

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO COVANTA BABYLON, INC., IN CONNECTION WITH A SOLID WASTE DISPOSAL RESOURCE RECOVERY FACILITY FOR THE PROCESSING OF MUNICIPAL SOLID WASTE OF THE TOWN OF BABYLON

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the "Act"), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon (the "Town"); and

WHEREAS, representatives of Covanta Babylon, Inc., (formerly known as Ogden Martin Systems of Babylon, Inc.), a corporation organized and existing under the laws of the State of New York have filed an application (the "Project Application") with the Agency concerning a project (the "Project") consisting of the leasing and operation of an existing solid waste disposal resource recovery facility located on a 9.9 acre lot at 125 Gleam Street in Wyandanch, New York (the "Facility Site"), consisting of 8 buildings containing approximately 431,355 square feet in the aggregate (collectively, the "Facility"), all for use by the Company as waste to energy facility in the disposal and processing of waste in the Town; and

WHEREAS, the Agency and the Town have heretofore entered into certain agreements with the Company for the providing by the Company of certain services for the Town in connection with the design, construction, start-up and performance testing of the Facility for the processing of 225,000 tons per year of acceptable municipal solid waste, the recovery of saleable materials and the generation of steam and electricity; and

WHEREAS, the Facility was constructed at the Facility Site owned by the Town which site has been and will continue to be leased by the Town to the Agency pursuant to an Amended and Restated Facility Site Lease Agreement between the Town and the Agency dated as of December 1, 1985, amended as of August 1, 1995 and further amended August 1, 2009 (the "Original Facility Site Lease Agreement") and to be further amended and restated pursuant to the Amended Facility Site Lease (herein defined) herein authorized, which Facility Site has been and will continue to be subleased by the Agency to the Company pursuant to an Amended and Restated Facility Site Sublease Agreement between the Agency and the Company dated as of December 1, 1985, amended as of August 1, 1995 and further amended August 1, 2009 (the "Original Facility Site Sublease Agreement") and to be further amended and restated pursuant to the Amended Facility Site Sublease (herein defined) herein authorized, and the Facility is owned by the Agency and has been and will continue to be leased by the Agency to the Company pursuant to an Amended and Restated Facility Lease Agreement between the Agency and the Company dated as of December 1, 1985, amended as of August 1, 1995 and further amended August 1, 2009 (the "Original Facility Lease Agreement") and to be further amended and restated pursuant to the Amended Facility Lease (herein defined) herein authorized ; and

WHEREAS, the costs of the acquisition, construction and equipping of the Facility was financed through (a) the issuance and sale by the Agency of its \$88,900,000 Resource Recovery Revenue Bonds, Series 1985 (Ogden Martin Systems of Babylon, Inc. Project) (the "Series 1985 Bonds") authorized by resolution of the Agency adopted on December 3, 1985, as supplemented on December 17, 1985, and under and pursuant to an Indenture of Mortgage and Trust dated as of December 1, 1985 between the Agency and the National Westminster Bank as trustee, (b) the providing of approximately \$17,880,000 in equity by or on behalf of the Company pursuant to a certain Project Agreement (the "Company Equity") and (c) the proceeds of a \$14,000,000 grant of Environmental Quality Bond Act funds ("EQBA Funds") pursuant to the EQBA Grant Agreement; and

WHEREAS, in furtherance of the purposes of the Act, the Agency and the Company refunded the Series 1985 Bonds, with the proceeds of its \$80,220,000 Town of Babylon Industrial Development Agency Resource Recovery Auction Rate Refunding Bonds, Series 1995 (Ogden Martin Systems of Babylon, Inc. Project) (the "Series 1995 Bonds") authorized by resolution of the Agency adopted on August 16, 1995 and under and pursuant to an Indenture of Mortgage and Trust dated as of August 1, 1995 between the Agency and the bond trustee for the Series 1995 Bonds; and

WHEREAS, in furtherance of the purposes of the Act, the Agency and the Company refunded the Series 1995 Bonds with the proceeds of its Town of Babylon Industrial Development Agency Weekly Adjustable/Fixed Rate Resource Recovery Refunding Bonds, Series 1998 (Ogden Martin Systems of Babylon, Inc. Project) (the "Series 1998 Bonds") authorized by resolution of the Agency adopted on August 16, 1995 and under and pursuant to an Indenture of Mortgage and Trust dated as of the first day of the calendar month of the month of issue of the Series 1998 Bonds between the Agency and the bond trustee for the Series 1998 Bonds; and

WHEREAS, in furtherance of the purposes of the Act, the Agency refunded the Series 1998 Bonds with the proceeds of its Town of Babylon Industrial Development Agency (a) Resource Recovery Bonds (Covanta Babylon, Inc. Project), Series 2009A (the "Series 2009A Bonds") and (b) Resource Recovery Bonds (Covanta Babylon, Inc. Project), Series 2009B Federally Taxable (the "Series 2009B Bonds" and together with the Series 2009A Bonds, the "Series 2009 Bonds" and collectively with the Series 1985 Bonds, the Series 1995 Bonds, and the Series 1998 Bonds, the "Facility Bonds") in order to refinance the Agency's outstanding Weekly Adjustable/Fixed Rate Refunding Bonds (Ogden Martin Systems of Babylon, Inc. Project) issued with respect to the Facility as authorized by a resolution of the Agency adopted on August 4, 2009 and under and pursuant to an Indenture of Mortgage and Trust dated as of August 1, 2009 between the Agency and the bond trustee for the Series 2009 Bonds; and

WHEREAS, the Facility is owned by the Agency and has been leased by the Agency to the Company pursuant to the Original Facility Lease Agreement which is to be further amended and restated pursuant to the Amended Facility Lease Agreement; and

WHEREAS, the Series 2009 Bonds have been paid in full; and

WHEREAS, pursuant to the Service Agreement dated as of December 1, 1985 (the “Original Service Agreement”) as amended between the Town and the Company, the Town has agreed, among other things, to deliver or cause to be delivered to the Facility, Acceptable Waste (as defined in the Original Service Agreement) collected within the Town for processing in the Facility and the Company has agreed to process such Acceptable Waste; and

WHEREAS, the Original Service Agreement is to be amended and restated by the Town and the Company subsequent to the date hereof pursuant to the Amended Service Agreement (the “Amended Service Agreement”), to among other things, extend the maximum term thereof to expire on December 19, 2035; and

WHEREAS, in conjunction with the extension of the terms of the Amended Service Agreement, the Agency and the Company desire enter into an Amended and Restated Facility Lease and Project Agreement (the “Amended Facility Lease Agreement”) and an Amended and Restated Facility Site Sublease Agreement (the “Amended Facility Site Sublease”) and the Town and the Agency desire to enter into an Amended and Restated Facility Site Lease Agreement (the “Amended Facility Site Lease”); and

WHEREAS, in order to provide cost effective waste disposal services to the Town for the duration of the Amended Service Agreement, the Agency will provide financial assistance to the Company with respect to the Facility in the form of a complete exemption of real property taxes in accordance with the provisions of the Amended Facility Lease Agreement, the Amended Facility Site Sublease and the Amended Facility Site Lease (collectively the “Agency Lease Documents”)

WHEREAS, the continued ownership of the Facility by the Agency and the lease of the Facility to the Company in order to provide for efficient and cost effective waste disposal in the Town is an essential part of the Town’s solid waste management plan and is in the furtherance the purposes of the Act; and

WHEREAS, in connection with the foregoing the Company as requested that the Agency extend the term of the Original Facility Lease Agreement for a term not to exceed April 30, 2019; and

WHEREAS, in connection with the Agency’s evaluation of the Project for the provision of financial assistance, the Agency has (i) assessed all material information relating to the project included in the Company’s project application (the “Project Application”) in order to afford a reasonable basis for the decision of the Agency to provide financial assistance to the Project; (ii) reviewed the Agency’s written cost benefit analysis for the Project which identifies the extent to which (A) the Project will create or retain permanent, private sector jobs; (B) the estimated value of any tax exemption to be provided to the Project; and (C) considered the extent to which the Project will provide additional sources of revenue for the Town and the school district where the Facility is located; and

WHEREAS, in connection with the adoption of this resolution the Agency has reviewed the Project Application and the Company has confirmed in such Project Application that as of the date of the Projection Application, the Company is in substantial compliance with the Act; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company in connection with the Facility consisting of exemption from real property taxes.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the members of the Agency as follows:

Section 1. With respect to the Agency's uniform evaluation criteria the Agency makes the following determinations:

- (a) It has reviewed the information in the Cost Benefit Analysis with respect to the Project.
- (b) The Project will not have significant impact from local labor construction in the Town.
- (c) Wage rates for the employees of the Company average \$140,000 per year for management employees, \$95,000 for professional employees, \$55,000 per year for administrative employees, \$75,000 per year for labor employees, and \$125,000 for production employees not including fringe benefits, which is greater than the median wage for the region.
- (d) The Project will have a significant effect on energy efficiency by converting waste to energy and recoverable materials.
- (e) The Project will not affect existing land use or zoning.
- (f) The continued ownership of the Facility by the Agency and the lease of the Facility to the Company in order to provide for efficient and cost effective waste disposal in the Town is an essential part of the Town's solid waste management plan.

Section 2. Based on the evaluation of the foregoing evaluation criteria, (a) The Agency hereby finds and determines that (i) the Project constitutes a "Project" within the meaning of the Act; and (ii) the granting of real property tax exemptions (the "Financial Assistance") by the Agency with respect to the Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant Financial Assistance to the Company with respect to the Project and the Facility.

Section 3. The form and substance of the Agency Lease Documents is hereby approved.

Section 4. The Agency hereby approves the extension of the Original Facility Lease Agreement for a term not to exceed April 30, 2019.

Section 5. The CEO of the Agency or any successor CEO of the Agency or any other authorized representative including the CFO, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Agency Lease Documents and any other agreements or certificates consistent herewith or therewith (hereinafter collectively called the "Agency Documents"), all in substantially the forms previously executed by the Agency for other "straight lease" transactions acceptable to Agency Counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO or the CFO of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or the CFO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO or CFO of the Agency or any other authorized representative are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the CEO's, the CFO's or any other authorized representative's signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 6. The CEO of the Agency, the CFO of the Agency or any other authorized representative including the Chairman or the Secretary and any member of the Agency (as used in this resolution, the "Authorized Representatives") are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Agency Documents and to be undertaken and in relation thereto, to execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments, agreements and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary, or in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause

compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 8. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution, and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 9. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 10. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 11. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance to be granted hereunder in excess of \$100,000 to the Company until the Agency has held a public hearing with respect to the grant of financial assistance in accordance with the provisions of the Act.

Section 12. This resolution shall take effect immediately.

