

**INVITATION TO BID**  
**HARRISBURG RESOURCE RECOVERY FACILITY**  
**ASH MANAGEMENT & BENEFICIAL USE/DISPOSAL**

**THE HARRISBURG AUTHORITY**

**Michele T.V. Torres, Executive Director**  
**312 Locust Street, Suite 302**  
**Harrisburg, Pennsylvania 17101**

*(717) 525-7677*

**January 2010**

**INVITATION TO BID  
HARRISBURG RESOURCE RECOVERY FACILITY  
ASH MANAGEMENT & BENEFICIAL USE/DISPOSAL**

**I. NOTICE TO BIDDERS**

1. Respondents to this Bid shall either hand carry or mail one (1) original of their Bid to: The Harrisburg Authority (“THA”), Attn: Jack D. Lausch, Jr., Facility Director, 212 Locust Street, Suite 302, Harrisburg, PA, 17101. The outside of the envelope must be plainly marked in the lower left hand corner "Bid for HRRF Ash Management & Beneficial Use/Disposal" and the envelope must show name of Bidder.
2. Bids must be on file in the office of THA no later than 3:00 P.M. on February 1, 2010. Any Bids received after that hour and date will not be opened and will be returned to the Bidder unread.
3. Bidders will be given permission to withdraw any Bid submitted, prior to their opening, provided the Bidder makes their request in writing to the Facility Director. All requests pertaining to withdrawal must reach the Facility Director no later than one (1) hour prior to the time set for the opening of Bids.
4. Award, if any, will be made within sixty (60) days of February 1, 2010.
5. Prices quoted are based on the acceptance of the Bid within sixty (60) days from the receipt thereof by THA. The prices on any Bid shall remain firm for the period specified by Bidder in his submission.
6. All Bidders are required to submit specifications with their Bids, detailing prices, services offered, qualifications and experience summary and/or any other information necessary in making a comparative evaluation. **Deviations from referenced services and specifications shall be clearly defined.** Failure to comply with this requirement may result in disqualification of your Bid.
7. Bid security in the amount of 10% of the total price (tons per year of HRRF Ash times tip fee per ton) is required with each Bid submitted in the form of a certified check, cashier's check, treasurer's check, an irrevocable letter of credit drawn on a bank acceptable to THA or a bond with sufficient surety approved by THA. The security shall be made payable to THA and the full amount of said security shall be forfeited and payable as damages to THA if the Bidder fails to execute an Agreement as provided, submit the certificate of insurance or other documentation as required. The Bid securities submitted will be returned to all Bidders when the Bidder(s) awarded an Agreement(s) delivers to THA the aforementioned documentation.
8. THA reserves the right to reject any or all Bids, or to make partial or multiple awards, whichever is deemed solely by THA to be in the best interest of THA.
9. The Bid evaluation will take into account all relevant criteria, including but not limited to price, environmental criteria, and any exceptions or deviations taken by the Bidder.
10. The price must be neither directly or indirectly the result of any agreement with any other Bidder. All Bidders must complete the enclosed Non-Collusion Affidavit as part of the Bidding requirements.

11. The Bidder will save harmless and fully indemnify THA and all its officers, agents or employees from all damages, costs or expenses that may at any time be imposed or claimed for Ash Management and Beneficial Use/Disposal of the ash.
12. THA is exempt from all excise taxes and transportation taxes. Direct sales made to THA are exempt from the provision of the Fair Trade Law and the Pennsylvania Sales Tax.
13. The successful Bidder shall maintain, through the duration of the Agreement, the following insurances: Broad Form General Liability Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 Aggregate; Workman's Compensation Insurance, representing the statutory required limits of the State of Pennsylvania; Employer's Liability Insurance in the amount of \$100,000 per person and \$500,000 per disease; Occurrence Form Excess Liability Insurance in the amount of \$2,000,000; and Environmental Impairment Liability Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. THA and Covanta Energy must be named as additional insured on all coverage except Workers Compensation.
14. No Agreement may be assigned, sublet or transferred without written consent of THA.
15. The Bid must be signed by an owner, partner or in the case of a corporation by the president, vice-president and the secretary or treasurer or any other corporate officer empowered to execute contracts.
16. No Bid will be considered unless Bid price is firm and clearly defined.
17. Bidder will list services and special considerations offered by their company.
18. Any questions related to this Bid must be submitted in writing no later than 3:00 P.M. on January 25, 2010. THA will not respond to oral questions or questions that are received after the aforementioned deadline. Questions should be addressed to Jack D. Lausch, Jr., Facility Director, THA, 212 Locust Street, Suite 302, Harrisburg, Pennsylvania 17101.
19. A site visit is highly recommended for the specific purpose of examining the HRRF and ash.

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**II. CONTENT OF BIDS AND REQUIRED SUBMITTALS**

1. All Bids must be typed or neatly completed in pen. Any erasures or other changes in the unit prices or total price must be explained or noted over the signature of the Bidder and failure to do so may result in the rejection of your Bid.
2. All Bids shall contain sections which organize the information that Bidders are required to submit, as provided below.
3. The first section of the Bid shall contain information on the services to be provided by the Bidder relative to the services to be provided under this Bid. The successful Bidder shall demonstrate that it has the ability to provide Ash Management and/or Beneficial Use/Disposal for the volume of ash requested herein for the term of the Agreement.
4. The second section of the Bid shall contain copies of any required permits, licenses or approvals relating to Ash Management and Beneficial Use/Disposal.
5. The third section of the Bid shall contain a current copy of the Pennsylvania Department of Environmental Protection's Form HW-C Compliance History, or other state's equivalent regulatory compliance history form, which provides regulatory compliance information relative to the Ash Management and Beneficial Use/Disposal.
6. The fourth section of the Bid shall contain a completed copy of each of following: 1) the non-collusion affidavit, 2) the price Bid sheet, 3) the signature sheet, 4) the Bid security, and 5) a statement which clearly identifies any and all deviations or exceptions that the Bidder may be taking to the Bid.
7. The fifth section of the Bid shall contain information relative to the availability of the insurances required by the Bid.
8. The sixth section of the Bid shall contain any additional information that the Bidder believes is relevant and should be considered by THA. This may include, but is not limited to, a qualification statement demonstrating Bidder's experience in related work/contracts.

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**III. SPECIFICATIONS FOR HARRISBURG RESOURCE RECOVERY FACILITY  
ASH MANAGEMENT & BENEFICIAL USE/DISPOSAL**

1. GENERAL SCOPE

The purpose of this solicitation is a request for ash management and disposal capacity for up to 80,000 tons per year of HRRF Ash, on an as needed basis, from THA's HRRF, 1670 South 19<sup>th</sup> Street, Harrisburg, PA 17104, Permit #100758. The HRRF Ash is residue after incineration of Municipal Solid Waste and Residual Waste at the HRRF and has the characteristics such as that it may be disposed of in accordance with applicable regulations, solids waste Beneficial Use/Disposal permits and approvals, and this Agreement. Daily ash Beneficial Use/Disposal needs may range between 200 and 400 tons per day or 18,000 and 20,000 tons per quarter.

THA currently has under Agreement a contractor to perform grading of ash that is delivered from the HRRF to THA's Landfill on a daily basis in accordance with permitted design. The contractor is also responsible for excavating ash deposited at THA's Landfill and the transportation of the HRRF Ash to a landfill with whom THA has an Agreement for Beneficial Use/Disposal of the HRRF Ash. THA is requesting pricing for Ash Management and Beneficial Use/Disposal capacity for the remainder of 2010 with an option to continue the Agreement for these services for years 2011, 2012, and 2013. THA does not guarantee any specific quantity of ash for Beneficial Use/Disposal, and THA shall have no liability, financial or otherwise except for payment for the quantity of HRRF Ash actually removed from the HRRF/THA Landfill and delivered to Bidder's proposed facility. Bidder shall be responsible for providing and maintaining all labor, materials, equipment, capacity and expertise necessary to manage and dispose of the volume of HRRF Ash agreed upon with THA in accordance with all Applicable Laws, the Pennsylvania Department of Environmental Protection (PADEP) and United States Environmental Protection Agency (USEPA) regulations, rules and guidelines, or other applicable regulations governing Ash Management and Beneficial Use/Disposal of waste.

2. THA's FACILITIES & QUANTITY OF ASH

THA's HRRF is permitted and approved by the PADEP, Permit #100758. THA's Landfill is an ash landfill, Permit #100992, on the HRRF site which meets criteria established under Subtitle D.

Remaining capacity at THA's Landfill is currently very limited. THA is disposing of HRRF Ash off-site to maintain space in its Landfill until such time as an expansion of THA Landfill can be completed or an alternative long term Beneficial Use/Disposal option is instituted. The volume of HRRF Ash delivered to Bidder's facility shall be made at the sole discretion of THA. THA will make a concerted effort to ship a consistent volume of HRRF Ash to aid Bidder with planning and scheduling. THA reserves the right to choose a combination of Bidders to meet its Ash Management and Beneficial Use/Disposal needs.

3. INSURANCE

The successful Bidder shall maintain, through the duration of the Agreement, insurance coverage as required by this Bid. THA and Covanta Energy shall be named as additional insured on all coverage except Workers Compensation and evidence of the required insurance coverage and additional insured status must be forwarded to THA prior to final execution of the Agreement.

4. AWARD

THA reserves the right to award multiple Agreements to separate and distinct companies in order to insure the availability of Ash Management and Beneficial Use/Disposal services for HRRF Ash at all times. The successful Bidder(s) will be required to enter into an Agreement substantially in the form of the HRRF Ash Management and Beneficial Use/Disposal Agreement included in this Bid document. Any and all deviations or exceptions to the provisions of the Agreement shall be clearly identified in section four (4) of the Bid. Failure to disclose any deviations or exceptions to these specifications may result in the forfeiture of the Bid security. Any such deviations or exceptions shall be taken into account during the evaluation process and in any subsequent negotiations. Material deviations or exceptions may result in rejection of the Bid. All decisions regarding the acceptance or rejection of Bids shall be at the sole discretion of THA.

The Agreement covers an initial ten (10) month period commencing on/about March 1, 2010, with additional one year extension options upon mutual agreement of both THA and Bidder. Bidders shall provide a price per ton for HRRF Ash Management and/or Beneficial Use/Disposal for 2010, effective March 1, 2010, on the Price Bid Sheet attached hereto. The price per ton shall be fixed and guaranteed through December 31, 2010, and not subject to any cost adjustment unless agreed upon by THA in writing. The successful Bidder(s) will enter into a HRRF Ash Management and Beneficial Use/Disposal Agreement within 15 days of the acceptance of the Bid unless an extension is mutually agreed to by THA and the Bidder. Failure to execute the Agreement shall constitute a failure to perform and result in the forfeiture of the Bid security. The form of the required Agreement is included in this Bid document.

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**IV. PRICE BID SHEET**

FEE PER TON TO BE CHARGED TO THA FOR ASH MANAGEMENT AND/OR BENEFICIAL USE/DISPOSAL OF HRRF ASH

2010 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Bidder shall provide a description of services to be provided for fee bid (ie. management of ash deposited daily in THA Landfill, excavation and loading of ash from THA Landfill for transportation, ash transportation to Bidder's facility, beneficial use/disposal tip fee, etc.). Attach additional pages if necessary.

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Optional:

2011 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

2012 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

2013 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

\*Note: Tip Fee Per Ton is to include mandatory fees, surcharges, host fees or other governmental impositions applicable to the management and beneficial use/disposal of the HRRF Ash by Bidder.

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**V. SIGNATURE SHEET**

NOTE: Security in the amount of 10% of the annual HRRF Ash tons that may be delivered to Bidder's facility times tip fee per ton is to be included with responses to this Bid.

ATTEST/WITNESS: \_\_\_\_\_  
(Signature of Witness)

BUSINESS NAME: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature of an Authorized Representative)

\_\_\_\_\_  
(Print Name as Signed Above)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

DATE: \_\_\_\_\_

**HARRISBURG RESOURCE RECOVERY FACILITY  
ASH MANAGEMENT & BENEFICIAL USE/DISPOSAL AGREEMENT**

**BETWEEN**

**CONTRACTOR**

**AND**

**THE HARRISBURG AUTHORITY**

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**This Harrisburg Resource Recovery Facility Ash Management & Beneficial Use/Disposal Agreement is entered into as of, \_\_\_\_\_ 2010, by and between The Harrisburg Authority (“THA”) and \_\_\_\_\_ (“Contractor”).**

## **RECITALS**

**WHEREAS**, THA is the owner and Covanta Energy is the operator of the Harrisburg Resource Recovery Facility (HRRF); and

**WHEREAS**, THA, from time to time, requires HRRF Ash Management and Beneficial Use/Disposal capacity; and

**WHEREAS**, THA desires to enter into an Agreement with Contractor pursuant to which Contractor will manage and/or beneficially use/dispose of HRRF Ash (as hereinafter defined) in compliance with solid waste regulations; and

**WHEREAS**, the Contractor desires to provide Ash Management and/or Beneficial Use/Disposal services to THA, and THA desires to obtain such services, upon the terms and conditions set forth herein; and

**WHEREAS**, THA has agreed to pay Contractor for Ash Management and/or Beneficial Use/Disposal services in accordance with the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual obligations undertaken herein, the Parties hereby agree as follows:

## **ARTICLE I - DEFINITIONS**

**Section 1.01 Definitions.** As used in this Agreement, the following terms shall have the meaning set forth below:

**"Agreement"** means this Ash Management and Beneficial Use/Disposal Agreement between THA and the Contractor, including all Schedules and Exhibits and any written amendments to this Agreement executed by the Parties.

**"Agreement Date"** means the date of execution of this Agreement.

**"Applicable Law"** means the Permits and provisions of the Pennsylvania Solid Waste Management Act, 35 P.S. 6018.101 et seq., ("Act 97"); Pennsylvania Municipal Waste Planning, Recycling, and Waste Reduction Act, 53 P.S. 4001.101, et seq., ("Act 101"), and any other state or federal law or statute or other ordinance, order, decree, rule, regulation, directive, standard, policy, or similarly binding THA or Contractor, which as of the Agreement Date has been enacted, adopted, promulgated, issued or enforced and is applicable to the ownership, design, operation, maintenance and/or repair of THA's Facilities or Contractor's Beneficial Use/Disposal Facility.

**"Article"** means an article of this Agreement.

**"Ash Management"** means the grading of HRRF Ash deposited daily at THA's Landfill, excavation of HRRF Ash at THA's Landfill, loading of HRRF Ash for transportation to a landfill or permitted site, and transportation of HRRF Ash to a landfill or other permitted site in compliance with the permitted and approved design of THA's Landfill and applicable rules, regulations, and laws.

**"Ash Management and/or Beneficial Use/Disposal Fee"** means the amount payable by THA to Contractor for Ash Management and/or Beneficial Use/Disposal services pursuant to Section 3.01.

**"Beneficial Use/Disposal"** means approved and permitted use of HRRF Ash as alternative daily cover or other approved use as determined by Pennsylvania Department of Environmental Protection (PADEP) rules and regulations.

**"Billing Period"** means the first (1<sup>st</sup>) and sixteenth (16<sup>th</sup>) of each calendar month during the Billing Year.

**"Billing Year"** means the twelve (12) month period commencing on the first day of the first Billing Period following the Commencement Date; provided, however, that the First Billing Year shall end on the thirty-first (31<sup>st</sup>) day of December.

**"Business Day"** means each Monday, Tuesday, Wednesday, Thursday, and Friday which is not a legal holiday.

**"Commencement Date"** means the sooner of: the day on which the Contractor manages and/or receives THA's HRRF Ash for Beneficial Use/Disposal, or on/about March 1, 2010.

**"Commonwealth"** means the Commonwealth of Pennsylvania and all its appropriate administrative, regulatory agencies and offices.

**"Contractor"** means the individual, corporation, or entity that pursuant to this Agreement will manage and/or dispose of THA's HRRF Ash.

**"Contractor's Facility"** means Contractor's landfill or permitted site where the HRRF Ash will be transported for processing, beneficial use, or disposal.

**"Daily Limit"** means the maximum amount of HRRF Ash that may be delivered during the Receiving Time by or on behalf of THA to Contractor's Beneficial Use/Disposal Facility as set for on Schedule "A" hereto.

**"Day"** means a twenty-four (24) hour period, beginning at 12:01 A.M. in the Eastern Time Zone, coinciding with the calendar day.

**"Event of Default"** means one or more of those events specified in Article VI.

**"Facility or Facilities"** means the HRRF, THA's Landfill, or Contractor's Facility.

**"HRRF"** means the Harrisburg Resource Recovery Facility, 1670 South 19<sup>th</sup> Street, Harrisburg, PA 17104 , Permit #100758 owned by THA and operated by Covanta Energy where the HRRF Ash is generated.

**"HRRF Ash"** means residue after incineration of Municipal Solid Waste and Residual Waste at the HRRF and has the characteristics such that it may be disposed of in accordance with Applicable Law, Beneficial Use/Disposal solid waste permits and approvals, and this Agreement.

**"Harrisburg"** means the City of Harrisburg, Pennsylvania.

**"Hauler" or "Haulers"** means a person or persons transporting HRRF Ash to Contractor's Facility pursuant to all applicable licenses or permits.

**"Hazardous Waste"** means any material or substance which, as of the Agreement Date and by reason of its composition or characteristic, is (1) toxic or hazardous waste as defined in either the Solid Waste Act 42 U.S.C. Subsection 6901 et. seq., as replaced or amended, and the regulations there under, or in the Pennsylvania Solid Waste Management Act 35 P.S. Subsection 6018.101 et. seq., as replaced or amended, and the regulations there under, (2) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954. If any governmental agency or unit now hereafter having appropriate jurisdiction shall determine that substance which were not, as of the Agreement Date, considered harmful, toxic or dangerous, are harmful, toxic or dangerous, then such substances shall be Hazardous Waste for the purpose of this Agreement as of the effective date of any such determination.

**"Legal Holiday"** means Martin Luther King Day, Presidents Day, Memorial Day, Good Friday, Independence Day, Labor Day, Veterans Day, Columbus Day, Thanksgiving Day, (and Subsequent Day) Christmas Day ( and the previous or subsequent business day as designated) and New Year's Day. The Contractor will; however, be required to work on all days that the HRRF is open to the public.

**"Municipal Waste"** - Any Solid Waste which is garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments and from community activities, and any sludge not meeting the definition of Residual or Hazardous Waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.

**"Party or Parties"** means THA or the Contractor, as the context may require.

**"Permit or Permits"** means the permits, licenses and approvals granted to and held by THA and Contractor as of the Agreement Date from the appropriate governmental authorities having jurisdiction over the ownership, design, operation, construction, maintenance or repair of the HRRF and Contractor's Facility, and which are necessary and legally required for the operation and existence of the HRRF and Contractor's Facility. For the purpose of this definition, Permit or Permits shall include all modifications, continuations, re-issuance, amendments, revisions and new or additional permits, licenses, and approvals which may, after the Agreement Date, be legally required and necessary for the continued existence, ownership, design, operation, construction, maintenance or repair of the HRRF and Contractor's Facility.

**"Receiving Time"** means the period of operation at Contractor's Facility during which HRRF Ash will be received.

**"Section"** means a Section of this Agreement.

**"THA"** means The Harrisburg Authority

**"THA Landfill"** means THA's Ash Landfill, 1670 South 19<sup>th</sup> Street, Harrisburg, PA 17104, Permit #100992.

**"Ton"** means a "Short Ton" of 2,000 pounds.

**"Unacceptable Waste"** – Waste other than HRRF Ash.

**"Uncontrollable Circumstances"** means any act, event or condition beyond the reasonable control of the Parties, that (a) has a direct adverse effect on i) the rights or the obligations of the parties under this Agreement, or ii) the ownership, construction, design, operation, maintenance or repair of the HRRF or Contractor Facility, or iii) the delivery and/or acceptance of HRRF Ash from the HRRF.

- (a) The occurrence of an act of God, hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, flood, fire, or explosion or similar occurrence; or an act of the public enemy, war, blockade, insurrection, riot, general unrest, or restraint of government or people, labor strikes, stoppages, interruptions, or similar concerted labor actions, civil disturbance, sabotage or similar occurrence, any exercise of power of eminent domain, condemnation, or other taking power of any governmental entity, and utility interruption or failures;
- (b) The order, injunction, decree, action and/or judgment of any Federal, State, Commonwealth, or Local Court, Administrative Agency or Governmental agency with jurisdiction over the Parties, provided that such order, decree, action, or judgment shall not be the result of the willful or negligent action or inaction of the Party relying thereon.

**Section 1.02 Entire Document.** This Agreement shall constitute the entire Agreement between the Parties with respect to the Ash Management and/or Beneficial Use/Disposal of the HRRF Ash. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and executed by the Parties hereto, unless otherwise expressly provided for in this Agreement.

## **ARTICLE II – DELIVERY, ASH MANAGEMENT AND BENEFICIAL USE/DISPOSAL OF HRRF ASH**

### **Section 2.01 Commencement Date.**

The Commencement Date shall be on/about March 1, 2010.

**Section 2.02 Overall Responsibilities.**

- (a) The Contractor shall use all reasonable best efforts to obtain, and maintain, the necessary permits and approvals with respect to delivery and/or acceptance of HRRF Ash to enable it to perform its obligations under this Agreement. Contractor shall operate and maintain Contractor's Facility or cause Contractor's Facility to be operated in compliance with the Pennsylvania Solid Waste Disposal Act, and the regulations promulgated there under, and/or any other applicable state and federal law.
- (b) Contractor shall operate and maintain Contractor's Facility, and accept and beneficially use/dispose of HRRF Ash delivered during the term of this Agreement. Normal volume from Monday through Friday is expected to be approximately 250 to 325 tons per day of HRRF Ash. During 2010, THA projects up to 80,000 tons of HRRF Ash will be generated. During the term of the Agreement the maximum amount of HRRF Ash to be delivered to Contractor's Facility is not expected to exceed 400 tons per day on any given day.
- (c) THA shall pay Contractor an Ash Management and/or Beneficial Use/Disposal Fee pursuant to Article IV.

**Section 2.03 Receiving Time; Regulation of Traffic; Weighing; Scale Records; Title to Solid Waste.**

- (a) Receiving Time. Contractor shall keep Contractor's facility open for the receipt of HRRF Ash during the Receiving Time. THA may request Contractor accept delivery of HRRF Ash at times other than the Receiving Time. Contractor will reasonably accommodate such request, provided there is no additional cost to Contractor.
- (b) Regulation of Traffic. THA and Contractor shall regulate the flow of traffic through their respective facilities and scales, and may deny any vehicle which is not in a safe condition and compliant with applicable regulations. The vehicles delivering HRRF Ash by or on behalf of THA shall be received and processed by Contractor in a manner no less favorable than the delivery vehicles of Contractor's other customers or its affiliated entities.
- (c) Weighing HRRF Ash. Contractor shall operate and maintain scales at Contractor's Facility the purpose of determining the total Tons of HRRF Ash delivered to Contractor's Facility. Each vehicle delivering HRRF Ash to Contractor's Facility by or on behalf of THA shall be weighed-in and out, and the weight of all such HRRF Ash and the identity of the Hauler delivering such HRRF Ash shall be recorded and maintained by Contractor for purposes of the preparation of THA's invoices for Beneficial Use/Disposal services and the determination of the tonnage delivered. Contractor shall determine the weight of vehicles leaving THA's Facility by weighing-in and out such vehicles. To the extent that Unacceptable Waste is delivered to Contractor's Facility by or on behalf of THA, THA and Contractor agree to remove the Unacceptable Waste from Contractor's Facility and reimburse Contractor for necessary costs associated with the Unacceptable Waste.
- (d) Scale Records. Contractor and THA shall test and recalibrate their respective Facility scales as often as may be required by Applicable Law.

Contractor shall provide copies of all delivery and weight records to THA at such intervals as the Parties may mutually determine.

Contractor shall be responsible for preparation and delivery of monthly invoices to THA for Ash Management and/or Beneficial Use/Disposal Fee payment in accordance with Section 3.03.

- (e) Title to Solid Waste. Contractor shall take title to HRRF Ash upon delivery and acceptance at Contractor's Facility.

### **ARTICLE III – ASH MANAGEMENT AND BENEFICIAL USE/DISPOSAL FEE, INVOICES**

**Section 3.01 Beneficial Use/Disposal Fee.** For the Term of this Agreement, the amount payable to Contractor by THA for each Ton of HRRF Ash managed by Contractor and/or beneficially used/disposed of at Contractor's Facility shall be as provided in Exhibit A to this Agreement.

**Section 3.02 Fees and Other Charges.** Contractor shall be responsible for the payment of all mandatory fees, surcharges or other governmental impositions applicable to the beneficial use/disposal of HRRF Ash at Contractor's Facility.

#### **Section 3.03 Invoicing.**

- (a) Contractor or its agent shall prepare and mail its invoices to THA for Ash Management and/or Beneficial Use/Disposal services rendered during each Billing Period within ten (10) days of the end of said Billing Period. Said invoice shall include such documentation as may be reasonably necessary to substantiate said invoice, including the weigh scale data or summaries of weigh scale data pursuant to Section 2.03(c). On request from THA, the Contractor will provide any additional information which may reasonably be deemed necessary by THA to resolve any potential discrepancy or inconsistency in weights and billings or payments.
- (b) THA shall pay Contractor the Ash Management and/or Beneficial Use/Disposal Fee for any Billing Period net thirty (30) days of the date of Contractor's invoice.

### **ARTICLE IV - UNCONTROLLABLE CIRCUMSTANCES**

**Section 4.01 Excuse for Nonperformance.** The failure of either Party to perform any obligation under this Agreement due to an Uncontrollable Circumstance shall not constitute a breach of the Agreement. THA's obligation to deliver HRRF Ash and Contractor's obligation to receive HRRF Ash shall be abated during any period when the HRRF is not generating and/or Contractor is not accepting waste as a consequence of an Uncontrollable Circumstance.

**Section 4.02 Mitigation.** Each Party shall be obligated to take all reasonable steps and use its best reasonable efforts to mitigate the adverse effect of any Uncontrollable Circumstance and any cost resulting thereon.

**Section 4.03 Notices.** As a condition precedent to the right to claim the benefits of this Article, each Party shall be obligated to provide prompt notice to the other Party of the occurrence of an Uncontrollable Circumstance. Such notice shall i.) identify the nature of the Uncontrollable Circumstance, ii) include a copy of any written notice required under 25 PA Code /Section 283.253, iii) specify the extent of the adverse effect on the performance of the affected Party's obligations under this Agreement and iv) identify the affected Party's abilities or intended response or plan of action to deal with the Uncontrollable Circumstances. Following the issuance of such notice, the affected Party shall thereafter keep the other Party reasonably informed of the status of the Uncontrollable Circumstance.

## **ARTICLE V - DEFAULT AND TERMINATION**

**Section 5.01 Event of Default.** The following shall constitute Events of Default by the Parties and the remedies available to either Party for breach of this Agreement.

- (a) Events of Default By THA. The failure to perform any of THA's obligations under this Agreement, including without limitation, the failure to provide HRRF Ash to Contractor for Ash Management and/or Beneficial Use/Disposal.
- (b) Events of Default By Contractor. The failure to perform any of Contractor's obligations with regard to Ash Management and/or Beneficial Use/Disposal under this Agreement.

**Section 5.02 Notice of Default** In the event an Event of Default occurs, written notice of such default shall be provided to the defaulting Party by the other Party. Within ten (10) days after receiving notice that an Event of Default has occurred, the Defaulting Party shall either correct the Event of Default or commence with due diligence a remedy for such Event of Default agreeable to both Parties, in which event the non-defaulting Party shall take no action and shall continue to perform its obligations as if no Event of Default has occurred; provided, however, if the Event of Default shall be a non-payment by THA of any amounts due and owing Contractor under this Agreement after the expiration of any applicable grace period, Contractor reserves the right to refuse to perform Ash Management services and/or accept further deliveries of HRRF Ash by or on behalf of THA until such time as THA becomes current in its payment of any amounts due and owing; and further provided that Contractor shall cure any default in its obligations to accept HRRF Ash from THA within ten (10) days of receipt of written notice of such default from THA.

**Section 5.03 Remedies for Default** Upon an uncured Event of Default, the non-defaulting Party shall have all remedies available to it, whether at law or in equity, for redress of such default. The Parties expressly acknowledge that an unexcused and uncured Event of Default will result in irreparable harm, and that the non-defaulting Party shall, in addition to other available remedies, be entitled to specific performance of this Agreement and to preliminary and permanent injunctive relief.

## **ARTICLE VI - GENERAL**

**Section 6.01 Term.** The Term of this Agreement shall be \_\_\_\_\_ year(s) from the Commencement Date, with the option of one year extensions annually upon mutual agreement by both Parties, sixty (60) days prior to the expiration of the then current Agreement, on the terms and conditions of each one year extension.

**Section 6.02 Assignment.** This Agreement may not be assigned by either Party without the prior written mutual consent of the Parties.

**Section 6.03 Change of Ownership.** In the event of change in control or ownership of THA's HRRF or of Contractor's Facility, the Parties shall release the original owner of all liabilities and obligations after the change in ownership and allow the new ownership to assume the rights, duties and obligations of the Agreement.

**Section 6.04 Indemnification and Waiver.**

- (a) Contractor agrees that it shall protect, indemnify, and hold harmless THA and its respective officers, officials, employees, operators and agents from and against all actions, claims, costs, damages, demands, expenses, judgments, liabilities, losses, suits and attorney's fees, and shall defend THA in any suit, including appeals, for personal injury to, or death of, any persons or for loss or damage to property arising out of the performance or non-performance of Contractor under this Agreement. Contractor further agrees to indemnify THA against any claims for environmental pollution occurrences arising out of any physical, chemical, or biological release of contaminants, toxins or other substances constituting pollution from Contractor's Facility.
- (b) THA agrees to protect, indemnify and hold harmless Contractor and its respective officers, officials, employees, operators and agents from and against all actions, claims, damages, demands, expenses, judgments, liabilities, losses, suits and reasonable attorney's fees, and shall defend Contractor in any suit, including appeals, for personal injury to, or death of, any persons or for loss or damages to property arising out of the performance or non-performance of THA under this Agreement.

**Section 6.05 Insurance Required of Contractor** The Contractor shall obtain and maintain the following types of insurance; in the amounts specified, and to provide evidence of such coverage to THA:

- (a) Broad Form General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, naming the THA and Covanta Energy as additional insured;
- (b) Statutory Worker's Compensation insurance in compliance with the requirements of the applicable provisions of the laws of the Commonwealth of Pennsylvania;
- (c) Employer's Liability insurance in the amount of One Hundred Thousand Dollars (\$100,000) per person and Five Hundred Thousand Dollars (\$500,000) per disease;
- (d) Comprehensive Automobile Liability insurance for all owned, non-owned, or hired vehicles in the amount of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate, naming THA and Covanta Energy as additional insured;
- (e) Occurrence Form Excess Liability insurance in the amount of Two Million Dollars (\$2,000,000) to provide additional limits of insurance in addition to those provided by the

Employer's Liability, Comprehensive General Liability and Automobile Liability policies, naming THA and Covanta Energy as additional insured;

- (f) Environmental Impairment Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, naming THA and Covanta Energy as additional insured.

**Section 6.06 Relationship of the Parties.** Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party. This Agreement is not to be construed as being made for the benefit of any person or political subdivision not a party to this Agreement.

**Section 6.07 Notices.** Any notices or communication required hereunder shall be in writing and delivered in person or sent by certified or registered mail, as follows:

**To Contractor:**

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**To THA:**

The Harrisburg Authority  
212 Locust Street, Suite 302  
Harrisburg, Pennsylvania 17101  
ATTENTION: Michele T. V. Torres, Executive Director

Changes in the respective addresses to which such notices may be directed may be made by either Party by written notice to the other Party.

**Section 6.08 Waiver.** The waiver by either Party of an Event of Default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent Event of Default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a Default or breach shall not operate or be construed to operate as a waiver of any subsequent Event of Default or breach.

**Section 6.09 Modifications.** The provisions of this Agreement shall (1) constitute the entire Agreement between the Parties, and (2) may only be modified by written Agreement duly executed by both Parties.

**Section 6.10 Governing Law.** This Agreement and any questions concerning its validity, construction or performance shall be governed by the Laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the Parties are affixed or of the place or places of performance.

In the hiring of employees and performance of work under Agreement or any sub-contract hereunder, no Contractor, Sub-Contractor or any person acting on behalf of said Contractor or Sub-Contractor shall by reason of race, color, religion, gender, sexual preference/orientation, national origin, citizenship, age or physical/mental disability discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates. No Contractor or Sub-Contractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under this contract by reason of race, color, religion, gender, sexual preference/ orientation, national origin, citizenship, age or physical/mental disability.

**Section 6.11 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

**Section 6.12 Interest on Overdue Payments.** All payments to be made under this Agreement outstanding after the applicable due date and grace period shall bear interest at the rate of eighteen (18%) percent per annum.

**Section 6.13 Integration.** This Agreement sets forth all of the obligations and understandings of the Parties concerning the subject herein and any prior or contemporaneous Agreements or understandings relating hereto are merged herein or superseded hereby.

**Section 6.14 Conditions Precedent and Additional Covenants**

- (a) THA hereby represents and warrants to Contractor that i.) the HRRF Ash to be delivered to Contractor's Facility is not designated or otherwise legally required to be disposed of at any specific municipal waste Beneficial Use/Disposal or processing facility, and ii) THA has the legal right to enter into this Agreement.
- (b) Contractor hereby represents and warrants to THA that i.) It has the authority to enter into this Agreement, ii) Contractor's Facility currently possesses all legally required Permits and approvals necessary for its operation and acceptance of HRRF Ash for Beneficial Use/Disposal, iii) Contractor's Facility will be operated in accordance with Applicable Law, iv) the execution of this Agreement will not violate Applicable Law, v) all HRRF Ash will be beneficially used/disposed of in accordance with Applicable Law, vi) THA's HRRF Ash may be delivered to and accepted for Beneficial Use/Disposal at Contractor's Facility as of the Commencement Date, vii) Contractor's Facility can accommodate THA's HRRF Ash tonnage over the Term of this Agreement.

**ARTICLE VII - SIGNATURES**

**Section 7.01** Upon executing this Agreement, the Parties are represented by the officials whose signatures are affixed hereto who are duly authorized to bind their respective entities by resolution or law.

**THE HARRISBURG AUTHORITY:**

BY: \_\_\_\_\_  
Chairman

BY: \_\_\_\_\_  
Secretary

**CONTRACTOR:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**EXHIBIT "A"**

**FEE PER TON TO BE CHARGED TO THA FOR ASH MANAGEMENT AND/OR BENEFICIAL USE/DISPOSAL OF HRRF ASH**

2010 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Bidder shall provide a description of services to be provided for fee bid (ie. management of ash deposited daily in THA Landfill, excavation and loading of ash from THA Landfill for transportation, ash transportation to Bidder's facility, beneficial use/disposal tip fee, etc.). Attach additional pages if necessary.

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Optional:

2011 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

2012 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

2013 Ash Management:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

Beneficial Use/Disposal\*:

\$ \_\_\_\_\_ (in numbers)

\_\_\_\_\_ (in words)

\*Note: Tip Fee Per Ton is to include mandatory fees, surcharges, host fees or other governmental impositions applicable to the management and beneficial use/disposal of the HRRF Ash by Bidder.

NON-COLLUSION AFFIDAVIT

Request for Bid: HRRF Ash Management and Beneficial Use/Disposal

State Of: \_\_\_\_\_;

County Of: \_\_\_\_\_;

I state that I am \_\_\_\_\_ of \_\_\_\_\_,  
(Title) (Firm)

and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for submission of the price(s) and response to this Request For Bids.

I state that:

1. The price(s) and responses to this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
2. Neither the price(s) nor responses in this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before opening of Bids.
3. The Bid of my firm is made in good faith and not pursuant to agreement or discussion with, or inducement from any firm or person to submit a complementary or other noncompetitive Bid.
4. \_\_\_\_\_, its affiliates, subsidiaries, directors, and employees are not currently under investigation by any government agency and have not in the last four years been convicted or found liable for any act by State or Federal Law in any jurisdiction, involving conspiracy or collusion with respect to Bidding on any public contract, except as follows:

I state that \_\_\_\_\_ ,  
(Firm)

my firm understands and acknowledges that the above responsibilities are material and important, and will be relied on by THA in entering into the Agreement(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from THA of the true facts relating to the submission of Bids for this Agreement.

\_\_\_\_\_  
(Name and Company Position)

Notary:  
SWORN TO AND SUBSCRIBED BEFORE

ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ , 2010.

My Commission Expires:

## INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any Agreement awarded pursuant to this Bid. According to the Pennsylvania Anti-Bid Rigging Act, 73 P.S. " 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with Bids.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Bidder who makes the final decision on prices and the amount quoted in the Bid.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of Bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry as necessary, of all other persons employed by or associated with the Bidder with responsibilities for the preparation, approval or submission of the Bid.
4. In the case of a Bid submitted by a joint venture, each party to the venture must be identified in the Bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term complementary Bid as used in the Affidavit has the meaning commonly associated with that term in the Bidding process, and includes the knowing submission of Bids higher than the Bid of another firm, any intentionally high or noncompetitive Bid, and any other form of Bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the Bid.