


City of Alexandria, Virginia

MEMORANDUM

**DATE:** JUNE 21, 2012

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

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

**SUBJECT:** CONSIDERATION OF A NEW WASTE-TO-ENERGY FACILITY (WTE)  
INTER-LOCAL AGREEMENT WITH ARLINGTON COUNTY

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**ISSUE:** Authorize the City Manager to enter a new inter-local agreement between the City of Alexandria and Arlington County for supervision and oversight of the WTE facility during the merchant era (2013 to 2025), which may be extended to 2038 by the jurisdictions, if they so choose at a later date.

**RECOMMENDATION:** That City Council:

- (1) Approve an inter-local agreement with Arlington County for the supervision and oversight of the WTE facility according to the terms summarized below and described in detail in the attachment to this memorandum; and
- (2) Authorize the City Manager to take such actions as are necessary to enter into such an agreement.

**DISCUSSION:** The following outlines and sets forth certain highlights of the proposed inter-local agreement for supervision and oversight of the WTE facility. (You will find attached a detailed term sheet from which the actual agreement is being developed by legal staff of the two jurisdictions.) The same terms of an agreement also are being proposed to the Arlington County Board.

**Section 1 – Creates a WTE Facility Monitoring Group** (WTE FMG) composed of 4 members appointed by the respective Chief Administrative Officers (CAOs) – 2 from each jurisdiction. The WTE FMG’s authority and tasks include providing a single administrative point of contact for Covanta, monitoring routine plant operations, maintaining records, discussing and evaluating major issues, and, within the authority granted by the Alexandria City Council and Arlington County Board, entering into contractual arrangements in accordance with its authorities and procedures as provided in this agreement.

**Section 2.1 – Establishes a joint WTE Fund to manage joint jurisdictional WTE-related financial management and procurement activities.** The Fund would be managed by one of the two jurisdictions (probably Arlington for accounting convention reasons because the majority of costs will be attributable to Arlington). A fee to be paid from the fund to the managing jurisdiction would be negotiated for providing these services. Deposits would be made into the fund by each jurisdiction periodically during the year according to the approved operating and capital budgets for the year and payments to Covanta or other vendors made from the fund according to the operating and capital budgets.

**Section 2.2 – Makes arrangements for managing the financial affairs of the WTE FMG,** which include developing annual operating and capital budgets for both routine monitoring and record-keeping, the discussion and evaluation of major issues and the costs of any major projects agreed to by the CAOs. Major project costs will be apportioned between the two jurisdictions on an ad hoc basis as agreed to by the CAOs based on the regional or local impact of the proposed project. Other routine costs would be shared on a 60% - 40% basis (Arlington 60%; Alexandria 40%), unless otherwise agreed to by the WTE FMG or the CAO's of the jurisdictions.

**Section 3 – Provides procedures for renewal or extension of the term of the Agreement with Covanta.** Both parties must agree on these decisions to renew or extend the term of the Agreement with Covanta. A timeline is provided for these decisions according to the provisions of the Agreement with Covanta. Such renewal or extension would require authorization by each jurisdictional governing body.

**Sections 4 and 5 – Provide a method for the allocation and payment of excess tonnage and shortfall fees** based on the proportionate jurisdictional shares of delivery of solid waste over the last full calendar year. These sections describe how the jurisdictions will share fees that may be owed to Covanta in the upcoming fiscal year for not delivering the minimum amount of waste required by the Agreement with Covanta, or for delivering more than the maximum amount of waste.

**Section 6 -- Allocates the revenues attributable to the WTE facility that will be available to the jurisdictions.** Taxes paid by Covanta will be shared 60% with Arlington and 40% with Alexandria after deduction of a host community fee (for Alexandria) based upon an agreed upon formula calculated by an estimate of the costs of providing City services to support the facility (e.g., public safety, transportation and other public infrastructure). All other revenue derived from Covanta or the operation of the WTE facility will be shared 60% - 40% as well. Any other net revenue derived from the sale of the real property, if sold, would be shared 60% - 40% except that the value paid for the land itself would be shared 50% - 50%, which is based on the original Arlington-Alexandria joint land ownership agreement as recorded in the City's records.

**Section 7 – Establishes miscellaneous provisions** for the term of the agreement, which is for the duration of the Agreement with Covanta up to 2025, or through 2038, unless mutually agreed changes are made as part of an extension of the agreement with Covanta. Dispute resolution procedures also are provided.

It should be noted that this Inter-local Agreement does not shift or share any WTE land use decisions from the usual and customary City of Alexandria land use decision-making processes, which include public review and public hearing requirements.

**ATTACHMENT:**

Term Sheet for New Inter-Local Agreement Between Alexandria and Arlington for Supervision and Oversight of the WTE Facility During The Merchant Era (2013 to 2025)

**STAFF:**

Bruce Johnson, Chief of Staff

Rich Baier, Director, Transportation and Environmental Services

Christopher Spera, Deputy City Attorney

TERM SHEET FOR NEW INTER-LOCAL AGREEMENT BETWEEN ALEXANDRIA AND ARLINGTON FOR SUPERVISION AND OVERSIGHT OF WTE FACILITY DURING THE MERCHANT ERA (2013 TO 2025)

References to sections and schedules are to the January 2012 agreement between the jurisdictions and Covanta)

**Proposed Terms of the Agreement**

**1. Waste-to-Energy Facility Monitoring Group (WTE FMG)**

- 1.1. Each jurisdiction's Chief Administrative Officers (CAOs) shall appoint two members to an inter-jurisdictional WTE Facility Monitoring Group (WTE FMG). The CAOs shall have the authority to change appointees at any time for any reason.
  - 1.1.1. One appointee from each jurisdiction shall have a financial management background, and one appointee should have a solid waste or environmental program background.
  - 1.1.2. The members shall be senior members of their respective jurisdictional staff and/or department heads
  - 1.1.3. At the discretion of each jurisdiction, one alternate member per member may also be appointed by the CAO who can serve in the absence of a member.
- 1.2. A chair shall be selected by the members from among them.
- 1.3. A quorum for conducting business shall be 4 members (including any officially appointed alternate member substituting for a member).
- 1.4. The WTE FMG shall meet at least quarterly to review the operations of the facility.
- 1.5. Other staff from each jurisdiction may attend at the discretion of each jurisdiction.
- 1.6. The WTE FMG shall:
  - 1.6.1. Provide a single point of contact for Covanta to deal with routine operational monitoring, financial management, and facility maintenance issues, as well as a forum to discuss and evaluate major environmental, capital repairs and improvements, changes-in-law, and other major issues that may arise.
  - 1.6.2. Routine issues include:
    - 1.6.2.1. Monitoring the operations of the WTE facility,
    - 1.6.2.2. Monitoring the proper upkeep and maintenance of the facility and compliance with environmental and other governmental regulations,
    - 1.6.2.3. Maintaining and sharing records of the operations of the plant,
    - 1.6.2.4. Maintaining and reporting tonnage records, and
    - 1.6.2.5. Performing any necessary financial management revenue and cost sharing calculations based on the Agreement with Covanta and this inter-local agreement.

- 1.6.2.6. Responding to questions or interpreting issues related to the Agreement with Covanta
- 1.6.2.7.
- 1.6.3. Other major issues may be discussed or evaluated including:
  - 1.6.3.1. Major environmentally motivated, capital repairs and improvements,
  - 1.6.3.2. Other capital repairs or improvements needed to the facility for other reasons that are otherwise not the responsibility of Covanta,
  - 1.6.3.3. The consequences to the facility and its operations caused by changes-in-law, and
  - 1.6.3.4. Responding to questions or interpreting issues related to the Agreement with Covanta
  - 1.6.3.5. Any other issues deemed of significance to the future operation of the facility.
- 1.7. The WTE FMG shall have authority to enter into contracts for goods and services in accordance with the scope of its authority and the procedures provided in this Inter-local agreement.

## **2. Financial Management**

### **2.1. Establishment of a Joint WTE Fund**

- 2.1.1. A Joint WTE Fund shall be established for managing joint jurisdictional WTE-related expenses.
- 2.1.2. Except as provided below, each jurisdiction shall have the authority to establish whatever budget and financial accounting procedures they deem appropriate to provide funds to the Joint WTE Fund to support their use of the WTE facility.
- 2.1.3. One of the two jurisdictions will manage the fund on behalf of both organizations.
  - 2.1.3.1. The managing jurisdiction shall receive an allowance from the other jurisdiction to be determined for providing financial management services (based on a mutually agreed upon estimate of the cost of services). Such allowance shall be budgeted as a routine cost of the WTE FMG.
  - 2.1.3.2. The managing jurisdiction shall include the transactions and assets of the fund in its financial statements as required by generally accepted accounting principles.
- 2.1.4. The annual contribution of funds from each jurisdiction shall be according to approved final budget for the WTE FMG.
- 2.1.5. Advance payments for each jurisdictions share of costs shall be made to the Joint WTE Fund on the first day of the fiscal year
- 2.1.6. Tasks of the managing jurisdiction:

- 2.1.6.1. Shall provide payments to Covanta and other vendors according to the terms of the Agreement with Covanta and any other contractual arrangements made by the WTE FMG.
- 2.1.6.2. Shall provide procurement support to the WTE FMG and the WTE FMG shall use the procurement policies and procedures of the managing jurisdiction to contract for goods and services necessary to carry out its functions under this Inter-local agreement.
- 2.1.6.3. Shall provide Monthly statements within 30 days of the end of the calendar month to non-managing jurisdiction showing the payments made on its behalf.
- 2.1.6.4. Shall provide an annual close out statement 60 days after the end of the fiscal year to each jurisdiction showing payments made for the year and allocating those payments to the respective jurisdictions according to the provisions of the Agreement with Covanta and this Inter-local agreement on an appropriate accounting basis as agreed by the jurisdictions.
- 2.1.6.5. The managing jurisdiction will be responsible for ensuring proper financial management and internal controls are in place and for responding to questions by any auditor(s) engaged by either jurisdiction.
- 2.1.6.6. If there are any surplus funds remaining, the managing jurisdiction shall attribute them to the respective jurisdictions according to the formulas contained in this Inter-local agreement.
- 2.1.6.7. These surplus funds may be available funding for any unexpected costs attributed to each jurisdiction in the subsequent fiscal year and considered in the formulation of the next upcoming fiscal year budget by each jurisdiction.
- 2.1.6.8. Nothing in section (2.3) shall in anyway prevent the managing jurisdiction from complying with generally accepted accounting procedures in reporting the financial transactions and assets of the Joint WTE Fund.

2.2. Annual Budgets: The WTE FMG shall develop each year a proposed operating and capital budget for the upcoming fiscal year

2.2.1. The WTE FMG proposed operating and capital budgets shall be submitted on a schedule to be agreed to by the CAOs of the two jurisdictions and reviewed by the respective CAOs and, at their individual discretion, included in their respective proposed budgets for the upcoming fiscal year.

2.2.2. The WTE FMG operating and capital budgets shall not be considered approved and final until they are approved by each jurisdiction's governing body.

2.3. Content of Annual Budgets: The annual budgets developed by the WTE FMG shall include:

- 2.3.1. The costs of routine operational monitoring, financial management, and facility maintenance to be borne by the jurisdictions. These costs may include:
- 2.3.1.1. Arrangements made to engage a contractor/consultant with appropriate professional expertise who is mutually acceptable to the two jurisdictions to assist in monitoring the operations of the WTE facility to ensure its proper upkeep and maintenance and compliance with environmental and other governmental regulations,
  - 2.3.1.2. Any professional association fees and activities necessary to maintain key knowledge of developments in the waste-to-energy industry regionally or generally, or among Covanta clients specifically, and
  - 2.3.1.3. Contractual costs for assistance in studying the desirability or feasibility of minor facility maintenance or repair projects, or implementing such projects. Such projects shall be considered “minor” if the particular individual study and/or maintenance or repair project is estimated to be less than \$150,000 in the upcoming fiscal year.
  - 2.3.1.4. The costs of financial management services provided under section 2.3 below.
  - 2.3.1.5. These routine costs described in section 2.3.1 shall be shared on a 60%/40% basis (Arlington County = 60%; Alexandria City = 40%), unless a different percentage is agreed to by the FMG or by agreement of the CAOs of each jurisdiction for any particular type of routine cost.
- 2.3.2. The proposed costs for studies of the feasibility, desirability or impact of major environmental, facility repairs and improvements, or responses to changes-in-law, and the costs of implementing such projects. Such projects shall be considered “major” if the particular individual study and/or maintenance or repair project is estimated to be more than \$150,000 in the upcoming fiscal year.
- 2.3.2.1. These major costs shall be shared on a basis mutually determined by the CAOs of each jurisdiction as appropriate for the type of project being studied or implemented based on an estimate of the regional vs. local impact of the proposed project. For instance,
    - 2.3.2.1.1. Aesthetic improvements of local impact only (e.g., landscaping or noise abatement actions) may be allocated entirely or primarily to Alexandria.
    - 2.3.2.1.2. Environmental improvements of regional significance such as Low NO<sub>2</sub>, waste water reuse, bag house particulate emission controls, excess steam usage, and responses to unknown Federal or State environmental requirements may be shared in an appropriate manner.
  - 2.3.2.2. The WTE FMG may not contract for and commit funds for major project studies or fund the implementation of major projects unless and until the CAOs of both jurisdictions approve the study or the project. The CAOs may each

determine individually whether and how the jurisdiction's governing body must approve the major project studies or implementation projects.

- 2.3.3. Any discrepancy or disagreement between elements of the WTE FMG budget approved by each jurisdiction, if it cannot be resolved by the mutual agreement of the CAOs, will be resolved by including the lowest funding level for the element at issue as approved by one of the governing bodies.

**3. Decision on Renewal or Extension of Term past June 30, 2019 (including when to exercise option to extend the term to December 31, 2038)**

(See section 2.3 (c) of the January 24, 2012 Waste Disposal and Service Agreement Among City of Alexandria, Virginia, County of Arlington, Virginia and Covanta Alexandria/Arlington, Inc.)

- 3.1. Decision to Extend Term to 2038 with Covanta under section 2.3 (c) requires agreement of both parties.

**4. Adjustments in Excess or Shortfall Tonnage Thresholds**

- 4.1. Under the Agreement with Covanta, both minimum and maximum thresholds can be adjusted by March 31<sup>st</sup> of each year effective for the next contract/fiscal year beginning July 1. Each jurisdiction will project their disposal needs for the coming year and be responsible for a jointly agreed upon apportioned allocation of the tonnage "band." The WTE FMG will adjust the minimum and maximum thresholds to meet the projections.
- 4.2. Allocation of minimum and maximum thresholds to each jurisdiction would be adjusted at the same time.

**5. Allocation and payment of Excess Tonnage/Shortfall Fees**

(See section 2.2 and Schedule 1)

- 5.1. When combined tonnages fall outside of the bandwidth provided in the Agreement (including any adjustments of the bandwidth as allowed by the Agreement) payment of excess/shortfall tonnage fees will be allocated based each jurisdiction actual tonnages compared to their projections for that contract/fiscal year.
- 5.2. Fees imposed according to the Agreement and paid to Covanta for a shortfall or excess delivery in total for a month would then be adjusted in an annual close-out to the



appropriate jurisdiction according to what portion of the shortfall or excess delivery for the year was attributable to each jurisdiction for the year.

## **6. Allocation and Use of Revenues**

- 6.1. The real property is now owned 50% - 50% by the two jurisdictions in the recorded deed. Regardless of that deed, the proceeds from all taxes (real and personal property and gross receipts) paid by Covanta to the City of Alexandria will be shared proportionately on a biannual basis with Arlington County, with 60% going to Arlington County and 40% to Alexandria after deduction of a host community fee for Alexandria based upon a formula to-be-agreed upon mutually based on an estimate of the costs of providing City services to support the facility (e.g., public safety, transportation and other public infrastructure).
- 6.2. All other revenue derived from Covanta or from the operation of the WTE facility, will be shared on a proportionate basis with 60% going to Arlington County and 40% going to Alexandria regardless of who receives the revenue or how the revenue is received.
- 6.3. The recorded deed for any sale of the real property shall be divided between the jurisdictions in the following manner:
  - 6.3.1. The value of the proceeds attributable to the land value shall be divided equally between the jurisdictions on a 50% - 50% basis.
  - 6.3.2. The net proceeds after the deduction of the land value and the deduction of any and all costs associated with the sale of the real property, including any actual costs of environmental clean-up shall be distributed to the jurisdictions 60% to Arlington County and 40% to Alexandria City.

## **7. Miscellaneous**

- 7.1. This Inter-local Agreement is between the jurisdictions and not Covanta or any jurisdictional related authorities.
- 7.2. In the event of a default of the City or the County in its obligations to Covanta under the Agreement with Covanta by either jurisdiction or any other 3<sup>rd</sup> party, that defaulting jurisdiction will guarantee that the other jurisdiction shall be held harmless financially.
- 7.3. The term of the agreement shall be for the duration of any joint Waste Disposal and Service Agreement with Covanta.
  - 7.3.1. If the joint Waste Disposal and Service Agreement with Covanta is extended pursuant the extension terms provided in that agreement, this inter-local agreement shall be extended as is for as long as the Agreement with Covanta is extended, unless the jurisdictions shall mutually agree to change it.

- 7.3.2. If the joint Waste Disposal and Service Agreement with Covanta is not extended, then the inter-local agreement will end at the conclusion of the joint Agreement with Covanta in 2025.
- 7.3.3. A new agreement will need to be negotiated between the jurisdictions post 2025 if the agreement with Covanta is not extended. The jurisdictions agree to begin negotiating such an agreement no later than 2 years prior than the expiration of the Agreement with Covanta.
- 7.4. Disputes between the jurisdictions shall be resolved as follows:
  - 7.4.1. Non-binding mediation services will be obtained and the costs of the mediation shall be shared equally by both jurisdictions.
  - 7.4.2. If non-binding mediation is unsuccessful in resolving disputes, then each side will make its best offer and binding arbitration will be arranged that will choose between the competing best offers.
  - 7.4.3. The costs of that non-binding arbitration will be borne entirely by the side whose best offer is not chosen.