

**FINAL RESOLUTION**  
*(Covanta Niagara, L.P. Project)*

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 9<sup>th</sup> day of January, 2013 at 9:00 a.m., local time.

The meeting was called to order by the (Vice) Chairperson and, upon roll being called, the following members of the Agency were:

PRESENT:

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Samuel M. Ferraro	Executive Director
Gary E. Kelsey	Manager of Finance
Susan C. Langdon	Director of Project Management
Michael Dudley	Accounting Associate
Mary Melloni	Administrative Assistant
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_\_

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF COVANTA NIAGARA, L.P. OR AN ENTITY FORMED OR TO BE FORMED (AS MORE FULLY DEFINED BELOW); (ii) DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT, PILOT MORTGAGE AND RELATED DOCUMENTS; AND (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE MORTGAGE RELATED TO THE PILOT AGREEMENT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **COVANTA NIAGARA, L.P.**, for itself or on behalf of an entity formed or to be formed (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of: (A) the acquisition or retention of a fee or leasehold interest in various parcel(s) of land with address of 100 Energy Boulevard at 56<sup>th</sup> Street in the City of Niagara Falls, New York (the "Land"); together with several existing structures thereon (the "Existing Improvements"); (B) (i) the construction on the Land of an approximately 24” steam supply line and condensate return lines with Greenpac Mill, LLC; (ii) the construction of additional steam supply lines and boiler(s) to support development of the adjacent brownfield properties; (iii) construction of a Rail to Truck Handling Facility; and (iv) construction of Special Waste Handling facility (the "Improvements"); and (C) the acquisition and installation of related machinery, equipment and personal property (the "Equipment" and, together with the Land, the Existing Improvements and the Improvements, the "Facility") (D) the leasing of the Project back to the Company, and (E) the providing of financial assistance to the Company for qualifying portions of the Project in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, on December 12, 2012, the Agency adopted a resolution (the “Preliminary Resolution”) accepting the Application and directing that a public hearing be held; and

WHEREAS, it was contemplated that the Agency would hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and payment-in-lieu of tax mortgage (the "PILOT Mortgage") with the Company, (iii) take or retain fee title to, leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, PILOT Agreement and PILOT Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption for financing related to the Project, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption with respect to a certain payment-in-lieu-of-tax mortgage; and

WHEREAS, on the 4<sup>th</sup> day of January, 2013, at 3:45 p.m. at the Niagara Falls City Hall, Room 17, City Hall, 745 Main Street, Niagara Falls, New York 14302, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing are attached hereto as Exhibit A;

WHEREAS, the City of Niagara Falls Planning Board, pursuant to and consistent with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act and the regulations adopted by the Department of Environmental Conservation, as found in 6 NYCRR 671 et seq. (collectively "SEQR"), conducted a coordinated environmental review for the Project, as defined in SEQR and the Agency consented to the City Board acting as Lead Agency for the purposes of SEQR;

WHEREAS, the City of Niagara Falls Planning Board, after taking a hard look at the potential adverse environmental impacts associated with the Project, issued a Determination of Non-Significance, dated November 21, 2012, a copy of which is attached hereto as Exhibit B, finding that the Project would not have any significant adverse environmental impacts and issued a Negative Declaration;

WHEREAS, pursuant to 6 NYCRR Part 617.6, the Determination of Non-Significance issued by the City of Niagara Falls Planning Board as Lead Agency following a coordinated review is binding on all other involved agencies including the Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities and retaining existing jobs in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the

Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

Section 2. Subject to the Company executing an Agency Agreement by and between the Agency and the Company and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency; (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agency Agreement shall expire on the date as indicated in the Agent Agreement (*unless extended for good cause by the Chief Executive Officer of the Agency*).

Section 3. The Chairperson, Vice Chairperson and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement with real property tax exemption benefits as set forth in Exhibit C attached; provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. 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 and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Henry M. Sloma	[ ]	[ ]	[ ]	[ ]
Michael W. Tucker	[ ]	[ ]	[ ]	[ ]
Stephen F. Brady	[ ]	[ ]	[ ]	[ ]
Deanna Brennen	[ ]	[ ]	[ ]	[ ]
Mark Onesi	[ ]	[ ]	[ ]	[ ]
Patricia Dufour	[ ]	[ ]	[ ]	[ ]
William J. Bradberry	[ ]	[ ]	[ ]	[ ]
Michael W. McNally	[ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.



## EXHIBIT C

to Payment-in-Lieu-of-Tax Agreement by and between  
Niagara County Industrial Development Agency  
and

### COVANTA NIAGARA, L.P.

<u>PILOT Year</u>	<u>School Tax Year</u>	<u>County and City Tax Year</u>	<u>Percentage of Normal Tax</u>
Year 1	2013/14	2014	15%
Year 2	2014/15	2015	15%
Year 3	2015/16	2016	25%
Year 4	2016/17	2017	25%
Year 5	2017/18	2018	35%
Year 6	2018/19	2019	35%
Year 7	2019/20	2020	35%
Year 8	2020/21	2021	35%
Year 9	2021/22	2022	35%
Year 10	2022/23	2023	45%
Year 11	2023/24	2024	45%
Year 12	2024/25	2025	45%
Year 13	2025/26	2026	45%
Year 14	2026/27	2027	45%
Year 15	2027/28	2028	45%
Year 16 and thereafter	2028/29	2029	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land and Existing Improvements were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land and Existing Improvements as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land and Existing Improvements if the Land and Existing Improvements were owned by the Company and not the Agency.
2. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Land and Existing Improvements shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by

the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land and Existing Improvements for such tax year.

3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Improvements and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Improvements and such assessable Equipment as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements and such assessable Equipment if the Improvements and such assessable Equipment was owned by the Company and not the Agency
4. In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Improvements and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Improvements and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Improvements and such assessable Equipment for such tax year, as shown in the table, above.
5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this PILOT Agreement.