

## City of Alexandria, Virginia

## MEMORANDUM

**DATE:** JANUARY 13, 2012

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** RASHAD M. YOUNG, CITY MANAGER 

**SUBJECT:** CONSIDERATION OF NEW WASTE DISPOSAL AND SERVICE AGREEMENT AMONG ARLINGTON AND ALEXANDRIA AND COVANTA ARLINGTON/ALEXANDRIA, INC. FOR THE ALEXANDRIA-ARLINGTON WASTE TO ENERGY FACILITY

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**ISSUE:** Consideration of an action to enter into a new waste disposal and service agreement among Arlington County, the City of Alexandria (“the Jurisdictions”) and Covanta Arlington/Alexandria, Inc. (“the Company”).

**RECOMMENDATION:** That City Council authorize the City Manager to execute the attached agreement subject to review and approval of the agreement by the City Attorney.

**DISCUSSION:** The attached agreement among Alexandria and Arlington and Covanta Alexandria/Arlington, Inc. would provide for disposal of the City’s residential solid waste from January 1, 2013, through June 30, 2019. The agreement has been negotiated in partnership with Arlington and is also before the Arlington County Board for approval this month. The agreement also provides the Jurisdictions the unilateral right to extend the agreement through 2038 (“the Extended Term”) if such right is exercised prior to June 30, 2018. If no such right is exercised, then the agreement will renew through September 30, 2025 (“the Renewal Term”) unless the Jurisdictions or the Company (at their own discretion) decide to opt out of the renewal. If a Renewal Term occurs, the Jurisdictions would then have another opportunity, through September 30, 2025, to exercise the unilateral right to an Extension term through 2038.

**BACKGROUND:** On December 1, 1984, an inter-local joint enterprise agreement was entered into between the Alexandria Sanitation Authority and the Arlington Solid Waste Authority (the “Authorities”). The Joint Enterprise, referred to as the Arlington/Alexandria Resource Recovery Corporation, was formed to design, construct, equip, test and operate a solid waste disposal facility having an installed capacity of 975 tons per day of mixed municipal solid waste. The facility is located at 5301 Eisenhower Avenue in Alexandria. The Alexandria Industrial Development Authority issued revenue bonds, and the proceeds were loaned to the Authorities to construct the facility. Since its opening, the facility has been operated by Covanta Arlington/Alexandria, Inc. which is a wholly owned subsidiary of Covanta Energy, Inc. which is one of the world’s largest owner/operator of waste-to-energy facilities.

The Company is bound to provide waste disposal services through January 1, 2013, pursuant to an Amended and Restated Facility Construction and Operation Agreement dated October 1, 1985, as amended (the "Facility Agreement"), by and among the Company, the Authorities and the City and County.

The Jurisdictions have leased the facility site to the Company for a term of 40 years pursuant to an Amended and Restated Original Site Lease dated October 1, 1985, as amended among the Jurisdictions, Authorities, and Company, and expiring in 2025.

On October 22, 1985, the Authorities sold the facility to a private company. The 1985 agreement required the Authorities to transfer full title to the facility when principal and interest on outstanding revenue bonds had been paid in full. In July 1998, the Authorities advance refunded over \$55 million of the outstanding revenue bonds (Series 1998A bonds) so that the Company could take advantage of lower interest rates. In November 1998, the Arlington Industrial Development Authority issued over \$48 million in new retrofit revenue bonds (Series 1998 B bonds) to cover the cost of new pollution abatement equipment (Maximum Achievable Control Technology) at the facility as required by federal law. The proceeds of the Series 1998 B revenue bonds were loaned to the Authorities to construct the equipment. The construction was completed in November 2000, and lease payments to the Authorities from the Company for use of the abatement equipment began in January 2001. A November 1, 1998, Operating Lease for the pollution abatement equipment (owned by the Authorities) to the Company runs through October 1, 2025. The Series A bonds matured on January 1, 2008, and the plant was sold to the Corporation for \$10.00 per a bill of sale dated February 28, 2008. The Series 1998 B bonds will be paid in full prior to or on January 1, 2013.

Pursuant to the terms of the underlying Site Lease among the Jurisdictions, Authorities and the Company, the plant and all its equipment (except for the pollution abatement equipment which is currently owned by the Authorities) revert to the ownership of the Authorities on October 1, 2025. Under the site lease, based on usage estimated at the start of this project, Arlington has a 60% interest in the facility and land, and Alexandria a 40% interest.

The current waste disposal agreement between the Company and the Jurisdictions provides for delivery of trash to the plant for processing and expires December 31, 2012. The agreement requires the Jurisdictions to deliver 225,000 tons of trash per year from residents and businesses to the plant. Current disposal rates (tip fees – paid to Covanta) are close to \$84/ton. The tip fees for residents are reflected in their annual solid waste bill. Alexandria and Arlington residents provide, on average, close to 62,000 tons per year combined in trash to the plant. The balance of the 225,000 tons comes from Alexandria and Arlington businesses who have agreements with private trash haulers who contract with the Company to use the facility.

The Jurisdictions created a trust fund to address unanticipated regulatory needs, fund potential facility enhancements, and, because of a "put or pay" jurisdictional obligation, to reimburse Covanta for the difference between tip fees paid by private trash haulers (who now pay \$47/ton tip fee) and current disposal rates. The plant's current capacity allows for processing of 350,000 tons of trash per year. The trust fund will cease to operate beginning January 1, 2013.

In the spring of 2010, the trust fund Trustees representing Alexandria and Arlington (i.e., City and County staff) began discussions about possible extension of the current waste disposal agreement. Trustees received guidance from the Alexandria City Council and the Arlington County Board to pursue an extension of the current operating agreement on a joint basis.

The goals during the negotiations were to provide a reasonably priced waste disposal option for Alexandria and Arlington while ensuring that any future agreement allows flexibility for the Jurisdictions to enhance environmental controls at the facility. The trustees also were directed to negotiate an agreement through 2025 and to provide an option, if possible, to be exercised at a later date to extend the term through 2038.

After extensive negotiations, a draft agreement has been developed. It is attached to this report and:

- Provides a waste disposal agreement, beginning January 1, 2013, extending through June 30, 2019. The initial base tipping fee will be \$42.00 per ton. Alexandria and Arlington currently pay a tip fee of close to \$84.00 per ton through the end of 2012. The base tipping fee may be reduced further if the Company, at its own option, takes advantage of the City and County's access to the I-95 Landfill for deposit of ash residue produced at the Plant. If the Company were to use the Landfill then the tipping fee may be reduced by as much as \$7.20 per ton. The \$42.00 per ton tipping fee escalates at 2.75% per year over the agreement term.
- Provides, at the Jurisdictions' option and cost, additional environmental enhancements to control emissions from the plant during the term. The plant surpasses all current environmental requirements. This continues the arrangement that allowed addition of substantial pollution abatement equipment more than ten years ago.
- Allows Alexandria and Arlington to deliver somewhere between 50,000 and 70,000 tons of trash annually. The Jurisdictions would no longer need to subsidize the delivery of other waste generated in Alexandria and Arlington to the plant. Given the changing composition of the solid waste disposal services in Alexandria and Arlington (through increased recycling and other waste reduction strategies), the Jurisdictions can lower (or raise) the minimum and maximum delivery thresholds by 5,000 tons per year as long as a 20,000 ton bandwidth remains (e.g. in 2014 the Jurisdictions could choose to lower the range to 45,000 tons but would then not be permitted to deliver more than 65,000 tons at the base rate. The Company, however, will be obligated to accept 50 percent additional tonnage from the Jurisdictions but at an additional \$5.00/ton (escalated at 2.75 percent per year).<sup>1</sup> If, for any reason, the Jurisdictions are unable to meet the minimum delivery tonnage requirements, the remedy of the Company is a "put or pay" jurisdictional obligation where the Company would receive payment for the amounts (up to the minimum) not delivered.

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<sup>1</sup> Over the past several years the Jurisdictions' combined waste delivery has averaged close to 62,000 tons per year. FY 2009 = 64,316 tons, FY 2010 = 60,898 tons, FY 2011 = 60,013 tons. Pre-recession and pre-single stream recycling tonnages were close to 75,000 to 80,000 tons annually.)

- Provides the Jurisdictions a “most favored nation” provision guaranteeing lower disposal rates to the Jurisdictions if the Company agrees to receive trash from other Jurisdictions [for period of more than 365 days] at a rate below the \$42.00 per ton rate (as adjusted annually).
- Provides a Renewal Term of July 1, 2019, through September 30, 2025. This renewal term may occur automatically; however, both the Jurisdictions and the Company will have the option to opt out of the Renewal Term during the six-month period from June 30, 2018 through December 31, 2018. The tipping fee at the start of the renewal period will begin at \$60.46 per ton and increase by 2.75% per year through 2025 (reduced by any offset created by Company use of the I-95 Landfill for ash disposal). The offset from use of the landfill for the Renewal Term could be as high as \$12.40 per ton.
- Provides the Jurisdictions a unilateral right to extend the disposal and service agreement through December 31, 2038. This unilateral right must be exercised prior to September 30, 2025. However, given that the Company may choose to opt out of the renewal term in 2018 (and renegotiate at that time), the Jurisdictions are only truly guaranteed this unilateral right through June 30, 2018. Upon exercise of the extension option, the underlying Site Lease would also be amended to provide the Company rights to the site through the end of 2038. The date on which the right to extend through 2038 is exercised will affect the tipping fee. More specifically:
  - The Jurisdictions will lock in a tipping fee from the date of exercise of the right through September 30, 2025, that will be equivalent to the tipping fee in effect at the time of the exercise of the right. (See schedule 2 of the attached agreement. For example, exercise of the right on December 1, 2014, would lock in a rate of \$44.34/ton as adjusted by any offset from use of the Landfill).
  - Beginning October 1, 2025, through December 31, 2038, the tipping fee would be ZERO dollars per ton. The possible rebate to be received by the Jurisdictions through the landfill credit would be eliminated at that time.
- The Jurisdictions’ trash receives priority at the facility. In the event of limited operation of the facility, both Alexandria and Arlington solid waste would be the “first in” and “last out.”

The agreement also addresses a host of other issues including requirements for delivery, recourse if the plant is unavailable (whether through operator error or “Force Majeure”), the impact of “changes in law” on the underlying costs of operation of the plant, fees to be charged if the Jurisdictions exceed the annual tonnage limits, payment methods, limitations on liability, protocols in extraordinary events such as hurricanes that cause a spike in amounts of trash, conditions of default, types of unacceptable solid waste, radiation detection protocols, and continued community outreach by the Company.

The City has made a general presentation and solicited input from the Environmental Policy Commission on January 9, 2012, and will be hosting a meeting on January 19 at the Lee Center from 7:00 p.m. to 8:00 p.m. on the City's intent to consider the proposed agreement. Pertinent issues will be reported by the Director of Transportation and Environmental Services at the City Council meeting on January 24, 2012.

Upon execution of the attached agreement, both Alexandria and Arlington will need to revise and amend the inter-local agreement to handle funding and oversight issues of the joint relationship. Preliminary discussions on this have begun.

**FISCAL IMPACT:** The estimated net present value benefits of the new waste disposal agreement are shown in the table below. These estimates are based on a number of assumptions that may differ from actual events that may occur in the future. Staff estimates that the most likely scenario (highlighted below) will provide close to \$40 million in value to the Jurisdictions. This benefit will be seen by residents as the rates they pay on their annual solid waste bills – which have been based on tipping fees of close to \$80 per ton, could be reduced, or additional solid waste services such as yard waste recycling could be funded. If the Jurisdictions exercise their rights to extend through 2038, then resident disposal fees would be reduced further. (Some fees would remain to pay for the pickup program and administering the underlying contracts).

Estimated Benefits Under Agreement (assuming exercise of option through 2038)

Jurisdiction Tons	Exercise Option	Discount Rate	NPV2013 (million)
45,000	2020	4.5%	\$26.6
45,000	2014	4.5%	\$28.9
55,000	2020	4.5%	\$32.6
55,000	2014	4.5%	\$35.3
65,000	2020	4.5%	\$38.5
65,000	2014	4.5%	\$41.7
75,000	2020	4.5%	\$44.4
75,000	2014	4.5%	\$48.1
85,000	2020	4.5%	\$50.3
85,000	2014	4.5%	\$54.5

The NPV column above shows the present value of the estimated annual benefits from 2013 - 2038.

- The annual monetary benefit to the Jurisdictions is the estimated avoided costs and credits related to market based municipal solid waste disposal costs. The benefit per ton is equal to the difference between the assumed market disposal rate and the estimated average cost per ton with a credit for ash disposal rights for the new agreement. A \$42.00 per ton rate is assumed to be applicable for the Initial Term of the new Agreement, i.e., through 2019. A \$55.00/ton rate is assumed afterwards. (Both of these dollar amounts grow by CPI during the term).
- The benefit of the following to the Jurisdictions has not been quantified and included in the estimated monetary benefits:

- o a return on investment for the value of the facility;
  - o the full value of the ash disposal rights conveyed; or
  - o the host location value for this class of industrial facility.
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- If the Jurisdictions exercise the Extended Term option, then most of the change-in-law, including changes in regulations, cost risks will be borne by the Company. This benefit to the Jurisdictions has not been quantified and included in the estimated monetary benefits shown above.
  
  - The Jurisdictions do not receive any benefits or take any risks related to future electricity prices, including the availability of any renewable energy or carbon credits. They also receive any potential profits from marketing solid waste disposal capabilities to private haulers using the facility. The Company receives all of these benefits and assumes all of the market risks. The relatively low tip fee the Company is charging the Jurisdictions, however, indirectly reflects some, but not all, of these benefits.

**ATTACHMENTS:**

Attachment 1: Agreement between “the Jurisdictions” and “the Company”

Attachment 2: Waste to Energy Overview Brochure

**STAFF:**

Mark Jinks, Deputy City Manager

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Richard J. Baier, P.E., LEED AP, Director, T&ES

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ENVIRONMENT AND ENERGY CONSERVATION COMMISSION  
c/o Department of Environmental Services  
2100 Clarendon Blvd., Suite 705  
Arlington, VA 22201

Mr. Chris Zimmerman, Chairman  
Arlington County Board  
2100 Clarendon Blvd., Suite 300  
Arlington, VA 22201

Dear Chairman Zimmerman:

The Environment and Energy Conservation Commission (E2C2) would like to offer this letter of support for the draft "Waste Disposal and Service Agreement Among City of Alexandria, Virginia, County of Arlington, Virginia and Covanta Alexandria/Arlington, Inc." This agreement provides for disposal of the County's residential solid waste from January 1, 2013, through June 30, 2019, with possible extensions to 2038. The agreement, negotiated in partnership with Alexandria will be before the Alexandria City Council for approval on January 24, 2012 the same evening it will come before the Arlington Country Board for approval. E2C2 supports the draft waste disposal agreement. The financial benefits that Arlington will derive from this agreement should allow Arlington County to continue to provide exceptional waste management services to its citizens while supporting initiatives for environmentally-friendly practices such as recycling and composting.

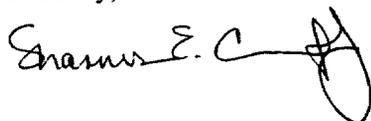
The existing agreement with the Covanta Waste-to-Energy (WTE) facility obliges Alexandria and Arlington to deliver 225,000 tons of municipal solid waste (MSW) per year from residents and businesses to the Covanta WTE plant. Arlington and Alexandria residents are currently generating on average 62,000 tons per year of MSW destined for the WTE plant. The remainder of the obligation is being filled with waste generated by businesses using private trash haulers. It is important to note that Arlington County cannot control where private haulers dispose of waste and has made disposing of waste at the Covanta WTE financially beneficial. This is achieved through discounted disposal rates for businesses, which are partially subsidized with Arlington County's disposal rate of \$84.58/ton (tip fees – paid to Covanta). This existing agreement will expire on December 31, 2012.

In the Spring of 2010, the Trustees representing Arlington and Alexandria began discussions about possible extension of the waste-disposal agreement. The goals for the negotiations were to provide a reasonably priced waste disposal option for Arlington and Alexandria while ensuring that any future agreement allowed flexibility for the jurisdictions to enhance environmental controls at the facility. The trustees also were directed to negotiate an agreement through 2025 and to provide an option, if possible, to extend the term through 2038.

The trustees reached many of the goals in the draft agreement. The much smaller proposed tonnage obligation, together with the ability to adjust over time, is especially favorable to Arlington given current waste generation rates of approximately 62,000 tons per year and ongoing initiatives to reduce MSW destined for the WTE plant.

E2C2 commends the achievements and provisions reached in the draft waste disposal agreement and recommends that the County Board approve the agreement.

Sincerely,



Shannon Cunniff, Chair