

**WASTE HANDLING AGREEMENT**

**between**

**CITY OF BIDDEFORD, MAINE**

**and**

**MAINE ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP**

**Term: March 1, 2007 – June 30, 2012**

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This Agreement is entered into in the State of Maine as of the 1st day of March, 2007 by and among THE CITY OF BIDDEFORD, MAINE, a municipal corporation, located at 205 Main Street, Biddeford, Maine 04005, hereinafter called "MUNICIPALITY," MAINE ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP, a Maine limited partnership, hereinafter called "COMPANY" and CASELLA WASTE SYSTEMS, INC., a Vermont corporation, hereinafter called "CASELLA".

**WITNESSETH:**

**WHEREAS**, MUNICIPALITY is required to provide solid waste disposal services for domestic and commercial solid waste generated within MUNICIPALITY; and

**WHEREAS**, COMPANY owns a waste-to-energy facility on a site located within the City of Biddeford, Maine; and

**WHEREAS**, CASELLA, directly or through its Affiliates, has experience in designing, procuring, constructing, financing, operating, maintaining and owning (i) waste-to-energy facilities for the purposes of receiving and disposing of Waste by the process of separation, combustion, generating energy in the form of steam or electricity thereby, and recovering certain other by-products therefrom, (ii) landfill facilities, and (iii) other solid waste facilities.

**WHEREAS**, COMPANY is a wholly owned subsidiary of CASELLA.

**WHEREAS**, MUNICIPALITY and COMPANY are parties to that certain Waste Handling Agreement, dated June 7, 1991 (the "1991 WHA"); and

**WHEREAS**, certain disputes have arisen between MUNICIPALITY and COMPANY with respect to the 1991 WHA; and

**WHEREAS**, the parties desire to effectuate a release of COMPANY and certain of its Affiliates with respect to certain claims asserted by MUNICIPALITY, and a release of MUNICIPALITY with respect to certain claims asserted by COMPANY, which releases shall be effectuated by separate writing; and

**WHEREAS**, MUNICIPALITY, COMPANY and CASELLA agree to work cooperatively towards the closure of Maine Energy in a manner that furthers their mutual interests; and

**WHEREAS**, MUNICIPALITY and COMPANY desire to settle such disputes, to terminate in its entirety the 1991 WHA, and to replace the 1991 WHA with this Waste Handling Agreement having a term commencing as of March 1, 2007, and expiring on June 30, 2012 (the "WHA"); and

WHEREAS, MUNICIPALITY, COMPANY and CASELLA are entering into this Agreement to formalize, among other things, their understandings and agreements respecting the acceptance by COMPANY and CASELLA of Acceptable Waste (as hereinafter defined) for processing at the Facility or at an Alternate Disposal Facility; and

WHEREAS, all necessary actions required to approve and authorize the execution, delivery and performance of this Agreement by MUNICIPALITY's governing body have been taken.

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter set forth and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, MUNICIPALITY, COMPANY and CASELLA do hereby agree as follows:

#### ARTICLE I. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them in this Article:

Acceptable Waste. Wastes which must be accepted at the Facility or at an Alternate Disposal Facility (as hereinafter defined) include all ordinary household, municipal, institutional, commercial and industrial wastes, which consist primarily of combustible materials and which are not Unacceptable Waste (as hereinafter defined). Notwithstanding anything to the contrary contained in this Agreement, the following types of Waste shall be deemed Acceptable Waste if they have been reduced in size to no larger than one cubic foot, and if permitted by COMPANY's licenses and permits.

- a. Mattresses (w/o springs)
- b. Stuffed furniture (w/o springs)
- c. Wood (under 24" in all dimensions)
- d. Building materials (excluding non-combustible materials including drywall and asphalt shingles)
- e. Rugs, carpet and carpet underlayment

Additional Costs. With respect to Diverted Waste (as hereinafter defined), all reasonable costs actually incurred by MUNICIPALITY associated with the handling, transportation, disposal, and all other reasonable costs of the same actually incurred by MUNICIPALITY, to the extent such costs exceed the sum of (i) the Net Tipping Fee in effect under this Agreement at any time or times that MUNICIPALITY disposes of any such Diverted Waste; plus (ii) the transportation and other costs (other than the Net Tipping Fee) that would have been incurred by MUNICIPALITY had it disposed of such Waste at the Facility.

Adjusted Tipping Fee. The tipping fee payable by MUNICIPALITY hereunder with respect to Acceptable Waste in excess of 115% of GAT in any Operating Year, as more fully provided in Article VI.A hereof.

Affiliate. With respect to any person or entity, any other person or entity which, directly or indirectly, controls or is controlled by or is under common control with such person or entity.

Agreement. This Waste Handling Agreement among COMPANY, CASELLA and MUNICIPALITY as it may be amended from time to time in accordance with Article XVIII hereof.

Alternate Disposal Facility. Any licensed facility or transfer station owned, operated, or from which disposal capacity is contracted by COMPANY, CASELLA or an Affiliate of either of them, that is located within thirty (30) miles of the Facility or MUNICIPALITY and to which Acceptable Waste of the Municipality may be directed in the event of closure of the Facility or the Facility's inability to accept waste, or the redirection of all Waste from the Facility.

Base Tipping Fee. Initially \$83.84 per ton of Acceptable Waste and thereafter as set forth on Appendix B attached hereto and made a part hereof and in Article VI.A hereof.

Change In Law. The promulgation, adoption, enactment or change by MUNICIPALITY in any law, code, ordinance, rule, or regulation or other governmental action of or by any administrative agency, government office, body or branch of MUNICIPALITY, and/or the rendering of any judgment, order or decree by any federal, state or local court implementing or enforcing such governmental action occurring subsequent to the date of this Agreement, and affecting the construction, operation, use or maintenance of the Facility or the Site, including by way of example but not by way of limitation, a refusal by any such governmental entity of MUNICIPALITY to grant, issue or renew any required permit or license or approval for the operation of the Facility unless changes in the Facility are made, unless such refusal is caused by any action or inaction of COMPANY or any Affiliate, or mandated host community benefits to be paid or provided by a facility such as the Facility.

Notwithstanding the foregoing, the following shall not constitute a Change in Law for purposes of this Agreement:

- (i) change in any federal tax law,
- (ii) change to the Internal Revenue Code of 1954 effected by the Tax Reform Act of 1986 (to the extent applicable on March 1, 2007),
- (iii) change in foreign law,

(iv) change in law which adversely affects COMPANY's legal rights as a licensee, grantee, owner or user of any patent or other "know-how" in respect of proprietary technology intended to be utilized by it in performing its obligations under this Agreement,

(v) change in labor laws, or

(vi) any fines, penalties or other adverse consequences imposed pursuant to proceedings commenced by any governmental agency or private party for non-compliance with any laws, permits, licenses, ordinances, codes, rules or regulations that do not themselves constitute a Change in Law.

Notwithstanding the foregoing, for purposes of this Agreement, the Biddeford Fire Ordinance enacted in 2000, and any changes after the date of this Agreement to the Biddeford Air Toxics Ordinance enacted in 2002 (including without limitation increases in fees, rates or penalties as a result of an amendment to the Biddeford Air Toxics Ordinance), shall be included within the definition of Change in Law.

Change in Law Adjustment. As defined in Article XVI.B hereof.

Change In Law Costs. For each Operating Year, all commercially reasonable costs, fees and expenses in accordance with available economically feasible viable technology which COMPANY has incurred or reasonably expects, after consultation and agreement with MUNICIPALITY or as determined pursuant to Article XVI hereof, to incur during said Operating Year in responding to, and complying with, any Change In Law, provided that with respect to any such costs, fees and expenses which must be capitalized by COMPANY for financial reporting purposes in accordance with generally accepted accounting principles (GAAP), only that portion of those costs, fees and expenses which will constitute "current year's capitalized costs" (as determined in accordance with GAAP) for said Operating Year shall be considered Change in Law Costs for that Operating Year. Anything to the contrary herein notwithstanding, legal fees and lobbying or consulting fees incurred in connection with efforts by COMPANY to prevent a Change in Law from occurring shall not constitute Change in Law Costs.

COMPANY. Maine Energy Recovery Company, Limited Partnership, a Maine limited partnership, or any successor thereto or assign thereof.

Consulting Engineer. A professional engineer or other person or entity qualified by reason of training or expertise who has been or is to be selected by MUNICIPALITY to act as a representative of MUNICIPALITY at the Facility and the Site during the term of this Agreement.

CPI Escalator. The lesser of (a) the increase in the CPI Index, as hereinafter defined, as of November of the immediately preceding calendar year over the CPI Index as of November of the next preceding calendar year, or (b) 5%.

CPI Index. The Consumer Price Index for "URBAN WAGE EARNERS AND CLERICAL WORKERS" (U.S. CITIES AVERAGE, all items, 1982-1984=100) as published monthly by the Bureau of Labor Statistics in a report currently entitled "CPI Detailed Report". If this Index ceases to be available at some time in the future, a comparable Index will be designated by COMPANY and MUNICIPALITY following consultation.

DEP. As defined in Article VI.A(v) hereof.

Delivery Hours. A minimum of not less than eight (8) hours per day Monday through Friday, excluding certain holidays as specified by COMPANY from time to time, during which deliveries of Acceptable Waste will be normally accepted at the Facility. Subject to the provisions of Article III.J hereof, such hours will be determined by COMPANY in its discretion. Delivery Hours may be suspended or curtailed by COMPANY due to emergencies, unsafe conditions or lawful governmental orders to do so.

Diverted Waste. All Waste delivered by MUNICIPALITY to (i) a facility other than the Facility or an Alternate Disposal Facility (a) at the direction of COMPANY, or (b) otherwise in the event MUNICIPALITY's Waste is not accepted at the Facility or at an Alternate Disposal Facility; or (ii) an Alternate Disposal Facility at the direction of COMPANY, as provided herein.

Energy Payment. As defined in Article III.E hereof.

Energy Sales Credit. As defined in Article III.E hereof.

Facility. COMPANY's waste-to-energy facility within the City of Biddeford, Maine together with any ancillary facilities which are now or may hereafter be owned by COMPANY or any Affiliate of COMPANY on the Site, and used for or in conjunction with the handling of Acceptable Waste.

Force Majeure. With regard to the performance of any obligation under this Agreement, except as to payment obligations, events such as an act of God, act of public enemy, sabotage, wars, blockade, insurrection, riots, explosions, fires, floods, storm, lightning, earthquake, wind, ice, perils of the sea, lockouts or other industrial disturbances, drought, theft or governmental taking (by eminent domain or similar proceedings) and other causes not reasonably within the control of any party invoking Article XIV for its benefit.

Guaranteed Annual Tonnage, or GAT. Sixteen Thousand Two Hundred (16,200) tons of Acceptable Waste during any Operating Year, prorated for partial calendar years during the term of this Agreement, and as adjusted from time to time pursuant to Article V.B hereof.

Hauler. Any entity or person delivering Waste to the Facility on behalf of, or pursuant to licenses issued by, MUNICIPALITY, including MUNICIPALITY when it delivers Waste with its own employees or agents.

Hauler Regulations. As defined in Article VIII hereof.

Hazardous Waste. Waste with inherent properties which make such Waste dangerous to manage by ordinary means, including, but not limited to, chemicals, explosives, Pathological Waste, radioactive wastes, toxic wastes and other wastes defined as hazardous at any time during the term of this Agreement by the State of Maine or under the Resource Conservation and Recovery Act of 1976, as amended, or other Federal or State laws, regulations, orders, or other actions promulgated or taken by any governmental body or agency from time to time, or any material which, if processed at the Facility, would be defined as hazardous at any time during the term of this Agreement by the State of Maine or under the Resource Conservation and Recovery Act of 1976, as amended, or other Federal or State laws, regulations, orders, or other actions promulgated or taken by any governmental body or agency from time to time.

Municipal T&D Agreement. As defined in Article VI.A(ii) hereof.

MUNICIPALITY. The City of Biddeford, Maine.

Net Tipping Fee. The payments required to be made under this Agreement to COMPANY for accepting (or being prepared to accept) Acceptable Waste received (or which should have been received) at the Facility up to 115% of GAT in any Operating Year, as determined in accordance with Article VI.A hereof.

Operating Year. A twelve (12) month period beginning January 1 and concluding December 31 in the same year, adjusted as to any partial calendar year, during the term of this Agreement.

Pathological Waste. Waste consisting of (1) human and animal remains, body parts, tissues, organs, blood, excreted, secretions or body fluids, or (2) any and all "infectious waste", which term shall include, but not be limited to, (a) waste which contains any disease producing or carrying material, agent or organism, (b) isolation wastes, cultures and stocks of etiological agents, (c) waste generated by surgery or autopsy performed on any human or animal, (d) sharps, dialysis waste and any wastes that could have been in contact with pathogens, (e) waste biologicals (e.g. vaccines) produced by pharmaceutical companies for human or veterinary use, (f) food, equipment, equipment parts and other products contaminated with etiological agents, (g) animal bedding and other wastes that were in contact with diseased or laboratory research animals, (h) equipment, instruments, utensils and fomites which were in contact with persons or animals who are suspected to have or have been diagnosed as having a communicable disease, (i) laboratory wastes such as pathological specimens and disposable fomites attendant thereto and (j) any disease causing material including but not limited to material defined as a "Hazardous

Substance" under current or future Federal or state law as a result of being classified an "etiologic agent". Tissues, diapers, sanitary napkins, kitty litter and similar items commonly disposed of in ordinary household Waste will not be deemed to be Pathological Waste if included in the small amounts customarily found in Waste from residential sources so long as the disposal and processing of such material by COMPANY at the Facility or an Alternate Disposal Facility, as applicable, is permitted by, and will not cause or result in COMPANY being in violation of, any applicable laws, statutes, rules, regulations, permits, licenses and orders of any governmental entities having jurisdiction over COMPANY and/or the Facility or an Alternate Disposal Facility, as applicable.

Person or Persons. Any individual, corporation, partnership, joint venture, association, joint stock company, trust company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

Property Tax Agreement Adjustment. Commencing with the tax year beginning April 1, 2007 (which tax year corresponds to the Municipal fiscal year July 1, 2007-June 30, 2008 with taxes due October 2007 and April 2008), in the event MUNICIPALITY assesses the real or personal property of COMPANY at a value greater or lesser than that provided for in Section 4 of the Settlement Agreement ("Adjusted Valuation") and such increase or decrease in valuation results in COMPANY paying more or less property taxes than COMPANY would have paid if the valuation had not changed from that called for in Section 4 of the Settlement Agreement, (a) the tipping fees payable by MUNICIPALITY under Article VI hereof shall be adjusted over the ensuing 12 months commencing on July 1 of the next Municipal fiscal year by an amount equal to the difference between (i) the amount assessed and paid by COMPANY to MUNICIPALITY in real estate and personal property taxes pursuant to the property tax bill most recently issued by MUNICIPALITY utilizing the Adjusted Valuation ("Tax Payment") and the amount of taxes that would have been paid by COMPANY under such tax bill in the absence of MUNICIPALITY increasing or decreasing the valuation from that established in Section 4 of the Settlement Agreement ("Agreed Upon Taxes"), (b) divided by the greater of (i) the number of Tons of Waste delivered to the Facility hereunder by MUNICIPALITY during the immediately preceding calendar year, or (ii) the GAT then in effect. If the number produced by the preceding formula is a positive number (i.e., the Tax Payment exceeded the Agreed-Upon Taxes), the Property Tax Agreement Adjustment shall increase the tipping fees payable by MUNICIPALITY under Article VI hereof for the ensuing twelve (12) months commencing on July 1 of the next Municipal fiscal year. If the number produced by the preceding formula is a negative number (i.e., the Agreed-Upon Taxes exceeded the Tax Payment), the Property Tax Agreement Adjustment shall decrease the tipping fees payable by MUNICIPALITY under Article VI hereof for the ensuing twelve (12) months commencing on July 1 of the next Municipal fiscal year.

Property Valuation Modification. A deviation by MUNICIPALITY from the provisions of Section 4 of the Settlement Agreement or other occurrence whereby the total taxable

assessed valuation for the Property or the Personal Property (as defined in the Settlement Agreement) differs from the total taxable assessed valuation for the Property or the Personal Property called for by said Section 4 and such increase or decrease in valuation results in COMPANY paying more or less than would have been paid in the absence of such increase or decrease from the valuation called for by said Section 4.

Proportionate Share. 0.05684, which is a fraction, the numerator of which is MUNICIPALITY's Guaranteed Annual Tonnage on March 1, 2007, and the denominator of which is 285,000 Tons.

Recycled Materials. Those materials which are separated from Waste, either at the source of such Waste or at any transfer station, recycling facilities or other locations, as the case may be, and which, (i) in the reasonable judgment of MUNICIPALITY, are capable of being returned to the economic mainstream in the form of raw materials or products and (ii) in fact are not disposed of at any solid waste disposal facility and are recycled and delivered into one or more sustained end markets. More specifically, Recyclable Materials refers to those items within the solid waste stream meeting the criteria in the preceding sentence, which are, from time to time, designated by MUNICIPALITY as recyclable and which are collected by MUNICIPALITY or its agent(s) from MUNICIPALITY-sponsored recycling programs or initiatives. Such items include, without limitation, (i) commingled (mixed) aluminum, steel and bi-metal food and beverage cans, (ii) empty aerosol cans, (iii) PET and HDPE plastic, (iv) green, brown and clear glass bottles and jars, and (v) fiber materials, including newsprint which has been separated from the commingled materials, telephone directories (both white and yellow pages) and cardboard.

Refuse-Derived Fuel. The remaining combustible fraction of municipal solid waste after noncombustible materials including recyclable metals and low BTU waste have been removed by a mechanical process.

Residue. Materials, residues and by-products derived from the acceptance and processing of Waste and combustion of Refuse-Derived Fuel at the Facility. Materials, residues and by-products from processing include, but are not limited to, a nonprocessable fraction, a noncombustible fraction (glass, grit, organics), a non-ferrous fraction and a ferrous fraction. Materials, residues and by-products of combustion include, but are not limited to, bottom ash, fly ash, lime, scrubber reagents and retained moisture from the ash quenching process and dust control.

Settlement Agreement. The Settlement Agreement, dated of near or even date herewith, by and among COMPANY, CASELLA, KTI, Inc. and MUNICIPALITY.

Site. The real property and any and all rights and/or interests in real property upon which COMPANY's trash-to-energy facility is currently located at Lincoln and Pearl Streets, Biddeford, Maine.

State. The State of Maine.

Ton. A quantity of 2,000 pounds.

Tri-County Municipalities. The following municipalities: Acton, Alfred, Buxton, Cornish, Dayton, Kennebunk, Kennebunkport, North Berwick, Old Orchard Beach, Sanford, Shapleigh, South Berwick, Wells.

Unacceptable Waste. All Waste listed below:

1. Abandoned or junk vehicles, trailers, agricultural equipment and boats and parts thereof.
2. Tires.
3. Hazardous Waste.
4. Demolition or construction debris (to the extent not expressly included in Acceptable Waste).
5. Putrefied waste.
6. Pathological Waste.
7. Water treatment residues or by-products of any kind.
8. Tree stumps (to the extent not expressly included in Acceptable Waste)
9. Brown goods (stereos, TV's, misc. electronics), other than items commonly disposed of in ordinary household Waste, if included in the small amounts customarily found in Waste from residential sources, so long as the disposal and processing of such material by COMPANY at the Facility or an Alternate Disposal Facility, as applicable, is permitted by, and will not cause or result in COMPANY being in violation of, applicable laws, statutes, rules, regulations, permits, licenses and orders of any and all governmental entities having jurisdiction over COMPANY and/or the Facility or an Alternate Disposal Facility, as applicable.
10. Tannery sludge and sewer sludge of any kind.
11. Waste oil or solvents.
12. Boxsprings, bedsprings, mattresses (to the extent not expressly included in Acceptable Waste).
13. White "goods" such as freezers, refrigerators, washing machines, or parts thereof.
14. Liquid wastes or sludges.
15. Stuffed furniture (to the extent not expressly included in Acceptable Waste).
16. Fish nets.
17. Automotive batteries.
18. Wire, rope, cable and banding metal.
19. Carpets, rugs and underlayment of any dimension (to the extent not expressly included in Acceptable Waste).
20. Rope (fiber) greater than 6 ft.
21. Hose greater than 6 ft.
22. Wood greater than 24" in any dimension.
23. Wire fencing.
24. Pesticides and other organic fluids.

25. Magnetic computer tape.
26. Rolled material (e.g., rolled roofing) of any tube length exceeding a rolled diameter of 4".
27. Firearms, ammunition, and explosives.
28. Propane tanks.
29. Other Waste which in the good faith judgment of COMPANY or COMPANY's waste delivery coordinator (a) could reasonably be expected to cause jam-ups, slowdowns, stoppages, failures or damage to the Facility or an Alternate Disposal Facility, as applicable, (b) could reasonably be expected to cause adverse consequences to the Facility or an Alternate Disposal Facility, as applicable, or its operations, because of excessive moisture, high noncombustible content or other similar reasons or (c) is an item similar in kind or effect to those enumerated above.
30. Any Waste deemed unacceptable for processing at the Facility or an Alternate Disposal Facility, as applicable, by federal, State or local law, regulation, rule, or order.
31. Special waste as defined in 06096 CMR 400(1) (Nnn) (subject, however, to the provisions of Article III.H hereof).

Waste. Solid waste, as defined in 38 M.R.S.A. § 1303-C(29).

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

A. COMPANY warrants and represents to MUNICIPALITY the following as of the date of this Agreement:

1. COMPANY is a limited partnership duly organized and validly existing under the laws of the State of Maine; is in good standing and authorized to do business under the laws of the State of Maine; and has full power and authority to execute, deliver and perform this Agreement and the Settlement Agreement in accordance with their respective terms.

2. The execution and delivery of this Agreement and the Settlement Agreement have been duly authorized by all necessary and appropriate partnership actions of COMPANY. This Agreement and the Settlement Agreement each constitutes the legal, valid and binding obligation of COMPANY enforceable in accordance with its respective terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors' rights, and by equitable principles of general application).

3. The execution, delivery and performance of this Agreement and the Settlement Agreement will not violate any material provision of law or any order of any court or other agency applicable to COMPANY, or any material indenture, agreement or other instrument to which the COMPANY is a party or by which the COMPANY or any of its property is bound and does not, and will not, conflict with, result in the breach of, or constitute a default under, any such law, order, indenture, agreement or other instrument.

4. To the best of its knowledge, with the exception of the proceedings instituted by Saco and Biddeford under the 1991 WHA, there is no pending or threatened litigation or governmental proceedings which would materially affect COMPANY's legal ability to perform its obligations under this Agreement and the Settlement Agreement.

5. The COMPANY has obtained all necessary licenses, permits and approvals required (a) to own and operate the Facility as currently operated and as contemplated, and (b) to perform its obligations under this Agreement and the Settlement Agreement.

6. Each of COMPANY and CASELLA represents it has secured, and can provide if requested, written consents from any and all lenders and financial institutions necessary to terminate the 1991 WHA and enter into this Agreement and the Settlement Agreement.

B. CASELLA warrants and represents to MUNICIPALITY the following as of the date of this Agreement:

1. CASELLA is a corporation duly organized and validly existing under the laws of the State of Vermont; is in good standing and authorized to do business under the laws of the State of Maine; and has full power and authority to execute, deliver and perform this Agreement and the Settlement Agreement in accordance with their respective terms.

2. The execution and delivery of this Agreement has been duly authorized by all necessary and appropriate corporate actions of CASELLA. This Agreement and the Settlement Agreement each constitutes the legal, valid and binding obligation of CASELLA enforceable in accordance with its respective terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors' rights, and by equitable principles of general application).

3. The execution, delivery and performance of this Agreement and the Settlement Agreement will not violate any material provision of law or any order of any court or other agency applicable to CASELLA, or any material indenture, agreement or other instrument to which CASELLA is a party or by which CASELLA or any of its property is bound and does not, and will not, conflict with, result in the breach of, or constitute a default under, any such law, order, indenture, agreement or other instrument.

4. To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings which would materially affect CASELLA's legal ability to perform its obligations under this Agreement and the Settlement Agreement.

C. MUNICIPALITY warrants and represents to COMPANY and CASELLA the following as of the date of this Agreement:

1. That it is a municipality duly organized and validly existing under the laws of the State of Maine and it has full power and authority to enter into and perform this Agreement and the Settlement Agreement in accordance with their respective terms including without limitation the legal power to levy and collect taxes to pay its obligations under this Agreement and the Settlement Agreement.
2. The execution, delivery and performance of this Agreement and the Settlement Agreement by it have been duly authorized by all appropriate actions of its governing body, this Agreement and the Settlement Agreement each has been duly executed and delivered by its authorized officer, and this Agreement and the Settlement Agreement each constitutes the legal, valid and binding obligation of MUNICIPALITY, enforceable in accordance with its respective terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors' rights, and by equitable principles of general application).
3. The execution, delivery and performance of this Agreement and the Settlement Agreement by MUNICIPALITY do not and will not violate any material provision of law or any order of any court or other agency applicable to MUNICIPALITY, or any material indenture, agreement or other instrument to which the MUNICIPALITY is a party or by which the MUNICIPALITY or any of its property is bound, and does not (and will not) conflict with, result in the breach of, or constitute a default under, any such law, order, indenture, agreement or other instrument.
4. To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings which would affect its legal ability to perform its obligations under this Agreement and the Settlement Agreement.
5. MUNICIPALITY has obtained all necessary licenses, permits and approvals required for performance of its obligations under this Agreement and the Settlement Agreement.

### **ARTICLE III. OPERATION OF THE FACILITY**

A. Except as expressly stated herein, the Facility, and any Alternate Disposal Facility that CASELLA may elect in its sole discretion to own, operate or have under contract, shall be provided, operated and maintained at the sole expense of COMPANY, CASELLA, or the Affiliates of either of them, as applicable.

B. COMPANY and CASELLA shall, except as otherwise expressly provided for herein, so operate and maintain the Facility, or cause it to be so operated and maintained, as to be

capable of receiving Acceptable Waste from MUNICIPALITY during Delivery Hours. Upon its acceptance of Acceptable Waste from or on behalf of MUNICIPALITY, title to such Acceptable Waste shall pass irrevocably to COMPANY or (in the case of deliveries of Acceptable Waste to an Alternate Disposal Facility) CASELLA, and neither MUNICIPALITY nor any Hauler shall have any further responsibility with respect to such Acceptable Waste upon such acceptance. COMPANY and CASELLA shall be jointly and severally solely responsible for (a) processing and combusting, or (b) providing for the alternate disposal of, such Acceptable Waste. COMPANY and CASELLA shall not be obligated to accept any Unacceptable Waste from or on behalf of MUNICIPALITY.

C. COMPANY and CASELLA shall make available to MUNICIPALITY for inspection at COMPANY's or CASELLA's premises, as applicable, during normal business hours with reasonable prior notice and without unreasonable interference with the operations of COMPANY or CASELLA, as applicable, copies of (i) all written reports filed by COMPANY or CASELLA with or received by COMPANY or CASELLA from any governmental agencies dealing with the licensing, operation and maintenance of the Facility or any Alternate Disposal Facility to which MUNICIPALITY has delivered Acceptable Waste hereunder, and (ii) summary reports of continuous emission monitoring data and exceedence reports for such facilities for each calendar quarter during which Acceptable Waste was delivered to such a facility.

D. COMPANY and CASELLA shall be jointly and severally solely responsible for and exclusively entitled to the benefits of the marketing of any materials either of them may recover from Waste delivered to the Facility or any Alternate Disposal Facility and accepted by COMPANY or CASELLA, as applicable.

E. COMPANY and CASELLA shall be jointly and severally solely responsible for and exclusively entitled to the benefits of the marketing of energy products produced by the Facility and any Alternate Disposal Facility, including the pricing thereof. Notwithstanding the foregoing, in the event and to the extent that MUNICIPALITY, acting in collaboration with COMPANY as requested by COMPANY, is successful in bringing about changes in laws or regulations applicable to COMPANY that result in COMPANY increasing its average annual power sales rate above \$0.06/kWh, COMPANY will pay to MUNICIPALITY, (i) any electric revenues received by COMPANY with respect to the then current Operating Year and any subsequent Operating Year during which such changes in laws or regulations remain in effect in excess of (A) the number of kWh actually sold by COMPANY in such Operating Year multiplied by (B) \$0.06, multiplied by (ii) the Proportionate Share (the "Energy Payment"); provided, however, that in no event shall any such payment be due with respect to any Operating Year in which the Facility processed fewer than 285,000 Tons of Acceptable Waste.

The amount, if any, payable by COMPANY to MUNICIPALITY hereunder shall be calculated, and written notice thereof given to MUNICIPALITY, within thirty (30) days after the end of each Operating Year following such change in laws or regulations. Such

amount shall be paid through a credit against Tipping Fees that are payable after such notice is given, in an amount per Ton equal to (i) the Energy Payment, divided by (ii) the greater of (A) the number of Tons of Acceptable Waste delivered by MUNICIPALITY under this Agreement during the immediately preceding Operating Year or (B) MUNICIPALITY's GAT (the "Energy Sales Credit"). The Energy Sales Credit shall be applied against the Tipping Fees payable by MUNICIPALITY until the aggregate of such credits equals the Energy Payment.

In addition to the foregoing, if, during the term of this Agreement, COMPANY is at any time or from time to time permitted to sell, and not contractually prohibited or precluded from selling, electrical power directly to MUNICIPALITY, COMPANY shall offer to sell such power to MUNICIPALITY for a term of one (1) year for the lowest price COMPANY has offered such power, within six (6) months preceding such offer to MUNICIPALITY, to any of its power purchase customers with agreements having a term of six (6) months to two (2) years. The number of kilowatt hours of power MUNICIPALITY shall be entitled to purchase during any one-year period at such lowest rate shall be equal to (i) the total number of kilowatt hours of power produced at the Facility in the applicable one-year period, multiplied by (ii) the Proportionate Share. At the end of any such one (1) year term, the provisions of this Section III.E shall again apply.

F. Subject to the other provisions of this Agreement, COMPANY and CASELLA shall be jointly and severally responsible for and shall bear all costs of loading, removing, transporting and disposing of all Residue generated by the Facility or any Alternate Disposal Facility. COMPANY and CASELLA may cause any Hauler that delivers Unacceptable Waste to bear all costs of loading, removing, transporting and disposing of Unacceptable Waste it delivers to the Facility or to an Alternate Disposal Facility which Unacceptable Waste is rejected by COMPANY or CASELLA, as applicable. If any such Hauler is under the control of MUNICIPALITY, whether employed by or under contract with MUNICIPALITY, and such Hauler fails to make such payment to COMPANY or CASELLA within thirty (30) days after receipt by Hauler of an invoice with respect thereto, COMPANY or CASELLA, as applicable, may cause MUNICIPALITY to bear all costs of loading, removing, transporting and disposing of Unacceptable Waste so rejected by COMPANY or CASELLA, as applicable.

G. Authorized representatives of MUNICIPALITY and the Consulting Engineer shall have access to the Facility, the Site and any Alternate Disposal Facility to which MUNICIPALITY has delivered Acceptable Waste hereunder during the current or immediately preceding Operating Year, and to the operational books and records relating thereto (excluding financial books and records), during normal business hours, and upon reasonable advance notice to COMPANY (which, in the case of the Facility and the Site, may be as little as two (2) hours' prior notice), for purposes of testing, inspecting, sampling, examining or copying (as the case may be) equipment, materials, records, Waste and Residue in order to ascertain COMPANY's compliance with this Agreement, provided that each complies with all reasonable safety rules and regulations adopted from

time to time by COMPANY and/or CASELLA, and each does not unreasonably interfere with COMPANY's or CASELLA's operations. All testing must be performed in accordance with all applicable state and federal testing protocols, and performed by organizations having demonstrated expertise in the relevant type of testing. The testing specifically contemplated by Article XV hereof shall also be subject to the additional limitations (including limitations as to frequency and scope) set forth therein.

H. COMPANY agrees that it shall not accept at the Facility (a) any Refuse-Derived Fuel, unless such Refuse-Derived Fuel is created from Waste at the Facility, or (b) except pursuant to agreements in effect on the date of this Agreement, any "special waste" as defined in 06096 CMR 400(1) (Nnn). Except as permitted under this Article III.H, COMPANY shall exercise its best efforts not to accept Unacceptable Waste at the Facility. In the event of any inadvertent failures to comply with the immediately preceding sentence resulting in a violation of applicable state or federal laws, regulations, permits or licenses, COMPANY shall notify MUNICIPALITY on a monthly basis or, in the event that such a non-compliance results in legally required notification to another governmental agency, contemporaneously with such other required notification.

I. COMPANY agrees not to receive at the Facility in any calendar year period more than 300,000 Tons of Waste (excluding any paper Waste returned to the Facility by a metal recycler which has already been counted against such annual tonnage limits (which returned paper has historically totaled approximately 20% of the tonnage of metal sent from the Facility for recycling)). In the event COMPANY despite its best efforts receives in excess of 300,000 Tons of Waste in any calendar year, COMPANY agrees to pay to MUNICIPALITY, in arrears, within sixty (60) days after the end of each Operating Year commencing on or after January 1, 2007, an amount equal to (a) (i) \$100.00, multiplied by (ii) the number of tons by which the Waste received at the Facility (adjusted as set forth in the first sentence of this subsection) in the immediately preceding calendar year exceeded 300,000 (but in no event more than 1,000 tons), plus (b) (i) \$1,000, multiplied by (ii) the number of tons by which the Waste received at the Facility (adjusted as set forth in the first sentence of this subsection) in the immediately preceding calendar year exceeded 301,000.

J. At no cost to MUNICIPALITY, COMPANY will deliver to MUNICIPALITY, by means of computer data link, continuous emissions monitoring (CEM) data as well as data with respect to the COMPANY's negative pressure continuous measurement program. MUNICIPALITY shall be responsible for the cost of any associated computer hardware and equipment to be located on MUNICIPALITY'S premises relating to such data delivery.

K. COMPANY agrees that it will not allow trucks carrying Waste to enter the Site other than during the following hours:

Monday through Friday	4:30 a.m. – 9:30 p.m.
Saturday	4:30 a.m. – 1:30 p.m.
Sunday	No delivery hours

The foregoing restrictions shall not apply to trucks backhauling Waste for purposes of removing Residue from the Facility. COMPANY agrees that trucks containing Residue and excess Refuse-Derived Fuel must be transported from the Facility within twenty-four (24) hours of when full, and that any truck containing Recycled Materials must be transported from the Facility by the end of the business day next succeeding the day on which such truck is filled.

L. COMPANY shall exercise diligent good faith efforts to work with shippers, packers and others in order that trucks delivering Waste to the Facility are periodically painted and regularly cleaned and maintained in order to enhance the cleanliness and professional appearance of such trucks.

M. COMPANY shall exercise its commercially reasonable efforts to cause trucks delivering Waste to or picking up Residue at the Facility, both in arriving at and departing from the Facility, to utilize the roads and routes within the MUNICIPALITY described on Appendix C attached hereto and made a part hereof, or such additional or different roads or routes within the MUNICIPALITY as MUNICIPALITY and COMPANY may agree to, with COMPANY's and MUNICIPALITY's consent to additional or different roads or routes not to be unreasonably withheld, delayed or conditioned.

N. COMPANY and MUNICIPALITY shall work together in good faith to establish and maintain, throughout the Term, a citizens' advisory committee comprised of (i) COMPANY representatives, (ii) MUNICIPALITY representatives, and (iii) citizen representatives selected by mutual agreement of MUNICIPALITY and COMPANY from among adult residents of MUNICIPALITY. Such committee shall be comprised of three to six members, with each group of representatives consisting of up to two persons, and shall endeavor to meet on a calendar quarterly basis to review the operating performance of the Facility and to discuss operational issues pertaining to the Facility.

#### ARTICLE IV. WEIGHING

A. Except as otherwise provided herein, COMPANY and CASELLA shall install and maintain a container and/or motor truck scale(s) to weigh all vehicles of up to 60 feet in length delivering Acceptable Waste to the Facility and any Alternate Disposal Facility on behalf of MUNICIPALITY. COMPANY and CASELLA shall provide for regular inspections of the scale(s) by the appropriate public officials with responsibility for certifying weights and measures to ensure their reasonable accuracy, such inspection to be conducted not less than annually and at such other times as MUNICIPALITY, at its own expense, reasonably deems necessary, with at least ten (10) days' prior written notice to COMPANY. In the case of inspections requested by MUNICIPALITY, such inspections

shall be conducted during business hours in such a manner as not to unreasonably interfere with Facility or Alternate Disposal Facility operations.

B. Deliveries by or on behalf of MUNICIPALITY shall be recorded separately. To the extent that MUNICIPALITY arranges for the transportation of its Waste by a third party, MUNICIPALITY shall provide COMPANY (or CASELLA) with information reasonably determined necessary by COMPANY (or CASELLA) to allow proper vehicle identification and to predetermine vehicle tare weights so that net vehicle load can be established. MUNICIPALITY shall provide COMPANY (or CASELLA) in writing a list of approved Haulers for MUNICIPALITY and shall update such list in writing periodically as appropriate. Each incoming Waste vehicle shall be weighed full, indicating gross truck weight, and weighed empty indicating tare truck weight, which information together with Tons delivered (to nearest hundredth of a Ton), time of delivery, source of incoming Waste, truck identification number and MUNICIPALITY's code shall be recorded on a weight ticket and signed by driver. MUNICIPALITY, COMPANY (or CASELLA) and the driver of each weighed vehicle shall receive a copy of the weight ticket. COMPANY or CASELLA shall retain all weight tickets for a period of not less than eighteen (18) months. MUNICIPALITY shall have the right to inspect COMPANY's and CASELLA's weight records upon 24 hours' prior written notice. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with Facility or Alternate Disposal Facility operations.

C. If all weighing facilities are inoperative or are being tested, COMPANY or CASELLA shall estimate the quantity of Acceptable Waste delivered by or on behalf of MUNICIPALITY on the basis of truck volumes and estimated data obtained through historical information pertinent to the Hauler and/or MUNICIPALITY in question. These estimates shall take the place of actual weighing records during the scale outage. COMPANY and CASELLA shall use reasonable efforts to avoid scale outages and to schedule maintenance and testing of weighing facilities other than during Delivery Hours.

D. The weight records maintained by COMPANY and/or CASELLA in accordance with this Article shall be conclusive and binding on COMPANY, CASELLA and MUNICIPALITY, absent manifest error, and shall be used by COMPANY, CASELLA and MUNICIPALITY as a basis for the calculations required herein.

E. With respect to Diverted Waste delivered to an Alternate Disposal Facility, COMPANY or CASELLA (or their Affiliate, as applicable) shall follow the same weighing procedures as set out in Sections A-D of this Article IV.

F. With respect to Diverted Waste delivered other than to an Alternate Disposal Facility, the weight records of the place of disposal, absent manifest error, shall be used to determine the Tons of Acceptable Waste so diverted pursuant to this Agreement.

**ARTICLE V. DELIVERY OF WASTE TO COMPANY; ACCEPTANCE OF  
WASTE BY COMPANY**

A. Delivery Requirement. During the term of this Agreement, MUNICIPALITY will cause to be delivered to the Facility all Acceptable Waste generated within its boundaries and under its control. COMPANY and MUNICIPALITY expressly agree that Waste generated by commercial and/or industrial entities, and collected by those entities or by private haulers, is not, as of the date of this Agreement, under the control of MUNICIPALITY for the purposes of this Agreement. In addition, MUNICIPALITY will use diligent good faith efforts to adopt reasonable measures to prevent the disposal of Unacceptable Waste at the Facility or any Alternate Disposal Facility by or on behalf of the MUNICIPALITY. Notwithstanding the foregoing, MUNICIPALITY shall in no event be obligated to deliver Recyclable Materials under this Agreement.

COMPANY shall accept all Acceptable Waste generated within MUNICIPALITY delivered by or on behalf of MUNICIPALITY, at the Facility. In the event of the closure or inability of the Facility to accept and process waste, or the redirection of all other Acceptable Waste from the Facility, COMPANY shall be entitled to redirect any and all deliveries of Acceptable Waste under this Agreement, in whole or in part from time to time, to one or more Alternate Disposal Facilities designated by COMPANY or CASELLA. In such event, CASELLA shall make available to MUNICIPALITY disposal capacity for MUNICIPALITY's Acceptable Waste at an Alternate Disposal Facility or Facilities. If neither the Facility nor any Alternate Disposal Facility accepts MUNICIPALITY's Acceptable Waste, in whole or in part, at any time during the term of this Agreement, MUNICIPALITY shall have the right to dispose of such Acceptable Waste not accepted at the Facility or an Alternate Disposal Facility at another facility, other than the Facility or an Alternate Disposal Facility. In all events, and in all cases where MUNICIPALITY has Diverted Waste, COMPANY and CASELLA, jointly and severally, shall pay or reimburse to MUNICIPALITY all Additional Costs within thirty (30) days after receipt of an invoice therefore. COMPANY shall use its reasonable best efforts to give MUNICIPALITY not less than thirty (30) days' prior written notice of any such redirection of deliveries of Acceptable Waste. COMPANY or CASELLA shall not accept waste at the Facility during the period that it is diverting or otherwise redirecting Municipality's Waste to any Alternate Disposal Facility.

B. Required Minimum Deliveries. During each Operating Year, MUNICIPALITY will deliver to COMPANY not less than the Guaranteed Annual Tonnage. MUNICIPALITY shall be deemed to have delivered, as part of its GAT, all Diverted Waste, such that all Acceptable Waste delivered by or on behalf of MUNICIPALITY to the Facility or any Alternate Disposal Facility designated by COMPANY or CASELLA pursuant to Article V.A hereof, together with all other Diverted Waste, shall be credited against MUNICIPALITY's GAT. In the event that MUNICIPALITY fails to deliver its Guaranteed Annual Tonnage in any Operating Year, such failure alone shall not constitute a default by MUNICIPALITY under this Agreement, provided, however, that MUNICIPALITY shall pay to COMPANY, within thirty (30) days of the end of such

Operating Year, an amount equal to (i) the number of Tons by which its actual deliveries of Acceptable Waste during such Operating Year were less than GAT, multiplied by (ii) the average Net Tipping Fee applicable to such Operating Year. Notwithstanding the foregoing, MUNICIPALITY's GAT shall be (i) reduced in the event and to the extent that deliveries to COMPANY of Acceptable Waste by MUNICIPALITY are demonstrably reduced due to (a) the adoption and maintenance by MUNICIPALITY of a recycling program not in effect on the date of this Agreement (including without limitation a "pay to throw" program), provided that MUNICIPALITY has provided COMPANY with at least six (6) months' prior written notice of the implementation of such program; and (b) reduction of waste stream in MUNICIPALITY due to (1) any loss or closure of a business located in MUNICIPALITY on the date of this Agreement (and the Waste of which is being delivered to the Facility hereunder on the effective date of this Agreement) or of a business which may locate in MUNICIPALITY during the term of this Agreement (the Waste of which new business has been added to GAT pursuant to clause (ii)(b) below) or (2) the diversion away from the Facility, at the election of such business, of non-MUNICIPALITY controlled Waste of a business now or hereafter located in MUNICIPALITY, the Waste of which business had theretofore been included in GAT ; or (ii) increased in the event and to the extent that deliveries to COMPANY of Acceptable Waste by MUNICIPALITY are demonstrably increased due to (a) the discontinuance or reduction of a program described in clause (i)(a) above, and (b) increase of waste stream in MUNICIPALITY, which Waste is delivered to the Facility or an Alternate Disposal Facility, due to the opening of a new business or expansion of a business then located in MUNICIPALITY. The parties agree that the Biddeford Crossing Shopping Center businesses shall be treated as new businesses under this Section. In addition to the above increases and decreases in GAT, not less than thirty (30) days before the end of any Operating Year, MUNICIPALITY shall be entitled, by written notice to COMPANY, to increase (but not to decrease, except as set forth herein) its GAT, effective as of the first day of the immediately following Operating Year, to an amount not to exceed 115% of its GAT for the then-current Operating Year.

C. Heat Content. COMPANY has not relied upon any information that implies any guarantee of Waste heat content.

D. Queuing Times. The COMPANY shall exercise commercially reasonable efforts to operate the Facility in such a manner as to reasonably ensure that vehicle queuing times shall be kept to an absolute minimum. COMPANY agrees to cooperate with MUNICIPALITY by considering in good faith the implementation of reasonable suggestions for the reduction of queuing times.

## ARTICLE VI. DETERMINATION OF TIPPING FEES

### A. Tipping Fees.

(i) From March 1, 2007 through June 30, 2012, MUNICIPALITY shall pay COMPANY a Base Tipping Fee rate per Ton equal to \$83.84 initially (and thereafter as set forth in

Appendix B attached hereto and made a part hereof) (a) increased, together with any prior increases reflecting the CPI Escalator, effective each January 1 (commencing January 1, 2008) by the CPI Escalator, (b) reduced by \$13.48 per Ton (the EVOD Payment, being made pursuant to the Settlement Agreement), until such time at which the total reductions pursuant to this clause (i)(b) total \$1,521,305 less the Variable Tip Fee Payment and the 2006 Property Tax Adjustment described in the Settlement Agreement, (c) reduced by \$22.06 per Ton (increased, together with any prior increases reflecting the CPI Escalator, each January 1 (commencing January 1, 2008) by the CPI Escalator) (the Host Community Tipping Fee Reduction), (d) increased or decreased, as applicable, by any applicable Property Tax Agreement Adjustment, (e) increased by the Change in Law Adjustment, if any, (f) decreased by \$2.00 per Ton as reflected in Appendix B hereto with respect to the period from March 1, 2007 through June 30, 2007 (the Cancellation Credit), and (g) reduced by any applicable Energy Sales Credit (the "Net Tipping Fee"). With respect to each Operating Year, the Net Tipping Fee shall be applicable only to a number of Tons of Acceptable Waste delivered hereunder equal to (i) one hundred and fifteen percent (115%) of the GAT as in effect on the first day of such Operating Year, plus or minus (ii) any adjustment to GAT during such Operating Year pursuant to the fourth sentence of Article V.B hereof.

In the event that, at the expiration of the term of this Agreement, the aggregate reductions in the Net Tipping Fee pursuant to clause (i)(b) above are less than (x) \$1,521,305 minus (y) the sum of the Variable Tip Fee Payment and the 2006 Property Tax Adjustment, COMPANY shall pay to MUNICIPALITY, within thirty (30) days, the amount of such shortfall. Alternatively, at the option of MUNICIPALITY, the amount per Ton by which the Base Tipping Fee is reduced pursuant to clause (i)(b) above shall be increased such that the \$1,521,305 of aggregate reductions thereunder less the Variable Tip Fee Payment and the 2006 Property Tax Adjustment is recovered on a per Ton basis over the scheduled term of this Agreement. In the event that, at any June 30 during the term of this Agreement (beginning June 30, 2008), the aggregate increases (or decreases) in the Net Tipping Fee pursuant to clause (i)(d) above have not equaled the aggregate amounts calculated in accordance with clause (a) of the definition of Property Tax Agreement Adjustment contained herein, MUNICIPALITY shall pay to COMPANY, or COMPANY shall pay to MUNICIPALITY, within thirty (30) days, the amount of such shortfall in MUNICIPALITY's payments or overpayment by MUNICIPALITY, respectively.

(ii) The Net Tipping Fee to MUNICIPALITY may be adjusted in the event CASELLA or COMPANY enters into and commences performance on or after November 1, 2006 under a Waste handling transportation and Waste disposal agreement with a municipality for delivery of Waste to the Facility (a "Municipal T&D Agreement").

The conditions which must be met for such an adjustment are as follows:

- i) The MUNICIPALITY must demonstrate that the total waste handling transportation and disposal cost, expressed on a per ton basis, paid under the Municipal T&D Agreement is lower than MUNICIPALITY'S total

- waste handling transportation and disposal costs under or related to this Agreement (excluding, however, for purposes of such determination, any component of such costs attributable to a Property Tax Agreement Adjustment, or a Change in Law Adjustment);
- ii) The MUNICIPALITY must demonstrate that the term of the Municipal T&D Agreement is within plus or minus ten per cent (-10%) of the remaining term of this Agreement; and
  - iii) The MUNICIPALITY must demonstrate that the waste handling and transportation component of the Municipal T&D Agreement is substantially similar in type, term and scope to those for which MUNICIPALITY has arranged in connection with delivery of Waste to the Facility.

Once all parties agree that all of these conditions have been met, the Net Tipping Fee will be reduced, as of the next weekly invoice, by the amount by which (i) the MUNICIPALITY'S total waste handling transportation and disposal cost per Ton under this Agreement and its related transportation arrangements at the time the Municipal T&D Agreement is entered into, exceeds (ii) the total waste handling transportation and disposal cost per Ton payable under the Municipal T&D Agreement as determined under (i) above. In the event that, due to changed circumstances under this Agreement or the Municipal T&D Agreement, the Municipal T&D Agreement no longer fulfills any of the criteria set forth in clauses (i)-(iii) above, such reductions to the Net Tipping Fee shall be immediately discontinued.

In the event that CASELLA or COMPANY enters into a Municipal T&D Agreement that fulfills the criteria set forth in clauses (i) and (iii) above (but not clause (ii) due to the term thereof being more than 110% of the then remaining term of this Agreement), CASELLA or COMPANY shall so notify MUNICIPALITY promptly in writing, and MUNICIPALITY shall have the right, exercisable by written notice to CASELLA and COMPANY, to extend the term of this Agreement to the termination date of such Municipal T&D Agreement and thereupon to be entitled to the Net Tipping Fee adjustment provided hereunder with respect to such Municipal T&D Agreement.

(iii) With respect to any Operating Year, the Adjusted Tipping Fee (as defined herein) shall be applicable to any Tons of Acceptable Waste delivered hereunder in excess of (i) one hundred and fifteen percent (115%) of the GAT as in effect on the first day of such Operating Year, plus or minus (ii) any adjustment to GAT during such Operating Year pursuant to the fourth sentence of Article V.B hereof. From and after the date of this Agreement to and including June 30, 2012, MUNICIPALITY shall pay COMPANY a tipping fee rate per Ton for any such excess tonnage equal to the Base Tipping Fee (the "Adjusted Tipping Fee").

(iv) The tipping fees payable by MUNICIPALITY shall be calculated by multiplying the applicable Net Tipping Fee or Adjusted Tipping Fee in effect during the invoice period of deliveries of Acceptable Waste, by the number of Tons of Acceptable Waste that

MUNICIPALITY causes to be delivered during such invoice period pursuant to this Agreement to which such Net Tipping Fee or Adjusted Tipping Fee applies hereunder, but in no event less, in the aggregate, than the GAT in effect for such year, determined in accordance with Article V.B hereof. The number of Tons of Acceptable Waste delivered by or on behalf of MUNICIPALITY based on weight records referred to in Article IV hereof shall be tallied, and Net Tipping Fees or Adjusted Tipping Fees therefore, as applicable, formulated into invoices on a weekly basis and submitted to MUNICIPALITY, all as provided herein.

(v) \$10.00 per Ton of the adjustments contemplated by subsection (i)(c) shall be suspended in the event that on or after July 1, 2009, and for so long thereafter as, MUNICIPALITY (1) appeals to any administrative or judicial body any federal, state or local permit, license, approval or determination (including but not limited to any of the foregoing issued by the Maine Department of Environmental Protection ("DEP")) relating to COMPANY or the Facility, or (2) imposes, through policy, ordinance or other act or failure to act, any substantial or material limitation on COMPANY's ability to operate the Facility in accordance with permits and licenses issued by DEP, including without limitation any odor control ordinances or enactments not in effect as of the date of the execution of this Agreement, or (3) initiates or sponsors any other Change in Law to occur (including without limitation a Change in Law mandating the payment or provision of host community benefits by a facility such as the Facility). Such suspension under (2) and (3) above shall take effect six (6) months following the occurrence of the event, condition or circumstance entitling COMPANY to effectuate such suspension if such event, condition or circumstance has not theretofore been cured, terminated, or resolved to the parties' mutual satisfaction. MUNICIPALITY and COMPANY agree that MUNICIPALITY'S initiation of mediation or arbitration proceedings under the terms of this Agreement shall not result in a suspension of the \$10.00 per Ton adjustment. Such suspension under (1) above shall take effect six (6) months following the filing of an administrative appeal, or lawsuit or appeal in the state or federal courts. In the event that MUNICIPALITY repeals an ordinance of the type described in clause (2) or (3) above, or such an ordinance is challenged and held to be invalid, COMPANY shall retain all amounts previously withheld hereunder but such adjustment shall thereupon be discontinued with respect to such ordinance. This subsection (v) is not intended to preclude MUNICIPALITY from exercising any statutory authority it may have to act in its own interest under applicable law, but rather to provide a contractual means for COMPANY to withhold certain benefits under this Agreement until resolution of the action taken by MUNICIPALITY. Should the action taken by MUNICIPALITY described in clause (1) above result in a final determination in favor of MUNICIPALITY (in which MUNICIPALITY is the substantially prevailing party), or should an ordinance adopted by MUNICIPALITY as described in clause (2) or (3) above be challenged by COMPANY and subsequently determined in such proceeding to be valid, then the suspension described above shall be discontinued and the amounts previously withheld by COMPANY pursuant to such suspension shall be promptly paid in full to MUNICIPALITY with interest at an annual rate of interest equal to 10% until paid. In the event that such action results in a final determination in which MUNICIPALITY is

not the substantially prevailing party, such suspended amounts shall be retained by COMPANY and shall not be payable to MUNICIPALITY. The parties further agree to engage in good faith negotiations to extend the July 1, 2009 date set forth in the first sentence of this subsection (v) (and to further extend any extension thereof) by three (3) additional years, prior to the arrival of such date (or extended date). Provided, however, that in the event MUNICIPALITY does not undertake any of the actions described above triggering the suspension of certain benefits during the initial three year period (or any further extensions thereof) the July 1, 2009 date set forth in the first sentence of this subsection (v) (or any extension date) shall be automatically extended for an additional three (3) year period.

B. Invoices; Payment. Payment of the Net Tipping Fees and Adjusted Tipping Fees shall be made by MUNICIPALITY within thirty (30) days of its receipt of said invoices, less the amount of any set-off permitted in this Article VI.B, with late payments bearing interest at an annual rate of interest equal to 10% until paid. MUNICIPALITY shall be entitled to set off against amounts payable by it to COMPANY all unpaid or unreimbursed Additional Costs. MUNICIPALITY shall have the right to submit disputes regarding the amount of any invoices for resolution in accordance with Article XVII hereof, provided that the pendency of such dispute shall not relieve MUNICIPALITY of the obligation to pay pursuant to the first sentence of this paragraph. If it is determined that the amount invoiced was excessive, COMPANY shall promptly reimburse MUNICIPALITY the amount of such excess with interest at the rate of 10% per annum from the date of payment by MUNICIPALITY to the date of such reimbursement.

C. Corrections and Survival. Within 120 days after the end of each Operating Year, COMPANY shall deliver to MUNICIPALITY an annual settlement statement (the "Annual Settlement Statement"). The Annual Settlement Statement shall show the computation of the Net Tipping Fees and Adjusted Tipping Fees for such year, determined as set forth in this Article VI, and a reconciliation of such amount with the Net Tipping Fees and Adjusted Tipping Fees charged during such Operating Year, including all adjustments required to reflect any discrepancies between (a) any estimated amounts used in the computation of the Net Tipping Fees as shown in such monthly statements and the actual amounts as determined at year end, and (b) the tonnage amounts used to calculate the Net Tipping Fee adjustments as per Ton figures during such year and the actual number of Tons for which MUNICIPALITY is obligated to pay the Net Tipping Fee with respect to such year.

If MUNICIPALITY has overpaid the COMPANY, then the COMPANY shall, at the time of its delivery of the Annual Settlement Statement, refund the overpayment to MUNICIPALITY. If MUNICIPALITY has underpaid COMPANY, then MUNICIPALITY within 90 days of receipt of the Annual Settlement Statement shall pay to COMPANY the additional amount due.

In the event of a dispute relating to the Annual Settlement Statement or the Net Tipping Fees or Adjusted Tipping Fees paid by MUNICIPALITY, such dispute shall be referred

within 30 days after delivery of such Annual Settlement Statement for resolution pursuant to Article XVII hereof.

## ARTICLE VII. UNACCEPTABLE WASTE

Unacceptable Waste shall be handled in the following manner:

A. COMPANY and CASELLA shall not be obligated to accept, and shall make every commercially reasonable effort to reject, any Unacceptable Waste. Any and all Unacceptable Waste delivered to the Facility or any Alternate Disposal Facility shall remain the property, and be the sole responsibility, of the Hauler or other responsible person delivering such Unacceptable Waste. COMPANY and CASELLA hereby expressly reserve the right to recover (and shall be entitled to recover) from each such Hauler and any other responsible person (including MUNICIPALITY, in the case of Unacceptable Waste delivered to the Facility or an Alternate Disposal Facility designated by COMPANY or CASELLA pursuant to Article V.A hereof by a Hauler that is under contract with MUNICIPALITY at the time of such delivery and which Unacceptable Waste (i) is not removed by Hauler at Hauler's own expense or (ii) is removed by COMPANY or CASELLA, and the expense of which (in either case) is not reimbursed by Hauler within 30 days) any and all costs, fees, expenses, liabilities, claims or damages suffered or incurred by COMPANY or CASELLA in connection with or in any way arising out of or related to the presence, handling, processing or disposal of Unacceptable Waste delivered to the Facility or any Alternate Disposal Facility by such Hauler or other responsible person, or their respective employees or agents, including without limitation all costs of loading, removing, transporting and disposing of Unacceptable Waste delivered to the Facility or any Alternate Disposal Facility by such Hauler or other responsible person or their respective employees or agents.

B. COMPANY and CASELLA shall have the right, but shall not be obligated, to make a visual inspection of every load of Waste delivered hereunder prior to such load being deposited on the Facility's (or any Alternate Disposal Facility's) tipping floor. If, in the reasonable judgment of COMPANY or CASELLA, circumstances so require, COMPANY and CASELLA retain the right to reject any load containing Unacceptable Waste, either upon initial inspection or within ten (10) days after the load of Waste has been delivered to the Facility or Alternate Disposal Facility. After such inspection, COMPANY and CASELLA retain the right to reject the entire load as Unacceptable Waste within such ten (10) day period if, in the reasonable judgment of COMPANY or CASELLA, circumstances so require, in addition to the right to reject only the portion of the load which is Unacceptable Waste within such ten (10) day period. The determination of the Waste delivery coordinator or other authorized personnel of COMPANY or CASELLA, if made in good faith, shall be final and binding upon MUNICIPALITY and its Haulers, subject to the dispute resolution provisions contained in Article XVII hereof. Any Unacceptable Waste not so rejected shall be deemed for all purposes to have been accepted by COMPANY or CASELLA, and title thereto shall no longer be in the MUNICIPALITY. In all events, title to all Waste shall no longer be in the

MUNICIPALITY upon removal thereof from the Facility or Alternate Disposal Facility after its disposal there by or on behalf of MUNICIPALITY. Notwithstanding the foregoing, COMPANY and CASELLA shall continue to have the right to pursue all available remedies against any generator of such Unacceptable Waste, other than the MUNICIPALITY.

COMPANY shall promptly notify MUNICIPALITY (in the manner set forth in Appendix A) of any rejected loads and shall, to the extent reasonably possible, provide to it particulars about the Hauler, the reason for rejection and the information on the weight ticket provided for by Article IV hereof for that rejected load.

COMPANY and CASELLA agree to establish a reasonable protocol (consistent with industry standards and practices) for inspection of Waste delivered to the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof and agree to use reasonable efforts to observe such protocol in the operation of the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof.

C. MUNICIPALITY agrees to use diligent good faith efforts to require all Haulers delivering Waste on behalf of such MUNICIPALITY under contracts with MUNICIPALITY (i) to comply with the Hauler Regulations of COMPANY and CASELLA and ordinances of MUNICIPALITY (or any municipality in which an Alternate Disposal Facility designated pursuant to Article V.A hereof is located) with respect to the delivery of Waste, including, without limitation, any such regulation and/or ordinance prohibiting delivery of Unacceptable Waste to the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof, (ii) to obtain a license from MUNICIPALITY prior to, and as a condition for, delivering Waste to the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof on behalf of MUNICIPALITY, which licensure shall include requirements for the Hauler to establish reasonable financial responsibility and (iii) to notify COMPANY's or CASELLA's weigh station operator and Waste delivery inspector if their load contains Pathological Waste or Hazardous Waste or is from a source such as a hospital or other place likely to produce Pathological Waste or Hazardous Waste. COMPANY and CASELLA retain the right to reject the entire load or just the portion of the load which is Unacceptable Waste. Acceptance of Unacceptable Waste hereunder on one or more occasions, whether knowing or inadvertent, shall not constitute a waiver of the COMPANY's or CASELLA's right to enforce these provisions (and any related provisions of this Agreement) on any other occasion.

D. In addition to any other rights which COMPANY and CASELLA may have under this Agreement as the result of the delivery of Unacceptable Waste by MUNICIPALITY, subject to the provisions of Article VIII hereof, COMPANY and CASELLA shall have the right to refuse to permit disposal or delivery of any Waste at the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof by any Hauler that (i) has, on two or more occasions in any 12 month period, delivered or attempted to deliver to the Facility or any Alternate Disposal Facility designated pursuant to Article

V.A hereof any load containing a material quantity of Unacceptable Waste or (ii) has otherwise failed, on two or more occasions in any 12 month period, to comply in any material respect with any Hauler Regulations adopted by COMPANY or CASELLA, until such time as COMPANY and CASELLA, in their sole and exclusive judgment, are satisfied that such Hauler will not continue to deliver Unacceptable Waste to the Facility or to any Alternate Disposal Facility designated pursuant to Article V.A hereof. In the event that, in accordance with the terms of this Agreement, a Hauler is refused permission to make further deliveries of Waste to the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof, there shall not be any consequent adjustment to GAT or any modification of MUNICIPALITY's obligations under Section V.A hereof, nor shall MUNICIPALITY be entitled to recover from COMPANY or CASELLA any additional costs incurred by it as a result thereof.

### ARTICLE VIII. REGULATIONS

COMPANY and CASELLA may from time to time, and with prior consultation with MUNICIPALITY, adopt reasonable regulations ("Hauler Regulations") governing the manner and time of delivery of Acceptable Waste to the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof, and other matters with respect to the operation of the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof, including provisions requiring any Hauler to observe the time of delivery provisions contained in Article III.J and to follow certain routes in the vicinity of the Facility or any Alternate Disposal Facility designated pursuant to Article V.A hereof in delivering Waste to the Facility or any Alternate Disposal Facility subject to the provisions of Article III.J and III.L. MUNICIPALITY agrees to comply with such Hauler Regulations and to use reasonable good faith efforts to cause any Hauler acting on its behalf to comply with such Hauler Regulations. COMPANY and CASELLA shall be entitled to suspend or revoke the right of any Hauler that fails, on two (2) occasions during any one-year period, to comply in any material respect with such Hauler Regulations to make further deliveries of Acceptable Waste to the Facility or any Alternate Disposal Facility until and unless COMPANY and CASELLA receive assurances reasonably satisfactory to them that such Hauler will comply with the Hauler Regulations. COMPANY and CASELLA agree to apply and enforce the Hauler Regulations in an equitable and fair manner among all haulers delivering Waste to the Facility or Alternate Disposal Facilities, including but not limited to haulers that are Affiliates of COMPANY or CASELLA. Prior to suspending any Hauler, COMPANY shall give MUNICIPALITY written notice thereof. In the case of a permanent revocation or a proposed suspension of one (1) year or more, MUNICIPALITY shall be given a period of sixty (60) days, and in the case of a revocation or a proposed suspension of more than five (5) days but less than one (1) year, MUNICIPALITY shall be given a period of thirty (30) days, within which to provide COMPANY and CASELLA with assurances reasonably acceptable to COMPANY and CASELLA that such Hauler will comply with the Hauler Regulations or to make arrangements with one or more substitute Haulers reasonably acceptable to COMPANY for delivery of MUNICIPALITY's Waste hereunder before such suspension or revocation may take effect.

## ARTICLE IX. INSURANCE

A. MUNICIPALITY shall at all times during the term of this Agreement maintain casualty and liability insurance for any damage or injury caused by the use of vehicles or trailers owned by MUNICIPALITY in delivering waste to the Facility or any Alternate Disposal Facility designated in accordance with Article V.A hereof and shall produce a certificate of such insurance within twenty-four (24) hours upon request by COMPANY. Such coverages shall be of the types set forth in Section IX.B below and with minimum limits not less than MUNICIPALITY's maximum liability under the Maine Tort Claims Act, as amended from time to time.

COMPANY shall be named an additional insured on all such policies, and such policies shall provide that they may not be cancelled, non-renewed or amended without thirty (30) days' prior written notice to COMPANY.

In addition, MUNICIPALITY shall require all Haulers with whom it contracts to obtain and maintain casualty and liability insurance in such amounts as may be agreed to by COMPANY and MUNICIPALITY, and to name COMPANY an additional insured, and to provide that any such policies may not be cancelled, non-renewed or amended without thirty (30) days' prior written notice to COMPANY.

B. COMPANY and CASELLA shall at all times during the term of this Agreement maintain casualty, liability, workers' compensation and business interruption insurance covering the Facility and any Alternate Disposal Facility designated in accordance with Article V.A hereof, as set forth below, and shall produce a certificate of such insurance within twenty-four (24) hours upon request of MUNICIPALITY. Such coverages shall be of the following types and with the following minimum limits:

Property/Casualty	N/A	\$21 million aggregate
Commercial General Liability	\$3 million per occurrence	\$3 million aggregate
Commercial Automobile Liability	\$3 million per occurrence	\$3 million aggregate
Business Interruption	N/A	\$5 million aggregate

MUNICIPALITY shall be named an additional insured on all such policies, and such policies shall provide that they may not be cancelled, non-renewed or amended without thirty (30) days' prior written notice to MUNICIPALITY.

## ARTICLE X. DAMAGE OR DESTRUCTION

If the Facility or any substantial portion thereof is damaged or destroyed to an extent that it cannot function as contemplated by this Agreement, by fire, the elements or other casualty, or if the Facility is taken by eminent domain, then COMPANY may, at its

option, restore, repair or reconstruct the Facility, or COMPANY may, at its sole option, terminate operations at the Facility. If operations are so terminated, or if at any time COMPANY is not accepting MUNICIPALITY's Waste at the Facility, COMPANY and CASELLA shall immediately notify MUNICIPALITY of the Alternate Disposal Facility to which MUNICIPALITY is to deliver Waste hereunder pursuant to Article V.A. In the event of condemnation or a taking by eminent domain, termination of operations shall not take effect until all government orders or decisions have either been fully appealed or the time for such appeals has passed if no appeal is taken by COMPANY.

#### **ARTICLE XI. TERM OF AGREEMENT**

This Agreement shall have the term set forth on Appendix A, unless this Agreement is earlier terminated as herein provided or terminated or modified in writing by mutual consent of the parties hereto. Upon termination of this Agreement for any reason, the parties shall be relieved of all further obligations hereunder, except for their accrued but unsatisfied obligations arising hereunder prior to the termination of this Agreement, and except as provided in Article XII hereof.

#### **ARTICLE XII. DEFAULT; TERMINATION**

A. Each of the following events shall constitute an "Event of Default" by MUNICIPALITY hereunder:

(1) The failure of MUNICIPALITY on two (2) occasions in any 12 month period to pay any amounts owed to COMPANY by MUNICIPALITY under this Agreement, when and as such amounts shall become due and payable, and the continuance of said failure for thirty (30) days after the giving by COMPANY to MUNICIPALITY of written notice of nonpayment, it being agreed and understood that the failure of MUNICIPALITY to make one payment despite two thirty (30)-day notices of non-payment in any 12-month period shall constitute two (2) occasions for purposes hereof; or

(2) The failure of MUNICIPALITY to observe and perform any other covenant, condition or agreement on its part required to be observed or performed by MUNICIPALITY under this Agreement, other than those referred to in (1) above, which failure continues for a period of sixty (60) days after written notice from COMPANY, which notice shall specify such failure, unless COMPANY shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice is curable but cannot be corrected within such period, COMPANY shall consent to an extension of such time for a reasonable period if corrective action is instituted within such period and diligently pursued by MUNICIPALITY.

B. Whenever any Event of Default by MUNICIPALITY shall have occurred and be continuing following any applicable notice and cure period COMPANY may terminate this Agreement without further notice to MUNICIPALITY and, except as otherwise provided in this Agreement, may pursue all remedies available to COMPANY under

Maine law. This provision, however, is subject to the condition that if, before the effective date of termination, MUNICIPALITY cures the Event of Default existing under this Agreement, the notice of default or termination shall be cancelled and the parties shall be restored to their prior position under this Agreement, but no such cancellation shall affect any subsequent default or impair or exhaust any rights or powers with respect thereto.

C. It shall constitute an Event of Default hereunder by COMPANY and CASELLA if COMPANY or CASELLA shall (i) fail to accept Waste as required by this Agreement, and fail to pay MUNICIPALITY's Additional Costs as provided herein, or (ii) fail to observe and perform any other covenant, condition or agreement on its part required to be observed or performed under this Agreement; and any such failure described in clauses (i) or (ii) hereof continues for a period of thirty (30) days after written notice from MUNICIPALITY, which notice shall specify such failure, unless MUNICIPALITY shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice is curable but cannot be corrected within such period, MUNICIPALITY shall consent to an extension of such time if corrective action is instituted within such period and diligently pursued by COMPANY, or (iii) be subject to bankruptcy or insolvency proceedings which, in the case of proceedings commenced against COMPANY or CASELLA, are not dismissed within sixty (60) days. Notwithstanding the foregoing, failures to observe and perform provisions of this Agreement that give rise to the payment by COMPANY or CASELLA of amounts pursuant to Article III hereof shall not entitle MUNICIPALITY to terminate this Agreement.

D. In the event of the failure by COMPANY or CASELLA to comply with any of the provisions referred to in Appendix D attached hereto, or to meet the standards specified therein as to environmental and other matters, COMPANY or CASELLA shall pay the applicable penalty set forth in Appendix D within 30 days of receipt by COMPANY and CASELLA of written notice from MUNICIPALITY of such non-compliance, and MUNICIPALITY shall not have the right to terminate this Agreement or pursue any other remedies in respect of such noncompliance unless so provided in Appendix D.

E. Whenever any Event of Default by COMPANY or CASELLA (other than an Event of Default described in Section XII.D hereof) shall have occurred and be continuing following any applicable notice and cure period, MUNICIPALITY may, subject to Article XII.C hereof, terminate this Agreement without further notice and, except as otherwise provided in this Agreement, pursue all remedies available to MUNICIPALITY under Maine law. This provision, however, is subject to the condition that if, before the effective date of termination, COMPANY or CASELLA cures the Event of Default existing under this Agreement, the notice of default or termination shall be canceled and the parties shall be restored to their prior position under this Agreement, but no such cancellation shall affect any subsequent default or impair or exhaust any rights or powers with respect thereto.

F. In lieu of the remedies set forth in Article XIII.E, whenever an Event of Default of COMPANY or CASELLA shall have occurred and be continuing, MUNICIPALITY may take whatever action may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant under this Agreement, subject to the provisions of Article XVII and Article XXIII hereof. In addition, a non-defaulting party shall be entitled to receive from the defaulting party any unpaid amounts owing to the non-defaulting party hereunder at the time of such termination.

G. In the event any agreement or covenant contained in this Agreement should be breached by one party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

### **ARTICLE XIII. FORCE MAJEURE**

A. Except as herein provided, if any party is rendered unable, wholly or in part, by Force Majeure, to carry out its obligations other than any payment obligation under this Agreement, that party shall give to the other party prompt written notice of the Force Majeure with reasonably full particulars concerning it. Thereupon the obligations of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than the continuance of, the Force Majeure, and for a reasonable time thereafter if required to remedy any physical damages and/or place the Facility back in operation.

B. During any period in which COMPANY and/or CASELLA is excused from accepting and/or processing Acceptable Waste or MUNICIPALITY is excused from causing to be delivered such Waste by reason of the occurrence of an event of Force Majeure, the party so excused shall promptly, diligently and in good faith take all reasonable action required in order for it to be able to commence or resume performance of its obligations under this Agreement. Without limiting the generality of the foregoing, the party so excused from performance shall, during any such period of Force Majeure, take all actions reasonably necessary to obtain and/or terminate as the case may be any temporary restraining orders, preliminary or permanent injunctions, approvals, licenses or permits needed to enable it to so commence or resume performance of its obligations under this Agreement.

C. The party whose performance is excused due to the occurrence of an event of Force Majeure shall, during such period, keep the other party duly notified of all such actions required in order for it to be able to commence or to resume performance of its obligations under this Agreement.

### **ARTICLE XIV. ASSIGNMENT, TRANSFER OF THE FACILITY, DELEGATION**

A. Except as hereinafter provided in this Article, this Agreement shall not be assigned in whole or in part by any party without the prior written consent of the other parties.

Subject to Article XIV.C hereof, COMPANY may assign this Agreement (1) at its expense to a person, firm or corporation acquiring all or substantially all of the business and assets of COMPANY provided that (a) the assignee assumes the obligations of COMPANY and CASELLA arising hereunder and under the Settlement Agreement from and after the date of acquisition, and (b) such assignee has the financial, technical and operational ability and capacity adequately to perform the obligations of COMPANY and CASELLA under this Agreement; and (2) as security to entities providing financing for construction, reconstruction, modification, replacement or operation of the Facility, provided that any such entity enter into a recognition, assumption and non-disturbance-type agreement on terms reasonably satisfactory to MUNICIPALITY.

COMPANY and CASELLA hereby agree that neither will sell or otherwise transfer, assign or convey to any person the Facility, or the business or assets of CASELLA or COMPANY, as applicable, or all or substantially all of the stock of CASELLA or COMPANY, unless, as part of such transfer, assignment or conveyance, the transferee agrees to assume this Agreement and the Settlement Agreement in their entirety and to be bound by and perform all obligations of COMPANY and CASELLA.

B. In furtherance of the provisions of Subarticle A above, and without limitation thereof, MUNICIPALITY affirmatively consents to the assignment, as security, of this Agreement and the Facility to any lender providing financing to COMPANY or with respect to the Facility, and agrees that it will execute and deliver such consents and assignments and certification in connection therewith or in connection with modifications or replacements of such financings as may be reasonably requested of it, provided that any such lender enters into a recognition, assumption and non-disturbance-type agreement on terms reasonably satisfactory to MUNICIPALITY. MUNICIPALITY further agrees that in the event of an assumption of the obligations of COMPANY and CASELLA under this Agreement by an assignee of this Agreement or transferee of the Facility as set forth in Article XIV.A above, this Agreement shall inure to the benefit of, and MUNICIPALITY will be bound hereunder to, such assignee or transferee, and neither COMPANY nor CASELLA shall have any liability for any obligation arising from and after the date of such assignment or transfer.

C. In furtherance of Subarticles A and B of this Article XIV, COMPANY will provide reasonable notice (at least as long a notice period as required by the DEP for consent to any such transfer or assignment) to MUNICIPALITY of any proposed transfer of the Facility or assignment of this Agreement requiring DEP approval.

In the event of any proposed transfer, assignment or conveyance not requiring DEP approval, COMPANY will make a good faith effort to cooperate with and assist MUNICIPALITY in its review of the financial, technical and operational capacity/ability of any proposed assignee/transferee to assume the obligations of this Agreement, including providing information or documentation that COMPANY has that MUNICIPALITY needs to review the proposed assignment or transfer; provided,

however, that the consent of MUNICIPALITY to any such transfer, assignment or conveyance shall not be required.

Provided the proposed transferee possesses the requisite capability, MUNICIPALITY agrees it will execute and deliver such consents, assignments and/or certificates in connection with any assignments of this Agreement or transfer of the Facility as may be reasonably requested of it with respect to any permitted transfer or assignment, but without cost or charge to MUNICIPALITY. MUNICIPALITY agrees that such transfer or assignment requiring the approval of the DEP (or any successor agency) will be permissible if the DEP (or any successor agency) reviews and accepts the proposed transferee or assignee.

#### ARTICLE XV. ENVIRONMENTAL MEASURES AND TESTING

A. VOC Reduction. The parties agree and acknowledge that the Facility's obligations with respect to VOC levels and reduction shall be subject solely to applicable requirements of federal and state laws, regulations, permits and licenses in effect from time to time, including without limitation the Title V license issued to COMPANY pursuant thereto and any SEPs, judicial orders and administrative consent agreements, if applicable, and that COMPANY shall be solely responsible for the cost of complying with such laws, regulations, permits and licenses, and that nothing contained in this Agreement shall impose on COMPANY or the Facility any different or additional requirements with respect to VOC issues.

B. Negative Pressure; Noise Control; Stack Testing; Odor Control. The Parties acknowledge that Appendix D hereto sets forth the agreement of the parties (i) for the achievement of negative pressure at the Facility, on a continuous basis, (ii) with respect to the noise standards applicable to the Facility, (iii) with respect to testing that may be performed by MUNICIPALITY with respect to the Facility's stacks, and (iv) with respect to the odor standards applicable to the Facility.

The Parties agree and acknowledge that DEP is authorized to regulate odor at the Facility pursuant to laws and regulations including, without limitation, 38 M.R.S.A. 1310-N(1) and the operating requirements for solid waste processing facilities under DEP administrative rules, 06 096 CMR 409(4)(E) and 06 096 CMR 403(6)(H)(4) as such requirements may be in force from time to time during the term of this WHA. The Parties agreement to an Odor Protocol is not intended to preclude any action by the DEP under applicable law with respect to odor at COMPANY's Facility.

#### ARTICLE XVI. CHANGE IN LAW

A. COMPANY shall, as soon as may be reasonably practical, notify MUNICIPALITY of any Change in Law of which it has knowledge, and upon determining the impact of any Change in Law, COMPANY shall provide MUNICIPALITY with a written notice thereof, which notice shall contain a written explanation of any Change in Law resulting

therefrom of which COMPANY then has knowledge as well as the COMPANY's expectation as to the capital costs and operating costs resulting from such Change in Law. COMPANY and MUNICIPALITY shall discuss in good faith alternative measures to enable COMPANY to achieve compliance with any applicable Change in Law. COMPANY and MUNICIPALITY shall make every reasonable effort to agree on such measures. In the event COMPANY and MUNICIPALITY are unable to agree on such measures, the matter of which measures should be implemented pursuant to the applicable terms of this Agreement shall be submitted to dispute resolution in accordance with Article XVII hereof.

B. If during any Operating Year during the term of this Agreement, as a result of any Change in Law, the COMPANY shall incur, or reasonably expects to incur, a Change In Law Cost, the COMPANY shall be entitled to recover from the MUNICIPALITY its Proportionate Share of such Change In Law Cost as agreed to by COMPANY and MUNICIPALITY or determined pursuant to Article XVII, to the extent contemplated by Article XVI.A hereof (the "Change In Law Adjustment"). Such Change in Law Adjustment shall be effected by increasing the Net Tipping Fee rate and the Adjusted Tipping Fee rate by MUNICIPALITY's Proportionate Share of the Change in Law Cost. Said increase in the Net Tipping Fee Rate and the Adjusted Tipping Fee rate shall be effective beginning in MUNICIPALITY's fiscal year next following (a) the delivery by COMPANY of the notice, or (b) the agreement of COMPANY and MUNICIPALITY or determination pursuant to Article XVII, and shall continue in effect until the earlier to occur of the expiration of the term of this Agreement or the payment in full of the Change in Law Cost or the end of the applicability of the Change in Law provisions.

#### ARTICLE XVII. APPLICABLE LAW; DISPUTE RESOLUTION

A. Governing Law. The law of the State of Maine shall govern the validity, interpretation, construction and performance of this Agreement.

B. Settlement. The parties agree that before resorting to non-binding arbitration pursuant to this Section, they shall attempt to come to a reasonable settlement of any dispute (i) by having their authorized representatives attempt to negotiate a resolution of the dispute for a period of 30 days, and, if not resolved by the authorized representatives, then (ii) if there are such more senior members of management, by having other more senior members of each party's management, who have had no previous involvement in the dispute, but who have the authority to resolve the dispute, attempt to negotiate a resolution of the dispute for an additional 15 days.

C. Agreement to Non-Binding Arbitration. In the event settlement of a dispute is not timely achieved, the parties agree that any disputes that may arise between them (including but not limited to any controversies or claims arising out of or relating to this Agreement or any alleged breach thereof, and any dispute over the interpretation or scope of this arbitration clause) shall be attempted to be resolved by non-binding arbitration as described in this Section.

D. Selection of Panel. In the event settlement is not achieved and non-binding arbitration is necessary, a panel of three arbitrators will hear and decide the dispute. Each of COMPANY and MUNICIPALITY will select an arbitrator and the arbitrators selected by such parties will, within 14 days of the appointment of the second of them, select the third arbitrator, who shall be a retired or former judge. The panel of three arbitrators shall consist of individuals who shall not have then or previously had any significant relationship with any of the parties and who shall sit as neutral arbitrators.

E. Choice of Law. The non-binding arbitration panel shall have the right only to interpret and apply the terms and conditions of this Agreement in question in accordance with the laws of the State of Maine and may not alter or modify any such term or condition. The Maine Rules of Civil Procedure and the Maine Rules of Evidence in effect at the time of any arbitration proceedings under this Agreement shall be applied in all such proceedings.

F. Venue. The non-binding arbitration proceedings shall be conducted in Portland, Maine, or in such other location as the parties may agree in writing.

G. Arbitration Award. The arbitration award shall be non-binding, provided that upon written agreement of the parties application may be made in any court of competent jurisdiction for confirmation of the arbitration award and entry of judgment in conformity therewith. The arbitration panel shall make written findings of fact and conclusions of law, or, if the parties agree that such formal findings and conclusions are not required, the arbitration panel shall prepare a reasoned opinion.

H. Limitation on Damages. No party shall be entitled to punitive damages as part of the non-binding arbitration award.

I. Expenses of Arbitration. Each party shall be responsible for payment of fees and expenses to its designated arbitrator, and the parties shall share equally the fees and expenses of the third arbitrator and other expenses. Each party shall be responsible for payment of its own attorney fees.

J. Litigation. In the event that any dispute between the parties becomes the subject of a court proceeding subsequent to completion of the non-binding arbitration ("litigation"), the parties agree that (a) the arbitration award, including findings of fact and conclusions of law, or the reasoned opinion, shall be admissible into evidence in the litigation; and (b) no party to litigation shall be entitled to receive any punitive damages.

K. Acknowledgment of Non-Binding Arbitration. The parties hereto acknowledge that this document contains an agreement to engage in non-binding arbitration. After signing this document, each party understands that it will not in the first instance be able to bring a lawsuit concerning any dispute that may arise which is covered by this non-binding

arbitration agreement. Instead, each party has agreed to submit any such dispute to a panel of arbitrators as described herein.

#### **ARTICLE XVIII. AGREEMENT AMENDMENT**

No amendments to this Agreement may be made except in writing signed by each party.

#### **ARTICLE XIX. SEVERABILITY**

In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions or provisions hereof; provided, however, that such remaining covenants, conditions and provisions can hereafter be applicable and effective without materially changing the obligations of any party.

#### **ARTICLE XX. RELATIONSHIP OF THE PARTIES**

Nothing herein shall be deemed to constitute any party a partner, agent, or local representative of the other party or to create any fiduciary relationship between or among the parties. The parties shall at all times act in good faith and with a duty of fair dealing with respect to one another.

#### **ARTICLE XXI. REPRESENTATIVES**

The authorized representatives of each of the parties for the purposes hereof shall be such persons as the parties may from time to time designate in writing.

#### **ARTICLE XXII. NOTICES**

All notices herein required or permitted to be given or furnished under this Agreement by either party to the other shall be in writing, and shall be deemed sufficiently given and served upon the other party if sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to COMPANY:     Maine Energy Recovery Company, Limited Partnership  
                              P. O. Box 401  
                              Biddeford, ME 04005  
                              Attn: Brian Oliver

If to CASELLA: Casella Waste Systems, Inc.  
25 Greens Hill Lane  
P.O. Box 866  
Rutland, VT 05701  
Attn: James Bohlig

With copies to: General Counsel  
Casella Waste Systems, Inc.  
25 Greens Hill Lane  
P.O. Box 866  
Rutland, VT 05701

Philip F.W. Ahrens, III, Esq.  
Pierce Atwood LLP  
One Monument Square  
Portland, ME 04101

If to MUNICIPALITY: As set forth in Appendix A

With a copy to:	City Solicitor	Mayor
	City of Biddeford	City of Biddeford
	205 Main Street	205 Main Street
	Biddeford, Maine 04005	Biddeford, Maine 04005

Each party shall have the right, from time to time to designate a different person and/or address by notice given in conformity with this section.

#### **ARTICLE XXIII. BINDING EFFECT AND LIMITATION OF LIABILITIES**

The Agreement shall be binding upon and inure to the benefit of COMPANY and MUNICIPALITY and their respective successors or assignees. No partner whether general or limited of COMPANY, nor any director, officer, employee or agent of any of them or of CASELLA, shall have any personal liability for the payment or performance of any obligation of COMPANY or of CASELLA hereunder, any such liability being forever waived, released and discharged by MUNICIPALITY. No municipal official, officer, agent or employee of MUNICIPALITY shall have any personal liability for the payment or performance of any obligation of MUNICIPALITY hereunder, any such liability being forever waived released and discharged by COMPANY.

#### **ARTICLE XXIV. OTHER DOCUMENTS**

Each party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably required in order to give full effect hereto.

## ARTICLE XXV. HEADINGS; CONSTRUCTION

Captions and headings herein are for ease of reference and do not constitute a part of this Agreement. For purposes of construing and interpreting this Agreement, which is the product of detailed, arms' length negotiations between the parties and their respective counsel, neither party shall be deemed to be the drafter of this Agreement.

## ARTICLE XXVI. COUNTERPARTS

The Agreement may be executed in more than one counterpart, each of which shall be deemed an original and all of which together shall constitute the same agreement.

## ARTICLE XXVII. INTEGRATION; NO THIRD PARTY BENEFICIARIES

This Agreement, together with the Settlement Agreement, is intended by the parties to integrate all prior discussions and writings, including memoranda and e-mail messages, term sheets, and similar expressions of intent into a single, complete statement of the understandings of the parties with respect to the matters covered by this Agreement and the Settlement Agreement and the documents referred to in any of them. Accordingly, the parties agree that this Agreement and the Settlement Agreement supersede all prior agreements and understandings between the parties with respect to their subject matter and constitute (along with the documents referred to in this Agreement and the Settlement Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to their subject matter. In addition, the parties agree that this Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment. The parties further agree and acknowledge that

- (i) this Agreement has not been entered into under undue time pressure, and that each party has had an adequate opportunity to review this Agreement with counsel.
- (ii) no oral assurances have been given by any party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming,
- (iii) there are no oral conditions or promises that supplement or modify the Agreement, and
- (iv) this Article XXVII does not constitute "boilerplate", but rather is a critical substantive provision of the Agreement.

There are no third party beneficiaries to this Agreement

## ARTICLE XXVIII. CONSENTS

To the extent that the consent of any party to this Agreement is required to any action of any other party pursuant to any provision of this Agreement, such consent will not be

unreasonably withheld, delayed or conditioned, except as otherwise expressly provided herein.

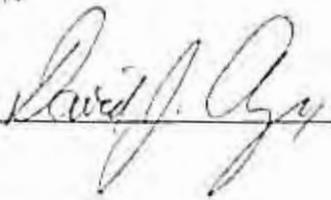
**ARTICLE XXIX. HOUSEHOLD HAZARDOUS WASTE;  
CONSTRUCTION AND DEMOLITION WASTE; RECYCLING**

A. COMPANY will work cooperatively with MUNICIPALITY in establishing collection days for Household Hazardous Wastes. In the event that MUNICIPALITY establishes and maintains in effect such a program, COMPANY will pay to MUNICIPALITY in support of such one-day program, on an annual basis, and upon submission of evidence of the reasonable cost of such one-day program, an amount equal to one hundred percent (100%) of the cost of any such program to MUNICIPALITY.

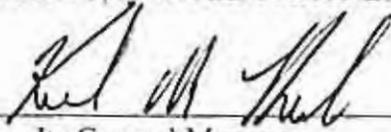
B. COMPANY agrees to negotiate in good faith with MUNICIPALITY with respect to the delivery by MUNICIPALITY of construction and demolition debris to facilities owned or operated by COMPANY or its Affiliates.

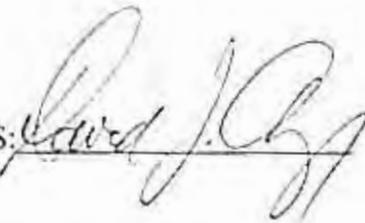
C. CASELLA agrees to make available to MUNICIPALITY, on the same terms and conditions as those on which CASELLA intends to make such program available to similarly situated municipalities, the Recyclebank™ recycling program. During the first three (3) years of the Recyclebank™ program in MUNICIPALITY, CASELLA will waive the \$2.00 per household monthly base fee and will provide each household with the program's recycling containers at no charge.

IN WITNESS WHEREOF the parties have executed this Agreement as of the 1<sup>st</sup> day of March, 2007.

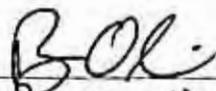
WITNESS: 

MAINE ENERGY RECOVERY  
COMPANY, LIMITED PARTNERSHIP

By:   
Its General Manager

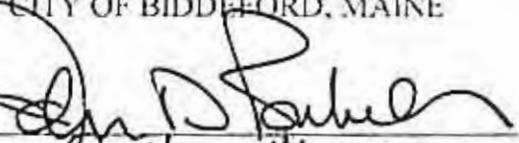
WITNESS: 

CASELLA WASTE SYSTEMS, INC.

By:   
Its: Region Vice President

WITNESS: 

THE CITY OF BIDDEFORD, MAINE

By:   
Its: City Manager

## APPENDIX A

1. Name and address of MUNICIPALITY:  
City Manager  
The City of Biddeford, Maine  
205 Main Street  
Biddeford, ME 04005
2. Contact Person: City Manager
3. Term of Agreement: The term of this Agreement shall be for the period beginning March 1, 2007 and ending June 30, 2012.
4. 4. Phone/Fax Notification for Rejected Loads and/or Municipal Unacceptable Waste Deliveries.

In addition to the City Manager, the Director of Public Works also shall be immediately notified by phone and by fax at the following address:

Director of Public Works  
City of Biddeford, Maine  
371 Hill Street  
Biddeford, Maine 04005  
Phone: (207) 282-1579  
Fax: (207) 286-9395

## APPENDIX B



Years	1	2	3	4	5	6	7	8
	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014
<b>PROJECTED DELIVERIES (TONS)</b>								
Biddeford	16,888	17,057	17,227	17,359	17,573	17,749	17,927	18,106
Total	16,888	17,057	17,227	17,399	17,573	17,749	17,927	18,109

**Option 1: 20 year contract beginning 3/1/07**

	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014
Biddeford Base Tipping Fee	\$ 83.84	\$ 85.94	\$ 88.08	\$ 90.29	\$ 92.54	\$ 94.85	\$ 97.23	\$ 99.65
Long Term Discount	\$ 8.33	\$ 8.59	\$ 8.81	\$ 9.03	\$ 9.25	\$ 9.49	\$ 9.72	\$ 9.97
Host City Benefit Tip Fee Reduction	\$ 22.06	\$ 22.61	\$ 23.18	\$ 23.76	\$ 24.35	\$ 24.95	\$ 25.55	\$ 26.22
Cancellation Credit	\$ 2.00							
EVOD credit	7.85	7.85	7.85	7.85	7.85	7.85	7.85	7.85
EVOD total	\$ 132,621	\$ 266,569	\$ 401,858	\$ 538,496	\$ 676,502	\$ 815,888	\$ 888,318	\$ 888,318
<b>Net Global Settlement Tip Fee for Option 1</b>	\$ 43.94	\$ 46.88	\$ 48.25	\$ 49.65	\$ 51.00	\$ 52.55	\$ 54.07	\$ 63.47

**Option 2: 15 year contract beginning 3/1/07**

	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014
Biddeford Base Tipping Fee	\$ 83.84	\$ 85.94	\$ 88.08	\$ 90.29	\$ 92.54	\$ 94.85	\$ 97.23	\$ 99.65
Long Term Discount	\$ 6.29	\$ 6.45	\$ 6.61	\$ 6.77	\$ 6.94	\$ 7.11	\$ 7.29	\$ 7.47
Host City Benefit Tip Fee Reduction	\$ 22.00	\$ 22.61	\$ 23.18	\$ 23.76	\$ 24.35	\$ 24.95	\$ 25.55	\$ 26.22
Cancellation Credit	\$ 2.00							
EVOD credit	7.85	7.85	7.85	7.85	7.85	7.85	7.85	7.85
EVOD total	\$ 132,621	\$ 266,569	\$ 401,858	\$ 538,496	\$ 676,502	\$ 815,888	\$ 888,318	\$ 888,318
<b>Net Global Settlement Tip Fee for Option 2</b>	\$ 45.64	\$ 49.03	\$ 50.45	\$ 51.91	\$ 53.40	\$ 54.93	\$ 56.50	\$ 65.95

**Option 3: 10 year contract beginning 3/1/07**

	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014
Biddeford Base Tipping Fee	\$ 83.84	\$ 85.94	\$ 88.08	\$ 90.29	\$ 92.54	\$ 94.85	\$ 97.23	\$ 99.65
Long Term Discount	\$ 4.19	\$ 4.30	\$ 4.40	\$ 4.51	\$ 4.63	\$ 4.74	\$ 4.86	\$ 4.98
Host City Benefit Tip Fee Reduction	\$ 22.06	\$ 22.61	\$ 23.18	\$ 23.76	\$ 24.35	\$ 24.95	\$ 25.55	\$ 26.22
Cancellation Credit	\$ 2.00							
EVOD credit	7.85	7.85	7.85	7.85	7.85	7.85	7.85	7.85
EVOD total	\$ 132,621	\$ 266,569	\$ 401,858	\$ 538,496	\$ 676,502	\$ 815,888	\$ 888,318	\$ 888,318
<b>Net Global Settlement Tip Fee for Option 3</b>	\$ 47.73	\$ 51.17	\$ 52.65	\$ 54.16	\$ 55.71	\$ 57.30	\$ 58.93	\$ 68.45

**Option 4: 5 year contract beginning 3/1/07**

	1/1/2007	1/1/2008	1/1/2009	1/1/2010	1/1/2011
Biddeford Base Tipping Fee	\$ 83.84	\$ 85.94	\$ 88.08	\$ 90.29	\$ 92.54
Long Term Discount	\$ -	\$ -	\$ -	\$ -	\$ -
Host City Benefit Tip Fee Reduction	\$ 22.06	\$ 22.61	\$ 23.18	\$ 23.76	\$ 24.35
Cancellation Credit	\$ 2.00				
EVOD credit	10.28	10.28	10.28	10.28	10.28
EVOD total	\$ 173,622	\$ 348,991	\$ 525,093	\$ 704,976	\$ 885,648
<b>Net Global Settlement Tip Fee for Option 4</b>	\$ 49.50	\$ 53.04	\$ 54.63	\$ 56.25	\$ 57.91

Years	9	10	11	12	13	14	15	16
	1/1/2015	1/1/2016	1/1/2017	1/1/2018	4/1/2019	1/1/2020	1/1/2021	1/1/2022
<b>PROJECTED DELIVERIES (TONS)</b>								
Biddford	17,287	18,470	18,854	18,841	19,029	19,220	19,412	19,605
Total	18,287	18,470	18,854	18,841	19,029	19,220	19,412	19,605

	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020	1/1/2021	1/1/2022
<b>Option 1: 20 year contract beginning 3/1/07</b>								
Biddford Base Tipping Fee	102.15	104.70	107.32	110.01	112.75	115.57	118.45	121.43
Long Term Discount	\$ 10.22	\$ 10.47	\$ 10.73	\$ 11.00	\$ 11.28	\$ 11.55	\$ 11.85	\$ 12.14
Host City Benefit Tip Fee Reduction	\$ 26.88	\$ 27.55	\$ 28.24	\$ 28.94	\$ 29.67	\$ 30.41	\$ 31.17	\$ 31.95
Cancellation Credit								
EVOD credit								
EVOD total	\$ 65.06	\$ 65.68	\$ 66.35	\$ 67.03	\$ 67.81	\$ 68.61	\$ 69.45	\$ 70.33
<b>Net Global Settlement Tip Fee for Option 1</b>								

	1/1/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020	1/1/2021
<b>Option 2: 15 year contract beginning 3/1/07</b>							
Biddford Base Tipping Fee	102.15	104.70	107.32	110.01	112.75	115.57	118.45
Long Term Discount	\$ 7.66	\$ 7.85	\$ 8.05	\$ 8.25	\$ 8.45	\$ 8.67	\$ 8.88
Host City Benefit Tip Fee Reduction	\$ 26.28	\$ 27.55	\$ 28.24	\$ 28.94	\$ 29.67	\$ 30.41	\$ 31.17
Cancellation Credit							
EVOD credit							
EVOD total	\$ 67.61	\$ 69.30	\$ 71.03	\$ 72.81	\$ 74.63	\$ 76.50	\$ 78.41
<b>Net Global Settlement Tip Fee for Option 2</b>							

	1/1/2015	1/1/2016
<b>Option 3: 10 year contract beginning 3/1/07</b>		
Biddford Base Tipping Fee	102.15	104.70
Long Term Discount	\$ 5.11	\$ 5.24
Host City Benefit Tip Fee Reduction	\$ 26.88	\$ 27.55
Cancellation Credit		
EVOD credit		
EVOD total	\$ 70.17	\$ 71.92
<b>Net Global Settlement Tip Fee for Option 3</b>		

	1/1/2015	1/1/2016
<b>Option 4: 5 year contract beginning 3/1/07</b>		
Biddford Base Tipping Fee	102.15	104.70
Long Term Discount	\$ 5.11	\$ 5.24
Host City Benefit Tip Fee Reduction	\$ 26.88	\$ 27.55
Cancellation Credit		
EVOD credit		
EVOD total	\$ 70.17	\$ 71.92
<b>Net Global Settlement Tip Fee for Option 4</b>		

Years 17 18 19 20  
 1/1/2023 1/1/2024 1/1/2025 1/1/2025

**PROJECTED DELIVERIES (TONS)**

Biddeford	19,802	20,000	20,200	20,402
Total	19,802	20,000	20,200	20,402

**Option 1: 20 year contract beginning 3/1/07**

	1/1/2023	1/1/2024	1/1/2025	1/1/2026
Biddeford Base Tipping Fee	124.45	127.57	130.76	134.03
Long Term Discount	\$ 12.45	\$ 12.70	\$ 13.08	\$ 13.40
Host City Benefit Tip Fee Reduction	\$ 32.75	\$ 33.57	\$ 34.41	\$ 35.27
Cancellation Credit				
EVOB credit				
EVOB total	\$ 79.27	\$ 81.25	\$ 83.28	\$ 85.36
<b>Net Global Settlement Tip Fee for Option 1</b>				

**Option 2: 15 year contract beginning 3/1/07**

Biddeford Base Tipping Fee				
Long Term Discount				
Host City Benefit Tip Fee Reduction				
Cancellation Credit				
EVOB credit				
EVOB total				
<b>Net Global Settlement Tip Fee for Option 2</b>				

**Option 3: 10 year contract beginning 3/1/07**

Biddeford Base Tipping Fee				
Long Term Discount				
Host City Benefit Tip Fee Reduction				
Cancellation Credit				
EVOB credit				
EVOB total				
<b>Net Global Settlement Tip Fee for Option 3</b>				

**Option 4: 5 year contract beginning 3/1/07**

Biddeford Base Tipping Fee				
Long Term Discount				
Host City Benefit Tip Fee Reduction				
Cancellation Credit				
EVOB credit				
EVOB total				
<b>Net Global Settlement Tip Fee for Option 4</b>				

## APPENDIX C

### APPROVED TRUCK ROUTES

The Maine Energy Recovery Company and the City of Biddeford agree that vehicles hauling trash to the facility (except for vehicles hauling Biddeford trash) or residuals from the facility are to only use the following roads:

#### SOUTH:

195, Route 111, Precourt Street (connector between Route 1 and Route 111), Route 1, Pearl Street, Lincoln Street.

#### NORTH:

195, 195, Industrial Park Road, Route 112, Route 5, Spring St., Lincoln St., Route 1, Lincoln St. (Biddeford), Pearl St., Precourt Street (connector between Route 1 and Route 111).

APPENDIX D

IMPACT PROTOCOLS/PENALTIES

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## OVERALL PURPOSE

It is the overall *purpose* of the parties that COMPANY operate the Facility so as to have the least practicable environmental impact on MUNICIPALITY. The parties are committed to cooperating towards this end for the mutual benefit of MUNICIPALITY and COMPANY. Further, the parties recognize that waste processing/recycling, and energy production from such waste processing, is a difficult and demanding task but is also an evolving technology and art. Science, with the benefit of technology, may bring further improvements or enhancements that can assist the parties in advancing their overall *purpose*. Both MUNICIPALITY and COMPANY agree that it is in their respective interests to see to the prudent disposal and processing of waste. Further, it is in their mutual interests to incorporate new, proven enhancements where practical and to cooperate in the further refinement of these protocols as experience dictates.

The parties acknowledge that the provisions of this Appendix have been bargained for between the parties and are a material inducement to MUNICIPALITY's entering into the Waste Handling Agreement to which this is an Appendix. It is the intent of the parties hereto that the monetary penalties set forth *herein* are designed to provide an incentive for COMPANY to operate the Facility in a manner which will not cause an Occurrence (as hereinafter defined), and the parties acknowledge that the amounts thereof have been bargained for. Terms not herein defined shall have the same definition as set forth above in Article One of the Waste Handling Agreement.

The parties agree that MUNICIPALITY, by entering into the Waste Handling Agreement, and particularly this Appendix, is not surrendering or waiving to any extent whatsoever its power to regulate the Facility, including with respect to matters which are the subject of this Exhibit, by ordinance or otherwise. Notwithstanding the foregoing, the parties agree that during the term of the WHA the protocols contained in this Appendix supercede all prior written and verbal agreements and that compliance by COMPANY with the standards set forth herein shall be deemed to constitute compliance with any local ordinance, now existing or hereinafter enacted, regulating matters which are the subject of this Appendix and MUNICIPALITY agrees that any penalty imposed on and paid by COMPANY for a violation of the standards contained herein shall be in lieu of any penalty which could have been imposed for the same or a similar violation of any such local ordinance, now existing or hereinafter enacted or any other sanction under the WHA.

## SECTION ONE: SOUND CONTROL

GOAL: It is the goal of COMPANY and MUNICIPALITY to minimize the emission of sound from the Facility. Both parties agree that it is impossible to prevent or completely dampen sounds from trucks entering and exiting the Facility, and from the process occurring at the Facility. However, each understands that sound control creates a more pleasant environment and permits the Facility to fit more harmoniously within the Community. Therefore, each commits to promoting sound control with a goal of minimizing the emission of sound from the Facility. Towards that end, COMPANY and MUNICIPALITY agree to the following program:

1. Definitions. The following terms have the following meanings in these Protocols:
  - A. Background Sound Condition. The condition that results when there is an increase in the broadband sound level emitted from or caused by Routine Operation of the Facility of more than 10 dBA above the Daytime or Nighttime Background Sound Level, whichever is applicable, as measured by a Sound Meter at a Point of Sound Measurement.
  - B. Daytime Background Sound Level. The L-90 Sound Pressure Level expressed in decibels on the A-scale (dBA) between the hours of 7:00 A.M. and 10:00 P.M. during total shutdown of the Facility established as set forth in subparagraph E of this paragraph 1 by application of the sound measuring standards of the American National Standards Institute, subject to change based on remeasurement pursuant to paragraph 5 of this Section One.
  - C. L-90. The A-weighted Sound Pressure Level which is exceeded 90% of the time.
  - D. Nighttime Background Sound Level. The L-90 Sound Pressure Level expressed in decibels on the A-scale (dBA) between the hours of 10:00 P.M. and 7:00 A.M. during total shutdown of the Facility established as set forth in subparagraph E of this paragraph 1 by application of the sound measuring standards of the American National Standards Institute, subject to change based on remeasurement pursuant to paragraph 5 of this Section One.
  - E. Points of Sound Measurement and Background Sound Levels. Points of sound measurement for determining Background Sound Levels shall be determined through mutual agreement of the Parties. The number of Background Sound Locations shall be at least ten (10). Background Sound levels shall be established to determine the occurrence of a Background Sound Condition or Pure Tone Condition.

The parties agree on the following schedule of locations for determining Background Sound Condition in the City of Biddeford:

- PM-1 = (new location on Biddeford side of river)
- PM-2 = (new location on Biddeford side of river)
- PM-3 = (existing location)

- PM-4 = (existing location)
- PM-5 = (existing location)
- PM-6 = (existing location)
- PM-7 = (existing location)
- PM-8 = (new location on Biddeford side of river)PM-9 = (existing location)
- PM-10 = (new location on Biddeford side of river)

The new Points of sound Measurement will be chosen with the same criteria as was used to determine the original Points of Sound Measurement. New Background Sound Levels for all Points of Sound Measurement will be determined at the next available opportunity, which will be the 2007 spring outage.

The Background Sound Level measurements are:

	<u>Nighttime Background Sound Level</u>	<u>Daytime Background Sound Level</u>
PM-1A	TBD	TBD
PM-2	TBD	TBD
PM-3	59	59
PM-4	53	51
PM-5	52	47
PM-6	52	50
PM-7	64	54
PM-8	TBD	TBD
PM-9	45	47
PM-10	TBD	TBD

- F. Pure Tone Condition. The condition that results when the one-third octave band Sound Pressure Level in the band containing the tonal sound emitted from the Facility exceeds the arithmetic average for the Sound Pressure Levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 Hz and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz when measured by a Sound Meter at a Point of Sound Measurement.
- G. Routine Operation. Regular and recurrent operation of equipment while on COMPANY site, including routine maintenance activity but excluding daytime construction activity, major overhaul activities, equipment testing, safety signals, warning devices, emergency pressure relief valves, and any other emergency activity.

- H. Sound Meter. A sound level meter or alternative sound level measurement system that meets performance requirements for a Type 1 or Type 2 sound level meter as specified in Specifications for Sound Level Meters established by the American National Standards Institute.
  - I. Sound Occurrence. A Background Sound Condition and/or a Pure Tone Condition. Pure Tone Condition does not have a permitted level and Background Sound Condition means a permitted level has been exceeded.
  - J. Sound Pressure Level. Twenty times the logarithm to the base ten of the ratio of the sound pressure to the referenced sound pressure of 20 micropascals (Unit: decibel, dB). The sound pressure is the root-mean-square of the instantaneous sound pressures in a stated frequency band during a specified time period.
2. Instrumentation and Calibration. Sound levels shall be recorded using a tripod-mounted Sound Meter equipped with a microphone and windscreen recommended by the meter's manufacturer. The Sound Meters shall be purchased by MUNICIPALITY and maintained, calibrated and replaced by MUNICIPALITY as necessary, with calibration in any event to be at least every twelve (12) months. Calibration records shall be maintained by MUNICIPALITY, and the records and Sound Meters shall be available for review and inspection by COMPANY.
  3. Measurement Procedures. Measurements shall be conducted by a MUNICIPAL Response Agent. Attempts shall be made to obtain measurements during weather conditions when community sounds are clearly noticeable. The position of the microphone shall be 4 to 5 feet above ground level and oriented in accordance with the manufacturer's instructions. There shall be no vertical reflective surface exceeding the microphone height located within thirty (30) feet.

During the measurement period, Sound Pressure Level shall be recorded by electronic media. The Sound Pressure Level shall be corrected for distance to the nearest Point of Sound Measurement. The results of each measurement shall be summarized on a measurement report prepared by the MUNICIPAL Response Agent, a copy of which shall be furnished to COMPANY within twenty-four (24) hours after the measurement. Each measurement report of broadband ambient sound levels shall contain the following information:

- A. Location and Time of Measurement. The specific location of the complaint where and time when measurements were taken (street address, map, and lot number)
- B. Equipment. Makes and models of Sound Meter and microphone used.
- C. Results. A written determination of the exceedance of the applicable permissible Sound Levels, the duration of such occurrence, and the amount of db exceedance.
- D. Sound Source. Whether the Facility is determined to be the source of the sound.
- E. Meteorological Conditions. Temperature, wind speed and direction, barometric pressure, humidity, and sky condition (i.e. percent cloud cover), all in general terms.

F. Comments. A brief description of the sound sources affecting the measured Sound Pressure Levels.

4. Establishment of No Sound Occurrence. There shall be no Sound Occurrence if inspection of the Sound Meter used indicates that it has not been properly calibrated or is not capable of measuring Sound Pressure Levels accurately, or if it is established that the Sound Meter was not operated properly or that the sound was not emitted from the Facility.
5. Re-measurement of Background Sound Levels. Either party may from time to time at its expense cause Background Sound Levels to be re-measured in accordance with ANSI standards and such levels shall then be substituted for the levels previously in effect hereunder. Updated sound levels shall become effective upon receipt of an updated Background Sound Level report by either Party. In the event the receiving Party contests the updated Background Sound Level report, the existing Background Sound Levels shall remain in effect until the issue is resolved through the dispute resolution provisions of the Waste Handling Agreement.

## **SECTION TWO: DUST CONTROL**

**GOAL.** The parties agree that dust within the Facility is an ongoing maintenance concern. Further, the parties agree the escape of dust from the Facility may be detrimental to surrounding properties and the community at large. Trucks arriving and departing the Facility as well can promote the spread of dust within the air. The parties are committed to controlling dust when and where possible. COMPANY agrees dust should be controlled as much as reasonably possible. MUNICIPALITY recognizes and agrees that dust can be difficult to control and is not always and solely from Facility. Therefore, the parties will work together to undertake and implement the following dust control measures:

1. **Dust Cleaning.** COMPANY agrees to vacuum, vactor clean or use other means to remove dust throughout the entry vestibules, processing room and the tipping room from floor to ceiling, including machinery, equipment, piping, conduits, doors, partitions, etc., as is necessary to suppress the emission of dust from the Facility and to minimize the accumulation of dust to the extent reasonably practical. COMPANY shall also sweep, vacuum or otherwise clean the outside grounds of the Site as necessary to minimize the accumulation of dust to the extent reasonably practical.
2. **Reports.** The COMPANY records of vacuum/vactor cleaning activities shall be available for review by MUNICIPALITY and the Chief of the BIDDEFORD Fire Department.
3. **Suppression/Prevention.** COMPANY shall employ an entry and exit system for handling incoming and exiting trucks that will minimize the release of dust, odor and ash from the Facility and into the Community as is reasonably practical.

**Haulers.** COMPANY shall require all arriving and departing trucks to have operating covers, etc. to minimize and/or prevent the escape of dust. If dust is dispersed by the Facility into BIDDEFORD, unless COMPANY timely takes necessary remedial actions after learning of the dispersion MUNICIPALITY may do so, in which event COMPANY agrees to pay MUNICIPALITY's costs of reasonable remedial actions.

### SECTION THREE: ODOR CONTROL

GOAL. COMPANY recognizes that MUNICIPALITY holds concern over odors escaping from the Facility. It is agreed such odors can be offensive. COMPANY and MUNICIPALITY will work diligently to suppress, if not eliminate, odors escaping the Facility and provide a system for detecting and preventing Odor Occurrences.

The Parties agree that maintaining a negative pressure condition within the Facility will reduce the odor impact to MUNICIPALITY from COMPANY's operations. Section Eleven of this Impact Protocol details the procedures to be followed to demonstrate achievement of negative pressure at the Facility on continuous basis. Facility, for the purposes of this section, shall have the same meaning as that defined in Section Eleven.

The Parties agree and acknowledge that Maine DEP is authorized to regulate odor at the facility pursuant to laws and regulations including, without limitation, 38 MRSA 1310-N(1) and the operating requirements for solid waste processing facilities under Maine DEP administrative rules, 06 096 CMR 409 (4)(E) and 06 096 CMR 403(6)(H)(4), as such requirements may be in force, or may be modified, replaced or added to, from time to time during the term of this agreement. The Parties' agreement to this Odor Protocol is not intended to preclude any action by Maine DEP under applicable law with respect to odor at Company's facility.

Pursuant to Maine DEP administrative rules (06 096 CMR 409 (4)(E)(2)), the Company shall make available to the DEP, as it may require, all odor complaints received directly by the Facility or ENVIROLINE.

1. Odor Control. COMPANY at all times shall maintain an odor control system for the Facility. The COMPANY shall operate its odor control system so as to minimize the emission of odors from the Facility into the community, but the parties acknowledge the system may be offline at times of COMPANY's choosing. Records of odor system availability shall be available to MUNICIPALITY within one week of request. COMPANY will continue to investigate new methods, science, and technology, which may improve odor suppression performance, and will reasonably invest in such improvements as may be needed to reduce odor impacts. COMPANY shall report such investigations to MUNICIPALITY in narrative form on an annual basis by March 1 of each year for the previous calendar year. In the event such information is provided to a state or federal agency, submittal of the agency report to MUNICIPALITY shall suffice and the due date of such report shall constitute the due date for submittal to the MUNICIPALITY.
2. Odor Investigation Procedure. After Enviroline receives a call/complaint regarding odor and the odor is ongoing, Enviroline shall contact MUNICIPALITY through the Biddeford Police Department (284-4551), shall notify COMPANY (283-4261) and shall notify the Maine DEP as the agency may require. If not ongoing a MUNICIPAL Response Agent shall contact the person filing the complaint to assess the nature of the complaint and determine whether a response is warranted. If ongoing or warranted based on the results of the Response Agent call to the complainant, the MUNICIPALITY shall contact the COMPANY to provide notice of the time the Municipal Response Agent shall arrive at the site of the complaint. The

Municipal Response Agent shall arrive at the site of the complaint within a reasonable time, but not later than 15 minutes from the time COMPANY is so notified. After providing notice to COMPANY, the following actions will be taken by the Municipal Response Agent:

- A. The Response Agent will travel to the site of complaint.
- B. MUNICIPAL Response Agent shall commence the odor assessment at the site no sooner than the time provided to COMPANY and assess the odor's "character" as defined below, and from such assessment determine if COMPANY is the most likely source through evaluation of wind direction and potential odor sources in the area.
- C. If the MUNICIPAL Response Agent determines that the odor is of a character or type likely to have come from the Facility and through evaluation of wind direction and other odor sources in the area most likely is coming from the Facility, the MUNICIPAL Response Agent shall use the N-butanol kit to determine the intensity of the odor. Beginning on the effective date of the Waste Handling Agreement the odor shall not exceed an intensity greater than 3.0 on the N-butanol scale within the immediate area surrounding the facility. This area is bordered on the north by Elm Street between the Saco River and Lincoln Street; bordered on the west by Lincoln Street between the corner of Elm Street and a point, along Lincoln Street, that is 250 feet from Maine Energy's Process Building; bordered on the south by a line beginning at the point on Lincoln Street 250 feet from Maine Energy's Process Building and extending perpendicular to Lincoln Street to the Saco River; and bordered on the east by the Saco River. Also, the odor shall not exceed an intensity greater than 2.5 for all other areas of Biddeford. An exceedance of 3.0 on the N-butanol scale within the immediate area surrounding the facility or an exceedance of 2.5 for all other areas of Biddeford shall be an Odor Occurrence.
- D. If the Company representative disagrees with the decision of the MUNICIPAL Response Agent at the time of the determination, Company may request an additional MUNICIPAL Response Agent to determine the character and source of odor, as well as measure the intensity of the odor using the N-butanol scale. The second MUNICIPAL Response Agent will advise the first MUNICIPAL Response Agent of his/her arrival time, which

must be within thirty (30) minutes of being notified. After being told when the second MUNICIPAL Response Agent will arrive, the first MUNICIPAL Response Agent and COMPANY representatives are free to leave. The second MUNICIPAL Response Agent shall make his or her own determination regarding source and intensity of odor before being told the findings determined by the first MUNICIPAL Response Agent. The determination of the second MUNICIPAL Response Agent as to the character, source and intensity of the odor shall be determinative. If Maine Energy is not notified as specified in Item 2 above or the second MUNICIPAL Response Agent fails to arrive within the thirty (30) minute timeframe if requested, there shall be no odor occurrence.

- E. If it is determined that there has been an Odor Occurrence, a written report shall be made by the MUNICIPAL Response Agent (both if a second is called) of the Occurrence within 24-hours specifying the location, time and intensity of the odor and the identity of the MUNICIPAL Response Agent(s) and Company representative, if present, and copies of the report shall be furnished promptly to MUNICIPALITY, COMPANY, and Maine DEP as the agency may require.
- F. COMPANY and MUNICIPALITY will investigate the use of so-called "sniffer" technology as a replacement for the use of response agents and N-butanol. If the Parties can be adequately assured that sniffer technology fairly assesses odor strength and character, they will work cooperatively to implement such technology, and will amend these Protocols accordingly.

### 3. Standards/Definitions.

Odor: A sensation or conscious reaction to a stimulus of the olfactory sense organs by odorous compounds in the air. Odor has two (2) principal properties: character and intensity.

Odor Character: Common understanding of a particular smell such as "rotten eggs", "sewage", "garbage", "coffee", "bacon", etc.

Odor Intensity: The strength of a perceived odor such as "faint" or "strong" or "overpowering" and as measured against the N-butanol intensity scale.

4. N-butanol Intensity Scale/Kit. The standard and agreed tool used for determining an occurrence. The portable butanol scale kit consists of eight (8) 125-ml bottles containing various concentrations of aqueous solutions of N-butanol as shown in the table below.

<u>N-Butanol Scale #</u>	<u>Aqueous Concentration of Butanol ppm</u>	<u>Headspace Concentration ppm</u>
1	150	15
2	300	30
2.5	TBD	TBD
3	625	60
4	1250	125
5	2500	250
6	5000	500
7	10000	1000

#### **SECTION FOUR: STACK TESTING**

**I.Goal:** Conduct two random stack tests at the combustion stack in addition to the annual stack testing required under Maine Energy's December 20, 2000, Part 70 Air Emission License A-46-70-A-I.

COMPANY agrees to allow MUNICIPALITY to perform two random stack tests at the combustion stack using EPA/state approved methods over a two-year period as defined in Technical Issues, Item 2, below.

##### **Basis:**

1. MUNICIPALITY shall have discretion in determining the date on which up to two additional full stack tests shall be performed using pre-approved EPA Methods and a pre-approved vendor.
2. Facility will be provided with no less than 24 hrs notice for each test. Should the COMPANY become aware of a test prior to the twenty four-hour notice, it will notify MUNICIPALITY that it has become aware of the scheduled test in which case MUNICIPALITY, at its option, may reschedule the test.
3. Should the supplemental stack tests be scheduled when testing cannot be completed, such as might occur during a shutdown, MUNICIPALITY shall reschedule the test with the vendor.
4. COMPANY shall fully fund the two additional full stack tests
5. MUNICIPALITY shall retain the right to perform any additional testing, with reasonable notice, at its sole expense, using qualified contractors and approved protocols throughout the term of the agreement.
6. Parties agree to meet periodically, but no less than sixty (60) days following receipt of the final stack test report, to discuss the results of the report. The Parties will also discuss any operational issues that may need to be addressed in the second test, specific to coordinating a successful and efficient stack test.

##### **Technical Issues:**

1. Vendor(s) must have demonstrated experience and proficiency in conducting stack tests, must have an acceptable safety and performance record, must agree to a predetermined testing and notification scenario, agree to a restriction on contact with COMPANY with regards to the random full stack testing program schedule, and agree to a restriction on providing preliminary results of any kind to COMPANY during a random test. However, if at the conclusion of the random stack test, there is any preliminary data that indicates a possible issue with compliance, that data shall be provided to the COMPANY and MUNICIPALITY simultaneously.
2. COMPANY shall select a qualified vendor of its choosing and provide MUNICIPALITY with the name of the vendor, contact information, a copy of the testing protocol, confirmation that the vendor has received authorization to proceed with testing at the request of MUNICIPALITY, and a list of dates for planned plant outages for a twelve month period. The list of outage dates is preliminary and subject to change. COMPANY will update the list as needed on a rolling twelve

(12) month basis for the duration of the testing program. The two year period shall commence upon completion of the 2006 compliance test or January 1, 2007, whichever is later.

3. COMPANY shall instruct the vendor to prepare a stack test protocol in preparation for the regular compliance stack test. The protocol shall be submitted to Maine DEP 30-days prior to the regular compliance test and shall serve as the basis for the random test(s) should MUNICIPALITY choose to perform a test in that year or COMPANY may prepare a separate protocol specific to the random testing program. MUNICIPALITY may schedule one random test in each of the two years or schedule two tests in any one year of the two year period without limitation.
4. MUNICIPALITY and COMPANY shall meet jointly with Maine DEP staff to explain the provisions of the random testing agreement and obtain authorization to implement a pre-approved testing protocol. In the event Maine DEP denies the use of a pre-approved protocol, COMPANY shall authorize the vendor to prepare a protocol as needed to facilitate random testing program.
5. Draft results and the Final Report shall be issued to MUNICIPALITY and COMPANY simultaneously.
6. MUNICIPALITY shall be responsible for coordinating the test schedule and will comply with the notification requirements specified by the random stack testing protocol.
7. MUNICIPALITY shall have access to the facility during the stack test as may be required to verify operational parameters and testing procedures. Any documentation of operating parameters required by the stack testing protocol shall be COMPANY's responsibility.
8. The testing program shall be consistent with the 2005 compliance test protocol with the addition of Method 25A.

**Data Management:**

1. The random full stack tests described in this section are to be considered "compliance tests".
2. The data collected from the random tests described in this section shall be maintained as "compliance data" consistent with data management requirements under existing licenses.
3. The testing results from the random tests will be sent by COMPANY to Maine DEP and can be used by the DEP for determining compliance.

## **SECTION FIVE: IMPROPER ACCEPTANCE OF WASTE**

**GOAL.** The Waste Handling Agreement provides that COMPANY will not intentionally accept Unacceptable Waste. The parties acknowledge that incidental quantities of Unacceptable Waste may arrive at the Facility without the knowledge or consent of the COMPANY. The Parties intend to separate intentional acceptance and disposal from unintended or accidental acceptance and to treat the first as an Occurrence but not the second. It is further understood that certain Unacceptable Waste is deemed unacceptable based solely on the Facility's operational capabilities rather than state or federal license prohibitions. COMPANY retains the right to process such incidental quantities at its discretion in accordance with applicable license restrictions.

1. Any intentional acceptance and processing by COMPANY of Unacceptable Waste in other than incidental quantities or in violation of state and federal license restrictions shall constitute a Waste Occurrence.
2. If COMPANY discovers Unacceptable Waste, COMPANY shall dispose of such waste as required by state or federal law.
3. COMPANY shall retain records on the delivery to the Facility of Biomedical and/or Pathological Waste, Radioactive Waste, Hazardous Waste or Firearms, Ammunition or Explosives, which records shall be regularly available for inspection by MUNICIPALITY.
4. The failure of COMPANY to comply with requirements of Paragraph 2 shall constitute a Waste Occurrence.
5. Inspection. MUNICIPALITY may inspect Waste from any Hauler, on any day, with notice to COMPANY's Plant Manager, once the Waste is tipped onto the processing floor or at the Facility before the truck has tipped, provided that the Plant Manager determines that the inspection can be completed safely. The Plant Manager shall designate the location within the facility for such inspection. Inspection requests shall be reasonable, address a specific concern or complaint, and not occur in such frequency as to disrupt the daily operations of the facility.

**SECTION SIX: ASH DISPOSAL.**

GOAL. The parties recognize that ash is a byproduct of COMPANY'S operation. This ash must be controlled and disposed of safely, and in a licensed facility.

- A. Ash Occurrence: A discharge of ash by the Facility other than is allowed by state or federal permit
- B. Ash Occurrence Procedure: A MUNICIPAL Agent and a COMPANY representative shall collect a sample of alleged Ash. If the BIDDEFORD Agent and the COMPANY agree it is an Ash from the Facility, MUNICIPAL Agent and the COMPANY shall record the occurrence. If they do not agree, both of them shall note their observations concerning the composition and source of emission, and ash samples shall be jointly collected and submitted to a mutually agreed independent laboratory. The determination by the laboratory whether the ash is from the Facility shall be conclusive.
- C. Collection Procedure: The MUNICIPAL Agent and the COMPANY representative shall jointly use adequate and appropriate steps to collect ash samples for analysis, and shall do their best to ensure that the samples are not contaminated by other materials. Ash samples shall be placed in sealed containers which shall be marked and handled in a manner which will assure proper identification and maintenance of the integrity of the samples.

## SECTION SEVEN: ENVIROLINE AND RESPONSE

### 1. ENVIROLINE

The COMPANY shall, at its cost, establish and maintain an answering service (the "ENVIROLINE") for persons to call if they have complaints for odor, noise, or ash (Occurrences). COMPANY, on a quarterly basis, shall advertise in the *Journal Tribune or Courier*, each a newspaper of general circulation in York County, information concerning the ENVIROLINE with the advertisement to be of a size customarily used in the past or otherwise reasonably acceptable to MUNICIPALITY. Said information shall include, at a minimum, the telephone number of ENVIROLINE, the nature of complaints to be reported, and the procedure for reporting of complaints. Residents who have complaints of possible Occurrences shall be encouraged to call ENVIROLINE. The person calling with a complaint shall be requested to provide his or her name and address, the location of the possible Occurrence, and the nature, time and, to the extent known, the duration of the Occurrence. Upon receipt of a complaint, Enviroline shall immediately notify the COMPANY and MUNICIPALITY of the complaint by facsimile.

COMPANY and MUNICIPALITY shall keep records reflecting the complaint information and notification information available to such party. It is expected that such records shall, at a minimum, in totality, include (a) the above required complaint information to identify the source and nature of the complaint, (b) the time the complaint was received, (c) the time of each notification of MUNICIPALITY and COMPANY respectively and (d) the identity of the person notified at MUNICIPALITY, the Agent and the person at the COMPANY notified. These records shall be available for inspection by MUNICIPALITY and COMPANY within five (5) days of notice by either party.

Complaints may come directly to MUNICIPALITY or COMPANY, which will make notice of the proper reporting procedure to the caller/complainant and provide the ENVIROLINE number. In such event, MUNICIPALITY or COMPANY will record the call in writing and follow-up with the ENVIROLINE to verify a report was made. A caller must make notice under ENVIROLINE for a complaint to result in an Occurrence. But, all calls will be documented, regardless of whether ENVIROLINE was employed, to document use/effectiveness of the ENVIROLINE system.

### 2. Company Response.

Following notification from ENVIROLINE or MUNICIPALITY of an Occurrence, COMPANY shall perform an internal investigation and record in a permanent record, the result of such investigation and any actions taken to identify the source of the complaint, any actions taken to prevent recurrence, and the date, time, and names of COMPANY employees involved in the investigation and mitigation activity.

Company shall retain ENVIROLINE records for a period of six (6) years.

## SECTION EIGHT: MUNICIPALITY AGENTS AND TRAINING

Response Agents shall be designated by MUNICIPALITY from among its full-time public safety or inspection department personnel, or if not designated from such personnel, then Response Agents shall be persons acceptable to COMPANY.

MUNICIPALITY shall establish the number of its Response Agents and may make replacements as may be necessary from time to time, in accordance with the preceding paragraph. Response Agents responding to odor complaints and COMPANY representatives observing a response to odor complaints shall be trained at COMPANY's expense and certified by an independent odor training company in the detection, investigation and determination of the existence of Odor Occurrences, including the ability to detect, determine and establish the source and intensity of odors; provided that COMPANY shall not be required to provide training more frequently than once every six (6) months. MUNICIPALITY shall keep COMPANY provided with a current list of Response Agents and their phone numbers. COMPANY may require Odor Response Agents to be recertified every twelve (12) months.

Company shall arrange for odor training sessions for certification and recertification of Response Agents. Company shall provide Municipality with no less than 30-days notice of such training.

Municipality shall make every effort to attend training sessions as scheduled by COMPANY. In the event that Municipality fails to send Response Agents to the designated training session, the cost of additional training shall be borne by Municipality.

**SECTION NINE: PENALTIES**

The parties agree that the payment of the following penalties shall be MUNICIPALITY's sole remedy for the violations of the WHA or applicable laws, regulations and ordinances to which they relate.

1. The following penalties shall apply for each respective occurrence, the word "month" meaning calendar month:

A. Sound Occurrence:

First Occurrence within one (1) month:	Warning
Second Occurrence within one (1) month:	\$500.00
Any subsequent Occurrence within one (1) month:	\$1,500.00

B. Odor Occurrence:

First Occurrence within one (1) month:	\$1,500.00
Second Occurrence within one (1) month:	\$2,500.00
Any subsequent Occurrence within one (1) month:	\$3,500.00

C. ENVIROLINE:

Failure to retain ENVIROLINE

First Occurrence within one (1) month:	\$500.00
Any subsequent Occurrence within one (1) month:	\$1,500.00

\*\*Note: Failure to maintain ENVIROLINE due to circumstances outside of COMPANY's control shall not constitute a violation as long as reasonable progress is made to rectify the matter.

D. Negative Pressure

Failure to operate and maintain negative pressure monitoring equipment as defined in Section Eleven.

First Occurrence within one (1) month:	\$500.00
Second Occurrence within one (1) month:	\$1,500.00
Any subsequent Occurrence within one (1) month:	\$2,500.00

Failure to maintain O&M records for negative pressure monitoring equipment as defined in Section Eleven.

First Occurrence (including any prior Occurrences discovered by MUNICIPALITY at that time) within one (1) month:	\$500.00
Second Occurrence (including any prior Occurrences discovered by MUNICIPALITY at that time) within one (1) month:	\$1,500.00
Any subsequent Occurrence (including any prior Occurrences discovered by MUNICIPALITY at that time) within one (1) month:	\$2,500.00

E. Ash Occurrence:

Any Occurrence \$10,000.00 and cost of remediation if remediation costs are incurred by MUNICIPALITY

F. Waste Occurrence

First Occurrence within one (1) month: \$1,500.00

Any subsequent Occurrence within one (1) month: \$2,500.00

G. Delivery and Departures

1. COMPANY shall be given a 30 day period following execution of the Waste Handling Agreement to notify all haulers with regards to the new restrictions on delivery hours. During this 30 day period, there will be no violations. If, after the 30 day period, a violation occurs, penalties will not be assessed if all of the following conditions are met: (1) Maine Energy demonstrates affirmatively that notification to haulers was provided pursuant to the delivery and departure requirements; (2) Maine Energy affirmatively demonstrates that it has taken sufficient action to prevent recurrence; (3) Maine Energy maintains a written record of such actions/Occurrences to include: date, time, company name, vehicle license number, driver name, description of violation, and a description of corrective action.

First Occurrence within any one (1) month: Written warning

Any subsequent Occurrence within (1) month: \$500.00

2. There shall be only one (1) Occurrence within any twenty four (24) hour period for any particular category of Occurrence, although there may be more than one category of occurrence in a twenty four (24) hour period.
3. Fines. Any fine required under these Protocols will be paid no later than thirty (30) days after its assessment.
4. CPI. All fines set further in these Protocols shall be subject to the CPI Adjustment set forth in the Amended Agreement.
5. Change in Operational Procedures or Installation of Equipment. The parties acknowledge that a Sound Occurrence may result from changes in operational procedures at the Facility or from the installation of new or additional equipment at the Facility. COMPANY agrees that it will notify MUNICIPALITY in advance of any proposed changes in operational procedures or intended equipment installation that, in the good faith judgment of COMPANY, or its consultants, may result in the creation of a Sound Occurrence or Odor Complaint. Notwithstanding the otherwise applicable penalty schedule set forth in this Section, MUNICIPALITY agrees that any Sound Occurrence resulting from operation of newly installed equipment or operational procedure changes at the Facility will not be subject to penalties during the first thirty (30) days after installation or change with respect thereto so as to permit COMPANY an opportunity to eliminate the cause of the Occurrence. With the consent of MUNICIPALITY, which consent shall not be

unreasonably withheld, the period for non-imposition of penalties may be extended upon evidence that COMPANY is using due diligence to eliminate the cause of the Occurrence.

## SECTION TEN: AMENDMENT OF PROTOCOLS

GOAL. The parties agree that this Appendix is intended to address and/or prevent problems as they are understood today. However, the parties recognize time and technology may change matters and that new, unexpected problems may arise. The parties desire that this Appendix remain flexible and adaptive to changing conditions. Therefore, the parties recognize a need for a means of modifying this Appendix:

1. The parties agree this Appendix may be revised following review, discussion, and agreement of MUNICIPALITY and COMPANY.
2. Any amendment will be in writing and must reference the provisions of this Appendix which are amended or replaced.
3. Notice of the prospective change will be published in a local paper of record.

## **SECTION ELEVEN: NEGATIVE PRESSURE**

**GOAL.** To verify the facility is operated in a continuous negative pressure condition within six (6) months after the date of this Agreement.

**Overview:** COMPANY will install equipment necessary to continually measure negative pressure within the facility in accordance with provisions listed in this section. The Parties agree to each use qualified consultants to mutually determine the number and location of monitoring sites, equipment specifications, frequency of data collection, and other elements of the system in accordance with the principles of EPA Method 204 but as defined within this document. If the Parties and their consultants cannot agree on the system specifications, the dispute resolution provisions of the Waste Handling Agreement will be used to settle the differences.

The Parties agree that a continuous negative pressure demonstration can be used as a tool to determine the source of an odor emission from the facility. As an example, if an odor complaint is received, the COMPANY or MUNICIPALITY can be assured that the odor source is from a source other than general facility openings if negative pressure is demonstrated, or if negative pressure is not demonstrated, the readings will pinpoint an area of the facility to evaluate as a potential source of odor. Therefore, continuous negative pressure readings will assist the facility in identifying and correcting situations that have or may result in odor complaints.

### **1. Summary of Methodology**

A building enclosure is evaluated against a set of criteria. If the criteria are met and if all the exhaust gases from the enclosure are directed to defined exhaust points, then the odor capture efficiency is assumed to be 100 percent, meaning the facility is under negative pressure preventing odors from escaping from locations other than designated exhaust points (e.g., scrubber stacks and combustion stack).

### **2. Definitions**

- a. **Building Enclosure (BE)** means the exterior envelope of each facility within which negative pressure is monitored.
- b. **Facility** means those portions of the tipping, processing and boiler buildings containing waste materials excluding those portions of a building meeting all of the following criteria: (1) the area is not involved with the storage, movement, processing or combustion of waste materials; (2) the area is physically separated from those areas of storage movement, processing, or combustion of waste materials by a continuous physical barrier; (3) openings in the physical barrier remain closed when not in use, such as with a man door; and (4) airflow from the those portions of the facility containing waste materials is not directed through or otherwise enters the area. The exclusion of areas of the facility subject to negative pressure verification shall be determined through mutual agreement of the Parties' respective consultants using the criteria listed above.
- c. **Natural Draft Opening (NDO)** means any permanent opening in the building enclosure that remains open or is routinely opened during operation of the facility, and is not a designated exhaust point. A

final determination of designated NDO's and exhaust points shall be through mutual agreement of the Parties' respective consultants.

- d. **Negative Pressure** means a condition within a building enclosure where there is a differential pressure drop compared to outside the building enclosure equal to or greater than 0.013 mmHg (0.007 in. H<sub>2</sub>O).
- e. **Unit** means each differential pressure gauge or monitoring device.

### 3. Criteria for Building Enclosure

- a. Any NDO shall be at least four equivalent opening diameters from each odor source unless otherwise exempted under this section, subsection 6, or absent specific exemptions, as specified under mutual agreement of the Parties' respective consultants.
- b. The total area of all NDO's shall not exceed 5 percent of the surface area of the building enclosure's four walls, floor, and ceiling as calculated under subsection 4(d) below.
- c. Negative pressure shall be confirmed with a pressure differential (pressure drop) equal to or greater than (0.013 mm Hg (0.007 in. H<sub>2</sub>O)). The direction of airflow through all NDO's shall be into the building enclosure.
- d. All doors, windows, and other openings whose areas are not included in the calculations performed in subsections 4(a) and 4(d) shall be closed during routine operations, except as provided for in subsection 2(c) or otherwise established through mutual agreement of the Parties' respective consultants.

### 4. Procedure

- a. The Parties' respective consultants shall determine the equivalent diameters of the NDO's, determine the distances from each NDO to the closest odor emitting point, determine the equivalent diameter of each exhaust duct or hood and its distance from the closest NDO, and calculate the distances from NDO's and ducts/hoods to the closest odor source in terms of equivalent diameters. The number of equivalent diameters to odor sources shall be at least four unless otherwise exempted under this section or as specified under mutual agreement of the Parties' respective consultants and subject to the limitations of subsection 6 below.
- b. The pressure differential across the enclosure shall be measured at locations established through mutual agreement of the Parties' respective consultants. Each location shall be assigned a unique location identifier.
- c. The pressure differential shall be measured using instrumentation meeting basic specifications necessary to accomplish the intent of this section and selected through mutual agreement of the Parties' respective consultants.
- d. Calculating the NDO to surface area ratio shall be accomplished through the following methodology. The Parties' respective consultants shall measure the total surface area ( $A_T$ ) of each building enclosure and the total area ( $A_N$ ) of all NDO's in each building enclosure in square feet. Consultants shall calculate the NDO to enclosure area ratio (NEAR) for each building enclosure as follows:

$$NEAR = A_N/A_T$$

The NEAR must be  $\leq 0.05$ .

- e. Negative pressure shall be confirmed by a pressure differential across the building enclosure (pressure drop) of 0.013 mm Hg (0.007 in. H<sub>2</sub>O). After all equipment required to measure negative pressure is operational, the Parties' respective consultants shall confirm negative pressure is attained at each Unit and document their findings.
- f. After all equipment required to measure negative pressure is operational, the direction of air flow through all NDO's must be inward as confirmed by the Parties' respective consultants.

**5. Data Management:**

- a. COMPANY shall maintain a "log" of negative pressure data for each unit except for periods of unit malfunction. The log shall be in electronic format with measurements recorded at a frequency determined by mutual agreement of the Parties' consultants. Operator notification alarms shall be based on real-time continuous readings consistent with equipment capabilities and delay specifications. The recording frequency value and system alarm delay value shall be documented.
- b. COMPANY shall make available records of negative pressure data upon reasonable notice by MUNICIPALITY. COMPANY will provide such records in an electronic format compatible with Microsoft Excel or Microsoft Access and shall include the unique unit designation, the date, time, and differential pressure reading at the frequency established in (a) above.
- c. Records required under this section shall be retained by the facility for a period not less than 12 months on a 12-month rolling basis.
- d. Real-time differential pressure readouts will be included in the CEM "link" to MUNICIPALITY.
- e. O&M records for each unit and the alarm system shall include records of routine maintenance and repair, records of manufacturers recommended inspection and testing, and records of downtime. Downtime records shall include the date and time of downtime events. The duration of downtime events shall be recorded to the nearest hour, and include the reason for such downtime, the unique unit designation and the corrective action taken to prevent recurrence.
- f. COMPANY shall maintain a list of all NDO's and non-NDO's included in the inventory calculations of subsections 4(a) and 4(d).
- g. COMPANY shall maintain a copy of all calculations specified in subsections 4(a) and 4(d).
- h. The list of NDO's and non-NDO's may be revised by COMPANY at anytime following prior notice to MUNICIPALITY, who's cooperation may not be unreasonably withheld, and implementation of the applicable procedures established in subsection 4. At all times, the limitations and understandings of subsection 6 shall apply.

**6. Limitations & Understandings**

- a. Nothing in this section shall require (1) the construction of additional separations or structures or (2) relocation or rearrangement of the existing equipment, process, or MSW and RDF material storage areas.
- b. Equipment installed to measure differential pressure on a continuous basis shall include an alarm system designed to notify facility personnel of loss of negative pressure at each unit. The alarm system shall be

located in the control room. The alarm system delay and recording frequency shall be established through mutual agreement of the Parties' respective consultants.

- c. The Parties agree that continuous negative pressure demonstration can be used as a tool to proactively recognize and address situations that may result in odor complaints.
- d. The Parties agree to meet annually to review the effectiveness of the equipment / program, discuss operational issues, and recommend improvements to the program.