



Contract Review Sheet

Contract #: PW-4211-21

Person Sending: **James Wharton-Hess** Department: **Public Works**
Contact Phone #: **(503) 566-4139** Date Sent: **Friday, June 25, 2021**

Contract Amendment# Lease IGA MOU Grant (attach approved grant award transmittal form)

Title: **Supply and Processing of Solid Waste**

Contractor's Name: **Covanta Marion, Inc.**

Term - Date From: **Jul 1, 2021** Expires: **June 30, 2024**

Contract Total: **\$0.00** Amendment Amount: **\$0.00** New Contract Total: **\$0.00**

Source Selection Method: Sole Source (attach approval) #

Additional Considerations (check all that apply)

- Board Order#
- Incoming Funds
- Independent Contractor (LECS) approval date:
- Insurance Waiver (attach)
- CIP# (required for all goods /software greater than \$5,000)
- Feasibility Determination (attach approved form)
- Federal Funds (attach sub-recipient / contractor analysis)
- Reinstatement (attach written justification)
- Retroactive (attach written justification)

Description of Services or Grant Award:

Contract for the supply and processing of solid waste.

FOR FINANCE USE

Date Finance Received: BOC Planning Date: Date Legal Received:
Comments:

REQUIRED APPROVALS:

Finance - Contracts		Date	Risk Manager	Date
Legal Counsel		Date	Chief Administrative Officer	Date

Date To be filed Added to Finance Table
 Date Returned to department for signature



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 30, 2021

Department: Public Works Agenda Planning Date: June 24, 2021 Time required: 15 minutes

Audio/Visual aids

Contact: Jane Vetto Phone: x5691

Department Head Signature: Jane E Vetto

TITLE: Marion County contract with Covanta for the Supply and Processing of Solid Waste

Issue, Description & Background: Covanta owns the waste to energy facility in Marion County. The current solid waste processing contract expires July 1, 2021 and this contract provides for a new three year term with Board approved processing and financial terms.

Financial Impacts: No new financial impacts to the County.

Impacts to Department & External Agencies: None

Options for Consideration: Approve the contract. Do not approve the contract.

Recommendation: Approve the contract.

List of attachments:

Presenter: Brian Nicholas, Brian May, Dennis Mansfield

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

**MARION COUNTY CONTRACT FOR THE SUPPLY AND PROCESSING
OF SOLID WASTE**

This Contract is between Marion County, Oregon (the "County"), a political subdivision of the State of Oregon, acting by and through its Board of Commissioners, and Covanta Marion, Inc. (the "Company") which operates a waste to energy facility at 4850 Brooklake Road NE, Brooks, Oregon, 97305. (the "Facility") (collectively the "Parties.")

1. PURPOSE

The County has principal governmental responsibility under the Oregon Revised Statutes, ORS 459.005 et seq., for planning and implementation of programs for environmentally sound management of locally generated Municipal Solid Waste. The County desires to enter this Contract with the Company to deliver or cause the delivery of Solid Waste generated within the County to the Facility, and the Company agrees to accept, process, and dispose of such waste in accordance with the following terms and attached Schedules.

2. TERM

This Contract is effective on July 1, 2021 the ("Effective Date"). This Contract expires on June 30, 2024.

Upon written notice, the Parties may extend the Term of this Contract with two separate five-year extensions, provided that the total Contract Term does not extend beyond June 30, 2034.

Each of the above-referenced Contract extensions may be exercised no later than twelve (12) months prior to the expiration of the Term, if the Company or the County provides written notice to the other of its intent to extend the Contract for the period described above and within seventy-five (75) days of the date of that notice, the other Party fails to provide written notice declining to extend the Contract for the period described above.

3. CONSIDERATION

Payments to the Company shall be made in accordance with the terms in Schedules 1, 2 and 3, and the payment schedule set forth in Section 8.

4. COMPLIANCE WITH STATUTES AND RULES

A. The County and the Company agree to comply with the provisions of this Contract and all applicable federal, state, and local statutes and rules. Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Company. Failure of the Company or the County to comply with the provisions of this Contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this Contract as specified in sections concerning recovery of funds and termination.

The County's performance under this Contract is conditioned upon the Company's compliance with the obligations intended for Contractors under ORS 279B.220, 279B.225 (if applicable to

this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein.

B. The Company must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. The Company shall not be considered in violation of this section if it is appealing the imposition or amount of any tax in an appropriate judicial or administrative forum.

i. Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of the Company's warranty, in subsection 28C of this Contract, that the Company has not complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

a. Termination of this Contract, in whole or in part in accordance with Section 24;

b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the Company, in an amount equal to the County's setoff right, without penalty; and

c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of the Company's breach of this Contract, including costs of cure and costs incurred in securing replacement services.

C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

5. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT

Company agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified Person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

6. FORCE MAJEURE

Neither the County nor the Company shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching Party's reasonable control. The

Company, or the County as case may be, shall, however, make all reasonable efforts to remove or eliminate the cause of the Company's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. The County or the Company may terminate this Contract upon written notice to the other party after reasonably determining that the delay or breach attributable to Force Majeure will likely prevent successful performance of this Contract for a period exceeding 60 days.

7. PERFORMANCE GUARANTEES

7.1 The County's Commitment to Deliver Municipal Solid Waste

A. On and after the Effective Date, the County shall cause to be delivered to the Facility at least 125,000 Tons of Municipal Solid Waste per year in accordance with Schedule 1 and Schedule 2.

7.2 The Company's Commitment to Accept, Process, and/or Dispose of Municipal SolidWaste

A. The Company, on and after the Effective Date, agrees to accept, process and/or dispose of 125,000 Tons of Municipal Solid Waste per year ("Guaranteed Tons") delivered to the Facility in accordance with Schedule 1 and Schedule 2. Any Tons delivered over the 125,000 Ton guarantee will be subject to the Excess Waste Fee per Schedule 1 and not the Municipal Solid Waste Tipping Fee per Schedule 1.

B. In the event the Facility is unable to process the Guaranteed Tons in whole or in part during a given Billing Period, the Company shall be obligated to accept, process and/or dispose of the Guaranteed Tons as set forth in Schedule 1 and Schedule 2 or the applicable Billing Period by using to the extent necessary Alternate Disposal Methods. If the Company determines that it is necessary to use an Alternate Disposal Method, the Company shall, as promptly as practicable, notify the County by telephone (which notice shall be confirmed in writing) within 24 hours of such determination and shall consult with the County with regard to (i) the use of any alternate facility and (ii) the amount of County Tons per day to be caused to be delivered by the County to such alternate facility or facilities; provided that the Company shall continue to accept Waste at the Facility for thirty-six (36) hours after giving such notice to the extent that such acceptance will not violate any environmental permit or applicable laws and regulations. The Company shall give the County similar notice of its intention to terminate use of Alternate Disposal Methods and will consult with the County regarding the need to use a different or additional alternate facility.

In the event that the Company does not accept the Guaranteed Tons from the County using the Facility or Alternate Disposal Methods, the Company shall pay the Underprocessing Fee for each Ton short of the Guaranteed Tons for the Billing Period as set forth in Schedule 2.

C. Ash transportation and disposal is the sole responsibility of the Company, provided that the Company shall not be liable for any acts or omissions of any County subcontractors providing transportation or disposal. The County will direct flow of ash to either Coffin Butte Landfill or the North Marion Monofill and the Company will pay the County for ash transportation and disposal costs at the respective Ash Transportation and Disposal rate as set

forth in Schedule 1. Once the North Marion Monofill has reached capacity as defined by the County in its sole discretion, the Company will be responsible, at its sole direction, cost, and expense, for transportation and disposal of ash generated at the Facility and the provisions of Schedule 3 shall govern.

D. The Company agrees to limit acceptance, processing, and disposal of total Out of County Regulated Medical Waste to no more than 18,000 Tons per year, as set forth in Schedule 1.

E. The County shall use reasonable efforts to cause only Acceptable Waste to be delivered to the Facility. However, any inadvertent deliveries by the County of Process Rejects to the Facility shall not constitute a breach of the County's obligation hereunder. The Company shall place Process Rejects in a Bypass Box, and the County shall remove them from the Facility and transport and dispose all Process Rejects at its own cost and expense.

F. The Company, at its sole discretion, on and after the Effective Date, agrees to transport, accept, process and/or dispose of County Leachate as set forth in Schedule 1 if it is requested and scheduled by the Facility directly and not through a third-party.

7.3 Costs

A. The County agrees to pay the Company \$37.50 per Ton ("Municipal Solid Waste Tipping Fee") for all Marion County Solid Waste delivered to the Company up to the Guaranteed Tons as set forth in Schedule 1, and if the County fails to deliver the Guaranteed Tons, then the County shall pay the Municipal Solid Waste Tipping Fee for each Ton of Shortfall.

B. The County agrees to pay the Company \$37.50 per Ton for Excess Waste as set forth in Schedule 1. The Excess Waste Fee is not subject to escalation.

C. The County agrees to pay Company \$0.15 per gallon for Leachate Disposal as set forth in Schedule 1.

D. The County agrees to a 1.5% annual escalation of Municipal Solid Waste Tipping Fee set forth in Schedule 1 on the anniversary of the Effective Date each year.

E. The Company agrees to pay the County \$5.00 per Ton for all Waste the Company brings into the Facility from sources outside the County as set forth in Schedule 1. ("Out of County Waste")

F. The Company agrees to pay the County \$3.06 per 1,000 gallons based on meter reading for Brooks-Willamette Outfall Pipe Usage Fee as set forth in Schedule 1.

7.4 Renewable Energy Credits

The Company agrees to share revenue on the existing Renewable Energy Credits generated by the Facility with 90% to the County and 10% to the Company. If after the date of this Contract, during the course of this Contract the Facility receives additional Renewable Energy Credits, the revenue of these additional Credits will be divided equally among the Parties.

7.5 Operation of Facility

- A. The Company shall hold, maintain, and comply with all required environmental and other governmental permits, licenses, authorizations, and directives, including, without limitation, any permits, authorizations, or directives of the Department of Environmental Quality or the Environmental Quality Commission and Environmental Protection Agency (EPA) and other agencies as applicable.
- B. The Company shall at all times during the Term of this Contract employ reasonable and ordinary care to prevent accidents that may cause damage to the County or other Persons.
- C. The Company shall keep litter and debris picked up at the Facility in order to minimize the impact on the surrounding property, and to otherwise keep the Facility location in a good, clean, and orderly condition.
- D. Upon providing reasonable notice to the Company, representatives of the County shall have the right to visit and inspect the Facility at any time during the Term of this Contract to ensure compliance with the terms and conditions set forth herein.

7.6 Receiving and Operating Hours and Storage of Waste

- A. The Company shall keep the Facility, or alternate facilities, if any, in accordance with Alternate Disposal Methods, open to receive Waste during the Receiving Time.
- B. If the Company requests and the County agree, the County shall deliver and the Company shall accept Waste at times other than the Receiving Time at no additional cost to the County.
- C. Upon the County's request and seven (7) days prior written notice (or such shorter notice as may be practicable in the event of a natural disaster or other emergency condition), the Company shall accept deliveries of Waste at times other than the Receiving Time for a maximum period of 7 days per week unless otherwise agreed to by the Parties.
- D. After delivery to the Facility and acceptance by the Company, no Acceptable Waste, Unacceptable Waste, or Hazardous Waste may be stored outside the Facility structure, except during an emergency and then only insofar as applicable environmental and safety requirements are satisfied.

7.7 Weighing of Waste Deliveries, Etc.

- A. The Company shall own and maintain weighing facilities at the Facility Site (the "Scale House"), which shall be operated by the County, for the purpose of determining the various quantities of Waste delivered to the Facility and the respective quantities of all categories of materials leaving the Facility. The County shall provide the Company with a daily record of all transactions at the Scale House, and the Company shall have reasonable periodic access to the Scale House, without notice, for purposes of monitoring and reviewing operation thereof and may audit Scale House records, including software, as it may deem reasonably necessary. The County and the Company will work together to develop, maintain, and from time-to-time modify and update a system of weight records containing the weight, date, time, and vehicle identification number of each waste transport vehicle entering and exiting the Facility.

B. If testing of the weighing facilities indicates at any time that the scales do not meet the accuracy requirements of the Oregon Department of Agriculture, Measurement Standards Division, the necessity for and extent of any adjustments to the weight records actually recorded during the preceding thirty (30) days shall be subject to negotiation by the County and the Company. If all weighing facilities are incapacitated or are being tested, the County and the Company shall estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and estimated data obtained through historical information pertinent to the County. These estimates shall be the basis for records during the scale outage and shall take the place of actual weight records during the scale outage. The County shall also provide each affected Hauler with copies of all weight tickets for the Hauler's deliveries to the Facility. The County and the Company shall each maintain copies of all daily records and weight tickets for a period of at least three (3) years.

C. The County shall provide properly qualified County employee(s) ("Scale Operator(s)") to perform the function of weighing or computing the weight of all Waste arriving at the Scale House. Such County employees shall be under the County's sole supervision, direction, and control, and the County shall be responsible for all wages, fringe benefits, and other compensation due to the Scale Operators. In addition to the other indemnification and liability provisions of this Contract, the County will be responsible for and shall indemnify the Company against any property damage caused by the Scale Operators while on the Facility site insofar as such damage is not covered by the insurance required by Section 9 of this Contract, including the self-insurance and deductible provisions thereof.

D. The County shall supply and maintain Scale House software. The County will take such security precautions as the Company may reasonably request to prevent improper modification of such software. The County is responsible for maintenance and repair of the Scale House computer system and related software. The Company is responsible for maintenance and repair of the scales and Scale House.

E. If during the Term of this Contract or any extension thereof the Company reasonably believes the County has failed to provide satisfactory operation of the Scale House including its computer system, the Company shall give the County written notice of the lack of satisfactory performance. The Company shall specify the nature of the unsatisfactory performance and the County shall have twenty (20) days in which to cure the unsatisfactory performance.

8. BILLING AND PAYMENTS

The Company will invoice the County by the 15th day of the following Billing Period, which shall set forth the tonnage of Municipal Solid Waste, Excess Waste, and gallons of leachate processed during the Billing Period and the amount billed at the disposal rates for each as set forth in Schedules 1 and 2. As part of the invoice, the County will be credited for Ash Transportation and Disposal, Underprocessing, Brooks-Willamette Outfall Pipe Use Fee and Out of County Waste when applicable and in accordance with the terms set forth in Schedule 1. Payment shall be processed by the County within 30 days from date of receipt of invoice from the Company.

9. INSURANCE

A. **REQUIRED INSURANCE.** The Company shall obtain at the Company’s expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. The Company shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to the County:

i. **WORKERS COMPENSATION.** All employers, including the Company, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The Company shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission, or any negligent acts related to the services to be provided under this Contract. The Company shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

\$1,000,000 Per occurrence limit for any single claimant; and

\$2,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Risk Manager

iii. **CYBER LIABILITY.** Covering network security, breach of data, and coverage for regulatory fines and fees imposed against the County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a Person or Persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access, and use of computer system, regulatory actions, and contractual liability.

Required by County **Not required by County.**

\$2,000,000 Per occurrence limit for any single claimant; and

\$5,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Information Technology Director and Risk Manager

iv. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. The Company shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Minimum Limits:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

v. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). The Company shall provide proof of insurance of not less than the following amounts as determined by the County:

- Required by County** **Not required by County.**

Minimum Limits:

- Oregon Financial Responsibility Law, ORS 806.060 (*\$25,000 property damage/\$50,000 bodily injury/\$5,000 personal injury*).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to the Company's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits, or non-renewal of insurance coverage(s) without 30 days written notice from this Company or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by the County.

D. CERTIFICATE(S) OF INSURANCE. The Company shall provide to the County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). The Company shall pay for all deductibles, self-insured retention, and self-insurance, if any.

10. ACCESS TO RECORDS

A. The Company shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Company as

they relate to the Contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. The Company agrees to establish and maintain financial records pertinent to this Contract. These records shall be retained for a minimum of three (3) years after the end of the Contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

11. REPORTING REQUIREMENTS

The Company shall provide the County with periodic reports related to Contract services provided to the County at the frequency and with the information prescribed by the County. Further, at any time, the County has the right to demand adequate assurances that the services provided by the Company shall be in accordance with the Contract. Such assurances provided by the Company shall be supported by documentation in the Company's possession from third Parties.

12. CONFIDENTIALITY OF RECORDS

A. The Company shall not use, release, or disclose any information concerning any employee, client, applicant, or Person doing business with the County for any purpose not directly connected with the administration of the County's or the Company's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant, or Person.

B. The Company shall ensure that its agents, employees, officers, and subcontractors with access to the County and the Company records understand and comply with this confidential provision.

13. INDEMNIFICATION AND INSURANCE

A. The Company shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of the Company or its officers, employees, subcontractors, or agents under this Contract. The Company shall have control of the defense and settlement of any claim that is subject to this section. However, neither the Company nor any attorney engaged by the Company shall defend the claim in the name of either the County or any department of the County, nor purport to act as legal representative of either the County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall the Company settle any claim on behalf of the County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

B. The Company shall obtain the insurance required under Section 9 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

C. The County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

14. CHANGE IN LAW

Subject to the provision of Section 15E below, the Company accepts any and all liability for any adverse effects originating from any Change in Law.

15. EARLY TERMINATION

This Contract may be terminated as follows:

A. The County and the Company, by mutual written agreement, may terminate this Contract at any time.

B. The County in its sole discretion may terminate this Contract for any reason on 180 days written notice to Company.

C. Either the County or the Company may terminate this Contract in the event of a breach of the Contract by the other, except that the County shall not terminate the Contract under this Section 15C for failure to accept or process the Guaranteed Tons if the Company is providing disposal of the Guaranteed Tons pursuant to Section 7.2B. Prior to such termination, the Party seeking termination shall give to the other Party written notice of the breach and intent to terminate. If the Party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

D. The County may terminate this Contract immediately by written notice to the Company upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that the Company must hold to provide services under this Contract. The Company shall not be considered terminated under this section if it provides proof that it is actively appealing the imposition or amount of any such denial, suspension, revocation or non-renewal in appropriate judicial or administrative forum.

E. The Company may terminate this Contract for a Change in Law or event which results in cumulative operational or capital cost increases of \$1.5 million during the initial three-year Contract Term. The Company must provide at least six months written notice of termination due to Change in Law from the Effective Date of the change or the compliance period, whichever comes first.

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F. The Company may terminate this Contract with at least a six-month written notice period if the Company cannot process at least 10,000 Tons of Regulated Medical Waste in a rolling 12-month period.

16. PAYMENT ON EARLY TERMINATION

Upon termination pursuant to Section 16, payment shall be made as follows:

A. If terminated under 15A or 15B for the convenience of the County, the County shall pay the Company for Work performed prior to the termination date if such Work was performed in accordance with the Contract. The County shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim the County may have against the Company.

B. If terminated under 15C by the Company due to a breach by the County, then the County shall pay the Company for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

C. If terminated under 15D by the County due to a breach by the Company, then the County shall pay the Company for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff and payments to which the County is entitled.

D. If terminated under 15E by the Company, then the County shall pay the Company for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff and payments to which the County is entitled.

E. If terminated under 15F by the Company, then the County shall pay the Company for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

17. INDEPENDENT COMPANY

A. The Company is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Company's activities and responsibilities for the purpose of implementing the provisions of this Contract, and maintains the appropriate license/certifications. This Contract shall not be construed as creating an agency, partnership, joint venture, employment relationship, or any other relationship between the Parties other than that of independent Parties. The Company is acting as an "independent Company" and is not an employee of the County, and accepts full responsibility for taxes or other obligations associated with payment for services under this Contract.

B. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the Contract may be Contracted or assigned to any other individual, firm, or entity without the express and prior approval of the County.

18. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

19. OWNERSHIP AND USE OF DOCUMENTS

All documents or other material submitted to the County by the Company shall become the sole and exclusive property of the County. All material prepared by the Company under this Contract may be subject to Oregon's Public Records Laws.

20. NO THIRD-PARTY BENEFICIARIES

A. The County and the Company are the only Parties to this Contract and are the only Parties entitled to enforce its terms.

B. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third Persons unless such third Persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

21. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns.

22. MERGER CLAUSE

This Contract and the attached Schedules constitute the entire Contract between the Parties.

A. All understandings and Contracts between the Parties and representations by either Party concerning this Contract are contained in this Contract.

B. No waiver, consent, modification, or change in the terms of this Contract shall bind either Party unless in writing signed by both Parties.

C. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

23. WAIVER

The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall

not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

24. REMEDIES

In the event of breach of this Contract, the Parties shall have the following remedies:

A. If terminated under 15C by the County due to a breach by the Company, the County may complete the Work either itself, by Contract with another Company, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Company shall pay to the County the amount of the reasonable excess.

B. In addition to the remedies in section 15 and 16 for a breach by the Company, the County also shall be entitled to any other equitable and legal remedies that are available.

C. If the County breaches this Contract, the Company's remedy shall be limited to termination of the Contract and receipt of Contract payments to which the Company is entitled and actual damages, which shall equal the difference between (a) the product of the Guaranteed Tons required to be delivered hereunder for the lesser of 90 days and the days remaining in the Contract Term and the tip fee per Ton payable by the County hereunder for such period and (b) the product of the Guaranteed Tons required to be delivered by the County for such period and the average tip fee per Ton of Municipal Solid Waste received by the Company in such period. The Company shall be required to mitigate its damages hereunder.

25. NOTICE

Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to the Company or the County at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated Person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Company:

Christopher Baker
Vice President
Covanta
445 South Street
Morristown, NJ 07960

General Counsel
Covanta
445 South Street
Morristown, NJ 079605

To County:

Brian May
Environmental Services Division Manager
Marion County Public Works
5155 Silverton Road NE, Building 1
Salem, OR 97305

26. SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26.

27. SEVERABILITY

If any Term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular Term or provision held to be invalid.

28. THE COMPANY'S REPRESENTATIONS AND WARRANTIES

Company represents and warrants to the County that:

- A. The Company has the power and authority to enter into and perform this Contract.
- B. This Contract, when executed and delivered, is a valid and binding obligation of the Company, enforceable in accordance with its terms.
- C. The Company (to the best of the Company's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date of this Contract, faithfully has complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - ii. Any tax provisions imposed by a political subdivision of this state that applied to the Company, to the Company's property, operations, receipts, or income, or to the Company's performance of or compensation for any Work performed by the Company;
 - iii. Any tax provisions imposed by a political subdivision of this state that applied to the Company, or to goods, services, or property, whether tangible or intangible, provided by the Company; and
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any goods delivered to the County under this Contract, and the Company's services rendered in the performance of the Company's obligations under this Contract, shall be provided to the County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

- E. The County represents and warrants to the Company that:
 - i. The County has the power and authority to enter into this Contract; and
 - ii. This Contract, when executed, is a valid and binding obligation of the County, enforceable in accordance with its terms.

29. CERTIFICATIONS AND SIGNATURE

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY. The undersigned certifies under penalty of perjury both individually and on behalf of Company is a duly authorized representative of Company, has been authorized by Company to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of the Company.

MARION COUNTY SIGNATURES

MARION COUNTY BOARD OF COMMISSIONERS

Kevin Cameron, Chair Date

Danielle Bethell, Commissioner Date

Colm Willis, Commissioner Date

Authorized Signature: _____
Brian Nicholas, Department Director or designee Date

Authorized Signature: _____
Jan Fritz, Chief Administrative Officer Date

Reviewed by Signature: _____
Jane Vetto, Marion County Legal Counsel Date

Reviewed by Signature: _____
Camber Schlag, Marion County Contracts & Procurement Date

COVANTA SIGNATURE

Authorized Signature: _____
Derek Veenhof Date
Executive Vice President and Chief Operating Officer

**SCHEDULES
TO
CONTRACT**

SCHEDULES

SCHEDULE 1 PRICING AND TERMS

SCHEDULE 2 WASTE DELIVERY

SCHEDULE 3 ASH DISPOSAL

SCHEDULE 4 DEFINITIONS

SCHEDULE 1

PRICING AND TERMS

	Current Rates	July 1, 2021 – June 30, 2022	July 1, 2022 – June 30, 2023	July 1, 2023 – June 30, 2024
Contract Terms		3 - Years / 2-5 Year Extensions		
Change in Law		100% Company	100% Company	100% Company
Guaranteed Tons		at least 125,000	at least 125,000	at least 125,000
Regulated Medical Waste Tonnage Cap		18,000	18,000	18,000
Electrical Share		100% Company	100% Company	100% Company
Blue/Grey/Supp Share		100% Company	100% Company	100% Company
Ferrous/Non-Ferrous Share		100% Company	100% Company	100% Company
Out of County Ton Fee		\$ 5.00	\$ 5.00	\$ 5.00
Ash Transportation* and Disposal** (per ton)				
To Coffin Butte	\$ 34.71	CPI Increase		
To Marion County Ash Monofill	\$ 28.86	CPI Increase	CPI + Rate Review	CPI + Rate Review
County Leachate Transportation and Disposal (per gallon)	\$ 0.15	\$ 0.15	\$ 0.15	\$ 0.15
Brooks-Willamette Outfall Pipe Use Fee (per 1,000 gallons)		\$ 3.06	\$ 3.06	\$ 3.06
Municipal Solid Waste Tipping Fee (per ton)***		\$ 37.50	\$ 38.06	\$ 38.63
Excess Waste Fee (per ton)		\$ 37.50	\$ 37.50	\$ 37.50
Underprocessing Fee (per ton)		\$ 49.95	\$ 49.95	\$ 49.95
Alternate Disposal Fee				
Cost/Ton Annual Escalation		1.5%	1.5%	1.5%

* Franchise Hauler Contract - Rate reviews at June 30 of 2023 and 2024.

** Rates Established by Coffin Butte Landfill Contract - Increased annually (July 1st) by CPI (West Class Cities B/C) - Current Contract Expires June 30, 2022

*** Rate includes 1.5% Cost/Ton Annual Escalation

SCHEDULE 2
WASTE DELIVERY

The Guaranteed Tons provided by the County shall be 125,000 tons of Solid Waste for each Contract Year and shall be prorated on the basis of a 360-day year for any Contract Year less than 12 calendar months.

Month	Guaranteed Tons
July	10,417
August	10,417
September	10,416
October	10,417
November	10,417
December	10,416
January	10,417
February	10,417
March	10,416
April	10,417
May	10,417
June	<u>10,416</u>
	125,000

Tons delivered to the Company over the monthly Guaranteed Tons will be charged at only the Excess Waste Fee of \$37.50 per ton.

The County shall not deliver more than 2,400 tons in any week, and not more than 650 tons in any day, unless the Company and the County agree mutually to respectively accept and deliver additional Acceptable Waste, and the Company shall have the right to reject waste in excess of the aforementioned monthly and daily limits in the absence of said mutual agreement to additional amounts.

SCHEDULE 3
ASH DISPOSAL

Subject to the provisions of Section 7.2C of the Agreement, once the North Marion Monofill has reached capacity as defined by the County in its sole discretion, the Company will be responsible, at its sole direction, cost, and expense for transportation and disposal of ash generated at the Facility. If the cost of ash transportation and disposal increases more than 5% in one year (July 1 – June 30), the Company must provide written verification to the County within 60 days of receiving a pricing agreement for ash transportation and disposal, and the parties may negotiate a new Solid Waste Tip Fee based on the increased cost associated with the increase in ash transportation and disposal rate or unilaterally terminate the Contract with 6-months' written notice.

SCHEDULE 4

DEFINITIONS

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

“ACCEPTABLE WASTE” means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of normal collection of Solid Waste in the County, including but not limited to: garbage, trash, rubbish, refuse, offal, beds, mattresses, sofas, bicycles, baby strollers, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and/or six (6) inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, Prohibited Waste.

“ALTERNATE DISPOSAL METHODS” means any reasonable and lawful method of disposal of Acceptable Waste which the County has determined to be adequate, other than the normal operation of the Facility, by which the Company or its agents assume control of and dispose of Acceptable Waste either through the use of the Facility, the Facility Site, or otherwise through the use of alternate equipment or facilities (including a permitted sanitary landfill).

“BILLING PERIOD” means each calendar month in each Contract Year, except that (a) the first Billing Period shall begin on the Effective Date and shall continue to the last day of the month in which the Effective Date occurs and (b) the last Billing Period shall end on the last day of the final Contract Year regardless of whether such day is the last day of a calendar month.

“BROOKS-WILLAMETTE OUTFALL PIPE” means the force main pipe that runs approximately 6.4 miles from the Brooks Community Service District treatment lagoons to the outfall into the Willamette River.

“BYPASS BOX” means the container at the Facility that the Company places Process Rejects in.

“CHANGE IN LAW” means (a) the adoption, pronouncement, promulgation, or modification after the Effective Date of (i) any federal statute, regulation or legally binding determination by federal judicial authority not adopted, pronounced, or published on or before the Effective Date or (ii) any State or County statute, ordinance, regulation, or legally binding determination by Oregon judicial authority that was not so adopted, pronounced, promulgated, or modified on or before the Effective Date, or (b) the imposition of any

material conditions in connection with the issuance, renewal, or modification of any official permit, license, or approval after the Effective Date.

The "COMPANY" has the meaning specified in the initial paragraph of this Contract and includes the Company's permitted successors and assigns.

"CONTRACT" means this Contract for the Supply and Processing of Solid Waste.

"COUNTY LEACHATE" means liquid waste that is not Solid Waste or Acceptable Waste as defined herein, drained from the County's Ash Monofill located in Woodburn, Oregon.

"EFFECTIVE DATE" means the date first entered in and set forth in Section 2 of this Contract.

"EXCESS WASTE" means Marion County Municipal Solid Waste delivered above the Guaranteed Tons amount.

"FACILITY" means without limitation the steam and electric generating facility, together with all additions, replacements, appurtenant structures and equipment, buildings, structures, utilities, grounds, landscaping, and fencing located at the Facility site.

"GUARANTEED TONS" has the meaning specified in Section 7.2A of the Contract and Schedules 1 and 2.

"HAULER" means any Person who transports Waste to the Facility, or, as applicable, to alternate facilities in accordance with Alternate Disposal Methods.

"HAZARDOUS WASTE" means: (A) any material or substances the treatment, storage or disposal of which, because of the composition or characteristics of the material or substance, is unlawful to treat, store, or dispose of at the Facility is (i) regulated as a toxic or hazardous waste as defined under either Subtitle C or the Solid Waste Disposal Act, 42 U.S.C 69921-6939a, or section 6 (e), of the Toxic Substances Control Act, 15 U.S.C. 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the State of Oregon, as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder, or (ii) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954; and (B) any other materials which any governmental agency or unit having appropriate jurisdiction shall lawfully determine from time to time to be ineligible for disposal through waste to energy facilities similar to the Facility because of the harmful, toxic, or dangerous composition or characteristics of the material or substance.

“HUMAN FETAL TISSUE” means tissue or cells from a dead human embryo or fetus resulting from a spontaneous or induced abortion or a stillbirth, but does not include non-fetal products of conception (i.e. placenta, umbilical cord, amniotic fluid and membranes).

“MUNICIPAL SOLID WASTE TIPPING FEE” means the fee set out in Schedule 1 which the County is obligated to pay the Company for delivery of Municipal Solid Waste to the Facility.

“OUT OF COUNTY WASTE” means waste, including Regulated Medical Waste, generated and collected outside of Marion County.

“PERFORMANCE GUARANTEES” means guarantees set forth in Section 7 of the Contract.

“PERSON” means a corporation, partnership, business trust, trust, joint venture, company, firm, or individual.

“PROCESS REJECTS” means Unacceptable Waste, Prohibited Waste, and Hazardous Waste accepted by the Company.

“PROHIBITED WASTE” shall include the following material if present in concentrations or quantities that, in the reasonable judgment of the Company: (1) would pose a substantial threat to public health or safety, (2) may cause applicable air quality or water effluent standards to be violated by the normal operation of the Facility, (3) are so large and bulky as to present a risk of blocking the Facility's waste feed chutes (6 feet in length and 30 inches in width), or (4) would result in ash residue from the Facility being hazardous: dynamite, hand grenades, blasting caps, live ammunition, any other explosives, fireworks, gasoline, fungicides, kerosene acids, hydraulic oil, petroleum, caustics, paints, inflammable or volatile liquids, alcohol, turpentine waste oil, ether, naphtha, acetate solvents, brick, stone, pallets (unless halved), cement, gravel, sand, soil, sawdust, roofing materials, plaster, porcelain fixtures, boilers, other non-combustible demolition debris, creosote treated lumber, drywall, metal pipes, offal, radioactive materials, asphalt sealed drums, ashes, pressurized containers (over one quart in size), human remains including Human Fetal Tissue, car batteries, automobile parts, tires or rims without special handling procedures and permission from DEQ, computers, computer monitors, televisions, and hazardous waste as defined under Federal, State, and local laws and regulations.

“RECEIVING TIME” means the hours between 6:00 a.m. and 6:00 p.m. Monday through Sunday, including all holidays.

“REGULATED MEDICAL WASTE” means in County and out of County solid waste, including boxed medical waste that is generated as a result of health care diagnosis, treatment or immunization of human beings or animals and managed in accordance with Section 7.2D.

“RENEWABLE ENERGY CREDITS” shall mean any revenues received from the sale of renewable energy certificates as defined under ORS 469A.005 and granted pursuant to ORS 469A.

“SCALE HOUSE” shall mean weighing facilities for Solid Waste deliveries at the Facility.

“SCALE OPERATORS” has the meaning specified in Section 7.

“SCHEDULE” means each of the several documents which are incorporated into and made a part of this Agreement, as identified in Section 1 which may be modified from time to time in accordance with the terms of the Agreement.

“SHORTFALL” means those tons the County is obligated, but unable to provide. This excludes tons that meet the definition of underprocessing.

“SOLID WASTE” and “MUNICIPAL SOLID WASTE” means all materials or substances including in county Regulated Medical Waste generated in Marion County and discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to items requiring Special Handling, garbage, refuse, industrial and commercial waste (including cannery waste), sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954, as amended.

“SPECIAL HANDLING” means receipt, management, and disposal of Acceptable Waste at the Facility in accordance with specific requirements for such waste by the generator thereof (or other person requesting such requirements) or to satisfy particular operational or other requirements identified by the Company and agreed to by the generator (or other person requesting processing of such waste). Special Handling shall include placement of waste directly into the Facility’s feed hoppers by the overhead crane through manual loading of the grapple and by passing the refuse pit, delivery to the waste storage pit over controlled conditions or mixing requirements with other waste, or by the conveyor system.

“TERM” has the meaning specified in Section 2 of the Contract.

“TON” means a US ton, or 2,000 pounds avoirdupois.

“UNACCEPTABLE WASTE” means that portion of Solid Waste, exclusive of Hazardous Waste such as, but not limited to, explosives, pathological and biological waste, radioactive

materials, ashes, foundry sand, sewage sludge unless processed to permit incineration, cesspool, and other human waste, human remains, motor vehicles, including such major motor vehicle parts such as automobile transmissions, rear ends, springs and fenders, agricultural machinery and equipment, marine vessels and major parts thereof, any other large type of machinery or equipment, or nonburnable construction materials and/or demolition debris, which present a substantial endangerment to public health or safety and cause the applicable air quality or water effluent standards to be violated by the normal operation Facility, unless such Unacceptable Waste is delivered in minimal quantities in concentrations as part of its collection in which case it shall constitute Acceptable Waste.

“UNDERPROCESSING” means those tons that the Company is unable to process, but the County is able to deliver as set forth in Schedule 2.