

# Covanta Lake II, Inc.

3830 Rogers Industrial Park Rd  
Okahumpka, FL 34762  
("Disposer")

## DISPOSAL SERVICES AGREEMENT

NAME: City of Leesburg, FL ("Customer")

**TYPE OF BUSINESS (Select One):**

Corporation     Subchapter S. Corp.     Limited Liability Co.     Sole Proprietorship  
 Partnership     Limited Partnership     Joint Venture     Other municipality

PHYSICAL ADDRESS: 550 S. 14<sup>th</sup> Street

CITY: Leesburg STATE: Florida ZIP CODE: 34749

BILLING ADDRESS: 550 S.14th Street

CITY: Leesburg STATE: Florida ZIP CODE: 34749

PHONE NUMBER: (352) 728-9878 FAX NUMBER: (352) 728-9879

CONTACT PERSON: Steve Lueallen TITLE: Solid Waste Supervisor

**DISPOSAL LOCATION (THE "FACILITY") AND DISPOSAL PRICE:**

FACILITY NAME: Covanta Lake Resource Recovery Facility

ADDRESS: 3830 Rogers Industrial Park Rd, Okahumpka, FL 34762

DELIVERY HOURS: 7:30 a.m. to 5 p.m., Monday through Saturday

DISPOSAL PRICE: \$27.50 per ton for all Acceptable Waste under the control of the Customer.

TERM: Unless sooner terminated in accordance with the provisions herein, the initial term of this Agreement shall be July 1, 2014 through December 31, 2014 (the "Initial Term"); thereafter, this Agreement will automatically extend on a month-to-month basis until one party provides the other party with written notice of its desire not to extend in accordance with the provisions herein.

TYPE OF WASTE Non-hazardous municipal solid waste

QUANTITY TO BE DELIVERED: Customer shall deliver, and Disposer shall receive and dispose of all tons of Acceptable Waste under the control of the Customer, except for recyclables and yard waste that is routinely delivered separately to other Customer facilities. All Acceptable Waste shall be delivered approximately ratably. Delivery shall be FOB the Facility.

INITIAL FEES AND TAXES: None

**THEREFORE, in consideration of their mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Disposer and Customer hereby agree as follows and as described above:**

- 1. ACCEPTABLE WASTE:** Customer shall deliver, and Disposer shall receive and dispose of, all of Customer's Acceptable Waste (hereinafter defined) as specified above. "Acceptable Waste" means municipal solid waste and excludes any waste defined or regulated as hazardous by any federal, state, local, or provincial authority. Acceptable Waste excludes construction and demolitions debris, incinerator residue, regulated medical waste, substances in gaseous form, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and any waste prohibited by any applicable permit condition. Acceptable Waste must be of a size and composition such that the Facility is able to process it. Acceptable Waste excludes any material that has the reasonable possibility of adversely

affecting the operation of any part of the Facility. Disposer may reject any and all waste which is not Acceptable Waste. Disposer may inspect random material on incoming waste vehicles. Disposer shall have no obligation to accept title to or process non-Acceptable Waste. If non-Acceptable Waste arrives at the Facility, Disposer may (but shall have no obligation to) arrange to have it picked up, transported, and disposed of at Customer's expense, paid in advance if Disposer so demands. In the alternative, and to the extent allowed under applicable law, Disposer may instruct Customer to pick up, transport and dispose of such waste at Customer's expense and provide Disposer with written proof of disposal in compliance with all applicable laws and regulations. Title to Acceptable Waste shall vest in Disposer only after acceptance of the Acceptable Waste. In the event that Disposer subsequently determines that any materials accepted from Customer are not Acceptable Wastes, then Disposer may revoke its acceptance of such non-Acceptable Waste, so long as the material has not been combined with any other materials by Disposer, and manage such non-Acceptable Waste as outlined in this paragraph. Any and all liability associated with Acceptable Waste shall pass to Disposer upon its acceptance of the waste; PROVIDED, HOWEVER, THAT IF CUSTOMER DELIVERS ANY NON-ACCEPTABLE WASTE, CUSTOMER SHALL INDEMNIFY DISPOSER FOR ALL LOSSES, COSTS, AND DAMAGES (INCLUDING ATTORNEY'S FEES AND COSTS) ("COSTS") ARISING THEREFROM, EXCEPT COSTS ARISING FROM DISPOSER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. Customer is prohibited from bringing any commingled non-Acceptable Waste along with Acceptable Waste for disposal, but in the event that Customer does bring any such non-Acceptable Waste, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR COSTS ASSOCIATED WITH SUCH NON-ACCEPTABLE WASTE, SPECIFICALLY INCLUDING ALL COSTS ASSOCIATED WITH DISPOSER'S NEGLIGENCE, BUT EXCLUDING COSTS ASSOCIATED WITH DISPOSER'S GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT, IN HANDLING OR DISPOSING OF SUCH NON-ACCEPTABLE WASTE. A surcharge of \$500.00 may be charged by Disposer (and if charged, shall be paid by Customer) for any loads which upon inspection, are found to contain non-Acceptable Waste. This surcharge is in addition to any amounts owed under the indemnities in this Agreement. Delivery of non-Acceptable Waste shall be grounds for immediate termination of this Agreement.

2. **PAYMENT:** Customer shall make payment within 30 days of the date of Disposer's invoice at the address specified on such invoice in accordance with Chapter 218, Part VII, Fla. Stat. (2013), the "Local Government Prompt Payment Act." Customer shall pay Disposer's reasonable investigation costs and attorney's fees for purposes of collection of amounts owed by Customer. Disposer will provide itemized billing to Customer delineating Customer's residential waste separate from Customer's commercial waste.
3. **INDEMNIFICATION:** Disposer shall indemnify and hold harmless Customer, its subsidiaries, and affiliate companies, from and against any and all loss, damage, suits, liability and expenses (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss of or damage to property, including Disposer's and the Facility's property, contamination of or adverse effects on the environment, and injuries to or death of persons, including Customer's, Disposer's or Facility's employees, caused by or resulting from: (1) the negligence or willful misconduct of Disposer, its employees, haulers, contractors, subcontractors or agents; or (2) Disposer's breach of any term or provision of this Agreement.

Subject to the limitation of F.S. 768.28, Customer shall indemnify and hold harmless Disposer and the Facility(ies), their partners and parents, subsidiaries, and affiliate companies (collectively, the "Indemnified Parties"), from and against any and all loss, damage, suits, liability and expenses (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss of or damage to property, including Disposer's and the Facility's property, contamination of or adverse effect on the environment, and injuries to or death of persons, including Customer's, Disposer's or Facility's employees, caused by or resulting from: (1) the negligence or willful misconduct of Customer, its employees, haulers, contractors, subcontractors or agents; or (2) Customer's breach of any term or provision of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, Customer assumes responsibility for (1) any injury or loss incurred by its employees or agents while on the Facility's premises (except that caused by Disposer's gross negligence), (2) any damage to Customer's property, including, but not limited to Customer's vehicles, that results from Disposer or the Facility providing unloading assistance to Customer while Customer is on the Facility's premises (except that caused by Disposer's gross negligence), and (3) the compliance with all of the Facility's rules and regulations, particularly those relating to safety and health.

Neither party shall have any liability to the other for any special, incidental or consequential damages, whether arising in contract, tort, strict liability, or in any other cause of action whatsoever. Said duties to indemnify, defend and hold harmless shall survive the termination of this Agreement.

4. **COMPLIANCE WITH AND GOVERNING LAW:** Both parties shall comply with all applicable local, state and federal laws. Customer shall also comply with work and safety rules promulgated to govern operations at the Facility. This Agreement, the interpretation hereof and performance hereunder shall be governed by and construed in accordance with the laws of the State of Florida without regard to the principles of conflict of law.
5. **FORCE MAJEURE:** Except for the obligation to pay for services rendered, neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots,

war, fire, nor acts of God, herein referred to as "Events of Force Majeure." The financial inability to perform of a party is not an Event of Force Majeure.

6. **DEFAULT AND TERMINATION:** (a) If either party fails to perform any material obligation under this Agreement or breaches any material warranty under this Agreement, and if such failure or such breach continues for more than 30 days after the non-breaching party gives the breaching party written notice thereof, then in addition to any rights or remedies the non-breaching party may have at law or in equity, such party may terminate this Agreement by giving written notice of termination to the breaching party and recover any damages occasioned by such failure or breach. (b) Notwithstanding anything contained herein to the contrary, if Disposer elects to shut down the Facility for any reason at its sole discretion, then Disposer may terminate this Agreement upon ninety (90) days prior written notice to Customer. (c) During the Initial Term, either party may terminate this Agreement for convenience upon 45 days' written notice to the other party.

7. **INSURANCE:** Customer shall maintain worker's compensation insurance providing statutory benefits, employer's liability coverage of not less than \$500,000 and automobile and commercial general liability insurance with policy limits of not less than \$2,000,000 each occurrence for bodily injury or death and \$1,000,000 each occurrence for property damage liability. Limits for automobile and general liability can be satisfied either through a single policy or combination of primary and umbrella/excess coverage. Where umbrella/excess coverage is used, coverage must be "follow form" or as broad as primary coverage. Customer shall cause the automobile and commercial general liability policies to be duly and properly endorsed by Customer's insurance underwriter's as follows: a) to provide endorsement amending policies to include Disposer as an additional covered party; b) to contain a standard cross liability and severability clause;; and c) to provide contractual liability coverage for all liability assumed by Customer under the terms of this Agreement. These limits are considered minimum and in no way intended to limit the Customer's liability under this Agreement. Prior to commencing any Services under this Agreement, Customer shall furnish Disposer with Certificates of Insurance issued by Customer's insurer(s), as necessary, in a form acceptable to Disposer, as evidence that the insurance policies, including all applicable endorsements, providing the required coverage's, conditions, and limits required by the section are in full force and effect. Should any of the above described policies be cancelled before the expiration date thereof, insurers shall deliver notice in accordance with the policy provisions. Customer shall notify Disposer, in writing, at least 30 days prior to any cancellation. Disposer also reserves the right to request and receive certified copies of any or all of such insurance policies and or endorsements. Disposer shall not be obligated, however, to review such insurance certificates, policies, and endorsements, or to advise Customer of any deficiencies in such documents, and such receipt shall not relieve Customer from or be deemed a waiver or Disposer's right to insist on strict fulfillment of Customer's obligations herein.

8. **FEES/TAXES:** Reserved.

9. **PUBLICITY.** Neither party shall use the name of the other party or any of its affiliates or related companies or customers in any publicity or advertising or disclose any information related to the existence of this Agreement or the terms and conditions of this Agreement hereof, without the prior written consent of the other party.

10. **MISCELLANEOUS.** (a) No changes to this Agreement will be effective unless in writing and signed by the party to be bound. (b) No failure by either party to insist on performance shall operate as a waiver of other or subsequent breaches. (c) Neither party shall assign its rights or delegate its duties under this Agreement to any other person without the prior written consent of the other party, such consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto. (d) If any provision of this Agreement is held to be unenforceable, this Agreement shall be reformed, but only to the extent necessary to render it enforceable. This Agreement may be executed in any number of counterparts, each of which when so executed shall be an original and all of which together shall constitute one and the same instrument.

CUSTOMER:

DISPOSER:

\_\_\_\_\_  
MAYOR DATE

*Brad Crispell* 6/12/2014  
\_\_\_\_\_  
AUTHORIZED SIGNATURE DATE

\_\_\_\_\_  
CITY CLERK

BRADFORD D. CRISPELL VP-Regional Bus.  
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PRINT NAME TITLE Mgnt