under the Disposal Agreement for underdeliveries in 2015 (“2015 Shortfall Fees”). The Rent Prepayment and the 2015 Shortfall Fees shall be netted against each other on the Regulatory Approval Date. Each party shall execute a settlement statement evidencing such netting of such payments and receipt of the amounts due.

Section 8. Miscellaneous.

(a) Capitalized terms used herein and not otherwise defined in this Second Amendment shall have the meaning ascribed to them in the Facility Lease Agreement.

(b) Except as expressly amended herein, all other terms and provisions of the Facility Lease Agreement, as previously amended, shall remain unmodified and in full force and effect.

(c) This Second Amendment contains the entire agreement and understanding between the UCUA and Covanta Union as to the subject matter of this Second Amendment and supersedes all prior agreements, representations and discussions between them concerning the subject matter of this Second Amendment. Section 7(c) shall survive termination of this Second Amendment. The UCUA and Covanta Union each represent that, in entering into this Second Amendment, it has not relied on any promise, inducement, representation, warranty, agreement or statement not set forth in this Second Amendment.

(d) This Second Amendment may not be altered or modified by either the UCUA or Covanta Union except by instrument in writing executed by both of them.

(5) Each party shall bear its own expenses in performing its obligations hereunder.

(e) The UCUA and Covanta Union each represents and warrants that (i) the person who signs below on its behalf has authority to execute this Second Amendment on its behalf without the further concurrence or approval of any person, entity or court, (ii) all requisite

DRAFT
28 JAN 2016

approvals to enter into, and bind the UCUA and Covanta Union, as applicable, to this Second Amendment have been obtained and (iii) this Second Amendment is a valid and binding obligation of such party enforceable against such party in accordance with its terms except to the extent that enforceability thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or limiting creditors' rights generally and the application of the principles of equity.

(f) This Second Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed by their duly authorized officers or agents, as applicable, as of the day and year first above written.

UNION COUNTY UTILITIES AUTHORITY

By: _____
Its:

COVANTA UNION, LLC

By: _____
Its:

EXHIBIT A
SCHEDULE 5

1. **Definitions.** Capitalized words which are used herein as defined terms shall (unless the context clearly requires otherwise) have the meanings ascribed to such words below.

“**UCUA Plant Profits Share**” means for each Year during the Second Lease Extension Period, the amount equal to thirty percent (30%) of the amount (if any) of the sum of (i) Plant Profits for such Year plus (ii) Depreciation and Amortization for such Year minus (iii) Capital Expenditures for such Year minus (iv) the principal component for debt service payable during such Year related to any financed Capital Expenditure (the interest component being reflected as an expense) plus (v) the portion (if any) of the Facility Rent that is included as an expense in the Financial Statements in determining the net income of Covanta Union plus (vi) the portion (if any) of the taxes on the net income of Covanta Union that is included as an expense in the Financial Statements in determining the net income of Covanta Union. The UCUA Plant Profits Share may be a positive or negative amount.

“**Plant Profits**” for a Year means the net income shown on the audited financial statements of Covanta Union for such Year (the “**Financial Statements**”), which shall be prepared in accordance with generally accepted accounting principles (“GAAP”), consistently applied. In the calculation of Net income of Covanta Union, the following items shall be excluded: proceeds of equity investments, proceeds of loans or inter-company borrowings, insurance and condemnation proceeds, transfers from reserves or similar cash transfers, amounts paid to Covanta Union in respect of tort liabilities or any other amounts received by Covanta Union that are not for, or with respect to, services of the Facility or the energy or other products thereof sold during the Second Lease Extension Period. Revenues and expenses arising from contractual or similar arrangements with Covanta Union’s parent or any Affiliates will be valued as if the related goods or services were provided on an arm’s length basis from a third party.[In the event that (x) Covanta Union enters into a contractual or similar arrangement (whether or not written) with any Affiliate(s) with respect to the delivery of Acceptable Waste or Special Waste (as such terms are defined in the Waste Disposal Agreement) to the Facility for processing, and (y) the tipping fees or other charges payable with respect to the delivery of such Acceptable Waste or Special Waste are paid to such Affiliate(s) and not to Covanta Union, such payments to Covanta Union’s Affiliate(s) shall be deemed to constitute revenues on the same basis as, and to the extent that, such payments were made to Covanta Union. Corporate overhead may be included as an expense of Covanta to the extent that it is consistently allocated over the US facilities of Covanta Union’s affiliates on a reasonable and consistent basis.

“**Depreciation and Amortization**” for a Year mean the amounts reflected in the Financial Statements for depreciation and/or amortization

“**Capital Expenditures**” for a Year means the aggregate amount incurred by Covanta Union during the Year for expenses related to the Facility that are capitalized by Covanta Union in accordance with GAAP, consistently applied; provided that (i) any capital expenditures that are financed (whether by third party financing or intercompany loans) shall be accounted for by

including the principal component of the related debt service in the calculation of UCUA Plant Profits Share (the interest component being reflected as an expense) in lieu of the actual amount of the expenditure and (ii) any single capital expenditure in excess of \$10 million that is incurred in any Year shall be financed via third party financing or intercompany loans and Covanta may so finance any capital expenditures.

“Minimum Rent” for a Year is \$4,000,000.

“Second Lease Extension Period” means the period beginning on December 16, 2031 and ending at the close of business on December 15, 2053.

“Year” means the calendar year during the Second Lease Extension Period, except the last year of the Second Lease Extension Period shall begin on the January 1, 2053, and shall end on December 15, 2053. All amounts payable with respect to a year of less than 365 days shall be prorated based upon the actual number of days in the partial year.

2. Facility Rent.

a) During the Second Lease Extension Period, Covanta Union shall pay the UCUA an amount as rent (**“Facility Rent”**) equal to the greater of (i) the Minimum Rent and (ii) the UCUA Plant Profit Share for the Year.

b) On or prior to December 15, 2031 and on or prior to December 15 of each Year during the Second Lease Extension Period, Covanta Union shall provide the UCUA with a good faith, non-binding estimate of the amount of the Facility Rent for the ensuing Year, together with supporting documentation therefor and such other information relating thereto as shall be reasonably requested by the UCUA.

c) The Facility Rent for each Year of the Second Lease Extension Period shall be paid as follows: four equal installments of the Minimum Rent Payment each equaling \$1,000,000 shall be paid on [February 15, May 15, August 15 and November 15] of each Year and in addition if in any Year the UCUA Share of Plant Profits exceeds the Minimum Rent for the Year, the amount equal to such excess shall be paid to UCUA on the date that the Year End Statement is required to be delivered.

d) Within one hundred twenty (120) days following the end of each Year of the of the Second Lease Extension Period, Covanta Union shall provide the UCUA with (i) the audited Financial Statements (including footnotes) for the Year, (ii) a statement of Plant Profits for the Year and a calculation of the UCUA Plant Profits Share for the Year, and Facility Rent (collectively, the **“Year End Statement”**), which shall be accompanied by a certification by Covanta Union’s chief accounting officer as to the as to the accuracy of all calculations leading to a determination of Plant Profits. The form of audited financial statement is attached as Exhibit A to this Schedule 5.

e) If the UCUA disagrees with the calculation of Plant Profits it may, at its expense, have Covanta Union’s books and records audited on a confidential basis by a nationally

DRAFT
28 JAN 2016

recognized accounting firm acceptable to both parties.