

SERVICE AGREEMENT

DUTCHESS COUNTY RESOURCE RECOVERY AGENCY

AND

WHEELABRATOR DUTCHESS COUNTY LLC

RESOURCE RECOVERY FACILITY
SERVICE AGREEMENT

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APPENDICES

The following appendices are attached to and made a part of this Agreement:

Appendix A - Power Sales Agreement

Appendix B - Site Survey

Appendix C - Codes and Standards

Appendix D - DCRRA 2013 Facility Condition Report

Appendix E - General Housekeeping Standards

Appendix F - Operations and Maintenance Manual - Dated February 2010, and as revised from time to time with DEC approval. Available at www/dcrra.org

Appendix G - Environmental Guarantees

Appendix H - Letter of Credit

Appendix I - Reserved

Appendix J - Parent Company Guaranty

Appendix K - Performance Guarantees

Appendix L - Contractor Owned Assets

Appendix M - Example Calculations

Appendix N - Designated Disposal Sites

Appendix O - Access Clause from Operations Contract

Appendix P - Termination Payment Schedules

Appendix Q - List of Specific Projects to be Completed by Contractor

SERVICE AGREEMENT

THIS AGREEMENT (the "Service Agreement") is made as of the 15th day of April, 2014, (the "Effective Date") by and between WHEELABRATOR DUTCHESS COUNTY LLC (the "Contractor"), a Delaware limited liability company, having its principal place of business at 4 Liberty Lane, West Hampton, New Hampshire 03842 and qualified to do business as a foreign corporation in the State of New York, and the DUTCHESS COUNTY RESOURCE RECOVERY AGENCY (the "Agency"), a public benefit corporation formed pursuant to Title 13-D of the Public Authorities Law of the State of New York, and having its office at 96 Sand Dock Road, Poughkeepsie, New York 12601.

WITNESSETH:

WHEREAS, Section 120-w of the New York General Municipal Law ("Section 120-w") authorizes the Agency to enter into contracts for the collection, processing and disposal of solid waste for a period not to exceed twenty-five years; and

WHEREAS, the Agency owns a mass burn Resource Recovery Facility located at 96 Sand Dock Road, Poughkeepsie, NY 12601 (the "Facility" as hereinafter defined) which began operation on or about June 30, 1989; and

WHEREAS, in reliance upon a prior contractor's promise to provide services, the Agency has provided waste disposal services for Dutchess County, pursuant to which undertaking the Facility was financed by bonds (the "Bonds" as hereinafter defined) issued and secured by a trust indenture (the "Trust Indenture" as hereinafter defined); and

WHEREAS, on March 26, 2013, the Agency issued a draft request for proposals for a replacement contract operator for the Facility and a final request for proposals (the "RFP") was issued by the Agency on June 25, 2013, to assume operation of the Facility as of July 1, 2014 (the "Service Commencement Date"); and

WHEREAS, upon evaluation of the Contractor's proposal submitted in response to the RFP, the Agency selected that proposal in accordance with Section 120-w; and

WHEREAS, the Contractor desires, based on its past experience, to operate and maintain the Facility, and the Agency, in reliance on such past experience with mass-burn type technology and facilities, desires the Contractor to operate and maintain its Facility; and

WHEREAS, as part of the consideration for this Agreement, the performance of the Contractor hereunder is unconditionally guaranteed by the Guarantor pursuant to the Parent Company Guaranty (the "Parent Company Guaranty" as hereinafter defined); and

WHEREAS, in reliance upon the Contractor's promise to provide the services called for herein, the Agency guarantees to deliver minimum quantities of solid waste to the Facility; and

WHEREAS, the Contractor and the Agency have negotiated this Service Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

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IS INTENTIONALLY LEFT BLANK]**

ARTICLE ONE
DEFINITIONS and INTERPRETATIONS

1.1 DEFINITION OF TERMS

The following definitions are used in this Agreement.

ADJUSTMENT FACTOR: As defined in Article 6.3.

AFFILIATE: Any Person directly or indirectly controlling or controlled by another Person or under direct or indirect common control with such Person.

AGENCY BOARD: The members of the Dutchess County Resource Recovery Agency constituting and acting as the governing board of the Agency pursuant to Title 13-D of the New York Public Authorities Law.

AGENCY INDEMNIFIED PARTY: As defined in Article 8.9(b).

AGENCY ENGINEER: Henningson, Durham & Richardson, Architecture and Engineering, P.C. in association with HDR Engineering, Inc. or another nationally-recognized, independent, consulting engineer (or firm of engineers) retained by the Agency to perform services required in connection with this Agreement.

AGENCY EXCESS TONS: As defined in Article 6.5(e).

AGENCY EXCESS TONS SERVICE FEE CREDIT: As defined in Article 6.5(e).

AGENCY SPARE PARTS INVENTORY: As defined in Article 5.3(d)

AGENCY TERMINATION PAYMENTS: As defined in Article 9.4(c).

AGENCY TONNAGE SHORTFALL: As defined in Article 6.5(b)

AGREEMENT: This Service Agreement, including the Articles, the Appendices and any written amendments hereto executed by Agency and Contractor.

BASE SERVICE FEE: As defined in Article 6.3.1

BONDS: Any bonds authenticated and delivered under any Trust Indenture to finance the Facility or Facility improvements, including Additional Bonds (as defined in the Trust Indenture), and any other bonds, notes or other evidences of indebtedness issued by the Agency to finance the Facility or Facility improvements, and any bonds, notes or other evidences of indebtedness issued by the Agency in substitution for, in lieu of, or to refund, retire or pay any such bonds, notes or other evidences of indebtedness.

BYPASS WASTE: Processable Waste that is weighed at the Facility, not processed for any reason and transferred out of the Facility.

CAPITAL IMPROVEMENTS: Any material physical improvement to the Facility excluding: (i) all structural and equipment repairs, rehabilitation and replacements which are part of the Contractor's repair and maintenance obligations hereunder, (ii) any maintenance to the Facility of a type that is customary or standard given the intended use and location of the Facility, or (iii) any rehabilitation or reconstruction of the Facility after an event giving rise to the damage, partial destruction or casualty thereof.

CENTRAL HUDSON: Central Hudson Gas and Electric Corporation.

CHANGE IN LAW: Any of the following acts, events or circumstances to the extent that compliance therewith increases or decreases a Party's cost of performing, or the revenues to be received by a Party hereunder (but only to the extent provided for herein), or expands or decreases the scope of a Party's obligations hereunder: (a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any applicable law, rule or regulation on or after the Effective Date, unless such applicable law, rule or regulation was on or prior to the Effective Date duly adopted, amended, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental body or (b) the denial of an application for or suspension, termination, interruption, failure to issue, or imposition, after the Effective Date, of any conditions on the issuance, modification or renewal of any Permits.

It is specifically understood, however, that a "Change in Law" shall not include:

- i. a change in the nature or severity of the actions typically taken by a governmental body to enforce compliance with applicable law which was effective as of the Effective Date; or
- ii. adverse judgments or orders of any court or other governmental body resulting from litigation involving the Contractor; or
- iii. any change in tax laws imposed upon or measured by the income or net income of a party, sales tax, or taxes that are substitutes for either taxes measured by the income or net income of a party or sales taxes, provided however if the Agency's sales tax exemption is no longer applicable to the Facility then the unavailability of the sales tax exemption will be considered a Change in Law; or
- iv. the enactment or any modification to local laws pertaining to "flow control" of Processable Waste in Dutchess County, unless the enactment or modification of such local laws specifically imposes obligations that are beyond those described in this Agreement; or
- v. A change in law other than a State or federal Change in Law.

CLAIMS: As defined in Article 8.9.

CONTRACTOR OWNED ASSETS: Personal property or other assets owned by the Contractor that are used at the Facility and listed in Appendix L, which the Contractor may

update from time to time during the Term subject to the approval of the Agency, which shall not be unreasonably withheld.

CONTRACTOR INDEMNIFIED PARTY: As defined in Article 8.9(a).

CONTRACT YEAR: A calendar year beginning at 12:00:01 a.m. on January 1st and ending at 12:00 midnight on December 31st of each year, provided however, that the first Contract Year shall commence on the Service Commencement Date and shall end at 12:00 midnight on December 31st of the year in which the Service Commencement Date occurred.

COST SUBSTANTIATION: With respect to any cost or expense incurred by any Party, a certificate signed by the Party with respect to the Party's asserted increased and incremental Direct Costs incurred by the Party, stating (a) the reason for incurring such Direct Cost, (b) the amount of such Direct Cost, (c) the act, event, condition or Article under this Agreement giving rise to the Party's right to incur such Direct Cost, and (d) that such Direct Cost, to the Contractor's knowledge after reasonable inquiry as disclosed to the other Party, is at a fair market value price for the service provided or materials supplied (it being understood that such services or materials may be provided or supplied by an Affiliate) or in the case of services or materials provided or supplied by non-Affiliates, to the extent practicable has been competitively bid. Any certification provided by any Party to the other Party shall include copies of all invoices or charges, together with any additional reasonable documentation of such costs or expenses incurred which the other Party deems reasonably necessary to verify the amount of such costs and expenses and to demonstrate the basis for the amount claimed.

COUNTY: Dutchess County, New York.

DEBT SERVICE: With respect to any period, the amount specified in the respective Trust Indenture to be paid or accrued without any acceleration during such period to retire or redeem the principal of and pay the interest on all Bonds from time to time outstanding.

DEC: The New York State Department of Environmental Conservation.

DIRECT COST(S): Means, in connection with any cost or expense incurred by any Party, the sum of:

(a) the costs of the Party's or its Affiliates' payroll directly related to the performance of any obligation of the Party pursuant to the terms of this Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, worker's compensation insurance and employer's liability insurance, medical and health insurance benefits excluding retirees' medical and health benefits which in the case of the Contractor are not otherwise provided by the Contractor, together with federal and state unemployment taxes, plus Markup but exclusive of any other markup, profit and overhead, plus

(b) the sum of (1) payments of reasonable costs to subcontractors necessary to and in connection with the performance of the Party's obligations, plus (2) the costs of equipment, materials, direct rental costs and supplies purchased by such Party (equipment manufactured or furnished by, and services, materials and supplies furnished by, the Party or its Affiliates shall be considered purchased materials at their actual invoice cost, provided such cost is an arm's length fair market value cost).

All Direct Costs incurred under subparagraph “b” above shall be procured by competitive procedures to the maximum extent reasonable (other than those provided by a Party or its Affiliates).

DIVERTED WASTE: Processable Waste that is scheduled for delivery to the Facility but has been diverted to other locations, at the request of the Contractor for any reasons other than for those listed in (a) through and including (f) of Article 3.10.1 hereto, or by the Agency due to excessive actual or anticipated wait times at the Facility, provided however that the Agency shall have the burden of proof that there were actual or anticipated excess wait times based on historical records.

EFFECTIVE DATE: The date affixed at the beginning of this Agreement.

ENVIRONMENTAL GUARANTEES: The environmental guarantees as set forth in Appendix G.

EVENT OF DEFAULT: Each of the instances defined as an Event of Default in Article 9.

FACILITY: All elements of the Agency’s resource recovery facility, including but not limited to the O’Connor Combustion System, the buildings, equipment, rolling stock and machinery on the Site, and other real and personal property owned by the Agency and located on or used at the Site, including such improvements that may be made during the term of this Agreement.

FACILITY CONDITION REPORT: The facility condition report, a copy of which is annexed hereto at Appendix D.

FINAL AGENCY INVENTORY: As defined in Article 5.1.

FINAL SPARE PARTS AND COMMODITY INVENTORY: As defined in Article 5.3.

FIRST ONE-YEAR RENEWAL PERIOD: As defined in Article 10.2.

FIVE-YEAR RENEWAL PERIOD: As defined in Article 10.2.

GROUP A UCC TONAGE: As defined in Article 6.5(d)

GROUP B UCC TONAGE: As defined in Article 6.5(d)

GROUP C UCC TONAGE: As defined in Article 6.5(d)

GROUP D UCC TONAGE: As defined in Article 6.5(d)

GROUP E UCC TONAGE: As defined in Article 6.5(d)

GUARANTEED ANNUAL TONNAGE: As defined in Article 3.11.

GUARANTEED FACILITY THROUGHPUT: 154,000 Tons per year of Processable Waste processed by the Contractor at the Facility.

GUARANTOR: Wheelabrator Technologies Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

HAZARDOUS MATERIAL: Any Hazardous Waste or any substance, object or material deemed hazardous under applicable law including without limitation “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C 9601 et. seq. and applicable regulations promulgated thereunder, each as amended from time to time and radioactive material; provided that household hazardous waste shall not constitute Hazardous Material.

HAZARDOUS WASTE: Any waste or substance that is or becomes subject to regulation as a hazardous waste under applicable federal, State or local statute, ordinance or regulation including under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., provided that household hazardous waste shall not constitute Hazardous Waste.

INITIAL AGENCY INVENTORY: As defined in Article 5.1(a).

INITIAL TERM: As defined in Article 10.1.

INDEPENDENT ENGINEER: A nationally recognized, independent consulting engineer (or firm of engineers) expert concerning design, construction, operation and maintenance of solid waste disposal and resource recovery facilities that has not been employed by or a contractor for either Party or an Affiliate of either Party for a minimum of six (6) years prior to their engagement, chosen by mutual agreement of the Parties, or upon their failure to agree within sixty (60) days of a request to appoint by a Party, one appointed by the State of New York Supreme Court pursuant to Article 75 of the NY Civil Practice Laws and Rules.

LANDFILL: A site, or sites that the Agency uses for the land disposal of Solid Waste, Unacceptable Waste, Bypass Waste and Process Residue which is permitted to accept such waste and Process Residue and is lawfully operating under all applicable federal and state laws, including 6 NYCRR Part 360 if located in New York State. For purposes of this definition, the Agency shall not designate a landfill from which a release or threat of a release is occurring, as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., as replaced or amended and the regulations promulgated thereunder or which is on the National Priorities List, Comprehensive Environmental Response, Compensation, and Liability Information System database (“CERCLIS”) or similar list established or maintained by any federal or state agency or, to the knowledge of the Agency, is subject to investigation for inclusion on such list.

LETTER OF CREDIT: The \$10,000,000 letter of credit required pursuant to Article 8.10 that is in substantially the same form as the letter of credit in Appendix H.

MARKUP: Means wherever such term is used, combined overhead and profit equal to ten percent (10%) of the Contractor’s own actual internal direct labor costs (i.e., Contractor’s or an Affiliate’s employee wages or prorated salaries), including fringe benefits, directly attributable to the specific work that is the subject of or basis for the Markup, subject to Cost Substantiation. The term “Markup” shall not apply to any other service, or purchase, subcontract, including a subcontract with an Affiliate, equipment, tools, materials, supplies and work other than that

specifically recognized above in the first sentence of this definition.

MATERIALS REVENUES: As defined in 6.3.1

NET AGENCY TONS: As defined in Article 6.3.

NET BOND INDEBTEDNESS: Shall mean the aggregate outstanding principal amount of the Bonds plus accrued interest due on such Bonds to the earliest call date plus any redemption premium less funds and accounts maintained pursuant to the Trust Indenture or indenture for such other bonds that are available for the repayment of the Bonds.

NET ELECTRICAL GENERATION GUARANTEE: The minimum number of kilowatt hours of electrical energy as set forth in Appendix K produced from each Ton of Processable Waste processed by the Facility and sold pursuant to the Power Sales Agreements.

NET RECOVERED MATERIALS REVENUE: The gross income received by the Agency from the sale of Recovered Materials less all costs to the Agency to handle, haul, prepare and market those Recovered Materials.

NON-PERFORMANCE PAYMENT: As defined in Article 6.3.3.

O'CONNOR COMBUSTION SYSTEM: The mass burning Solid Waste disposal system which consists of technology, machinery and equipment, which provides for the disposal of Processable Waste in a water-cooled rotary combustor using an unlined rotary kiln type furnace.

OPERATIONS CONTRACT: The Amended and Restated Service Agreement between the Operator and the Agency.

OPERATOR: Covanta Hudson Valley Renewable Energy, LLC.

OUTAGE ELECTRICAL SALES: As defined in Exhibit A to Appendix K.

OUTAGE THROUGHPUT: As defined in Exhibit A to Appendix K.

PARENT COMPANY GUARANTY: The parent company guaranty attached as Appendix J and issued by Guarantor in favor of the Agency, as required by Article 8.10.

PARTY: The Agency and the Contractor as defined herein.

PASS THROUGH COSTS: As defined in Article 6.3.

PERFORMANCE GUARANTEES: The performance guarantees set forth on Appendix K.

PERMIT(S): All, permits, authorizations, rights, licenses, filings, zoning changes or variances, and entitlements, of whatever kind and however described that are required under applicable law to be obtained or maintained by any Person with respect to the operation of the Facility or the services to be provided by the Contractor under this Service Agreement.

PERSON: Any individuals, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal entities, including public bodies.

POWER SALES AGREEMENTS: The contract between the Agency and the energy customer attached hereto as Appendix A, as the same may be amended from time to time, and any other future contracts or other arrangements, providing for the sale of electricity recovered by the operation of the Facility.

PROCESSABLE WASTE: Solid Waste, excluding Unacceptable Waste, generated by a household, or by a commercial or institutional entity to the extent that the waste material is the same as waste normally generated by a household, and which: (1) will not cause damage to or adversely affect the operation of the Facility when processed; (2) can physically pass through the Facility including lumber not in excess of four feet long or larger than four inches in diameter; and (3) can be processed at the Facility in compliance with the Permits and all other applicable law.

PROCESS RESIDUE: Material that remains after the processing of Processable Waste at the Facility for energy and materials recovery that must be disposed of at a cost whether beneficially used or not, excluding any ferrous metals that have been recovered by the Contractor.

QUALIFIED COMMERCIAL BANK: As defined in Article 8.10.

RECOVERED MATERIALS: Ferrous metal, and aluminum, mixed heavy non-ferrous metals, aggregate material and any other materials agreed between the Agency and the Contractor to be recovered from Processable Waste. Recovered Materials also includes the metallic portions of equipment or material removed from the Facility by the Contractor due to the repair or replacement of Facility equipment which are sold.

RESIDUE COST: As defined in Article 6.3.

RESIDUE FEE: As defined in Article 6.3.

RESIDUE TONS: As defined in Article 6.3.

SECOND ONE-YEAR RENEWAL PERIOD: As defined in Article 10.2.

SERVICE COMMENCEMENT DATE: Means the later of: (i) July 1, 2014, or (ii) the date in which all of the conditions precedent in Article 11.8 are satisfied or waived.

SERVICE FEE: The amount paid by the Agency to the Contractor pursuant to 6.3.1(A).

SITE: The 47.8 acres of real property owned by the Agency located in the County and more fully described in Appendix B, together with those parcels known as 25 and 30 Sand Dock Road.

SIX-YEAR RENEWAL PERIOD: As defined in Article 10.2.

SOLID WASTE: The term “solid waste” shall mean all materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

SPARE PARTS AND COMMODITY INVENTORY: As defined in Article 5.2.

SPARE PARTS PURCHASE PRICE: As defined in Article 5.3(d)

SPECIAL WASTE: Solid waste which otherwise constitutes Processable Waste but is not disposed of by, and collected from residential, commercial, light industrial, governmental or institutional establishments as part of their normal disposition of Processable Waste but is disposed of and collected from the foregoing on a segregated basis or requires special handling.

STATE: The State of New York.

STEP-UP LETTER OF CREDIT: The additional \$10,000,000 letter of credit required pursuant to Article 8.10 that is in substantially the same form as the letter of credit in Appendix H.

SUPPLEMENTAL ELECTRICAL COMPENSATION: The amount paid by the Agency to the Contractor pursuant to 6.3.1(B).

SUPPLEMENTAL PROCESSABLE WASTE: Processable Waste supplied to the Facility by the Contractor, when agreed to by the Agency in its sole discretion, at prices and terms acceptable to the Agency.

TANGIBLE NET WORTH: The total assets, minus all intangible assets such as goodwill, patents and trademarks, minus all liabilities of a company.

TERM: The Initial Term and all renewal terms as defined in Article 10.2.

TON: 2,000 pounds avoirdupois.

TOTAL PROCESSED TONNAGE: The sum of Net Agency Tons and Tons of Supplemental Processable Waste that have not been designated, pursuant to Article 3.12, as being delivered by or on behalf of the Agency.

TRUST INDENTURE: With respect to any Bonds, shall mean the trust indenture entered into by the Agency with a bank and/or Trustee pursuant to which such Bonds will be or have been issued and secured, as originally entered into, or, if amended or supplemented as in such Trust Indenture provided, as so amended or supplemented.

TRUSTEE: With respect to each Trust Indenture, the trustee thereunder and its successors and any other corporation which may at any time be substituted in its place pursuant to such Trust Indenture.

TURBINE/GENERATOR OPERATIONS AND MAINTENANCE FEE: As defined in Article 6.3.

UCC TONNAGE SHORTFALL: As defined in Article 6.5(d)

UCC TONNAGE SHORTFALL THRESHOLD: As defined in Article 6.5(d)

UNACCEPTABLE WASTE: All waste that is not Processable Waste including, sludges from air or water pollution control facilities or water supply treatment facilities, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, sewage, sludge of any kind, and other highly diluted, water-carried material or substances and those in gaseous form; heavy appliances such as refrigerators, stoves, washing machines, water heaters etc.; special nuclear byproduct material within the meaning of the Atomic Energy Act of 1954, as amended; explosives; pathological and biological wastes; radioactive materials; foundry sand; human remains; motor vehicles, including such major motor vehicle parts as engine blocks, transmissions, rear ends, springs and fenders; agricultural and farm machinery and equipment; large tools, castings and machinery; large quantities of sulfur containing materials; bulk liquid wastes; septic and cesspool pumpouts; and all Hazardous Waste.

UNCONTROLLABLE CIRCUMSTANCES: Any act, event or condition arising on or after the Effective Date that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and that materially interferes with or materially increases or decreases the cost of performing its obligations or the revenues to be received by it hereunder (but only to the extent provided for herein), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such Party.

Inclusions: Subject to the foregoing, Uncontrollable Circumstances shall include the following:

- i. Changes in Law in New York State or federal law;
- ii. the presence or discovery of Hazardous Materials at, on or under the Site and not caused by any act or omission of the Contractor except Hazardous Materials that are typically used in the operation and maintenance of the Facility and have been managed in accordance with applicable law;
- iii. naturally occurring events (except typical and normal weather conditions in the areas in which the Agreement is being performed) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes, floods, epidemics, and other acts of God;
- iv. explosion, fire, sabotage or similar occurrence, act of a declared public enemy,

extortion, war, terrorist act, blockade or insurrection, riot or civil disturbance;

- v. local, regional or national labor disputes or strikes not directed specifically at the Contractor, its Affiliates or any of their subcontractors;
- vi. the failure of any appropriate governmental body or private utility serving the Facility to provide and maintain utilities to the Facility which are required for the performance of the Agreement;
- vii. the preemption, confiscation, diversion or destruction of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Facility;
- viii. the failure of any subcontractor (other than the Contractor, the Guarantor or any Affiliate of either), to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is itself the result of an event which would constitute an Uncontrollable Circumstance if it affected the Contractor directly, and the Contractor is not able to timely obtain substitutes after exercising all reasonable efforts;
- ix. revisions to the Operations and Maintenance Manual attached as Appendix F in effect as of the Effective Date;
- x. with respect to the Contractor, any Agency fault; or
- xi. with respect to the Agency, any Contractor fault.

Exclusions: It is specifically understood that none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

- i. any act, event or circumstance that would not have occurred if the affected Party had complied with its obligations under this Agreement;
- ii. changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions;
- iii. changes in the financial condition of the Agency, the Contractor, the Guarantor, or their Affiliates or subcontractors affecting the ability to perform their respective obligations;
- iv. any legal proceeding brought against the Contractor and not the Agency, whether or not the Contractor subsequently seeks to join the Agency as an additional party;
- v. the consequences of error, neglect or omissions by the Contractor, the Guarantor, any subcontractor, any of their Affiliates or any other person in relation to the Contractor's performance of its obligations hereunder;
- vi. strikes, work stoppages or labor disputes by employees of the Contractor, its

Affiliates or any of their subcontractors, but excluding items described in clause (v) of “Inclusions” above;

- vii. union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by the Contractor or otherwise increasing the cost to the Contractor of performing the Agreement;
- viii. normal weather conditions for the areas in which the Agreement is to be performed;
- ix. mechanical failure of equipment to the extent not resulting from a condition that is listed in the “Inclusions” section of this definition;
- x. power outages to the extent not caused by third party utilities or not resulting from a condition that is listed in the “Inclusions” section of this definition;
- xi. failure of the Contractor to secure patents that may be deemed necessary for the performance of the Agreement;
- xii. the expiration at the end of the term of the Power Sales Agreement in Appendix A;
- xiii. any act, event, or circumstance occurring outside the United States, or Change in Law other than New York or federal law;
- xiv. the condition of the Facility and Site on or after the Services Commencement Date, except as expressly provided herein, including the “Inclusions” section in this definition; or
- xv. any change in the make up or composition of Processable Waste, except as otherwise provided for in Appendix K.

UTILITY: Central Hudson or any other utility or Person that purchases power from the Facility in accordance with any future contracts or other arrangements, providing for the sale of electricity recovered by the operation of the Facility.

UTILITY EXPENSES: As defined in Article 6.3.

UTILITY REVENUE: As defined in Article 6.3.

WEEK: A seven day period commencing Sunday at 12:00:01 a.m. and ending midnight of the following Saturday.

WRONGFULLY REFUSED WASTE: The sum of (i) all Processable Waste delivered to the Facility by or on behalf of the Agency that is not accepted, i.e., refused, by the Contractor for any reason other than those listed in (a) through and including (f) of Article 3.10.1, hereto, and (ii) Diverted Waste.

1.2 **INTERPRETATION**

In this Agreement notwithstanding any other provision hereof:

(a) **References Hereto.** The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(b) **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa.

(c) **Headings.** The table of contents and any headings preceding the text of the Articles, sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(d) **Entire Agreement.** This Agreement (including the Appendices hereto) contains the entire agreement between the parties hereto with respect to the subject matter hereof. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings, both written and oral, and agreements between the parties with respect to such transactions, including those contained in the Agency’s RFP, the proposal of the Contractor submitted in response thereto, and any amendments or supplements to the RFP or the proposal.

(e) **Standards of Workmanship and Materials.** Any reference in this Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Contractor to furnish the same in accordance with the grades and standards therefor indicated in this Agreement. Where this Agreement does not specify any explicit quality or standard for materials or workmanship, the Contractor shall use only workmanship and materials of a quality consistent with or better than that called for by good industry practices, good engineering practice and good construction practice.

(f) **Technical Standards and Codes.** Unless otherwise noted, references in this Agreement to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Effective Date.

(g) **Liquidated Damages.** This Agreement provides for the payment of liquidated

damages in certain circumstances of nonperformance, breach and default. Each Party agrees that the damaged Party's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance do not constitute a penalty and are intended to place the damaged Party in the same economic position as it would have been in had the circumstance not occurred. Unless otherwise noted, where liquidated damages are provided as a remedy for a specific circumstance of nonperformance, breach or default hereunder, such liquidated damages shall be the exclusive remedy for such nonperformance, breach or default.

(h) **Party Bearing the Cost of Performance.** All obligations undertaken by each Party hereto shall be performed at the cost of the Party undertaking the obligation, unless the other Party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other Party or through an adjustment to the Service Fee, or Supplemental Electrical Compensation, or both.

(i) **Assistance.** The obligations of a Party to cooperate with, to assist or to provide assistance to the other Party hereunder shall be construed as an obligation to use the Party's personnel resources to the extent reasonably available in the context of performing their normal duties, and not to incur material additional expense unless requested and reimbursed by the assisted Party.

(j) **Good Industry Practice and Good Engineering and Construction Practice.** Good industry practice, good engineering practice and good construction practice shall be utilized hereunder, among other things, to implement, and in no event displace or lessen the stringency of other obligations in the Agreement. In no event shall good industry practice or good engineering practice or good construction practice relieve either Party of its express obligations hereunder.

(k) **Compliance with and Applicability and Stringency of Agreement Standards.** The Contractor shall be obligated to comply only with those standards which are applicable in any particular case. Where more than one standard applies to any particular performance obligation of the Contractor hereunder, each such applicable standard shall be complied with. In the event there are different levels of stringency among such applicable standards, the most stringent of the applicable standards shall govern.

(l) **Approvals and Consents.** Any approval, consent, or satisfaction required of

either Party hereunder shall not unreasonably be withheld, delayed or conditioned, except where such approval, consent, or satisfaction may be given in the sole discretion of the approving or consenting Party under an express provision hereof.

(m) **Delivery of Documents in Digital Format.** The Contractor is obligated to deliver reports, records, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Contractor agrees that all such documents shall be submitted to the Agency both in printed form (in the number of copies indicated) and, at the Agency's request, in digital form. Electronic copies shall consist of computer readable data submitted in any standard interchange format which the Agency may reasonably request to facilitate the administration and enforcement of this Agreement.

(n) **Removal of Records from Premises.** Where performance of this Agreement involves use by the Contractor of Agency papers, files, data or records at Agency facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Agency.

(o) **Severability.** If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties shall: (1) promptly attempt to negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effectuate the intent of the Parties in the invalid clause, provision, subsection, Section or Article; (2) if necessary or desirable to accomplish item (1) of this subsection, upon mutual agreement of the Parties, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Agreement, as may be necessary in addition to and in conjunction with items (1) and (2) of this subsection to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

(p) **Drafting Responsibility.** Notwithstanding the Agency's having assumed primary drafting responsibility for the main body and certain Appendices to this Agreement, or the Contractor's having assumed primary drafting responsibility for certain modifications to the Agreement and certain Appendices to this Agreement, neither Party shall be held to a higher

standard than the other Party in the interpretation or enforcement of this Agreement as a whole or any portion hereof as a result of having assumed such drafting responsibility.

(q) **No Third Party Rights.** This Agreement is exclusively for the benefit of the Agency and the Contractor and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

(r) **References to Days, Weeks, Months or Years.** Except as otherwise provided herein, all references to days, weeks, months or years are references to calendar days, calendar weeks, calendar months or calendar years.

(s) **References to Including.** All references to “include” or “including” herein shall be interpreted as meaning “include without limitation” or “including without limitation.”

(t) **References to Knowledge.** All references to “knowledge,” “knowing,” “know” or “knew” shall be interpreted as references to a Party having actual knowledge.

(u) **Counterparts.** This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same agreement.

(v) **Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New York.

(w) **Violation of Law; Third Party Privilege.** No provision of this Agreement shall be construed as requiring a party to violate any governmental law, rule or regulation in the performance of its duties hereunder, or to waive any legal privilege recognized by the courts of any State having jurisdiction.

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ARTICLE TWO
RESPONSIBILITIES OF THE PARTIES, APPENDICES AND
REPRESENTATIONS AND WARRANTIES

The Contractor agrees that it has fully inspected the Facility, and except as otherwise specifically provided herein, including the provision regarding Hazardous Materials in the definition of Uncontrollable Circumstances, accepts all risk of the Facility in its “as-is” condition as of the Service Commencement Date. Except as otherwise provided herein, the Contractor further acknowledges that it is being fully compensated to accept the Facility in its “as-is” condition through the Service Fee and Supplemental Electrical Compensation.

Prior to the Service Commencement Date the Agency will not sell the Facility or dispose of any material assets it owns at the Facility. Furthermore, the Agency shall administer the obligations of the Operator pursuant to the Operations Contract in accordance with past practice.

2.1 REPRESENTATION AND WARRANTIES.

(a) **Representations and Warranties of the Agency.** The Agency represents and warrants to the Contractor that (i) the Agency is a public benefit corporation duly organized, validly existing and in good standing under the laws of the State of New York; (ii) this Agreement has been executed by an authorized officer of the Agency, and has heretofore delivered to the Contractor evidence of such authority; (iii) it has the full power and authority to execute and deliver this Agreement and the documents contemplated hereby to the Contractor and to carry out the transactions contemplated hereby, all of which have been duly authorized by the Agency Board in accordance with and the laws of the State of New York; (iv) this Agreement constitutes the valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies; (v) the execution, delivery and performance by the Agency of this Agreement and the documents and transactions contemplated hereby do not and will not (1) violate any provision of the organizational documents of the Agency, (2) conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration, in any material respect, of any right or obligation of the Agency under any contract, license, agreement

or other instrument to which the Agency is a party or to which its assets are subject or (3) materially violate or result in a breach under any law or other restriction to which the Agency is subject; (vi) there is no litigation, investigation or proceeding by or before any court, government authority or arbitrator pending, or to the knowledge of the Agency threatened, which questions this Agreement or which would affect or may affect the transactions contemplated hereby; and (vii) the Agency has complied with the terms of New York State General Municipal Law 120-w.

(b) **Representations and Warranties of the Contractor.** The Contractor represents and warrants to the Agency that (i) the Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of New York; (ii) this Agreement has been executed by an authorized officer of the Contractor, and has heretofore delivered to the Agency evidence of such authority; (iii) the Contractor has the full power and authority to execute and deliver this Agreement and the documents contemplated hereby to the Agency and to carry out the transactions contemplated hereby, all of which have been duly authorized in accordance with its governing documents and laws of the states of Delaware and New York; (iv) this Agreement constitutes the valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies; (v) the execution, delivery and performance by the Contractor of this Agreement and the documents and transactions contemplated hereby do not and will not (1) violate any provision of the organizational documents of the Contractor, (2) conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration, in any material respect, of any right or obligation of the Contractor under any contract, license, agreement or other instrument to which the Contractor is a party or to which its assets are subject or (3) materially violate or result in a breach under any law or other restriction to which the Contractor is subject; and there is no litigation, investigation or proceeding by or before any court, governmental authority or arbitrator pending or, to the knowledge of the Contractor, threatened, which questions this Agreement or which would affect the transactions contemplated hereby.

2.2 PRE-SERVICE COMMENCEMENT DATE

(a) On or after the Effective Date and prior to the Service Commencement Date, the Agency, to the extent permitted by the Operations Contract, shall permit the Contractor and its Affiliates access to the Facility, the Facility's operations, maintenance, performance, Process Residue, environmental and similar records and the personnel of the Operator as the Contractor shall reasonably request in order to observe the operation and maintenance of the Facility. Except for any limits imposed by the Operator, such access may include without limitation the right to have one or more employees present in the control room of the Facility on a daily basis, to conduct regular inspections of the Facility and to be present at any scheduled or unscheduled outages at the Facility and inspect the condition of any equipment including the boilers undergoing repair and maintenance during such outage.

(b) While at the Facility the Contractor shall (i) comply with all the provisions of the current Operations Contract that apply to the Agency of which the Contractor has been previously notified or informed, including, but not limited to Article 3.7 of the Operations Contract attached hereto as Appendix O, and (ii) not interfere in any way with the operations of the Facility, and upon the provision of reasonable notice, follow all the reasonable safety rules and regulations of the Operator.

(c) On or after the Effective Date and prior to the Service Commencement Date, the Agency shall promptly inform the Contractor in writing of any material, non-confidential, events that occur at the Facility including any material communications and notifications to or from governmental authorities.

(d) Upon mutual agreement, the Contractor may be designated as an agent of the Agency.

2.3 RESPONSIBILITIES OF THE PARTIES AFTER THE SERVICE COMMENCEMENT DATE

(a) The Agency hereby retains the Contractor and the Contractor hereby accepts this retainer to operate and maintain the Facility on behalf of the Agency from and after the Service Commencement Date. As of the Service Commencement Date, subject to the terms and conditions of this Agreement, the Agency will be responsible to:

- (i) make the Facility available for the Contractor's performance under this Agreement;

- (ii) provide the Facility with the Guaranteed Annual Tonnage;
- (iii) pay the Contractor as provided in Article 6;
- (iv) do any other requirements as defined, stated and set forth in this Agreement;
and
- (v) do any other acts consistent with and necessary to effectuate this Agreement.

(b) As of the Service Commencement Date, subject to the terms and conditions of this Agreement, the Contractor guarantees and will be responsible to:

- (i) accept and process Processable Waste in accordance with the terms of this Agreement;
- (ii) produce electricity at or above the Net Electrical Generation Guarantee ;
- (iii) recover ferrous metals at or above the Ferrous Metals Recovery Efficiency Guarantee;
- (iv) operate the Facility at the Contractor's cost in full compliance with this Agreement, including all Appendices, the applicable Permits and all federal, State and local requirements and regulations, environmental or otherwise, whether contained in this Agreement or in law;
- (v) cooperate upon reasonable request with the Agency in carrying out from time to time public information programs and displays throughout the County;
- (vi) arrange, using reasonable commercial efforts, for marketing of Recovered Materials if and as requested by the Agency;
- (vii) perform at the Contractor's expense all necessary, repairs and/or replacements;
- (viii) do any other requirements as defined, stated and set forth in this Agreement;
and
- (ix) do any other acts consistent with and necessary to effectuate this Agreement.

(c) Notwithstanding anything to the contrary herein, if the Contractor is unable to meet the Performance Guarantees due to a lack of spare parts during the first 90 days following the Service Commencement Date, the Contractor shall use reasonable efforts to meet the Performance Guarantees, but shall not be required to do so and shall not be subject to any Non-Performance Payments or any other losses, damages or expenses of the Agency as a result of the

Contractor's failure to meet such Performance Guarantees or the failure to maintain an adequate inventory of spare parts. If the Contractor is unable to accept and process Processable Waste delivered by Agency during such 90 day period, then the Tons of Processable Waste that the Contractor could not accept and process shall be subtracted from the Guaranteed Annual Tonnage as calculated in Article 3.11 and the UCC Tonnage Shortfall Threshold as calculated in Article 6.5(d).

ARTICLE THREE **OPERATIONS AND MAINTENANCE**

3.1 CLEANLINESS, NUISANCES AND HOUSEKEEPING

The Contractor shall keep the exterior of the Facility clean and in an orderly condition at all times. The Contractor shall ensure that the operation of the Facility does not create any odor, litter, noise, fugitive dust, or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under applicable law. The Contractor shall operate and maintain the Facility, including without limitation, as follows:

- (a) No odors emitted from the Facility will be detectable at a nuisance level at or beyond the existing fence line of the Facility.
- (b) The interior and exterior of the buildings and the landscaping and grounds within the Site boundary will be well maintained and kept in a neat and orderly manner, substantially free of litter or debris.
- (c) Snow and ice shall be promptly removed from all parking lots, roadways and sidewalks within the Site boundary.
- (d) Sand Dock Road and its shoulders, north to IBM Road, as well as the Agency parking lot will be regularly swept mechanically and cleaned up of litter.
- (e) Noise solely from the Facility, as measured at the far boundary of the buffer zone (described in Appendix B, hereto), will not exceed 70 dB(A) between the hours of 7 a.m. - 10 p.m., and 60 dB(A) between the hours of 10 p.m. - 7 a.m., as required by Part 360 of the New York Code of Rules and Regulations.
- (f) Interior equipment components and machinery, including pipes, will be identified and well-maintained in a clean condition.
- (g) All Processable Waste, Process Residue and Recovered Materials will each be confined only to areas designed for their storage or processing.

- (h) Spillage of any substance within the Facility or the Site that may cause an environmental or safety issue will be cleaned up immediately upon the Contractor's knowledge of the occurrence.
- (i) Unacceptable Waste will be removed from the Site when the Unacceptable Waste bins/containers are full, unless required by law to be removed sooner.
- (j) Unacceptable Waste will be stored in a neat, clean and safe manner.
- (k) Perform all the requirements in Appendix E.

3.2 LABOR, MATERIALS AND EQUIPMENT

The Contractor will provide all labor, materials and equipment necessary for the operation, overhaul, repair, and maintenance of the Facility.

3.3 HOURS OF RECEPTION AND OPERATION

Subject to Uncontrollable Circumstances that adversely impact operations, the Contractor shall (i) keep the Facility open for the reception (i.e., acceptance) of Processable Waste, including the provision of necessary front end loader operation, from 6:00 a.m. - 4:00 p.m. Monday through Saturday, excluding legal holidays in New York State; and (ii) operate and maintain the Facility continuously seven days per week, 24 hours per day, every day of the year.

3.4 EMERGENCY AND EXTENDED OPERATIONS

In the event of an emergency the Agency may require the Contractor on reasonable notice, and otherwise, on not less than 24 hours advance notice, to accept Processable Waste at times different from those specified in Article 3.3. Subject to any Permit limits, the Contractor shall accommodate the Agency's request, and the Agency shall, subject to the receipt of Cost Substantiation, reimburse the Contractor for its reasonable additional Direct Cost to provide the emergency or extended operations as a Pass Through Cost.

3.5 REPAIR, REPLACEMENT AND MAINTENANCE

From and after the Service Commencement Date, the Contractor shall operate the Facility in compliance with this Agreement as well as (i) all Permits; (ii) all applicable laws, rules, regulations, and the Codes and Standards listed in Appendix C; (iii) the most recently adopted DEC approved Agency Operation and Maintenance Manual in Appendix F and as revised from

time to time; (iv) the Power Sales Agreement in Appendix A; and (v) the Performance Guarantees and Environmental Guarantees in Appendices K and G, respectively.

The Contractor shall (a) keep the Facility in good and safe operating condition, (b) conduct all required overhauls and make all necessary repairs and replacements, and (c) maintain an adequate inventory of spare parts, to prevent unnecessary downtime and otherwise manage the Facility, which requirements (a), (b) and (c) shall each be performed consistent with prudent industry practice and good engineering practices for waste-to-energy facilities, and the Codes and Standards listed in Appendix C, hereto.

The Contractor shall establish and maintain safety procedures for the Facility and shall enforce all reasonable safeguards for the safety and protection of persons or property on the Site, including the designation of a qualified employee to be responsible for safety procedures.

In addition to the foregoing, and to the extent not done prior to the Service Commencement Date, the Contractor shall diligently commence and continue to perform the maintenance and repair and replacement described in Appendix Q.

During each subsequent Contract Year, the Agency shall have the right, but not the obligation to prepare updated facility condition reports. The Contractor shall provide access to the Facility and provide all maintenance records to the Agency and the Agency Engineer to facilitate the preparation of these updated facility condition reports.

At the termination of the Agreement the Contractor must return the Facility to the Agency in substantially the same condition as received, as described in the Facility Condition Report, with the work required by Appendix Q having been performed, subject to normal wear and tear, with all of its components being in functional condition, and with the Facility and each of its components being capable of meeting all Performance Guarantees and Environmental Guarantees.

3.6 ACCESS

Representatives of the Agency, the County, their authorized invitees, invitees of the Contractor and representatives of the Trustee and regulatory authorities including the DEC, may visit and inspect the Facility with prior reasonable notice to the Contractor (except in the case of any inspections by DEC), at any time when escorted by a representative of the Agency or the Contractor. All visitors shall be required to comply with all reasonable safety rules and regulations adopted by the Contractor and shall not interfere with the operation of the Facility.

3.7 WEIGHING RECORDS

The Contractor shall maintain, and as needed repair and replace, the truck scales, their components and the scale house at the entrance-exit to the Facility. The Agency shall operate the truck scales at the entrance-exit to the Facility, and arrange and pay for the testing and calibration of the scale load cells and radiation detection equipment. The scales shall meet the accuracy requirements of the Dutchess County Director of Weights and Measures and shall weigh all vehicles transporting Processable Waste and other material to, and those removing Unacceptable Waste, Bypass Waste, Process Residue and other materials from, the Facility. Each such vehicle will be weighed upon entering and upon leaving the Facility, with the time, truck identification, gross weight and tare weight (for exiting vehicles) being entered on a weight record. The record shall also include a description of the contents and identity of each truck, the driver's signature and the origin of the contents.

If, upon testing, the scales do not meet accuracy requirements, the Agency and Contractor will calculate and agree upon an appropriate adjustment of completed weighing records and of Service Fees and Supplemental Electrical Compensation paid since the previous test. If all scales are incapacitated or are being tested, the Agency shall, without delay, notify the Contractor and shall estimate the quantity of Processable Waste delivered. The Contractor shall accept such estimates unless in its opinion there is a gross discrepancy in which case the dispute may be referred to the Independent Engineer by the Contractor. These estimates (or where applicable, the determination of the Independent Engineer) shall take the place of actual weighing records during the period the scales are unavailable. Copies of all weight records in the form of printed summaries shall be available from the Agency. Both the Contractor and the Agency may maintain staff in the scale house during its operation.

3.8 RESPONSIBILITY FOR PROCESSABLE WASTE

The Contractor shall receive, handle, and process in full accordance with this Agreement all the Processable Waste that the Agency delivers or causes to be delivered, excluding the waste it may refuse in accordance with Article 3.10.1.

To the extent permitted by the Agency's New York State Department of Environmental Conservation Permit issued pursuant to 6NYCRR Part 360, the Contractor may transfer Processable Waste from the Facility at its sole cost and expense without the Agency's approval, provided such waste cannot be processed at the Facility. Any Processable Waste transferred by

the Contractor shall be weighed at the Facility scale before leaving the Site and shall be considered Bypass Waste. Such transferred Processable Waste shall also be considered Wrongfully Refused Waste, except if transferred due to an Uncontrollable Circumstance.

Any Processable Waste transferred by the Contractor pursuant to this section shall be disposed of at properly permitted waste-to-energy facilities or Landfills that are approved by the Agency, which approval shall not be unreasonably withheld.

3.9 UNACCEPTABLE WASTE, BYPASS WASTE DISPOSAL AND PROCESS RESIDUE DISPOSAL

The Contractor shall be responsible for handling all Processable Waste, Bypass Waste, Unacceptable Waste and Process Residue within the Facility, all consistent with the DEC Operations and Maintenance Manual for the Facility in Appendix F and as revised from time to time. Without limiting its liability therefor, the Contractor shall also use reasonable efforts to minimize the potential for Bypass Waste, and shall mitigate its effects.

The Contractor, directly or through its Agency-approved agent, which approval shall not be unreasonably withheld, shall provide and pay for the transportation and disposal of all Unacceptable Waste that has not been returned to the delivering hauler, provided, however, for each Contract Year the Agency shall reimburse the Contractor, subject to Cost Substantiation, any amount paid by the Contractor during that Contract Year for the transportation and disposal of Unacceptable Waste that is above \$10,000 multiplied by the Adjustment Factor. Such payment shall be made as part of the annual reconciliation as provided for in Article 6.5, hereto.

The Contractor, directly or through its Agency-approved agent, which approval shall not be unreasonably withheld, shall provide and pay for the transportation and disposal of all Bypass Waste due to Contractor fault.

The Agency, directly or through its designated agent, shall provide and pay for the transportation and disposal of all Process Residue, a portion of which shall be reimbursed monthly by the Contractor to the Agency in accordance with Article 6.3.1(A). The Agency shall advise the Contractor of the disposal site, or sites used by the Agency, and any changes to the disposal site or sites. The Agency shall not designate a disposal site from which a release or threat of a release is occurring, as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., as replaced or amended and the regulations promulgated thereunder, or which is on the National

Priorities List, CERCLIS or similar list established or maintained by any federal or state agency or, to the knowledge of the Agency, is subject to investigation for inclusion on such list.

The Agency shall provide for or pay for the disposal of all Bypass Waste due to an Uncontrollable Circumstance.

The Contractor guarantees that Process Residue from the Facility shall meet all Agency applicable Permit standards, and all applicable laws, rules and regulations.

Should any Hazardous Waste be delivered to the Facility and not be removed by the delivering hauler, the Contractor shall, in the most expeditious manner possible in the circumstances cause such Hazardous Waste to be cleaned up and handled in accordance with applicable law.

All Hazardous Waste shall be handled as provided in the DEC Operations and Maintenance Manual at Appendix F and as revised from time to time. The Agency reserves its right to pursue any responsible party for the Agency's expense in transporting and disposing of Hazardous Waste.

In the event that the Agency requires services for the disposal or processing of Processable Waste because the Facility is partially or totally shutdown the Contractor will provide to the extent capacity is available such disposal or processing services at negotiated prices at one of the designated disposal sites identified in Appendix N.

3.10 REFUSAL OF DELIVERIES

3.10.1 Extent of Refusal Rights

The Contractor may refuse to accept delivery of the following and shall order the delivering party to remove:

- (a) Any Unacceptable Waste;
- (b) Any Processable Waste delivered at times other than the times provided in Articles 3.3 and 3.4, provided however that any trucks that were in line to the Facility prior to the end of receiving hours in accordance with Article 3.3 shall be considered delivered during normal receiving hours;
- (c) Any Processable Waste delivered in any Week in excess of 3,500 Tons, unless the Facility can accommodate the receipt of such deliveries;
- (d) Any Processable Waste delivered in excess of 17,000 Tons in a five (5) Week period, unless the Facility can accommodate the receipt of such deliveries;

- (e) Any Processable Waste that the Contractor is unable to accept or process due to an Uncontrollable Circumstance;
- (f) Any Processable Waste delivered in excess of the Guaranteed Facility Throughput in any Contract Year, provided that the processing of such excess waste would cause a violation of an Environmental Guarantee or Performance Guarantee; or
- (g) Any Processable Waste in excess of any waste acceptance limit in the Agency's New York State Department of Environmental Conservation Permit issued pursuant to 6NYCRR Part 360.

Once Unacceptable Waste is placed in the charging chute of the O'Connor Combustion System there shall be no claim against the Agency for any damages including damage to the Facility caused by such processing.

3.10.2 EFFECT OF REFUSAL RIGHTS

Any Unacceptable Waste, except as otherwise provided in Article 6.5, or Wrongfully Refused Waste shall not be included in the computation of the Service Fee and the Supplemental Electrical Compensation.

3.10.3 WRONGFUL REFUSAL

In the event the Contractor refuses to accept any Processable Waste, the burden of proof that such Processable Waste was not Wrongfully Refused Waste shall be on the Contractor. If the Contractor wrongfully refuses to accept any Processable Waste, it shall make a Non-Performance Payment to the Agency for such Wrongfully Refused Waste, pursuant to Article 6.3.3(a) and 6.5(a)(i).

3.11 GUARANTEED DELIVERIES OF PROCESSABLE WASTE

The Agency shall deliver or will cause to be delivered to the Facility a minimum of 140,000 Tons of Processable Waste per Contract Year.

The 140,000 Tons amount above shall be reduced ton for ton in a Contract Year for each Ton of Wrongfully Refused Waste, and for each Ton of waste that could not be accepted or processed at the Facility or delivered to the Facility due to an Uncontrollable Circumstance, except for Agency fault, in such Contract Year.

The net tonnage amount that results from the preceding two paragraphs is the

“Guaranteed Annual Tonnage”.

3.12 SUPPLEMENTAL PROCESSABLE WASTE DELIVERY

The Contractor shall not accept Processable Waste from any source other than the Agency without the prior written consent of the Agency. Contractor supplied Supplemental Processable Waste may be authorized by the Agency on such prices and other terms as it may in its discretion determine, and unless otherwise agreed on a case by case basis Contractor supplied Supplemental Processable Waste shall reduce on a ton for ton basis the Guaranteed Annual Tonnage.

Such terms and conditions may include, without limitation, any payments made by the Contractor to the Agency for the delivery of such Supplemental Processable Waste, any payments made by the Agency to the Contractor for the acceptance and processing of such Supplemental Processable Waste, whether or not the Supplemental Processable Waste is treated as waste delivered by or on behalf of the Agency for the purpose of the Agency meeting its Guaranteed Annual Tonnage obligations, and how Process Residue and Bypassed Waste disposal costs will be shared.

3.13 SPECIAL WASTE

The handling and processing of any Special Waste at the Facility shall be in accordance with applicable laws, rules, regulations, this Agreement and its Appendices and the following:

- (a) No Special Waste may be Hazardous Waste.
- (b) All Special Waste deliveries shall require the Agency’s advance approval.
- (c) Subject to Agency approval, the Contractor agrees to accept and combust the following types of Special Waste:
 - i. Consumer-packaged products intended for human or animal use and/or application but not consumption.
 - ii. Materials generated in the manufacture of items in the categories above that are or contain commercially useless (i.e., expired, rejected or spent) or finished products not yet formed or packaged for commercial distribution.
 - iii. Packaging materials, natural and synthetic fibers, clothing, floor coverings of all types, fabric remnants and empty containers (including

but not limited to items such as aprons, gloves, floor sweepings and paints).

- iv. Waste materials that contain oil from routine clean-up of industrial or commercial establishments and machinery or the oil-contaminated materials used in the clean-up of spills of used or virgin petroleum products in transit or storage, and which are liquid-free (including but not limited to items such as rags, lints and adsorbent materials).
- v. Confidential documents (including but not limited to business records, lottery tickets, event tickets and microfilm).
- vi. Contraband and expired pharmaceuticals that may be disposed of at the request of local, state, or federal governmental agencies.
- vii. Treated regulated medical waste.
- viii. Waste materials originating at airports, seaports or other locations and regulated for disposal by the United States Department of Agriculture.

The Contractor's additional compensation for each ton of Special Waste delivered by or on behalf of the Agency shall be ten percent (10%) of the adjusted Base Service Fee, (i.e, $BSF \times AF \times \text{number of tons of Special Waste} \times 0.10$), which amount shall be paid as a Pass Through Cost. Notwithstanding the foregoing, the Contractor shall not receive any compensation for contraband or expired pharmaceuticals delivered by or on behalf of the Agency for which the Agency has not received a tip fee.

3.14 SOURCE SEPARATION

Nothing in this Agreement shall restrict the rights of the inhabitants of the County to practice source separation for the recovery and recycling of any material, or the right of the Agency to sponsor, encourage or require source separation. No increase in the Service Fee and Supplemental Electrical Compensation shall be made as a consequence of any source separation program or the implementation of the New York State Returnable Container Act or similar measures imposing restrictions on the disposal of containers or recyclable materials, provided that the Agency continues to meet the Guaranteed Annual Tonnage.

3.15 WASTE STREAM SCREENING

The Contractor shall permit no waste to be tipped directly into the Facility pit. The Contractor shall inspect each load of waste upon delivery for Unacceptable Waste, and all Unacceptable Waste, where possible, shall be returned by the Contractor to the delivering hauler. The Contractor shall keep records of all Persons (e.g., the haulers and specific drivers) that delivered Unacceptable Waste to the Facility, provide the Agency with these records on a monthly basis, and reasonably assist the Agency in creating a deterrent to such Persons who repeatedly deliver Unacceptable Waste to the Facility.

The Agency retains the right to establish and revise rules and regulations to prevent the delivery and/or processing of Unacceptable Waste at the Facility. The Contractor shall be bound by the rules and regulations of the Agency with respect to waste stream screening; provided that to the extent that compliance results in increased incremental cost to the Contractor, such cost, subject to Cost Substantiation, shall be reimbursed to the Contractor as a Pass Through Cost. In addition, the Agency shall have the independent right to conduct a detailed inspection at random of the cargos of incoming vehicles. The inspections and the rules and regulations noted above shall not unreasonably interfere with the operation of the Facility.

3.16 WASTE WATER DISPOSAL

Any waste water discharge from the Facility shall be pretreated by the Contractor to the degree necessary to comply with the regulations of the Arlington Sewer District, Poughkeepsie, New York, as they may be amended.

3.17 PROTECTION OF PERSONS AND PROPERTY

In any emergency affecting the safety of persons or property at the Facility or Site, the Contractor shall act in such a manner as it reasonably believes will minimize threatened damage, injury or loss.

3.18 LIENS AND ENCUMBRANCES

The Contractor shall keep the Site and the Facility free from any and all liens and encumbrances arising out of or in connection with acts, omissions or debts of the Contractor or any of its subcontractors or suppliers.

ARTICLE FOUR
ENERGY AND MATERIAL RECOVERY

4.1 SALE OF ENERGY

The Agency is a party to a Power Sales Agreement that is scheduled to expire on January 15, 2019, a conformed copy of which is annexed hereto as Appendix A. The Agency will advise the Contractor of the termination or non-renewal of the current Power Sales Agreement within 30 days of receipt or transmission of such notice. In addition, the Contractor shall assist the Agency as reasonably requested in the negotiation of a successor or amended Power Sales Agreement or the sale of electricity to the grid. The Parties will collaborate to maximize the revenues received under the Power Sales Agreement.

4.2 RECOVERY OF OTHER MATERIALS AND BY-PRODUCTS

The Contractor may propose to recover non-ferrous materials and other marketable materials from Processable Waste or Process Residue. Such recovery shall only commence after the execution of a mutually agreeable contract amendment. The Contractor shall not remove combustibles or non-ferrous recoverable materials from the Processable Waste stream or the Process Residue without the prior written approval of the Agency. This provision shall apply as to non-ferrous recoverable materials even if the recovery of materials from the Process Residue is done at a location other than the Facility.

4.3 MARKETING OF RECOVERED FERROUS MATERIALS

The Contractor shall, if requested by the Agency, use reasonable commercial efforts to assist the Agency in the marketing of recovered ferrous materials. The Contractor shall not be reimbursed for any such marketing expenses but shall be paid for its efforts in accordance with Article 6.3.1.

Notwithstanding which Party is marketing recovered ferrous materials, the Contractor shall be responsible for the cost of their recovery, on site handling, loading, and on site staging of containers for transport from the Facility.

4.4 MATERIALS RECOVERY

All materials recovery systems shall be operated in a manner consistent with prudent industry practice and good engineering practice for operations of these types systems with emphasis on safety, cleanliness of product, minimization of nuisances and maximization of recovery.

ARTICLE FIVE **SPARE PARTS AND COMMODITY INVENTORY**

5.1 INITIAL SPARE PARTS AND COMMODITY INVENTORY

(a) Within ten (10) days after the Service Commencement Date, the Contractor shall prepare and deliver to the Agency a list of the spare parts, tools, and commodities at the Facility that are owned by the Agency on the Service Commencement Date (the “Initial Agency Inventory”) and the Contractor’s best estimate of the fair market value, including the basis used to determine the fair market value, of each item in the Initial Agency Inventory. The Contractor shall identify those items in the Initial Agency Inventory that it wishes to purchase from the Agency at their fair market value. All items remaining in the Initial Agency Inventory, including any obsolete or inoperable items, or items that the Contractor cannot or does not want to use during the Term shall constitute the “Final Agency Inventory.”

(b) Items in the Final Agency Inventory shall be owned by the Agency and properly stored by the Contractor at the Facility, at no cost to the Agency. Such items shall not be removed from the Facility or used by the Contractor. At any time during the Term, the Agency may remove, sell, or dispose of any or all items in the Final Agency Inventory. The Agency shall bear the cost of removal and disposal and keep any revenues received from the sale of such items removed from the Final Agency Inventory.

(c) If the Agency disagrees with the completeness of the Initial Agency Inventory, then the Agency shall notify the Contractor of any items of spare parts, tools, or commodities that in the Agency’s reasonable opinion were omitted from the Initial Agency Inventory or should not be in the Initial Agency Inventory (e.g., rolling stock that are part of the Facility). If within twenty (20) days after the Agency notifies the Contractor that it disagrees with the Initial Agency Inventory the Agency and the Contractor are unable to agree to the items in Initial

Agency Inventory, then either Party may submit the dispute to the Independent Engineer for resolution in accordance with Article 11.15, hereto.

(d) If the Agency disagrees with the fair market value assigned to any item in the Initial Agency Inventory that the Contractor wishes to purchase, then the Agency shall notify the Contractor of any disagreement with the fair market value assigned to any such items in the Initial Agency Inventory and the reason therefor. If within twenty (20) days after the Agency notifies the Contractor that it disagrees with the fair market value assigned to any such item in the Initial Agency Inventory the Agency and the Contractor are unable to agree to the fair market value assigned to any such item in the Initial Agency Inventory then such item shall be included in the Final Agency Inventory.

(e) Within thirty (30) days from the completion of the Final Agency Inventory, the Contractor shall pay the Agency the aggregate of the fair market values for all items in the Initial Agency Inventory that are not included in the Final Agency Inventory.

5.2 MAINTENANCE AND DELIVERY OF SPARE PARTS AND COMMODITY INVENTORY

(a) During the Term the Contractor shall maintain a complete list of the spare parts, tools, and commodities stored at the Facility (the “Spare Parts and Commodity Inventory”). All items in the Final Agency Inventory and any obsolete or inoperable items shall be excluded from the Spare Parts and Commodity Inventory.

(b) At the end of each Contract Year, the Contractor shall provide the Agency a complete copy of the then current Spare Parts and Commodity Inventory taking into account all items added to and removed from the Spare Parts and Commodity Inventory. The Spare Parts and Commodity Inventory shall be provided by the Contractor to the Agency in a Microsoft Excel or other mutually agreed-to computer readable form.

(c) Upon reasonable notice to the Contractor, the Agency shall have the right, at its own cost and expense, but not the obligation, to audit the Spare Parts and Commodity Inventory for completeness and accuracy, including a physical inspection of the spare parts, tools, and commodity inventory stored at the Facility.

5.3 FINAL SPARE PARTS AND COMMODITY INVENTORY AND AGENCY'S PURCHASE OPTION

(a) Within five (5) days after the end of each month during the last Contract Year of the Term, the Contractor shall provide the Agency a copy of the then current Spare Parts and Commodity Inventory, determined in accordance with Article 5.2 above, along with the fair market value of each item in the Spare Parts and Commodity Inventory and the basis used to determine the fair market values. Within five (5) days after the end of the Term, the Contractor shall provide the Agency the Spare Parts and Commodity Inventory, determined in accordance with Article 5.2 above, along with the fair market values of each item in the Spare Parts and Commodity Inventory and the basis used to determine the fair market values that were existing on the last day of the Term (i.e., the "Final Spare Parts and Commodity Inventory").

(b) During the last Contract Year the Agency shall, as soon as practical, indicate to the Contractor the specific items in the Spare Parts and Commodity Inventory it wants the Contractor to leave at the Facility upon termination or expiration of the Agreement, including the fair market value, or other agreed to price, of those items as specified in the Spare Parts and Commodity Inventory. Except as may be needed for the proper operation and maintenance of the Facility, the Contractor shall maintain those items identified by the Agency in the Spare Parts and Commodity Inventory at the Facility.

(c) The Agency shall have the right to purchase from the Contractor any, or all, items in the Final Spare Parts and Commodity Inventory for their fair market price, or other agreed to price.

(d) Within five (5) days after receipt of the Final Spare Parts and Commodity Inventory, the Agency, in its sole discretion, shall provide the Contractor a final list of items in the Final Spare Parts and Commodity Inventory the Agency wants to purchase from the Contractor (the "Agency Spare Parts Inventory"). The "Spare Parts Purchase Price" shall be the aggregate of the fair market values, or other agreed to prices, of each item in the Agency Spare Parts Inventory.

(e) Within seven (7) days from the date on which the Agency Spare Parts Inventory is determined, the Contractor shall remove from the Facility all the items in the Final Spare Parts and Commodities Inventory that are not included in the Agency Spare Parts Inventory. The Contractor shall not remove any items in the Agency Spare Parts Inventory.

(f) The Agency shall pay the Contractor the Spare Parts Purchase Price within thirty (30) days after the determination of the Agency Spare Parts Inventory.

ARTICLE SIX **PAYMENTS**

6.1 BASIC FINANCIAL RESPONSIBILITIES OF THE PARTIES

The Agency shall pay the Contractor the Service Fee and Supplemental Electrical Compensation under Article 6.3, any property taxes or assessments directly related to ownership of the Facility, and any other amounts provided herein.

Except as specifically provided for elsewhere in this Agreement, the Contractor shall pay all costs and expenses for the management, administration, operation, repair and replacement, maintenance, marketing and subcontractor costs of the Facility, including but not limited to the following:

- (a) The cost of all insurance, including insurance premiums and deductibles, which insurance shall be obtained by the Contractor, as required in Article 8.2;
- (b) Charges, if any, required to be paid by the Contractor pursuant to Appendix A;
- (c) Fees for maintaining the Letter of Credit and Step-Up Letter of Credit;
- (d) Taxes including state and local sales taxes arising out of the Contractor's performance of this Agreement, provided that the Agency shall cooperate with the Contractor in submitting applications for tax exemption of particular purchases or classes of purchases;
- (e) All utility charges including but not limited to natural gas, gasoline, liquid petroleum gases, oil, water, sewer, purchased power and any electrical demand charges used in the operation of the Facility or performance of this Agreement;
- (f) The costs of all consumable chemicals including lime, activated carbon and any and all other chemicals and materials used in Contractor's operation of the Facility and performance of this Agreement;

- (g) All management, administration, operating, repair and replacement and maintenance labor costs;
- (h) All costs of all machinery, equipment and replacement parts;
- (i) All repair and replacement costs;
- (j) All supply costs;
- (k) All subcontractor costs;
- (l) All marketing costs;
- (m) All required environmental testing costs; and
- (n) All costs associated with repair or replacement of equipment required due to obsolescence, the bankruptcy of the manufacturer, or shortage of replacement parts.

6.2 RECOVERED MATERIAL AND ENERGY RECOVERY AGREEMENTS

6.2.1 Recovered Material Revenue Payment

Payments from the purchaser under any Recovered Material sales agreement(s) will be made to the Agency by the purchaser, and the Agency shall thereafter make payment to the Contractor pursuant to Article 6.3 below. All business and administrative communications relating to the sale of Recovered Materials shall be between the purchaser and the Agency. However, purchaser and Contractor shall also be in regular communication with the Agency and the purchaser of Recovered Materials regarding Facility pick-up and coordination issues. The Agency shall be party to or copied on those communications.

6.2.2 Energy Recovery Revenue Payment

Payments from the purchaser under the Power Sales Agreement(s) will be made to the Agency by the purchaser, and the Agency shall thereafter make payment to the Contractor pursuant to Article 6.3 below. All business and administrative communications relating to the sale of energy shall be between the purchaser and the Agency. However, purchaser and Contractor shall also be in regular communication regarding Facility operational issues. The Agency shall be party to or copied on those communications.

The Contractor shall be reimbursed, subject to Cost Substantiation, any increased cost, including the cost of any required Capital Modifications to the Facility, resulting from a new Power Sales Agreement or an amendment to the current Power Sales Agreement at Appendix A.

6.3 COMPENSATION CALCULATION AND NON-PERFORMANCE PAYMENTS

The compensation due the Contractor from the Agency for the Contractor's performance under this Agreement shall be the sum of the Service Fee and the Supplemental Electrical Compensation, as calculated pursuant to Articles 6.3.1(A) and 6.3.1(B), respectively, which shall be paid following the submittal and Agency approval of supporting documentation.

The Service Fee and Supplemental Electrical Compensation shall be calculated on a monthly basis in arrears.

The Service Fee and Supplemental Electrical Compensation, including Non Performance Payments, shall be calculated according to this Article 6. Examples of some of these calculations are included in Appendix M. The Service Fee and Supplemental Electrical Compensation set forth in this Article 6 and the example calculations set forth in Appendix M shall, to the extent possible, be interpreted in a manner that reconciles any differences or ambiguities, but if there are any irreconcilable inconsistencies between this Article 6 and Appendix M, the provisions of this Article 6 shall govern. To the extent that the examples in Appendix M contain rounding conventions that are not directly addressed in this Article 6, the convention in the appropriate example in Appendix M shall govern.

6.3.1(A) Service Fee Calculation

The monthly Service Fee (SF) shall be computed as follows:

$$\text{SF} = (\text{BSF} \times \text{AF} \times \text{NAT}) \pm (0.25 \times \text{MR}) - \text{RF}^* + \text{PTC} - \text{NPP}^{**}$$

*If $\text{RT} \leq (0.32 \times \text{NAT})$ then $\text{RF} = (0.5 \times \text{RC})$

If $\text{RT} > (0.32 \times \text{NAT})$ then $\text{RF} = [0.5 \times (\text{RC}/\text{RT}) \times 0.32 \times \text{NAT}] + \{(\text{RC}/\text{RT}) \times [(\text{RT} - (0.32 \times \text{NAT}))]\}$

** [NPP to be computed periodically pursuant to Article 6.3.3]

The Service Fee (SF) payable monthly to the Contractor shall be computed using the following definitions:

- (a) **Adjustment Factor (AF):** The cost of living adjustment provided for in Article 6.3.2 below which shall be applied annually on and after January 1, 2015.
- (b) **Base Service Fee (BSF):** \$68.25 per Ton.
- (c) **Materials Revenues (MR):** The Agency's Net Recovered Materials Revenue

including the cost to dispose of any recovered ferrous material that cannot be sold, or is sold at a net loss to the Agency, whether beneficially used or not.

- (d) **Net Agency Tons (NAT):** Total Tons of Solid Waste (including Special Waste, except Special Waste which is contraband or expired pharmaceuticals for which the Agency has not received a tip fee) delivered by, or on behalf of the Agency that is weighed in over the Facility scale less all Bypass Waste and Unacceptable Waste removed from the Facility.
- (e) **Non-Performance Payment (NPP):** The amount owed to the Agency pursuant to Article 6.3.3 below.
- (f) **Pass Through Costs (PTC):** Those Cost Substantiated costs that are specifically provided by this Agreement to be borne by the Agency and paid to the Contractor;
- (g) **Residue Cost (RC):** The sum of the total costs for the transportation and disposal or beneficial reuse of Process Residue.
- (h) **Residue Fee (RF):** Payment due by Contractor for its share of Residue Cost (i.e., RC).
- (i) **Residue Tons (RT):** Total wet Tons of Process Residue.

6.3.1(B) Supplemental Electrical Compensation

The monthly Supplemental Electrical Compensation (SEC) shall be computed as follows:

$$\text{SEC} = (\text{TGM} \times \text{AF} \times \text{NAT}) + [0.25 \times (\text{UR} - \text{UE})]$$

The Supplemental Electrical Compensation (SEC) payable to the Contractor shall be computed using the following definitions: Terms not defined below that are used in this Article have the same meaning as defined in Article 6.3.1(A).

(a) **Turbine/Generator Operations and Maintenance Fee (TGM).**

\$0.83 per Ton. This fee is to be used for the sole purpose of maintaining and improving the operations of the Turbine/Generator. At the option of the Agency, at any time, the Agency may request Cost Substantiation for the purpose of determining that the funds paid have been utilized or escrowed in a dedicated account for the above stated purpose.

(b) **Utility Expenses (UE):**

All expenses incurred by the Agency in connection with the sale of energy products including amounts paid to the Contractor as a Pass Through Cost, fixed fee, or other agreed-to additional compensation and the costs billed by the Utility to the Agency pursuant to a Power Sales Agreement to accommodate the reimbursable expenses, fees or penalties due to the Utility for purchasing the power generated by the Facility. Costs of this type include, among others, the switchyard maintenance fee which is separately billed.

(c) **Utility Revenue (UR):**

Total revenue received by the Agency for the energy related products generated by the Facility in a one month period of time, including, capacity payments, renewable energy credits and other revenue.

6.3.2 Adjustment Factor

The Base Service Fee, Turbine/Generator Operations and Maintenance Fee and any other fees or values subject to annual adjustment pursuant to the Agreement shall be adjusted as of January 1, 2015, and thereafter on the first day of January and in each succeeding year of this Agreement by the adjustment factor (the “Adjustment Factor”), computed as follows:

$$AF = CPI-2/CPI-1$$

Where CPI-1 is the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C (Series Id: CUURX100SA0LE) as published monthly by the United States Department of Labor for June 2014, and CPI-2 is the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C (Series Id: CUURX100SA0LE) as published by the United States Department of Labor for November of the year prior to which the adjustment is to be applied. For example, for January 1, 2015, CPI-2 is the value of the index for November 2014.

6.3.3 Non-Performance Payments

Non-Performance Payments (NPP) are the sum of the amounts calculated pursuant to paragraphs (a), (b), (c) and (d) of this Article 6.3.3. As applicable, the calculation of the Non-

Performance Payment during any period shall be based on average prices per Ton and average costs per Ton for the period. These calculations may include, without limitation, the following where (i) the average tip fee per Ton is equal to the total tip fee revenues received by the Agency during the period divided by the Net Agency Tons for the period; (ii) the average electricity sales revenues per Ton is equal to the sum of the Utility Revenues received by the Agency during the period divided by the Total Processed Tonnage for the period; (iii) the average net Recovered Materials sales revenues per Ton is equal to the sum of the Net Recovered Material Revenues received by the Agency during the period divided by the Total Processed Tonnage for the period; and (iv) the average Process Residue disposal transportation and disposal cost per Ton during the period is equal to the sum of the Residue Cost during the period divided by the Total Processed Tonnage for the period.

(a) **Wrongfully Refused Waste**. The Non-Performance Payment for Wrongfully Refused Waste is equal to the greater of: (i) zero (0); or (ii) difference between (x), where (x) is the sum of (1), (2), (3), and (4) below; and (y), where (y) is the sum of the additional Service Fee and additional Supplemental Electrical Compensation that the Contractor would have received and the Process Residue haul and disposal costs the Agency would have incurred if the Wrongfully Refused Waste was accepted and processed by the Contractor.

1. Any additional reasonable costs or expenses incurred by the Agency resulting from the failure of the Contractor to accept and process the Wrongfully Refused Waste, including, any incremental costs, damages, fees, or reimbursements paid by the Agency to haulers or incurred directly by the Agency to haul and dispose of waste elsewhere and any damages, incremental fees or other charges incurred by the Agency for failure to meet any obligation under the Power Sales Agreement or a Recovered Materials agreement;
2. All lost tip fee revenues equal to the number of Tons of Wrongfully Refused Waste times the average tip fee the Agency charged its customers during the period;

3. One hundred percent (100%) of the electricity sales revenues the Agency would have received had the Wrongfully Refused Waste been accepted and processed by the Contractor; and
4. One hundred percent (100%) of the Net Recovered Material Revenues the Agency would have received had the Wrongfully Refused Waste been accepted and processed by the Contractor.
5. The calculation of the Non-Performance Payment for Wrongfully Refused Waste shall be based on (i) the assumed average kilowatt hours of electricity sold per Ton of Wrongfully Refused Waste during the applicable period, being the greater of the actual kilowatt hours of electricity sold during the period divided by the Total Processed Tonnage for the period, or the Net Electrical Generation Guarantee of 307 kWh per Ton; (ii) the assumed average ferrous metal sold per Ton of Wrongfully Refused Waste during the applicable period being equal to the greater of the actual Tons of ferrous metal recovered during the period divided by the Total Processed Tonnage for the period, or 0.04 ; and (iii) the assumed wet Tons of Process Residue per Ton of Wrongfully Refused Waste shall be the lesser of the actual wet Tons of Process Residue disposed of during the period divided by the Total Processed Tonnage for the period, or 0.32 Tons. For clarity, this means that the Non-Performance Payment calculation for Wrongfully Refused Waste is independent of the Tons of the waste on the tipping floor or in the pit of the Facility at the beginning and end of the period.
6. The Non-Performance Payment for Wrongfully Refused Waste shall be assessed monthly and is subject to annual reconciliation pursuant to Article 6.5, hereto.

(b) **Failure of the Contractor to Meet Net Electrical Generation Guarantee.**

If the Total Processed Tonnage for the period is zero (0) Tons, then the Non-Performance Payment for the period for the failure to meet the Net Electrical

Generation Guarantee shall be equal to zero (0). If the actual net kilowatt hours of electricity sold during the period divided by the Total Processed Tonnage for the period is greater than or equal to the Net Electrical Generation Guarantee, then there is no Non-Performance Payment for the period for the failure to meet the Net Electrical Generation Guarantee. If the actual net kilowatt hours of electricity sold during the period divided by the Total Processed Tonnage for the period is less than the Net Electrical Generation Guarantee, then the Non-Performance Payment for failing to meet the Net Electrical Generation Guarantee in the period is equal to the sum of (1) and (2) below:

1. Any additional reasonable costs or expenses incurred by the Agency resulting from the failure of the Contractor to meet its Net Electrical Generation Guarantee, including any damages, incremental fees or other charges incurred by the Agency for failure to meet an obligation under the Power Sales Agreement resulting from the failure of the Contractor to meet its Net Electrical Generation Guarantee;
2. The Agency's share of the lost electricity sales revenues that is equal to: (i) 0.75 times; (ii) the Total Processed Tonnage (i.e., TPT) for the period; times (iii) the difference between (x) the Net Electrical Generation Guarantee and (y) the actual net kilowatts of electricity sold during the period divided by the Total Processed Tonnage for the period; times (iv) the average price per kilowatt hour of electricity sold during the period, i.e., $0.75 \times \text{TPT} \times [\text{Net Electrical Generation Guarantee} - (\text{actual net kilowatts of electricity sold during the period} / \text{TPT})] \times (\text{the average price per kilowatt hour of electricity sold during the period})$.
3. The Non-Performance Payment for the failure to meet the Net Electrical Generation Guarantee, if any, shall be determined quarterly and included in the calculation of the Service Fee for the months of March, June, September and December of each year, and shall be subject to annual reconciliation pursuant to Article 6.5, hereto.

The calculation of the average kilowatt hours per Ton generated during a calendar quarter or Contract Year as appropriate shall be adjusted pursuant to Exhibit A in Appendix K for a period when an adjustment is allowed for a major turbine outage.

(c) **Failure of the Contractor to Meet the Ferrous Metals Recovery Efficiency**

Guarantee. If the Total Processed Tonnage for the period is zero (0) Tons, then the Non-Performance Payment for the period for the failure to meet the Ferrous Metals Recovery Efficiency Guarantee shall be equal to zero (0). If the total Tons of ferrous metals recovered by the Contractor during the period divided by the Total Processed Tonnage for the period is greater than or equal to the Ferrous Metals Recovery Efficiency Guarantee, then there is no Non-Performance Payment for the period for the failure to meet the Ferrous Metals Recovery Efficiency Guarantee. If the total Tons of ferrous metals recovered by the Contractor during the period divided by the Total Processed Tonnage for the period is less than the Ferrous Metals Recovery Efficiency Guarantee, then the Non-Performance Payment for failing to meet the Ferrous Metals Recovery Efficiency Guarantee in the period is equal to the sum of (1) and (2) below:

1. Any additional reasonable costs or expenses incurred by the Agency resulting from the failure of the Contractor to meet its Ferrous Metals Recovery Efficiency Guarantee, including any damages, incremental fees or other charges incurred by the Agency for failure to meet an obligation under any ferrous metal sales agreement;
2. The Agency share of the lost ferrous metal sales revenues that is equal to: (i) 0.75 times; (ii) the Total Processed Tonnage (i.e., TPT) for the period; times (iii) the difference between (x) the Ferrous Metals Recovery Efficiency Guarantee and (y) the actual Tons of ferrous metals recovered divided by the Total Processed Tonnage during the period; times (iv) the average price per Ton of the ferrous metal sold during the period, i.e., $0.75 \times \text{TPT} \times [\text{Ferrous}$

Metals Recovery Efficiency Guarantee – (actual Tons of ferrous metals recovered /TPT)] x (the average price per Ton of the ferrous metal sold during the period)

3. The Non-Performance Payment for the failure to meet the Ferrous Metals Recovery Efficiency Guarantee, if any, shall be determined quarterly and included in the calculation of the Service Fee for the months of March, June, September and December of each year, and shall be subject to annual reconciliation pursuant to Article 6.5, hereto.

- (d) **Failure of the Contractor to Meet Environmental Guarantees.** In the event the Contractor fails to meet its Environmental Guarantees, the Contractor shall pay the Agency the sum of (a) all costs, fines, penalties, fees and expenses resulting therefrom, and (b) \$1,000 per day for each day following a receipt of a citation or warning from any environmental regulatory agency with jurisdiction of a Permit violation until the Facility is brought back into compliance with such Permit.

6.4 PAYMENTS TO CONTRACTOR

(a) Any invoice submitted by the Contractor for compensation pursuant to Article 6.3 that is received by the Agency by the 10th of the month, excluding any invoice amounts for Contractor's share of energy and Recovered Materials revenues, will be presented to the Agency Board at that month's Agency Board meeting for approval and payment. Any invoice submitted by the Contractor for compensation pursuant to Article 6.3 that is received by the Agency after the 10th of the month, excluding any invoice amounts for Contractor's share of energy and Recovered Materials revenues, will be presented at the following month's Agency Board meeting for approval and payment. Payment will be made within the earlier of (i) seven (7) days after approval by the Agency Board, or (ii) forty five (45) days after receipt of such invoices by the Agency unless and to the extent contested by the Agency.

(b) Any energy or Recovered Materials revenues received by the Agency by the 10th of a month in which the Contractor has a share will be submitted to the Agency Board at that month's Agency Board meeting for approval and payment in that given month. Any revenues

received by the Agency after the 10th of a month in which the Contractor has a share will be submitted to the Agency Board at the following month's Agency Board meeting for approval and payment. Payment will be made within the earlier of (i) seven (7) days after approval by the Agency Board, or (ii) forty five (45) days after receipt of such bill by the Agency unless and to the extent contested by the Agency.

(c) If any monthly Service Fee or Supplemental Electrical Compensation is less than zero (i.e., credit due the Agency), then such amount shall be carried forward to the next month. If requested by the Agency in writing that such amount due the Agency be paid directly to the Agency rather than carried forward to future months, the Contractor shall pay the Agency such amount within thirty (30) days of receipt of such written notice.

6.5 ANNUAL RECONCILIATION AND ADJUSTMENT

General: Within 120 days following the end of each Contract Year, all records and weight tickets shall be reconciled by a firm of independent public accountants selected and paid for by the Agency. Such process shall reconcile all payments by the Agency and Contractor under this Agreement. Any balance shown to be due to either Party, including Non-Performance Payments due the Agency or Non-Performance Payment reimbursements due the Contractor, Agency Tonnage Shortfall and UCC Tonnage Shortfall payments due the Contractor; or Agency Excess Tons Service Fee Credit due the Agency shall be paid within forty-five (45) days after delivery of the reconciliation. Each Party shall pay its respective costs of the annual reconciliation. Both the Agency and the Contractor shall receive a copy of the reconciliation report.

(a) **Non-Performance Payments:** At the end of each Contract Year the Agency as part of the annual reconciliation shall calculate the annual Non-Performance Payments to determine if the Contractor is entitled to a rebate of some, or all, of the Non-Performance Payments made during the Contract Year, or whether the Contractor will pay any additional Non-Performance Payments to the Agency. The Non-Performance Payment rebates, or payments, are to be calculated as follows:

- i. **Wrongfully Refused Waste.** If the Net Agency Tons for the Contract Year are greater than or equal to the Guaranteed Facility Throughput, then the Non-

Performance Payment for Wrongfully Refused Waste for the Contract Year is equal to zero (0) and the Agency will reimburse the Contractor all of the monthly Non-Performance Payments for Wrongfully Refused Waste that were made by the Contractor pursuant to Article 6.3.3(a) during the Contract Year.

ii. **Failure of the Contractor to Meet Net Electrical Generation Guarantee.**

- (1) If the quotient of the total kilowatt hours of electricity sold during the Contract Year divided by Total Processed Tonnage for the Contract Year is greater than or equal to the Net Electrical Generation Guarantee, then the Non-Performance Payment for failure of the Contractor to meet the Net Electrical Generation Guarantee for the Contract Year is equal to zero (0) and the Agency will reimburse the Contractor all of the quarterly Non-Performance Payments for failure of the Contractor to meet the Net Electrical Generation Guarantee that were made by the Contractor pursuant to Article 6.3.3(b) during the Contract Year.
- (2) If the quotient of the total kilowatt hours of electricity sold during the Contract Year divided by Total Processed Tonnage for the Contract Year is less than the Net Electrical Generation Guarantee, then the Agency shall calculate the Non-Performance Payment for failure of the Contractor to meet the Net Electrical Generation Guarantee using the method described in Article 6.3.3(b) and annual average performance, cost, and revenue values.
- (3) If the Non-Performance Payment for the failure of the Contractor to meet the Net Electrical Generation Guarantee calculated pursuant to paragraph (2) above is less than the sum of the quarterly Non-Performance Payments made by the Contractor during the Contract Year for the failure of the Contractor to meet the Net Electrical Generation Guarantee, then the Agency shall reimburse the Contractor the difference between (x) the sum of the quarterly Non-Performance Payments made by the Contractor for the failure of the Contractor to meet the Net Electrical Generation Guarantee pursuant to Article 6.3.3(b) during the Contract Year and (y) the Non-

Performance Payment for the failure of the Contractor to meet the Net Electrical Generation Guarantee calculated pursuant to paragraph (2) above.

- (4) If the Non-Performance Payment for the failure of the Contractor to meet the Net Electrical Generation Guarantee calculated pursuant to paragraph (2) above is greater than the sum of the quarterly Non-Performance Payments made by the Contractor during the Contract Year for the failure of the Contractor to meet the Net Electrical Generation Guarantee, then the Contractor shall pay the Agency the difference between (x) the Non-Performance Payment for the failure of the Contractor to meet the Net Electrical Generation Guarantee calculated pursuant to paragraph (2) above and (y) the sum of the quarterly Non-Performance Payments made by the Contractor for the failure of the Contractor to meet the Net Electrical Generation Guarantee pursuant to Article 6.3.3(b) during the Contract Year.

iii. **Failure of the Contractor to Meet Ferrous Metals Recovery Efficiency Guarantee.**

- (1) If the quotient of the total Tons of ferrous metals recovered by the Contractor during the Contract Year divided by Total Processed Tonnage for the Contract Year is greater than or equal to the Ferrous Metals Recovery Efficiency Guarantee, then the Non-Performance Payment for failure of the Contractor to meet Ferrous Metals Recovery Efficiency Guarantee for the Contract Year is equal to zero (0) and the Agency will reimburse the Contractor all of the quarterly Non-Performance Payments for failure of the Contractor to meet Ferrous Metals Recovery Efficiency Guarantee that were made by the Contractor pursuant to Article 6.3.3(c) during the Contract Year.
- (2) If the quotient of the total Tons of ferrous metals recovered by the Contractor during the Contract Year divided by Total Processed Tonnage for the Contract Year is less than the Ferrous Metals Recovery Efficiency Guarantee, then the Agency shall calculate the Non-Performance Payment for failure of the Contractor to Meet Ferrous Metals Recovery Efficiency

Guarantee using the method described in Article 6.3.3(c) and annual average performance, cost, and revenue values.

- (3) If the Non-Performance Payment for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee calculated pursuant to paragraph (2) above is less than the sum of the quarterly Non-Performance Payments made by the Contractor during the Contract Year for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee, then the Agency shall reimburse the Contractor the difference between (x) the sum of the quarterly Non-Performance Payments made by the Contractor for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee pursuant to Article 6.3.3(c) during the Contract Year and (y) the Non-Performance Payment for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee calculated pursuant to paragraph (2) above.

- (4) If the Non-Performance Payment for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee calculated pursuant to paragraph (2) above is greater than the sum of the quarterly Non-Performance Payments made by the Contractor during the Contract Year for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee, then the Contractor shall pay the Agency the difference between (x) the Non-Performance Payment for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee calculated pursuant to paragraph (2) above and (y) the sum of the quarterly Non-Performance Payments made by the Contractor for the failure of the Contractor to meet the Ferrous Metals Recovery Efficiency Guarantee pursuant to Article 6.3.3(c) during the Contract Year.

(b) **Agency Shortfall Payment.** In the event that the annual reconciliation reveals that the Agency has failed to deliver the Guaranteed Annual Tonnage, then the Agency shall pay the Contractor for each Ton of such tonnage shortfall a per ton amount equal to the total Service

Fee and Supplemental Electrical Compensation payments made or payable by the Agency to the Contractor during the applicable Contract Year divided by the Net Agency Tons for the applicable Contract Year, provided, however, if in any Contract Year the Net Agency Tons are equal to zero, the per ton amount referred to in the prior sentence shall be equal to the Base Service Fee x AF. In making this calculation the tonnage shortfall shall be an amount that is equal to the Guaranteed Annual Tonnage minus the Net Agency Tons for the applicable Contract Year, or zero (0), whichever is greater, provided however, the Agency may reduce or eliminate any shortfall payments pursuant to the following paragraph (the “Agency Tonnage Shortfall”)

(c) If, as part of the annual reconciliation, it is determined that the Agency had an Agency Tonnage Shortfall during the Contract Year and the Contractor supplied Supplemental Processable Waste that was not treated as Processable Waste delivered by or on behalf of the Agency, then the Agency will have the option, in its sole discretion, to pay the Contractor the difference between the (i) the sum of the Service Fee and Supplemental Electrical Compensation the Agency would have paid for such Supplemental Processable Waste based on the average per Ton Service Fee and Supplemental Electrical Compensation paid by the Agency to the Contractor during the applicable Contract Year, and (ii) the positive difference, if any, between (x) total revenues, including any energy or Recovered Materials revenues the Contractor or an Affiliate received from any Person, including the Agency, for the acceptance and processing of each Ton of such Supplemental Processable Waste and (y) the costs incurred by the Contractor or Affiliate to transport the Supplemental Processable Waste to the Facility. The Agency will have the right to select the number of Tons, up to the amount of the shortfall, to minimize the tonnage shortfall payment due the Contractor.

In such circumstances the Contractor shall provide a completed list of all the Persons who supplied Supplemental Processable Waste to the Contractor during the Contract Year and supporting information, similar to that required for Cost Substantiation excluding any Markup, for the revenues received and transportation costs incurred for each such delivery. For the purpose of this Article 6.5 the revenues received from an Affiliate for the acceptance and processing of any such Supplemental Waste shall be at fair market value.

(d) **UCC Tonnage Shortfall Payment:**

If due to an Uncontrollable Circumstance the Contractor is unable to accept and combust Processable Waste or the Agency is unable to deliver Processable Waste, then as part of the annual reconciliation, the Agency shall determine if there was a “UCC Tonnage Shortfall,” as defined below, and if so, make a UCC Tonnage Shortfall Payment to the Contractor as a Pass Through Cost.

The “UCC Tonnage Shortfall Payment” in any Contract Year shall be equal to: (i) 0.60; (ii) times the Base Service Fee; (iii) times the Adjustment Factor applicable for that Contract Year; (iv) times the UCC Shortfall Tonnage for that Contract Year, provided, however, for Contract Years prior to January 1, 2019 the UCC Tonnage Shortfall Payment for Group A UCC Tonnage attributable to the UCC Shortfall tonnage shall be equal to (i) 1.00; (ii) times the Base Service Fee; (iii) times the Adjustment Factor.

As part of the annual reconciliation the Agency shall determine the tonnage of Processable Waste that could not be delivered to the Facility by, or on behalf of, the Agency; or could not be accepted and combusted at the Facility by the Contractor due to Uncontrollable Circumstances. In making this determination the Agency shall use, without limitation, the Uncontrollable Circumstance information provided during the Contract Year pursuant to Article 11.1. The Agency shall split the tonnage of Processable Waste that could not be delivered, accepted, or combusted due to an Uncontrollable Circumstances into five mutually exclusive groups as follows:

- A. Tons of Processable Waste that could not be combusted, due to a material Change in Law (“Group A UCC Tonnage”);
- B. Tons of Processable Waste, excluding Group A UCC Tonnage, that could not be delivered or combusted due to an Uncontrollable Circumstance that had a continuous duration of 15 days or less during the Contract Year (“Group B UCC Tonnage”);
- C. Tons of Processable Waste, excluding Group A UCC Tonnage, that could not be combusted at the Facility by the Contractor due to an Uncontrollable Circumstance (whether or not such Processable Waste could have been delivered to the Facility by,

or on behalf of the Agency) during the 16th day of a continuous Uncontrollable Circumstance through and including the 30th day of such continuous Uncontrollable Circumstance (“Group C UCC Tonnage”);

- D. Tons of Processable Waste, excluding Group A UCC Tonnage, that could not be combusted at the Facility by the Contractor due to an Uncontrollable Circumstance (whether or not such Processable Waste could have been delivered to the Facility by, or on behalf of the Agency) following the 30th day of a continuous Uncontrollable Circumstance (“Group D UCC Tonnage”); and
- E. Tons of Processable Waste, excluding Group A UCC Tonnage, Group B UCC Tonnage, Group C UCC Tonnage, and Group D UCC Tonnage, that could not be delivered to the Facility by, or on behalf of, the Agency due to an Uncontrollable Circumstance (“Group E UCC Tonnage”).

The “UCC Tonnage Shortfall,” if any, in a Contract Year is calculated as follows:

- A. The “UCC Tonnage Shortfall Threshold” in each Contract Year shall be equal to: (i) 140,000 Tons; (ii) minus the aggregate Tons of Wrongfully Refused Waste during the Contract Year; (iii) minus the Group B UCC Tonnage, (iv) minus the Group D UCC Tonnage, minus (v) the Agency Tonnage Shortfall.
- B. If the Net Agency Tons are greater than or equal to the UCC Shortfall Tonnage Threshold, then the UCC Tonnage Shortfall will be equal to zero (0).
- C. If the Net Agency Tons are less than the UCC Tonnage Shortfall Threshold, then the UCC Tonnage Shortfall will be lesser of: (i) the difference between the UCC Shortfall Tonnage Threshold and the Net Agency Tons for the Contract Year; or (ii) the sum of the Group A UCC Tonnage, Group C UCC Tonnage, and Group E UCC Tonnage.

(e) **Agency Excess Tons Service Fee Credit Payment.**

(i) If the Net Agency Tons for the Contract Year are greater than the Guaranteed Annual Tonnage in a Contract Year, then “Agency Excess Tons” for the Contract Year shall be the difference between Net Agency Tons and the Guaranteed Annual Throughput.

(ii) If during the Contract Year the Agency delivered Agency Excess Tons then the Contractor shall pay the Agency an amount equal to: (x) the Agency Excess Tons; times (y) \$25.00; times (z) the Adjustment Factor applicable for the just completed Contract Year (the “Agency Excess Tons Service Fee Credit”).

(f) **Unacceptable Waste Disposal Cost Reimbursement**

If during the Contract Year the actual reasonable haul and disposal costs paid by the Contractor for Unacceptable Waste exceeds \$10,000 times the Adjustment Factor the Agency shall reimburse the Contractor for such excess.

(g) **Prorating for Partial Year Calculations**

For purposes of the calculations made for the annual reconciliation, (i) the Guaranteed Facility Throughput and the Guaranteed Annual Tonnage shall be prorated for any partial Contract Years; and (ii) the Guaranteed Facility Throughput shall be reduced ton for ton for tonnage of Processable Waste the Contractor is unable to accept or process at the Facility due to an Uncontrollable Circumstance.

6.6 CONTRACTOR REPORTS

The Contractor shall submit monthly written reports and supporting documentation to the Agency with respect to such matters relating to the operation and maintenance of the Facility and the administration of this Agreement as the Agency shall reasonably request.

The monthly report shall, at minimum, certify: (a) the number of gross Tons of Processable Waste the Agency delivered to the Facility; (b) the number of Tons by type of Special Waste delivered to the Facility; (c) the number of Tons of Unacceptable Waste transferred by the Contractor and the costs incurred by the Contractor for the transport and disposal of such Unacceptable Waste; (d) the number of wet-Tons of Process Residue transferred

to the Agency; (e) the Tons of Processable Waste accepted but not processed; (f) the types and tonnage of wastes that the Contractor refused to accept for processing; (g) Contractor's plans for repair and replacement of equipment for the next month and for the next year, and complete records of the repairs and replacements of equipment completed in the previous month; and (h) current staffing by position including vacancies and new hires.

ARTICLE SEVEN **CAPITAL IMPROVEMENTS**

7.1 IMPLEMENTATION OF CAPITAL IMPROVEMENTS OF THE FACILITY

(a) Contractor Requested Capital Improvement

- (i) For any Contractor requested Capital Improvement the Contractor shall, at its sole cost and expense, furnish the Agency and the Trustee if and as required, for their review all of the following:
 - a preliminary statement of the work to be done;
 - an estimated cost for the Capital Improvement, including the basis for such estimated cost;
 - the identity of a qualified contractor that will perform the work (which may be the Contractor) and equipment suppliers, if known;
 - a projected schedule to complete the work and such design, operational and cost data as is reasonably required for the Agency's evaluation of the proposed Capital Improvement;
 - recommendations, if appropriate, of any changes required to the Facility's then current Operations and Maintenance Manual as a consequence of the proposed Capital Improvement;
 - a statement describing the benefits of or need for the proposed Capital Improvement; and
 - a statement describing any proposed improvements in the Performance Guarantees or the Environmental Guarantees.

- (ii) Implementation of any Capital Improvement proposed by the Contractor shall require the prior written approval of the Agency, which approval shall be in the

Agency's sole discretion; provided that the Agency shall not be entitled to withhold approval where Contractor has demonstrated that the Capital Improvement does not increase any cost or obligation of the Agency; does not impact the Facility's ability to operate in accordance with the Performance Guarantees and Environmental Guarantees, does not impair the quality, durability or reliability of the Facility, is reasonably necessary or advantageous for the Contractor to fulfill its obligations under this Agreement, is technically feasible, and the Contractor is responsible for all the costs of the Capital Improvement or the Parties have come to agreement regarding shared costs and operational benefits or savings.

- (b) Agency Requested Capital Improvements or Capital Improvements Required Due to an Uncontrollable Circumstance
- (i) Either Party may propose a Capital Improvement required by an Uncontrollable Circumstance by notice to the other Party and to the Trustee if and as required.
- (ii) For any Agency requested Capital Improvement the Agency may, at its sole cost and expense, furnish the Contractor and the Trustee if and as required, for their review any, or all, of the following:
- a preliminary statement of the work to be done;
 - an estimated cost for the Capital Improvement, including the basis for such estimated cost;
 - recommendations, if appropriate, of any changes required to the Facility's then current Operations and Maintenance Manual as a consequence of the proposed Capital Improvement;
 - a statement describing benefits or need for the proposed Capital Improvement;
 - a statement describing any possible improvements in the Performance Guarantees or the Environmental Guarantees; and
 - any amendments to the Agreement, if any, that may be required as a result of the Agency requested Capital Improvement.

- (iii) Within thirty (30) days after the Agency gives notice to the Contractor of a requested Capital Improvement or either Party gives notice to the other Party of a need for a Capital Improvement resulting from an Uncontrollable Circumstance (or such other period as is reasonable under the circumstances), the Contractor, at its sole cost and expense, shall provide the Agency with (x) a not-to-exceed third party cost (e.g., design cost), excluding costs of an Affiliate and any attorney fees, for preparing the proposal described in Article 7.1(b)(iv) below, and (y) a non-binding estimate of the cost to implement the Capital Improvement. If the Contractor and Agency, each acting reasonably, are unable to agree on the not-to-exceed cost, or other agreed-to price for preparing the proposal, then this dispute shall be determined by the Independent Engineer.

Within sixty (60) days after mutual agreement of the not-to-exceed price for the proposal described in Article 7(b)(iv), or determination of the not-to-exceed price by the Independent Engineer, the Agency may give the Contractor a written notice to proceed to prepare the proposal.

- (iv) Within sixty (60) days after the Agency gives the Contractor a written notice to proceed to prepare such proposal (or such other period as is reasonable under the circumstances), the Contractor shall furnish the Agency and the Trustee if and as required, for their review a proposal containing, at a minimum the following:
- a proposed price for the Capital Improvement, which may be a firm price, or other agreed to pricing structure;
 - A statement of the work to be done for the Capital Improvement;
 - the identity of a qualified contractor that will perform the work (which may be the Contractor) and equipment suppliers, if known;
 - the projected schedule to complete the work;
 - such design, operational and cost data as is reasonably required for the Agency's evaluation of the proposal;
 - a recommendation, if appropriate, of any changes required to the Facility's then current Operations and Maintenance Manual as a consequence of the proposed Capital Improvement;
 - a statement describing the effect, if any, the proposed Capital

Improvement would have on the Performance Guarantees;

- a statement describing the effect, if any, the proposed Capital Improvement(s) would have on the Environmental Guarantees; and
- any amendments to the Agreement, if any, that may be required as a result of the Capital Improvement.

- (v) Implementation of any Agency requested Capital Improvements or a Capital Improvement required due to an Uncontrollable Circumstance shall require the prior written approval of the Agency, which approval shall be in the Agency's sole discretion.
- (vi) If the Contractor and Agency, each acting reasonably, are unable to agree on any material element of a proposed Agency requested Capital Improvement or a Capital Improvement required due to an Uncontrollable Circumstance within thirty (30) days (or such other period as is reasonable under the circumstances) after the Agency receives the proposal from the Contractor, or if the Contractor fails to supply the required information within the sixty (60) day period (or such other period as is reasonable under the circumstances), the Agency may at its option, and upon prior notice to the Contractor, arrange to have other parties perform the Capital Improvement with minimum interference with the Contractor's operation of the Facility; provided either (i) the Capital Improvement during implementation and after completion does not adversely affect the Contractor's ability to perform its obligations or to receive compensation hereunder or (ii) the Agency adjusts the Agreement, including the guarantees and/or the Service Fee, to prevent Contractor losses and increased costs it may reasonably be expected to incur as a consequence of the Capital Improvement.
- (vii) If the Contractor prepares a satisfactory proposal as described in Article 7.1(iv) above and the Agency decides not to proceed with such Agency requested Capital Improvement or Capital Improvement required due to an Uncontrollable Circumstance, then the Agency shall reimburse the

Contractor, as applicable, either (x) the third party costs, subject to Cost Substantiation, (excluding costs of an Affiliate and any attorney fees) incurred by the Contractor for preparing such proposal up to the not-to-exceed third party costs agreed to by the Parties or determined by the Independent Engineer pursuant to Article 7.1(b)(iii) above, or (y) another price for preparing the proposal agreed to by the Parties pursuant to Article 7.1(b)(iii) above.

- (viii) Upon receipt of a notice to proceed from the Agency the Contractor shall perform, or supervise, the Capital Improvement in accordance with the plans, specifications and schedule approved by the Agency, which approval shall not be unreasonably withheld.

7.2 COSTS OF CAPITAL IMPROVEMENTS TO THE FACILITY

(a) Except for (i) Agency requested Capital Improvements to the Facility and (ii) Capital Improvements to the Facility required due to Uncontrollable Circumstances, the Contractor shall pay all costs to design and construct Capital Improvements in the Facility. This Agreement, including the Service Fee, Supplemental Electrical Compensation, Performance Guarantees, and Environmental Guarantees, shall not change as a result of any such Capital Improvements to the Facility.

(b) The Agency will pay the costs to design and construct a Capital Improvement to the Facility that it elects to make, or a Capital Improvement to the Facility required to be made as a consequence of Uncontrollable Circumstances.

(c) For any Agency requested Capital Improvement this Agreement, including the Performance Guarantees, Environmental Guarantees, the Service Fee and Supplemental Electrical Compensation will be adjusted as agreed to between the Parties or adjusted pursuant to Article 7.1(b)(vi).

(d) If a Capital Improvement to the Facility is required to be made due to Uncontrollable Circumstances, this Agreement, including the Performance Guarantees, Environmental Guarantees, the Service Fee and Supplemental Electrical Compensation will be

adjusted as appropriate to compensate the Contractor for: (i) any increased operating and maintenance costs; and (ii) any decrease in net revenues resulting from any reduced Net Electrical Generation Guarantee or Ferrous Metals Recovery Efficiency Guarantee (except changes caused by events that affected the composition of the Processable Waste, including, without limitation, the heating value of the Processable Waste and the quantity of ferrous metals in the Processable Waste), which in the case of either (i) or (ii), or both occur after the Capital Improvements are implemented and are directly attributed to the Capital Improvements to the Facility required by the Uncontrollable Circumstance. If an Uncontrollable Circumstance results in decreased operating or maintenance costs, the Service Fee and Supplemental Electrical Compensation shall be appropriately reduced.

(e) The Agency shall be responsible for any deductible amounts, up to the amounts specified in Article 8, in connection with Uncontrollable Circumstances giving rise to insurance proceeds.

ARTICLE EIGHT **INSURANCE, GUARANTY and SECURITY**

8.1 GENERAL INSURANCE REQUIREMENTS

The Contractor shall obtain and maintain such insurance with respect to the premises and operations of the Facility and the Site with insurance companies qualified to do business in the State of New York as is appropriate for a facility of this nature but in no event less than the type and amount specified in Article 8.2. These policies shall be maintained at all times during the Term of this Agreement. Insurance companies shall be A.M. Best rated “A” or better and be admitted and conform to all regulatory procedures directed by the State of New York Insurance Department. Non-admitted carriers may be used only if admitted carriers are not available to provide coverage and where mutually agreed upon by both parties. Failure of the Contractor to obtain or maintain any of the required insurance shall not relieve the Contractor from any liability under this Agreement.

8.2 MINIMUM INSURANCE REQUIREMENT

<u>TYPE</u>	<u>MINIMUM COVERAGE</u>
Disability Insurance	As Required by New York State
Workmen's Compensation Insurance	As Required by New York State
Employer's Liability	Bodily Injury by accident: \$1,000,000 each accident. Bodily injury by Disease: \$1,000,000 policy limit. Bodily Injury by Disease: \$1,000,000 each employee
Commercial General Liability, with, at a minimum, the following coverages: Premises-Operations; Independent Contractors and Subcontractors; Products/Completed Operations; Broad Form Property Damage; Contractual Liability (Broad Form) including Third Party Coverage; Explosion, Collapse, and Underground; Personal and Advertising Injury	Claims paid from first dollar General Aggregate per location \$2,000,000 Products/completed operations aggregate \$2,000,000 Per occurrence limit \$1,000,000 Personal and Advertising Injury limit \$1,000,000 Medical expense limit (any one person) \$10,000
Comprehensive Automobile Liability	Combined Single Limit of \$1,000,000 per occurrence with coverage provided for (1) owned motor vehicles (2) hired motor vehicles and (3) other non-owned vehicles
Excess Umbrella Liability	From the Service Commencement Date to December 31, 2020: \$25,000,000 limit. From January 1, 2021 through the end of the Term: \$30,000,000 limit. Contractor is responsible for the retention on non-following coverages without contribution from the Agency, County or Trustee.
Property insurance	All risk of Direct Physical Loss or Damage, including flood & earthquake, Ordinance or Law (demolition & increased cost of construction) Comprehensive Boiler & Machinery (equipment breakdown), on a replacement cost basis with agreed amount. \$50,000 deductible. Covering all Real and Personal Property including property within care, custody and control of the Contractor
Business Interruption and Extra Expense Insurance, on an Actual Loss Sustained basis including Contingent Business	Business Interruption Insurance and Extra Expense Insurance on the Facility caused by the loss of revenues to the Facility arising from a

<p>Interruption and soft costs; and Ordinance or Law Increased Period of Restoration</p>	<p>covered loss that results in total or partial suspension of, or interruption in, the operation of the Facility due to an insured peril in an amount not less than that required to provide during any period of up to twelve calendar months the sum of (i) gross revenues required to be produced pursuant to the rate covenant under the Trust Indenture and (ii) amounts required for payment of any reasonable and covered extra expenses incurred by the Agency in connection with such suspension or interruption caused by an insured cause of loss.</p> <p>Subject to a 30 day deductible.</p>
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8.3 FORM AND CONTENT

(a) All policies, binders or interim insurance contracts with respect to the insurance required to be maintained by the Contractor (except disability, worker's compensation, employer's liability insurance, property and business interruption insurance) pursuant to this Article 8 hereof shall:

- (i) designate the Agency, the State, the County and the Trustee as additional insured, as their respective interests may appear, provided however, except that as to the Commercial General Liability (and following form Excess Umbrella Liability) coverage required by Article 8.2 above the Agency shall be a named insured; provided however, that without in any way limiting the Agency's rights or status as a named insured on said Commercial General Liability coverage, the State, the County, and the Trustee shall only be additional insureds with respect to liability imposed or claimable against the State, the County, or the Trustee arising vicariously, derivatively or by operation of law to the extent and only to the extent such liability arises out of the acts, errors or omissions of the Contractor during its performance under this Agreement;
- (ii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency, the Trustee, or the County to the extent that such other insurance provides the Agency or the Trustee with contingent and/or excess liability insurance with respect to its respective interest in the Facility and shall expressly provide that all provisions thereof,

except the limits of liability (which shall be applicable to all insureds as a group) shall operate in the same manner as if there were a separate policy covering each insured;

(b) all policies (except disability, workmen's compensation and employer's liability) insurance maintained by the Contractor pursuant to Article 8 hereof shall:

(i) provide that the Agency, the Trustee and the Contractor will be furnished with at least 90 days prior notice of in the case of commercial general liability, automobile and excess umbrella insurance and at least 30 days prior notice in the case of property insurance any cancellation of coverage; and

(ii) waive any right of subrogation of the insurers thereunder against the Agency, the Trustee, and the County, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

(c) The all risk property insurance shall include the Agency, the County and the Trustee as loss payee as their interests may appear as respects a covered loss to the Facility and any resulting Business Interruption loss and extra expense incurred.

(d) The Contractor shall provide the Agency and the Trustee with at least 90 days prior notice of any material change, expiration or nonrenewal of coverage of any insurance required to be maintained by the Contractor pursuant to this Article 8.

8.4 COPIES

The Contractor shall deliver to the Agency, the Trustee, and the County copies of all property and public liability insurance policies required above (or certificates with respect thereto, certifying as to all endorsements to such policies to cause them to satisfy the requirements of this Article 8, duly executed by the insurer or its duly authorized agent). Sixty (60) days prior to the expiration date, and within ninety (90) days after or one hundred sixty (160) days before the end of each calendar year thereafter the Contractor shall file with the

Agency and the Trustee a report of the Contractor's independent insurance brokers or agents to the effect that insurance complying with this Article 8 is in full force and effect, and that all premiums on such insurance due to the date of such report have been duly paid.

8.5 PROOFS OF LOSS AND PAYMENTS OF PROCEEDS

The Contractor shall make all proofs of loss under any casualty or business interruption insurance with respect to the Facility and take all other steps necessary or reasonably requested by the Trustee to collect from insurers for any loss under any other insurance required hereunder.

If a loss occurs and insurance proceeds are received by the Agency or the Trustee, then the Agency shall file with the Trustee any Agency Certificate required by the Trust Indenture authorizing payment of an amount from such proceeds sufficient to reimburse Contractor for costs and expenses incurred in (a) repairing or replacing the Facility or portion thereof subject to the loss or (b) paying to or for the account of the Agency damages related to such loss, provided that Contractor supplies Cost Substantiation to the Agency.

8.6 TRUSTEE COPIES

A copy of any policy required hereunder, and evidence of renewal or replacement thereof, shall be promptly furnished to the Trustee, upon its request, for its records, provided that the Contractor need not disclose to any person (a) the actual limits of liability of the Contractor under any of the policies referred to in Article 8 in excess of the limits provided herein, or (b) any other provisions relating to the respective rights of the Contractor and the insurers under such policies which do not affect the liability, defenses or obligations of such insurers to any of the additional insureds referred to in Article 8 or the maintenance of the coverage (including deductibles and limits of liability) required to be provided under such policies.

8.7 ADEQUACY

The Agency does not in any way represent that the insurance specified herein, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Contractor's business or interest.

8.8 ADVANCES

In the event the Contractor shall fail to take out and maintain the insurance coverage required by this Article 8, then after not less than ten days' notice to the Contractor (provided the Contractor shall have failed to proceed with diligence to correct or shall not have corrected such condition), the Agency or the Trustee may (but shall be under no obligation to) take out the required policies and pay premiums thereon, and provide for payment thereof. All amounts so advanced by the Agency or the Trustee shall become an additional obligation of the Contractor to the person making the advance, which amounts, together with interest thereon at the rate announced from time to time by J.P. Morgan Chase as its prime rate plus one percent per annum, the Contractor agrees to pay upon demand therefore by the Agency or the Trustee, as the case may be.

8.9 INDEMNIFICATION

(a) **By Contractor:**

- i. The Contractor shall, to the extent permitted by applicable law, indemnify, defend and hold the Agency, the State, the County, and the Trustee (each being an "Contractor Indemnified Party") and the officers, directors, employees, agents and representatives of any Contractor Indemnified Party harmless from and against any and all liabilities, losses, damages, penalties, fines or charges, (including reasonable attorneys' fees and expenses) relating to or in connection with any and all claims, suits, liens, demands, obligations, actions, proceedings or hearings (the "Claims") of every kind and character including Claims under the Power Sale Agreements which may be asserted against any Contractor Indemnified Party, whether individually or by way of class action, arising out of the Contractor's negligence, intentional misconduct, or failure to perform its obligations under this Agreement. The Contractor is not however, required to reimburse or indemnify any Contractor Indemnified Party for loss or claim to the extent it is ultimately adjudged to be due to the negligence or willful misconduct of any Contractor Indemnified Party, and if a Contractor Indemnified Party's negligence or willful misconduct is adjudged to have been the sole cause of such loss or Claim, it will reimburse the Contractor for the cost of defending suit for the Contractor Indemnified Party as required above. Subject to the foregoing sentence and in

instances wherein an insurer is obligated to defend, the Contractor shall assume full responsibility, at its sole cost and expense, of investigating, handling, litigating, negotiating and settling of the Claims, even if the Claims shall be groundless, false or fraudulent.

- ii. Such indemnification shall include, but is not limited, to Claims resulting from any action taken by the Agency at the direction of the Contractor or any action with respect to the improvement, equipping or operation of the Facility and performance under the Power Sale Agreements.
- iii. With respect to any Claim for which the Contractor shall indemnify a Contractor Indemnified Party, the Contractor shall defend such Claim on behalf of the Contractor Indemnified Party. The Contractor Indemnified Parties shall promptly notify the Contractor of any Claim brought against them for which indemnity may be sought against the Contractor pursuant to this Article; such notice is to be given in sufficient time to allow the Contractor to defend such Claim, and shall not settle any Claim without the approval of the Contractor.
- iv. This Article shall remain in force and effect after the termination of this Agreement with respect to acts or failures to act which occur prior to the termination of this Agreement until the latter of (1) the expiration of the period stated in the applicable statute of limitations during which a Claim may be brought or (2) the satisfaction or payment of, such Claim and of all expenses and charges incurred by an Contractor Indemnified Party relating to the enforcement of such Claim.
- v. The indemnification provisions are for the protection of the Contractor Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

(b) **By Agency**

- i. The Agency shall, to the extent permitted by applicable law, indemnify, defend and hold the Contractor and Wheelabrator Technologies Inc. (“Agency Indemnified Party”) and the officers, directors, employees, agents and representatives of the Agency Indemnified Party harmless from and against any and all liabilities, losses, damages, penalties, fines or charges, (including reasonable attorneys’ fees and expenses) relating to or in connection with any and all claims, suits, liens, demands, obligations, actions, proceedings or hearings (the “Claims”) of every kind and character including Claims under the Power Sale Agreements which may be asserted against the Agency Indemnified Party, whether individually or by way of class action, arising out of the Agency’s negligence, intentional misconduct, or failure to perform its obligations under this Agreement, and Claims related to Hazardous Material at, on or under the Site existing or present on or prior to the Service Commencement Date. The Agency is not however, required to reimburse or indemnify any Agency Indemnified Party for loss or Claim to the extent it is ultimately adjudged to be the negligence or willful misconduct of any Agency Indemnified Party, and if an Agency Indemnified Party’s negligence or willful misconduct is adjudged to have been the sole cause of such loss or Claims, it will reimburse the Agency for the cost of defending suit for the Agency Indemnified Party as required above. Subject to the foregoing sentence and in instances wherein an insurer is obligated to defend, the Agency shall assume full responsibility, at its sole cost and expense, of investigation, handling, litigation, negotiation or settlement of the Claims, even if the Claims shall be groundless, false or fraudulent.

- ii. With respect to any Claim for which the Agency shall indemnify an Agency Indemnified Party, the Agency shall defend such Claim on behalf of the Agency Indemnified Party. The Agency Indemnified Parties shall promptly notify the Agency of any Claim brought against them for which indemnity may be sought against the Agency pursuant to this Article; such notice is to be given in sufficient time to allow the Agency to defend such Claim, and shall not settle any claim without the approval of the Agency.

- iii. This Article shall remain in force and effect after the termination of this Agreement with respect to acts or failures to act which occur prior to the termination of this Agreement until the latter of (a) the expiration of the period stated in the applicable statute of limitations during which a Claim may be brought or (b) the satisfaction or payment of, such Claim and of all expenses and charges incurred by an Agency Indemnified Party relating to the enforcement of such Claim.
- iv. The indemnification provisions are for the protection of the Agency Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

8.10 GUARANTY AND SECURITY

The Contractor shall supply at the execution of this Agreement a Parent Company Guaranty, from the Guarantor, of the payment and performance of the Contractor's obligations under this Agreement, a copy of which is annexed hereto as Appendix J. The Contractor's obligations of payment and performance under this Agreement and the Parent Company Guaranty shall be secured by a Letter of Credit issued by a Qualified Commercial Bank. The Contractor shall provide the Letter of Credit by the later of: (i) June 1, 2014, or (ii) at least ten (10) days prior to the Service Commencement Date. For the purpose of this Agreement a "Qualified Commercial Bank" means a domestic commercial bank whose long term debt is rated "A2" or higher by Moody's, "A" or higher by Fitch, Inc. or "A" or higher by Standard & Poor's (if there is a split rating, the lower of the three shall apply), and which is a bank organized and existing under the laws of the United States and has an office in New York State within 80 miles of the Facility.

At the time the Contractor has knowledge that the Tangible Net Worth of the Guarantor has fallen below \$150 million dollars, the Contractor shall promptly notify the Agency, and within twenty (20) days after delivery of such notice also supply the Agency a Step-Up Letter of Credit from a Qualified Commercial Bank. Such Step-Up Letter of Credit shall remain in effect until the Contractor can demonstrate to the reasonable satisfaction of the Agency that the Guarantor's Tangible Net Worth has increased above \$150 million and remained above \$150 million for at least 365 continuous days, at which time the Contractor is no longer required to have a Step-Up Letter of Credit and the Agency shall promptly return to the Contractor the Step-

Up Letter of Credit, provided, however, that another Step-Up Letter of Credit shall be required in accordance with this Article 8.10 if and when the Tangible Net Worth of the Guarantor again falls below \$150 million.

8.11 LIMITATION ON LIABILITY

(a) Except as otherwise provided in Section 8.11(b), in any Contract Year, the Contractor’s liability to the Agency in that Contract Year shall be limited to:

(1) the amounts provided in the following table for the applicable Contract Year during the Initial Term:

Contract Year	Amount	Contract Year	Amount
07/01/14 - 12/31/14	\$2,310,000	01/01/21 - 12/31/21	\$3,260,000
01/01/15 - 12/31/15	\$3,000,000	01/01/22 - 12/31/22	\$3,310,000
01/01/16 - 12/31/16	\$3,040,000	01/01/23 - 12/31/23	\$3,360,000
01/01/17 - 12/31/17	\$3,080,000	01/01/24 - 12/31/24	\$3,410,000
01/01/18 - 12/31/18	\$3,120,000	01/01/25 - 12/31/25	\$3,460,000
01/01/19 - 12/31/19	\$3,160,000	01/01/26 - 12/31/26	\$3,510,000
01/01/20 - 12/31/20	\$3,210,000	01/01/27 - 12/31/27	\$3,560,000

(2) for each Contract Year during any renewal period or any period in the initial Term after 12/31/27, \$3,560,000.

In the case of paragraphs (1) or (2) above, when applying these amounts for multiple Contract Years the aggregate limit of liability is the sum of the values for each applicable Contract Year beginning with the year of the breach and all future Contract Years.

(b) There shall be no limit on the Contractor’s liability to the Agency under this Agreement for the following damages, costs or expenses:

- i. any losses incurred in performing its obligations under the Agreement;
- ii. any cost or expense to operate and maintain the Facility in accordance with the Agreement;
- iii. any Claims pursuant to Article 8.9(a), hereto, arising out of or related to the liabilities described in this Article 8.11(b);
- iv. any claims, losses and liabilities to third parties for death, personal injury

- or damage to property;
- v. any fines, penalties, costs or damages incurred as a result the failure of the Contractor to meet the Environmental Guarantees, or of any violation of environmental laws or resulting from the release of Hazardous Material by the Contractor;
 - vi. any losses or liabilities for which Contractor has insurance coverage, or insurance coverage the Contractor should have had pursuant to Articles 8.1 and 8.2, (e.g., costs to rectify damage to the Facility arising out of insured events);
 - vii. any costs or expense required as a result of the Contractor's failure to comply with the Contractor's obligation to maintain the Facility in accordance with this Agreement, including without limitation those arising under Articles 3.1 and 3.5, hereto;
 - viii. fraud by the Contractor;
 - ix. willful default by the Contractor; or
 - x. costs incurred as a result of the Contractor's violation of any statute, law, regulation or rule.

(c) In no event shall either Party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

ARTICLE NINE **TERMINATION AND EVENTS OF DEFAULT**

9.1 RIGHTS TO TERMINATE

The Agency may terminate this Agreement for an Event of Default by the Contractor referred to in Article 9.2 or for special circumstances in accordance with Article 9.5(a), 9.5(b), 9.5(d), or 9.5(e). The Contractor may terminate this Agreement for an Event of Default by the Agency referred to in Article 9.3 or for special circumstances in accordance with Article 9.5(a) or 9.5(c).

9.2 EVENTS OF DEFAULT BY CONTRACTOR

Each of the following shall constitute an Event of Default by the Contractor:

(a) Except for the obligation to make payments to the Agency, the failure or refusal by the Contractor to timely and substantially fulfill any material obligation under this Agreement, unless excused by Uncontrollable Circumstances or by the act or failure to act by the Agency contrary to this Agreement, notwithstanding the payment by the Contractor of any damages, Non-Performance Payments, or other amounts provided under this Agreement; provided, however, that no such default shall constitute an Event of Default unless and until:

- i. The Agency has given written notice to the Contractor specifying the Contractor's default or defaults; and
- ii. The Contractor either has not corrected such default within 30 days of receipt of such notice, or
- iii. has not initiated reasonable and substantive steps to correct the same within 30 days of its receipt of such notice, or
- iv. having initiated such steps does not continue to take reasonable and substantial steps to correct such default.

(b) Failure to make payment due the Agency within sixty (60) days after written demand therefore by the Agency accompanied by notice that failure to make such payment will constitute the Event of Default unless the issue has been presented to the Independent Engineer for dispute resolution.

(c) Persistent and repeated failure to perform its obligations under this Agreement over any seven hundred and thirty (730) day period or though the remainder of the Term if there are fewer than seven hundred and thirty (730) days remaining in the Term, including failure to make payments when due; properly operate, maintain, repair the Facility; provide reports or meet Performance Guarantees, or Environmental Guarantees even if cured pursuant to a or b above, are an Event of Default without a cure period. For purposes of this Article 9.2(c), a fourth failure to perform obligations of a similar kind or nature after the Contractor has received three (3) prior written notices of such failure within any contiguous seven hundred and thirty (730) day period or though the remainder of the Term if there are fewer than seven hundred and thirty (730) days remaining in the Term, shall be considered a persistent and repeated failure to perform and an

Event of Default as to which the Contractor will not have a cure period.

(d) Failure of the Contractor or the Guarantor to maintain solvency. The occurrence of any of the following are deemed a failure of the Contractor to maintain solvency:

- i. the Contractor or Guarantor is deemed “insolvent” as defined in 11 USC § 101(32) as amended, or
- ii. inability, failure, or refusal by the Contractor or Guarantor to pay debts as they mature; entry into an arrangement by the Contractor or the Guarantor with or for the benefit of their creditors; the Contractor’s or the Guarantors consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of the Contractor’s or the Guarantors property; or
- iii. a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against the Contractor or the Guarantor under the laws of any jurisdiction, which proceeding is not dismissed within sixty (60) days of filing; or
- iv. any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding in which the Contractor or the Guarantor approve of, consent to, or acquiesce in, any such proceeding; or
- v. the levy of any distress, execution, or attachment upon the property of the Contractor or the Guarantor which shall substantially interfere with its performance hereunder; or
- vi. the failure to provide the Step-Up Letter of Credit pursuant to Article 8.10.

(e) Without waiving or impairing the Agency’s rights under subparagraph 9.2(d)(iv) above, if, in the event of the Contractor or the Guarantor being or becoming insolvent or bankrupt, the Contractor shall fail to:

- i. assume this Agreement within sixty (60) Days after the order for relief;
- ii. promptly cure any failure to perform its obligations or any Event of Default arising under this Agreement for reasons other than the event set forth in this paragraph;
- iii. compensate or provide adequate assurance that it will promptly compensate the Agency for any amounts due the Agency under this Agreement; and

- iv. provide adequate assurance of future performance under this Agreement under 11 USC §365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code which adequate assurance shall include the posting of a letter of credit or other security by the Contractor or the Guarantor in an amount sufficient to secure their obligations under this Agreement and the Guaranty. The foregoing provisions shall not prevent the Agency from requesting such other conditions to assumption of this Agreement, as it deems reasonable and necessary.

9.3 EVENTS OF DEFAULT BY THE AGENCY

Each of the following shall constitute an Event of Default by the Agency:

(a) Except for the obligation to make payments to the Contractor, the failure or refusal by the Agency to timely and substantially fulfill any material obligation under this Agreement, unless excused by an Uncontrollable Circumstance, or by the act of or failure to act by the Contractor contrary to this Agreement; provided, however, that no such default shall constitute an Event of Default unless and until:

- i. The Contractor has given written notice to the Agency specifying the Agency's default or defaults; and
- ii. The Agency either has not corrected such default within sixty (60) days of receipt of such notice, or
- iii. has not initiated reasonable and substantive steps to correct the same within sixty (60) days of its receipt of such notice, or
- iv. having initiated such steps does not continue to take reasonable and substantive steps to correct such default.

(b) Failure by the Agency to make any undisputed payment to the Contractor under this Agreement within sixty (60) days after written demand therefor by the Contractor accompanied by notice that failure to make such payment will constitute an Event of Default, unless the issue has been presented to the Independent Engineer for dispute resolution.

9.4 TERMINATION FOR EVENTS OF DEFAULT

(a) Any Party electing to terminate this Agreement for an Event of Default shall give the other Parties notice of the termination date, which shall be not less than thirty (30) days from the date the notice is given, unless sooner allowed by this Agreement.

(b) If the Agency terminates this Agreement for an Event of Default by the Contractor the Contractor shall be liable to the Agency for all damages resulting from the Contractor's breach, including the Agency's expense in procuring a short and long term Facility operator, the additional expense of alternate waste disposal, and the cost to satisfy its Net Bond Indebtedness. Notwithstanding the forgoing the Contractor's liability upon a termination by the Agency for an Event of Default by the Contractor shall not exceed the limit of liability in the Contract Year in which the termination occurs plus the aggregate of the limit of liability in each remaining Contract Year of the Term or any renewal term as set forth in Article 8.11(a), except for these costs, damages and expenses set forth in Article 8.11(b) which shall be uncapped.

(c) If the Contractor terminates this Agreement for an Event of Default by the Agency, the Agency shall pay the Contractor, as liquidated damages, a payment equal to the sum of (i) any costs, fees and expenses that Agency then otherwise owes to the Contractor at the date of such termination, (ii) the amount indicated in Table 1 of Appendix P in the month in which the termination date occurs and (iii) the amount indicated in Table 2 of Appendix P in the month in which the termination date occurs (the "Agency Termination Payments"). The Contractor acknowledges that the Agency Termination Payments includes, without limitation, compensation for all of the Contractor's demobilization costs and expenses and that the Contractor shall bear all of its demobilization costs and expenses whenever the Agency is required to make the Agency Termination Payments to the Contractor.

(d) The calculation of payments due under this Article 9.4 shall be made initially by the Agency Engineer.

9.5 SPECIAL TERMINATIONS

(a) **Termination Due to a Constructive Loss of the Facility.** If an Uncontrollable Circumstance results in material damage to or destruction of the Facility, or materially impairs the operation of the Facility for a period of at least one-hundred and eighty-three (183) consecutive days or is reasonably expected to last for such period, or if any material part of the Facility is taken by eminent domain, the Agency may terminate this Agreement, and the obligations of the Parties shall cease except obligations that have accrued prior to the effective date of such termination. If the Agency does not elect to terminate this Agreement, and the Uncontrollable Circumstance continues for a period of two-hundred and seventy-four (274) consecutive days, then the Contractor shall have the right to terminate the Agreement and the

obligations of the Parties shall cease except obligations that have accrued prior to the effective date of such termination.

(b) **Agency Termination for Cost Increases Due to Uncontrollable Circumstances.**

- (i) If, in any Contract Year, the sum of the Service Fee per Ton and the Supplemental Electrical Compensation per Ton increases as a result of a single Uncontrollable Circumstance by an amount equal to 15% or more over what the sum would have been for that Contract Year had no Uncontrollable Circumstance occurred; or
- (ii) If, in any Contract Year, the sum of the Service Fee per Ton and the Supplemental Electrical Compensation per Ton increases as a result of multiple Uncontrollable Circumstances, which have occurred since the Effective Date, by 20% or more over what the sum would have been for that Contract Year had no Uncontrollable Circumstances occurred,

the Agency may upon ninety (90) days written notice to the Contractor, terminate this Agreement by paying the Contractor the amount in Table 2 of Appendix P for the month in which the termination becomes effective plus, subject to Cost Substantiation, the reasonable demobilization costs and expenses (excluding any attorney fees) incurred by the Contractor, provided, however, if the month in which the termination pursuant to this Article 9.5(b) becomes effective prior to the first anniversary of the Service Commencement date then the Agency shall pay the Contractor the Agency Termination Payment applicable in the month in which the termination occurs and the Contractor shall bear all of its demobilization costs and expenses.

(c) **Contractor Termination for Cost Increases Due to Uncontrollable Circumstances**

- (i) If in any Contract Year, the sum of the Service Fee per Ton and the Supplemental Electrical Compensation per Ton earned by the Contractor decreases as a result of a single Uncontrollable Circumstance by an amount equal to 15% or more over what the sum would have been for that Contract

Year had no Uncontrollable Circumstance occurred; or

- (ii) If, in any Contract Year, the sum of the Service Fee per Ton and the Supplemental Electrical Compensation per Ton earned by the Contractor decreases, as a result of multiple Uncontrollable Circumstances which have occurred since the Effective Date, by 20% or more over what the sum would have been for that Contract Year had no Uncontrollable Circumstances occurred,

the Contractor may, upon 90 days written notice to the Agency, terminate this Agreement. Upon such termination (1) the Agency shall pay the Contractor any costs, fees and expenses that the Agency then otherwise owes to the Contractor at the date of such termination; and (2) the Contractor shall pay the Agency any costs, fees and expenses that Contractor then otherwise owes to the Agency at the date of such termination. Upon such termination no other payments shall be made to either Party. Notwithstanding anything to the contrary in this Article 9.5(c), any such pending termination shall not relieve the Contractor of its obligations under the Agreement.

(d) **Agency Right to Terminate for Convenience.** Except as provided below, the Agency shall have the right at any time, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Agreement upon not less than ninety (90) days' written notice to the Contractor.

The Agency may not exercise its convenience termination right pursuant to this Article 9.5(d) in order to secure a replacement contractor to operate and maintain the Facility.

If the Agency exercises its right to terminate this Service Agreement pursuant to this Article 9.5(d) on or after the Service Commencement Date, the Agency shall pay the Contractor the Agency Termination Payment applicable in the month in which the termination becomes effective and the Contractor shall bear all of its demobilization costs and expenses.

(e) **Termination for Failure to Meet Condition Precedent.** Notwithstanding anything to the contrary in this Agreement, the Agency shall have the right, in its sole discretion, to

terminate this Agreement without cost of any kind if the condition precedent in Article 11.8(c) has not been satisfied.

9.6 TRANSFER OF OPERATIONS ON TERMINATION

If this Agreement is terminated by reason of the default of the Contractor or if it expires pursuant to Article 10, the Contractor shall, at the request and option of the Agency, continue to operate the Facility under its current terms and/or fully cooperate with the Agency and any other party operating the Facility for up to four (4) months prior to and after expiration or termination to achieve a prompt and smooth transition of operation. The additional Direct Costs of the Contractor in providing such cooperation after the expiration or termination of this Agreement shall be reimbursed by the Agency to the Contractor subject to Cost Substantiation. At the effective date of the termination or expiration, or at the end of any extended operation pursuant to the prior sentence, the Agency shall retake immediate exclusive possession of the Facility and any material in the pit, The Contractor shall:

(a) grant to the Agency a paid-up, royalty free nonexclusive license to any patents, trademarks, copyrights and trade secrets and "shop rights" used by Contractor and required for the operation of the Facility, except that the Agency may utilize such licenses only for purposes related to the operation of the Facility;

(b) turn over all items in the Final Agency Inventory, Agency Spare Parts Inventory, software, manuals, warranties, operating records and data, Facility supplies and all proprietary components needed for continuing the operation and maintenance of the Facility;

(c) to the extent permitted as a matter of law, assign for the benefit of the Agency, or any subsequent Facility contractor, all maintenance and supply contracts, and

(d) assist the Agency, and any subsequent Facility contractor, by providing during the periods aforesaid initial training of Agency personnel and successor contractor personnel as may reasonably be necessary to enable the Agency to continue with the operation and maintenance of the Facility. Such training shall be provided by Contractor employees who are fully experienced in the operation of the Facility. The additional Direct Costs of the Contractor in providing such training shall be reimbursed by the Agency to the Contractor subject to Cost Substantiation. The Contractor shall also provide the Agency and its representatives all operational technical and nontechnical information, whether or not proprietary, licenses and permits required by the Agency to continue with the operation of the Facility.

The Contractor shall allow and assist in providing access to potential new contract operators, and shall not prohibit or impair its employees or contractors from accepting employment or contracts with the Agency or a potential new contract operator.

If requested by the Agency, the Contractor shall decommission the Facility in accordance with prudent industrial practice, good engineering practice, insurance requirements, and all applicable laws, regulations, codes and standards. The Agency shall pay the Contractor, subject to Cost Substantiation, for such decommissioning.

9.7 RIGHTS AND REMEDIES

Except as otherwise specifically provided elsewhere in this Agreement, all rights and remedies of the parties under any provision of this Agreement shall be cumulative, and in addition to any other rights and remedies provided for by law and equity, and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed to be an election of such right or remedy or to preclude or waive the exercise of any other right or remedy.

ARTICLE TEN **TERM**

10.1 TERM OF AGREEMENT

Except as otherwise provided herein, the term of this Agreement shall be from the Effective Date through the end of the hundred and sixty-second month from the month in which the Service Commencement Date occurred (the “Initial Term”).

10.2 EXTENSION

(a) Unless it has been earlier terminated, upon notice to the Contractor not less than six (6) months nor more than one (1) year prior to the expiration of this Agreement, the Agency in its sole discretion may extend the term of this Agreement an initial one (1) year period (the “First One-Year Renewal Period”) on the same terms and conditions as herein provided.

(b) If the Agency exercises its option for the First One-Year Renewal Period, then unless the First One-Year Renewal Period has been earlier terminated, upon notice to the Contractor not less than six (6) months prior to the expiration of the First One-Year Renewal Period, the Agency, in its sole discretion, may extend the term of this Agreement for a second one (1) year period (the “Second One-Year Renewal Period”) on the same terms and conditions

as herein provided.

(c) Unless this Agreement has been earlier terminated and upon mutual agreement, the Parties may extend the term of this Agreement for an additional six (6) year period (the “Six-Year Renewal Period”) on the same terms and conditions as herein provided.

(d) If the Parties mutually agreed to a Six-Year Renewal Period, then unless the Service Agreement has been earlier terminated and upon mutual agreement, the Parties may extend the term of this Agreement for another five (5) year period (the “Five-Year Renewal Period”) on the same terms and conditions as herein provided.

(e) Notwithstanding anything to the contrary in this Article 10, the Term of this Agreement shall not extend beyond June 30, 2039.

ARTICLE ELEVEN **MISCELLANEOUS**

11.1 UNCONTROLLABLE CIRCUMSTANCES

The failure or delay of either Party to perform any act required herein when such failure or delay is caused by an Uncontrollable Circumstance is excused; provided, however, that in no event shall any Uncontrollable Circumstance excuse the Agency from timely payment of Debt Service on the Bonds or payments to either Party of amounts otherwise due. Each Party shall use its reasonable efforts to overcome or remove at the earliest possible time any Uncontrollable Circumstance or the effects thereof. To the extent that the occurrence of an Uncontrollable Circumstance (other than where Capital Improvements are required due to an Uncontrollable Circumstance, which is addressed in Article 7.2) results in increased operating and maintenance costs of the Facility to the Contractor, the Agency shall reimburse the Contractor, subject to Cost Substantiation, any such increased cost as a Pass Through Cost.

To the extent that the occurrence of Uncontrollable Circumstance (other than where Capital Improvements are required due to an Uncontrollable Circumstance, which is addressed in Article 7.2) results in decreased operating and maintenance costs of the Facility to the Contractor, the Service Fee shall be reduced by the amount of such reduction.

The Agency shall be responsible for the cost of any rehabilitation or reconstruction of the Facility caused by an Uncontrollable Circumstance. The provisions of Article 7.1 shall apply to such rehabilitation or reconstruction.

If an Uncontrollable Circumstance limits the amount of Processable Waste that can be

delivered to, or accepted or processed at the Facility, then there may be a UCC Tonnage Shortfall and associated UCC Tonnage Shortfall Payment due the Contractor pursuant to Article 6.5(d).

Within 24 hours of knowledge of an event that may be an Uncontrollable Circumstance the Party affected shall verbally notify the other Party, and as soon as possible in writing, of the event, its potential impact and duration, and the measures the affected Party will be taking to mitigate the impact of the event. Within 10 days after the end of each month during the event and within thirty (30) days after the event has ended, the Party affected shall notify the other Party, in writing, of the actual impacts and duration of the event, whether in its judgment it is an Uncontrollable Circumstance, and the actual measures take to mitigate the impacts of the event. Furthermore, in such written notices, the effected Party shall include any limitations on the delivery, acceptance, or combustion of any Processable Waste, taking into consideration the facts at the time such as, without limitation, the Tons of Processable Waste planned to be delivered to the Facility, any planned and forced outages, and the permitted capacity of the Facility. The Party affected shall also specify in such notices the Tons applicable that may be classified as a Group A UCC Tonnage, Group B UCC Tonnage, Group C UCC Tonnage, Group D Tonnage or Group E Tonnage pursuant to Article 6.5(c).

Either Party may dispute the assertions of the other Party pursuant to the dispute resolution provisions of this Agreement.

11.2 ASSIGNMENT

Except as provided herein, this Agreement may not be assigned by any Party, nor may the performance of a Party's contractual obligations be subcontracted without the prior written consent of the other Parties hereto. In any event, no assignment by the Contractor will be valid unless the Contractor guarantees the performance of the assignee and the Guarantor consents in writing to such assignment and extends its guarantee and maintains its security therefore in accordance with Appendix J as to both the Contractor and its assignee for the Term of this Agreement.

Without consent, the Agency may assign its rights and obligations hereunder to a public-private joint venture or partnership, and it may assign, or create a security interest in, its rights hereunder and pledge all monies receivable by the Agency hereunder to the Trustee and the County as security for, or otherwise in connection with, arrangements for the financing or refinancing the cost of all or part of the Facility or any addition or alteration thereto, and in such

event the Contractor when notified of such assignment, will make payments to such assignee or assignees.

11.3 MAINTENANCE OF CORPORATE EXISTENCE

During the term of this Agreement the Contractor shall maintain its corporate existence and shall not, without the prior written consent of the Agency, (a) dissolve or otherwise dispose of all or substantially all of its assets, (b) consolidate with or merge into any corporation or business entity or (c) permit the transfer, sale or acquisition of a controlling share of any of its voting securities.

11.4 CONTRACTOR RECORDS

The Contractor shall account for and make available to the Agency and the County, all records relating to all materials, machinery, equipment, and labor used in its performance of this Agreement and shall keep all its records relating to the Facility or its performance of this Agreement in accordance with normal business practices and generally accepted accounting principles. At any time during the term of this Agreement and until six (6) months following termination of this Agreement, and upon two (2) weeks written notice to the Contractor, the Agency, the Agency Engineer or a firm of independent public accountants designated by the Agency may examine and audit any such records of the Contractor. The Agency shall pay the cost of such audits.

11.5 RELATIONSHIP OF THE PARTIES

No Party to this Agreement shall have any responsibility whatsoever to perform services or to assume contractual obligations that are the obligations of the other Party; nothing herein shall constitute either Party a partner, agent or representative of the other party, or create any fiduciary relationship between the Parties. Contractor and the Guarantor shall have no right against the County under this Agreement or under any other agreement executed in connection with the financing of the Facility.

11.6 NOTICE

Any notices or other communications required or permitted hereunder will be in writing and will be deemed sufficiently given only if delivered in person or sent by first-class mail, postage prepaid, express mail, email or facsimile, addressed to:

IF TO THE AGENCY	IF TO THE CONTRACTOR
Dutchess County Resource Recovery Agency, 96 Sand Dock Road Poughkeepsie, New York 12601 Attn: Executive Director	Wheelabrator Technologies Inc. 4 Liberty Lane West Hampton, NH 03842 Attn: General Counsel
And to Dutchess County at: Dutchess County Division of Solid Waste Management, 27 High Street Poughkeepsie, NY 12601 Attention: Deputy Commissioner solidwastemgmt@dutchessny.gov ; And to Counsel at: Van DeWater & Van DeWater, LLP. 85 Civic Center Plaza, Suite 101 P.O. Box 112 Poughkeepsie, New York 12602	

or to their then current addresses.

11.7 APPLICABLE LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of New York pertaining to contracts executed and to be performed in New York. Any action or proceeding arising out of this Agreement shall only be maintained and venued in the Supreme Court of the State of New York for Dutchess County.

11.8 CONDITIONS PRECEDENT

Except for the obligations under Article 2.2, which shall become effective on the Effective Date, the obligations of the Contractor and the Agency under this Agreement including, without limitation, the obligations of the Agency to make payments under Article 6 and any

termination payments under Article 9, shall be and become absolute and unconditional only upon the satisfaction or waiver by the party in interest (which is the Agency in the case of clause (a) and both Parties in the case of clauses (b) and (c)) of the following conditions:

(a) the delivery of the Parent Company Guaranty by the Contractor, and

(b) the Agency has received or it has applied for and is diligently pursuing all required consents from the Trustee, Bondholders, the DEC, the County and others as may be required by law or contract; and

(c) the sixty (60) day period provided for in General Municipal Law section 120-w (6) has passed without the filing of an action, suit or proceeding contesting the validity of this Agreement or if such an action, suit or proceeding has been filed, such action, suit or proceeding has been dismissed with prejudice, and without the possibility of appeal.

11.9 AMENDMENT

This Agreement may be amended from time to time, in writing, by mutual written consent of the Parties.

11.10 PERMITS

(a) It will be the obligation of the Agency to secure and maintain a Part 360 Solid Waste Management Facility Operating Permit and a Title V Air Quality Permit from the DEC and to secure and maintain any other environmental permits or other permits or certificates that are or may be required during the term of this Agreement. The Contractor will provide the Agency with all information and data in its possession or under its control, and reasonable assistance, as required to obtain, maintain and enforce environmental and other permits.

(b) The Agency acknowledges that the Operations and Maintenance Manual attached as Appendix F will need to be revised to reflect the Contractor's specific operational practices relative to maintaining a spare parts inventory. The Agency will reasonably cooperate with the Contractor in revising the Operations and Maintenance Manual as reasonably necessary to reflect such spare parts inventory practices and will file and seek the DEC's approval of an Operations and Maintenance Manual incorporating such revisions as soon as reasonably possible. The Agency shall indemnify, defend and hold harmless the Contractor from any failure of the Contractor to comply with Section 2.2.9 of the Operations and Maintenance Manual and any

related provisions until such revised Operations and Maintenance Manual is approved by the DEC.

11.11 WAGE, AND SUBCONTRACTING

The Contractor agrees to comply with Section 220, et seq. of the New York State Labor Law, and Section 120-w of the New York State General Municipal law as amended, as applicable, and all other applicable local, state and federal laws, including but not limited to, the requirements that all subcontractors pay prevailing wage rates and supplements in accordance with prevailing practices. Furthermore, the Contractor shall take all necessary steps to insure the meaningful participation of minority group persons and business enterprises in the conduct of the subcontracted work.

11.12 NON-DISCRIMINATION REQUIREMENT

The Contractor shall comply with all federal, state and local laws, rules and regulations that are intended to protect civil rights. The Contractor also agrees that there shall be no discrimination or intimidation because of race, creed, color, sex, sexual orientation or national origin in the employment of persons for work required herein, whether performed by the Contractor or a subcontractor.

11.13 HEADINGS

Captions and headings in this Agreement are for reference only and do not constitute a part of this Agreement.

11.14 WAIVER

The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any other default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed as a waiver of any default or breach.

11.15 DISPUTES

The Independent Engineer shall assume initial jurisdiction over disputes and claims

having a total value of less than \$250,000. Disputes and claims with a total value of \$250,000 or more shall be resolved in the Supreme Court of the State of New York for Dutchess County under Article 11.7 above.

If the Parties cannot resolve a dispute or claim having a total value of less than \$250,000 within 10 days, either Party may submit the dispute to the Independent Engineer at a forum convened in Dutchess County, who shall make a determination within 20 days after submittal as to all matters necessary for the resolution of the dispute, including the obligation, or sharing of the obligation, between the Parties for the payment of the Independent Engineer's costs. The Parties shall submit a written statement of their positions, with supporting facts and data, to the Independent Engineer within 10 days after receipt of notice of the dispute or claim having been brought by either Party to the Independent Engineer.

The Parties shall pay any amount found due, without interest, and diligently pursue performance of any task directed by the Independent Engineer within the time period determined by the Independent Engineer. The obligation to pay amounts determined and perform tasks as directed by the Independent Engineer may be confirmed and entered as a judgment pursuant to CPLR § 7510 and § 7514 and shall be absolute and unconditional, except as provided by CPLR § 7511.

11.15.1 Payment Disputes

If any Party disputes an amount owing to the other Party, such Party shall:

(a) Give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute, which notice shall be delivered on or before the due date of the amount disputed; and

(b) Pay all undisputed amounts on the due date. The disputed amount shall be determined by negotiation or dispute resolution as provided in Article 11.15 above.

11.16 TRANSFER OR REMOVAL OF EQUIPMENT

During the Term of this Agreement, except for Contractor Owned Assets, the Contractor shall not remove any equipment, commodities, mobile equipment (except for normal use related to the operations of the Facility), parts, tools or scrap from the Site or transfer any interest therein

without the Agency's written consent. At the end of the Term, the Contractor may, in its sole discretion, remove Contractor Owned Assets.

The Contractor hereby agrees to indemnify and save the Agency harmless from any and all loss, cost, expense, claims or demands that may arise from the Contractor's unauthorized removal or transfer contrary to this Article 11.16.

11.17 MERGER CLAUSE

This Agreement (including the Appendices hereto) constitutes the entire agreement and understanding of the parties with respect to the operation and maintenance of the Facility and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to the subject matter hereof.


11.18 SURVIVAL


The provisions of Articles 5, 6, 8.9, 9, 11.4, 11.7, 11.15, 11.16, and 11.18 shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

Dutchess County Resource Recovery Agency

Wheelabrator Dutchess County LLC
Contractor

By: 
WILLIAM CALOGERO
Executive Director

By: 
Its: Vice President

**APPENDICES
TO
SERVICE AGREEMENT**

POWER SALES AGREEMENT
WITH CENTRAL HUDSON

APPENDIX A

POWER SALES AGREEMENT

THIS AGREEMENT, made and entered into as of November 1, 1984 by and between the Dutchess County Resource Recovery Agency (the "Agency"), a public benefit corporation formed pursuant to the Public Authorities Law of the State of New York, and having its office at 22 Market Street, Poughkeepsie, New York and Central Hudson Gas & Electric Corporation ("Central Hudson"), a New York corporation with its office in Poughkeepsie, New York,

W I T N E S S E T H:

WHEREAS, the Agency is empowered to finance, acquire, construct, operate, own and maintain solid waste disposal facilities in Dutchess County; and

WHEREAS, the Agency is contemplating the construction of a qualifying mass-burning co-generating, resource recovery facility (the "Facility"), on the east bank of the Hudson River in the town of Poughkeepsie, New York, to process a guaranteed quantity of solid waste, recover saleable materials and generate steam and electricity; and

WHEREAS, the Agency intends to issue resource recovery revenue bonds in order to finance the construction of the Facility; and

WHEREAS, the Agency is contemplating entering into a Steam Sales Agreement, whereby steam produced by the Facility will be sold to International Business Machines Corporation ("IBM"), a New York corporation for use at IBM's plant located on South Road, Poughkeepsie, New York; and

WHEREAS, the Agency wishes to make available and sell, and Central Hudson wishes to accept and purchase, electrical energy produced by the Agency's Facility;

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

ARTICLE I: CONDITIONS

1.1 This Agreement is expressly conditioned and contingent upon the acceptance by the Agency of the Facility from the party constructing the Facility.

ARTICLE II: DEFINITIONS

2.1 As used in this Agreement, the following terms will have the following meanings:

(a) "Avoided Costs" means one of the following rates, at the Agency's option:

- (i) the New York State statutory minimum payment to cogeneration facilities, or
- (ii) a generally applicable rate for purchases of long-term power by Central Hudson from other qualifying cogeneration facilities, as established from time to time by tariff or by order of the Public Service Commission of the State of New York (the "Commission") or
- (iii) a generally applicable rate for purchases of short-term power by Central Hudson from other qualifying cogeneration facilities, as established from time to time by tariff or by order of the Commission or if no such Commission-established rate is in effect, then Central Hudson shall develop a rate for purchases of short-term power using the methodology employed by the Commission in developing the most recently approved generally applicable rate for Central Hudson's purchases of short-term power from qualifying cogeneration facilities; provided that Central Hudson shall submit

the rate so developed to the Commission for its review and approval or acceptance and that upon such approval or acceptance said rate shall be effective for purposes of this subparagraph (iii); provided further that until such approval or acceptance is received, the rate for purchases most recently applicable under the Agreement shall remain in effect for purposes of this subparagraph (iii).

The calculation of the rate and the exercise of the Agency's option shall first be made within thirty days after the date on which the Agency gives notice to Central Hudson that the Facility has been tested and is capable of reliably furnishing electricity. The day on which the Agency first exercises its option shall be known as the "Rate Option Exercise Date." The parties will review the calculation of the rate every twelve months after the Rate Option Exercise Date (the "Anniversary Date") at which time the Agency will again exercise its option. If, at any time, either party determines that a review of the calculation of the rate should occur before the next Anniversary Date, the parties agree to so review it, provided that the party requesting the review shall pay for or reimburse Central Hudson for, as

the case may be, all the reasonable costs actually incurred by Central Hudson in calculating the rate options. Notwithstanding any of the foregoing, the Agency may exercise its option to sell power at the rate set forth in subparagraph 2.1(a) (ii) above, if at all, only one time during the Term of this Agreement, and such exercise must occur not later than October 31, 1989. The exercise of such option shall, until the elected series of long-term rates expires, preclude the Agency from exercising any other rate option provided above.

(b) "Force Majeure" means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure, and shall include acts of God, strikes, lockouts or other industrial disturbances, wars, blockades, insurrections, riots, arrests and restraints of rules and people, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or any other cause beyond the reasonable control of and without the fault or negligence of the party claiming relief from any of the requirements of this Agreement and which, by the exercise of due diligence, the party is unable to prevent or overcome.

(c) "Gross Adjusted Energy Output" means the gross output of a generating facility in kilowatt-hours, less any

step-up transformation losses to a high voltage bus at the generator site.

(d) "Interconnection" means a connection between the electrical systems of the Agency and that of Central Hudson permitting the transfer of electric energy (meeting Central Hudson's reasonable requirements for safety and quality of power supplied) in either direction.

(e) "Interconnection Costs" means the reasonable costs of connection, switching, safety provisions, Metering Devices, metering and administration actually incurred by Central Hudson which are directly related to the provision, construction, installation and maintenance of Interconnection Equipment necessary to permit the sale of electric energy by the Agency to Central Hudson, but only to the extent that they exceed those amounts Central Hudson would incur in selling to the Agency all of the Facility's electric service requirements as a non-cogenerating customer. Such costs shall be Interconnection Costs only to the extent that they exceed the corresponding costs which would have been incurred by Central Hudson had it not purchased electric energy from the Agency, but instead generated or purchased an equivalent amount of electric energy from other sources.

(f) "Interconnection Equipment" means all the materials and equipment installed for the purpose of making

Interconnection as specified and depicted in Appendix B to this Agreement.

(g) "Interconnection Point" means the physical point at which interconnection is made between the electrical systems of the Facility and Central Hudson, as specified and depicted in Appendix B to this Agreement.

(h) "Metering Device" means an instrument used to measure, or to measure and record, electric energy or capacity.

(i) "Month" means calendar month.

(j) "Net Adjusted Energy Output" means the gross output of a generating facility in kilowatt-hours, less station use, less any step-up transformation losses to a high voltage bus at the generator site.

(k) "Output Meter" means a Metering Device which measures, or measures and records, the electrical power output of the Facility.

(l) "Station Use" means the kilowatt-hours drawn from Central Hudson's distribution system or generated by the Facility which are used by the Agency for the purposes of operating the Facility.

(m) "System Emergency" means a condition on Central Hudson's electric system which is likely to result

in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

2.2 Appendices. The following Appendices are attached hereto and made a part hereof:

Appendix A

Appendix B

Appendix C

ARTICLE III: TERM

3.1 This Agreement, after execution by both parties, shall be filed by Central Hudson with the Commission. The Agreement shall become effective upon its approval by the Commission and shall, unless otherwise terminated pursuant to the provisions of Sections 3.2, 3.4 or Article VIII below, continue in effect for an initial period of 20 years beginning on the date that the Agency and Central Hudson mutually agree that the Facility and the Interconnection Equipment have been tested and are capable of reliably furnishing electricity ("Initial Term") such agreement not unreasonably to be refused. At the expiration of the Initial Term, this Agreement shall automatically be renewed for two (2) successive five (5) year periods ("five year Renewal Terms") unless notice of intention to terminate is given by the Agency to Central Hudson, as provided for in Section 3.4

below. At the expiration of the second five year Renewal Term, this Agreement shall automatically be renewed for successive one (1) year periods ("one year Renewal Terms"), unless notice of intention to terminate is given by either Party to the other as provided for in Sections 3.4 and 3.5 below. The word "Term" when used in this Agreement means ~~of the Initial Term~~ and any Renewal Terms.

3.2 Notwithstanding any other provision of this Agreement to the contrary, the Agency, at its sole option, may terminate this Agreement upon reasonable notice given to Central Hudson, if the Facility loses any exemption from regulation under the Federal Power Act, the Public Utility Holding Company Act of 1935 or the laws of the State of New York, as such exemption is in effect on the date of this Agreement.

3.3 Central Hudson agrees that it will cooperate, to the extent required, with any trial runs or testing required in connection with acceptance testing of the Facility and the Interconnection Equipment, referred to in Section 3.1 above, including the furnishing and acceptance of electrical energy.

3.4 The Agency may terminate this Agreement by giving notice of such intention to Central Hudson at least 180 days prior to expiration of any Term.

3.5 Central Hudson may terminate this Agreement at the end of any one year Renewal Term by giving notice of such intention to the Agency at least 180 days prior to the expiration of said one year Renewal Term.

ARTICLE IV: SALE OF POWER

4.1 The Agency agrees to make available and sell, and Central Hudson agrees to accept and purchase, during the Term of this Agreement, either the Facility's Gross Adjusted Energy Output or Net Adjusted Energy Output, at the Agency's option, subject to the terms, qualifications and provisions of this Agreement. It is expressly understood between the parties hereto that the Facility's Gross Adjusted Energy Output or Net Adjusted Energy Output, as the case may be, is being sold only on an as available basis, unless the Agency exercises its option, set forth in Section 2.1(a)(ii) above, in favor of a rate for purchases of long-term power by Central Hudson. During periods that the Agency exercises the option to sell the Facility's Gross Adjusted Energy Output, the Facility's station use will be considered to be supplied by Central Hudson and the Agency shall pay Central Hudson for such service under the appropriate Central Hudson tariff.

4.2 As of the date of this Agreement, the energy described in Section 4.1 above and any capacity made available by the Agency under this Agreement shall be provided

by the Agency's 9200 KVA-rated generator rated at a Power Factor of .80 which is located at the Facility.

4.3 The energy and any capacity provided under this Agreement shall be three-phase, 60 hertz nominal, alternating current at a nominal voltage of 13,800 volts, and shall be made available by the Agency at the Interconnection Point with electric characteristics which permit safe and continuous parallel operation with the Central Hudson electric system. Subject to the preceding sentence, no warranties, express or implied, shall be deemed to have been made by the Agency with regard to the electric energy to be furnished by the Agency to Central Hudson under this Agreement.

4.4 The Agency may add, upon six months notice to Central Hudson (i) additional qualifying generating capacity up to a total capacity of 10 MW or (ii) one additional solid waste processing line at the Facility. Central Hudson will accept and purchase, in accordance with the terms and provisions of this Agreement, any energy produced by such additional capacity or as a result of the additional processing line. If the acceptance of such additional energy requires the installation of additional Interconnection Equipment, Central Hudson will notify the Agency as to the identity and cost of such equipment and promptly install the same. Before Central Hudson is required to purchase power from

such additional capacity, the additional Interconnection Equipment as necessary shall be in place. The Agency shall reimburse Central Hudson in the manner provided in Section 5.2 below for the costs of any such additional Interconnection Equipment. Any dispute between the parties concerning the additional equipment will be submitted to the Commission for resolution.

ARTICLE V: INTERCONNECTION, OPERATION
AND MAINTENANCE

5.1 Central Hudson agrees to make Interconnection with the Facility. The Interconnection shall be designed to receive 10 MW of electricity. Central Hudson agrees to provide, construct and install all Interconnection Equipment as specified in Appendix B hereto. If after the Facility commences operation, it should reasonably be determined that due to previous error, omission or previously unforeseen circumstances, certain equipment, in addition to the Interconnection Equipment, is necessary in order to permit the Facility to operate in parallel with the Central Hudson electric system without adversely affecting the quality, reliability and safety of the electric service furnished to Central Hudson's customers, the Agency, at its cost and expense, shall install or cause to be installed such additional equipment as may reasonably be required by Central Hudson to permit

the safe and continuous operation of the Facility in parallel with the Central Hudson electric system. It is the intention of the parties that such additional equipment shall be limited to that equipment which is necessary solely as a result of the operation of the Facility and shall not require the Agency to bear costs which are fairly allocable to retail customers or other cogenerators or small power producers. Any dispute between the parties concerning such additional equipment will be submitted to the Commission for resolution.

5.2 Central Hudson shall give notice to the Agency upon completion of Interconnection of all Interconnection Costs incurred as of the date of completion of the Interconnection. The Agency agrees to reimburse Central Hudson for Interconnection Costs in six equal monthly installments, the final installment being due not later than 180 days after Interconnection is completed.

5.3 The Interconnection Point and the method by which Interconnection will be accomplished, shall be as set forth in Appendix B hereto.

5.4 Electric energy or capacity made available to Central Hudson by the Agency pursuant to this Agreement shall be measured by Metering Devices to be installed, owned and maintained by Central Hudson. The number, type and location of Metering Devices to measure Net Adjusted Energy Output

shall be as set forth in Appendix C hereto. The number, type and location of Metering Devices to measure Gross Adjusted Energy Output shall be as reasonably determined by Central Hudson and shall be installed upon request of the Agency, but in any event prior to the effective date of the Agency's exercise of its option to sell, pursuant to Section 4.1, the Facility's Gross Adjusted Energy Output. The Agency shall reimburse Central Hudson, in the manner provided in Section 5.2, for the costs of installing the Metering Devices to measure the Facility's Gross Adjusted Energy Output.

5.5 Upon reasonable advance notice to the Agency, one or more specifically designated representatives of Central Hudson shall have reasonable access during the Agency's normal working hours to the Interconnection Equipment for the purposes of conducting necessary examinations, tests, calibrations and maintenance thereof; provided, however, that such access shall not disrupt or otherwise interfere with the normal operation of the Agency's business.

5.6 Central Hudson agrees to inspect and test all Metering Devices upon installation and at least annually thereafter. Additionally, upon written request by the Agency, Central Hudson shall inspect or test any Metering Device and shall permit a qualified representative of the Agency to witness the inspection or testing of any Metering Device.

The reasonable and actual expense of any such requested inspection or testing by Central Hudson shall be reimbursed by the Agency unless, upon being inspected or tested, a Metering Device is found to register inaccurately by more than 0.4% of full scale, in which event the expense of the requested inspection shall be borne by Central Hudson. If a Metering Device is found to be defective or inaccurate, it shall be adjusted, calibrated, repaired or replaced by Central Hudson at its own expense.

5.7 If a Metering Device fails to register, or if the measurement made by a Metering Device is found upon testing to be inaccurate (whether or not within 0.4% of full scale), an adjustment shall be made correcting all measurements made by the inaccurate or defective Metering Device for (a) the actual period during which inaccurate measurements were made, if that period can be determined to the mutual satisfaction of the parties; or (b) if the actual period cannot be determined to the satisfaction of the parties, one-half of the period from the date of the last previous test of the Metering Device. If the parties are unable to agree on an adjustment amount to be applied to the adjustment period, the amount of the adjustment shall be determined (i) by using the registration of the Agency's own Metering Devices, if any, and if installed and accurately

registering, or in the absence of such measuring equipment, (ii) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or, if both subparagraphs (i) and (ii) are inapplicable, then (iii) by estimating on the basis of deliveries during periods under similar conditions when the Metering Device was registering accurately. The previous payments by Central Hudson for electricity delivered during this period shall be subtracted from the adjusted amount of payments that are calculated to be owed under this Section. If the difference is a positive number, that difference shall be paid by Central Hudson to the Agency; if the difference is a negative number, that difference shall be paid by the Agency to Central Hudson.

5.8 The Agency shall read the Output Meters and shall report the readings to Central Hudson at a location to be designated by Central Hudson at an agreed-upon time. The Agency shall, after reasonable notice, have the right to inspect all metering records maintained by Central Hudson pursuant to this Agreement.

5.9 The Agency shall have the sole right and obligation to operate, maintain, inspect, test and calibrate the Facility.

5.10 The Agency and Central Hudson agree to notify each other immediately in the event hazardous or unsafe conditions associated with operations pursuant to this Agreement are discovered to exist. Central Hudson shall not be obligated to accept and may require the Agency to curtail, interrupt or reduce deliveries of the Facility's Gross Adjusted Energy Output or Net Adjusted Energy Output, as the case may be, if Central Hudson reasonably determines that such curtailment, interruption or reduction is necessary because of a System Emergency. Upon request by the Agency, Central Hudson shall promptly state in writing its reasons for such determination.

5.11 The Agency shall pay a monthly charge to Central Hudson for Central Hudson's property taxes, operating and maintenance expenses incurred in connection with or properly allocable to the Interconnection Equipment. The monthly charge shall be that set forth by the Public Service Commission of the State of New York in Central Hudson's tariff in effect at the time of payment, or if none is then in effect, such monthly charge shall be 0.75% of the Interconnection Costs.

ARTICLE VI: PAYMENTS BY CENTRAL HUDSON

6.1 Central Hudson agrees to make monthly payments to the Agency pursuant to the terms and conditions of this Article VI.

6.2 Central Hudson shall pay the Avoided Costs to the Agency for each kilowatt-hour of energy made available by the Agency at the Interconnection Point.

6.3 Each monthly payment shall be made by Central Hudson to the Agency no later than 15 days after the end of the calendar month for which such payment is due. A disagreement between the parties as to the amount of the payment due from Central Hudson shall not relieve Central Hudson of its obligation to make timely payment, as provided in the preceding sentence, of all undisputed amounts. Late payment shall carry a service charge during the period of delinquency equivalent to interest at a rate of 1 1/2% per month.

6.4 In the event adjustments are made to correct measurements of defective or inaccurate Metering Devices, the parties shall use the corrected measurements described in Section 5.7 to recompute the amounts due from either Central Hudson or the Agency for the electric power made available under this Agreement during the period of inaccuracy. If the total amount, as recomputed, due from either Central Hudson or the Agency for the period of inaccuracy varies from the total amount due as previously computed, the difference in the amounts shall be paid to either Central Hudson or the

Agency, as the case may be, 20 days after the party owing the difference is notified of the results of the recomputation.

6.5 Central Hudson agrees to deliver to the Agency, not later than the 15th day of each month, a memorandum of record itemizing the calculations for all payments, adjustments and other transactions conducted under this Agreement during the previous month.

ARTICLE VII: INDEMNIFICATION

7.1 Central Hudson will indemnify and hold the Agency harmless from damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable counsel fees incurred in litigation or otherwise, assessed, incurred or sustained by or against the Agency with respect to or arising out of (i) the acts or omissions of employees, subcontractors, representatives or other agents of Central Hudson or (ii) any and all liabilities for which Central Hudson is to remain liable as provided in this Agreement.

7.2 Promptly after receipt by the Agency of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 7.1 above may apply, the Agency will notify Central Hudson in writing of such fact.

Central Hudson will assume the defense thereof with counsel designated by Central Hudson and satisfactory to the Agency: provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and otherwise to participate in the defense of such action on behalf of such indemnified party or parties.

7.3 Should the Agency be entitled to indemnification under this Article VII as a result of a claim by a third party, and Central Hudson fails to assume the defense of such claim, the Agency will at the expense of Central Hudson contest (or, with the prior written consent of Central Hudson, settle) such claim, provided that no such contest need be made and settlement or full payment of any such claim may be made without consent of Central Hudson (with Central Hudson being obligated to indemnify the Agency under this Article VII if, in the opinion of the Agency's counsel, such claim is meritorious).

7.4 In the event that Central Hudson is obligated to indemnify and hold the Agency harmless under this Article VI, the amount owing to the Agency will be the amount of the Agency's actual out-of-pocket loss net of any insurance or other recovery.

7.5 To the extent permitted by law, the Agency will indemnify and hold Central Hudson harmless from damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable counsel fees incurred in litigation or otherwise, assessed, incurred or sustained by or against Central Hudson with respect to or arising out of the acts or omissions of employees, subcontractors, representatives or other agents of the Agency; provided, however, that the Agency's obligations hereunder, and the requirements as to notices and assumptions of defense, shall be identical to Central Hudson's obligations to the Agency set forth and more particularly described in this Article VII.

ARTICLE VIII: EVENTS OF DEFAULT AND TERMINATION

8.1 The occurrence of any of the following events shall constitute an event of default under this Agreement and the party not in default shall have the right, upon notice, to terminate this Agreement without liability:

(a) if either party shall fail to make any payment due hereunder and such failure shall continue for 20 days after notice demanding such payment;

(b) if either party shall fail to observe or perform any other term, covenant, condition or agreement contained herein and such failure shall continue for 30 days after notice specifying such failure and demanding that it be remedied;

(c) if either party shall become bankrupt or insolvent, or a voluntary or involuntary proceeding shall be initiated against a party under the bankruptcy or insolvency laws, or a party shall fail to meet its debts in the ordinary course of business; provided, however, that this Agreement shall not be terminated pursuant to this subparagraph 8.1(c) if, within 10 days after the receipt of termination notice from Central Hudson, the Agency, the Agency as debtor in possession or the Agency's trustee, receiver or custodian, whichever is obligee under this Agreement, affirms this Agreement in writing.

8.2 If Central Hudson defaults under Section 8.1 hereof, the Agency shall have the right to transmit electricity on Central Hudson's system, from the Facility to any electric utility, municipality or other entity the Agency may designate from among such entities interconnected with Central

Hudson, to the extent sufficient transmission capacity is available, and to the extent such transmission does not jeopardize the reliability of the Central Hudson system and is consistent with Central Hudson's service obligations under New York and federal law. Such transmission shall be provided under rate and service conditions that are applicable to other Central Hudson third-party transmission arrangements, or under other rates and conditions that may be reasonable under the circumstances, subject to the approval of the regulatory agencies having jurisdiction over wheeling transactions.

8.3 The termination of this Agreement for any reason shall not discharge either party from any obligations it owes to the other party under this Agreement by reason of any transactions, loss, cost, damage, expense or liability which occurred or arose (or the circumstances, events or basis of which occurred or arose) prior to such termination. It is the intent of the parties that any such obligations owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events or basis of the same shall be known or unknown at the termination of this Agreement) shall survive the termination of this Agreement.

ARTICLE IX: FORCE MAJEURE

9.1 If as a result of Force Majeure either party

is rendered wholly or partly unable to perform its obligations under this Agreement, that party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected provided that:

(a) the non-performing party gives the other party immediate written notice describing the particulars of the Force Majeure;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(c) no obligations of either party which arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and

(d) the non-performing party uses its best efforts to remedy its inability to perform.

9.2. Nothing in this Article IX shall require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party having the difficulty.

ARTICLE X: NOTICES

10.1 All notices or other communications which are required or permitted hereunder shall be sufficient if in writing and personally delivered or by certified mail, postage prepaid, as follows:

if to the Agency:

County Office Building
Fifth Floor
22 Market Street
Poughkeepsie, New York 12601

Attention: Stephen J. Wing, Esq.
Dutchess County Attorney

if to Central Hudson:

284 South Avenue
Poughkeepsie, New York 12601

Attention: Secretary

or such other person or address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice or communication will be deemed to have been given as of the date personally delivered or mailed.

ARTICLE XI: ASSIGNMENT

11.1 The Agency may assign all or any portion of its rights and obligations hereunder provided, however, that the Agency shall notify Central Hudson 60 days in advance of any such assignment. In the event that all or any portion of the Agency's obligations are assigned, the assignee shall

agree in writing to assume such obligations. Upon any such assignment and assumption, the Agency shall have no further liability with respect to the rights and obligations so assigned, except for the reimbursement for Interconnection Costs. The provisions of this Agreement shall bind the parties hereto and their respective successors and assigns. The provisions of this paragraph requiring advance notification shall not apply to the assignment by the Agency of its rights to receive revenues under this Agreement for the purpose of financing the construction of the Facility.

ARTICLE XII: RECORDS

12.1 Central Hudson shall maintain and preserve for a period of not less than 5 years from the date of preparation thereof complete and accurate records of (a) all Interconnection Costs, (b) of all metering of electrical energy or energy and capacity provided pursuant to this Agreement and (c) of all data and information necessary to calculate payments as provided in this Agreement, including invoices, receipts, charts, print-outs and other materials and documents. Central Hudson shall make all such records available for inspection by the Agency or its representatives upon reasonable advance notice.

ARTICLE XIII: MISCELLANEOUS

13.1 The headings used in this Agreement are for

convenience only and will not affect the construction of any of the terms in this Agreement.

13.2 This Agreement and the documents delivered pursuant hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations and understandings.

13.3 Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against whom enforcement of the termination, amendment, supplement, waiver or modification is sought.

13.4 This Agreement shall be governed by the laws of the State of New York.

13.5 The unenforceability or invalidity of any Article or Section or provision of this Agreement shall not affect the enforceability or validity of the balance of this Agreement; provided, however, that if any or all of such Articles or Sections are held unenforceable or invalid then, at the option of the Agency, this Agreement shall be terminated in its entirety.

13.6 This Agreement may be executed in any number of counterparts and each such counterpart will be deemed an original instrument, but all such counterparts together shall constitute but one agreement.

13.7 No delay or failure on the part of any party in exercising any rights hereunder, and no partial or single exercise thereof, will constitute a waiver of such rights or of any other rights hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers this 27th day of November 1984.

DUTCHESS COUNTY RESOURCE RECOVERY AGENCY

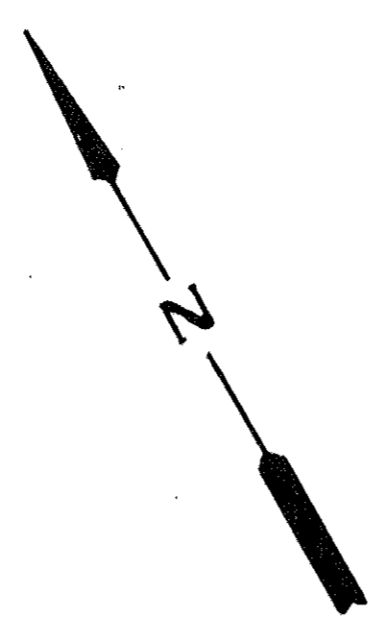
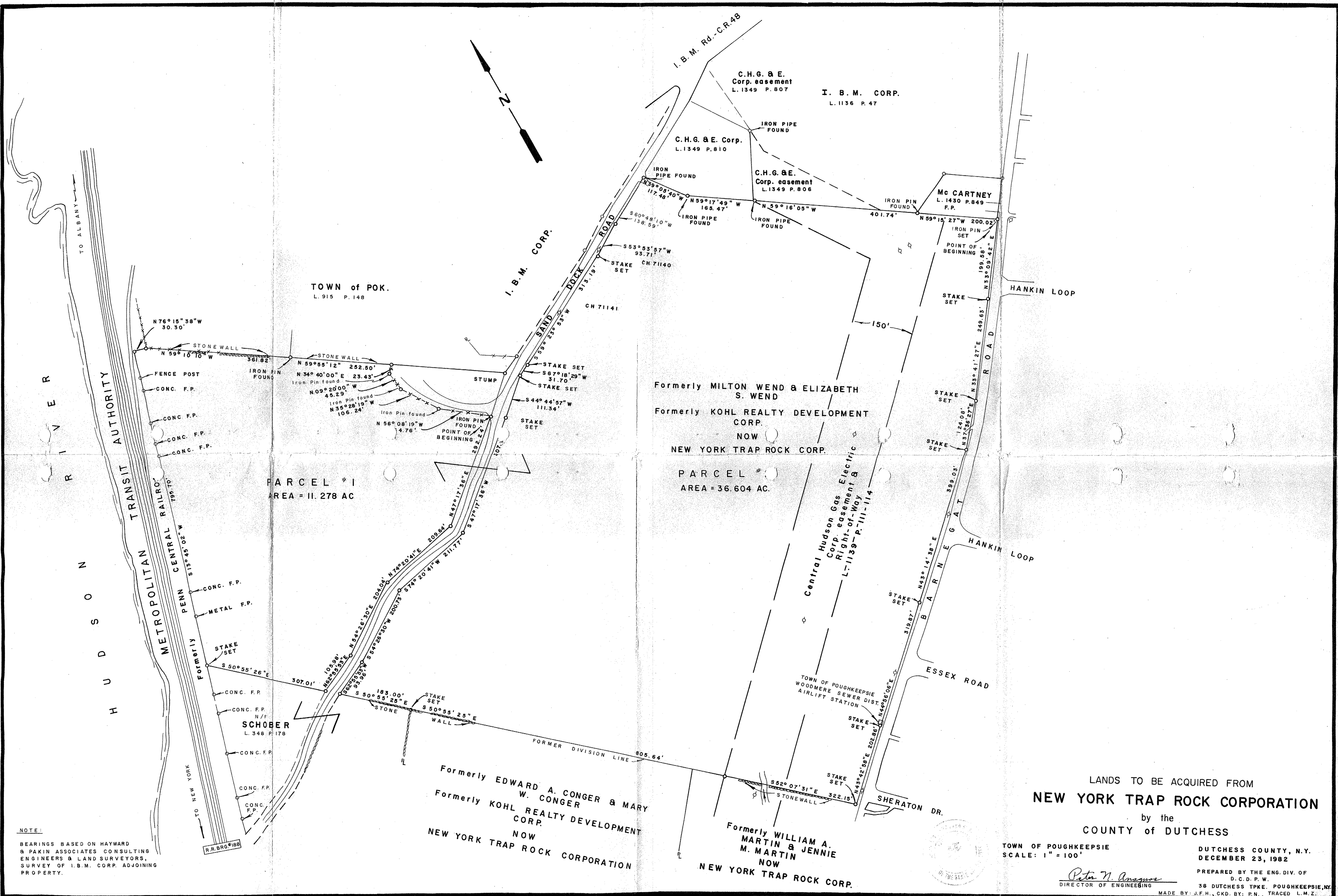
By Steph Wang
[Title]

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

By John C. Mack III
[Title]

SITE SURVEY

APPENDIX B



NOTE:
 BEARINGS BASED ON HAYWARD
 & PAKIN ASSOCIATES CONSULTING
 ENGINEERS & LAND SURVEYORS,
 SURVEY OF I.B.M. CORP. ADJOINING
 PROPERTY.

LANDS TO BE ACQUIRED FROM
NEW YORK TRAP ROCK CORPORATION
 by the
 COUNTY of DUTCHESS

TOWN OF POUGHKEEPSIE
 SCALE: 1" = 100'
 DUTCHESS COUNTY, N.Y.
 DECEMBER 23, 1982
 PREPARED BY THE ENG. DIV. OF
 D. C. D. P. W.
 38 DUTCHESS TPKE. POUGHKEEPSIE, NY.
 MADE BY: J.F.H., CKD. BY: P.N., TRACED L.M.Z.

CODES AND STANDARDS

APPENDIX C

APPENDIX C

CODES AND STANDARDS

1. Air Conditioning and Refrigeration Institute (ART)
2. Air Moving and Conditioning Association (AMCA)
3. American Concrete Institute (ACI), including without limitation,
 - (i) ACI 318 — Structural Concrete Building Code
 - (ii) ACI 350 — Environmental Engineering Concrete Structures
4. American Institute of Steel Construction (AISC), including without limitation,
 - (i) Manual for Steel Construction
 - (ii) Specifications for the Design, Fabrication and Erection of Structural Steel for Buildings
 - (iii) Specifications for the Design of Cold-Formed Steel Structural Members
5. American Iron and Steel Institute (AISI)
6. Americans with Disabilities Act Accessibility Guidelines (ADAA)
7. American Gas Association (AGA)
8. American Gear Manufacturer's Association (AGMA)
9. American Institute of Architects (AIA)
10. American National Standards Institute (ANSI)
11. American Petroleum Institute (API)
12. American Public Health Association (APHA)
13. American Public Works Association (APWA)
14. American Society of Civil Engineering (ASCE)
15. American Society of Heating, Refrigeration and Air Conditioning (ASHRAE)
16. American Society of Mechanical Engineers (ASME)
17. American Society of Non-Destructive Test Engineers (ASNDTE)
18. American Society of Testing and Materials (ASTM)
19. American National Standards Institute (ANSI)
20. American Plywood Association (APA)

21. American Water Works Association (AWWA)
22. American Welding Society (AWS)
23. American Wood Preservers Bureau (AWPB)
24. Conveyor Equipment Manufacturer's Association (CEMA)
25. Concrete Reinforcing Steel Institute (CRS1) Handbook
26. Crane Manufacturers Association of America (CMAA)
27. Hydraulic Institute (HI)
28. Industrial Gas Cleaning Institute (IGCI)
29. Institute of Boiler & Radiator Manufacturers (IBRM)
30. Instrument Society of America (ISA)
31. Insulated Power Cable Engineer Association (IPCEA)
32. Institute of Electrical and Electronic Engineers (IEEE)
33. International Electrical Testing Association (NETA), including without limitation,
 - (i) Acceptance Testing Specifications for Electrical Power Distribution Equipment and Systems
 - (ii) Maintenance Testing Specifications for Electrical Power Distribution Equipment and Systems
34. National Board of Boiler and Pressure Vessel Inspectors (NBBI), including without limitation,
 - (i) National Board Inspection Code (NBIC)
35. National Bureau of Standards (NBS)
36. National Electric Manufacturers Association (NEMA)
37. National Fire Protection Association (NFPA), including without limitation,
 - (i) NFPA 70 - National Electrical Code (NEC)
 - (ii) NFPA 72 - National Fire Alarm Code
 - (iii) NFPA 90A - Standard for Installation of Air Conditioning and Ventilation Systems
 - (iv) NFPA 704 - Standard System for the Identification of Hazard Materials for Emergency Response
 - (v) NFPA 780 - Standard for the Installation of Lightning Protection Systems
38. National Electrical Contractors Association (NECA)
39. National Roofing Contractors Association (NRCA)

40. Northeastern Lumber Manufacturers Association (NELMA)
41. Sheet Metal and Air Conditioning Contractors National Association (SMACNA) including without limitation,
 - (i) HVAC Duct Construction Standards Metal and Flexible
 - (ii) Thermoset FRP Duct Construction Manual
42. Steel Structures Painting Council (SSPC)
43. Tile Council of America (TCA)
44. All other applicable codes and standards

Where the requirements of this Appendix differ from the requirements of the codes and standards referenced herein, then the more stringent requirements shall apply.

DCRRA 2013
FACILITY CONDITION REPORT

APPENDIX D

DCRRA 2013 FACILITY CONDITION REPORT	
	** IT IS SPECIFICALLY NOTED HEREBY THAT ANY ITEM BELOW WHICH IS NOT FOLLOWED BY A COMMENT WAS FOUND TO NOT HAVE ANY NOTABLE DEFECTS DURING THE DECEMBER 2013 INSPECTION **
	<u>COMMENTS</u>
PLANT OPERATION	
	a) The fireproofing on the structural steel for the facility interior still needs repairs.
	b) All fire extinguishers and eyewash stations had been recently serviced, with the exception of one fire extinguisher that was missed in the baghouse.
	c) Piping insulation and lagging continues to deteriorate in many areas.
	d) Overall plant liner paneling, specifically around the tipping floor, remains damaged
	e) Insulation and lagging continues to deteriorate on many of the fly ash screw conveyors.
	f) The tipping floor and ash aisle floors is degrading rapidly with exposed rebar in many areas and areas where the rebar is no longer present. The concrete piers at the pit wall are also damaged.
	g) The front wall of the waste pit has several areas of exposed rebar.
	h) A steam trap audit should be performed to identify and address leaking traps throughout the Facility.
GENERAL MANAGEMENT	
EXTERIOR ENVIRONMENTAL (i.e. Noise)	
	PLANT EXTERIOR
NORTH SIDE	
LOAD-OUT DRIVE THROUGH	Covanta stated that they are not using this drive through area to load ash. Empty ash trailers are stored here.
TRAILER STORAGE AREA HOUSEKEEPING (ASH, METALS, NONCOMBUSTIBLES)	Original "Yard Horse" tractor is stored in non-functional condition between the oil tank and the ash trailer storage building - functionality to be returned via repair or replacement
GENERAL AREA CONDITION	The fence on the west side of the parking area by the IBM steam line is knocked down. It appears a trailer was backed up too far and knocked the fence over. The orange indicator post for a buried gasline has been bent sideways. There are also large ruts in the grass and asphalt due to trailer storage in this area.

	<u>COMMENTS</u>
BUILDING PHYSICAL CONDITION (SIDING, PAINT)	The liner paneling is damaged and separating from the structural supports in some locations. Separation areas are large enough to allow for MSW to escape the tipping floor. There is damaged siding on the east side of the roll up door. Many of the louvers are closed and the spring operators are broken. Covanta indicated that some of the louvers did not come with screens, which is why they are not present in some locations.
IBM PIPELINE	The pipeline could not be accessed due to vegetation overgrowth. The pipe line has been blanked off from the Facility and not used since the 1990's.
TRANSFER TRAILERS	No change from 2010/2011. Containers are stored on the north side of the Facility and are causing rutting in the asphalt.
DIESEL FUEL TANK	New 1,000-gallon diesel fuel storage tank was installed during 2012.
WEST SIDE	
TIPPING FLOOR EXPANSION AREA	No change from 2011/2012. The plastic curtains are torn in many areas and need to be replaced. The translucent panels at the upper most portion of the wall are covered in dirt and need to be cleaned. The panels were observed to be rolled up. Covanta stated that the truck drivers requested they roll these up to prevent their vehicles from getting scratched.
MATERIAL STORAGE AREA ORGANIZATION (PROPER STORAGE/ PROTECTION OF EQUIPMENT AND MATERIALS)	Two SH tube bundles covered with tarping were stored on the grass in two different locations. A decommissioned storage tank was also stored adjacent to the building.
OUTSIDE STORAGE AREA	
PERIMETER ROAD MAINTENANCE	
BUILDING PHYSICAL CONDITION (SIDING, PAINT)	Some minor liner paneling damage and discoloration due to rust.
NATURAL GAS STATION	Smell of natural gas around natural gas meters. Covanta stated that Central Hudson comes regularly to grease and repack leaking valves.
SPARE PARTS WAREHOUSE	
FIRE EXTINGUISHER	Last inspected on 11/30/2013
SOUTH SIDE	
SCRUBBERS	

	<u>COMMENTS</u>
INTERIOR PENTHOUSE HOUSEKEEPING	No change from 2012. The cooling water control valves in both penthouses are leaking water and causing small ponding and rusting of the floor. Covanta has installed cameras in the penthouse for personnel protection.
EXTERIOR PHYSICAL CONDITION	
FLOOR DRAIN	
INSULATION AND SIDING CONDITION	A section of lagging at the transitional section on the north side of Unit #1 was observed to be peeled back exposing the insulation and structural steel. Degradation of one or more gusset plates in this location was observed. The degradation may be accelerated by lime slurry dripping down the side of the scrubber in this location.
CONTROLS AND INSTRUMENTATION	
LIGHTING	
DOORS AND LATCHES	
VENT FANS	Not operating in Unit #2 penthouse; however, Covanta indicated the fan is temperature controlled and is not offline for any other reason.
DOORS AND LATCHES	
WORKBENCH/SINK	
PIPING PHYSICAL CONDITION	
AIR RECEIVER TANK	
WATER PRESSURE TANK	
JIB CRANE	
EYEWASH	Last inspected on 12/2/2013.
FIRE EXTINGUISHER (MOUNTED, FILLED)	Last inspected on 11/30/2013
SCRUBBER HOPPER LEVEL	
DOORS AND LATCHES	
HOPPER VIBRATORS	
DOUBLE DUMP VALVES	
INSULATION AND LAGGING CONDITION	
GRATING/RAILINGS	

	<u>COMMENTS</u>
INSTRUMENTATION	
LIME SILO	
INTERIOR CONDITION	Significant amount of fugitive lime - cannot enter silo without respirator protection.
EXTERIOR CONDITION	A new level detector has been installed and fencing has been installed on the railing for additional personnel protection. Some spilled lime was observed on the roof. Per Covanta, this occurs due to the over pressurization of the fill line during loading operations.
LIME PREPARATION BUILDING	
INTERIOR HOUSEKEEPING	Slurry caked on equipment and floor around slurry pumps; the floor is also wet.
EXTERIOR PHYSICAL CONDITION	No change from 2010/2011/2012. The louver screens on the slurry building east wall are clogged and torn and should be replaced.
LIME SLURRY PUMP OPERATION	Covanta has made several modifications to the lime slurry system. They have raised the connection point with the slurry tank in an attempt to pull in less sediment through the pumps. In addition, they have increase the size of the strainer baskets and switched to baskets with small diameter holes. Hoses with quick connections are being used instead of a main discharge header to facilitate cleaning and reduce pluggage. Covanta may be installing a circulation pump in the slurry tank to reduce the amount of sediment build up at the bottom of the tank.
INSULATION AND SIDING CONDITION	
CONTROLS AND INSTRUMENTATION	
DOORS AND LATCHES	
GRATING	
SLURRY TANK APPEARANCE	
PIPING PHYSICAL CONDITION	
CHEMICAL WASH TANK	
MIXER OPERATION/APPEARANCE	
VOLUMETRIC FEEDERS	
WATER HOSE REELS	
SUMP	
DILUTION WATER PUMP OPERATION	

	<u>COMMENTS</u>
JIB CRANE	
LIGHTING	
EYEWASH	Last inspected on 12/20/2013
FIRE EXTINGUISHER (MOUNTED, FILLED)	Last inspected on 11/30/2013
CARBON INJECTION SYSTEM	Carbon injection system was not in operation during 2013.
INTERIOR HOUSEKEEPING	
EXTERIOR SILO PHYSICAL CONDITION	
FEEDER OPERATION	
BLOWER OPERATION	
CONTROLS AND INSTRUMENTATION	
DOORS AND LATCHES	
FILL PIPE	
TRUCK FILL PANEL	
PIPING PHYSICAL CONDITION	
AIR RECIEVER TANK	
FEEDER PANEL	
LIGHTING	Off
FIRE EXTINGUISHER (MOUNTED, FILLED) (COVERED, SIGNAGE, ACCESSIBILITY)	
COMPRESSOR BUILDING	
INTERIOR HOUSEKEEPING	
EXTERIOR PHYSICAL CONDITION	No change from 2011/2012. The louver screens on the compressor building wall are clogged and torn and should be replaced.
COMPRESSOR OPERATION	
INSULATION AND SIDING CONDITION	
CONTROLS AND INSTRUMENTATION	

	<u>COMMENTS</u>
LIGHTING	
DOORS AND LATCHES	
EXHAUST FANS/LOUVERS	
AIR RECEIVER TANK	Covanta has installed a valve so they can use compressed air from the tank for sandblasting during outages instead of renting a portable air compressor.
PIPING PHYSICAL CONDITION	Insulation is required for personnel protection on the inlet piping to the compressed air tank.
AIR DRYER SKID	
ROLL-UP DOORS	
AIR RECEIVER SUMP	
FIRE EXTINGUISHER (MOUNTED, FILLED) (COVERED, SIGNAGE, ACCESSIBILITY)	Last inspected on 11/30/2013
BAGHOUSE	
AREA HOUSEKEEPING	
CONDITION OF BAGHOUSE	Covanta is changing the threaded cam locks on the clean out ports with quick connect caps as they fail. Red tape was observed blocking two sections of grating (under Unit #1 - between Cells 1 & 2 and Cells 4 & 5). The grating needs to be replaced in this location. Access hatches have been installed in the baghouse penthouse roof to access the reverse air duct. Leaking outlet dampers were replaced approximately one month ago. Some missing insulation & lagging was observed around the door to Unit #2, Cell #3, which was removed to seal a leak, as well as around the temperature thermocouples which were installed recently above the access doors to each cell. The magnchelic differential pressure gauge on cell 6 of unit 2 is disconnected.
BAGHOUSE RAILING	Some railings remain rusty and need to be painted.
PRESSURE GAUGES	All but one of the differential pressure gauges were functioning.
CONDITION OF CONTROLS	The heat trace lines on most of the poppet dampers on Unit #2 are loose or disconnected and no longer attached to the air lines. Several poppet dampers on units #1 and #2 suck air at the shaft seal to the damper. The accordion protective sleeves are also broken on most of the dampers.
BAGHOUSE SCREW CONVEYORS	Lagging and insulation is missing and/or damaged. Covanta indicated that they do not have moisture issues related to these screw conveyors and they stay adequately warm even in the winter months. Regardless of the performance, these screw conveyors should be kept protected from the environment to reduce rusting of the exposed metal.

	<u>COMMENTS</u>
BAGHOUSE ASHDRAG CONVEYORS (BELT COVER) (OPERATING STATUS, ZERO SPEED SWITCHES)	The underbelly of each inclined drag conveyor was replaced during the Spring 2012 outage. The baghouse chutes should be replaced.
CONDITION OF REVERSE AIR FANS	Unit #2 reverse air fan outlet expansion joint has been replaced. There is insulation and lagging that was removed to complete this repair and needs to be replaced/reinstalled.
FIRE EXTINGUISHERS	Last inspected on 11/30/2013
LIGHTING	
BAGHOUSE HOPPERS	The double dump valves under Unit #2, Cells 5 & 6 were not functioning properly and there were periods of time when both valves were in the open position allowing tramp air to enter the hoppers.
DUCTWORK	The outlet duct expansion joint blanket on Unit #1 has been removed from the expansion joint. The blanket should be put back in position.
STACK	
AREA HOUSEKEEPING	A slight audible leak was heard around the Environmental S.A. box on the NW side of the stack on the stack port access platform. It is likely the leak is coming from the sampling port at this location.
PHYSICAL CONDITION	A slight audible air-in leak was heard around the Environmental S.A. box on the NW side of the stack on the stack port access platform. It is understood that repairs have been made recently to address some leaking and corrosion on the stack interior. Covanta should advise the Agency of the findings and repairs completed.
I.D. FANS	
FAN OPERATION	Covanta stated that the Unit #1 ID fan motor was replaced a couple of months ago. NOTE: This motor was also replaced during the Spring 2012 outage.
FAN CONTROLS	
FAN INSULATION	Insulation and lagging missing on the Unit #2 ID fan outlet. Air was leaking around the access door on the discharge side of the Unit #2 ID fan. Covanta stated that the studs around the access door may have been broken and need to be repaired/replaced.
FAN FLEXIBLE CONNECTIONS	
FAN INSTRUMENTATION	
I.D. FAN VFD ROOM	Fire extinguisher last inspected on 11/30/2013
AIR COOLED CONDENSER	

	<u>COMMENTS</u>
CONTROLS	
ACCESS DOORS	
PLATFORMS AND RAILINGS	The structure around the expansion ACC was strengthened (based on observations made in 2011), however the fan shroud still shakes.
OVERALL APPEARANCE	A new expansion joint was installed on the steam piping to the ACC. There is some paint peeling and rusting on this piping that needs to be addressed.
EQUIPMENT CONDITION	Vacuum running around 3.8 in Hg abs. Could be improved - leak tests should be performed at next available outage. Fin-tube Channels are clear. Minor damage to a few of the ACC fins. Covanta stated that they clean the ACC 4-5 times per year. They have fabricated brackets that allow personnel to secure themselves approximately 10-15 feet in the air and power wash the ACC from the top side. Previously, cleaning was performed from the inside which was less effective as you are fighting the effects of gravity.
AREA HOUSEKEEPING	Trees around base of expansion ACC should be removed to increase the efficiency of the ACC.
DUCTWORK	
EDC-2 (FORMERLY CALLED BAGHOUSE CONTROL ROOM IN THIS REPORT)	
EQUIPMENT CONDITION	
COMBUSTIBLE STORAGE	
MOTOR CONTROL CENTER (NOTE EQUIPMENT LOCKOUTS)	
BAG HOUSE PANEL	Unit #1:7.5 inH2O dP, 325 deg F (inlet); Unit #2: 9.3 inH2O dP, 324 deg F (inlet)
HVAC	
WWT CONTROL PANEL	
LIME SILO FEED CONTROLS	
ACC TEMPERATURE MONITORING PANEL	
ASH SYSTEM CONTROL PANEL	
INSIDE HOUSEKEEPING	
OUTSIDE HOUSEKEEPING	
FIRE EXTINGUISHER (MOUNTED, FILLED) (COVERED, SIGNAGE, ACCESSIBILITY)	Last inspected on 11/30/2013

	<u>COMMENTS</u>
CEM TRAILER	
CONDITION OF EMISSION MONITORS	
HCL	
NOx	
CO	
SO2 (IN-OUT)	
CO2	
O2	
GENERAL HOUSEKEEPING	
LIGHTING	
HVAC	
FIRE EXTINGUISHER	Last inspected on 11/30/2013
WASTE WATER TREATMENT	
AREA HOUSEKEEPING	
OVERALL APPEARANCE	
PUMP OPERATION (LEAKING SEALS, CAVITATION) (OPERATING STATUS)	
EQUALIZATION TANK	
OPERATING STATUS OF THE MIXER	Rotating assembly was not in operation.
PHYSICAL CONDITION (PAINT, DIRT)	Covanta stated that they may recoat the interior in the next few years (~2015).
CLEARWELL TANK	
QUALITY OF THE CLEARWELL FLUID	
PHYSICAL CONDITION (PAINT, DIRT)	
PIPING/PUMPS	
CLARIFIER TANK	

	<u>COMMENTS</u>
OPERATING STATUS - SKIMMER/SCRAPER	Skimmer/Scraper was not in operation and requires new motor and structural repair. Operational requirements of skimmer/scaper to be determined
PHYSICAL CONDITION	The tank is highly rusted - it has been drained and Covanta is out to bid for sandblasting and recoating of the interior of the tank.
SCUM COLLECTOR	inoperable
WATER SURFACE APPEARANCE	
REACTION TANK	
OPERATING STATUS OF THE MIXER	Mixer was not in operation
PHYSICAL CONDITION (PAINT, DIRT)	
CHEMICAL LINE CONNECTION	
BAC UNIT	
PHYSICAL CONDITION	
OPERATING STATUS OF EQUIPMENT	
CONDITION OF FLUIDS	
CONTROL STATUS (HAND OR AUTO)	
BAC UNIT ROOF AREA	
CONDITION OF STAIRS AND HANDRAILS	
CONDITION OF ROOF	
AREA HOUSEKEEPING	
OVERALL APPEARANCE	No change from 2011/2012. The louvers on the south wall near the BAC are damaged and/or missing and need to be replaced.
CONDENSATE RETURN TANK VENT LINE	High flow rate discharging to BAC unit roof area. Per Covanta personnel, this is typical and does not indicate any leaking valves in the system. Covanta should look into this further.
EAST SIDE	
PERIMETER ROAD MAINTENANCE	No change from 2011/2012. There are ruts and cuts in the road by the east fire hydrant outside of the ash ally.

	<u>COMMENTS</u>
AREA HOUSEKEEPING	
BUILDING PHYSICAL CONDITION	No change from 2011/2012. There is rust stains on the outside of the building, along the girt line at EL. 120'.
STORAGE	
WALKWAYS AND STEPS	
STORED MATERIAL	
TRANSFORMER	
GRASS AND LANDSCAPING	
DIESEL STORAGE TANK	
APPEARANCE OF TANK AND PIPING	10,000-gallon diesel storage tank no longer in operation. Permanent closure on 9/24/2012. 10,000 gallon tank may be converted into a clean water reclamation tank.
APPEARANCE OF DIKE	
SAFETY SIGNAGE	
WATER LEVEL IN DIKE	
OVERALL APPEARANCE OUTSIDE THE DIKE	
BONE YARD	
AREA ORGANIZATION	Bone yard is clear of any debris, overgrown vegetation, materials, or equipment
MATERIAL PROTECTION	
AREA HOUSEKEEPING	
AIR COOLED CONDENSER EQUIPMENT BUILDING	
INTERIOR HOUSEKEEPING	
EXTERIOR PHYSICAL CONDITION	
PUMP OPERATION	#1 pump and motor was recently replaced.
INSULATION CONDITION	Minor insulation damage - some of the steam piping could be better insulated for personnel protection.

	<u>COMMENTS</u>
CONTROLS AND INSTRUMENTATION	
LIGHTING	
DOORS AND LATCHES	
GRATING	
HOTWELL APPEARANCE	
PIPING PHYSICAL CONDITION	
AIR EJECTOR OPERATION	
FIRE EXTINGUISHER	Last inspected on 11/30/2013
EYEWASH STATION	Last inspected on 11/20/2013
ASH AISLE	
GENERAL AREA CONDITION	Ash aisle floor near metals bunker has been repaired and the steam unit heater previously leaking condensate has been replaced.
FIRE EXTINGUISHER	
EQUIPMENT OPERATION	
PHYSICAL CONDITION (DETERIORATION) (CAUSED BY TRUCK DAMAGE)	No change from 2012. The ash aisle structural steel needs to be cleaned and painted. The fire proofing is also missing in large segments on each steel column.
MATERIAL STORAGE	
SCALE HOUSE	
SCALES CALIBRATED	Some load cell bolts were replaced on 12/9/13 and the scale was re-calibrated after completion of this work.
RADIATION METER OPERATIONAL	
SCALE PHYSICAL CONDITION	
SCALE HOUSE PHYSICAL CONDITION	
ACCESS ROAD MAINTENANCE (ASH, RUBBISH, DEBRIS)	
SECURITY FENCE OPERATION AND PHYSICAL CONDITION	

	<u>COMMENTS</u>
SCALE COMPUTER OPERATIONAL	
SCALE HOUSE HOUSEKEEPING	
SCALE HOUSE HVAC	
TIPPING FLOOR AREA	
APPROXIMATE AMOUNT OF STORED MSW	The inventory of MSW in the pit during the inspection was approximately 2500 tons
MSW PIT	
TIPPING FLOOR AREA HOUSEKEEPING	Most of the concrete column piers on the perimeter wall of the tipping floor have impact damage and rebar is exposed. There is siding damage on the north side of the building; however, the damaged siding on the east side of the building has been replaced. There is moderate tipping floor wear and rebar exposed in front of the A and B zone. Covanta stated that work will be done in B zone to the pit wall, pier, and floor. The floor will be resurfaced about ~30-40 feet out from the pit. Some of the concrete foundation damage on the east wall will be repaired and plated over when the floor is done. The 980F loader has been equipped with new tires and a new rubber scraper has been installed on the bucket. Covanta has replaced the 10 ton bucket on this loader with a 5 ton bucket. The appropriate 10 ton bucket should be installed on this loader.
EAST LAY DOWN FIRE EXTINGUISHER	
EAST LAY DOWN HOUSEKEEPING	
WEST SIDE FIRE EXTINGUISHER	
WEST SIDE HOUSEKEEPING	No change from 2011/2012. There is a bollard that has been sheared from the floor at the overhead entrance door.
SPECIAL WASTE STORAGE	
PIPING IN AREA	
FIRE CANNONS	Cannons are tested weekly.
DOORS PHYSICAL CONDITION	
CRANES OPERATIONAL	West crane in operation. East crane was currently having new closing cables installed.
TRANSFER STATION AREA	
STEAM LINE TO IBM PHYSICAL CONDITION	
TRAFFIC SIGNAGE	

	<u>COMMENTS</u>
SAFETY SIGNAGE AND MIRROR	
STORED MATERIAL	
TURBINE ROOM	
SAFETY SIGNAGE	
VESTIBULE	
TURBINE AREA HOUSEKEEPING	
TURBINE SYSTEM CONDITION	Overhaul completed September 2013 - reports from overhaul vendors available. Covanta stated that they have recently rebuilt the inlet control valve and performed some other preventative maintenance activities (such as a lube oil flush) when the turbine was offline. A couple steam leaks were observed on some of the ancillary piping and through the exterior vents.
FIRE EXTINGUISHERS	Last inspected on 11/30/2013
LIQUID MOVER OPERATION	
OIL/WATER SEPARATOR OPERATION	
MAINTENANCE SHOP	
AREA HOUSEKEEPING	
RECORD KEEPING	
HVAC	
DOORS AND LATCHES	
NOISE	
FIRE EXTINGUISHERS	Last inspected on 11/26/2012
FIRST AID STATION	
FIRE STATION	The City water piping supply line needs repainting.
PLANT INTERIOR	
GROUND FLOOR EL. 66'-6"	
GENERAL AREA HOUSEKEEPING	A lot of fly ash was observed on the southwest area of the building. Covanta stated that ash from the ash alley blows inside of the building due to gaps in the wall. The building wall will be rebuilt during 2014 to prevent this issue.

	<u>COMMENTS</u>
GENERAL AREA PIPING	No change from 2011/2012. The insulation is tattered and missing in several areas including the low pressure steam line by the Unit #1 FD fan.
BOTTOM ASH CONVEYORS OPERATION	There was a small pile of fly ash under on the floor near the Unit #1 bottom ash drag conveyor. Covanta stated that they sweep the floor and pick up any piles of fly ash at the end of the shift.
FORCED DRAFT FANS OPERATION	
FORCED DRAFT FANS FLEXIBLE CONNECTIONS	
EAST SIDE FIRE EXTINGUISHERS	
EAST SIDE HOSE RACK	
WEST SIDE HOSE RACK	
WEST SIDE FIRE EXTINGUISHER	
LIGHTING	
SUMP APPEARANCE	
RO UNITS (1A, 1B, & 2)	
CARBON FILTERS	
RO WATER STORAGE TANKS	
AREA PIPING	
RO MAIN PUMPS	
RO BOOSTER PUMPS TO SDA	
POLISHING TANKS	
CONDITION OF CONTROLS	
HYDRAULIC POWER UNIT OPERATION	
HYDRAULIC POWER UNIT AREA HOUSEKEEPING	
FORCED CIRCULATION PUMP OPERATION	#2 turbine pump was locked out (new seals being installed).
BOILER FEEDWATER PUMP OPERATION	The one plant capacity electric pump was in service. Rebuilt electric pump on standby - but leaking from casing joint. The steam driven feed pump was locked out due to an inboard bearing issue. Potential boiler code issue - needs to be resolved immediately

	<u>COMMENTS</u>
CONDENSATE PUMP OPERATION	
PUMP AREA PHYSICAL CONDITION	
PUMP AREA LIGHTING	
EXIT LIGHTS	
BOILER CHEMICAL SYSTEM	
EYEWASH / SAFETY SHOWER OPERATION	Last inspected on 11/30/2013
FIRE DOOR/EXIT LIGHTS	
CHEMICAL SKID APPEARANCE / OPERATION	
STAIRWAY, RAILING, OVERHEAD CAUTION SIGNS	
CABLE TRAYS	
NORTH SIDE FIRE EXTINGUISHERS	
NORTH SIDE MAINTENANCE STORAGE ROOM	
FIRE PROTECTION SYSTEM	
ELECTRIC SHOP HOUSEKEEPING	
LEVEL 2 EL. 78'-6"	
SAFETY SIGNAGE	
GENERAL AREA HOUSEKEEPING	
GENERAL AREA LIGHTING	
CONDENSATE STORAGE TANK	
FIRE EXTINGUISHERS	
FIRE HOSES	
ROTARY COMBUSTOR	No change from 2011/2012. Insulation and lagging around the combustor is loose and/or missing in many areas on both units. There are small holes on the boiler left side travel grate outlets on both units. On both sides of Unit #2, there are structural seams that are not sealed allowing exposure of the underside of the traveling grate. Unit #2 was observed to be operating under slightly positive pressure (as evident but flue gas escaping the unit). Covanta stated that this was due to an extended period of time (~16 hours) in between sootblowing, which was due to work being conducted to the sootblowers.

	<u>COMMENTS</u>
PIPING (LEAKS, DRIPS)	
PIPING INSULATION	No change from 2011/2012. Insulation is damaged and tattered in many areas.
OBSERVED BURNOUT	Burn out was observed to be "fair".
FIRE EXTINGUISHERS	
FLY ASH CONVEYOR	
TRAVELING GRATE CAMERA	
BOTTOM ASH CONVEYOR CONTROL PANEL	
AREA EXIT LIGHTS	
ROTARY AND CONDITIONER CONTROLS	
LABORATORY FIRE EXTINGUISHER	Last inspected on 11/30/2013
LABORATORY ORGANIZATION	
LABORATORY SIGNAGE	
LABORATORY HOUSEKEEPING	
EYEWASH / SAFETY SHOWER OPERATION	
CONTROL ROOM HOUSEKEEPING	
CONTROLS OUT OF SERVICE	
NOTE ANNUNCIATOR WARNING LIGHTS	None.
CONTROL ROOM FIRE EXTINGUISHER	
FIRST AID STATION	
OPERATIONS DURING INSPECTION	Unit #1 and Unit #2 generating approximately 41,000 lbs/hr and 33,000 lbs/hr of steam, respectively. The reduced steam flow on Unit #2 was attributable to sootblowing that was occurring at the time this flow was obtained.
EMISSIONS OBSERVED	
FIRE CONTROL PANEL	
SOOT BLOWERS AND PANELS	The sootblowers on the front side of the economizers are severely corroded.

	<u>COMMENTS</u>
MCC #1 AREA HOUSEKEEPING	There is a very minor leak in the roof in front of MMC #1 panel. Covanta stated they have already made some repairs in this location and was waiting for another rain or snow event to determine if additional work was required.
SAFETY SIGNAGE	
FIRE CONTROL	
EYEWASH STATION	Last inspected on 12/6/2012
FIRE EXTINGUISHERS	Last inspected on 11/26/2012
FIREDOOR	
CYLINDER STORAGE	
CONDENSATE RECEIVER TANK	The exterior of this tank is peeling in some locations and should be repainted.
FLYASH AISLE	
MAINTENANCE OF ASH FALLOUT	
DOORS, CATWALK AND LATCHES	Catwalk replaced in 2012.
EQUIPMENT OPERATION	The fly ash conditioning system was in use and being operated in manual.
BCW TANK APPEARANCE	
BCW PUMP OPERATION (NOTE: HAND, AUTO, OUT OF SERVICE)	Operated in AUTO mode.
HVAC	
FIRE EXTINGUISHERS	Last inspected on 11/30/2013
LEVEL 3 EL. 90'-6"	
GENERAL AREA HOUSEKEEPING	
GENERAL AREA MATERIAL STORAGE	
ROTARY COMBUSTOR/BOILER CONTROLS	The combustor was observed to be puffing smoke. The Shift Supervisor stated that this was because the unit has not ran a sootblow cycle in 16 hours, due to maintenance work being performed on the sootblowing system. Typically the sootblowers operate once per shift. Sootblowing removes slag build up on the boiler tubes, which cause cause higher dP's across the unit and cause the ID fan to work harder to maintain the boiler under negative pressure.

	<u>COMMENTS</u>
ROTARY COMBUSTOR PHYSICAL CONDITION	There is large steam leak from the Unit #2 rotary joint (Unit #1 minor leak). Insulation and agging was missing on the right side of Unit #1, adjacent to Zone's A and C.
PIPING (LEAKS, DRIPS)	
PIPING INSULATION	Insulation is damaged and tattered in many areas. Repair work is scheduled to be completed on the Unit #1 feedwater bypass line.
RAM FEEDERS AND TRANSFER CHUTES	Some frit buildup near the rams.
FIRE EXTINGUISHERS	Last inspected on 11/26/2012
SECONDARY AIR SYSTEM	Not running.
AIR HEATER	
AIR HEATER FLEXIBLE CONNECTORS	
ECONOMIZER	The lagging on the backside of the economizer on both units is missing. New access doors have been installed during 2013.
ECONOMIZER PIPING	
ECONOMIZER CONTROLS	
ECONOMIZER FLEXIBLE CONNECTORS	
COMBUSTION AIR DUCT INSULATION	
COMBUSTION AIR DUCT FLEX CONNECTION	
STAIRS AND RAILINGS	
SAFETY SIGNAGE	
SIDE SAFETY RAILINGS	
FIRE DOOR	
WEST SIDE FIRE EXTINGUISHERS	
WEST SIDE FIRE HOSES	
LIGHTING	
EXIT LIGHTS	

	<u>COMMENTS</u>
AIR COMPRESSORS	
RECEIVER TANKS AND PIPING	
CHILLER	
HOT WATER HEATERS	
COMPRESSOR ROOM LIGHTING	
COMPRESSOR AREA HOUSEKEEPING	
COMPRESSOR ROOM FIRE EXTINGUISHER	
ROOF AREA ABOVE ELECTRICAL ROOM	
LEVEL 3-1/2 101'-0"	
SUPERHEATER HOPPERS	Generally the spray-on insulation on the superheater hoppers on both units is in poor condition and lagging is nonexistent. There is insulation missing on the Unit #2 SSH where new plating has been welded on). Insulation is missing around the anchor points.
ASH CONVEYORS	Some fly ash accumulation observed on top of the superheater hopper screw conveyors.
COMBUSTION AIR DUCT INSULATION	
WARM - UP (AUXILIARY) BURNERS	
SOOT BLOWER STATUS (HAND, OFF, AUTO)	Maintenance work was being performed to the Unit #2 sootblowing system and a cycle was later observed by HDR. There is a significant quantity of steam that is expelled in some locations of the plant when the condensate is purged from the lines. Coordination between the CRO and plant personnel is required to make sure certain areas of the plant are vacated before this operation commences.
PIPING (LEAKS, DRIPS)	
PIPING INSULATION	No change from 2011/2012. Insulation is damaged and tattered in many areas.
AREA LIGHTS	
EXIT LIGHTS	
FIRE EXTINGUISHER AND HOSES	
FIREDOOR	
GENERAL AREA HOUSEKEEPING	

	<u>COMMENTS</u>
STAIRS AND RAILINGS	
FRESH AIR FANS	
AIR HANDLING UNITS	
LEVEL 4	
ROTARY COMBUSTOR / BOILER CONTROL INSTRUMENTATION & APPEARANCE	
AREA HOUSEKEEPING	
BOILER CASING	Seal weld at bolted horizontal casing section between gen bank and superheater section has failed - is cracked - no leakage observed - needs to be repaired - on both units
PIPING (LEAKS, DRIPS)	
PIPING INSULATION	
LIGHTING	Bulb needs to be replaced on the boiler right side of Unit #2 (outside the superheater section).
EXIT LIGHTING	
FIREDOORS	
SOOT BLOWERS	Covanta replaced the packing on the Unit #1 sootblowers and stated they have observed a noticeable improvement to the sootblowing operations after these repairs had been made.
FIRE EXTINGUISHER AND HOSES	
OUTSIDE ROOF LEVEL APPEARANCE	
AIR PREHEATER	Covanta replaced all of the tubes in the #1 A/H in 2013
LEVEL 5 EL. 115'-6"	
DEAERATOR PHYSICAL CONDITION	Covanta has replaced/repared the internal trays in the DA as well as the safety valve.
IBM CONDENSATE LINE CONTROLS	Not used.
AUTO BLOWDOWN PHYSICAL CONDITION	
PIPING (LEAKS, DRIPS)	

	<u>COMMENTS</u>
PIPING INSULATION	Much of the pipe insulation and lagging remains tattered and damaged. Covanta stated that the MP line from the letdown station to the DA will be reinsulated and relagged in 2013.
AREA HOUSEKEEPING	
AREA LIGHTING	
AREA FIRE EXTINGUISHERS	
AREA FIRE HOSES	
BOILER CONTROLS	
AREA STAIRS AND RAILINGS	
CHARGING HOPPER AREA EL. 117'-6"	
AREA HOUSEKEEPING	The floor, equipment, and structures were very dusty. Minor debris on the crane deck.
AREA MATERIAL STORAGE	
RAILINGS	
FIRE CANNONS	Minor leak on west side fire cannon.
FIRE EXTINGUISHERS	
STAIRS	
CRANE PULPIT HOUSEKEEPING	The glass window on the crane pulpit door was popped out. In addition, some cracking was observed in the front windows. Covanta stated that they are redesigning the window framing and will be installing new windows and frames in 2014.
CRANE PULPIT CONTROLS	
CRANE PULPIT HVAC	
CRANE OPERATION	
CRANE EQUIPMENT	Crane gantry needs to be scraped and painted.
AREA LIGHTING	
FIREDOORS	
EXIT LIGHTS	

	<u>COMMENTS</u>
MEETING ROOM APPEARANCE	
BACK OF MEETING ROOM	
TRANSFORMER AND ELECTRIC SWITCHES	
CRANE ACCESS STAIRS AND RAILINGS	
FAN AND FAN GUARD	
DOORS AND LATCHES	
AREA HOUSEKEEPING	
LEVEL 6 EL. 121'-6"	
BOILER PIPING (LEAKS AND DRIPS)	There were some minor steam leaks observed (i.e. Unit #2 superheater vent block valve, unidentified valve on the right side of the Unit #2 steam drum). Covanta stated that some of them, such as the isolation valve on the steam temperature transmitter, are difficult to access to repair.
PIPING AND CONTROL VALVES	
MUFFLER	The two louver blades by the muffler are missing.
PIPING INSULATION	Insulation is damaged and tattered in many areas. Covanta stated they will be reinsulating and relagging the MP safety line and the letdown from the HP to LP sections on the MP line to the DA.
AREA HOUSEKEEPING	Covanta has installed some safety railings for personnel protection in some locations on the top of the boiler.
BOILER CONTROLS	
AREA LIGHTING	Most of the original overhead lighting is not working. Covanta stated that they are difficult to access to replace blown bulbs. In addition to the skylights previously installed, Covanta has stadium lighting installed on the top elevation which is working well. Covanta is looking into installing these lights on a telescopic pole with the ballasts installed at the bottom of the pole to allow for easier changing.
FIRE EXTINGUISHER AND HOSE	
RAILINGS AND STAIRS	
EXIT LIGHTS	
FIREDOORS	

	<u>COMMENTS</u>
DESUPERHEATER	
SOUTH WEST STAIRWELL	
AREA HOUSEKEEPING	
PANIC BAR - BOTTOM EXIT	
BOTTOM LEVEL HOUSEKEEPING	
LIGHTING	
NORTH EAST STAIR AND OFFICES	
STAIRS UP TO ROOF - HOUSEKEEPING	
STAIRS UP TO ROOF - LIGHTING	One bulb is out at the top elevation.
STAIRS UP TO ROOF - SPRINKLERS	
ROOF ENTRY DOOR	
SPRINKLER HEADS	
ROOF HOUSEKEEPING / PREVENTIVE MAINTENANCE	There was some siding damage on the east side @ the bottom coping. The sides of the roof have been fixed at the wall where water was dripping to the the tipping floor. There were a couple safety cables used for tying off which were lying on the ground and could be considered a tripping hazard.
SAFETY LADDERS	
EXHAUST FANS	
STAIRS DOWN SPRINKLERS	
STAIRS DOWN HOUSEKEEPING	
STAIRS DOWN LIGHTING	
EMERGENCY LIGHTING TEST	
DOORS AND LATCHES	
EXIT SIGNAGE	
MANAGEMENT OFFICES HOUSEKEEPING	
MAINTENANCE OFFICES HOUSEKEEPING	

	<u>COMMENTS</u>
LUNCH ROOM HOUSEKEEPING	
SPRINKLERS - OFFICE AND LOBBY	
LOBBY HOUSEKEEPING	
BATHROOM HOUSEKEEPING	
LOCKER ROOM HOUSEKEEPING	
EXIT LIGHTING IN OFFICES AND LOBBY	

GENERAL HOUSEKEEPING
STANDARDS

APPENDIX E

APPENDIX E GENERAL HOUSEKEEPING STANDARDS

1. SITE HOUSEKEEPING STANDARDS

The Contractor shall be responsible for maintaining the Facility and Site in an orderly and neat condition and undertaking necessary maintenance and upkeep in a timely manner in accordance with the Agreement, including without limitation the following:

- a) Cracked or spalled concrete, asphalt and expansion joints shall be repaired within sixty days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required). Separation (either vertically, horizontally or both) of concrete, asphalt and expansion joints shall be repaired within sixty days of discovery of repair need by the Contractor or notice by the Agency.
- b) On site roadways, pavement markings, traffic and site signage, light pole and lights, curbing and guardrails shall be repaired within sixty days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required). Cracks and joints shall be sealed annually.
- c) Storm water pathways and structures (all ditches and culverts within the Facility Site) shall be kept substantially free of silt, litter and debris. Maintenance activities shall be sufficient to maintain flow at all times. Removal of vegetation from the bottom of ditches and repairs and stabilization of side slopes is included in this activity.
- d) If Residue or debris, not detrimental to water quality, enters the storm water system, it shall be removed within 24 hours (or such longer period as is reasonably required) of discovery by the Contractor or notice by the Agency and provisions shall be put in place within one week of the event so that such event will not be repeated. Any potentially detrimental product entering the storm water system shall be removed within 24 hours.
- e) Fencing shall be repaired within thirty (30) days of discovery by the Contractor or notice by the Agency.
- f) The entire Site shall be kept in a neat and orderly condition.
- g) The Contractor shall provide for the daily collection and disposal of all litter on the Facility Site. Arrangements shall be made for the removal of debris from the Agency office area and parking lot if such debris emanated from the Facility or from the vehicles using the Facility.
- h) Weed control will be performed in paved areas on the Facility Site to keep cracks and joints clear of vegetation.
- i) The Contractor shall mow, trim and edge vegetative matter within the Facility Site. This shall include furnishing all equipment including maintenance and operation and all

labor necessary to perform the following operations; open field cutting of grasses, slope mowing all ditch lines, weeds and other similar vegetative matter, trimming to water's edge in all areas, trimming around fences, along roadways, and around all structures or other obstructions, and edging along all paved surfaces and curbs. Vegetation shall be trimmed to eliminate overhang from roadways and walkways and growth which may impact ditches, canals, culverts and fences. The Contractor is prohibited from using mowers which lack the ability to follow natural contours independent of tractor angle. Chemical control of vegetation shall be only by chemicals approved by the Agency, such approval not be unreasonably withheld. Any damage to the Facility Site that occurs as the result of the maintenance of vegetation shall be reported to the Agency as soon as practicable. The Contractor shall have five (5) days (or such longer period as is reasonably required) in which to repair any damage.

- j) Grass and landscape areas shall be maintained in an attractive, neat manner.
- k) Grass will be mowed at least every two weeks during the growing season of each year.
- l) Grass will be watered regularly during dry weather unless water conservation measures are being implemented by the County.
- m) All spare parts, materials and supplies shall be stored in a neat, clean and orderly manner consistent with good industry practice.
- n) Roadways shall be swept at least three times a week, and more frequently if reasonably necessary to control dust, litter and debris. Particular attention shall be paid to cleaning all metal debris from the traveled ways on and immediately off site.
- o) Snow shall be removed from roadways and walkways within twelve hours of any storm event and roadways accessibility shall be maintained during normal business hours, and ice shall be promptly controlled.

2 Building and Structures Housekeeping Standards

The Contractor shall be responsible for maintaining the Facility buildings and structures in good condition at all times and undertaking necessary maintenance and upkeep in a timely manner in accordance with the Agreement, including without limitation the following:

- a) Siding, roofing and other types of building interior and exterior treatments shall be repaired or painted within sixty (60) days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required).
- b) Damaged insulation and/or lagging shall be repaired within sixty days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required).

- c) Doors and windows (including all appurtenances thereto) shall be repaired within sixty (60) days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required).
- d) Roof leaks shall be temporally repaired within twenty four (24) hours of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required). Permanent repairs and replacements shall be made within one week (or such longer period as is reasonably required).
- e) Corrosion of metal surfaces shall be repaired, sanded and painted within sixty days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required).
- f) Drains, gutters, downcomers and spillways shall be cleaned regularly and shall be repaired within thirty days of discovery of repair need by the Contractor or notice by the Agency (or such longer period as is reasonably required).
- g) Fire detection and protection equipment shall be repaired within three (3) days of discovery by the Contractor or notice by the Agency (or such longer period as is reasonably required). Proper notification shall be given to local authorities and temporary protection measures shall be put in place upon discovery and remain in place until repairs are completed.
- h) Inoperable interior and exterior light fixtures and light bulbs (regular and emergency) for buildings and equipment areas shall be repaired within one week (or such longer period as is reasonably required) of discovery by the Contractor or notice by the Agency. Lights and fixtures requiring a high lifter to fix shall be repaired on a quarterly basis. Temporary lighting will be provided upon discovery and remain in place, where necessary, for the protection of property and personnel safety until the repairs are complete.
- i) Regular pest and vector control measures shall be applied by the Contractor or a licensed pest control service company hired by the Contractor.
- j) All plumbing and piping leaks and failures shall be temporarily repaired, plugged or bypassed within twenty four (24) hours of discovery of leak so that water or liquid spills have ceased. Permanent repairs and replacements shall be made within one week (or such longer period as is reasonably required). In the case of minor steam leaks or other piping leaks that do not pose a safety concern but require a shutdown of one or more combustion units to repair, permanent repairs shall be made at the next available outage.
- k) Floors of building entrances, administration areas, conference room, lunchroom, restrooms, locker-rooms, control room, and laboratories shall be cleaned daily. All finished floors shall be stripped and a new floor finish applied as necessary to maintain appearance and safety standards. Walls shall be cleaned as needed when

visibly dirty, and touch up paint applied as reasonably necessary. Tile walls shall be washed as needed when visibly dirty. Walls, floor and ceilings in unfinished areas shall be cleaned as needed when visibly dirty. Paint shall be touched up following proper surface preparation as reasonably required to protect siding and structural steel.

- l) The exterior vertical areas of all buildings (siding, doors and the like) shall be pressure washed as needed. Paint shall be touched up following proper surface preparation as reasonably required to protect siding.
- m) The interior and exterior of all windows shall be washed as needed, whenever visibly dirty. Any cracked or broken panes shall be replaced.
- n) Rollup doors shall be maintained in good working condition and shall be closed except during the receiving times or as otherwise required.
- o) Areas where tour groups are routed through the Facility shall be maintained in a neat clean, orderly condition (except for the normal condition of the tipping floor and charging area). These areas shall not be used for storage.

OPERATIONS AND
MAINTENANCE MANUAL
DATED FEBRUARY 2010
AND AS REVISED FROM TIME TO TIME,
WITH DEC APPROVAL

AVAILABLE AT WWW.DCRRRA.ORG

APPENDIX F

ENVIRONMENTAL GUARANTEES

APPENDIX G

APPENDIX G **ENVIRONMENTAL GUARANTEES**

At all times during the Term of this Agreement the Contractor guarantees that the following standards will be met (unless specified otherwise, all costs incurred to maintain environmental compliance shall be borne by the Contractor):

- A. The Facility will comply with all federal, state and local environmental rules, regulations, policies or standards that apply, or that have been proposed and would apply if adopted, to the Facility, on the Effective Date.

- B. The Facility will comply with all federal, state and local environmental permits and approvals that are required to operate the Facility.

- C. The Facility will comply with all the required tests, schedules, activities and procedures as detailed in the Operations and Maintenance Manual approved by any federal, state and/or local environmental authority.

LETTER OF CREDIT

APPENDIX H

FORM OF LETTER OF CREDIT

[Date]

Dutchess County Resource Recovery Agency
96 Sand Dock Road
Poughkeepsie, New York 12603
Attn: Executive Director
Dear Sir or Madam:

1. At the request and for the account of WHEELABRATOR DUTCHESS, LLC (the “Company”), we hereby establish in your favor, our Letter of Credit No. _____ (the “Letter of Credit”) in the amount of TEN MILLION (\$10,000,000) DOLLARS (the “Stated Amount”) effective immediately and, subject to the terms of paragraph 2 below, expire at the close of business ([Insert Name of Location of Bank] time) _____ (the “Stated Termination Date”). All drawings under this Letter of Credit shall be paid with our own funds.

2. This Letter of Credit shall automatically renew in the Stated Amount without amendment for an additional one year period from the Stated Termination Date, or any future Stated Termination Date, unless at least sixty (60) days prior to any Stated Termination Date we notify you, by certified mail, or overnight courier that we elect not to consider this Letter of Credit renewed for any such additional period.

3. We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions and subject to the reductions in amount as hereinafter set forth, in one or more drawings by one or more of your drafts in the form of Annex A attached hereto, payable at sight by you on a Business Day (as hereinafter defined), and accompanied by your written and completed certificate in the form of Annex B attached hereto (any such draft accompanied by such certificate being your “Drawing Certificate”), an aggregate amount not exceeding the Stated Amount, representing amounts payable to you by the Company under the Service Agreement for Operation of the Dutchess County Resource Recovery Facility dated as of _____, 2014, between the Company and the Dutchess County Resource Recovery Agency (the “Service Agreement”).

4. Each Drawing Certificate drawn under this Letter of Credit must be dated the date of presentation and bear on its face the clause “Drawn under Irrevocable Letter of Credit No. _____.”

5. Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by you shall be made at our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department
Telephone no. _____
Telecopy no. _____

Demand for payment hereunder may also be made in the form of facsimile transmission of the appropriate Drawing Certificate hereunder to the address and telecopy number shown above. You must confirm our receipt of each telecopied Drawing Certificate by telephoning the number shown above. Only upon such confirmation shall the demand under such Drawing Certificate be made. As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at our aforesaid office are authorized or required by law or executive order to close.

6. In the case of a presentation of a Drawing Certificate hereunder, if such Drawing Certificate is presented hereunder by sight or facsimile transmission as permitted hereunder, by 11:00 a.m. ([Insert Name of Location of Bank] time), on a Business Day, and provided that such Drawing Certificate strictly conforms to the terms and conditions hereof, payment shall be made to you, or to your designee, of the amount specified, in immediately available funds, not later than 5:00 p.m. ([Insert Name of Location of Bank] time) on the same day or such later Business Day as you may specify. If a Drawing Certificate is presented by you after the time specified hereinabove, on a Business Day, and provided that such Drawing Certificate strictly conforms to the terms and conditions hereof, payment shall be made to you, of the amount specified, in immediately available funds, not later than 5:00 p.m. ([Insert Name of Location of Bank] time), on the next Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank of New York funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you or your designee maintains with us.

7. This Letter of Credit is transferable in its entirety (but not in part) to the Trustee (as defined in the Service Agreement) as collateral for, or otherwise in connection with the Trust Indenture (as defined in the Service Agreement). Transfer of this Letter of Credit to such transferee shall be effected upon the presentation to us of this Letter of Credit accompanied by a certificate of transfer executed by the Beneficiary in the form attached hereto as Annex C and a certified copy of the resolution of the Beneficiary (or any subsequent transferor) designating the individual executing such certificate as the Beneficiary's (or the subsequent transferor's) authorized representative as having the authority to act in such capacity.

8. Upon honoring any Drawing Certificate presented by you hereunder, the Stated Amount and the amount available to be drawn hereunder by you by any subsequent Drawing Certificate shall be automatically and permanently decreased by the amount stated in each drawing hereunder.

9. Only you, as Beneficiary, may make a drawing under this Letter of Credit. Upon any payment to you, of the amount demanded hereunder, we shall be fully discharged of our

obligation under this Letter of Credit with respect to the amount of such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

10. Except as set forth in the next paragraph and the certificates referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Service Agreement); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificates referred to herein.

11. This Letter of Credit is to be construed in accordance with the Uniform Customs and Practices of the Chamber of Commerce, UCP600, and any subsequent revisions thereto, as interpreted by the laws of the State of New York.

Very truly yours,

[Name of Bank]

Signature: _____

Printed Name: _____

Title: _____
(Authorized Officer)

**ANNEX A TO LETTER OF CREDIT
FORM OF SIGHT DRAFT**

TO:

AT SIGHT PAY TO THE DUTCHESS COUNTY RESOURCE RECOVERY
AGENCY, as Beneficiary, [Amount in words] United States Dollars
(US\$_____). Drawn under Irrevocable Letter of Credit No. _____.

DUTCHESS COUNTY RESOURCE RECOVERY
AGENCY

Date of Presentation: _____

Signature:_____

Printed Name:_____

Title:_____

**ANNEX B TO LETTER OF CREDIT
CERTIFICATE FOR DRAWING
IN CONNECTION WITH
PAYMENT OF AMOUNTS
UNDER THE SERVICE AGREEMENT**

Drawn under Irrevocable Letter of Credit No. _____

The undersigned, a duly authorized representative of the Dutchess County Resource Recovery Agency (the "Beneficiary") hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to a Service Agreement dated as of _____, 2014 (the "Service Agreement") by and between the Beneficiary and _____ (the "Company").

2. An Event of Default by Company has occurred under the Service Agreement.

3. The Beneficiary has made a demand against the Guarantor (defined in the Service Agreement) under the Service Agreement for the amount stated below, and the Guarantor has failed to pay the amount in the time prescribed by the Guaranty.

4. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of _____ United States Dollars (US\$ _____) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Company under the Service Agreement and does not exceed the Stated Amount.

5. Payment of the amount described hereby shall be made by wire transfer to the following Beneficiary's account: [wire transfer instructions].

6. The undersigned is a duly authorized representative of the Beneficiary and authorized to bind the Beneficiary.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its Representative as of this ____ day of _____, ____.

**DUTCHESS COUNTY RESOURCE RECOVERY
AGENCY**

Signature: _____

Printed Name: _____

Title: _____

**ANNEX C TO LETTER OF CREDIT
REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY**

Date: _____

[INSERT BANK NAME
AND ADDRESS]

Attn: Trade Services

Re:
Irrevocable Standby Letter of Credit No.

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE: _____

ADDRESS OF TRANSFEREE: _____

CITY, STATE/COUNTRY ZIP

(hereinafter, the "transferee") all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to ¼% of the amount transferred, minimum of \$250.00

Select one of the following:

____ we enclose a cashier's/certified check

____ we have wired funds to you through _____ bank

_____ we authorize you to debit our account # _____ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours,
[BENEFICIARY NAME]

Authorized Signature

The signature(s) of _____ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

(Signature of Authenticating Bank)

(Name of Bank)

(Printed Name/Title)

(Date)

FOR BANK USE ONLY

Confirmation of Authenticating Bank's signature performed by: _____

Date: _____ Time: _____ a.m./p.m.

Addl Info.: _____

Appendix I

RESERVED

PARENT COMPANY GUARANTEE

APPENDIX J

GUARANTY AGREEMENT

Between

WHEELABRATOR TECHNOLOGIES INC.

and

THE DUTCHESS COUNTY RESOURCE RECOVERY AGENCY

Dated as of

_____, 2014

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GUARANTY

This Guaranty (this "Guaranty") dated as of _____, 2014 (the "Effective Date"), is made by Wheelabrator Technologies Inc., a Delaware corporation (the "Guarantor"), in favor of the Dutchess County Resource Recovery Agency, a New York public benefit corporation (the "Counterparty").

RECITALS

WHEREAS, Wheelabrator Dutchess County LLC, a Delaware limited liability company (the "Contractor") is a party to the Service Agreement dated as of the date hereof by and between the Contractor and the Counterparty (the "Service Agreement");

WHEREAS, the Guarantor is an affiliate of the Contractor and will receive substantial and direct benefits from the transactions contemplated by the Service Agreement and has agreed to enter into this Guaranty to provide assurance for the payment and performance obligations of the Contractor in connection with the Service Agreement and to induce the Counterparty to enter into the Service Agreement;

NOW, THEREFORE, for good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

SECTION 1.1 GUARANTY

The Guarantor hereby absolutely and unconditionally guarantees (a) the full and prompt performance by the Contractor of all obligations of the Contractor under the Service Agreement in accordance with the terms and conditions therein stated; and (b) the punctual and full payment when due (subject to written demand in accordance with Section 5 below) of all of Contractor's payment obligations under the Service Agreement (all such obligations referred to in the preceding clauses (a) and (b) being collectively referred to as the "Guaranteed Obligations"). The Guarantor agrees that, if any payment made by any person or entity is applied to the Guaranteed Obligations and is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, under any law, including without limitation, any bankruptcy, state or federal law, common law or equitable cause, then, to the extent of such payment, repayment or return, Guarantor's liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made, or, if prior thereto this Guaranty shall have been canceled or terminated, this Guaranty shall be

reinstated and returned in full force and effect, and such prior cancellation or termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the Guarantor in respect of the amount of such payment.

If all or a part of any payment or performance made by the Guarantor to the Counterparty hereunder is later determined, as a result of the resolution of a dispute pursuant to the dispute resolution provisions of the Service Agreement, to have been improper because such amount was not actually owed or such performance was not required by the Contractor to the Counterparty under the Service Agreement, the Counterparty shall after the exhaustion of all appeals or the expiration of the time to appeal, repay such amount to the Guarantor within forty-five (45) Business Days of written demand by the Guarantor, or shall pay to the Guarantor all the Guarantor's costs of performance, together with any interest, reasonable attorneys' fees, and/or costs of collection, if any, required by the Service Agreement to be paid by the Counterparty in the collection of such amount.

SECTION 1.2 GUARANTY ABSOLUTE

The obligations of the Guarantor under this Guaranty shall be direct, independent and primary obligations of the Guarantor and are absolute, irrevocable, unconditional and continuing obligations of the Guarantor. Without limiting the generality of the foregoing, the Guarantor shall have no right to terminate this Guaranty, or to be released, relieved or discharged from its obligations hereunder, and such obligations shall be neither affected or diminished for any reason whatsoever, including, without limitation, by:

- (a) any defect or deficiency in the Service Agreement or any other documents executed in connection with the Service Agreement;
- (b) any modification, extension or waiver of any of the terms of the Service Agreement;
- (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Service Agreement or any other agreement or instrument executed in connection therewith;
- (d) except as to applicable statutes of limitation, the failure, omission, delay, waiver or refusal by the Counterparty to exercise, in whole or in part, any right or remedy

held by the Counterparty with respect to the Service Agreement or any transaction under the Service Agreement; or

- (e) any change in the existence, structure or ownership of the Guarantor or the Contractor, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Guarantor or the Contractor or their assets.

The obligations of the Guarantor hereunder are several and not joint with the Contractor or any other person, and are primary obligations for which the Guarantor is the principal obligor. Except as expressly contained herein, there are no conditions precedent to the enforcement of this Guaranty, and this Guaranty is not conditioned in any way upon the institution of suit or the taking of any other action or any attempt to enforce performance of or compliance with the Guaranteed Obligations. It shall not be necessary for the Counterparty, in order to enforce payment or performance by the Guarantor under this Guaranty, to exhaust its remedies against the Contractor, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations. This Guaranty is one of payment and performance and not of collection and shall apply regardless of whether recovery of all such Guaranteed Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting the Contractor or its assets.

Any and all suretyship defenses are hereby waived by the Guarantor; provided, that notwithstanding the foregoing, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Contractor is or may be entitled to arising from or out of the Service Agreement otherwise, except as limited herein and except for defenses arising out of the bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting the Contractor or its assets.

SECTION 1.3 WAIVER

The Guarantor hereby waives:

- (a) notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by the Counterparty in reliance hereon or in connection herewith;
- (b) notice of the entry into the Service Agreement between the Contractor and the

- Counterparty, and notice of any amendments, supplements or modifications thereto; or any waiver of consent under the Service Agreement, including waivers of the payment and performance of the obligations thereunder;
- (c) notice of any increase, reduction or rearrangement of the Contractor's obligations under the Service Agreement or notice of any extension of time for the payment of any sums due and payable to the Counterparty under the Service Agreement;
 - (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and
 - (e) any requirement that suit be brought against, or any other action (other than a demand for payment of other action required under the Service Agreement) by the Counterparty be taken against the Contractor or any other person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.

SECTION 1.4 LIMITATION OF GUARANTY LIABILITY

Notwithstanding any other provision of this Guaranty to the contrary, the aggregate maximum liability of the Guarantor for and in respect of the Guaranteed Obligations shall not exceed the maximum liability of the Contractor set forth in the Service Agreement.

SECTION 2 SUBROGATION

The Guarantor shall be subrogated to all rights of the Counterparty against the Contractor in respect of any amounts paid by the Guarantor pursuant to this Guaranty, provided that the Guarantor waives its rights to exercise any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Counterparty against the Contractor or any collateral which the Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Counterparty in full. If (a) the Guarantor shall perform

and shall make payment to the Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been indefeasibly paid or performed in full, the Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment or performance by the Guarantor.

SECTION 3 OTHER OBLIGATIONS OF THE GUARANTOR

Within sixty (60) days after the end of each quarter of the Guarantor's fiscal year (except the last quarter) and one hundred twenty (120) days after the end of each fiscal year of the Guarantor, the Guarantor shall provide to Counterparty its unaudited comparative financial statements, including its income statement and balance sheet, prepared according to generally accepted accounting principles for such quarter or fiscal year, as the case may be, which shall include the Guarantor and its consolidated subsidiaries (which for the purpose of this Guaranty shall include those subsidiaries of the Guarantor whose accounts are fully consolidated in accordance with generally accepted accounting principles with the accounts of the Guarantor in accordance with the Guarantor's policy of consolidation as in effect from time to time), in reasonable detail, subject, however, to year-end adjustments in the case of quarterly statements, and certified by a principal financial officer of the Guarantor. If, at any time during the term of this Guaranty, the Guarantor causes to be prepared audited annual financial statements in the course of its business, the Guarantor shall provide to Counterparty its audited annual financial statements in lieu of and within the period required for delivery of Guarantor's unaudited annual financial statements.

SECTION 4 NOTICES

All demands, notices and other communications provided for hereunder shall be in writing, addressed to the party receiving the notice at the address set forth below or at such other address as such party shall designate by notice to the other party under this Section. Notice shall be provided by one or more of the following means and shall be deemed to have been duly given (a) if delivered personally, when received, (b) if transmitted by facsimile, on the date of transmission with receipt of a transmittal confirmation (unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day),

or (c) if by overnight courier service, upon delivery by such courier service to the address for the recipient set forth below or such earlier delivery date as may be confirmed in writing to the sender by such courier service. No notice hereunder may be delivered by e-mail. Each party shall have the right at any time and from time to time to specify additional persons to whom notice hereunder must be given, by delivering to the other party five (5) days' notice thereof setting forth a single address for each such additional person, provided, however, that no party shall have the right to designate more than two (2) such additional persons. The initial addresses for notices are as follows:

- If to Counterparty:
The Executive Director
Dutchess County Resource Recovery Agency
96 Sand Dock Road
Poughkeepsie, New York 12603

with a copy to:

Van DeWater & Van DeWater, LLP
85 Civic Center Plaza, Suite 101
P.O. Box 112
Poughkeepsie, New York 12602

- If to Guarantor:
Wheelabrator Technologies Inc.
Attn: General Counsel
4 Liberty Lane West
Hampton, NH 03842

For purposes of this Agreement, the term “**Business Day**” shall mean any day other than a Saturday, Sunday, or any other day on which all banks in New York are authorized or required to be closed.

SECTION 5 DEMAND AND PAYMENT OR PERFORMANCE

The Counterparty is not entitled to make demand upon the Guarantor until the Contractor has failed to make payment of or to perform the Guaranteed Obligations after notice and demand in accordance with the Service Agreement. Any demand by the Counterparty for payment or performance hereunder shall be in writing, reference this Guaranty, reference the Guaranteed Obligations, be signed by a duly authorized representative of the Counterparty and delivered to

the Guarantor pursuant to Paragraph 4 hereof. The Guarantor shall pay, or cause to be paid, and to the extent that the Guaranty Obligation is one of performance, shall also commence performance or cause performance to be commenced and diligently continued with respect to such Guaranteed Obligations, within ten (10) Business Days of receipt of such demand.

SECTION 6 COSTS AND EXPENSES

In the event the Counterparty engages in litigation to enforce this Guaranty, the Guarantor agrees to pay, in addition to any amounts of the Contractor which the Guarantor has otherwise guaranteed to pay hereunder, any and all costs and expenses incurred by the Counterparty (including reasonable attorneys' fees) in enforcing this Guaranty.

SECTION 7 NO WAIVER, REMEDIES

Except as to applicable statutes of limitation, no failure on the part of Counterparty to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8 TERM

This Guaranty shall continue in full force and effect from the Effective Date until the date on which the Guaranteed Obligations are indefeasibly performed and paid in full by the Contractor or Guarantor, as applicable.

SECTION 9 ASSIGNMENT, SUCCESSORS AND ASSIGNS

Except as provided below, the Guarantor shall not assign or delegate its obligations hereunder to any other entity without the prior written consent of the Counterparty, and any assignment in violation of the foregoing shall be null and void and of no force or effect. This Guaranty shall be binding upon and inure to the benefit of the each party hereto and their respective successors and permitted assigns.

Notwithstanding the foregoing, Wheelabrator Technologies Inc. as the Guarantor hereunder may, upon forty-five (45) Business Days prior written notice to the Counterparty after

the receipt by the Counterparty of supporting financial and other documentation and information sufficient to demonstrate compliance with the requirements of this section transfer and assign all of its rights and obligations under this Guaranty provided that (a) the substitute guarantor has a Tangible Net Worth (as defined in the Service Agreement) of at least ONE HUNDRED FIFTY MILLION [\$150,000,000] DOLLARS; and (b) the substitute guarantor evidences its assumption of the obligations under this Guaranty in an agreement reasonably satisfactory to the Counterparty.

SECTION 10 MERGER, CONSOLIDATION AND SALE OF ASSETS

The Guarantor will not merge or consolidate with another entity or sell, lease, transfer or otherwise dispose of all or substantially all of its assets to any entity unless such entity has Tangible Net Worth of at least ONE HUNDRED FIFTY MILLION [\$150,000,000] DOLLARS, as reasonably evidenced by supporting financial documentation and information to demonstrate the successor's compliance with the Tangible Net Worth requirement, and unless such successor or transferee entity shall expressly assume, in writing by instrument reasonably satisfactory to Counterparty, the due and punctual payment, performance and observance of all obligations of the Guarantor hereunder, with the same effect as if such entity had originally been named as the Guarantor hereunder. The Guarantor shall notify the Agency of any such merger, consolidation, sale, lease or transfer within 5 days of the public notice thereof, and thereafter will provide the Agency as much notice as is reasonably practical prior to the closing of such transaction.

SECTION 11 AMENDMENTS, ETC.

No amendment of this Guaranty shall be effective unless in writing and signed by the Guarantor and the Counterparty. No waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by the Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 12 CAPTION

The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this

Guaranty.

SECTION 13 REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants as follows:

- (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.
- (b) The execution, delivery and performance of this Guaranty have been and will remain duly authorized by all necessary corporate action and do and will not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles.
- (d) The person signing this Guaranty on the Guarantor's behalf has been properly authorized by corporate action to do so, and no authorization by a third party is required
- (e) There is no legal proceeding, at law or in equity, before or by any governmental body pending or, to the best of the Guarantor's knowledge threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.
- (f) The Guarantor has no knowledge of any applicable law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

SECTION 14 GOVERNING LAW

THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION.

However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 15 JURISDICTION AND VENUE

Each of the Parties hereby submits to the jurisdiction of the New York State Supreme Court located in the County of Dutchess, State of New York, agrees that the litigation of all disputes between the parties shall be exclusively venued in the County of Dutchess, and waives to the fullest extent permitted by applicable law any right each might have to trial by jury in respect to any such dispute.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of the date first written above.

WHEELABRATOR TECHNOLOGIES INC.

By: _____
Name: _____
Title: _____

PERFORMANCE GUARANTEES

APPENDIX K

APPENDIX K
PERFORMANCE GUARANTEES

1. Guaranteed Facility Throughput ¹	154,000 NT/year
2. Net Electrical Generation Guarantee (Quarterly or Annual Average) ^{1,2}	307 kWh/TPT
3. Ferrous Metals Recovery Efficiency Guarantee (Quarterly or Annual Average) ³	4.0% of TPT
4. Process Residue Generation Guarantee, measured in wet Tons	32% by weight of TPT
5. The percentage of combustible material (LOI) and putrescible matter in the Process Residue ⁴	NYCRR Part 360 Permit Requirement

NOTES:

¹ For the purposes of calculating any Non-Performance Payment, the Contractor's Guaranteed Annual Throughput or Net Electrical Generation Guarantee, as appropriate, will be adjusted if the average higher heating value of the Processable Waste is less than 3,300 Btu per pound or greater than 5,500 Btu per pound. The Contractor shall have the burden of proof that the inability to meet the Guaranteed Annual Throughput or Net Electrical Generation Guarantee is due to the higher heating value of the waste being less than 3,300 Btu per pound or greater than 5,500 Btu per pound.

² The Net Electricity Generation Guarantee may be adjusted as described in Exhibit A of this Appendix K.

³ Ferrous Metal Recovery Efficiency Guarantee is based on historic recovery of ferrous for the calendar years 2001 – 2012. For purposes of calculating any Non-Performance Payment the Ferrous Metals Recovery Efficiency Guarantee will be adjusted to reflect a material reduction in average percent of ferrous metals in the Processable Waste, provided, however, that the Ferrous Recovery Efficiency Guarantee shall at a minimum require the Contractor to recover at least 85% of the ferrous metal in the Processable Waste. The Contractor shall have the burden of proof that the inability to meet the Ferrous Metal Recovery Efficiency Guarantee is due to the significant reduction in percentage of ferrous metals in the Processable Waste.

⁴ TPT means Total Processed Tonnage. LOI means loss on ignition.

EXHIBIT A to APPENDIX K
Major Turbine Outage

The Net Electricity Generation Guarantee shall not apply during the period in which a major outage of the turbine is scheduled and performed by the Contractor. For each such turbine outages, the Parties shall follow the protocol and document the outcomes as follows:

1. The Contractor shall notify the Agency at least fourteen (14) days in advance of any major scheduled turbine outage and the planned start date and time and end date and time of the planned outage.
2. Following the last waste delivery on the day prior to the actual start date of the turbine outage, the time and pit level, including any Processable Waste on the tipping floor, will be recorded and agreed values will be determined by the Parties. To the extent practical, all of the Processable Waste should be in the pit. At that same time the net electrical readings at the utility meter will also be recorded.
3. Following the last delivery on the actual end date of the turbine outage, the time and pit level, including any Processable Waste on the tipping floor, will be recorded and agreed values will be determined by the Parties. To the extent practical, all of the Processable Waste should be in the pit. At that same time the net electrical readings at the utility meter will also be recorded.
4. The Agency shall calculate the total Net Agency Tons delivered during the turbine outage pursuant to the scalehouse records for the day in which the actual start date occurred through and including the day in which the end date occurred.
5. The Agency shall calculate the change in estimated Tons in the pit records from the start date through and including the end date. If volumes are used to estimate the Tons of Processable Waste in the pit and on the tipping floor, the estimated Tons will be made assuming a Processable Waste density of 500 pounds per cubic yard. The "Outage Throughput" shall be equal to the Total Processed Tonnage during the major turbine outage plus or minus the change in pit inventory and tipping floor as determined in paragraphs 2 and 3 above.
6. The total electrical power sold to the Utility during the outage period, based on the utility meters shall be "Outage Electrical Sales."

For any period in which there is such a major turbine outage (i.e., during the applicable quarter of a year and during the entire Contract Year), the calculation for the actual net kilowatt hours of electricity sold per Ton that will be compared to the Net Electrical Generation Guarantee shall be calculated as follows:

$$\text{KWh/Ton} = (\text{Actual net kilowatt hours sold to the Utility during the period} - \text{the Outage Electrical Sales}) / (\text{the Total Processed Tonnage during the period} - \text{the Outage Throughput}).$$

This adjustment shall only apply to the major turbine preventive maintenance outages that occur approximately once every 5 to 6 years. The Contractor shall have the right in its sole discretion to determine the actual start date and end date of each such major turbine outage, provided, however, that during the Initial Term the aggregate number of days the Contractor can use for such major turbine outages, and, therefore, the use of the adjustments in this Appendix K is limited to a maximum of 32 days. If the Agreement is extended in accordance with Article 10.2(a) or 10.2(b) the Contractor will have an additional sixteen (16) days, if necessary, for conducting such major turbine outages during either the First One Year Renewal Term or the Second One-Year Renewal Term, but not both. If the Agreement is extended in accordance with Article 10.2(c) or 10.2(d) the Contractor will have an additional sixteen (16) days, if necessary, for conducting for conducting such turbine outages during the Six-Year Renewal Term and Five-Year Renewal Term.

This protocol can also be applied to specific turbine refurbishment outages to improve electrical performance that will be subject to cost and terms to be negotiated between the Parties.

CONTRACTOR OWNED ASSETS

APPENDIX L

APPENDIX L
Contractor Owned Assets
Dutchess County
As of April 9, 2014

This list below includes all additional items purchased by the Contractor and excludes any existing equipment presently at the Facility.

- Electronic Equipment
 - Computers
 - Desktops/Laptops
 - Printers
 - Fax Machines
 - Copiers
 - Scanners
 - Routers
 - Network Hubs
 - Phone System, paging system
 - Mobile communications (radios)

- Office Furniture
 - Desks
 - Filing Cabinets
 - Storage Cabinets
 - Tables
 - Chairs
 - Task Chairs
 - Safes

- Hand Tools
 - Tool boxes
 - Pallet Jacks
 - Hand carts

- Essential Shop Tools
 - Storage cabinets
 - Flammable cabinets
 - Welders – Welding equipment: leads, stingers, cables
 - Machines – Band saw, drill press, grinders, sandblaster, lathe
 - Gang boxes
 - Rigging equipment: chain-falls, come-alongs, straps, shackles
 - Work benches
 - Electrical testing equipment
 - Ultrasonic/ parts cleaner

- Rolling Stock
 - Front End loader
 - Skid Steer
 - Fork Trucks
 - Company Pickup

EXAMPLE CALCULATIONS

APPENDIX M

APPENDIX M
SAMPLE CALCULATIONS

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APPENDIX M

EXAMPLE SERVICE FEE CALCULATIONS

Example calculations pursuant to Article 6 of the Agreement are presented herein. These examples are presented to illustrate the methods and procedures used to determine the Service Fee, Supplemental Electrical Compensation, Non-Performance Payments, tonnage shortfall payments and other calculations and are not calculations of the actual values.

The following rounding conventions shall be used by the Parties when making all calculations in the Agreement:

1. Tonnage values are rounded to two (2) decimal places;
2. All intermediate and final dollar values are rounded to the nearest penny;
3. The value of the Adjustment Factor is rounded to ten (10) decimal places;
4. The average kWh per Ton is rounded to one (1) decimal place; and
5. The average wet-Tons of Process Residue per Ton is rounded to four (4) decimal places.

M1. SERVICE FEE AND SUPPLEMENTAL ELECTRICAL COMPENSATION EXAMPLES

In accordance with Article 6.3.1(A) of the Agreement the monthly Service Fee (SF) and Supplemental Electrical Compensation (SEC) are calculated on a monthly basis as follows:

$$SF = (BSF \times AF \times NAT) \pm (0.25 \times MR) - RF + PTC - NPP$$

$$\text{If } RT \leq (0.32 \times TPT) \text{ then } RF = (0.5 \times RC)$$

$$\text{If } RT > (0.32 \times TPT) \text{ then } RF = [0.5 \times [(RC/RT) \times 0.32 \times NAT] + \{(RC/RT) \times [RT - (0.32 \times NAT)]\}]$$

$$SEC = (TGM \times AF \times NAT) + [0.25 \times (UR - UE)]$$

where

AF	=	Adjustment Factor
BSF	=	Base Service Fee
MR	=	Material Revenue
NAT	=	Net Agency Tons
NPP	=	Non-Performance Payments
PTC	=	Pass Through Costs
RC	=	Residue Cost
RF	=	Residue Fee
RT	=	Wet-Tons of Process Residue
TPT	=	Total Processed Tonnage
TGM	=	Turbine/Generator Operations and Maintenance Fee
UE	=	Utility Expenses
UR	=	Utility Revenue

These terms are more fully defined in Section 6.3.1(A) of the Agreement.

Example 1: Service Fee and Supplemental Electrical Compensation July 2014

For this Example 1 it is assumed that during the month of July 2014:

- the Agency delivers 11,550.80 Tons of Processable Waste;
- there is no Bypass Waste, Wrongfully Refused Waste, Supplement Processable Waste, Special Waste or Unacceptable Waste;
- there are no Pass Through Costs;
- 473.6 Tons of ferrous metals is recovered and sold at an average net price of \$213.50/Ton. There are no other handling, haul, marketing and other costs;
- 3,488.34 wet-Tons of Process Residue is disposed (i.e., an average of 0.302 Tons of Process Residue per Ton) at an average haul and disposal cost of \$38.88/wet Ton; and
- 3,555,336.0 kWh of electricity is sold (i.e., an average of 307.8 kWh per Ton) at \$0.06/kWh. The Utility Expense for the month was \$5,800.00.

Service Fee Calculation

For July 2014 the Adjustment Factor (AF) is equal to 1.0. Since there is assumed to be no Bypass Waste, the Net Agency Tons (NAT) is 11,550.8, (i.e., 11,550.8 minus 0.00). Since there is not Supplemental Processable Waste this is also equal to the Total Processed Tonnage.

Since the 3,488.34 wet Tons of Process Residue (RT) is less than 3,696.00 (i.e., 0.32 times 11,550.80), the Residue Fee (RF) is equal to:

$$RF = 0.50 \times 3,488.34 \times \$38.88 = \$67,813.33.$$

The Material Revenue (MR) is equal to:

$$MR = (473.6 \times \$213.50) - \$0.00 = \$101,113.60.$$

The resulting monthly Service Fee for this Example 1 is:

$$SF = (\$68.25 \times 1.0 \times 11,550.80) + (0.25 \times \$101,113.60) - \$67,813.33 = \$745,807.17.$$

Supplemental Electrical Compensation Calculation

The Utility Revenue (UR) is equal to:

$$UR = 3,555,336.0 \times \$0.060 = \$213,320.16.$$

The resulting monthly Supplemental Electrical Compensation for this Example 1 is:

$$SEC = (\$0.83 \times 1.0 \times 11,550.80) + [0.25 \times (\$213,320.16 - \$5,800.00)] = \$61,467.20.$$

Example 2: Service Fee and Supplemental Electrical Compensation September 2015 (with Bypass Waste and Special Waste)

For this Example 2 it is assumed that during the month of September 2015:

- the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C for June 2014 (CPI-1) is 253.902 and for November 2014 (CPI-2) is 257.092;
- the Agency delivers 12,051.36 Tons of Processable Waste that includes 10.2 Tons of Special Waste other than contraband or expired pharmaceuticals delivered by or on behalf of the Agency for which the Agency has not received a tip fee;
- there is 52.10 Tons of Bypass Waste;

- there is no Wrongfully Refused Waste, Supplement Processable Waste or Unacceptable Waste;
- there are no Pass Through Costs other than for Special Waste;
- 542.31 Tons of ferrous metals is recovered and sold at an average gross price of \$201.03/Ton. There is a \$2,100.00 Recovered Material handling, haul, marketing and other costs;
- 3,796.18 wet-Tons of Process Residue is disposed (i.e., an average of 0.316 wet-Tons of Process Residue per Ton) at an average haul and disposal cost of \$39.46/wet Ton; and
- 3,725,075.4 kWh of electricity is sold (i.e., an average of 310.4 kWh per Ton) at \$0.06/kWh. The Utility Expense for the month was \$6,350.00.

Service Fee Calculation

For the Contract Year beginning on January 1, 2015 the Adjustment Factor (AF) for this Example 2 is equal to 257.092/253.902, or 1.0125639026.

Since there is assumed to be 52.10 Tons of Bypass Waste, the Net Agency Tons (NAT) is equal to:

$$\text{NAT} = 12,051.36 - 52.10 = 11,999.26.$$

Since there is not Supplemental Processable Waste this is also equal to the Total Processed Tonnage.

Since the 3,796.18 wet Tons of Process Residue (RT) is less than 3,839.76 (i.e., 0.32 times 11,999.26), the Residue Fee (RF) is equal to:

$$\text{RF} = 0.50 \times 3,796.18 \times \$39.46 = \$74,898.63.$$

The Material Revenue (MR) is equal to:

$$\text{MR} = (542.31 \times \$201.03) - \$2,100.00 = \$106,920.58.$$

In accordance with Article 3.13, the Pass Through Cost (PTC) for the 10.2 Tons of Special Waste is equal to:

$$\text{PTC} = \text{BSF} \times \text{AF} \times 0.10 \times 10.2 = (\$68.25 \times 1.0125639026 \times 0.10 \times 10.2) = \$70.49.$$

The resulting monthly Service Fee for this Example 2 is:

$$\text{SF} = (\$68.25 \times 1.0125639026 \times 11,999.26) + (0.25 \times \$106,920.58) - \$74,898.63 + \$70.49 = \\ \$829,238.70 + \$26,730.15 - \$74,898.63 + \$70.49 = \$781,140.71.$$

Supplemental Electrical Compensation Calculation

The Utility Revenue (UR) is equal to:

$$\text{UR} = 3,725,075.4 \times \$0.060 = \$223,504.52.$$

The resulting monthly Supplemental Electrical Compensation for this Example 2 is:

$$\text{SEC} = (\$0.83 \times 1.0125639026 \times 11,999.26) + [0.25 \times (\$223,504.52 - \$6,350.00)] = \\ \$10,084.51 + \$54,288.63 = \$64,373.14.$$

Example 3: Residue Generation Above Process Residue Generation Guarantee

The assumption used in Example 3 are the same as those used in Example 2 except the wet-Tons of Process Residue disposed is 3,923.76 wet-Tons (i.e., an average of 0.327 wet-Tons of Process Residue per Ton).

The total Residue Disposal Cost divided by the total wet-Ton of Process Residue is equal to \$39.46/wet-Ton.

Since, in this example, RT, which is equal to 3,923.76, is greater than 3,839.76 (i.e., 0.32 x 11,999.26),

$$\text{RF} = [0.5 \times (\text{RC}/\text{RT}) \times 0.32 \times \text{NAT}] + \{(\text{RC}/\text{RT}) \times [\text{RT} - (0.32 \times \text{NAT})]\} = \\ (0.5 \times 39.46 \times 0.32 \times 11,999.26) + 39.46 \times (3,923.76 - 3,839.76) = \\ \$75,758.53 + \$3,314.64 = \$79,073.17.$$

The resulting monthly Service Fee for this Example 3 is:

$$\text{SF} = \$829,238.70 + \$26,730.15 - \$79,073.17 + \$70.49 = \$776,966.17.$$

M2. NON-PERFORMANCE PAYMENTS

Example 4: Non-Performance Payment for Wrongfully Refused Waste

The assumptions used for this Example 4 are the same as those used in Example 2, except the 52.10 Tons of Bypass Waste is assumed to be Wrongfully Refused Waste. In addition, this example assumes there is no Wrongfully Refused Waste in July 2015 and August 2015. Since September is the last month of the 3rd quarter, the Service Fee in this Example 4 would be the same as the Service Fee in Example 2, except it would be reduced by a Non-Performance Payment (NPP) for the Wrongfully Refused Waste.

To illustrate how this Non-Performance Payment is calculated the following additional assumptions are used.

- the average tip fee charged by the Agency to the haulers in September 2015 is \$76.22/Ton; and
- the total additional costs or expenses incurred by the Agency resulting from the failure of the Contractor to accept and process the Wrongfully Refused Waste, is \$104.20.

The Non-Performance Payment is equal to the difference between:

(1) the sum of: (a) any incremental cost incurred by the Agency and (b) the Agency's lost revenues for the Wrongfully Refused Waste that is in this Example 4 is the sum of the: (i) lost tip fee revenues, (ii) lost electricity revenues, and (iii) lost net Recovered Material revenues; and

(2) sum of the additional Service Fee and additional Supplemental Electrical Compensation that the Contractor would have received and the Process Residue haul and disposal costs the Agency would have incurred if the Wrongfully Refused Waste was accepted and processed by the Contractor..

For this Example 4 the Agency's lost revenues for the Wrongfully Refuse Waste that is calculated as follows:

The lost tip fee revenues are equal to:

$$52.10 \times \$76.22 = \$3,971.06.$$

For this Example 4, it is assumed that in September 2015 3,725,075.4 kWh of electricity is sold at \$0.06/kWh, and that the Total Processed Tons is 11,999.26 Tons. The resulting average kWh/Ton is (3,725,075.4/11,999.26), or 310.44 kWh/Ton. Since 310.4 kWh is greater

than the 307.0 kWh per Ton (i.e., the Net Electrical Generation Guarantee), the lost electricity revenues are equal to:

$$52.10 \times 310.4 \times \$0.06 = \$970.31.$$

For this Example 4, it is assumed that in September 2015 an average of 4.52% of the Tons processed (i.e., 542.31 Tons of ferrous metals divided by 11,999.26 NAT) is recovered and sold at an average price of \$201.03/Ton. Since 4.52% is greater than the 4.0% (i.e., Ferrous Metals Recovery Efficiency Guarantee), the lost ferrous metal revenues are equal to:

$$52.10 \times 0.0452 \times \$201.03 = \$473.41$$

The sum of the Agency's incremental costs and lost revenues in this example is:

$$\$104.20 + \$3,971.06 + \$970.31 + \$473.41 = \$5,518.98.$$

The sum of the Service Fee and the Supplemental Electrical Compensation that the Contractor would have received if it had accepted and processed the 52.10 Tons of Wrongfully Refuse Waste is calculated as follows:

$$SF = (\$68.25 \times 1.0125639026 \times 52.10) + [0.25 \times \$201.03 \times 0.0452 \times 52.10] - [0.50 \times \$39.46 \times 0.3164 \times 52.10] = \$3,600.50 + \$118.35 - \$325.24 = \$3,393.61.$$

$$SEC = (\$0.83 \times 1.0125639026 \times 52.10) + [0.25 \times \$0.06 \times 310.4 \times 52.10] = \$43.79 + \$242.58 = \$286.37.$$

$$\text{The Agency's avoided Process Residue Haul and Disposal Cost} = PRHDC = [0.50 \times \$39.46 \times 0.3164 \times 52.10] = \$325.24.$$

$$SF + SEC + PRHDC = \$3,393.61 + \$286.37 + \$325.24 = \$4,005.22.$$

For this example it was assumed that the electrical sales and material sales costs do not vary tonnage. Therefore, each Party pays their respective shares of the electrical sales and material sales costs in the Service Fee and Supplemental Electrical Compensation for the Net Agency Tons actually accepted and processed and these sales costs are not included in the calculation of the Service Fee and the Supplemental Electrical Compensation that the Contractor would have received if it did not wrongfully refused any waste. In addition, this example assumes the Contractor met the Process Residue Generation Guarantee. If this was not the case then the calculation of RF would reflect this fact.

For this Example 4 the Non-Performance Payment for Wrongfully Refused Waste in the 3rd quarter of the Contract Year is:

$$\text{NPP} = \$5,518.98 - \$4,005.22 = \$1,513.76.$$

Example 5: Non-Performance Payment for Wrongfully Refused Waste with a Failure to Meet the Net Electrical Generation Guarantee

The assumptions used for Example 5 are the same as those used for Example 4 except net electricity sales is assumed to be 3,670,573.6 kWh, or an average of 305.9 kWh/Ton (i.e., 3,670,573.6/11,999.26).

Since the average kWh/Ton is below the 307 kWh/Ton Net Electrical Generation Guarantee, the Net Electrical Generation Guarantee is used to calculate both the Agency's lost revenues and the Supplemental Electrical Compensation for the Wrongfully Refused Waste.

The lost electricity for the 52.10 Tons of Wrongfully Refused Waste is:

$$52.10 \times 307 \times \$0.06 = \$959.68.$$

The sum of the Agency's incremental costs and lost revenues for the Wrongfully Refused Waste in this example is:

$$\$104.20 + \$3,971.06 + \$959.68 + \$473.41 = \$5,508.35.$$

The Supplemental Electrical Compensation the Contractor would have received had it processed the 50.10 Tons of Wrongfully Refused Waste would be:

$$\text{SEC} = (\$0.83 \times 1.0125639026 \times 52.10) + [0.25 \times \$0.06 \times 307 \times 52.10] = \$43.79 + \$239.92 = \$283.71,$$

and

$$\text{SF} + \text{SEC} + \text{APRHDC} = \$3,393.61 + \$283.71 + \$325.24 = \$4,002.56.$$

For this Example 5 the Non-Performance Payment for Wrongfully Refused Waste in the 3rd quarter of the Contract Year is:

$$\text{NPP} = \$5,508.35 - \$4,002.56 = \$1,505.79.$$

Example 6: Non-Performance Payment for the Failure to Meet Electricity Generation Guarantee

The assumptions used for Example 6 are the same as those used for Example 5. It is also assumed that there are no additional cost or expenses incurred by the Agency resulting from the failure of the Contractor to meet its Net Electrical Generation Guarantee.

Since the average net electricity sales per Tons of 305.9 kWh/Ton for the 11,999.26 Total Processed Tonnage is less than the 307 kWh/Ton Net Electricity Generation Guarantee the Non-Performance Payment for the failure to meet the Net Electricity Generation Guarantee in this example is.

$$\$0.00 + [0.75 \times \$0.06 \times 11,999.26 \times (307.0 - 305.9)] = \$593.96.$$

Example 7: Non-Performance Payment for the Failure to Meet the Ferrous Metals Recovery Efficiency Guarantee

The assumptions used for Example 7 are the same as those used for Example 2 except 461.97 Tons of ferrous metals is recovered and sold at an average price of \$201.03/Ton. It is also assumed that there are no additional costs or expenses incurred by the Agency resulting from the failure of the Contractor to meet its Ferrous Metal Recovery Efficiency Guarantee.

Since the average Tons of ferrous metals recovered of 3.85% (i.e., 461.97/11,999.26) is less than the 4.00% Ferrous Metal Recovery Efficiency Guarantee there is a Non-Performance Payment for the failure to meet this guarantee.

Non-Performance Payment for the failure to meet the Ferrous Metals Recovery Efficiency Guarantee is calculated as follows:

$$\$0.00 + [0.75 \times 201.03 \times 11,999.26 \times (0.04 - 0.0385)] = \$2,713.74.$$

Since the \$2,100.00 sale cost is used to calculate the Service Fee, it is not included in the calculation of this Non-Performance Payment.

M3. ANNUAL RECONCILIATION

The calculation of the Non-Performance Payments as part of the annual reconciliation are done in the same way as illustrated about for the period Non-Performance Payments, except the annual average values are used, rather than the average periodic values.

Example 8: Excess Agency Tons Service Fee Credit Payment

For this Example 8 it is assumed that during the Contract Year ending on December 31, 2015:

- the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C for June 2014 (CPI-1) is 253.902 and for November 2014 (CPI-2) is 257.092.
- the Agency delivers 156,300 Tons of Processable Waste;
- there is 52.10 Tons of Bypass Waste;
- there is no Wrongfully Refused Waste, Supplement Processable Waste or Unacceptable Waste; and
- there are no Uncontrollable Circumstances affecting the delivery, acceptance, or combustion of the Processable Waste.

For this Example 8 the Net Agency Tons is $156,300 - 52.10 = 156,247.90$ and the Guaranteed Annual Tonnage is 140,000.00.

Since the Net Agency Tons is greater than the Guaranteed Annual Tonnage the Agency Excess Tons for the Contract Year is: $156,247.90 - 140,000.00 = 16,247.90$, and the Excess Tons Service Fee Credit is:

$$\$25.00 \times 1.0125639026 \times 16,247.90 = \$411,300.93.$$

Example 9: Agency Shortfall Payment Without Any Supplemental Waste

For this Example 9 it is assumed that during the Contract Year ending December 31, 2015:

- the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C for June 2014 (CPI-1) is 253.902 and for November 2014 (CPI-2) is 257.092;
- the Agency delivers 138,200.08 Tons of Processable Waste;

- there is no Bypass Waste, Special Waste, Wrongfully Refused Waste, Supplement Processable Waste or Unacceptable Waste;
- there are no Uncontrollable Circumstances affecting the delivery, acceptance, or combustion of the Processable Waste
- there are no Pass Through Costs;
- 5,666.20 Tons of ferrous metals is recovered and sold at an average price of \$121.72/Ton. There is a total of \$25,200.00 handling, haul, marketing and other costs;
- 40,216.20 wet-Tons of Process Residue is disposed (i.e., an average of 0.2910 wet-Tons of Process Residue per Ton) at an average haul and disposal cost of \$39.46/wet Ton; and
- 42,634,700.0 kWh of net electricity is sold (i.e., an average of 308.5 kWh per Ton) at \$0.06/kWh. The Utility Expense for the month was \$78,550.00.

Average Service Fee per Ton

For the Contract Year beginning on January 1, 2015 the Adjustment Factor (AF) for this Example 2 is equal to 257.092/253.902, or 1.0125639026.

Since there is assumed to be no Bypass Waste or Supplemental Processable Waste, the Total Processable Waste (TPT) and Net Agency Tons (NAT) are both equal to 138,200.08 Tons.

Since the 40,216.20 wet Tons of Process Residue (RT) is less than 44,224.00 (i.e., 0.32 times 138,200.08), the Residue Fee (RF) is equal to:

$$RF = 0.50 \times 40,216.20 \times \$39.46 = \$793,465.63.$$

The Material Revenue (MR) is equal to:

$$MR = (5,666.20 \times \$121.72) - \$25,200.00 = \$664,489.86.$$

The resulting average per Ton Service Fee for this Example 9 is:

$$SF = [(\$68.25 \times 1.0125639026 \times 138,200.08) + (0.25 \times \$664,489.86) - \$793,465.63] / 138,200.08 =$$

$$(\$9,550,660.14 + \$166,122.47 - \$793,465.63) / 138,200.08 = \$64.57/\text{Ton}.$$

Average Supplemental Electrical Compensation Per Ton

The Utility Revenue (UR) is equal to:

$$UR = 42,634,700.0 \times \$0.060 = \$2,558,082.00.$$

The resulting average per Ton Supplemental Electrical Compensation for this Example 9 is:

$$\{(\$0.83 \times 1.0125639026 \times 138,200.08) + [0.25 \times (\$2,558,082.00 - \$78,550.00)]\} / 138,200.08 = (\$116,147.22 + \$619,883.00) / 138,200.08 = \$5.33/\text{Ton}.$$

The resulting sum of the average per Ton Service Fee and average per Ton Supplemental Electrical Compensation is:

$$\$64.57 + \$5.33 = \$69.90/\text{Ton}.$$

The Agency tonnage shortfall is equal to the difference between the Guaranteed Annual Tonnage and the Net Agency Tons, which for this Example 9 is:

$$140,000 - 138,200.08 = 1,799.92.$$

The resulting Agency Tonnage Shortfall Payment is:

$$\$69.90 \times 1,799.92 = \$125,814.41.$$

Example 10: UCC Tonnage Shortfall Payment When the Facility Down Due To An Uncontrollable Circumstance

Example 10A

For this Example 10A it is assumed that:

- there is an Uncontrollable Circumstance during the Contract Year ending December 31, 2016 with a duration of 54 continuous days when the Facility was down and could not combust any waste;
- the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C for June 2014 (CPI-1) is 253.902 and for November 2015 (CPI-2) is 263.340;
- the Net Agency Tonnage during the Contract Year is 125,300 Tons;
- there is no Bypass Waste, Wrongfully Refused Waste, Supplement Processable Waste, Special Waste;
- the Group A UCC Tonnage and Group E UCC Tonnage were both equal to zero (0); and
- based on the facts at the time of the Uncontrollable Circumstance it was

determined that an average of 371.35 Tons per day could not be accepted or combusted at the Facility during the 54 days of the Uncontrollable Circumstance.

For this Example 10A, the Group B UCC Tonnage is $371.35 \times 15 = 5,570.25$ Tons; the Group C UCC Tonnage is $371.35 \times 15 = 5,570.25$; and the Group D UCC Tonnage is $371.35 \times (54 - 30) = 8,912.40$ Tons.

For this example, the total quantity of Processable Waste that could not be accepted or combusted at the Facility, or delivered to the Facility due to an Uncontrollable Circumstance is the sum of Group A UCC Tonnage, Group B UCC Tonnage, Group C UCC Tonnage, Group D UCC Tonnage and Group E UCC Tonnage, i.e., $0.00 + 5,570.25 + 5,570.25 + 8,912.40 + 0.00 = 20,052.90$ Tons,.

Calculation of the Agency Shortfall Tonnage

For this example, the Guaranteed Annual Tonnage is equal to:

140,000.00 minus Wrongfully Refused Waste minus any waste that could not be accepted or processed at the Facility or delivered to the Facility due to an Uncontrollable Circumstance, which is equal to:

$$140,000.00 - 0.00 - 20,052.90 = 119,947.10 \text{ Tons.}$$

Since the Net Agency Tonnage of 125,300.00 is greater than the Guaranteed Annual Tonnage of 119,947.10 Tons, for this example, the Agency Shortfall Tonnage is equal to zero (0).

Calculation of the UCC Shortfall Tonnage

The UCC Shortfall Tonnage Threshold for this example is: 140,000 Tons; (ii) minus the aggregate Tons of Wrongfully Refused Waste during the Contract Year; (iii) minus the Group B UCC Tonnage, (iv) minus the Group D UCC Tonnage (v) minus the Agency Shortfall Tonnage, which for this example is: $140,000.00 - 0.00 - 5,570.25 - 8,912.40 - 0.00 = 125,517.35$.

Since the Net Agency Tons of 125,300 is less than the 125,517.35 UCC Tonnage Shortfall Threshold, the UCC Tonnage Shortfall is 217.35 Tons, which is the lessor of: (a) $125,517.35 - 125,300.00 = 217.35$ or (b) the sum of the Group A UCC Tonnage, Groups C

UCC Tonnage and Group E UCC Tonnage, i.e., $0.00 + 5,570.25 + 0.00 = 5,570.25$.

Calculation of the UCC Shortfall Tonnage Payment

In this example, the Adjustment Factor for the Contract Year ending December 31, 2016 is $263.340/253.902 = 1.0371718222$.

Since there is a UCC Tonnage Shortfall and the Group A UCC Tonnage is equal to zero (0), the UCC Tonnage Shortfall Payment in this example would be equal to:

$$0.60 \times \$68.25 \times 1.0371718222 \times 217.35 = \$9,231.33.$$

Example 10B

On the other hand, if the Net Agency Tonnage was greater than 125,517.35 Tons, then the UCC Shortfall Tonnage would be equal to zero (0) and there would be no UCC Tonnage Shortfall Payment.

Example 10C

The same assumptions are used for this Example 10C that were used for Example 10A, except the Net Agency Tons is 118,534.33.

Calculation of the Agency Shortfall Tonnage

Since the Guaranteed Annual Tonnage is 119,947.10 and Net Agency Tonnage is 118,534.33 Tons, the Agency Shortfall Tonnage would be $119,947.10 - 118,534.33 = 1,412.77$ Tons.

Calculation of the UCC Shortfall Tonnage

Given that the Net Agency Tonnage is 118,534.33 Tons and the Agency Shortfall Tonnage was 1,412.77, the UCC Shortfall Tonnage Threshold would be: $140,000.00 - 0.00 - 5,570.25 - 8,912.40 - 1,412.77 = 124,104.58$.

Since the Net Agency Tons of 118,534.33 is less than the 124,104.58 UCC Tonnage Shortfall Threshold, the UCC Tonnage Shortfall is 5,570.25 Tons, which is the lessor of: (a) $124,104.58 - 118,534.33 = 5,570.25$ or (b) the sum of the Group A UCC Tonnage, Groups C

UCC Tonnage and Group E UCC Tonnage, i.e., $0.00 + 5,570.25 + 0.00 = 5,570.25$.

Calculation of the UCC Shortfall Tonnage Payment

Since there is a UCC Tonnage Shortfall and the Group A UCC Tonnage is equal to zero (0), the UCC Tonnage Shortfall Payment in this example would be equal to:

$$0.60 \times \$68.25 \times 1.0371718222 \times 5,570.25 = \$236,580.69.$$

Example 11: UCC Tonnage Shortfall Payment Due To A Change in Law

Example 11A

For this Example 11A assume that:

- effective at the beginning on January 1, 2016, there is a Change in Law that reduced the average daily permit capacity of the Facility from 456 Tons to 420 Tons per day;
- the Consumer Price Index for all Urban Consumers less energy Northeast, Size Class B/C for June 2014 (CPI-1) is 253.902 and for November 2015 (CPI-2) is 263.340;
- the Net Agency Tonnage during the Contract Year is 135,300 Tons;
- there was no Bypass Waste, Wrongfully Refused Waste, the Group B UCC Tonnage, Group C UCC Tonnage, Group D UCC Tonnage, or Group E UCC Tonnage;
- based on the facts at the time it is determined that the Group A UCC Tonnage is 5,120.00.

Calculation of the Agency Shortfall Tonnage

For this example, the Guaranteed Annual Tonnage is equal to:

140,000.00 minus Wrongfully Refused Waste minus any waste that could not be accepted or processed at the Facility or delivered to the Facility due to an Uncontrollable Circumstance, i.e.,

$$140,000.00 - 0.00 - 5,120.00 = 134,880.00.$$

Since the Net Agency Tons of 135,300 was greater than the Guaranteed Annual Tonnage of

134,880.00 Tons, then, for this example, the Agency Shortfall Tonnage is equal to zero (0).

Calculation of the UCC Shortfall Tonnage

Since the Net Agency Tons of 135,300 is less than 140,000 Tons; (ii) minus the aggregate Tons of Wrongfully Refused Waste during the Contract Year; (iii) minus the Group B UCC Tonnage, (iv) minus the Group D UCC Tonnage, minus the Agency Shortfall Tonnage, i.e., $140,000.00 - 0.00 - 0.00 - 0.00 - 0.00 = 140,000.00$; the UCC Tonnage Shortfall is 4,700.00 Tons, which is the lessor of: (a) $140,000.00 - 135,300.00 = 4,700.00$ or (b) the sum of the Group A UCC Tonnage, Groups C UCC Tonnage and Group E UCC Tonnage, i.e., $5,120.00 + 0.00 + 0.00 = 5,120.00$.

Calculation of the UCC Shortfall Tonnage Payment

Since there is a UCC Tonnage Shortfall; all of it is due to a Change in Law, i.e., a Group A UCC Tonnage; and the UCC Tonnage Shortfall for a Contract Year prior to January 1, 2019, the UCC Tonnage Shortfall Payment in this example would be equal to:

$$1.00 \times \$68.25 \times 1.0371718222 \times 4,700.00 = \$332,698.79.$$

If this calculation was being made for a Contract Year beginning on January 1, 2019 or later, this amount would be 60% of this value.

Example 11B

On the other hand, if in this example the Net Agency Tons was greater than 140,000.00 Tons, then for this example the UCC Shortfall Tonnage would be equal to zero (0).

DESIGNATED DISPOSAL SITES

APPENDIX N

Appendix N
Designated Disposal Sites

- 1) **Wheelabrator Hudson Falls Waste-to-Energy Facility**
93 River Street, Hudson Falls New York 12839

- 2) **Wheelabrator Westchester Waste-to-Energy Facility**
One Charles Point Avenue, Peekskill, NY 10566

- 3) **Wheelabrator Bridgeport Waste-to-Energy Facility**
6 Howard Avenue, Bridgeport CT 06605

ACCESS CLAUSE FROM
OPERATIONS CONTRACT

APPENDIX O

Appendix O

Access Clause from Operations Contract

Article 3.7 Access

Representatives of the Agency, its authorized invitees, invitees of the Contractor and representatives of the Trustee and regulatory authorities including New York State, may visit and inspect the Facility with prior reasonable notice to the Contractor, at any time. Visitors shall be required to comply with all reasonable safety rules and regulations adopted by the Contractor. Such rules and regulations may include a requirement that each person visiting the Facility sign a statement assuming the risk of a visit to the Facility.

TERMINATION PAYMENT SCHEDULES

APPENDIX P

APPENDIX P

TERMINATION PAYMENT SCHEDULE

Table 1: Termination Payment A ^{(a)(b)}

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014							\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
2015	\$1,980,000	\$1,960,000	\$1,940,000	\$1,920,000	\$1,900,000	\$1,880,000	\$1,860,000	\$1,840,000	\$1,820,000	\$1,800,000	\$1,780,000	\$1,760,000
2016	\$1,740,000	\$1,720,000	\$1,700,000	\$1,680,000	\$1,660,000	\$1,640,000	\$1,620,000	\$1,600,000	\$1,580,000	\$1,560,000	\$1,540,000	\$1,520,000
2017	\$1,500,000	\$1,480,000	\$1,460,000	\$1,440,000	\$1,420,000	\$1,400,000	\$1,380,000	\$1,360,000	\$1,340,000	\$1,320,000	\$1,300,000	\$1,280,000
2018	\$1,260,000	\$1,240,000	\$1,220,000	\$1,200,000	\$1,180,000	\$1,160,000	\$1,140,000	\$1,120,000	\$1,100,000	\$1,080,000	\$1,060,000	\$1,040,000
2019	\$1,020,000	\$1,010,556	\$1,001,111	\$991,667	\$982,222	\$972,778	\$963,333	\$953,889	\$944,444	\$935,000	\$925,556	\$916,111
2020	\$906,667	\$897,222	\$887,778	\$878,333	\$868,889	\$859,444	\$850,000	\$840,556	\$831,111	\$821,667	\$812,222	\$802,778
2021	\$793,333	\$783,889	\$774,444	\$765,000	\$755,556	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2022	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2023	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2024	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2025	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2026	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
2027	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000

(a)

The termination payment is for the month in which the termination occurs.

(b) If the Service Commencement Date occurs after July 1, 2014, all dates in this Table shall be adjusted to reflect that the first month in the Table is the month in which the Service Commencement Date occurred.

Table 2: Termination Payment B ^{(a)(b)}

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014							\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
2015	\$3,960,000	\$3,920,000	\$3,880,000	\$3,840,000	\$3,800,000	\$3,760,000	\$3,720,000	\$3,680,000	\$3,640,000	\$3,600,000	\$3,560,000	\$3,520,000
2016	\$3,480,000	\$3,440,000	\$3,400,000	\$3,360,000	\$3,320,000	\$3,280,000	\$3,240,000	\$3,200,000	\$3,160,000	\$3,120,000	\$3,080,000	\$3,040,000
2017	\$3,000,000	\$2,960,000	\$2,920,000	\$2,880,000	\$2,840,000	\$2,800,000	\$2,760,000	\$2,720,000	\$2,680,000	\$2,640,000	\$2,600,000	\$2,560,000
2018	\$2,520,000	\$2,480,000	\$2,440,000	\$2,400,000	\$2,360,000	\$2,320,000	\$2,280,000	\$2,240,000	\$2,200,000	\$2,160,000	\$2,120,000	\$2,080,000
2019	\$2,040,000	\$2,021,111	\$2,002,222	\$1,983,333	\$1,964,444	\$1,945,556	\$1,926,667	\$1,907,778	\$1,888,889	\$1,870,000	\$1,851,111	\$1,832,222
2020	\$1,813,333	\$1,794,444	\$1,775,556	\$1,756,667	\$1,737,778	\$1,718,889	\$1,700,000	\$1,681,111	\$1,662,222	\$1,643,333	\$1,624,444	\$1,605,556
2021	\$1,586,667	\$1,567,778	\$1,548,889	\$1,530,000	\$1,511,111	\$1,492,222	\$1,473,333	\$1,454,444	\$1,435,556	\$1,416,667	\$1,397,778	\$1,378,889
2022	\$1,360,000	\$1,341,111	\$1,322,222	\$1,303,333	\$1,284,444	\$1,265,556	\$1,246,667	\$1,227,778	\$1,208,889	\$1,190,000	\$1,171,111	\$1,152,222
2023	\$1,133,333	\$1,114,444	\$1,095,556	\$1,076,667	\$1,057,778	\$1,038,889	\$1,020,000	\$1,001,111	\$982,222	\$963,333	\$944,444	\$925,556
2024	\$906,667	\$887,778	\$868,889	\$850,000	\$831,111	\$812,222	\$793,333	\$774,444	\$755,556	\$736,667	\$717,778	\$698,889
2025	\$680,000	\$661,111	\$642,222	\$623,333	\$604,444	\$585,556	\$566,667	\$547,778	\$528,889	\$510,000	\$491,111	\$472,222
2026	\$453,333	\$434,444	\$415,556	\$396,667	\$377,778	\$358,889	\$340,000	\$321,111	\$302,222	\$283,333	\$264,444	\$245,556
2027	\$226,667	\$207,778	\$188,889	\$170,000	\$151,111	\$132,222	\$113,333	\$94,444	\$75,556	\$56,667	\$37,778	\$18,889

(a) The termination payment is for the month in which the termination occurs

(b) If the Service Commencement Date occurs after July 1, 2014, all dates in this Table shall be adjusted to reflect that the first month in the Table is the month in which the Service Commencement Date occurred.

Appendix Q

LIST OF SPECIFIC PROJECTS TO BE COMPLETED BY CONTRACTOR

APPENDIX Q
LIST OF PROJECTS TO BE COMPLETED BY CONTRACTOR

The following is a list of projects the Contractor will complete by the applicable dates below:

PROJECT	TIMETABLE¹
1. Repair tipping building siding	Before July 31, 2016
2. Repair lime silo hopper	Before July 31, 2016
3. Clean and paint steel in ash aisle	Before July 31, 2016
4. Repair/Replace loader on tipping floor	Before July 31, 2015
5. Repair/Replace Yard Dog tractor	Before July 31, 2016
6. Purchase a fork truck for facility use in the warehouse and loading/unloading materials	Before July 31, 2015
7. Purchase a skid steer loader for use in the ash areas and roadways	Before July 31, 2016
8. Purchase a 2 ton pick-up truck	Before July 31, 2016
9. Repair curbing and paving repairs along roadways	Before July 31, 2015
10. Repair landscaping including rut repairs	Before July 31, 2015
11. Repair the facility fencing	Before July 31, 2015
12. Repair tipping floor bollard for fire cannons	Before December 31, 2014
13. Repair boiler casing leaks during the first scheduled outage on the respective units.	Contractor will evaluate leakage and make needed repairs during the first schedule outage on each respective unit.
14. Repair fabric filter double dumps and dampers	The Contractor will make all needed repairs to facility double dump valves, the analysis will be done within 6 months of the commencement date and all repairs will be completed before July 31, 2016

¹ The dates in this table shall be extended for the same duration as any delay in the Service Commencement Date after July 1, 2014.

15. Repair soot blower system integrity	Contractor will perform all required sootblower maintenance to return system integrity. All deficiencies will be repaired during the first scheduled outage for each respective unit.
16. Procurement of spare parts inventory	Contractor will manage and procure a complete and detailed spare parts inventory for the facility commencing immediately and completed during the first 18 months of operation.
17. Repairs to the tipping floor concrete	Before July 31, 2015
18. Repairs to the roof leak in the MCC building	Before December 31, 2014
19. Contact Central Hudson to have them make repairs to the natural gas valves	Before September 30, 2014
20. Repairs to SDA Gusset. Repairs will be determined based on the results of the diagnostic testing.	Contractor will make repairs to SDA gusset and structure as needed based on observations from facility walkdown to be completed during the first scheduled outage on that unit. Diagnostic testing will be completed during the first scheduled outage, repairs and timeline will be determined based on the results of testing.
21. Repairs to the stack. Repairs will be determined based on the results of the diagnostic testing.	Contractor will perform diagnostic testing on the stack within one year of service date. Results of the diagnostic testing will be reviewed and a timeline will be developed for repairs.
22. Repairs to facility insulation and lagging	This item will be a collaborative effort between the Contractor and the Agency. Items will be addressed based on a priority list established; this will be an ongoing item at the facility, based on priority and agreement between the Contractor and Agency.