Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20060013

1. ACTION REQUESTED/PURPOSE: Waive formal procurement procedures and approve and authorize the Chairman to sign an Amended and Restated Service Agreement between Lee County and Covanta Lee, Inc, the current operator of the waste to energy facility, providing for the long term operation and maintenance of the waste to energy facility (including the original facility and the expansion project).

WHAT ACTION ACCOMPLISHES: Consistent with the Board's previous actions related to the waste to energy facility, this motion establishes a formal agreement providing the roles, costs, and responsibilities for the County and Covanta Lee, Inc. for the operation and maintenance of the waste to energy facility. This Agreement was developed pursuant to the Memorandum of Understanding (MOU) and Amendment No. 6 (to the original Service Agreement), both previously approved by the BOCC.

3. **MANAGEMENT RECOMMENDATION:** Staff recommends approval.

4. Departmental Category: 8 A 8 A

5. Meeting Date: 01-24-2006

6. Agenda:		7. Requirement/Purpose: *(specify)*		8. Request Initiated:	
	Consent		Statute	Commissioner	
X	Administrative		Ordinance	Department	Public Works
	Appeals	X	Admin. Code 4-4	Division	Solid Waste
	Public		Other	By:	Lindsey J. Sampson
	Walk-On				

9. Background:

Lee County and Covanta Lee, Inc. are Parties to a long-term Service Agreement whereby Lee pays Covanta to operate and maintain the County's waste to energy facility (WTE). The term of the Agreement is twenty years and runs through November of 2014. Covanta was the original contractor of the present Waste to Energy facility as "Ogden Martin". Lee County has decided to expand the WTE by adding a third municipal waste combustion unit and a second turbine-generator. It is prudent and appropriate to have Covanta operate and maintain the entire expanded facility for an extended term. This Restated Agreement is consistant with the original agreement and provides that Covanta may continue to operate the facility through November 2024. However, either the County or Covanta may elect to reduce the term to 2019 with appropriate advance notice. This Agreement also requires certain operating and maintenance standards and and environmental guarantees similar to the conditions established for the original facility.

On January 18, 2005, pursuant to the Boards direction of 11-25-03, the BOCC approved a Memorandum of Understanding (MOU) outlining the basic roles and responsibilities of the Parties for the design, construction and start-up of the WTE Expansion Project. The MOU also provided that a Definitive Agreement would be established to provide detailed information relating to the respective Party's responsibilities and other contract conditions. The Definitive Agreement is in the form of Amendment No. 6 for the construction of the expansion project and is in the form of this 'Amended and Restated Service Agreement' for the long-term operations and maintenance of the expanded facility.

Funds will be made available through the budget process.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
1.6.06	1/9/06	N.A.		1/9/06	1/10/06				1.6.06

11. Commission Action:

____Approved
____Deferred
____Denied
____Other

RECEIVED BY COUNTY ADMIN: 1-10-06 10:10
COUNTY ADMIN FORWARDED TO: 1-11-06 11:12AM

Rec. by CoAtty
Date: 1/9/06
Time: 4:15PM
Forwarded To: Budget

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AMENDED AND RESTATED SERVICE AGREEMENT

Between

LEE COUNTY

And

COVANTA LEE, INC.

December __, 2005

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AMENDED AND RESTATED SERVICE AGREEMENT

THIS AMENDED AND RESTATED SERVICE AGREEMENT (this "Service Agreement") made and entered into as of ~~December~~ January ___, ~~2005~~2006 and between Covanta Lee, Inc.(formerly Ogden Martin Systems of Lee, Inc.), a Florida corporation, ("Contractor"), and Lee County, Florida, a political subdivision and charter County of the State of Florida, ("County"), acting by and through its Board of Commissioners, amends and restates a Service Agreement entered into by the Contractor and the County on August 29, 1990, as amended by the First Change Order, dated June 5, 1991, the Second Change Order, dated October 21, 1992, the Third Change Order, dated December 13, 1995, the Fourth Change Order, dated May 18, 1999, the Fifth Change Order, dated October 31, 2000 and the Project Management, Engineering Oversight and Environmental Performance Amendment (Amendment Number 6) to the Service Agreement, dated ~~November ___~~,December 6, 2005.

RECITALS:

WHEREAS, the County is empowered to enter into this Service Agreement with the Contractor providing for Solid Waste Processing services by the Processing of Processible Waste delivered by or on behalf of the County to the Facility and the operation and maintenance of the Facility pursuant to the terms hereof;

WHEREAS, the County originally selected the Contractor, pursuant to its Request for Qualifications/Request for Proposals, dated January, 1990, and the Contractor's responses thereto, in reliance on the skill, expertise and past successful experience with mass burn technology of the Contractor and its Covenantor, (Martin GmbH) ("Covenantor") to design, construct, start-up, Acceptance Test, operate and maintain the Facility as a service to the County,

in accordance with the terms and provisions of the Construction Agreement, this Service Agreement, and as applicable the Related Documents as hereinafter defined;

WHEREAS, the Contractor shall operate and maintain the Facility so as to provide certain Solid Waste Processing services to the County, and the County will deliver or cause to be delivered to the Facility certain quantities of Processible Waste to be Processed at the Facility in accordance with the terms and conditions of this Service Agreement;

WHEREAS, the County and the Contractor entered into Amendment Number 6 relating to the Expansion of the Facility; and

WHEREAS, Covanta Energy Corporation ("Guarantor") has executed the Guarantee set forth in Schedule 1 guaranteeing the Contractor's performance of its obligations under this Service Agreement.

NOW, THEREFORE, in consideration of the mutual premises set forth above, and the terms and conditions hereinafter set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Contractor and the County do hereby agree as follows:

ARTICLE I

EFFECTIVENESS; COOPERATION; DOCUMENTS

Section 1.01 Effectiveness. This Service Agreement shall become effective on the Effective Date and no further action, approval or authorization of either Party will be required for this Service Agreement to become effective on the Effective Date. Upon the Effective Date, the Prior Service Agreement shall be superseded in its entirety by this Service Agreement and the Prior Service Agreement shall have no further force or effect. The terms and provisions set forth herein shall not become effective and shall not be enforceable by either the County or the Contractor prior to the Effective Date. Prior to the Effective Date, the Prior Service Agreement

shall remain in full force and effect. In the event that for any reason the Effective Date never occurs, then (a) this Service Agreement shall not become effective, (b) the terms and provisions set forth herein shall not be enforceable by either the Contractor or the County, and (c) the Prior Service Agreement shall remain in full force and effect.

Section 1.02 Cooperation. The Parties shall cooperate and use their best efforts, pursuant to the terms of this Service Agreement, to facilitate the Processing ~~and disposal~~ of Processible Waste delivered to the Facility by or on behalf of the County, and the disposal of Residue derived therefrom. Accordingly, the Parties agree in good faith to mutually undertake the resolution of disputes, if any, in an equitable and timely manner so as to limit the need for resolution of such disputes in accordance with Article IX.

Section 1.03 Service Agreement Documents. The following Schedules are attached hereto and made a part of this Service Agreement.

Schedule 1 - Guarantee
Schedule 2 - Performance Guarantees and Full Acceptance Standard and Minimum Acceptance Standard
Schedule 3 - Operating Parameters
Schedule 4 - Scheduled and Unscheduled Maintenance
Schedule 5 - Performance Test Procedures
Schedule 6 - Power Purchase Agreement
Schedule 7 - Insurance
Schedule 8 - Adjustment Factor
Schedule 9 - Pass Through Costs
Schedule 10 - Covenant of Assurance
Schedule 11 - Calculation of Disposal Cost
Schedule 12 - Permits
Schedule 13 - RESERVED
Schedule 14 - Indenture

This Service Agreement, together with the foregoing Schedules, constitutes the entire Service Agreement between the Contractor and the County with respect to the Processing and disposal of Processible Waste delivered or caused to be delivered to the Facility by the County; provided, however, that the Power Purchase Agreement set forth in Schedule 6 and the Indenture set forth

in Schedule 14 are intended by the Parties to be attached for informational purposes only and the Parties agree that the terms and provisions of this Service Agreement, including the Schedules, except Schedules 6 and 14, shall govern exclusively the obligations of the Parties.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions.

For purposes of this Service Agreement, the following words and phrases shall be given the following respective interpretations and meanings:

"Acceptance" or "Accepted" means that the Full Acceptance Standard has been met or, if the Full Acceptance Standard is not met, that the Facility has been accepted at less than the Full Acceptance Standard, as determined in accordance with Sections 7.02 or 7.03 of the Construction Agreement. The Parties acknowledge that Acceptance occurred on November 30, 1994.

" Acceptance Date" means the date on which Acceptance of the Facility occurred, which was November 30, 1994.

"Acceptance Test" and "Acceptance Testing" means the tests described in the test plan developed in accordance with Section 7.02 (b) of the Construction Agreement, together with the test procedures specified in Schedule 4 of the Construction Agreement.

"Additional Bonds" means bonds, other than the initial series of Bonds, and other evidences of indebtedness, issued by the County pursuant to the Indenture to provide the County with funds for the construction of the Facility or for Capital Projects.

"Additional Financing Documents" means any agreement or obligation entered into by the County other than the Indenture specifically related to the financing of the Facility with

respect to the issuance of the Bonds, Additional Bonds or security features thereof, including but not limited to, letters of credit, reimbursement agreements, bond insurance, or other instruments specifically related to the financing of the Facility.

"Adjustment Factor" has the meaning specified in Schedule 8.

"Affiliate" means the Guarantor and any corporation, partnership, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Guarantor, the Contractor or any one of such entities.

"Amendment Number 6" means the Project Management, Engineering Oversight and Environmental Performance Amendment (Amendment Number 6) to the Service Agreement, dated December 6, 2005.

"Ammonia Consumption Guarantee" means the Contractor's obligation with respect to the use of ammonia in accordance with Part A7. (b) of Schedule 2.

"Annual Average Energy Guarantee" means the Contractor's obligation to generate electrical power per Ton of Processible Waste Processed in each Billing Year in accordance with Section 5.02, as specified in Part 9 of Schedule 2.

"Applicable Law(s)" means every applicable federal, State, county, or local law, code, rule, mandate, statute, regulation, ordinance, municipal charter provision, order, decree, permit, license, judgment, and other governmental requirement or resolution, the common law arising from final, nonappealable decisions of governmental authorities in the United States, and any interpretation or administration of any of the foregoing by any governmental authority, whether now or hereafter in effect.

"Authorized Representative" means the County's and the Contractor's representatives designated pursuant to Section 16.11.

"Billing Month" means each calendar month in each Billing Year, except that (a) the first Billing Month began on the first day of the month following the date on which the Acceptance Date occurred, subject to the provisions of Section 7.02 of the Construction Agreement, and (b) the last Billing Month shall end concurrently with the end of the term of this Service Agreement.

"Billing Year" means, for each Billing Year other than the first and last, the twelve calendar month period commencing on the first Day of October following the calendar year in which the first Billing Month occurs and ending on the last Day of September, and each twelve calendar month period thereafter. The first Billing Year shall commence on the first day of the Billing Month following the Acceptance Date and shall end on the last Day of September following the first Billing Month. The last Billing Year shall end concurrently with the end of the term of this Service Agreement.

"Bonds" means the outstanding bonds, or any other evidences of indebtedness, issued by the County from time to time pursuant to the Indenture to finance the Facility, electrical transmission lines and interconnect, utilities to the Facility Site boundary and any Capital Project, including such additional amounts as are, or were, required to pay all County development costs associated with the Facility, the costs of issuance of the bonds, credit enhancement and other financing fees, interest during construction, and to fund any reserves required to be funded under the terms of the Indenture. Bonds shall not include any refinancing of the items listed above unless all or a portion of the existing Bonds are retired or defeased and such refinancing Bonds shall be Bonds only to the extent of outstanding Bonds retired or defeased by the refinancing.

"Btu" means British Thermal Unit.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday which is not a Legal Holiday.

"Bypassed Waste" means the Tons of Processible Waste which the Contractor was obligated to Process which were not Processed, calculated pursuant to Section 4.01 (b) (iii).

"Capital Project" means any addition, change, repair, reconstruction, modification or alteration to the Facility, which addition, change, repair, reconstruction, modification or alteration is performed pursuant to the provisions of Article VIII.

"Change in Law" means either (a) the enactment, adoption, promulgation, modification or repeal after the execution of Amendment Number 6 of any federal, State, or local law, ordinance, code, rule, regulation or other similar legislation or the change in interpretation after the execution of Amendment Number 6, of any federal, state, or local law, ordinance, code, rule, regulation, official permit, license or approval by any regulatory entity having jurisdiction with respect to the construction, operation or maintenance of the Facility or the Processing, disposition or hauling of Solid Waste or (b) the imposition, after the execution of Amendment Number 6, of any material conditions on the issuance, modification or renewal of any official permit, license or approval necessary for construction, start-up, Acceptance Testing or operation of the Facility, which, in either case, necessitates or makes advisable a Capital Project, modifies the Contractor's guarantees of Facility Performance or increases the Facility Price or the Initial Operation and Maintenance Charge pursuant to Section 8.04 by establishing requirements with respect to the operation or maintenance of the Facility which are more burdensome than the most stringent requirements:

(i) in effect on the execution of Amendment ~~Number~~No. 6;

(ii) agreed to by the County and the Contractor in any applications for official permits, licenses or approvals for the Facility, other than any requirements set forth in said applications to comply with future laws, ordinances, codes, rules, regulations or similar legislation; or,

(iii) contained in Schedule 14 of the Construction Agreement.

For purposes of part (a) of this definition, no enactment, adoption, promulgation or modification of laws, ordinances, codes, rules, regulations or similar requirement or enforcement policy with respect to any such requirement shall be considered a Change in Law if, as of the execution of Amendment Number 6, such law, ordinance, code, rule, regulation or other similar requirement was (x) officially proposed by the responsible agency and published in final form in the Federal Register or equivalent federal, state or local publication and thereafter becomes effective without further action or (y) enacted into law or promulgated by the appropriate federal, state or local body before the execution of Amendment Number 6, and the comment period with respect to which expired on or before the execution of Amendment Number 6 and any required hearings concluded on or before the execution of Amendment Number 6 in accordance with applicable administrative procedures and which thereafter becomes effective without further action. In no event shall a change in federal, state or local tax law, or any other tax law, be considered a Change in Law. For purposes of this definition, the proposed OSHA rule (in the Federal Register #69:59305-59474 dated October 24, 2004) for Occupational Exposure to Hexavalent Chromium CrVI and regulations which effect respirator requirements when working inside boilers shall not be treated as Changes in Law as long as the enacted regulations are consistent and no more stringent than the proposed regulations dated October 24, 2004.

(iv) contained in Schedule of Amendment No. 6.

"Codes and Standards" means those applicable technical or numerical codes and standards referenced in this Agreement, and those applicable codes and standards of technical societies, organizations or associations and all applicable provisions of all national, state or local established rules for the work that, pursuant to Applicable Laws, shall be adhered to by Contractor in the performance of its work.

"Combustion/Steam Generator Line" means the separate complete furnace/boiler including the waste feed hopper, grates ~~or rotary combustor~~, boiler, combustion air fans, ash quench device, ash removal device, dry scrubber, baghouse, induced draft fan, flue, and related auxiliary equipment.

"Confidential Information" means information now or hereafter owned or controlled by the Contractor and identified as such pursuant to the provisions of Section 14.03 hereof, including, without limitation, patented and unpatented inventions, trade secrets, know-how, techniques, data, specifications, as-built drawings, blueprints, flow sheets, designs, engineering information, cost and productivity data, construction information, operation criteria, and Operation and Maintenance Manuals relating to the Facility. Any such information which becomes publicly available without restriction on disclosure other than in violation of the provisions of Article XIV shall not be deemed Confidential Information.

"Construction Agreement" means the Construction Agreement, dated August 29, 1990, as amended, between the Contractor and the County.

"Consulting Engineer" means a nationally recognized consulting engineering company, with demonstrated experience in the area of resource recovery, which shall be HDR Engineering, Inc., until such time as the County, in its sole discretion, shall engage a replacement engineer, provided, however, that such replacement shall not be a competitor of the Contractor or a party

to litigation in which the Contractor is an adverse party. The County shall notify the Contractor of any change in such consulting engineering company.

"Contract Date" means ~~December __, 2005.~~January __, 2006.

"Contractor" means Covanta Lee, Inc., a corporation formed under the laws of the State of Florida.

"Contractor Fault" means any material breach, failure, nonperformance or noncompliance by the Contractor with the terms and provisions of this Service Agreement, or the negligent or wrongful act or omission of any agent, employee, contractor, sub-contractor at any tier or independent contractor of the Contractor which in fact prevents or delays the County from performing its obligations under this Service Agreement or which deprives the County of any of its material rights under this Service Agreement, other than any such breach, failure, nonperformance or noncompliance caused by an Uncontrollable Circumstance or County Fault.

"Cost Substantiation" means, with respect to any cost or expense incurred by either Party, either a certificate signed by the County's Authorized Representative with respect to Direct Costs incurred by the County, or a certificate signed by the Contractor's Authorized Representative with respect to Direct Costs incurred by the Contractor, stating the reason for incurring such Direct Costs, the amount of such Direct Cost, and the event or Section of this Service Agreement giving rise to the Party's right to incur such Direct Cost and that such Direct Cost is at a fair market value price for the service or materials supplied (it is understood by the Parties that such services or materials may be provided by an Affiliate). If the other Party does not object, in writing, to any such certificate provided by the other Party within thirty (30) Days after receipt thereof, such Direct Cost shall be deemed accepted by such Party and shall be payable in accordance with the terms of this Service Agreement. With respect to Direct Costs

incurred by the Contractor or the County, the amount shall be increased to provide for the payment of a profit to the Contractor, or an administrative fee to the County only when expressly authorized pursuant to the terms of this Service Agreement. The amount of such profit, when applicable, shall be ~~equal to~~ an amount equal to ten (10) percent of such Direct Costs, exclusive of costs of travel and subsistence incurred by any employee of the Contractor. Any certification provided by either Party shall include copies of all invoices or charges, together with any additional documentation of such costs or expenses incurred which are necessary, in accordance with generally accepted accounting practices and procedures, to verify the amount of such costs and expenses and to demonstrate the basis for the amount claimed.

"County" means Lee County, Florida, a political subdivision of the State, acting by and through its Board of County Commissioners.

"County Contribution" means any moneys paid by the County, other than Bond proceeds or ~~Additional~~additional Bond proceeds, to be applied for any of the items which could be financed by the Bonds or ~~Additional~~additional Bonds pursuant to the terms of the Indenture.

"County Fault" means any material breach, failure, nonperformance or noncompliance by the County with the terms and provisions of this Service Agreement, or the negligent or wrongful act or omission of any agent, official, commissioner, employee, contractor, subcontractor at any tier or independent contractor (including without limitation the Consulting Engineer) of the County which in fact prevents or delays the Contractor from performing its obligations under this Service Agreement or which deprives the Contractor of any of its material rights under this Service Agreement for any reason other than any such breach, failure, nonperformance or noncompliance caused by an Uncontrollable Circumstance or Contractor Fault.

"Covenant of Assurance" means the covenant of assurance delivered by the Covenantor to the County in substantially the Form of Schedule 10.

"Covenantor" means Martin GmbH.

"Cure", "Cured" or "Curing" means any repair, replacement, change, modification, reconstruction, cure, remedy or correction to or on the Facility, as required pursuant to Section 3.03 herein.

"Daily Established Expansion Capacity" means the actual daily ~~average~~ throughput with respect to the Expansion, as established during throughput performance testing of the Expansion, and as ~~increased~~modified in accordance with Section 6.02(d).

"Daily Guaranteed Capacity" means the Contractor's obligation to Process the quantities of Processible Waste, in accordance with Section 5.01, as specified in Part A.2 (a) of Schedule 2.

"Day" shall mean a calendar day of time, beginning at 12:01 a.m. in the eastern time zone of the United States coinciding with the calendar day, whether or not a Sunday or Legal Holiday.

"Direct Costs" means, in connection with any cost or expense incurred by either Party for which Cost Substantiation is required pursuant to the terms of this Service Agreement, the sum of (a) the product of (i) the costs of the Party's payroll directly related to the performance of any obligation of said Party pursuant to the terms of this Service Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Worker's Compensation Insurance not otherwise provided by either Party pursuant to the provisions of Article X, federal and state unemployment taxes and all medical and health insurance benefits, times (ii) 1.10, plus (b) the product of (i) payments of reasonable costs to subcontractors necessary to and in connection with the performance of such obligation, times (ii) 1.08 for supervision of such subcontractors to the extent such supervision is not included in (~~A~~a) above,

plus (c) the costs of materials, services, direct rental costs and supplies purchased by such Party (equipment manufactured by and professional services and supplies furnished by the Contractor or its Affiliates or the Consulting Engineer shall be considered purchased materials at their actual invoice cost, provided such cost is an arm's length fair market value cost, plus (d) the reasonable costs of travel and subsistence incurred by any employee of such Party. Direct Costs excludes services performed by employees working full time at the Facility.

"Disposal Cost" means the amount calculated pursuant to Schedule 11.

"Disposal Cost Increase Limitation" means the limit on the increase in the County's Disposal Cost due to Uncontrollable Circumstances which occur after the Construction Date. The maximum cumulative increase in the County's Disposal Cost due to such Uncontrollable Circumstances is twenty three dollars ($23.00) per Ton of Processible Waste, adjusted in accordance with Schedule 8, as calculated pursuant to Section 7.04. [this number was updated through 2004 in order for new escalation date in Schedule 8 to be applicable]

"Dolomitic Lime Consumption Guarantee" shall have the meaning specified in Schedule 2, Part A.12.

"Effective Date" means the acceptance date related to the Expansion, as such acceptance date is defined in Amendment Number 6 and determined pursuant to Amendment Number 6.

"Effluent Guarantee" means the Contractor's obligation with respect to storm water discharge and wastewater discharge specified in Section 5.07 and paragraph A.4 of Schedule 2.

"Energy Credit" means the component of the Service Fee calculated in accordance with Section 6.04 (b).

"Energy Efficiency Guarantee" means the Contractor's obligation to generate electric energy in accordance with Section 5.02 and as specified in Part A.1 of Schedule 2.

"Energy Inefficiency Period" means the period of time, as specified pursuant to Section 5.02 (c) or Section 5.02 (d), during which the Contractor is obligated to pay the County Monthly Damages for lost electric revenues pursuant to Section 6.06 (a).

"Environmental Guarantee" means the Contractor's obligation to operate the Facility in compliance with applicable environmental rules and regulations, and permits, licenses or approvals issued thereunder, in accordance with Section 5.03 and Part A.5 of Schedule 2.

"EPA" means the United States Environmental Protection Agency or any successor.

"Event of Default" means any one or more of those events described in Sections 12.02 and 12.03.

"Expansion" means the third boiler and combustion unit train and second turbine generator, together with appurtenant structures and equipment, to be constructed by the County.

"Expansion Capacity Adjustment" has the meaning set forth in Section 6.02 (d).

"Facility" means the mass burn resource recovery electric generating facility, together with appurtenant structures and equipment and the electrical interconnect, designed, constructed and Acceptance Tested by the Contractor, pursuant to the Construction Agreement, and the Expansion.

"Facility Inventory List" shall have the meaning specified in Section 3.05.

"Facility Price" means the price set forth in Section 5.02 of the Construction Agreement.

"Facility Site" means the real property, easements, and rights of way located in County, as more particularly described in Schedule 3 of the Construction Agreement, upon which the Facility is to be constructed.

"Ferrous Removal Guarantee" means the Contractor's obligation to recover ferrous metals pursuant to Section 5.04, as specified in Part A.8 of Schedule 2.

"Full Acceptance Standard" means compliance of the Facility with the performance guarantees set forth in Part B of Schedule 7 of the Construction Agreement, as demonstrated by Acceptance Testing in accordance with Schedule 4 of the Construction Agreement.

"Guarantee" means the agreement between the Guarantor and the County set forth in Schedule 1.

"Guaranteed Tonnage" means the number of Tons of Processible Waste required to be delivered by or on behalf of the County to the Facility in any Billing Year, which number shall be the sum of (1) three hundred seventy-two thousand three hundred (372,300) Tons, plus (2) the product of (i) eighty-five percent (85%) of the Daily Established Expansion Capacity and (ii) 365, or such lesser amount as results from the operation of Section 4.01 (a) of the Service Agreement or as may result from (i) reduction of the Processing Guarantee due to an Uncontrollable Circumstance, or (ii) an Uncontrollable Circumstance which prevents delivery of Processible Waste; provided, however, that for a Billing Year of less than fifty-two (52) weeks, the Guaranteed Tonnage shall be proportionately reduced to reflect the number of weeks in said Billing Year.

"Guarantor" means the Person which executed the Guarantee set forth in Schedule 1.

"Hazardous Waste" means any material or substance which, as of the Contract Date, and by reason of its composition or characteristics is (a) hazardous waste as defined in the Solid Waste Disposal Act, 42 USC §6901 et seq., as amended, replaced or superseded, and the regulations implementing same, or (b) material the disposal of which is regulated by the Toxic Substances Control Act, 15 USC §2601, et seq., as amended, replaced or superseded, and the regulations implementing same, or (c) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, or (d) treated as hazardous waste under applicable

state or local law. If any governmental agency or unit having appropriate jurisdiction shall determine that substances are hazardous or harmful to health when Processed at the Facility, then any such substances or materials shall be Hazardous Waste for purposes of this Service Agreement.

"Higher Heating Value" or "HHV" means the Btu content or specific higher heating value of Processible Waste as determined by using the combustion system of the Facility as a calorimeter in accordance with Schedule 5.

"Indenture" means the Indenture of Trust to be entered into between the County and Trustee as from time to time may be amended and any other agreement or supplemental indenture pursuant to which Bonds or Additional Bonds are issued to finance the Facility or any Capital Project.

"Independent Engineer" means the nationally recognized independent consulting engineer or firm selected in accordance with the procedure set forth in Article IX.

"Initial Operation and Maintenance Charge" means (a) prior to December 1, 2014, the amount of $12,454,411.00 plus $13.3634 for every Ton by which the Guaranteed Tonnage exceeds 427,216 up to a maximum Guaranteed Tonnage of 569,619, at which point the total amount would be $14,357,414.00, and (b) on and after December 1, 2014, the amount of $12,614,891.00 plus $13.5355 for every Ton by which the Guaranteed Tonnage exceeds 427,216 up to a maximum Guaranteed Tonnage of 569,619, at which point the total amount would be $14,542,414. The Initial Operation and Maintenance Charge shall be subject to the Expansion Capacity Adjustment.

"kWh" means kilowatt hours of electricity.

"Landfill" means the County's landfill, or any other landfill as the County may lease, own, operate or designate during the term of this Service Agreement, provided that the County's landfill or other landfill shall always be permitted in accordance with all applicable federal and state laws and shall be permitted to accept the particular Residue, Bypassed Waste, Processible and Nonprocessible Waste delivered to it in accordance with all applicable federal and state laws. If the Landfill is included or proposed to be included, pursuant to a published notice, on the National Priorities List or a successor list as administered by the EPA, the County will undertake or cause to be undertaken such corrective actions as may be necessary by the applicable governmental authority to permit continued operation and to remove the Landfill from any National Priorities List. ~~If the County Landfill operator is unsuccessful in maintaining its operating permit, the County shall provide a different Landfill.~~

"Landfill Charge" means the Landfill Charge component of the Service Fee, in the amount of eighty ($80.00) dollars per Ton of Bypassed Waste, adjusted in accordance with Schedule 8, which component shall be calculated pursuant to Section 6.05.

"Legal Holiday" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or such other Legal Holidays as may be designated from time to time by the County.

"Lime Consumption Guarantee" means the Contractor's obligation with respect to the use of chemical reagent in accordance with Section 5.05 and Part A.7 (a) of Schedule 2.

"Line Hour of Maintenance" means any given hour, or part thereof, during which a Combustion/Steam Generator Line is unable to Process Processible Waste (for any reason other than Uncontrollable Circumstance or County Fault), which time period shall start when the steam

flow drops below fifty percent (50%) of its normal operating range and shall end when the steam flow is restored to fifty percent (50%) of its normal operating range.

"Maximum Utility Utilization Guarantee" means the maximum amounts of water, electricity, sanitary sewage disposal, and propane gas which the Facility may utilize pursuant to Section 5.08 and specified in Schedule 2.

"Mercury Reagent Consumption Guarantee" means the Contractor's obligation with respect to the use of carbon in accordance with Part A.10 of Schedule ~~2~~2.

"Monthly Adjustment" means the component of the Service Fee calculated pursuant to Section 6.07.

"Monthly Damages" means the component of the Service Fee calculated pursuant to Section 6.06.

"Non-Ferrous Recovery System" or "NFRS" shall mean the systems, structures and equipment for the removal of non-ferrous metals from Residue.

"NFRS Revenues" shall mean the revenues derived by the sale by the Contractor of the non-ferrous metals recovered by the NFRS, net of all expenses of sale, including for example reasonable broker's and marketer's charges or fees and freight expense or transportation charges.

"Nonprocessible Waste" means that portion of Solid Waste that is not Processible Waste or which is predominantly noncombustible, including ashes, metal furniture and appliances, concrete rubble, mixed roofing materials, noncombustible building debris, rock, gravel and other earthen materials, large automotive vehicle parts, engine blocks and transmissions, agricultural and farm machinery and equipment, marine vessels and major parts thereof, trailers, other large machinery and equipment, and wire and cable, as well as dead animals, offal from slaughterhouses and wholesale food processing establishments, infectious, pathological and

biological waste, sewage sludge, liquid wastes, explosives, chemicals and radioactive materials, other materials which by applicable law, ordinance, rule or regulation may not be Processed by the Facility and such other Solid Waste as may be treated as Nonprocessible Waste pursuant to Section 4.03 (c).

"Operating Parameters" means the measured characteristics of daily Facility operation that the Contractor is obligated to monitor and record pursuant to Section 5.02 (b), as specified in Schedule 3.

"Operation and Maintenance Manuals" means drawings, diagrams, schematics, instructions, parts lists, schedules, procedures, and other literature provided by equipment suppliers or subcontractors or developed by Contractor, during the term of this Service Agreement, for the purpose of providing guidance in operating, maintaining and repairing all mechanical, electrical and control instrumentation systems installed in the Facility.

"Party" or "Parties" means either the County or the Contractor or both, as the context of the usage of such term may require.

"Pass Through Costs" means the component of the Service Fee calculated pursuant to Section 6.03.

"Pass Through Taxes" shall mean federal, State and local sales and use taxes on materials and equipment furnished and installed in the Facility, personal property taxes, personal service taxes, value added taxes, and utility taxes (except to the extent in lieu of generally applicable taxes on income in which case the excess over such taxes on income shall be a Pass Through Tax), any land rental taxes or real estate taxes which arise out of and directly result from the Contractor's performance of this Service Agreement or which relate to the Facility or Facility Site and any other tax imposed on the Contractor because it is constructor and/or operator of a

plant such as the Facility. Taxes on rooms, meals, utilities (those normally levied in conjunction with the provision of routine utility services), and other consumables, payroll taxes, taxes on income and taxes in the nature thereof are not included in this definition of Pass Through Taxes.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Power Purchase Agreement" or "Power Purchase Agreements" means the contract(s) entered into between the County and Seminole Electric Cooperative, Inc., dated May 18, 1999, set forth in Schedule 6, providing for the sale of electricity produced by the Facility, as the same may from time to time be amended, modified or supplemented in accordance with its or their terms or amended, modified, supplemented or replaced in accordance with the next clause of this definition; provided that the County shall not voluntarily amend, modify or supplement any Power Purchase Agreement in a manner which would materially and adversely affect the ability of the Contractor to perform its obligations or which would materially increase the Contractor's costs or liabilities or decrease the Contractor's revenues under this Service Agreement or the Construction Agreement. The County shall provide the Contractor with prompt notice of any change or proposed change in the Power Purchase Agreement.

"Power Purchaser" or "Power Purchasers" means the company or entity (entities) that has entered into a Power Purchase Agreement(s) with the County.

"Prime Rate" means the annual rate of interest announced from time to time by JP Morgan Chase, as its prime rate.

"Prior Service Agreement" means the Service Agreement entered into by the Contractor and the County on August 29, 1990, as amended by the First Change Order, dated June 5, 1991,

the Second Change Order, dated October 21, 1992, the Third Change Order, dated December 13, 1995, the Fourth Change Order, dated May 18, 1999, the Fifth Change Order, dated October 31, 2000 and the Project Management, Engineering Oversight and Environmental Performance Amendment (Amendment Number 6) to the Service Agreement, dated November __, 2005.

"Process", "Processed" or "Processing" means the combustion of Processible Waste at the Facility.

"Processible Waste" means that portion of Solid Waste which can be Processed which is collected and disposed of as part of normal collections of Solid Waste in the County, such as, but not limited to: garbage, trash, rubbish, refuse, paper and cardboard, plastics, tin or other metal cans, beds, mattresses, sofas, bicycles, and other noncombustible residential waste mixed in Solid Waste, occasional automobile or small vehicle tires (to the extent the air emission criteria applicable to the Facility are not violated by the Processing thereof), as well as portions of commercial and industrial Solid Waste which can be Processed, trees and lumber, if no more than four (4) feet long and/or six (6) inches in diameter or width, branches, leaves, twigs, grass and plant cuttings; excepting, however, Nonprocessible Waste and Hazardous Waste. If any governmental agency or unit having appropriate jurisdiction shall determine that any wastes which are not included, as of the Contract Date, within this definition of Processible Waste because they are considered harmful, toxic or dangerous to the public health and welfare, are not harmful, toxic or dangerous, then such wastes shall be Processible Waste for purposes of this Service Agreement, unless otherwise excluded under the definitions of Nonprocessible Waste or Hazardous Waste.

"Processing Guarantee" means the Contractor's obligation to Process the quantity of Processible Waste specified in Part A.2 (b) of Schedule 2 in accordance with Section 5.01, or

such lesser amount as may result from (i) a reduction in Processing capacity due to an Uncontrollable Circumstance or County Fault, (ii) an Uncontrollable Circumstance or County Fault which prevents delivery of Processible Waste to the Facility, or (iii) Acceptance of the Facility at less than the Full Acceptance Standard.

"Prudent Industry Practices" means those practices, methods, techniques, specifications and standards of safety, maintenance, housekeeping, repair, replacement and performance, as the same may change from time to time, as are commonly observed in the Southeastern region of the United States by competent, qualified operators performing management, operation, maintenance, repair and replacement services on Solid Waste facilities of the type and size similar to the Facility, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are (a) considered good, safe and prudent practice in connection with the maintenance, operation and use of such equipment, facilities and improvements, with commensurate standard of safety, performance, dependability, efficiency and economy.

"Punch List Item(s)" shall have the meaning specified in Section 3.03(b).

"Qualified Turbine Outage Day" means any Day of scheduled maintenance of the turbine generator, as specified in Section 6.12 (b) (ii).

"Receiving Time" means the period of operation for the Facility consisting of any consecutive up to twelve (12) hour period of operation for each Business Day as specified pursuant to Section 3.06 (b).

"Recovered Resources" means electric energy meeting the specifications and requirements of the Power Purchase Agreement, magnetic ferrous metals and, if applicable, Residue or other materials recovered from Processible Waste or Residue at the Facility.

"Recovered Resources Revenues" means the component of the Service Fee calculated pursuant to Section 6.04 (c).

"Reference Waste" means Processible Waste having a Higher Heating Value of five thousand (5,000) Btu's per pound, as well as other characteristics described in Table 1 of Schedule 2.

"Related Documents" means the Construction Agreement, Power Purchase Agreement, Indenture, Guarantee, Covenant of Assurance, and any credit support agreement relating to the Bonds and Additional Bonds, if any.

"Residue" means the material remaining after Processible Waste is Processed, including fly ash, bottom ash, dolomitic lime and Spent Reagent, and prior to the recovery of ~~magnetic~~ ferrous ~~materials~~and non-ferrous metals.

"Residue Quality Guarantee" means the Contractor's obligation with respect to ~~t~~ Residue composition required by Section 5.06, as specified in Part A.3 of Schedule 2.

"Schedule" means an exhibit or schedule attached hereto and incorporated in this Service Agreement unless otherwise expressly indicated by the terms of this Service Agreement.

"Service Fee" means the amount payable to the Contractor by the County for Solid Waste disposal services, calculated in accordance with Section 6.01.

"Solid Waste" means all materials or substances generally 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 material, incinerator residue, demolition and other construction debris and offal;

provided, however, this definition shall not include sewage and other highly diluted water-carried materials or substances and those in gaseous form, or Hazardous Waste.

"Spare Parts" means component parts and replacement items relative to the Facility that (a) have been as of the Contract Date (as defined in Amendment No. 6) purchased by the Contractor and (b) are procured or secured by the Contractor during the term of this Service Agreement that, in the case of either (a) or (b), are (1) stored on or in close proximity to the Facility Site or (2) readily available within forty-eight hours (48 hours) for repair and replacement of equipment in conformance with Prudent Industry Practices.

"Spare Parts Inventory List" shall have the meaning specified in Section 3.05.

"Spent Reagent" means reacted and unreacted chemicals remaining after passing through the acid gas control system of the Facility.

"Standards of Maintenance" shall have the meaning specified in Section 3.03(a).

"State" means the State of Florida and all of its appropriate administrative, contracting and regulatory agencies and offices.

"TCLP" means the Toxic Characteristics Leaching Procedure as promulgated by the EPA, as modified or amended. Samples shall be collected in accordance with 40 C.F.R. 260.11, if appropriate.

"Timeframe" shall have the meaning set forth in Section 3.03(b)(2).

"Ton" means two thousand (2,000) pounds.

"TPD" means Tons per Day

"Trustee" means the bank selected by the County pursuant to the Indenture or any successor trustee appointed pursuant to the Indenture.

"Uncontrollable Circumstances" means any act, event or condition, other than a labor strike, work stoppage or slowdown, that has a direct material adverse effect on the rights or the obligations of a Party under this Service Agreement, if such act, event or condition 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 Service Agreement or is not the result of the Contractor's failure to maintain the Facility in accordance with the terms of the Service Agreement. Such acts or events shall include, but not be limited to, the following:

(a) An act of God (except normal weather conditions for the geographic area of the Facility Site), hurricane, tornado, epidemic, landslide, lightning, earthquake, flood, fire or explosion, or similar occurrence, an act of the public enemy, war, blockade, insurrection, riot, general unrest, restraint of government and people, civil disturbance, sabotage or similar occurrence;

(b) The order, injunction or judgment of any federal, State or local court, administrative agency or governmental body or officer with jurisdiction in the County acting in its governmental capacity, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity excepting decisions interpreting federal, State and local tax laws; provided, however, that such order, injunction or judgment shall not arise in connection with or be related to the negligent or wrongful action or inaction of the Party relying thereon and that neither the contesting in good faith of any such order, injunction, or judgment nor the reasonable failure to so contest shall constitute or be construed as a wrongful or negligent action or inaction of such Party;

(c) The suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal of any permit, license, consent, authorization or approval

necessary to the operation and maintenance of the Facility, if such act or event shall not arise in connection with or be related to the negligent or willful action or inaction of the Party relying thereon, and that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as a negligent or willful action or inaction of such Party; excluding, however, any license, consent or authorization for the technology of the Covenantor, if applicable, which is required for the operation, repair or maintenance of the Facility;

(d) The failure of any appropriate federal, State or local agency or public or private utility having operational jurisdiction in the area of location of the Facility Site to provide and maintain in the necessary quantity and assure the maintenance of all utilities necessary for operation of the Facility or operation of the Landfill;

(e) A default by the Power Purchaser under the Power Purchase Agreement;

(f) Any subsurface condition(s), with the exception of the groundwater in any quantity as opposed to quality, which is discovered after the Acceptance Date and which was unknown to the Contractor and which could not have been discovered with reasonable diligence by the Contractor on or before the Acceptance Date, which prevents or affects operation of the Facility or requires a Capital Project to correct the adverse effect of such subsurface condition on the Facility;

(g) A Change in Law;

(h) The failure of any subcontractor or supplier to furnish services, material or equipment on the dates agreed, to, provided, however, that (i) such failure is (a) caused by an act, event or condition materially and adversely affecting the performance of such subcontractor or supplier that would be an Uncontrollable Circumstance if it directly affected the Contractor, and (b) materially, adversely affects the Contractor's ability to perform its obligations, and (ii) the

Contractor is not able reasonably to obtain substitute services, material or equipment on the agreed upon dates at reasonable costs;

(i) The unavailability of the Landfill sufficient for disposal of all Residue; and

(j) Any change ~~by the Power Purchaser~~ of the location of the point of interconnection or any delay ~~by the Power Purchaser~~ in completing such interconnection with the Facility ~~under the Power Purchase Agreement~~ or any change in the equipment necessary for the County to make such interconnection which prevents or impairs the delivery of electricity for sale pursuant to the Power Purchase Agreement, or any failure (whether excused or not) by such purchaser to take electricity at the point of interconnection.

(k) Failure of the Florida Department of Environmental Protection, or any other regulatory agency having jurisdiction under the Final Order approving the Power Plant Site Certification for the Facility, which was issued on June 17, 1992, including the Final Order of Supplemental Site Certification, signed by the Governor of the State on October 6, 2003 (collectively, the "Certification"), to review plans, drawings and specifications required to be submitted to them pursuant to the Certification in 30 days or less, or 60 days or less if such plans, drawings and specifications relate to wastewater disposal.

(l) Failure of the South Florida Water Management District ("SFWMD") to approve the dewatering operations described in Paragraph A.1 (i) of Schedule 14 to the Construction Agreement and Division B of the Review Package for Construction submitted to SFWMD on August 25, 1992.

"Unscheduled Maintenance Bank" means the number of Tons of Processible Waste established pursuant to Schedule 4 for each Billing Year.

"Urea Consumption Guarantee" means the Contractor's obligation with respect to the use of urea in accordance with Section 5.05 and Part A.11 of Schedule 2.

Section 2.02 Terms Defined in the Construction Agreement. In the absence of a clear implication otherwise, capitalized terms used in this Service Agreement which are not defined herein shall have the meaning given to such terms in the Construction Agreement.

Section 2.03 Terms Generally. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "agree," "agreement," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require.

Section 2.04 Notices Generally. Unless specifically provided elsewhere in this Service Agreement, at least fifteen (15) Days prior written notice shall be required to be given by one Party to the other Party of any breach of this Service Agreement by the other Party hereto or failure to fulfill any requirement of this Service Agreement by a Party, in order to allow the Party receiving such notice to cure any such breach; or to commence and diligently pursue the cure of any such breach which cannot reasonably be cured during such 15 Day period, or to allow such Party time to prepare for, question or contest the fact that any such requirement of this Service Agreement has not been fulfilled.

ARTICLE III

OPERATION AND MAINTENANCE OF THE FACILITY BY CONTRACTOR

Section 3.01 Overall Responsibilities.

(a) The Contractor shall, at its sole cost and expense, provide management, supervision, personnel, materials, equipment, services and supplies (other than Processible Waste) necessary to operate, maintain and repair the Facility, including the scalehouse (excluding operation of the scalehouse, operation and maintenance of the scale and any other County infrastructure that is on the Facility Site that is not part of the Facility), including repair and replacement due to design and construction errors and omissions, throughout the term of this Service Agreement in a manner consistent with good engineering, operational and maintenance practices and procedures for mass-burn water wall boiler, electric generating facilities in order to receive Processible Waste during the Receiving Time, and to process such Processible Waste and generate electricity therefrom in accordance with the terms of this Service Agreement~~: provided that, notwithstanding anything herein to the contrary, the County shall pay the Contractor any Direct Costs incurred by the Contractor with respect to any repair, replacement or extraordinary maintenance of any aspect of the Expansion due to design or construction errors that were not the result of Contractor Fault~~. In addition, in the event that the County requests that the Contractor perform any project management services after July 15, 2007 regarding any correctional work with respect to the Expansion and consistent with the terms of Amendment Number 6, for reasons other than Contractor Fault, then the Contractor shall be paid, pursuant to a Change Order, its Direct Costs incurred to perform such services; provided, however, any such compensation for such services shall be reduced to the extent (a) that such services were to be performed by or on behalf of the Contractor pursuant to Amendment No. 6 prior to July 15, 2007 and (b) of the Contractor's cost savings for such specific services not performed prior to such date.

(b) The County shall deliver or cause to be delivered at least the Guaranteed Tonnage to the Facility during each Billing Year at no cost to the Contractor. If the Guaranteed Tonnage is not delivered to the Facility, the County nevertheless shall be responsible for payment of the Service Fee, including damages, if any, as provided in Section 6.11 (a).

(c) After the Acceptance Date and subject to Section 4.01 (b) the Contractor shall receive Processible Waste during the Receiving Time, and shall Process all Processible Waste which is delivered to the Facility throughout the term of this Service Agreement.

(d) The County shall provide the Landfill and transportation to the Landfill, at its cost and expense, throughout the term of this Service Agreement for disposal of Residue, Bypassed Waste, Nonprocessible Waste, Processible Waste rejected pursuant to Section 4.01(b) and unmarketed Recovered Resources.

(e) The Contractor shall operate and maintain the Facility in such a manner so that the Facility will receive and Process Processible Waste in accordance with its guarantees set forth in Article V and, consistent with the terms and provisions of this Service Agreement, will use reasonable efforts to maximize the net revenues resulting from the sale of Recovered Resources.

Section 3.02 Safety of Persons and Property. The Contractor agrees that it will: (a) take all reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the Facility, to any property on the Facility Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, equipment, structures and utilities (~~except for~~including County installed infrastructure on the Facility Site that is not part of the Facility); (b) establish and maintain safety procedures for the Facility for the protection of employees of the Contractor and all other Persons, including invitees and permittees at the

Facility in connection with the operation and maintenance thereof, at a level consistent with applicable law and with good industry standards and practices for mass-burn electrical generating plants; (c) comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to the safety of Persons or property at the Facility or their protection at the Facility from damage, injury or loss; and (d) designate a qualified and responsible member of its organization at the Facility Site whose duties shall be safety and the prevention of fires and accidents at the Facility and the Facility Site and to coordinate such activities as shall be necessary with federal, State, local, and municipal officials.

Section 3.03 Repair and Maintenance of the Facility. (a) General Obligation. Subject to the County's rights relative to performing, or causing to be performed through a third party, repairs, replacements, corrections or cures to the Facility set forth below in this Section 3.03, the Contractor shall, at its sole cost and expense (except as specifically set forth herein), (1) perform all corrective, predictive, preventative and routine maintenance and repair and replacement of the Facility and equipment, including facilities, buildings and supporting infrastructure on the Facility Site in accordance with the Standards of Maintenance at a level adequate for the efficient, long term reliability and preservation of the capital investment, (2) operate and maintain the Facility and the Facility Site in a good, clean, orderly and litter-free condition, including implementing necessary repairs, purchasing and maintaining necessary replacement equipment or parts for the Facility and maintaining an adequate inventory of Spare Parts and equipment, consistent with meeting its obligations set forth in this Service Agreement, and (3) maintain within the Facility Site all landscaping, all roads and drainage systems, including, but not limited to, storm water drainage systems and pipes, manholes, inlets, headwalls, flared-end sections, cleanouts and rip-raps; except for areas of ~~the Facility Site that have been modified~~

~~by the County as a result of~~ County infrastructural additions on the Facility Site; and provided that the Contractor shall not be responsible for any wholesale replacement of ~~any~~ roads.

(b) Standards of Maintenance. In furtherance of the Contractor's obligations under the previous paragraph of this Section 3.03, the Contractor shall repair, replace components and maintain the Facility and equipment, and perform each and every component of its obligations under this Service Agreement in accordance with the more stringent of (1) Operation and Maintenance Manuals and other operating instructions relating to the Facility or the equipment as provided by any of its Subcontractors, vendors, contractors or manufacturers, each as may change from time to time, all as modified by the Contractor consistent with Prudent Industry Practices, (2) manufacturer's recommendations, as modified by the Contractor consistent with Prudent Industry Practices, that are necessary to maintain the equipment and other Facility component warranties whether or not the warranty period is then in effect, (3) the applicable terms and conditions of this Service Agreement, (4) Prudent Industry Practices, (5) Codes and Standards, (6) Applicable Laws and (7) the requirements of applicable insurance providers relative to this Service Agreement as of the Contract Date (as defined in Amendment No. 6) (collectively, the "Standard(s) of Maintenance"); provided, however, that compliance with the foregoing shall not be a violation of Applicable Laws and Codes and Standards.

The Contractor shall be obligated to comply with those Standards of Maintenance which are applicable in any particular circumstance. Where more than one Standard of Maintenance applies to any particular obligation under this Service Agreement, the Contractor shall comply with each applicable Standards of Maintenance; except for areas of the Facility Site that have been modified by the County as a result of County infrastructural additions on the Facility Site;

and provided that the Contractor shall not be responsible for any wholesale replacement of any roads.

(c) Enforcement of Standards of Maintenance.

(1) Consulting Engineer Inspections and Reports. To give effect to Section 3.03(a), the Consulting Engineer shall have the right, to inspect and comment on the condition of the Facility at any time. On a quarterly basis, commencing during the first full month after the Commencement Date (as defined in Amendment No. 6) and every third month thereafter during the term of this Service Agreement, the Consulting Engineer shall have the right to conduct an inspection over one or more Days of the Facility and with the full cooperation of the Contractor to determine if the Facility and its equipment is being repaired, replaced and maintained in accordance with Section 3.03(b). Within fifteen (15) Business Days following the completion of such inspection, the Consulting Engineer shall file a written report with the County and the Contractor of its findings. To the extent that the Facility and/or the equipment does not comply with the Standards of Maintenance, such written report shall so identity such items and specify in reasonable detail as to how such items are not in compliance (the "Punch List Items"). The report shall further identify the Cure that the Contractor shall pursue to bring such Punch List Items into compliance with the Standards of Maintenance, including the draft proposed timeframe, on an item-by-item basis, by which each Punch List Item must achieve compliance. In establishing such proposed timeframe(s), the Consulting Engineer shall take into account the time necessary to purchase or acquire each such Punch List Item, the work necessary to bring each such Punch List Item into compliance, the priority of such work relative to maintaining the Contractor's obligations under this Service Agreement, the availability of Subcontractors to perform the work, the time for review pursuant to Section 3.03(c)(2), the

potential for coordination of such work with scheduled downtimes of applicable portions of the Facility and other relevant factors.

(2) Resolution of Disagreements. Upon receipt of the Consulting Engineer's report, the Contractor shall have fifteen (15) Business Days thereafter to provide the County and the Consulting Engineer with written notice of its disagreement, if any, on an item-by-item basis, with the findings of the Consulting Engineer. Such notice shall specify in reasonable detail the basis for the Contractor's disagreement with each contested Punch List Item. Failure of the Contractor to give such notice within such fifteen (15) Business Day period shall be deemed acceptance or approval of the Consulting Engineer's report. If the Contractor gives such Notice to the County and the Consulting Engineer, the Contractor and the Consulting Engineer shall meet within ten (10) Business Days after the delivery of such Notice by the Contractor in an effort to resolve the disputed portions of the Consulting Engineer's report and agree on a final schedule pursuant to which a Cure shall be implemented with respect to each Punch List Item (the "Timeframe"). If such Authorized Representatives and the Consulting Engineer resolve some or all such disputed portions of the report, the report will be amended accordingly, redelivered by the Consulting Engineer to the Authorized Representatives within five (5) Business Days after such resolution and the Contractor shall diligently pursue the necessary Cures identified in the amended report that are no longer in dispute. If, within ten (10) Business Days after the initial meeting of the Consulting Engineer and such Authorized Representatives to resolve the disputed portions of the Consulting Engineer's report, resolution is not achieved as to all contested items, either Party may refer the remaining disputed items to dispute resolution pursuant to Article IX.

(3) Withholding for Uncorrected Work. If the Contractor does not achieve compliance with respect to all Punch List Items identified in the Consulting Engineer's report that have not been referred to dispute resolution within the Timeframe, then the County, upon written notice to the Contractor, may direct that the Consulting Engineer prepare a cost estimate to complete the compliance work with respect to each Punch List Item not brought into compliance within the Timeframe. In preparing such cost estimate, the Consulting Engineer may be required to inspect the Facility and/or equipment regarding such uncompleted work and the Contractor shall be fully cooperative in such inspection. Upon completion of such cost estimate, the Consulting Engineer shall file its written cost estimate with the County's and the Contractor's representatives, and the County may direct the County payment of the Contractor's current invoice and, as necessary, future monthly invoices for work performed, be set-off against the Service Fee.

(4) County Completion of Work. The County may, after the County provides written Notice to the Contractor, cause the uncompleted Punch List Items referenced in paragraph (3) above to be completed on a schedule specified by the County. After such written Notice is delivered to the Contractor, the County may proceed to cause such uncompleted Punch List Items to be completed by its reasonably qualified employees or one or more reasonably qualified third parties. The County may also then direct that the difference, if any, between (A) the aggregate amount of the cost estimate of such uncompleted items developed by the Consulting Engineer pursuant to paragraph (3) above and (B) the aggregate amount retained by the County pursuant to paragraph (5) below, be credited against the payment of the Contractor's current invoice and, as necessary, future monthly invoices for Service Fees. Amounts withheld and retained by the County pursuant to paragraph (4) and (5) of this Section

3.03(c) shall be used by the County to pay for the work necessary to complete such uncompleted Punch List Items. If the actual costs to pay for the work necessary to complete such Punch List Items exceeds such amounts withheld and retained by the County, the Contractor shall be liable for such excess amount. Any excess amount shall be paid by the Contractor to the County, at the County's election, either as (i) a direct payment of the County's invoiced amount within thirty (30) Days following the Contractor's receipt of the County's invoice or (ii) a credit against the amounts otherwise due and owing with respect to the Contractor's next or future monthly Service Fee invoice(s). The aggregate amount of the cost estimate pursuant to (A) above and the excess amount to complete the uncompleted Punch List Items pursuant to (ii) above shall be referred to as the County's cost to Cure. The Contractor shall fully cooperate with the County in its effort to complete, or to cause to be completed, the Punch List Items not achieving compliance by the due date set forth in the Consulting Engineer's report, and once each such Punch List Item is completed, the Contractor shall comply with paragraph (6) below. Until such time, (A) the County, through its reasonably qualified employees, initiates the work or (B) the County executes a contract with one or more reasonably qualified third parties, to perform the work, in either case, to complete the uncompleted Punch List Items referenced in paragraph (3) above, the Contractor retains the right to complete, or cause to be completed, such uncompleted Punch List Items.

(5) Additional Withholding and Payment of Withheld Amounts. To encourage the Contractor to effect a Cure within the Timeframe, the County, effective on (A) the first Day following the last Day in the Timeframe or (B) at any time thereafter, may retain and withhold up to one thousand dollars ($1,000.00), as adjusted by the Adjustment Factor, per Day from payment of the Contractor's monthly invoice until all non-

compliant items are completed; provided; however, such continued per Day retaining and withholding shall cease to be effective on the date either (i) that the County, gives written Notice to the Contractor that the County has commenced a Cure of such outstanding non-compliant Punch List Items, through its reasonably qualified employees or one or more reasonably qualified third parties, pursuant to paragraph (4) above or (ii) the Contractor completes corrective or curative action of all outstanding non-compliant Punch List Items. The County shall give the Contractor seven (7) Days prior written notice of the per Day retainage to be applied prior to implementing such retainage. Upon completion of all non-complaint Punch List Items, the County shall release any remaining accumulated retainage collected pursuant to paragraphs (4) and (5) above and shall pay the Contractor any such remaining amount as part of the Contractor's next monthly Service Fee invoice. No interest shall accrue on any such retainage nor shall any interest be paid by the County on such retainage.

To the extent the County has set-off and retained the Consulting Engineer's aggregate cost estimate pursuant to paragraph (3) above and the Contractor effects a Cure of one or more uncompleted Punch List Items identified pursuant to paragraphs (4) and (5) above, the County shall pay to the Contractor such amount as it has set-off and retained for each such Punch List Item, without interest, on the Contractor's next monthly invoice for work performed under this Service Agreement, less any costs and expenses incurred or to be incurred by the County in its effort to effect a Cure of each such Punch List Item. In no event shall the County pay or be required to pay the Contractor any amount in excess of the total amount set-off and withheld by the County pursuant to paragraph (3) above, and the Contractor waives any and all claims it could have or assert to any payment from the County in excess of such amount set-off and withheld.

(6) Contractor Operation and Maintenance of County Completed Work. To the extent the County, through its reasonably qualified employees or one or more reasonably qualified third parties, effects a Cure of the out-of-compliance Punch List Items in accordance with paragraph (4) above, the Contractor shall thereafter operate and maintain such items in accordance with this Service Agreement, and the Contractor hereby waives any claim it may assert against the County that, as a result of such Cure, it can no longer operate the Facility in accordance with the Contractor's obligations under this Service Agreement, but shall be entitled to the benefits of any rights that the County may have against the County's third party contractors relative to defective work.

(d) Housekeeping, Maintenance of Buildings and Grounds. The Contractor shall continually and on a daily basis maintain the Facility and the Facility Site in an aesthetically attractive, clean, neat, orderly, and litter free condition. Without limiting the generality of the foregoing, the Contractor shall maintain within the Facility Site all grounds, landscaping and drainage systems, including, but not limited to, storm water drainage systems, manholes, inlets, headwalls, flared-end sections, cleanouts and rip-raps; except for areas of the Facility Site that have been modified by the County as a result of County infrastructure additions on the Facility Site; and provided that the Contractor shall not be responsible for any wholesale replacement of roads.

(e) No Waiver of Event of Default. Notwithstanding the County's retention and/or use of funds by the County under this Section 3.03 to encourage the Contractor to perform corrective or curative work and/or the completion of such work by the County's reasonably qualified employees or by one or more reasonably qualified third parties, the Contractor's repeated and persistent failure to perform repair, replacement, maintenance, and

correction of identified, non-compliant and undisputed material items and to complete the same within the Timeframe shall be considered a Contractor Event of Default for purposes of Section 12.02(a).

(f) The Contractor will retain any "trade-in" value derived from any equipment that is replaced and paid for by the Contractor. In the event that any equipment is removed from the Facility and not "traded-in" for replacement equipment, the Contractor shall provide such scrap equipment to the County for the County's disposition.

Section 3.04 Personnel. The Contractor shall staff the Facility with the appropriate number of hourly and salaried employees consistent with good management and industry standards and practices for a mass burn electrical generating plant, in sufficient numbers to enable the Contractor to perform all of the Contractor's obligations and duties under this Service Agreement in a timely and efficient manner. All of the Contractor's personnel shall be appropriately trained in accordance with all applicable rules, regulations and law so that the Facility will be operated and maintained in accordance with and consistent with applicable law and said good industry standards and practices for a mass burn electrical generating plant. The plant manager and one other supervisor shall have not less than two years of experience in a management, assistant management, or responsible supervisory position in a mass burn electric generating facility with a Processing capacity of four hundred (400) TPD or greater, and the Contractor shall provide a training program consistent with good operating practices within the industry.

Section 3.05 Facility Equipment and Spare Parts Inventory. Within 0ne-hundred twenty (120) Days after the Restated Service Agreement is executed, the County and the Consulting Engineer, at the County's cost and expense, shall conduct a physical inventory and

current listing of (1) the Facility, including the equipment, materials, supplies and chemicals ("Facility Inventory List") and (2) all Spare Parts ("Spare Parts Inventory List"). The Facility Inventory List and the Spare Parts Inventory List shall, to the extent applicable to each such item, include the number or, as applicable, units of all such equipment, materials, supplies, chemicals and Spare Parts and a reasonably detailed description, to the extent known or can reasonably be determined, including photographs of all such items, including the physical and operating condition of the Facility and equipment (identifying and listing any defects existing at the time of such inventory), the date of purchase, if available, the identification number, if any, and the manufacturer's name, if available. Such physical inventory and current listing may be witnessed and/or the results verified by the Contractor. The County or the Consulting Engineer shall maintain possession of the Facility Inventory List and the Spare Parts Inventory List and shall provide free of charge to the Contractor a copy of such lists and all further updated lists for review and comment.

The Contractor shall be responsible for all equipment, materials and chemicals and replenishing the same to at least the physical inventory and current listing in the Facility Inventory List and the Contractor shall be responsible for all Spare Parts and replenishing the same to at least the same value as the current listing in the Spare Parts Inventory List. Any Contractor proposed modifications to the Facility Inventory List shall be submitted by the Contractor to the County for approval. Upon expiration of the term of this Service Agreement or, as applicable, termination of this Service Agreement, the physical inventory and current listing of the Facility, including the equipment, materials, supplies, and chemicals shall be equal to the number and composition of such items as contained in the Facility Inventory List unless otherwise approved in writing by the County. Upon expiration of the term of this Service

Agreement or, as applicable, termination of this Service Agreement, the physical inventory and current listing of the Spare Parts must be at least equal to the value (as determined pursuant to the immediately succeeding paragraph) to such items contained in the Spare Parts Inventory List.

To determine or verify the physical inventory and current listing of the Facility, including the equipment, materials, supplies, chemicals and Spare Parts at the expiration of the term of this Service Agreement or as applicable, on the termination of this Service Agreement, the County and the Consulting Engineer may, on such expiration or, as applicable, termination date, conduct a physical inventory and current listing of the Facility, including equipment, materials, supplies, chemicals and Spare Parts. This physical inventory may be witnessed and/or the results verified by the Contractor. To the extent the number and composition of equipment, materials, supplies and chemicals, as determined by the County and the Consulting Engineer, is less than that listed in the Facility Inventory List or to the extent the number and composition of the Spare Parts, as determined by the County and the Consulting Engineer is less in value than that listed in the Spare Parts Inventory List or, on a total value basis, is less than the total value of such lists as the value of each item on each such list is escalated solely by the Machinery and Equipment Index in Schedule 14, then, notwithstanding any provision in this Service Agreement to the contrary, the Contractor shall, at its election, either (1) procure or replace the applicable Facility components, including equipment, materials, supplies, chemicals and Spare Parts at the Contractor's cost and expense or (2) deliver to the County a check in the amount of the monetary difference within thirty (30) Days after the County and the Consulting Engineer have made such determination and delivered the same to the Contractor. If the Contractor shall elect to deliver a check for the difference to the County but disagrees with the total value determination of the County and the Consulting Engineer, the Contractor may refer the matter to dispute resolution pursuant to

Article IX. If the Contractor elects to procure and replace the number and composition of the applicable items and the Contractor's proposed procurement and replacement is not implemented and completed prior to the earlier to occur of the termination or expiration of the term of this Service Agreement, the Contractor shall, notwithstanding anything in this Service Agreement to the contrary, be solely liable for the entire cost and expense of such procurement process and purchase costs, plus labor costs to perform such replacement. The estimated cost of such procurement process, purchase and third party labor shall be determined by the Consulting Engineer, and such estimated amount may be withheld from any payments due and owing, or which may become due and owing in the future, under this Service Agreement; provided, however, that nothing shall preclude the County from exercising all legal and equitable means available to it to secure timely and full payment by the Contractor. If the actual cost of such procurement process, purchase and third party labor exceeds the estimated amount withheld, the Contractor shall be liable for the difference. Any excess amount shall be paid by the Contractor to the County either, at the County's election, as (1) a direct payment to the County's invoiced amount within thirty (30) Days following the Contractor's receipt of the County's invoice or (2) if known at such time, as a credit against the amounts otherwise due and owing for the final three (3) Billing Months of this Service Agreement, as an adjustment to the Service Fee.

Section 3.06 Operating Hours; Receiving Time; Legal Holidays.

(a) The Contractor shall operate the Facility continuously, subject to the availability of Processible Waste, to the extent consistent with good industry standards and practices and procedures for the operation and maintenance of mass burn electric generation facilities.

(b) The Contractor shall keep the Facility open for receiving Processible Waste during the Receiving Time from time to time specified in writing by the County, excluding Legal Holidays, which shall not exceed twelve (12) consecutive hours during each Business Day, up to a maximum of sixty-four (64) hours per week. The County shall give the Contractor written notice at least 30 Days prior to the effective date of any change in Receiving Time. Subject to applicable State regulations and any permit issued thereunder, the Contractor may receive Processible Waste at the Facility at such additional times as the Contractor and the County may agree. The Contractor shall maintain at least one responsible employee on the tipping floor at all times that trucks are unloading Solid Waste, including periods when ash residue is being loaded out from the residue storage building.

(c) The Contractor agrees to receive Processible Waste at the Facility at hours other than the Receiving Time, if (i) requested by the County to accommodate unusual quantities of Processible Waste resulting from an emergency or from programs of the County or any local governmental entity designed to promote clean-up of an area serviced by the Facility; (ii) the Facility is able, in the reasonable judgment of the Contractor, to receive such additional quantities of Processible Waste without adversely affecting the Contractor's operation or maintenance of the Facility or its performance guarantees set forth in Article V and Schedule 2; and (iii) the County provides the Contractor with reasonably adequate advance notice of such delivery of Processible Waste to enable the Contractor to respond to any such request.

(d) If the Contractor receives Processible Waste at the Facility in accordance with Section 3.06(c), the County shall not be liable for any additional costs or expenses the Contractor may incur for such services, and the Contractor agrees that such costs are included in the compensation provided under Section 6.02.

Section 3.07 Inspection of the Facility; Record Keeping and Reporting.

(a) (i) The County may, at its cost and expense and with the full cooperation of the Contractor, inspect the Facility, and shall have the right to require the Contractor to performance test the Facility pursuant to Section 5.02 (d), to determine whether the Contractor is in compliance with all of its obligations under this Service Agreement. The County shall furnish the Contractor with a copy of any report made as a result of any such inspection. If such inspection shall reveal that the Contractor is not in compliance with such obligations, the Contractor shall have thirty (30) Days from the date of the Contractor's receipt of written notice by the County of such noncompliance to correct or take appropriate steps to commence the correction of such noncompliance or to dispute any such report. The County shall, at the request of the Contractor, and at the Contractor's cost and expense, cause the Facility to be re-inspected or re-tested pursuant to Section 5.02 (d) to verify the correction of any deficiency noted in such report. Any dispute arising with respect to such inspection and report shall be resolved in accordance with Article IX and the Contractor shall not be required to repair the Facility to the extent it violates a performance guarantee for which specific damages are provided and such damages are being fully paid by the Contractor.

(ii) In connection with such inspections or visits, the County shall, on behalf of itself, its agents and representatives, comply, and cause its agents and representatives to comply, with all reasonable rules and regulations adopted by the Contractor, including a requirement that each person inspecting or visiting the Facility sign a statement agreeing (1) to assume the risk of injury or death during the inspection or visitation, but not the risk of injury or death due to the intentional or negligent acts of the Contractor, and (2) not to disclose or use, consistent with applicable law, and pursuant to Article XIV, any Confidential Information.

(iii) Inspections by federal, State, County or local officials pertaining to permits or licenses necessary for the operation of the Facility may be conducted without prior notice to the Contractor, except as otherwise provided by applicable law.

(iv) Both Parties recognize the County's intent to inspect the Facility during scheduled maintenance of Combustion/Steam Generator Line(s). The Contractor shall provide the County with at least 30 days notice, notwithstanding the requirements of Section 4.01 (a), of the date such Combustion/Steam Generator Line(s) scheduled maintenance is to commence. If subsequent notice, revising the date of scheduled maintenance, is given to the County less than seven (7) days prior to the original scheduled date of such scheduled maintenance provided above, the Contractor shall pay the County for Direct Costs incurred as a result of such change in schedule, provided, however, that if it is reasonable to perform scheduled maintenance at the time of an unscheduled outage, the Contractor shall not be obligated to pay such Direct Costs as a result of such change in schedule.

(b) (i) The Contractor shall establish and maintain an information system to provide storage and ready retrieval of all information necessary to verify calculations made pursuant to Article VI.

(ii) The Contractor shall prepare and maintain proper, accurate and complete books and records and accounts of all its transactions related to the County and Contractor's rights and obligations hereunder (but not Confidential Information) in accordance with generally accepted standards in the industry.

(iii) The Contractor shall, on or before the fifteenth (15) Day of each Billing Month, submit as part of its invoice for the previous Billing Month, the following operating data: (1) hourly electricity generated each Day and summary totals of electricity

delivered to the Power Purchaser and other County facilities during the preceding Billing Month; (2) the anticipated operating schedule for the next succeeding Billing Month; (3) the total amount of any materials consumed with respect to operation of the Facility during such preceding Billing Month, including but not limited to, water, propane gas, ammonia, other utilities and chemical reactive agent, which may be purchased by the Contractor or County and delivered to the Contractor for storage and later consumption; (4) the quantities of Recovered Resources generated other than electricity, and summary totals of the amount of Recovered Resources Revenues received by the Contractor from sales of such Recovered Resources during such preceding Billing Month and (5) those costs (both unit and total) and expenses incurred by the Contractor during such preceding Billing Month which are specified as Pass Through Costs in Schedule 9, and which have not been previously paid by the County; (6) waste received during such preceding Billing Month; (7) waste Processed during such preceding Billing Month; (8) estimated higher heating value of waste Processed (Btu per pound) during such preceding Billing Month; (9) Residue shipped (Tons) during such preceding Billing Month; (10) steam generation (pounds) during such preceding Billing Month; (11) steam generation per Ton of waste Processed during such preceding Billing Month; (12) boiler make-up water (total pounds) during such preceding Billing Month; (13) Facility electric usage (total and kWh per Ton Processed) during such preceding Billing Month; (14) availability, as a percent of total hours during such preceding Billing Month; (15) boiler utilization (total steam produced divided by total design steam production for such preceding Billing Month); and (16) results of pH testing of Residue performed during such preceding Billing Month. Each invoice shall present all data in a form consistent with the provisions of this Service Agreement, generally accepted accounting practices and procedures and reasonably acceptable to the County and the Consulting Engineer,

and with respect to Pass Through Costs, copies of all invoices, receipts, records and data received by the Contractor for sanitary sewage, electric stand-by charges, if any, and propane gas in support of such invoice, in such form as the County may reasonably require.

(iv) The Contractor shall provide the County with reasonable access, including, where feasible, access by computer, excluding data transmission, to all meters and records relating to (1) the kWhs of electricity which were (a) generated by the Facility, and (b) delivered to the Power Purchaser pursuant to the Power Purchase Agreement, and (2) the amount of Recovered Resources other than electric energy generated by the Facility and sold.

Section 3.08 Operation and Maintenance Manuals. The Contractor shall promptly deliver to the County two (2) copies of all revisions of the Operation and Maintenance Manuals throughout the term of this Service Agreement.

Section 3.09 Credits. The Parties shall cooperate in order to optimize their ability to receive any tax credits, emission related offsets or other credits that may be available to either Party pursuant to any existing or future applicable law or newly available commercial options for emission trading or the sale or purchase of allowances, offsets or credits derived from the Facility. Prior to the Contractor commencing any such activities, the Parties shall mutually agree on the manner in which they will share the benefits resulting from any such activities and the reimbursement to the Contractor for its costs related to such activities. Regarding tax credits for the delivery from the Federal Energy Act of 2005, which are applicable to the Expansion, the County will reimburse the Contractor for reasonable Direct Costs in providing specific accounting and/or legal services, including profit. The Parties will share in the value of such credits 90/10% County/Contractor.

ARTICLE IV

DELIVERY AND PROCESSING OF PROCESSIBLE WASTE

Section 4.01 Receipt of Processible Waste; Rejection Rights; Processible Waste Composition; Nonprocessible Waste.

(a) Guaranteed Tonnage. The County shall deliver or cause to be delivered to the Facility, at least the Guaranteed Tonnage for each Billing Year in accordance with this Article IV. The County may elect, by notice of the Contractor in writing no later than 90 days prior to the beginning of each Billing Year, to adjust the Guaranteed Tonnage but in no event higher than the Processing Guarantee. Subject to Section 4.01 (b) (i), the Contractor shall use all reasonable efforts to Process all Processible Waste delivered to the Facility. Ninety (90) Days prior to the first Day of each Billing Year, the Parties shall reasonably agree and establish the scheduled maintenance periods for the next Billing Year in accordance with Schedule 4, taking into account the Contractor's obligation, consistent with good engineering practices and procedures, and use reasonable efforts to maximize the Recovered Resources generated during such Billing Year. The County and the Contractor shall establish scheduled maintenance periods for each Billing Year using all reasonable efforts to coincide with the periods during such Billing Year in which the lowest quantities of Processible Waste are expected to be delivered to the Facility in order to minimize the quantities of Processible Waste, if any, which will be required to be delivered to the Landfill during scheduled maintenance of the Facility, given good engineering practices and consistent with the Contractor's long-term repair and maintenance obligations hereunder. The Parties shall also take into consideration the Power Purchase Agreement requirements, and the Contractor's requirement of maintaining the Facility so as to meet the Operating Parameters and Processing Guarantee.

(b) Rejection of Deliveries.

(i) Contractor's Rejection Rights. The Contractor may reject tenders of: (1) Processible Waste delivered at hours other than the Receiving Time; (2) Processible Waste delivered in excess of 2.809% of the Processing Guarantee per week; (3) Processible Waste which the Facility is unable to accept or Process as a result of (a) an Uncontrollable Circumstance or (b) County Fault; (4) Hazardous Waste; (5) Nonprocessible Waste; (6) Processible Waste delivered during periods of scheduled maintenance which is in excess of the reduced Daily Guaranteed Capacity determined pursuant to Schedule 4 [discuss deletion/modification of Schedlue 4]; (7) other Processible Waste up to the amount of the Unscheduled Maintenance Bank in any Billing Year; and (8) Processible Waste at times when the pit is full (including stacking) other than due to Contractor Fault. Only for the purposes of determining Contractor Fault in Section 4.01(b), it shall be deemed Contractor Fault at any time the boiler steam production rate is below the design steam production rate for the original two boiler units in the Facility (but as to the Expansion, below the lesser of its design steam production rate and the rate it achieves during its initial acceptance testing) and Processible Waste was available in the pit, subject to adjustment for scheduled maintenance, and the shortfall in boiler steam production shall be converted to a shortfall in Tons Processed by using the specific ratio of lbs of steam/pound of Processible Waste demonstrated in the most recent performance test. The calculation contemplated in the preceding sentence shall not extend to beyond the beginning of the current Billing Year. Notwithstanding any other provision of this Service Agreement, Bypassed Waste may be, at the Contractor's sole discretion, withdrawn from the Unscheduled Maintenance Bank (to the extent such Unscheduled Maintenance Bank contains a balance greater than zero) and the number of Tons of Bypassed Waste for the Billing Month shall be accordingly reduced.

(ii) Effect of Contractor's Rejection Rights. All Processible Waste which is not Processed by the Contractor pursuant to clauses (1), (2), (3) (B), (6), and (8) of Section 4.01 (b) (i), shall not be credited to the Guaranteed Tonnage. All Processible Waste which is available for Processing and which is not Processed by the Contractor pursuant to clause (3)(A) and (7) of Section 4.01 (b) (i) or not Processed due to Contractor Fault shall be credited to the Guaranteed Tonnage.

(iii) Bypassed Waste. All Processible Waste which is delivered to the Facility Site which is not Processed by the Contractor and which is rejected unless such rejection is authorized pursuant to Section 4.01 (b) (i), shall be Bypassed Waste, to the extent that the total Tons of Processible Waste Processed plus the Tons of Processible Waste rejected other than pursuant to Section 4.01 (b) (i) during any Billing Month does not exceed the Daily Capacity Guarantee, as adjusted pursuant to Schedule 4 [discuss deletion/modification of Schedule 4], times the number of Days in said Billing Month.

Section 4.02 Processing Guarantee; Delivery of Processible Waste.

(a) During each Billing Year, but subject to the Contractor's rejection rights during any Billing Month specified in Section 4.01 (b) (i), the Contractor shall receive and Process Processible Waste delivered to the Facility by or on behalf of the County in an amount at least equal to the Processing Guarantee.

(b) Only Processible Waste which the County authorizes or delivers, or causes to be delivered to the Facility, may be Processed by the Contractor. The County shall be solely responsible for providing for the delivery of the Guaranteed Tonnage to the Facility. Tipping or disposal fees, if any, or disposal assessments for Processing Processible Waste originating outside of the County shall be established by the County, in its sole discretion.

Section 4.03 Inadvertent Deliveries of Nonprocessible Waste.

(a) The County shall use reasonable efforts, in good faith, to cause only Processible Waste to be delivered to the Facility and to minimize the quantities of Nonprocessible Waste included therein. However, the Contractor and the County agree that inadvertent deliveries of other than Processible Waste to the Facility shall not constitute a breach of the County's obligations hereunder and shall not be deemed to be a County Fault.

(b) Nonprocessible Waste which is delivered to the Facility shall be removed from the pit by the Contractor and placed in a roll-on, roll-off container located on the tipping floor. The County shall provide for the removal and disposal of all such Nonprocessible Waste, and the amount of such Nonprocessible Waste shall be deducted from the Processing Guarantee and shall not be credited toward the Guaranteed Tonnage. The Contractor shall not permit separate sorting or scavenging of any such Nonprocessible Waste at the Facility or the Facility Site.

(c) If the Contractor and the County cannot agree whether any Solid Waste constitutes Nonprocessible Waste, the Contractor may reject such Solid Waste as Nonprocessible Waste and the Parties shall resolve such dispute pursuant to Article IX. If resolution of such dispute pursuant to Article IX determines that such Solid Waste was Processible Waste, then the quantity of such material rejected by the Contractor shall be Bypassed Waste and shall be subject to the provisions of Schedule 4 [discuss deletion/modification of Schedule 4]. If any Solid Waste is delivered to the Facility which, in the reasonable judgment of the Contractor (i) may present a substantial endangerment to public health or safety, (ii) may cause applicable air quality or water effluent standards to be violated by the normal operation of the Facility, or (iii) there is a substantial likelihood that it would materially and adversely affect the operation of

the Facility, then the Contractor may consider such Solid Waste to be Nonprocessible Waste, unless such Nonprocessible Waste is delivered in minimal quantities and concentrations as a part of normal collections in which case such material shall constitute Processible Waste. If Solid Waste is delivered to the Facility and is deemed Nonprocessible Waste by the Contractor solely under the terms of the preceding sentence, the Contractor shall promptly so notify the County and the County shall ~~immediately~~promptly remove and dispose of such Solid Waste at its cost and expense.

(d) Nothing in this Service Agreement shall be construed to mean that receiving Processible Waste, or the inadvertent receipt of Nonprocessible Waste or Hazardous Waste at the Facility Site, creates on the part of the County or the Contractor, any ownership interest in, or confers on the County or the Contractor any title to, such Processible Waste, Nonprocessible Waste or Hazardous Waste.

Section 4.04 Weighing of Processible Waste; County Data; Operation of the Scale House; Invoicing of Disposal Fees; Testing of Scales.

(a) The County shall operate during Receiving Time and maintain the weigh scales located on the Facility Site and associated computer equipment and weigh scales records, for the purpose of determining the total Tons of Processible Waste delivered to the Facility, and the Tons of Residue, Bypassed Waste and Nonprocessible Waste delivered to the Landfill, as well as the amount of Recovered Resources, other than electricity, which leave the Facility Site. The Contractor shall be obligated, at its expense, to perform all routine janitorial services at the scale house and to maintain the scale house structure. The Contractor may have an employee present in the scale house during Receiving Time to observe scale house operations.

The County shall provide the Contractor with the following data necessary for preparation of the Contractor's invoice for each Billing Month no later than seven (7) Days after the first Day of each Billing Month: (i) the total quantity of Processible Waste delivered to the Facility during the preceding Billing Month; (ii) the total quantity of Residue delivered to the Landfill during the preceding Billing Month; (iii) the quantities of Bypassed Waste and Nonprocessible Waste delivered to the Landfill during the preceding Billing Month; (iv) the quantity of Processible Waste rejected due to Uncontrollable Circumstances during the preceding Billing Month; (v) a copy of the County's statements for electric energy sold during the preceding Billing Month, as each such statement becomes available pursuant to the Power Purchase Agreement; (vi) the total number of Tons of Processible Waste rejected by the Contractor which were charged against the Unscheduled Maintenance Bank during the preceding Billing Month and the number of Tons remaining in the Unscheduled Maintenance Bank for the current Billing Year and (vii) the total number of Tons of Recovered Resources other than electricity leaving the Facility during the preceding Billing Month.

(b) In the event that actual data for the preceding Billing Month is not available to the County, then any such data shall be estimated by the County and shall be the basis for the Contractor's invoice for the Billing Month. Any estimate of such data shall be adjusted in any succeeding Billing Month when such information becomes available to the County, and shall be included in the Service Fee as the Monthly Adjustment.

(c) The County shall be responsible for the preparation, mailing and collection of all invoices or assessments for users of the Facility and revenues from the Facility.

(d) The County, at its expense, shall test and recalibrate the Facility weigh scales as often as may be required by State law. Either Party may request more frequent testing

of the weigh scales at the requesting Party's cost and expense. If, at any time, testing of the weigh scales indicates that the scales do not meet the accuracy requirements of applicable State law, or if the scales are being tested, the Parties shall estimate the quantity of Processible Waste delivered on the basis of truck volumes and estimated data obtained from historical information pertinent to the County and shall assume, for purposes of such estimate, that the weigh scale inaccuracy occurred on a linear basis from the test most recently preceding the test demonstrating such inaccuracy. These estimates shall take the place of actual weighing records until correction of the weigh scales is completed. The County shall provide copies of all weigh scale records to the Contractor. Copies of all daily weigh records shall be maintained by the County for a period of at least two (2) years.

Section 4.05 Removal and Disposal of Nonprocessible Waste, Residue; Removal and Disposal of Processible Waste. In accordance with all applicable permits, and federal, State and local laws, ordinances, rules or regulations, the County shall at its cost and expense remove and transport all Nonprocessible Waste, Residue and unsold Recovered Resources from the Facility Site for disposal at the Landfill. The Contractor shall be responsible for providing equipment and labor necessary to load Residue and Nonprocessible Waste.

Section 4.06 Storage. Processible Waste shall be stored in the pit at the Facility designed for that purpose. No Processible Waste, Nonprocessible Waste, Hazardous Waste, Recovered Resources or Residue may be stored outside the Facility structure; provided, however, that the Contractor may temporarily store Recovered Resources or Residue in totally enclosed vehicles or trailers on the Facility Site prior to their removal for disposal or sale.

Section 4.07 Landfill Operations. The County shall be responsible, at its cost and expense, to provide for landfill capacity, and shall cause the Landfill to be made available during

normal operating hours applicable to the Landfill for the term of this Service Agreement, for the disposal of: (i) Residue resulting from operation of the Facility; (ii) Bypassed Waste, subject to the Contractor's obligation to pay the Landfill Charge; (iii) Processible Waste which is rejected by the Contractor as authorized pursuant to Section 4.01 (b) (i); (iv) Nonprocessible Waste; and (v) unsold Recovered Resources, exclusive of Hazardous Waste and any other material contained in Nonprocessible Waste which is not permitted to be disposed of at the Landfill by applicable provisions of Federal, State or local law, and the rules, regulations, orders, permits or licenses issued thereunder.

Section 4.08 Landfill Indemnification. The County shall indemnify, defend and hold the Contractor Indemnified Parties (as defined in Section 11.01 (b)) harmless from and against any and all liability, loss, damages, penalties, fines or charges, however designated, including reasonable attorneys' fees and expenses, which may arise from or in any way be related to the removal, transportation or disposal of Nonprocessible Waste, Bypass Waste, Residue, and Processible Waste or the operation, construction or use of the Landfill or may be levied by any federal, State or local court or agency having jurisdiction over the operation of the Facility, Facility Site or Landfill arising out of, or with respect to, either the containment, discharge, removal or release of any substance from the Landfill into the environment to the extent that any such liability, loss or damage, fine, penalty or charge is not the result of Contractor's wrongful misconduct or negligence. Any such County obligation to indemnify and reimburse any Contractor Indemnified Party shall become due and payable when and as any liability, loss, damage, fine, penalty or charge incurred by any Contractor Indemnified Party becomes due and payable. Any liability of the Contractor for which it is seeking indemnification, under this Section 4.08, shall be appealed to a court or administrative body at the County's request. Any

such appeal shall be at the County's cost and expense and the Parties shall mutually agree on counsel for such appeal. This Section 4.08 shall survive termination of this Agreement.

Section 4.09 Hazardous Waste. The Parties acknowledge and agree that the Facility is not, and is not intended to be, a Hazardous Waste or infectious waste disposal facility in any sense and that the Facility is solely intended to be a Solid Waste facility, and that it is in the Parties' mutual best interest to fully cooperate to prevent the delivery of any Hazardous Waste or infectious waste to the Facility and to treat illegal deliveries of Hazardous Waste or infectious waste appropriately.

(a) Prevention of Delivery. The County shall use reasonable efforts to prevent and avoid the delivery to the Facility of Hazardous Waste or infectious waste. Such efforts will include, but will not necessarily be limited to:

(i) adoption of an ordinance by the County and/or appropriate local municipalities prohibiting the delivery of Hazardous Waste or infectious waste to the Facility by any municipality or Person engaged in the business of collecting and transporting, delivering or disposing of Solid Waste generated within the County; and

(ii) periodic and random inspections at the Facility scale house of vehicles delivering material to the Facility for Processing, including periodic selection of vehicles that will be required to dump such material in such a manner as to allow full inspection by the County of the character of the waste load.

(b) Prevention of Acceptance. The Contractor shall use reasonable efforts to avoid the deposit or acceptance of Hazardous Waste or infectious waste into the Facility pit and shall conduct periodic and random inspections of vehicles delivering material into the Facility

tipping floor and may require any vehicle to dump such material inside the Facility in or near the pit in such a manner as to allow full inspection by the Contractor of the waste load.

(c) Refusal or Rejection. Should either the County or the Contractor discover that any Hazardous Waste or infectious waste has been delivered to the Facility, the Party or Parties discovering the delivery shall:

(i) notify the other Party of the delivery and include in such notification all available information concerning the hauler so as to allow either Party to identify that hauler in the future; and

(ii) subject to the requirements of applicable law, immediately order and direct the hauler to leave the Facility Site with the hauler's entire load of waste, or, in the event that the load has been dumped in or near the pit, notify the County to remove such portion of the load which is reasonably suspected to be Hazardous Waste or infectious waste from the Facility Site, or, at the option of either Party, the hauler may be required to remove or provide for the removal of such Hazardous Waste or infectious waste from the Facility Site by a qualified and duly licensed third Person.

(d) Removal, Transport and Disposal. If, notwithstanding the reasonable efforts of the Parties described in (a), (b) and (c) above, Hazardous Waste or infectious waste is delivered to the Facility and the source of such Hazardous Waste or infectious waste, or the identity of the hauler delivering the Hazardous Waste or infectious waste is unknown, or, if after the request, the hauler does not remove such Hazardous Waste or infectious waste or if Hazardous Waste or infectious waste is discovered on the Facility Site, then, provided the presence of such Hazardous Waste or infectious waste is not due to Contractor Fault, the Hazardous Waste or infectious waste shall be contained, set aside, isolated and maintained

separately by Contractor as agent for the County from all other Solid Waste in the Facility, and the County shall be immediately notified of the location, general character and amount of such waste. The County shall promptly remove or cause to be removed such Hazardous Waste or infectious waste from the Facility and the Facility Site and shall transport and dispose of, or shall provide for the transport and disposal of, such material in accordance with applicable State and federal law, at a duly licensed and permitted Hazardous Waste or infectious waste, as the case may be, disposal facility.

(e) Expenses. All Direct Costs incurred by the Contractor for Hazardous Waste or infectious waste containment, removal, and clean-up, shall be Pass Through Costs, subject to the exclusion of certain amounts specified in Schedule 9, to the extent of Cost Substantiation, including profit.

(f) Hazardous Waste Indemnity. Except to the extent the Contractor or the County is required to pay for costs pursuant to Schedule 9, the County shall indemnify and save harmless the Contractor Indemnified Parties from any and all loss, cost, damages or expenses, including fees and assessments by any governmental agency, which arise from or relate to Hazardous Waste or infectious waste, including the containment, discharge, removal or release of any hazardous substance into the environment to the extent such containment, discharge, removal, release or threat of release arises from the presence at the Facility or Facility Site of Hazardous Waste (including Residue determined to be Hazardous Waste but not Hazardous Waste brought to the Facility by the Contractor) or infectious waste or the removal, transportation or disposal of such waste except to the extent resulting from the negligence or wrongful misconduct of the Contractor Indemnified Parties or except to the extent such loss, cost, damage or expense is caused by the failure of the Contractor to operate the Facility within

its guarantees of Facility performance contained in Article V of this Service Agreement (unless such failure is due to an Uncontrollable Circumstance or County Fault). This indemnity shall survive termination of this Agreement.

Section 4.10 Composition of Processible Waste. Nothing in this Service Agreement shall be construed to mean that the County guarantees the composition of any Processible Waste as it pertains to the proportion of any material contained therein, the energy value thereof, or any other physical or chemical property of Processible Waste, nor shall the performance guarantees set forth in Article V and Schedule 2 be diminished due to any variation in the composition of Processible Waste; provided, however, that if the HHV of Processible Waste is outside a range of three thousand eight hundred (3800) Btus per pound to five thousand (5,000) Btus per pound, as demonstrated by the average of performance test results conducted pursuant to Schedule 5 Part B.1(a) and (b), 2, and 3, conducted for eight hours twice a week using the results from all process trains in operation at the time of each test which must include at least ~~one~~two process ~~train~~trains during a period of three (3) consecutive Billing Months (such performance tests shall be conducted at such times and Days which are all selected prior to the start of such three (3) consecutive Billing Months), then the performance guarantees set forth in Article V and in Schedule 2, and, if necessary, the provisions of Section 4.01(b), as well as the Guaranteed Tonnage and the Processing Guarantee, shall be adjusted in accordance with the provisions of Schedules 2 and 5, retroactive to the date of the Contractor's notice required below prior to the initial performance test conducted at the beginning of said three (3) consecutive Billing Month period. The Parties agree to mutually determine, in good faith, whether any increase or decrease in the Pass Through Costs will result from the demonstrated change in the HHV of the Processible Waste, and such increase or decrease shall correspondingly increase or decrease such

Pass Through Costs. Thirty (30) Days prior to the three (3) Billing Month performance test contained in this Section 4.10, the Contractor shall provide the County with written notice of such tests and the Consulting Engineer and County shall have the right to be present and witness all such tests. The Parties shall mutually agree on the laboratory to perform such test and the laboratory test cost shall be shared equally by the County and the Contractor.

Section 4.11 Operation of Scale House. The Contractor shall at its cost and expense maintain the scale house. The County shall operate the scale house and scales and shall maintain the scales at its cost and expense.

Section 4.12 Refuse Pit Management Plan. On or before the sixtieth (60^{th}) Day following the Commencement Date (as defined in Amendment No. 6), the Contractor shall submit to the County for its review and approval, a refuse pit management plan addressing, among other things, the following:

(a) turning over Processible Waste in the pit on a periodic basis and

(b) removal of standing water in the pit in order to limit the amount of water in the pit;

Within thirty (30) Days following the County's receipt of such plan, the County shall approve or disapprove the same. If the County approves the plan, it shall provide written notice to the Contractor of such approval within such thirty (30) Day period; such plan shall thereafter be part of this Service Agreement; and the Contractor shall comply with such plan's requirements. If the County disapproves the plan, the County shall provide written notice to the Contractor of such disapproval within such thirty (30) Day period, together with its reasons, in a reasonably detailed manner, for its disapproval. The Contractor shall, within two weeks after its receipt of the County's disapproval, either (1) modify the plan consistent with the County's

comments and reasons for disapproval and resubmit the modified plan to the County for its review and approval or (2) meet with the County in an attempt to resolve the Parties' differences and thereafter modify the plan consistent with any resolutions of the differences that may result from such meeting and resubmit such modified plan to the County within two weeks after such meeting for the County's review and approval. Such process shall continue with the procedures and timeframes specified above. If the Parties cannot agree on such plan, either Party at any time may refer the matter to dispute resolution pursuant to Article IX. If the County shall fail to give notice of its approval or disapproval within such thirty (30) Day period, the plan shall be deemed approved. Once the modified plan is approved by the County, resolution is reached pursuant to dispute resolution or is deemed approved, as applicable, pursuant to this Section 4.12, such plan shall thereafter be part of this Service Agreement and the Contractor shall comply with such plan's requirements.

ARTICLE V

CONTRACTOR GUARANTEES OF FACILITY PERFORMANCE

Section 5.01 Guaranteed Facility Capacity. The Contractor hereby guarantees, subject to Uncontrollable Circumstances and County Fault, that the Facility shall be operated and maintained in such a manner as to Process Processible Waste in amounts at least equal to the Daily Guaranteed Capacity when tested in accordance with Schedule 5, subject to the provisions of Section 4.01(b), and at least equal to the annual Processing Guarantee.

Section 5.02 (a) Annual Average Energy Guarantee.

The Contractor hereby guarantees, subject to Uncontrollable Circumstances and County Fault, that the Facility shall be operated and maintained so as to generate net saleable electric

energy per Ton of Processible Waste Processed at least equal to the Annual Average Energy Guarantee, subject to the provisions of Sections 6.06(a) and 6.12(b).

(b) Daily Verification of Performance. Verification of continued efficient Facility operations will be based upon a daily monitoring and recording of the Operating Parameters specified in Schedule 3. In conjunction with its invoice submitted pursuant to Section 6.08(a), the Contractor shall provide the County with a compilation of all such Operating Parameters and any noncompliance with applicable air quality permit conditions.

(c) Reserved.

(d) Energy Inefficiency Period After Acceptance. Notwithstanding the continuous verification of performance pursuant to Section 5.02(b), the County may, at such intervals as it may deem necessary and at its sole option, require that the Facility be performance tested in accordance with the appropriate provisions of Schedule 5. The Contractor may take up to thirty (30) Days before testing pursuant to County's notice. Any damages pursuant to Section 6.06(a) shall be from the date of the performance test if testing is commenced within seven (7) Days from the date the Contractor received such notice and shall be from the date of notice if the test commences beyond such seven (7) Days. If such performance testing demonstrates that the Energy Efficiency Guarantee set forth in Schedule 2 is not met by the Facility for any reason other than Uncontrollable Circumstances or County Fault, then the Facility shall be deemed not to have achieved the Operating Parameters required to be monitored pursuant to Section 5.02(b) for each Day of the period referred to as the Energy Inefficiency Period, beginning on the Day specified above, and ending on the Day that the Contractor certifies to the County pursuant to the provisions of Schedule 5 that the Facility has met the Energy Efficiency Guarantee. In the event that the Facility has Processed Processible Waste

during any Billing Year in excess of the Processing Guarantee, the Energy Inefficiency Period shall be suspended as of the Day following any Day on which the Processing Guarantee was exceeded until the last Day of said Billing Year, and shall resume on the first Day of the next succeeding Billing Year unless a performance test has demonstrated otherwise. During such period of such suspension, the Contractor shall not be obligated for the payment of energy inefficiency damages pursuant to Section 6.06(a) for any Ton Processed during such period of suspension. For each Billing Month during the said Energy Inefficiency Period, the Contractor shall be obligated to pay Monthly Damages pursuant to Section 6.06(a).

(e) Costs of Testing After Acceptance.

(i) If any performance test conducted after the Acceptance Date pursuant to Section 5.02(d) demonstrates that the Facility failed to meet the lower of (i) the level of performance demonstrated by the most recent test or (ii) the Energy Efficiency Guarantee, then the Contractor shall pay the County for the County's Direct Costs (not including lost Recovered Resources) incurred with respect to such test, to the extent of Cost Substantiation, ~~excluding profit~~including the County's administrative fee. Any such Direct Costs shall be deducted from the Contractor's Service Fee payable for the Billing Month in which such test occurred.

(ii) If any performance test performed after the Acceptance Date at the request of the County pursuant to Section 5.02(d) demonstrates that the Facility met the lesser of (x) the level of performance most recently demonstrated by performance testing or (y) the Energy Efficiency Guarantee, then the County shall pay the Contractor for the Direct Costs incurred by the Contractor for the performance of such performance test to the extent of Cost Substantiation, with profit to the extent that the preparation for or conduct of such performance

testing (A) directly adversely affected the Contractor's ability to meet any performance guarantees the Contractor shall not be responsible for failure to meet such performance guarantees, but only to the extent of such adverse effect, or (b) resulted in the Contractor being obligated for payment of the Landfill Charge, the County shall reimburse the Contractor for any Landfill Charge payment made. Any Direct Costs shall be paid by the County as part of the Service Fee invoice for the Billing Month in which such performance test occurred.

(iii) The Contractor may, at any time during the term of this Service Agreement, cause the Facility to be performance tested at the Contractor's cost and expense, and the Contractor shall pay the County for its Direct Costs incurred as a result of such testing, to the extent of Cost Substantiation, ~~excluding profit.~~including the County's administrative fee.

Section 5.03 Environmental Guarantee. The Contractor hereby guarantees that it shall operate and maintain the Facility so as to meet the Environmental Guarantee subject to Uncontrollable Circumstance and County Fault. The Contractor shall be obligated to pay any fine or penalty, under Section 6.06(d), imposed by any regulatory entity having jurisdiction over operation of the Facility, or shall indemnify and reimburse the County for any such fine or penalty to the extent the County pays such fine or penalty, which results from the Contractor's failure to meet the Environmental Guarantee except to the extent it is due to an Uncontrollable Circumstance or County Fault. Any liability of the County for which it is seeking reimbursement, under this Section 5.03, shall be appealed to a court or administrative body at the Contractor's request, provided the Contractor has reimbursed the County for any payments made by the County. Any such appeal shall be at the Contractor's cost and expense and the Parties shall mutually agree on counsel for such appeal. This Section 5.03 shall survive termination of this Agreement.

Section 5.04 Ferrous Removal Guarantee.

(a) The Contractor hereby guarantees that it will operate and maintain the Facility so that the recovery of ferrous metals will meet the Ferrous Removal Guarantee subject to Uncontrollable Circumstances and County Fault. If the Contractor fails to meet the Ferrous Removal Guarantee, the Contractor shall be obligated to pay the County damages under Section 6.06 (e).

(b) The Contractor shall operate the ferrous metals recovery system continuously throughout the term of this Service Agreement. The Contractor shall be obligated to use all reasonable efforts to identify available markets for the sale of ferrous metals recovered from the Residue, and shall be responsible for marketing and selling such recovered ferrous metals. The Contractor and the County shall share equally in the net revenues received by the Contractor from the sale of recovered ferrous metals, and such amounts shall be included in the calculation of the Service Fee pursuant to Section 6.04(c). If no market or purchasers for such recovered ferrous metals can be identified by the Contractor or the County, then the Contractor may cease operation of the ferrous metals recovery system only until a purchaser of such metals is subsequently obtained by the Contractor or County; and the Contractor shall not be obligated to pay damages under Section 6.06(e) and 6.12(e). If recovered ferrous metals can only be sold at a loss, the Contractor shall notify the County of such circumstance and the County shall elect to treat them as either not marketable or instruct the Contractor to market them in which case the County shall pay the cost of such marketing. If recovered ferrous metals exceed the capacity of the bunker provided for such metals, then the County shall transport or shall arrange for the transport of such ferrous metals to the Landfill. The County shall provide for disposal of such ferrous metals at the Landfill at its cost and expense.

Section 5.05 Lime, Dolomitic Lime and Ammonia Consumption Guarantee.

(a) Consumption Guarantees. The Contractor hereby guarantees that it will operate and maintain the Facility so that the consumption of lime, dolomitic lime and ammonia will not exceed, respectively, the Lime Consumption Guarantee, the Dolomitic Lime Consumption Guarantee and the Ammonia Consumption Guarantee, subject to Uncontrollable Circumstances and County Fault. Lime, dolomitic lime and ammonia consumed in excess of, respectively, the Lime Consumption Guarantee, the Dolomitic Lime Consumption Guarantee and the Ammonia Consumption Guarantee for reasons other than the result of the occurrence of an Uncontrollable Circumstance or County Fault shall be paid for by the Contractor or, under Section 6.06, the Contractor shall reimburse the County for the County's Direct Costs, to the extent of Cost Substantiation, excluding profit, incurred for such excess consumption.

(b) Dolomitic Lime Savings. If, during any Billing Year, actual dolomitic lime consumption is less than eight (8) pounds per Ton of Processible Waste Processed, then the County shall calculate and pay to the Contractor an amount equal to fifty percent (50%) of the commodity cost savings. To make such savings determination, the actual pounds of dolomitic lime per Ton of Processible Waste Processed consumed by the Facility shall be calculated by dividing the actual pounds of dolomitic lime consumed by the actual Tons of Processible Waste Processed. The actual pounds of dolomitic lime consumed by the Facility shall be calculated as the pounds of dolomitic lime delivered to the Facility during the Billing Year plus the pounds of dolomitic lime in storage at the Facility at the beginning of the first Day of the Billing Year less the pounds of dolomitic lime in storage at the Facility at the end of the last Day of the Billing Year. To the extent that (1) the total actual number of pounds of dolomitic lime consumed by the Facility in the Billing Year is less than (2)(A) eight (8) pounds

per Ton of Processible Waste Processed multiplied by (B) the number of Tons of Processible Waste Processed during the Billing Year, such resulting pounds shall be multiplied by the average cost per pound of dolomitic lime purchased during the Billing Year to determine the amount of the savings. This Section 5.05(b) shall be effective on the Contract Date and remain in effect until the earlier to occur of (a) the termination of this Agreement or (b) the County's payment of the Contractor's percentage of the savings totals eight hundred and twenty-five thousand dollars ($825,000.00)

(c) Associated Costs. The Contractor agrees that on and after August 29, 1990 through the term of this Service Agreement, the Contractor is solely liable for all labor and, except as expressly recognized herein, the capital cost for the existing delivery system ~~costs~~ relative to the use and consumption of dolomitic lime at the Facility, and that the Operation and Maintenance Charge pursuant to Section 6.01(b) took such costs into account in establishing such charge. The County agrees to procure, construct and install at the Facility a dolomitic lime delivery system, including a silo, feed conveyors and dust control system, the capital cost of which shall be borne solely by the County. The County further agrees to have such system installed and operational by the earlier of (a) the date of Mechanical Completion (as defined in this Amendment No. 6) or (b) July 15, 2007. The Contractor shall cooperate with the County in facilitating the installation of such dolomitic lime delivery system, and on and after its installation and a demonstration of its operability, such system shall be deemed part of the Facility and the Contractor's obligations under this Service Agreement with respect to the Facility shall be applicable thereto.

In the event that such dolomitic lime delivery system is not installed and operational by the earlier of such date above, then on and after such date, the County shall reimburse the

Contractor for a portion of its labor costs equal to the amount of such labor costs that would not have been reasonably incurred had such system been installed and operational by such earlier date.

(d) Ash Test Results. Within ten (10) Days after the Contractor's receipt or production of any and all Residue testing results pursuant to a TCLP test or otherwise, such results, including pH level results, shall be provided to the County at the Contractor's sole cost and expense.

Section 5.06 Residue Quality Guarantee.

(a) The Contractor hereby guarantees that the Facility shall be operated and maintained so that the Residue shall meet the Residue Quality Guarantee, as defined in Schedule 2, subject to Uncontrollable Circumstances and County Fault.

(b) The Contractor shall use all reasonable efforts to inject sufficient quantities of dolomitic lime, or other conditioning agent as agreed by the County, to the ~~combined bottom ash and fly ash~~Residue in order to condition the combined bottom ash and fly ash such that the Residue will not fail to meet the TCLP test or such other successor EPA test as may be in effect from time to time, pertaining to analysis of Residue at any time such test is required by EPA, the State or the County; provided that any change in the TCLP test or other testing requirement established after the Contract Date shall be deemed to be a Change in Law. The County shall pay the Contractor for its Direct Costs incurred for such testing, to the extent of Cost Substantiation, including profit.

Section 5.07 Effluent Guarantee. The Contractor hereby guarantees that the Facility shall be operated and maintained so that storm water and wastewater discharges from the Facility

and Facility Site will meet the Effluent Guarantee subject to Uncontrollable Circumstances and County Fault.

Section 5.08 Maximum Utility Utilization Guarantee. The Contractor hereby guarantees that the Facility shall be operated and maintained so that consumption of electricity other than electricity produced by the Facility, sanitary sewage, potable water, and propane gas will not exceed the Maximum Utility Utilization Guarantee subject to Uncontrollable Circumstances and County Fault. Utilities consumed in excess of the Maximum Utility Utilization Guarantee for reasons other than Uncontrollable Circumstance or County Fault shall be paid for by the Contractor, or, under Section 6.06 (c) the Contractor shall reimburse the County for the County's Direct Costs, to the extent of Cost Substantiation, excluding profit, incurred for such excess consumption. In the case of the guarantee under Part A.6 (b) of Schedule 2, if excess use is caused by water quality adversely different from that represented in Table 2-3 of Part A of Schedule 2 of the Construction Agreement, the County and the Contractor shall mutually agree to utilization of water from the on site well and/or a modification of the Effluent Guarantee and/or the Maximum Utility Utilization Guarantee and/or reimbursement for chemical costs associated with water treatment.

ARTICLE VI

SERVICE FEE PAYMENTS

Section 6.01 Service Fee.

(a) Commencing with the first Billing Month and for each Billing Month thereafter, the Contractor shall be paid a Service Fee by the County for operating and maintaining the Facility, (excluding operation and maintenance of the Facility weigh scales), pursuant to the terms of this Agreement, in accordance with the following formula:

SF = OM + PT + EC – RRR – LC – MD + MA

Where:

SF = Service Fee

OM = Operation and Maintenance Charge

PT = Pass Through Costs

EC = Energy Credit

RRR = Recovered Resources Revenues

LC = Landfill Charge

MD = Monthly Damages

MA = Monthly Adjustment

(b) For the period of time, if any, following the Effective Date until the first Day of the first Billing Month, the Contractor shall be paid an amount equal to the sum of: (i) the Operation and Maintenance Charge times a fraction, the numerator of which is the number of Days from the Effective Date to the first Day of the first Billing Month, and the denominator of which is the number of Days in the calendar month in which the Effective Date occurred; plus (ii) the Pass Through Costs incurred for such period of time from the Effective Date until the first Day of the first Billing Month; plus (iii) the Energy Credit payable to the Contractor for such period of time from the Effective Date until the first Day of the first Billing Month; minus (iv) the County's share of Recovered Resources Revenues; minus (v) the Landfill Charge, if any; minus (vi) the Monthly Damages, if any, plus or minus (vii) the Monthly Adjustment, if any. Such amount shall be included in the Contractor's invoice submitted for the first Billing Month.

Section 6.02 Operation and Maintenance Charge.

(a) For any Billing Month, the Operation and Maintenance Charge shall be one-twelfth (1/12) of the Initial Operation and Maintenance Charge, as adjusted by the Adjustment Factor for the Billing Year in which such Billing Month falls, plus or minus amounts calculated pursuant to Section 6.09 (c), if applicable.

(b) If, pursuant to the terms and provisions of the Construction Agreement or this Service Agreement, the Operation and Maintenance Charge is required to be increased or decreased, then such increase or decrease shall be calculated as hereinafter provided. Upon final determination of the amount of any such increase or decrease in the Operation and Maintenance Charge after the Contract Date pursuant to the terms of the Construction Agreement or this Service Agreement, the County shall calculate the net present value of such increased or decreased amount as of February 1, 2005, using a discount rate equal to the rate of adjustment of the Adjustment Factor from February 1, 2005, including the year in which the Operation and Maintenance Charge was subject to adjustment. The discounted amount so calculated shall then be summed to the Initial Operation and Maintenance Charge, and such increased or decreased Initial Operation and Maintenance Charge shall thereafter be the basis of the calculation of the Operation and Maintenance Charge pursuant to Section 6.02 (a); provided, however, that neither Party shall be entitled to any retroactive adjustments of any payments of the Operation and Maintenance Charge previously made prior to the occurrence of the event giving rise to the said increase or decrease in the Operation and Maintenance Charge.

(c) For each Ton of Processible Waste Processed in excess of the Guaranteed Tonnage during a Billing Year, the County shall increase the Operation and Maintenance Charge by $18.18 per Ton , as adjusted by the Adjustment Factor on the same basis as the Initial

Operation and Maintenance Charge. The excess tonnage fee shall be added for each such excess Ton to the Operation and Maintenance Charge for any Billing Month in which such excess Tons are Processed.

(d) The portion of the Initial Operation and Maintenance Charge related to the Expansion is $4,439,678 (the "Expansion Portion") and is based on an assumed Daily Established Expansion Capacity of 636 Tons per Day. In the event that the actual Daily Established Expansion Capacity is less than 636 Tons per Day, then the Expansion Portion shall be reduced by an amount equal to (i) $4,439,678 minus the product of (ii) the actual Daily Established Expansion Capacity divided by 636, times $4,439,678, and such amount shall be deemed to be the Expansion Capacity Adjustment (the "Expansion Capacity Adjustment") and shall be deducted from the Initial Operation and Maintenance Charge. The Daily Established Expansion Capacity shall be initially established based on throughput performance testing undertaken pursuant to Amendment Number 6. The Contractor shall have the right, at its option, to perform additional throughput performance testing pursuant to Schedule 5 of this Service Agreement no more often than once every three months during the term hereof and the Contractor shall notify the County at least ~~twenty~~thirty (30) Days prior to conducting any such testing. To the extent the Contractor performs such additional throughput performance testing, the Daily Established Expansion Capacity shall be deemed to be the highest actual daily average throughput achieved during any such throughput performance testing (not to exceed 636 Tons per Day) and any ~~increase~~change in the Daily Established Expansion Capacity shall result in a ~~decrease~~modification to the Expansion Capacity Adjustment. Notwithstanding the above, in the event that the Initial Operation and Maintenance Charge is reduced by the Expansion Capacity Adjustment and the Contractor demonstrates to the reasonable satisfaction of the County that the

Contractor's actual costs of operating and maintaining the ~~Facility~~Expansion exceed the Initial ~~Operation and Maintenance Charge~~Expansion Portion (as reduced by the Expansion Capacity Adjustment), then the Initial Operation and Maintenance Charge shall be increased to an amount sufficient to cover the Contractor's cost of operating and maintaining the ~~Facility~~Expansion but such increase shall in no event exceed the Expansion Capacity Adjustment.

Section 6.03 Pass Through Costs. Pass Through Costs for any Billing Month shall be the sum of the costs and expenses for the items set forth in Schedule 9 which were incurred by the Contractor during such Billing Month, to the extent of Cost Substantiation, excluding profit. All costs incurred by the County, subject to Cost Substantiation, for utility usages in excess of the Maximum Utility Utilization Guarantee shall be paid by the Contractor as part of the calculation of Monthly Damages.

Section 6.04 Energy Credit and Recovered Resources Revenues.

(a) For the purpose of this Service Agreement, "gross revenues," when used in connection with the sale of Recovered Resources, shall mean the total revenues received from the sale of any Recovered Resources, and "net revenues" shall mean the gross revenues less (i) administrative costs charged by purchasers of Recovered Resources and (ii) all third party commissions or charges and all Direct Costs paid by either Party in connection with the sale of any Recovered Resources and all demand, standby or other charges by the Power Purchaser or other power supplier related to the provision of energy to the Facility to the extent of Cost Substantiation, excluding profit.

(b) The Energy Credit component of the Service Fee calculated pursuant to Section 6.01 (a) for each Billing Month, shall be an amount equal to: (1) the net revenues from the sale of electric energy by the County pursuant to the Power Purchase Agreement received

during such Billing Month, times (2) ten percent (10%). The sale or use of electric power produced by the Facility and used at or by other County facilities or operations will be measured (or metered). Such measurement(s) of electric power will provide the basis for monthly calculations and payment or credit by the County to the Contractor such that the Contractor receives the same payment or credit for such electric power as if such electric power had been sold and purchased in accordance with the Power Purchase Agreement.

(c) The Recovered Resources Revenues component of the Service Fee calculated pursuant to Section 6.01 (a) for each Billing Month shall be equal to (i) the net revenues from the sale of any Recovered Resources other than electric energy, times (ii) fifty percent (50%).

(d) Notwithstanding the provisions of Section 6.04 (c) above, the NFRS Revenue component only, of the Recovered Resources Revenues for each Billing Month shall be distributed as follows: all NFRS Revenues shall be paid or credited 50% to the Contractor and 50% to the County. ~~In addition, as part of the annual settlement procedure under Section 6.12 of the Service Agreement, the County shall reimburse the Contractor for an amount equal to 50% of all the Contractor's costs for parts and subcontracts for NFRS repair and maintenance in excess of $9,000.00 per year, as adjusted by the Adjustment Factor on the same basis as the Initial Operation and Maintenance Charge.~~

Section 6.05 Landfill Charge. The Landfill Charge component of the Service Fee during any Billing Month for Bypassed Waste shall be an amount equal to the number of Tons of Bypassed Waste calculated pursuant to Section 4.01 (b) (iii) times the Landfill Charge, subject to Schedule 4.

Section 6.06 Monthly Damages. Monthly Damages for any Billing Month shall be equal to the sum of the amounts, if any, calculated pursuant to paragraphs (a), (b), (c), (d) and (e) of this Section 6.06.

(a) Energy Inefficiency Period Damages. If an Energy Inefficiency Period occurred or is continuing during any Billing Month, or any portion thereof, the Contractor shall pay the County an amount equal to the product of : (i) the Tons of Processible Waste Processed during the Energy Inefficiency Period up to but not exceeding the Processing Guarantee in any Billing Year; times (ii) the shortfall in kilowatt hours of electricity below the Energy Efficiency Guarantee per Ton of Reference Waste demonstrated by the most recent performance test of the Facility conducted in accordance with Schedule 5; times (iii) the average net revenues per kilowatt hour of electricity sold pursuant to the Power Purchase Agreement during such Billing Month; times (iv) ninety percent (90%).

(b) Capacity Payment Reduction. If, pursuant to the Power Purchase Agreement, damages are assessed or there is a reduction in the capacity payment specified therein for any Billing Year as a result of a shortfall in electricity generated in the preceding Billing Year, such shortfall or damages shall be paid to the County by the Contractor if such damages or reduction is the result of Contractor Fault. For this purpose Contractor Fault shall be measured by the percentage reduction in electricity generated as established by testing or violation of the Operating Parameters or failure to Process due to Contactor Fault compared to the electricity that would have been generated by Processing, at the Annual Average Energy Guarantee, Tons equivalent to the Processing Guarantee or the Tons provided by the County as Guaranteed Tonnage, if less. If such shortfall is due to an Uncontrollable Circumstance or any other cause, the shortfall shall not be made up and any payment for damages to the Power

Purchaser shall be limited to and shared on the basis of each Party's interest in the revenues from such Power Purchase Agreement. Subject to good engineering practice, both Parties will mutually agree on nomination of capacity to the Power Purchaser, to the extent permitted. In any event, any payments to the Power Purchaser due to front end loading of payments for electricity from the Power Purchaser shall be shared on the basis of each Party's interest in the revenues from such Power Purchase Agreement.

(c) Excess Utility and Reagent Utilization. To the extent excess utility or reagent utilization costs are not previously paid by the Contractor for any Billing Month, the Contractor shall reimburse the County for the costs incurred by the County of utilities in excess of the Maximum Utility Utilization Guarantee and lime, dolomitic lime, potable water, sewage, propane, urea, mercury reagent and ammonia reagent utilized by the Contractor during such Billing Month in excess of the Lime Consumption Guarantee, Dolomitic Lime Consumption Guarantee, Urea Consumption Guarantee, Mercury Reagent Consumption Guarantee, Potable Water Consumption Guarantee, Propane Consumption Guarantee and Ammonia Consumption Guarantee for reasons other than Uncontrollable Circumstance or County Fault. Failure to meet the Lime Consumption Guarantee, Dolomitic Lime Consumption Guarantee, Urea Consumption Guarantee, Mercury Reagent Consumption Guarantee or the Ammonia Consumption Guarantee shall be based on the performance tests provided in Schedule 5 and shall be equal to the percentage of over use demonstrated by the most recent performance test.

(d) Fines and Penalties. Any fine or penalty imposed against the County by any regulatory agency having jurisdiction over operation of the Facility for the Contractor's failure to meet the Environmental Guarantee, except to the extent due to an Uncontrollable Circumstance or County Fault, shall be paid by the Contractor. Any liability of the County for

which it is seeking reimbursement, under this Section 6.06 (d), shall be appealed to a court or administrative body at the Contractor's request, provided the Contractor has reimbursed the County for any payments made by the County. Any such appeal shall be at the Contractor's cost and expense and the Parties shall mutually agree on counsel for such appeal. This Section 6.06 shall survive termination of this Agreement.

(e) Ferrous Metal Guarantee. If the Contactor fails to meet the Ferrous Removal Guarantee as determined by performance testing pursuant to Schedule 5 for reasons other than Uncontrollable Circumstances or County Fault, the Contractor shall pay the County the Landfill Charge on the amount of Tons of ferrous metal not removed during the Billing Month as shown by the most recent performance test.

(f) Maintenance Related Withholding, Retainage and Credits. To the extent any unresolved punch list items result in County withholding or retainage as defined in Section 3.03, or the satisfactory completion of previous punch list items result in a credit adjustment, such withholding retainage and/or adjustment shall be made to the Contractor's monthly invoice.

Section 6.07 Monthly Adjustment. To the extent that the actual value of any item in any invoice of the Contractor for payment of the Service Fee for any Billing Month cannot be accurately determined as of the Billing Month statement date, such item shall be billed on an estimated basis calculated in good faith, and an adjustment shall be made, to reflect the difference between such estimated value and the actual value of such item on the Billing Month invoice next following the date on which the County or the Contractor knows the exact value of any such estimated item. Such adjustment may be either positive or negative.

Section 6.08 Billing and Payment of Contractor's Invoices.

(a) The Contractor shall submit its invoice to the County for each preceding Billing Month no later than the fifteenth (15^{th}) Day of each Billing Month. Each element necessary to calculate the Service Fee payment due to the Contractor shall be reflected in said invoice, including the following items, if applicable:

(i) any balance due to the County or the Contractor as a result of the annual settlement pursuant to Section 6.12;

(ii) any amount due to the Contractor for a Capital Project payable pursuant to Article VIII;

(iii) the operating data required to be maintained by the Contractor pursuant to Section 3.07 (b);

(iv) the Facility Site weigh scale data required to be maintained by the County and provided to the Contractor pursuant to Section 4.04 (a); and,

(v) any insurance proceeds payable to the Contractor.

(b) The County shall pay the Contractor the Service Fee within thirty (30) Days after the date of receipt by the County of said invoice for any Billing Month.

(c) One hundred twenty (120) Days before the start of each Billing Year, the Contractor shall provide the County with a written statement, which statement shall not be binding on the Contractor, setting forth its reasonable estimate of the aggregate Service Fee for the next Billing Year, and the calculations upon which said statement was based.

(d) The County shall provide the Contractor with copies of each statement rendered by the Power Purchaser pursuant to the Power Purchase Agreement and the Contractor shall provide the County with copies of each statement rendered by any purchaser of Recovered Resources other than electricity, as soon as said statements are available to either Party.

Section 6.09 Uncontrollable Circumstance and Performance.

(a) If either Party fails to perform any of its obligations under this Service Agreement, and if such failure to perform was caused by an Uncontrollable Circumstance, then the Parties shall cooperate to remove, reduce or eliminate the adverse effect of such Uncontrollable Circumstance and the Contractor shall receive and Process Processible Waste to the extent of any remaining Processing capability of the Facility. The County shall deliver, or cause to be delivered, Processible Waste, to the extent of its ability to cause such delivery, to the Facility. The County shall pay the Contractor the Service Fee, and shall provide for the disposal of Processible Waste not Processed at the Facility at no cost to the Contractor. During the occurrence of an Uncontrollable Circumstance, the Contractor shall (i) use all reasonable efforts to continue to Process Processible Waste and (ii) consistent with its contractual and long-term operating and maintenance requirements, use all reasonable efforts to reduce its operating costs, in which case, the Operation and Maintenance Charge shall be reduced pursuant to paragraph (c) of this Section 6.09.

(b) If the County is unable to deliver Processible Waste to the Facility due to the occurrence of an Uncontrollable Circumstance, the County shall nevertheless pay the Service Fee, subject to the Contractor's obligation to reduce its costs of operation and maintenance pursuant to paragraph (a) of this Section 6.09.

(c) During the continuance of an Uncontrollable Circumstance which reduces the capacity of the Facility to Process Waste, the Contractor shall consistent with its contractual and long-term operating and maintenance requirements, in good faith, reduce its costs of operation to the minimal level possible, taking into account any remaining Processing capacity of the Facility; including, but not limited to, reduced hours in which Processible Waste is delivered

to the Facility, reduction of staffing, and reduction of Pass Through Costs. The total amount of such reductions in costs of operation shall be deducted from the Operation and Maintenance Charge, to the extent of Cost Substantiation, to the extent that payments of the Operation and Maintenance Charge are not covered by insurance proceeds. Any dispute as to the extent of available operating cost reductions, or the amount of any reductions in cost resulting from the Contractor's efforts, shall be resolved in accordance with Article IX.

(d) The Parties agree that if any Processible Waste is not Processed due to the occurrence of an Uncontrollable Circumstance, that neither Party shall be entitled to recover lost electric revenues from the other Party; provided, however, that if any business interruption insurance proceeds are paid as a result of the occurrence of an Uncontrollable Circumstance, in excess of the amount of any such insurance proceeds available for payment of the debt service on the Bonds or the payment of either Party's extra expenses and costs resulting from such Uncontrollable Circumstance, then each Party shall receive the percentage share of any remaining insurance proceeds which is equal to such Party's percentage share of lost electric revenues utilized to calculate the Energy Credit which would have been received by such Party if such Processible Waste were Processed but for the occurrence of such Uncontrollable Circumstance.

(e) If due to one or more Uncontrollable Circumstances, the cost to the Contractor of operating and maintaining the Facility shall increase, the Operation and Maintenance Charge shall be increased by an amount equal to such increase in cost of operating and maintaining the Facility subject to the provisions of Section 7.03 and subject to Cost Substantiation, without profit, for the period of time that the effect of the Uncontrollable Circumstance causes such increase.

Section 6.10 Contractor Non-Performance.

(a) If, during any Billing Year, the Contractor, due to Contractor Fault, does not Process at least the lesser of the Tons of Processible Waste delivered to the Facility and not rejected pursuant to Section 4.01 (b) (i), and the Processing Guarantee, then in addition to the Contractor's responsibility to pay the County the Landfill Charge during any Billing Month of said Billing Year pursuant to Section 6.05, the Contractor shall be obligated for the payment of damages calculated pursuant to Section 6.12 (b) (vi).

(b) If, at any time, the Facility performs at less than the Full Acceptance Standard for reasons other than Uncontrollable Circumstances or County Fault, the Contractor may, at its sole cost and expense and subject to the provisions of Section 8.02, alter the Facility in order for the Facility to meet the Full Acceptance Standard; provided, however, that no expenditure by the Contractor in connection with such alteration shall in itself cause an increase in the Service Fee nor change the outside appearance of the Facility.

Section 6.11 County Non-Performance.

(a) If, during any Billing Year, the Facility is temporarily shut down, either partially or totally, or is unable to receive and Process Processible Waste in accordance with the Contractor's obligations under this Agreement due to County Fault and not as a result of Contractor Fault or Uncontrollable Circumstance, the Contractor shall receive and shall Process such lesser amounts of Processible Waste, to the full extent of the remaining Processing capability of the Facility, the County shall pay the Service Fee and the County shall pay the Contractor damages, if any, pursuant to Section 6.12 (a).

(b) During any such period during the Billing Year, the Contractor shall use all reasonable efforts to reduce its costs of operation and maintenance of the Facility consistent

with good engineering practices and the Contractor's long-term obligations hereunder and any such reduction in cost shall correspondingly reduce the Operation and Maintenance Charge, in the same manner as provided in Section 6.09 (c), provided that the Operation and Maintenance Charge shall only be reduced by such costs.

(c) If due to County Fault, the cost to the Contractor of operating and maintaining the Facility shall increase, the Operation and Maintenance Charge shall be increased by an amount equal to such increase in cost of operating and maintaining the Facility subject to Cost Substantiation, including profit, for the period of time that the effect of such County Fault causes such increase.

(d) Failure of the County to provide sufficient process water for operation of the Facility, including as a result of the limitation set forth in Paragraph XV.B.(2)(a) of the Certification, shall be deemed to be an Uncontrollable Circumstance hereunder.

Section 6.12 Annual Settlement Procedure. Within sixty (60) Days after the last Day of each Billing Year, the Contractor shall prepare and deliver to the County an annual settlement statement, payable by the Contractor or the County, as the case may be, within thirty (30) Days of such statement date, reflecting the following items.

(a) Adjustment for County Fault and Excess Landfill Charge. The County shall refund to the Contractor, as part of the annual settlement, any excess Landfill Charges paid by the Contractor during the Billing Year pursuant to Section 6.05 for Bypassed Waste. If the Contractor Processed the Processing Guarantee during the Billing Year, the County shall refund to the Contractor all Landfill Charges paid during the Billing Year. If (a) the Processing Guarantee minus the total Tons Processed during the Billing Year, is less than (b) the total Tons of Bypassed Waste calculated pursuant to Section 4.01 (b) (iii) for said Billing Year, then the

County shall pay the Contractor an amount equal to the product of: (1) the Landfill Charge; times (2) the number of Tons of Processible Waste credited to the Guaranteed Tonnage pursuant to this Section 6.02(a), minus the Tons of Processible Waste Processed; provided, however, that such amount shall not exceed the total of any Landfill Charge payments by the Contractor during said Billing Year.

(b) Adjustment For Contractor Fault.

(i) If, at the end of any Billing Year, (a) the Facility has been demonstrated to have achieved each of the Operating Parameters required to be monitored and recorded for every Day of said Billing Year pursuant to Section 5.02 (b), exclusive of any Energy Inefficiency Period, or (b) the annual average net kWh generated per Ton of Processible Waste Processed during the Billing Year is equal to or greater than the Annual Average Energy Guarantee, then the Contractor shall not be obligated to pay the County damages pursuant to this Section 6.12 (b) with respect to energy generation for such Billing Year subject to the provisions in paragraph (ii) below.

(ii) If due to Contractor Fault, at the end of any Billing Year, (a) the Facility failed on any Day of said Billing Year during which the Facility is Processing Processible Waste to achieve one or more of the Operating Parameters required to be monitored and recorded pursuant to Section 5.02 (b), and (b) the annual average net kWh generation per Ton of Processible Waste Processed during said Billing Year is less than the Annual Average Energy Guarantee, then the Contractor shall be obligated to pay the County damages for energy generation inefficiency calculated pursuant to Section 6.12 (b) (iii); provided, however, that for purposes of clause (a) above, the Contractor shall be deemed to have achieved the Operating Parameters on (1) any Qualified Turbine Outage Day and (2) the first 45 Days per boiler during a

Billing Year that the flue gas temperature of a boiler is below 425 degrees Fahrenheit to the extent that the decrease in temperature is due to the cleaning of such boiler (provided that if the County and Contractor observe during the Contractor's normal inspection, abnormal or excessive corrosion at the outlet to the boiler or inlet to the scrubber or associated piping between them, such 45-Day period shall be appropriately reduced by mutual agreement of the Parties and disputes shall be resolved pursuant to Article IX and further provided that such decrease in temperature is not below that which requires a reduction in dry scrubber efficiency to maintain the flue gas temperature into the baghouse above the dew point), and for purposes of clause (b) above, the Tons Processed and electricity produced during any Qualified Turbine Outage Day or Day below 425 degrees Fahrenheit allowed in (2) above shall not be taken into account for purposes of determining whether the Contractor achieved the Annual Average Energy Guarantee. A "Qualified Turbine Outage Day" shall mean any Day the Facility turbine generator is shut down for scheduled maintenance and refurbishment; provided, however, the number of Qualified Turbine Outage Days shall not exceed twenty-one (21) Days in three (3) consecutive Billing Years starting with the ~~fist~~first Billing Year and prorated for the last two (2) Billing Years. This provision shall not affect the Contractor's obligation to Process the Processing Guarantee.

(iii) If the Contractor is obligated to pay the County damages pursuant to Section 6.12 (b) (iv), then the amount of such damages shall be equal to the sum of the daily damages, calculated pursuant to Section 6.12 (b) (iv) and (v), for each Day, exclusive of any Energy Inefficiency Period, that the Facility failed to achieve one or more of the Operating Parameters required to be monitored and recorded pursuant to Section 5.02 (b); provided, however, that such total amount of damages shall not exceed an amount equal to (a) the number

of Tons of Processible Waste Processed up to but not exceeding the Processing Guarantee at the Facility, times (b) the Annual Average Energy Guarantee, times (c) the County's percentage of average net revenues per kWh of electricity sold during the Billing Year, minus (d) the total net revenues retained by the County after payments to the Contractor from the sale of electric energy during the said Billing Year.

(iv) Daily damages for any Day, exclusive of any Day during an Energy Inefficiency Period, that the Facility failed to achieve any of the Operating Parameters required to be monitored pursuant to Section 5.02 (b), shall be an amount, if greater than zero, equal to (a) the product of (W) the number of Tons of Processible Waste Processed at the Facility on such Day, times (X) the Annual Average Energy Guarantee, times (Y) the average net revenues received per kWh of electricity sold with respect to each of said Days, times (Z) the County's percentage of such revenues minus (b) the product of the total net revenues received by the County from the sale of electricity with respect to each of said Days times the County's percentage of such revenues.

(v) For any Billing Year in which an Energy Inefficiency Period(s) occurred, only those Days exclusive of Days which occurred during any Energy Inefficiency Period(s) will be considered for the purpose of calculating daily damages pursuant to Section 6.12 (b) (iv).

(vi) If at the end of any Billing Year, (P) the number of Tons of Processible Waste which is equal to the lesser of the Tons of Processible Waste delivered in such Billing Year and not rejected pursuant to Section 4.01 (b) (i) or the Processing Guarantee, exceeds (Q) the Tons of Processible Waste Processed at the Facility, then the Contractor shall pay the County an amount equal to the sum of: (1) the product of (a) the number of Tons of

Processible Waste by which the amount of Tons calculated pursuant to (P) of this paragraph exceeds the amount of Tons calculated pursuant to (Q) of this paragraph, times (b) the Annual Average Energy Guarantee, times (c) 90 percent of average net revenues received per kWh of electricity sold during the Billing Year; plus (2) an amount equal to the product of (X) the number of Tons of Processible Waste calculated pursuant to (a) of this paragraph times (Y) the average net revenues received from the sale of Recovered Resources other than electricity per Ton of Processible Waste Processed in said Billing Year, times (Z) fifty percent (50%).

(c) Residue Adjustment. If a performance test conducted in accordance with Schedule 5 demonstrates that the Facility does not meet the Residue Quality Guarantee, then for each Billing Month or portion thereof during the Billing Year following such performance test until the Day when a performance test demonstrates that the Facility meets the Residue Quality Guarantee, all Tons of Residue resulting from Processing Processible Waste in said period which are in excess of an amount calculated as hereinafter provided, shall be Bypassed Waste. The amount of such Tons shall be calculated by multiplying (a) the number of Tons of Processible Waste Processed by the Facility during each such period by (b) the weight of additional Residue per Ton of Processible Waste Processed resulting from failure of the Facility to meet the Residue Quality Guarantee, as demonstrated by the most recent performance test, as calculated pursuant to the test plan for the Residue Quality Guarantee developed in accordance with Part B.3 of Schedule 5. The total weight of Bypassed Waste calculated hereunder shall be multiplied by the Landfill Charge and the resulting amount shall be paid by the Contractor to the County as part of the annual settlement pursuant to Section 6.12 (b).

(d) Certain Average Net Revenues. Average net electric revenues per kWh shall be determined with respect to the average rate payable under the Power Purchase

Agreement per kWh of electricity applicable to the Billing Year. Average net revenues for Recovered Resources other than electricity shall be determined on the basis of the average price per Ton of the most recent five hundred (500) Tons of ferrous and fifty (50) Tons non-ferrou, such Recovered Resources which were recovered and sold during any Billing Year. If at least said amount of Recovered Resources other than electricity was not sold in the Billing Year in issue, then in such event, such net Recovered Resources Revenues shall be assumed to be zero.

(e) If the ferrous metals or non-ferrous recovery system has not operated at an availability of 90% for the Billing Year excluding those periods in which such materials are not marketable, the Contractor shall pay the County for applicable lost Recovered Resources Revenues.

(f) Any obligation of payment to a Party which accrued under this Section 6.12 prior to termination of this Service Agreement shall survive termination of this Service Agreement.

ARTICLE VII

UNCONTROLLABLE CIRCUMSTANCE AND DISPOSAL COST INCREASE LIMITATION

Section 7.01 Effect on Obligations.

(a) If an Uncontrollable Circumstance occurs which (i) prevents the Facility from Processing any portion of the Guaranteed Tonnage or meeting any of the performance guarantees specified in Article V and Schedule 2, or increases the Operation and Maintenance Charge, or (ii) which causes the Landfill to be unable to accept any portion of the Residue or (iii) prevents the delivery of any portion of the Guaranteed Tonnage to the Facility for Processing, then, to the extent of available Facility Processing capacity, or to the extent of

available Residue disposal capacity of the Landfill, the Contractor shall be obligated to Process as much Processible Waste as is reasonably possible during such reduction in Processing capacity or Landfill Residue disposal capacity.

(b) Except for the County's obligation to pay the Service Fee pursuant to Section 6.01 and 6.09, neither Party shall be liable to the other for its failure to perform any obligation under this Service Agreement to the extent such performance is prevented by an Uncontrollable Circumstance.

(c) The County shall reinstate regular deliveries of Processible Waste to the Facility as promptly as possible after receipt of notice from the Contractor that any such Uncontrollable Circumstance, or its adverse effect on the Facility has ceased, unless this Service Agreement is terminated as provided in Sections 7.02 or 7.03.

Section 7.02 Notices; No Repair or Reconstruction.

(a) Within three (3) Business Days after the occurrence of any Uncontrollable Circumstance adversely affecting the operation of the Facility, or a Party's actual knowledge of the occurrence, whichever is later, such Party shall notify the other Party of such fact, followed as promptly as possible thereafter, by written confirmation of such notice.

(b) Not more than ninety (90) Days following the date of such initial notice, the Contractor shall notify the County of (i) any increase in the Operation and Maintenance Charge under Section 6.09 (e) and (ii) if the Facility has been damaged, whether or not, in the Contractor's opinion, the Facility can be repaired, modified or reconstructed so that it can resume operation at either the Full Acceptance Standard, or any portion of the Full Acceptance Standard specified in said notice.

(c) If Contractor's notice states that in the reasonable engineering judgment of the Contractor, the Facility cannot be repaired, reconstructed or modified so that the Facility can Process Processible Waste and meet at least the Minimum Acceptance Standards (with respect to the original two units of the Facility and a comparable standard for the Expansion unit based on its actual performance prior to the event necessitating the repair, reconstruction or modification), the County may in writing, at its discretion, elect to either: (1) continue to operate the Facility pursuant to this Agreement, except that the performance guarantees set forth in Article V and Schedule 2 shall be modified to reflect the level of operation of the Facility at which the Contractor has notified the County and which the County has found to be reasonable, and the Guaranteed Tonnage, the Processing Guarantee, Section 4.01 (b), Article V and Schedules 2, and, if necessary, 3, 5 and 9 shall be appropriately modified to the mutual satisfaction of the County and the Contractor; or (2) terminate this Agreement in accordance with Article XIII.

Section 7.03 Repair and Reconstruction.

(a) If the Contractor's notice states that in its reasonable engineering judgment the Facility can be repaired, reconstructed or modified so that it can meet at least the Minimum Acceptance Standard (with respect to the original two units of the Facility and a comparable standard for the Expansion unit based on its actual performance prior to the event necessitating the repair, reconstruction or modification), such notice shall also include: (i) the total cost of any resulting Capital Project, as well as the effect on the Operation and Maintenance Charge and the Pass Through Costs resulting from such Capital Project; (ii) the effect on the Guaranteed Tonnage, the Contractor's performance guarantees specified in Article V and Schedule 2, and, if applicable, Schedules 3, 5 and 9 and the amount of Processible Waste that the Facility will be capable of Processing; (iii) the time required for such Capital Project; and

(iv) any other information or data necessary to the County with respect to such Uncontrollable Circumstance. The total aggregate increase in Disposal Cost since the Contract Date as a result of all prior Uncontrollable Circumstances shall then be determined, which shall additionally include an estimate of the cost of the increased debt service resulting from the Capital Project necessitated by the current Uncontrollable Circumstance, the assumed interest rate, financing costs and amortization information as of the date of Contractor's notice to the County pursuant to Section 7.02, which are necessary to calculate the impact on the Disposal Cost resulting from the current Uncontrollable Circumstance. The information so provided shall be the basis of the calculation of the Disposal Cost pursuant to Schedule 11. Disputes as to the calculation of the Disposal Cost shall be resolved in accordance with Article IX.

(b) Mandatory Repair or Reconstruction. If the Contractor's notice states that the Facility can be repaired, modified or reconstructed so that it can meet at least the Minimum Acceptance Standard, then if (i) the aggregate increase in Disposal Cost since the Contract Date as a result of the current and all prior Uncontrollable Circumstances is not greater than the Disposal Cost Increase Limitation and (ii) the time required for such repair, modification or reconstruction is not longer than the period covered by business interruption insurance proceeds, if any, then subject to the provisions of Section 7.03 (d), the Contractor shall undertake the Capital Project in accordance with Section 8.04, and the County shall arrange for financing of the Capital Project pursuant to Section 8.06.

(c) County's Option. If the cumulative amount of the increase in Disposal Cost resulting from the current and all prior Uncontrollable Circumstances since the Contract Date, as calculated in Schedule 11, is greater than the Disposal Cost Increase Limitation, or if the time required for such repair is longer than the period covered by business interruption insurance

proceeds, if any, then the County may (1) approve such increase in Disposal Cost or (2) elect to operate the Facility at the reduced capacity specified in the Contractor's notice without undertaking such Capital Project, or (3) subject to Section 7.03 (d), terminate this Service Agreement pursuant to Section 13.04. Upon receipt of the County's written election to undertake such Capital Project, and subject to the provisions of this Section 7.03, the Contractor shall design, construct, and complete such Capital Project in accordance with Section 8.04. Financing of the cost of such Capital Project shall be arranged by the County pursuant to Section 8.06.

(d) Contractor Option. If the County notifies the Contractor of its intent to terminate this Service Agreement pursuant to Section 7.03 (c), the Contractor may elect to absorb and pay for only those amounts in excess of the Disposal Cost Increase Limitation resulting from the Capital Project or other increase necessitated by and resulting from the current Uncontrollable Circumstance, in which event, this Service Agreement shall continue and the Parties shall proceed in accordance with paragraph (c) of this Section 7.03; provided, however, that any increase in the Disposal Cost Increase Limitation pursuant to the Adjustment Factor subsequent to the Uncontrollable Circumstance event which gave rise to the County's right to terminate this Service Agreement shall correspondingly reduce the Contractor's elected payment of such Disposal Cost Increase Limitation and shall be used to refund any payments, plus interest calculated pursuant to Section 16.04 hereof, by the Contractor in prior years, subject to Cost Substantiation.

(e) Issuance of Bonds and Conformance With Indenture. If the County elects or is required to undertake a Capital Project in accordance with this Section 7.03, the County shall pay for the cost of such Capital Project utilizing available insurance proceeds, if any, funds

held pursuant to the Indenture and available for such purpose, any other legally available funds or the proceeds of any ~~Additional~~additional Bonds issued pursuant to Section 8.06. Any Capital Project to be performed pursuant to this Service Agreement shall be undertaken in accordance with the terms and provisions of Article VIII and the Indenture.

Section 7.04 Calculation of Disposal Cost Increase Limitation. For purposes of the calculation of the Disposal Cost Increase Limitation pursuant to Schedule 11, (i) costs of any Capital Project due to an Uncontrollable Circumstance event which are not capitalized and are paid by the County, shall be amortized over the remaining term of this Service Agreement, even though paid by the County in the Billing Year incurred, at an assumed interest rate equal to the then current interest rate in the Bond Buyer Revenue Bond Index or if no longer published, a comparable index, and (ii) adjustment of the Disposal Cost Increase Limitation pursuant to the Adjustment Factor shall be calculated as of the date of the initial notice of the Uncontrollable Circumstance event provided pursuant to Section 7.02. Any calculation of the Disposal Cost Increase Limitation shall take into account the availability of insurance proceeds. Disputes as to the calculation of the Disposal Cost Increase Limitation shall be resolved in accordance with Article IX.

ARTICLE VIII

CAPITAL PROJECTS

Section 8.01 Capital Projects Due to Uncontrollable Circumstance. The Contractor shall be solely responsible for the design, construction, and, if applicable, Acceptance Testing, of any Capital Project with respect to the Facility which is required by or results from an Uncontrollable Circumstance, subject to the Disposal Cost Increase Limitation. The County shall be responsible for financing the cost of the design and construction and, if applicable,

Acceptance Testing of any such Capital Project, taking into account any reserves available therefore pursuant to the Indenture, any available insurance proceeds, as provided in Section 8.03, or any other available funds.

Section 8.02 Contractor Capital Projects.

(a) The Contractor may, subject to the provisions of this Section 8.02, make changes to the Facility which the Contractor determines are necessary or desirable to comply with the performance guarantees specified in Article V and Schedule 2 only after prior written notice in conformance with this Section 8.02 to the County and the Consulting Engineer. The County shall, within thirty (30) Days of the date of receipt of the Contractor's written notice as hereinafter provided, approve or disapprove the Capital Project specified in the Contractor's notice. The County may disapprove such Capital Project only if it determines that the proposed change (i) impairs the quality of the Facility described in Schedule 2 of the Construction Agreement, or (ii) would adversely affect the income tax status of interest on the Bonds or Additional Bonds. Any Capital Project undertaken by the Contractor pursuant to this Section 8.02 without the approval of the County may be undertaken at the Contractor's sole risk only if the County's disapproval of such Capital Project was based upon (i) above. Should the Contractor proceed with any such Capital Project without the County's prior written approval, or should the County disapprove the proposed Capital Project on the grounds of (i) above, then either Party may elect to resolve such dispute pursuant to Article IX to secure a determination as to whether the County withheld its approval for reasons other than as stated in Section 8.02 (i). If the decision reached pursuant to such dispute resolution determines that the County correctly withheld its approval for the Capital Project, then the Contractor shall correct such Capital Project initiated without the County's prior written approval and shall bring the original two

units of the Facility into full compliance with the specifications set forth in Schedule 2 of the Construction Agreement. In no event shall the Contractor undertake a Capital Project which the County has disapproved for reasons stated in Section 8.02 (ii) unless the County has obtained the written opinion of nationally recognized bond counsel, in the County's sole opinion, that such Capital Project will not adversely affect the income tax status of interest on the Bonds, and that such Capital Project is in compliance with the terms and provisions of the Indenture, and the County expressly approves such Capital Project in writing. In no event shall any Capital Project undertaken by the Contractor pursuant to this Section 8.02 increase the Operation and Maintenance Charge or the Pass Through Costs.

(b) The foregoing to the contrary notwithstanding, the Contractor is not authorized by this Section 8.02 to modify the appearance of the Facility, including, but not limited to the provisions of Schedule 2 to the Construction Agreement pertaining to Facility colors, building materials, Facility Site layout and landscaping, other than as necessary with respect to the Expansion. Any such changes may be initiated by the Contractor only upon the prior written approval of the County. Additionally, if any of the equipment installed in the Facility and designated in the specifications set forth in Schedule 2 of the Construction Agreement (or as otherwise set forth in the documentation related to the Expansion), included in such designation the phrase "or equal", then the Contractor may substitute an item of equipment for the item of equipment originally specified in Schedule 2 of the Construction Agreement (or Expansion documentation) only upon the prior written approval of the County and the Consulting Engineer which shall not be unreasonably withheld.

Section 8.03 County Capital Projects.

(a) Any Capital Project requested by the County with respect to the Facility shall be submitted in writing by the County to the Contractor. Prior to the Contractor undertaking any activity in connection with any such requested Capital Project, the County and the Contractor shall promptly agree on the cost of such Capital Project, the amount of any increase or decrease in the Pass Through Costs and the amount of any increase or decrease in the Operation and Maintenance Charge if any, as well as a new not-to-exceed and milestone drawdown schedule for such Capital Project, and the effect, if any, of such Capital Project on the Guaranteed Tonnage, the performance guarantees set forth in Article V and Schedule 2 and any other appropriate modification to any obligation of either Party under this Service Agreement. The Contractor shall be obligated to complete any such Capital Project requested by the County; provided, however, that the Contractor shall have the right to reject any County requested Capital Project that, if implemented, would adversely affect the Contractor's ability to meet the standards and performance guarantees set forth in Article V and Schedule 2 unless the County and the Contractor have mutually agreed to appropriately modify such standards or performance guarantees.

(b) If the Contractor receives a request from the County to undertake a Capital Project, the Contractor shall send to the County within ten (10) Days of such request a written estimate of the cost to prepare a firm proposal for such Capital Project. If the County gives its written approval to the estimate of the cost for the preparation of a firm price proposal for such Capital Project then the Contractor shall furnish a detailed proposal within thirty (30) Days after the receipt of such written approval or within such other period of time as the Parties may agree, describing in reasonable detail: (i) the necessary revisions to the plans, drawings and specifications; and (ii) the total effect of the Capital Project, including, if any, the resulting

impact on the Facility operations, the cost of such Capital Project, the resulting impact on the Operation and Maintenance Charge and the Pass Through Costs, if any, the new not-to-exceed drawdown and milestone schedule for such Capital Project, the impact on the performance guarantees set forth in Article V and Schedule 2, the effect, if any, on the Guaranteed Tonnage and the Processing Guarantee and any other appropriate modification to any obligation of either Party under this Service Agreement. The County shall notify the Contractor in writing within thirty (30) Days of the receipt of the price proposal if the County wishes to proceed with such Capital Project. If the County provides such notice, the items and Schedules referred to above shall be adjusted in accordance with the Contractor's proposal, and the Contractor shall undertake and complete such Capital Project.

(c) If the County and the Contractor cannot agree as to the cost of any such Capital Project, the County shall have the right to require the Contractor to perform such Capital Project for an amount equal to the Contractor's Direct Costs to the extent of Cost Substantiation, including profit.

(d) If the County and the Contractor cannot agree to the resulting impact on the Operation and Maintenance Charge, the Pass Through Costs, the new not-to-exceed drawdown and milestones schedule for such Capital Project, or the performance guarantees set forth in Article V and Schedule 2, such dispute shall be resolved in accordance with Article IX. Increases or decreases in the Operation and Maintenance Charge, if applicable, shall be limited to an amount equal to the increase or decrease in the Contractor's Direct Costs, to the extent of Cost Substantiation, including profit, and such adjustment shall be calculated in accordance with Section 6.02 (b).

(e) Whenever the Contractor determines that a Capital Project would be in the best interest of the County and the Contractor, it shall so notify the County in a writing that describes the suggested Capital Project and the justification for such Capital Project in reasonable detail. Upon receipt of such notice, the County, in its sole discretion, may initiate the suggested Capital Project pursuant to this Section 8.03.

Section 8.04 Capital Projects due to Uncontrollable Circumstance.

(a) Within three (3) Business Days after the occurrence of an Uncontrollable Circumstance adversely affecting the operation of the Facility, or a Party's actual knowledge of the occurrence, whichever is later, such Party shall provide the other Party with notice of such event, followed by prompt written confirmation thereof in accordance with Sections 7.02 and 7.03. As expeditiously as possible following such notice, the Contractor shall provide the County with the written description of the impact of such Capital Project required by said Sections 7.02 and 7.03 setting forth (i) any necessary revisions to the plans, drawings and specifications specified in the Construction Agreement; (ii) the purpose of any Capital Project and its impact on operation of the Facility; and (iii) the total effect of the Capital Project, including, if any, the resulting impact on the performance guarantees set forth in Article V and Schedule 2, the cost of such Capital Project, the increase or decrease in the operation and Maintenance Charge or the Pass Through Costs, the new not-to-exceed draw down and milestones schedule for said Capital Project, the impact, if any, on the Guaranteed Tonnage and the Processing Guarantee, and the necessary modification of Schedules 2, 3, 5 and, if necessary, 9.

(b) If the County and the Contractor cannot agree to the cost of such Capital Project, then the County shall have the right to require the Contractor to undertake and complete such Capital Project in accordance with the provisions of Section 8.04 (c).

(c) If the County and the Contractor cannot agree as to the resulting impact on the Operation and Maintenance Charge, the Pass Through Costs, the new not-to-exceed drawdown and milestones schedule, the requirements of Schedules 2, and, if applicable, Schedules 3, 5, and 9 or the Guaranteed Tonnage or the Processing Guarantee, such dispute shall be resolved in accordance with Article IX. Increases or decreases in the Operation and Maintenance Charge, if applicable, shall be limited to an amount equal to the Contractor's Direct Costs, to the extent of Cost Substantiation excluding profit, and such adjustment shall be calculated in accordance with Section 6.02 (b).

(d) Notwithstanding the provisions of Section 8.04 (a) to the contrary, if the Contractor shall reasonably determine that a Capital Project is required due to an Uncontrollable Circumstance and that failure to promptly execute such Capital Project will materially adversely affect (i) the Contractor's ability to meet its performance guarantees set forth in Article V and Schedule 2 or (ii) the Operation and Maintenance Charge, the Contractor shall notify the County in writing of the actions planned under this Section 8.04 (d), and the total estimated cost of such planned action. If the total estimated cost of the Contractor's planned action does not exceed one hundred thousand dollars ($100,000) , then the Contractor may proceed with such action without the prior written consent of the County only if the County's Authorized Representative has verbally approved such action and only if the circumstances were such that prior written approval of the County was not practicable prior to the material adverse effect of the Uncontrollable Circumstance on the Facility. In such case, and to the extent of Cost

Substantiation, excluding profit, the Contractor shall be paid for its costs incurred, not to exceed One Hundred Thousand Dollars ($100,000); provided, however, that the cost of such action shall be taken into account for purposes of calculation of the Disposal Cost Increase Limitation. If the estimated cost exceeds One Hundred Thousand Dollars ($100,000) for any one event, then the Contractor shall be authorized to proceed only upon the prior written consent of the County in accordance with this Section 8.04 (d). In either case, the County shall have the right to dispute the reasonableness of the Contractor's action and the reasonableness of the costs incurred by the Contractor pursuant to this Section 8.04 (d) (except for those actions and costs, if any, which the County has specifically consented to in writing). Any disputes relating thereto shall be resolved in accordance with Article IX.

(e) For Capital Projects due to an Uncontrollable Circumstance all Direct Costs shall be paid to the extent of Cost Substantiation, including profit. If the parties disagree as to the cost of any Capital Project caused by an Uncontrollable Circumstance upon which basis the Contractor would be entitled to receive a profit pursuant to this Section 8.04 (e), then such dispute shall be resolved in accordance with Article IX.

Section 8.05 Costs for Preparation of Proposals for Capital Projects. The County shall reimburse the Contractor for its Direct Costs, to the extent of Cost Substantiation, including profit, incurred in the preparation of proposals for Capital Projects pursuant to Section 8.03, or, with respect to the preparation of proposals for Capital Projects pursuant to Section 8.04, for its Direct Costs incurred, to the extent of Cost Substantiation, excluding profit.

Section 8.06 Additional Financing. At the County's option, Additional Bonds may be issued by the County to finance the cost of Capital Projects undertaken pursuant to this Article VIII, taking into account any applicable proceeds of insurance to be received and available

funds, if any, in applicable reserves for contingencies established in the Indenture for such purchase or any other funds available to the County. If the County elects to issue Additional Bonds, the County shall allow the Contractor reasonable review consistent with Section 4.03 (l) of the Construction Agreement and comply with terms of the Indenture pertaining thereto. The Contractor shall reasonably cooperate with the County in connection with the issuance of any such Additional Bonds. If the County is unable to issue Additional Bonds, and other legally available funds of the County are insufficient to pay for the cost of such Capital Project, the Contractor shall use reasonable efforts to obtain alternate financing for this purpose. The Contractor shall not be obligated to provide such alternate financing and if Contractor decides to provide such alternate financing then such alternate financing is contingent on, in the Contractor's sole judgment and discretion which judgment shall be absolute and not subject to the provisions of Article IX, the County entering into appropriate undertakings to assume or repay any obligation of the Contractor created in connection with any such alternate financing. The Contractor need not proceed with a Capital Project until it is reasonably assured of payment.

Section 8.07 Construction Monitoring of Capital Projects. The County, the Consulting Engineer and the County's agents shall have the right to monitor the Contractor's performance of its obligation to design and construct and, if applicable, to start-up and Acceptance Test, any Capital Project undertaken by the Contractor pursuant to this Article VIII, in the same manner as specified in Article III of the Construction Agreement. The Parties mutually agree to enter into a written agreement incorporating substantially similar provisions with respect to the supervision and monitoring of any Capital Project as are set forth in said Article III of the Construction Agreement prior to the Contractor undertaking such Capital Project. The County and the Contractor agree to mutually review and, in good faith, attempt to resolve any disputes arising

out of the Consulting Engineer's monitoring activities of Capital Projects. If the parties cannot resolve any such disputes then such disputes shall be resolved pursuant to Article IX.

ARTICLE IX

INDEPENDENT ENGINEER

Section 9.01 Scope. To help bring about a quick and efficient resolution of disputes which may arise during the term of this Service Agreement, the Parties do hereby establish a procedure for resolution of disputes, as set forth in this Article IX. All claims, controversies and disputes which are expressly subject to resolution in accordance with this Article IX, shall be resolved by the Independent Engineer pursuant to Section 9.02 as provided by the terms of this Service Agreement excluding any Events of Default and obligations which are subject to the remedy of specific performance specified in Article XII. The Independent Engineer for each dispute shall be selected in accordance with Section 9.03.

Section 9.02 Disputes. If the matter in dispute involves any matter(s) primarily requiring the exercise of engineering judgment and involves an amount of $2,000,000 or less the dispute shall be brought to the Independent Engineer who shall assume exclusive jurisdiction thereof. Any other dispute may be brought to the Independent Engineer by the Parties or shall be subject to resolution in court. Any dispute as to whether a matter primarily requires engineering judgment shall be resolved by the American Arbitration Association. The Independent Engineer shall be required to make a final determination, not subject to appeal, within thirty (30) Days from the receipt of such dispute by the Independent Engineer and the County and the Contractor shall be bound by the terms of such final determination. The determination by the Independent Engineer shall be made in writing and shall contain written findings of fact, and may be specifically enforced by a court of competent jurisdiction. The Independent Engineer shall

determine a fair and equitable allocation of the reasonable expenses of both Parties incurred in connection with the resolution of any dispute hereunder, which expenses associated with each dispute shall be borne and paid by the Party losing such dispute. Each Party shall bear the cost of its own attorney's fees, unless the Independent Engineer shall determine that the nature of the action or defense of the losing Party was frivolous, in which event the Independent Engineer shall determine a fair and equitable attorney's fee to be paid by the losing Party to the prevailing Party. The fees of the Independent Engineer incurred in connection with its resolution under this Section 9.02 shall be paid one-half by the County and one-half by the Contractor.

Section 9.03 Selection of Independent Engineer. The Contractor and the County shall mutually agree on a list of three nationally recognized independent consulting engineers or firms which have agreed to serve as Independent Engineer for the purpose of resolving disputes in accordance with Section 9.02. The consulting engineers or firms on such list shall not be associated with the transactions contemplated by this Service Agreement and shall have knowledge ~~and~~with respect to the design, construction, Acceptance Testing, operation and maintenance of solid waste disposal and mass burn resource recovery facilities. Subsequent to the establishment of the original list, the Parties may mutually agree to amend the list or to fill a vacancy occurring because a consulting engineer or firm on such list has developed a conflict of interest or otherwise is no longer willing to be selected to serve as Independent Engineer. To the extent that the Parties are unable to mutually agree on one or more of such list of consulting engineers or firms, or to fill a vacancy on such list, the list shall be completed by the American Arbitration Association as expeditiously as possible. Within five (5) days of the occurrence of a dispute expressly subject to resolution in accordance with this Article IX, the Contractor and the

County shall select at random from the list the consulting engineer or firm which will serve as the Independent Engineer to resolve such dispute in accordance with Section 9.02.

Section 9.04 Replacement of Independent Engineer. Subsequent to selection pursuant to Section 9.03, the Independent Engineer may be replaced prior to its resolution of a dispute by mutual agreement of the Parties or on a showing of conflict of interest or malfeasance. If the Consulting Engineer resigns, or has been replaced by mutual agreement of the Parties or upon showing of a conflict of interest or malfeasance, then the County and the Contractor shall select at random a successor Independent Engineer from the two remaining consulting engineers or firms on the list and shall fill the vacancy on the list as expeditiously as possible in accordance with Section 9.03. The County and Contractor shall mutually agree on the fees, if any, to which the resigning or replaced Independent Engineer is entitled, which fees shall be paid in the same manner as provided in Section 9.03.

Section 9.05 Covenant to Continue Performance. During resolution of any dispute under this Article IX, the Contractor and the County shall each continue to perform all of their respective obligations under this Service Agreement without interruption or slowdown.

Section 9.06 Survival. This Article IX shall survive termination of this Service Agreement.

ARTICLE X

RISK FINANCING

Section 10.01 Insurance. Notwithstanding any insurance provisions contained in this Service Agreement, Contractor shall secure, or cause to be secured, and maintain the insurance policies with the policy limits specified in Schedule 7. Contractor shall not commence any services of any kind under this Service Agreement until all insurance requirements contained in

this Article 10 shall have been complied with, and until evidence of such compliance satisfactory to the County as to form and substance has been filed with the County as provided herein. Subject to exceptions or limitations provided in this Article 10, the premium payments, for such policies, shall be a Pass Through Cost to the County provided that Contractor provides evidence that the premiums for each such policy (or the portion of premium payments reasonably allocated to the applicable policies), submitted by Contractor as a Pass Through Cost to the County, have been paid, and paid when due, to the applicable insurance provider. Contractor may secure additional insurance coverages and policies not specified or required under this Article 10 or Schedule 7 and all such insurance shall not be a Pass Through Cost to the County but shall be borne exclusively by Contractor at its sole cost and expense. The County may propose a change relating to the insurance coverages or requirements set forth in this Article 10. Subcontractors will be required to carry insurance limits commensurate with industry standards and with approval of Contractor. Subcontractors will not commence any Services until receiving Contractor approval.

Section 10.02 Deductibles. Contractor shall be responsible to satisfy any and all deductibles and self-insured retentions contained in the insurance coverages required to be secured and maintained by Contractor under this Service Agreement, as well as any excluded loss or losses if the same are within Contractor's liability under this Service Agreement due to any insured event caused by Contractor Fault, but only to the extent of its liability. The County shall be solely liable for deductibles or self-insured retentions for insured events caused by anything other than Contractor Fault. The insurance coverages required to be secured and maintained by Contractor and the County under this Service Agreement shall contain deductible limits equal to those specified in Schedule 7.

Section 10.03 Insurance Requirements Generally. The following shall be applicable to the insurance policies and coverages required to be secured and maintained pursuant to Article 10 and Schedule 7:

Section 10.04 Policies of Insurance; Certificates as Evidence of Insurance. A certificate of insurance or binder for all policies of insurance required to be secured and maintained by Contractor shall be furnished to the County as early as possible prior to the Effective Date for the County's review and approval. If any Contractor secured policy of insurance fails to meet the requirements set forth in Article 10 or Schedule 7, or if any such policy of insurance is canceled or not renewed, Contractor shall provide, or cause to be provided, a certificate for the substitute policy to the County as early as possible before the commencement of the policy period for the County's review and approval. If a policy of insurance is renewed without material change, Contractor shall supply the County with a certificate of insurance which reflects the policy number of the County approved policy, lists the coverages provided and states the term of the renewal.

Section 10.05 County Right to Secure Alternative Insurance. If the County shall determine at any time that the cost or financial security of any particular insurance program, policy or coverage Contractor is required to secure and maintain in this Article 10 and Schedule 7 is unacceptable, the County retains the right to secure alternative programs, at its sole cost and expense, policies or coverages, except for Worker's Compensation or Employer's Liability on behalf of itself and Contractor, subject to the approval of Contractor, which shall not be unreasonably withheld. Alternative insurance shall meet the requirements set forth in Article 10 and offer no less protection for Contractor than the replaced policy(ies). If an alternative program is provided for by the County, the applicable premium for such County secured

alternative insurance under Article 10 and Schedule 7 shall be paid directly by the County and shall no longer be a Pass Through Cost to the County.

Section 10.06 Waiver of Subrogation. All policies of insurance required to be secured and maintained by Contractor under Article 10 and Schedule 7 shall include a waiver of subrogation rights or a no right of recovery against the County and the Lee County Board of County Commissioners, its officers and employees to the extent permitted by Applicable Law and except as specially provided in Schedule 7. It is the intention of the Parties that the insurance required by Article 10 and Schedule 7, except for Worker's Compensation or Employer's Liability, shall protect the County and the Lee County Board of County Commissioners as additional insureds for liabilities arising out of Contractor's operations.

Section 10.07 Financial Security Requirement/Rating. Any and all companies providing insurance required by Article 10 must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty.

For all contracts, regardless of size, companies providing insurance or bonds under this Service Agreement must have a current: (a) Best's Rating no less than A- and current, (b) Best's Financial Size Category not less than Class IX, and (c) companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Florida. Furthermore, all proposal, performance and payment bonds must be a U.S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements and becomes unsatisfactory to the County, written notification shall be mailed by the County to Contractor who shall promptly obtain a new policy or bond issued by an insurer that does meet the

requirements set forth in Article 10 and shall submit evidence of the same to the County as required herein.

Section 10.08 Renewal and Cancellation Notification. Any policy or policies procured, or caused to be procured, by Contractor shall provide by endorsement that the County shall, without exception, be given not less than forty five (45) Days written notice prior to cancellation, nonrenewal, or material change as required by F.S. 627.4133 and that such notice shall be delivered to the County's Risk Manager at the address set forth in Section 16.8. Confirmation of this mandatory forty five (45) Days notice of nonrenewal, cancellation or material change as required by F.S. 627.4133 shall appear on the Certificate of Insurance. If any such policy is subject to expiration or cancellation and Contractor fails to provide the County with written commitment's to renew or purchase other such insurance meeting the requirements of this Article 10 at least fifteen(15) days prior to the effective date of such expiration or cancellation, then the County shall have the right to purchase or renew such coverage and Contractor shall be obligated to reimburse the County for the premiums costs for such insurance over and above that applicable to Contractor had it renewed or repurchased such coverage.

Section 10.09 Additional Insured. The County and the Lee County Board of County Commissioners, its officers and employees shall be covered as Additional Insureds under any insurance policy required to be secured and maintained by Contractor under Article 10; such insurance shall be primary with respect to the Additional Insured status; and a Severability of Interest Provision shall be applicable to each policy. Confirmation of this shall appear on the Certificate of Insurance, and on any and all applicable insurance policies. However, this requirement shall not apply to Workers' Compensation.

Section 10.10 Compliance Mechanisms. Contractor may comply with the various requirements of this Article 10 and Schedule 7 through the purchase of commercial insurance, the use of self-insurance, and/or participation in alternative risk financing programs. However, use of any risk financing mechanism other than a commercial insurer meeting the requirements of Article 10, shall be subject to mutual approval of the County and Contractor, such approval not to be unreasonably withheld or delayed.

Section 10.11 Additional Project Coverage. Any policy of insurance required to be secured and maintained by Contractor and the County under this Service Agreement may provide coverage for other projects outside of the scope of this Service Agreement. However, any general aggregate policy limit contained in such a policy shall not be depleted by any claims or losses outside the scope of this Service Agreement to the extent that the limits required herein are not available at any time.

Section 10.12 Non-Recourse Against County. All insurance policies required to be secured and maintained by Contractor under this Service Agreement shall provide that each insurance company shall have no recourse against the County for payment of any premiums or for assessments under any form of policy.

Section 10.13 Authorization and Licensing of Agent. Each and every agent acting as authorized representative on behalf of the companies affording coverage under this Service Agreement shall warrant when signing the Certificate of Insurance that specific authorization has been granted by the companies for the agent to bind coverage as required and to execute the Certificate of Insurance as evidence of such coverage. In addition, each and every agent shall warrant when signing the Certificate of Insurance that the agent is licensed to do business in the State of Florida and that the company or companies are currently in good standing in the State.

ARTICLE XI

INDEMNIFICATION AND WAIVER

Section 11.01 Indemnification.

(a) The Contractor agrees that it shall protect, indemnify, and hold harmless the County and its respective officials, commissioners, employees, subcontractors and agents, including the Consulting Engineer (the "County Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the County Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property of third parties to the extent arising out of the acts or omissions of the Contractor in the performance (or nonperformance) of the Contractor's obligations under this Service Agreement. The Contractor is not, however, required to protect, indemnify or hold harmless any County Indemnified Party to the extent of any loss or claim resulting from performance (or nonperformance) of the County's obligations under this Service Agreement or the negligence or willful misconduct of any County Indemnified Party. The Contractor's aforesaid indemnity is for the exclusive benefit of the County Indemnified Parties and in no event shall such indemnity inure to the benefit of any third Person.

(b) The County agrees that it shall protect, indemnify, and hold harmless, the Contractor, its partners and any Affiliates (including subsidiaries), and their respective directors,

officers, members, employees, subcontractors and agents (the "Contractor Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the Contractor Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property of third parties to the extent arising out of the acts or omissions of the County including its officials, Commissioners, employees and agents, including the Consulting Engineer, in the performance (or nonperformance) of the County's obligations under this Service Agreement or arising from operation of the Facility by or on behalf of the County after termination of the Contractor or this Service Agreement. The County is not, however, required to protect, indemnify or hold harmless any Contractor Indemnified Party to the extent of any loss or claim resulting from performance (or nonperformance) of the Contractor's obligations under this Service Agreement or the negligence or willful misconduct of any Contractor Indemnified Party. The County's aforesaid indemnity is for the exclusive benefit of the Contractor Indemnified Parties, and in no event shall such indemnity inure to the benefit of any third Person.

Section 11.02 Waiver. Subject to the provisions of Section 10.02, the Contractor and the County hereby waive any and every claim arising pursuant to the terms of this Service Agreement for recovery from the other for any and all loss or damage to each other resulting from the performance of this Service Agreement, which loss or damage is covered by collected insurance policy proceeds and will require their insurers to waive all rights of recovery and subrogation against the County or the Contractor as the case may be. If, however, the deductible or risk-retained amount of such insurance coverage is governed by the provisions of Section 10.02, then to the extent of such deductible or retention amount, neither Party shall be

deemed to have waived its right to recover such loss or damage under the terms of this Service Agreement from the Party causing such loss or damage and the provisions of Section 10.02 shall be applicable to such loss or event.

Section 11.03 Exclusion of Consequential Damages.

(a) The Parties acknowledge and agree that because of the unique nature of the undertakings contemplated by this Service Agreement, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by either Party as a result of a breach of this Service Agreement by the other Party. Accordingly, in the event that either Party elects not to exercise its right of specific performance to enforce any obligation of the other Party pursuant to Section 12.01, then the Parties agree that either Party shall be liable and obligated to pay only those liquidated damage amounts and payments, damages and credits expressly provided for in accordance with the terms of this Service Agreement, or such amounts as may be determined pursuant to Article IX, and that such amounts that may become due pursuant to the terms of this Service Agreement shall constitute either Party's sole damages recoverable from the other Party regardless of legal theory.

(b) In no event, however, whether because of a breach of any provision contained in this Service Agreement or any other cause, whether based upon contract, tort (including negligence or strict liability), warranty, delay or otherwise, arising out of the performance or nonperformance by either Party of its obligations under this Service Agreement, including, without limitation, suits by third Persons, shall either Party be liable for or obligated in any manner to pay incidental, special, punitive, consequential or indirect damages of any nature incurred by either Party whether occurring during or subsequent to the performance of this Service Agreement.

Section 11.04 Survival. This Article XI shall survive termination of this Agreement.

Section 11.05 Limitation of Liability. Notwithstanding anything herein to the contrary, the maximum liability of the Contractor to the County pursuant to this Service Agreement for damages, credits or payments shall be determined in accordance with the provisions of this Service Agreement.

ARTICLE XII

EVENTS OF DEFAULT

Section 12.01 Remedies for Default. The Parties agree that in the event of the breach by any Party of an obligation under this Service Agreement, that neither Party shall have the right to terminate this Agreement except for and as a result of an Event of Default as described in Sections 12.02 and 12.03. With respect to and as a result of any breach or default under this Service Agreement which is not an Event of Default as described in Sections 12.02 or 12.03, which are not expressly subject to resolution pursuant to Article IX, the Parties acknowledge that the exclusive remedies of the Party not in breach or default shall be either (i) the payment of such liquidated damages, damages or credits as are specifically provided herein, or (ii) if liquidated damages, damages or credits are not specifically provided herein, specific performance or such other remedies in law or equity as may be available to compel specific performance.

Section 12.02 Events of Default by the Contractor. Each of the following shall constitute an Event of Default on the part of the Contractor:

(a) The persistent or repeated failure or refusal by the Contractor to fulfill all or any of the Contractor's obligations under this Service Agreement, or the persistent or repeated failure of the Guarantor to fulfill all or any of the Guarantor's obligations under the Guarantee, unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or

by County Fault, except insofar as such refusal or failure relates to payment obligations of the Contractor, in which case Section 12.02 (e) shall govern and except insofar as it relates to performance guarantees in which case Section 12.02 (d) shall govern; provided, however, that no such default shall constitute an Event of Default giving the County the right to terminate this Service Agreement under this Section 12.02 unless and until:

(i) the County shall have given prior written notice to the Contractor and the Guarantor specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Service Agreement or the Guarantee on the part of the Contractor or the Guarantor; and,

(ii) the Contractor or the Guarantor has not corrected such default or has not taken reasonable steps to commence to correct the same within thirty (30) Days from the date of receipt of the notice given pursuant to clause (a) (i) of this Section 12.02 and thereafter does not continue to take reasonable steps to diligently correct such default.

(b) the Contractor or the Guarantor (i) being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) being or becoming a party to 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 if involuntary in nature, has not been dismissed within sixty (60) Days, or (iii) taking any action approving of, consenting to, or acquiescing in, any such proceeding, or (iv) being a party to the levy of any distress, execution or attachment upon the property of the Contractor or the Guarantor which shall substantially interfere with the Contractor's performance hereunder. In the

event of the Contractor or the Guarantor being or becoming insolvent or bankrupt, the Contractor shall (i) assume or reject this Service 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 Service Agreement for reasons other than the event set forth in this paragraph; (iii) compensate or provide adequate assurance that it will promptly compensate the County for any amounts due the County pursuant to Article VI; and (iv) provide adequate assurance of future performance under this Service Agreement under 11 USC §365 (b)(2)(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 defease the Bonds (other than any Bonds issued to finance the Expansion) pursuant to the terms of this Service Agreement. The foregoing provisions shall not prevent the County from requesting such other conditions to assumption of this Service Agreement, as it deems reasonable and necessary.

(c) The Contractor's or the Guarantor's ceasing to pay its respective debts, which are not being contested in good faith, as they mature or the written admission by Contractor or the Guarantor that it is insolvent or bankrupt, or the filing by Contractor or the Guarantor of a voluntary petition under the Federal Bankruptcy Code or under the laws of any other jurisdiction, the consent or acquiescence by Contractor or the Guarantor to the appointment by a court of a receiver, liquidator or trustee for all or a substantial portion of its property or business, or the making by the Contractor or the Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of, the Contractor's or the Guarantor's property or business or the levy of any distress, execution or attachment of the property and assets of the Contractor or the Guarantor which would substantially interfere with

the Contractor's performance under this Service Agreement or the Guarantor's performance under the Guarantee.

(d) Failure by the Contractor, for a period of twelve (12) consecutive months, to operate the Facility at an average throughput capacity of at least eighty-five percent (85%) of the Processing Guarantee unless due to Uncontrollable Circumstance or County Fault; provided, however, that the County has made available sufficient quantities of Processible Waste; and, provided further, that no such default shall constitute an Event of Default giving the County, in its sole discretion, the right to terminate this Service Agreement unless and until:

(i) the County shall have given prior written notice to the Contractor and the Guarantor specifying that the default exists which will, unless corrected, constitute a material breach of this Service Agreement and the Guarantee on the part of the Contractor and the Guarantor; and

(ii) the Contractor and/or the Guarantor has not corrected such default or has not taken reasonable steps to commence to correct same within thirty (30) Days from the date of receipt of the notice given in (i) above of this paragraph (d) and thereafter does not continue to take reasonable steps to correct such default.

(e) Failure on the part of the Contractor to pay all or any amount required to be paid to the County or the Trustee under this Service Agreement when such amount becomes due and payable, unless the same is paid within thirty (30) Days after written demand therefore by the County accompanied by notice that unless the same is not so paid, such failure to pay will constitute an Event of Default, unless a dispute with respect to any such amount is being pursued under the provisions of Article IX.

(f) Failure on the part of the Guarantor to pay all or any amount required to be paid to the County or the Trustee or to perform any obligation under the Guarantee when required, unless the same is paid or performed within thirty (30) Days after written demand therefore by the County accompanied by notice that unless the same is not so paid or performed, such failure will constitute an Event of Default.

(g) The failure of the Contractor or the Guarantor to timely comply with the final determination and order of the Independent Engineer with respect to any dispute required by this Service Agreement to be resolved pursuant to Article IX or a court order.

Section 12.03 Events of Default by County. Each of the following shall constitute an Event of Default on the part of the County:

(a) The persistent or repeated failure or refusal by the County to fulfill all or any of its obligations under this Service Agreement, except insofar as such failure or refusal relate to payment obligations of the County, in which case Section 12.03 (b) shall govern, unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or Contractor Fault; provided, however, that no such default shall constitute an Event of Default giving the Contractor the right to terminate this Service Agreement under this Section 12.03 unless and until:

(i) the Contractor shall have given the County prior written notice specifying that a particular default or defaults exist, which will, unless corrected, constitute a material breach of this Service Agreement on the part of the County; and

(ii) the County has not corrected such default or has not taken reasonable steps to commence to correct the same within thirty (30) Days from the date of the

notice given pursuant to clause (a) (i) of this Section 12.03 and thereafter does not continue to take reasonable steps to correct such default.

(b) Failure on the part of the Trustee or the County to pay all or any amount required to be paid to the Contractor under this Service Agreement and the Indenture when such amount becomes due and payable, unless the same is paid within thirty (30) Days after written demand therefore by the Contractor accompanied by notice that unless the same is not so paid, such failure to pay will constitute an Event of Default, unless a dispute with respect to any such amount is being pursued under the provisions of Article IX.

(c) The County (i) being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with, or for the benefit of, its creditors or consenting to, or acquiescing in, the appointment of a receiver, trustee or liquidator for a substantial part of its property or (ii) being or becoming a party to a bankruptcy, winding up, reorganization, insolvency arrangement or similar proceeding instituted by or against the County under the laws of any jurisdiction, which proceeding has not been dismissed within sixty (60) Days, or (iii) taking any action approving of, consenting to, or acquiescing in, any such proceeding, or (iv) being a party to the levy of any distress, execution or attachment upon the property of the County which shall substantially interfere with its performance hereunder. In the event of the County being or becoming insolvent or bankrupt, the County shall (i) assume or reject this Service 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 Service Agreement for reasons other than the event set forth in this paragraph; (iii) compensate or provide adequate assurance that it will promptly compensate the Contractor for any amounts due the Contractor pursuant to this Service Agreement. The foregoing provisions shall not prevent

the Contractor from requesting such other conditions to assumption of this Service Agreement, as it deems reasonable and necessary.

(d) The failure of the County to timely comply with the final determination and order of the Independent Engineer with respect to any dispute required by this Service Agreement to be resolved pursuant to Article IX or a court order.

ARTICLE XIII

TERMINATION

Section 13.01 Mitigation. The Contractor and the County agree that in the event either Party is terminated by the other Party due to an Event of Default, the injured Party is entitled only to the rights and remedies specified in this Article XIII and for damages as specified in other provisions of this Service Agreement accruing or accrued prior to the effective date of such termination; provided, however, that the injured Party is obligated, to the extent not detrimental to its interests and within any applicable provisions of law, to mitigate the damages, costs and expenses incurred by reason of such Events of Default and to credit the savings therefrom to any damages, costs and expenses otherwise payable by the defaulting Party.

Section 13.02 Termination by County for Contractor Event of Default.

(a) If this Service Agreement is terminated by the County due to an Event of Default by the Contractor, the County may elect either the remedy provided in paragraph (1) below or that provided in paragraph (2) below:

(1) (i)(A) If termination occurs between the Effective Date and November 30, 2014, then the Contractor shall pay the County an amount sufficient to defease the outstanding aggregate principal amount of the Bonds, plus Additional Bonds issued from time to time for Capital Projects, if any, pursuant to Section 8.06, plus the County Contribution, but

excluding any Bonds issued to finance the Expansion. In any event, such amount shall be net of funds from Bond proceeds and insurance proceeds which are available under the terms of the Indenture for the redemption of such Bonds or such portion of the Bonds. The Contractor shall pay such amount in accordance with Section 13.05.

(B) If termination occurs after November 30, 2014, then the Contractor shall pay the County an amount equal to the full Initial Operation and Maintenance Charge for the year in which the termination occurs, as such amount has escalated in accordance herewith (and the calculation of such amount shall assume that the County has directed the full Guaranteed Tonnage to the Facility during such year). The Contractor shall pay such amount in accordance with Section 13.05.

(ii) If the Contractor is required to pay the County the amount calculated pursuant to (i), then the Contractor at its sole option may elect, upon the payment of such amount, to occupy the Facility Site for a period of one (1) year from the effective date of the termination of this Service Agreement, during which period of time the Contractor shall be permitted to salvage and sell any component of the Facility, and the County shall assign without additional compensation its right and title to the Facility, fixtures, equipment, capital improvements, and any other property purchased or constructed with the proceeds of the Bonds, any Additional Bonds and the County Contribution which are located on the Facility Site, excluding, however, the Expansion and title to the Facility Site, to the Contractor. If the Contractor elects to occupy the Facility Site on or before the expiration of said one (1) year period, the Contractor shall restore the Facility Site (other than the Expansion and other County infrastructure) to grade. Upon the expiration of such one (1) year period, the Contractor shall vacate the Facility Site; or

(2) The County shall retain the Facility, in which case the Contractor shall:

(i) If termination occurs on or prior to November 30, 2014, then within ninety (90) Days of such notice of termination, make any repairs required and perform performance tests of the Facility pursuant to Schedule 5 to determine whether the Facility is capable of meeting the requirements of Section 16.01 (b). The Contractor may performance test the Facility more than once during such period. In the event the final performance tests demonstrate that the Facility does not meet such requirements, the Contractor shall pay as liquidated damages ~~$2,000,000~~3,000,000 times each percent the performance tests demonstrate that the Facility is below 96% of the Daily Guaranteed Capacity at which the Facility was Accepted (but not in excess of the Full Acceptance Standard) as adjusted for Uncontrollable Circumstances, County Fault or County Work Change. The Contractor's maximum liability shall not exceed the Facility Price. If the Contractor fails to performance test the Facility within such ninety (90) Day period due to Contractor Fault or fails to meet the Environmental Guarantee on air emissions, the Contractor shall pay liquidated damages equal to the Facility Price. If the Contractor fails to meet the Maximum Utility Utilization Guarantee for sanitary sewage, the Contractor shall pay an amount to be determined by the Independent Engineer sufficient to make repairs to meet such guarantee. For purposes of demonstrating compliance with the Environmental Guarantee for air emissions, the Facility must demonstrate compliance at a steam flow no lower than the steam flow demonstrated during the Daily Guaranteed Capacity test conducted pursuant to this Section. The Contractor may reduce steam flow during the Daily Guaranteed Capacity test to enable the Facility to demonstrate compliance with the Environmental Guarantee for air emissions.

(ii) Operate the Facility pursuant to this Service Agreement and pay all applicable damages provided under this Service Agreement during all or a portion of the 90 Day period in (i) above utilized to perform the performance test. The Contractor shall be entitled to all payments provided under this Service Agreement until such requirements are met.

(iii) Pay the County $10,000,000 in liquidated damages if the termination notice occurs in the first fifteen (15) years following the Acceptance Date which payment shall be reduced by $1,000,000 per year thereafter until such payment reaches $2,000,000 for the remainder of the term of the Service Agreement.

(b) Upon termination of this Service Agreement pursuant to Section 13.02(a)(2), the Contractor shall, in a timely manner to permit the continued operation of the Facility, (i) grant to the County a paid-up, royalty-free nonexclusive license to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility; (ii) supply at their fair market price any proprietary components needed for continuing the operation of the Facility; (iii) assign for the benefit of the County all maintenance and supply contracts, turn over to the County all spare parts currently in inventory, whether or not such spare parts were initially paid for with County funds, and turn over to the County the following mobile equipment: two (2) front end loaders, a street sweeper, a forklift and a pick-up truck, all of which shall be operable and in reasonably well maintained condition; (iv) assist the County by providing initial training of personnel as may be reasonably necessary to enable the County to continue with the operation of the Facility and the County shall pay the Contractor for its Direct Costs, to the extent of Cost Substantiation, including profit, incurred by the Contractor in the performance of such services; and (v) provide reasonably required non-technical and technical design, construction and operational information, whether or not

proprietary, including technical specifications and as-built drawings (in electronic format) of the Facility and assign or provide any other license, permit or consent which is necessary for the operation, maintenance and repair of the Facility. In any such event the Contractor shall be entitled to payment of the Service Fee pursuant to Article VI prior to the effective date of the County's notice of termination of this Service Agreement pursuant to Section 12.02.

Section 13.03 Termination by Contractor For County Event of Default. If the Contractor terminates this Service Agreement for an Event of Default on the part of County pursuant to Section 12.03 of this Service Agreement, the County shall pay the Contractor an amount equal to: (a) the Service Fee payable up to the effective date of termination; plus (b) all Direct Costs incurred by the Contractor in connection with such termination, including cancellation charges, if any, from contractors, subcontractors, or suppliers, for which the Contractor shall provide Cost Substantiation, excluding profit; plus (c) amounts expended by the Contractor in connection with Capital Projects, if any, to the extent not otherwise recovered by the Contractor under this Service Agreement; plus (d) the amount of $10,000,000, if the termination notice occurs in the first fifteen (15) years following the Acceptance Date (reduced by $1,000,000 per year thereafter until such payment reaches $2,000,000 for the remainder of the term of the Service Agreement); minus (e) the amount of any adjustments favorable to the County, including Monthly Damages payable by the Contractor to the County pursuant to Section 6.06.

Section 13.04 Termination for Uncontrollable Circumstance.

(a) Termination by either Party due to the occurrence of an Uncontrollable Circumstance pursuant to Section 7.02 (c) or Section 7.03 (c), shall be effective upon thirty (30) Days' prior written notice of such termination by either Party. Upon such termination, neither Party shall be obligated to the other for the payment of any costs or expenses, except as accrued

to date or otherwise specifically provided in this Service Agreement. Upon such termination, the County shall pay the Contractor for any additional incremental Direct Costs incurred by the Contractor prior to the effective date of such termination, to the extent of Cost Substantiation, excluding profit, which were not paid by the County through the effective date of such termination as part of the Service Fee, subject to the Disposal Cost Increase Limitation unless the County has elected to pay amounts in excess of such limitations.

(b) Upon termination of this Service Agreement pursuant to Section 7.03 (c) and this Section 13.04, and if the County elects to continue operation of the Facility within five (5) years of such termination, the Contractor shall have the first right of refusal to operate the Facility. The Contractor shall, if the County takes over operation, in a timely manner to permit the continued operation of the Facility, (i) grant to the County a paid-up, royalty-free nonexclusive license to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility; (ii) supply at their fair market price any proprietary components needed for continuing the operation of the Facility; (iii) assign for the benefit of the County all maintenance and supply contracts; (iv) assist the County by providing initial training of personnel as may be reasonably necessary to enable the County to continue with the operation of the Facility and the County shall pay the Contractor for its Direct Costs, to the extent of Cost Substantiation, including profit, incurred in the performance of such services; and (v) provide reasonably required non-technical and technical design, construction and operational information, whether or not proprietary, including technical specifications and as-built drawings (in electronic format) of the Facility and assign or provide any other license permit or consent which is necessary for the operation, maintenance and repair of the Facility.

Section 13.05 Manner of Termination Payment; Transfer of Assets. Within ninety (90) Days following the effective date of termination of this Service Agreement, the Parties shall reconcile all amounts then due and payable to either Party under the terms of this Service Agreement. Upon reaching the total amount of the outstanding unpaid balance upon determination of the total amount which either Party may owe the other Party as a result of such reconciliation, the County or the Contractor, as the case may be, shall pay such amount within thirty (30) Days of the date of determination of said final amount in complete discharge of each Party's obligations to the other Party under this Service Agreement, except those obligations arising out of any Sections of this Agreement which explicitly survive the termination of this Service Agreement. In addition, upon the termination of this Service Agreement, the Contractor shall turn over to the County (a) all spare parts currently in inventory, whether or not such spare parts were initially paid for with County funds, (b) the following mobile equipment: two (2) front end loaders, a street sweeper, a forklift and a pick-up truck, all of which shall be operable and in reasonably well maintained condition and (c) a nonexclusive license to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility; provided that the County shall pay the Contractor any Direct Costs incurred by the Contractor in providing the materials or information set forth in this clause (c).

Section 13.06 Survival. This Article XIII shall survive termination of this Service Agreement.

ARTICLE XIV

CONFIDENTIALITY

Section 14.01 Confidential Information. The County acknowledges that the Contractor owns or has in its possession or control Confidential Information. The Contractor shall deliver to

the County two (2) copies of Operation and Maintenance Manuals and one complete set of current "as built" drawings (in electronic format) as specified in Schedule 16 of the Construction Agreement, specifications, prints and technical data sheets relating to the Facility which the County shall hold confidential pursuant to the terms of this Article XIV.

Section 14.02 County Obligation of Confidentiality.

(a) The County shall hold in strict confidence any Confidential Information which it obtains from the Contractor and shall take all reasonable precautions to prevent disclosure of Confidential Information to third Persons, except for disclosures permitted under this Service Agreement. The County shall only use Confidential Information for purposes of its rights and interests in the Facility under this Service Agreement. The Contractor recognizes and agrees, however, that disclosure of Confidential Information may be permitted pursuant to: (1) the Consulting Engineer's performance of its responsibilities in connection with its duties for the County, but only to the extent that such disclosure is authorized under an agreement providing appropriate disclosure restrictions entered into between the Contractor and the Consulting Engineer; (2) disclosures to any governmental agency necessary to obtain and maintain any permits, licenses, or other approvals with respect to the operation and maintenance of the Facility pursuant to federal, State or local regulatory requirements; and (3) disclosures permitted pursuant to Section 14.02 (b) of this Service Agreement. The County shall promptly notify the Contractor of any request for disclosure of Confidential Information and shall, to the extent permitted by State law, limit the scope of disclosure of such Confidential Information to the purpose of such request. The County, to the extent authorized by applicable provisions of State law pertaining to public records, shall disclose such Confidential Information only upon prior written authorization by the Contractor. Prior to the disclosures required by the

immediately preceding sentence, the Contractor may participate with the County in discussions with such requesting Person and may comment on the scope and content of such requested Confidential Information.

(b) The Parties acknowledge that the rights and obligations of the Parties set forth herein with respect to Confidential Information are subject to applicable provisions of State law pertaining to public records. The County shall give the Contractor notice immediately upon receipt of any request for Confidential Information made pursuant to such provisions of State law. The County shall consult with the Contractor prior to any response to such request, and within the time provided by such applicable provisions of State law prior to compliance with such request for disclosure, fully cooperate with the Contractor in negotiations with the Persons requesting such information or in any legal action by the Contractor to enjoin the release of said Confidential Information; provided, however, that unless prohibited by a court of competent jurisdiction, disclosure by the County of such Confidential Information pursuant to such applicable provisions of State law pertaining to public records shall not violate the terms of this Section 14.02

Section 14.03 Identification of Confidential Information. The Contractor shall clearly identify as such Confidential Information which the Contractor discloses to the County, its representatives or consultants. Any document or portion of a document containing Confidential Information which is delivered by the Contractor to the County, or its representative or consultant, shall be clearly labeled with the words "Confidential or Proprietary Information." Any other form of Confidential Information shall be clearly identified by the Contractor as such prior to or promptly after disclosure to the County (provided that the County's obligation does not accrue until receipt of Contractor's notice), its agents or representatives in such manner as to

reasonably put any recipient of such information on notice of the confidential nature of such communication. Upon notice that the County has been requested to disclose Confidential Information pursuant to the provisions of State law pertaining to public records, the Contractor shall further separately identify that information, if any, which, in the opinion of the Contractor, is not included within the meaning of such provisions of State law, and the statutory basis therefore; provided, however, that such opinion of the Contractor shall in no way modify the County's obligation to disclose such information in accordance with the provisions of such law and the provisions of Section 14.02.

Section 14.04 Survival. This Article XIV shall survive termination of this Service Agreement.

ARTICLE XV

REPRESENTATIONS

Section 15.01 Representations of County. The County represents to the Contractor that:

(a) The County is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Service Agreement;

(b) The County has the power, authority and legal right to enter into and perform its obligations under this Service Agreement as of the Effective Date, and the execution and delivery hereof by the County (i) have been duly authorized by its Board of County Commissioners, (ii) do not require any other approvals by any other governmental officer or body, other than those permits or approvals contemplated to be obtained after the Effective Date; (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to the County, and (v) do not constitute a default under, or result in

the creation of, any lien, charge, encumbrance or security interest upon any assets of the County under any agreement or instrument to which the County is a party or by which the County or its assets may be bound or affected.

(c) This Service Agreement has been duly entered into and delivered by the Board of County Commissioners of the County and constitutes a legal, valid and binding obligation of the County, fully enforceable, as of the Effective Date, in accordance with its terms; and

(d) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the County's knowledge, threatened against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Service Agreement, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby.

Section 15.02 Contractor's Representations. The Contractor hereby represents to the County that:

(a) The Contractor is qualified to do business in the State and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Service Agreement;

(b) The Contractor has the power, authority and legal right to enter into and perform its obligations set forth in this Service Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained

after the Effective Date, (iii) will not violate any judgment, order, law or regulation applicable to the Contractor or any provisions of the Contractor's articles of incorporation and by-laws and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected;

(c) The Contractor holds, or is expressly authorized under, the necessary patent rights, licenses and franchises to construct and operate and maintain the Facility pursuant to the terms of the Construction Agreement and this Service Agreement;

(d) This Service Agreement has been duly entered into and delivered and, as of the Contract Date, constitutes a legal, valid and binding obligation of the Contractor, fully enforceable, as of the Effective Date, in accordance with its terms; and

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Contractor's knowledge, threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of the Construction Agreement or this Service Agreement, or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

ARTICLE XVI

MISCELLANEOUS

Section 16.01 Term.

(a) Unless sooner terminated in accordance with the provisions of this Service Agreement, this Service Agreement shall commence on the Acceptance Date and continue in effect until November 30, 2024; provided that (i) the County may terminate this Service Agreement on November 30, 2019 by providing written notice thereof to the Contractor no ~~earlier than September 1, 2018 and no~~ later than November 29, 2018 and (ii) the Contractor may terminate this Service Agreement on November 30, ~~2020~~2019 by providing written notice thereof to the County [no earlier than September 1, 2018 and] no later than November 29, ~~2018.~~2017.

(b) Twelve (12) months prior to November 30, 2014 (a), the County shall have the right to require the Contractor to perform performance tests on the Facility pursuant to Schedule 5 to determine whether the Facility is capable of meeting the performance guarantees specified in Article V and Schedule 2. In the event such performance tests demonstrate that the Facility does not meet the Daily Guaranteed Capacity, the Contractor shall modify the Facility, or take such other appropriate measures as are necessary to enable the Facility to meet the Daily Guaranteed Capacity (subject to the four percent (4%) variance set forth in the next sentence), at the Contractor's cost, prior to November 30, 2014. In addition, the Contractor shall supply all materials and take all actions required by Section 13.02 (b) as requested by the County; provided, however, that if the Daily Guaranteed Capacity demonstrated by the final performance tests is more than four percent (4%) under those at which the Facility was Accepted (but not greater than the Full Acceptance Standard) as adjusted for Uncontrollable Circumstances, County Fault and County Work changes, the Contractor shall be obligated to pay as liquidated damages $2,000,000 times each percent such performance tests demonstrate that the Facility is below 96% of such Daily Guaranteed Capacity. The Contractor's maximum liability under this

Section 16.01 (b) shall not exceed the amount of the Facility Price. If the Contractor fails to performance test the Facility within such year due to Contractor Fault or fails to meet the Environmental Guarantee on air emissions, the Contractor shall pay liquidated damages equal to the Facility Price. If the Contractor fails to meet the Maximum Utility Utilization Guarantee on sanitary sewage, the Contractor shall pay an amount to be determined by the Independent Engineer sufficient to make repairs to meet such guarantee. For purposes of demonstrating compliance with the Environmental Guarantee for air emissions, the Facility must demonstrate compliance at a steam flow no lower than the steam flow demonstrated during the Daily Guarantee Capacity test conducted pursuant to this Section. The Contractor may reduce steam flow during the Daily Guaranteed Capacity test to enable the Facility to demonstrate compliance with the Environmental Guarantee for air emissions.

Section 16.02 Visiting Rights.

(a) During the term of this Service Agreement, the County's invitees (except for Solid Waste competitors of the Contractor) and representatives of regulatory agencies shall have the right to visit the Facility in the presence of a Contractor representative, if approved in advance by the Contractor (which approval shall not be unreasonably withheld); provided, however, that such visit shall be conducted in a manner so as to minimize interference with the Contractor's performance of its obligations under this Service Agreement and its operation of the Facility. No photographs of the Facility or Facility Site by competitors of the Contractor shall be allowed without Contractor's prior written consent and no photographs for publication by any Person shall be allowed without Contractor's consent which shall not be unreasonably withheld.

(b) In connection with any such visits, the County shall comply, and shall cause its agents, representatives, employees or invitees to comply, with all reasonable rules and

regulations adopted by the Contractor, including a requirement that each Person visiting the Facility Site shall sign a statement agreeing (i) to assume the risk of injury or death during the inspection or visit but not the risk of injury or death due to the intentional or negligent acts or omissions of the Contractor and (ii) not disclose or use any Confidential Information other than for the purpose for which it was disclosed. The Contractor shall have no obligation to disclose Confidential Information to members of the public who are invitees of the County. Individuals employed or retained by the County or the Consulting Engineer making more than one visit to the Facility Site shall be required to sign such statement at their initial visit and such statement shall apply to all subsequent visits made by that individual.

(c) The Contractor may entertain visitors at the Facility.

Section 16.03 Industrial Property Rights.

(a) The Contractor shall pay all royalties and license fees (except as otherwise provided in this Service Agreement) relating to the design, construction, performance testing, operation and maintenance of the Facility. The Contractor hereby warrants that the design, construction and performance testing of the Facility, and the contemplated operation and maintenance of the Facility and the use of any component unit thereof and the use of any article, machine or process, or a combination of any or all of the aforesaid, by the County or any third Person shall not infringe any patent, trademark or copyright of any other third Person. The Contractor shall defend any claim or lawsuit brought against the County or any of its officials, Commissioners, employees or representatives, including any claim or lawsuit for infringement of any patent, trademark or copyright relating to the design of the Facility, or for the unauthorized use of trade secrets by reason of the design, construction, operation or maintenance of the Facility, or the Contractor may, at its option, acquire the rights of use under infringed patents, or

modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe, subject to the provisions of Section 8.02, and the Contractor shall indemnify the County Indemnified Parties and hold each and all harmless against all liability, judgments, decrees, damages, interest, costs and expenses (including reasonable attorneys' fees) recovered against the County and any County Indemnified Party by reason of any such actual or alleged infringement of any patent, trademark or copyright or the unauthorized use of any trade secret.

(b) This Section 16.03 shall survive termination of this Service Agreement.

Section 16.04 Interest on Payments. All payments to be made pursuant to this Service Agreement outstanding after the applicable due date shall bear interest equal to the lesser of interest calculated on the basis of (i) the maximum rate permitted by State law, if applicable, or (ii) the greater of (A) the Prime Rate or (b) the current rate of interest earned on the Bond proceeds. If the County is required to pay interest to the Contractor pursuant to this Service Agreement and the interest is calculated on the basis of the Prime Rate, the County shall be obligated to pay the Contractor up to the Prime Rate plus one percent to the extent that the County earns interest in excess of the Prime Rate on the monies withheld from the Contractor past the applicable due date and the County is permitted by law to retain such interest.

Section 16.05 Compliance with Laws. The Contractor shall comply with all laws and regulations and permits issued thereunder in connection with operation or maintenance of the Facility.

Section 16.06 Assignment. This Service Agreement may not be assigned by either Party without the prior consent of the other Party, except that the Contractor may, without such consent, assign its interest hereunder to any Affiliate which has a credit rating (or its equivalent)

at least equal to that of the Contractor and in which event the Affiliate shall assume all the obligations and undertakings of Contractor under this Service Agreement; provided, however, that such assignment shall not relieve the Guarantor from its obligations and undertakings under the Guarantee and the Guarantor shall execute such documents as are necessary to assure that the Guarantee shall continue and remain in full force and effect. The County may, however, without such consent, assign its interest hereunder to (a) the Trustee as collateral for, or otherwise in connection with, the Indenture, Bonds, Additional Bonds, if any, other arrangements of the financing or refinancing of all or part of the Facility or (b) to a governmental successor of the County or an authority or agency of the County, which shall not relieve the County from its obligations hereunder.

Section 16.07 Subcontracts, Assignment and Default. The Contractor shall use all reasonable efforts to assure that all contracts with subcontractors and suppliers are assignable to Trustee. Additionally, the Contractor shall use reasonable efforts to obtain favorable subcontracts which include competitive warranties and guarantees of services, materials and equipment. Notwithstanding the above, the Contractor may not enter into subcontracts with respect to the continuous operation of the three (3) boiler unit trains and the air pollution equipment. In the event the Contractor desires to enter into subcontracts with respect to the operation of auxiliary systems such as the ferrous system, non-ferrous system, ash loading, the water treatment system or similar auxiliary system, then the County shall have the right of first refusal to perform such operating functions with an appropriate adjustment to the Initial Operation and Maintenance Charge.

Section 16.08 Notices. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to

the following addresses or sent by certified or registered mail, postage prepaid with return receipt requested, at such addresses and effective on receipt thereof:

(a) If to County:

Lee County Contracts Management
PO Box 398
Ft. Myers, Florida 33902-0398

With copies to:

Lee County Attorney
PO Box 398
Ft. Myers, Florida 33902-0398

And

Lee County Solid Waste Division
10500 Buckingham Road
Ft. Myers, Florida 33905

(b) If to Contractor:

Covanta Lee, Inc.
10500 Buckingham Road
Ft. Myers, Florida 33905
Attention: Business Manager

With copies to:

Covanta Lee, Inc.
40 Lane Road
Fairfield, NJ 07007-2615
Attention: President

And

Covanta Lee, Inc.
40 Lane Road
Fairfield, NJ 07007-2615
Attention: General Counsel

Either Party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying Party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such Party by a duly authorized officer or employee.

Section 16.09 Relationship of the Parties. Neither Party shall have any responsibility to perform services for or to assume contractual obligations which are the obligation of the other

Party; nothing herein shall constitute either Party as a partner, agent or representative of the other Party, or to create any fiduciary relationship between the Parties other than as provided in this Service Agreement.

Section 16.10 Waiver. Unless otherwise specifically provided by the terms of this Service Agreement, no delay or failure to exercise a right resulting from any breach of this Service Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Service Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach under this Service Agreement.

Section 16.11 Authorized Representatives. For purposes of this Service Agreement, the Parties' authorized representatives are as follows:

For Contractor:	Tom Mueller Business Manager Covanta Lee, Inc. 10500 Buckingham Road Ft. Myers, Florida 33905
For County:	Lindsey Sampson 10500 Buckingham Road Ft. Myers, Florida 33905

Either Party may change its authorized representative at any time by written notice to the other Party.

Section 16.12 Article and Section Captions; References. The article and Section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

Except as otherwise indicated, all references herein to sections and articles are to sections and articles of this Service Agreement.

Section 16.13 Severability. In the event that any provisions of this Service Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Service Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Service Agreement, as so amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

Section 16.14 Amendment. No amendment, modification or change to this Service Agreement shall be effective unless same shall be in writing and duly executed by the Parties.

Section 16.15 Agreement Governed by State Law. This Service Agreement shall be governed by the laws of the State.

Section 16.16 No Other Agreements. All negotiations, proposals and agreements prior to the Effective Date of this Service Agreement are superseded hereby, there being no agreement or understanding other than those written or specified herein. As of the Effective Date, the Prior Service Agreement shall be superseded in its entirety and this Service Agreement and Schedules hereto, together with the Construction Agreement, and Schedules thereto shall constitute the entire agreement between the County and the Contractor with respect to the design, construction, start-up, Acceptance Testing, operation and maintenance of the Facility.

Section 16.17 Successors and Assigns. This Service Agreement shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of County and the Contractor.

Section 16.18 Execution of Documents. This Service Agreement shall be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.

Section 16.19 Modification of Indenture. The County agrees that during the lesser of the term of this Service Agreement or the effectiveness of the Indenture, no modification or amendment to the provisions of the Indenture that would materially and adversely affect the rights or obligations of the Contractor under this Service Agreement or under the Indenture or Additional Financing Documents, shall be made by the County without the prior written consent of the Contractor.

Section 16.20 Transfer or Removal of Equipment; Liability to Transfer. Upon any termination of this Service Agreement, neither party, as applicable, shall remove any permanent facility, equipment or materials from the Facility Site nor transfer any interest therein, without first providing the other Party with written assurance satisfactory to the other Party that limitations of, and protections against, liability following such removal or transfer are, at a minimum, equivalent to those afforded each party under the provisions of this Service Agreement. In the event of any such transfer or removal, such assurance shall be obtained form the transferee, however, if such written assurances are not obtained, then the transferring Party shall indemnify the other Party for any liability incurred by reason of any such transfer or removal. This Section 16.20 shall survive termination of this Service Agreement.

Section 16.21 Uniform Commercial Code. The Parties agree that this Service Agreement is an agreement for the sale of services, and as such, is not governed, directly, indirectly, or by analogy, by the statutory provisions or judicial interpretations of the Florida Uniform Commercial Code, Florida Statutes, Chapters 671-680 ("Code"). The Parties hereby waive any and all protections, rights or remedies provided by such Code and agree that such Code shall not be utilized to interpret this Service Agreement.

Section 16.22 Waiver of Sovereign Immunity. To the extent permitted by law, the County hereby irrevocably waives any and all defenses it may have on the grounds of sovereign immunity in any action, at law or in equity, which may be brought by the Contractor against the County in connection with this Service Agreement. The County will take appropriate actions to effectuate this waiver of sovereign immunity and indemnities pursuant to State law.

Section 16.23 Press Releases. The Contractor shall consult with the County prior to the issuance of press releases about the Facility.

IN WITNESS WHEREOF, County and Contractor have caused this Service Agreement to be executed in their respective names, have caused their respective corporate seals to be hereto affixed, and have caused this Service Agreement to be attested, all by their duly authorized officers and representatives, and County and Contractor have caused this Service Agreement to be dated as of the date and year first written above.

ATTEST:	**LEE COUNTY, FLORIDA**
By_____	By_____
Deputy Clerk	Name: Douglas St. Cerny Title: Chairman, Board of County Commissioners Lee County
ATTEST:	**COVANTA LEE, INC.**, a Delaware Corporation
By_____	By_____ Name: Title:
APPROVED AS TO LEGAL FORM AND CONTENT	
_____ **OFFICE OF THE LEE COUNTY ATTORNEY**	

SCHEDULES

Schedule	1	-	Guarantee
Schedule	2	-	Performance Guarantees And Full Acceptance Standard And Minimum Acceptance Standard
Schedule	3	-	Operating Parameters
Schedule	4	-	Scheduled and Unscheduled Maintenance
Schedule	5	-	Performance Test Procedures
Schedule	6	-	Power Purchase Agreement
Schedule	7	-	Insurance
Schedule	8	-	Service Fee Adjustment Factor
Schedule	9	-	Pass Through Costs
Schedule	10	-	Covenant of Assurance
Schedule	11	-	Calculation of Disposal Costs
Schedule	12	-	Permits
Schedule	13	-	RESERVED
Schedule	14	-	Indenture

SCHEDULE 1
GUARANTEE

This Guaranty made as of the ___ day of ___ 2005, by Covanta Energy Corporation, a Delaware corporation ("Guarantor"), having its principal place of business in Fairfield, New Jersey, to and for the benefit of Lee County, Florida, a political subdivision of the State of Florida, (the "County"). Guarantor and County are referred to herein individually as a "Party" and collectively as the "Parties."

Section 1 Background and Expansion.

Section 1.1 The County owns and contracts with Covanta Lee, Inc. ("Covanta"), a wholly owned subsidiary of the Guarantor, for the operation and maintenance of a municipal, mass burn, waste-to-energy facility located in the County (the "Facility"), pursuant to that certain Service Agreement, dated as of April 29, 1990 (as amended, supplemented or otherwise modified from time to time) (the "Agreement");

Section 1.2 The County desires to expand the Facility by the construction (and integration with the Facility) of a third boiler unit and related machinery and equipment (the "Project");

Section 1.3 The County and Covanta have entered into an Amended and Restated Service Agreement, dated December __, 2005 (the "Restated Service Agreement") (a) which shall become effective on a date specified therein (the "Effective Date"), (b) which amends and restates the Agreement, and (c) pursuant to which Covanta shall operate and maintain the Facility and the Project, all as more fully set forth in the Restated Service Agreement;

Section 1.4 The County is willing to enter into and perform its obligations pursuant to the Reststed Service Agreement only upon the condition that Guarantor execute this instrument;

Section 1.5 The Guarantor has agreed to guarantee payment and performance of Covanta's covenants, agreements and obligations under the Restated Service Agreement, and any amendment or Change Order thereto; and

Section 1.6 The Guarantor will benefit from the transactions contemplated by the Restated Service Agreement. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantor for the purpose of inducing the County to enter into the Restated Service Agreement, the Guarantor does hereby make the following guarantees to and agreements with the County.

Section 2. Definitions. Capitalized terms used herein shall have the meanings assigned to them herein or, if not defined herein, such terms shall have the meanings assigned to them in the Restated Service Agreement.

Section 3. Guaranty. Beginning on the Effective Date, Guarantor absolutely, irrevocably and unconditionally guarantees, (a) the due and punctual payment of (i) each payment required to be made by Covanta under the Restated Service Agreement, when and as due, including payments in respect of reimbursement of disbursements and interest thereon and (ii) all other monetary obligations whatsoever, including indemnities, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, of Covanta under the Restated Service Agreement, whether such obligations now exist or arise hereafter and subject to all limitations of liability thereunder (all such obligations referred to in this clause (a) being collectively referred to as the "Monetary Obligations") and (b) the due and punctual performance and observance of, and compliance with, all covenants, agreements and obligations of Covanta under or pursuant to the Restated Service Agreement, or any other agreement or instrument entered into by the Covanta related thereto whether such obligations now exist or arise hereafter (all such

obligations referred to in the preceding clauses (a) and (b) being collectively referred to as the "Obligations"). Guarantor further agrees that the Obligations may be extended, amended, modified or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension, amendment, modification or renewal of any Obligation by the County and Covanta.

Section 4. Obligations Not Waived. To the fullest extent permitted by applicable law, Guarantor waives all notices whatsoever with respect to this Guaranty and the Restated Service Agreement or with respect to the Obligations, including presentment to, demand of payment from and protest to Covanta of any of the Obligations, and notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the Obligations of Guarantor hereunder shall not be affected by (a) the failure of the County to assert any claim or demand or to enforce or exercise any right or remedy against Covanta in respect of the Obligations or otherwise under the provisions of the Restated Service Agreement, or otherwise, or, in each case, any delay in connection therewith, or (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, the Restated Service Agreement, or any other agreement to which Covanta is a party.

Section 5. Continuing Guaranty of Payment and Performance. Guarantor further agrees that its guaranty constitutes a continuing guaranty of payment and performance when due, and not of collection, and Guarantor further waives any right to require that any resort be had by the County to any security.

Section 6. No Discharge or Diminishment of Guaranty.

Section 6.1 The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination, or be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, or otherwise be affected, for any reason (other than the performance in full of all Obligations, including the indefeasible payment in full of all Monetary Obligations, or the termination of all the Obligations), including: any claim of waiver, release, surrender, alteration or compromise of any of the Obligations; the invalidity, illegality or unenforceability of the Obligations; the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to Covanta or any other person (for purposes hereof, "person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental authority), or the dissolution, liquidation or winding up of Covanta or any other person; any permitted assignment or other transfer of this Guaranty by the County or any permitted assignment or other transfer of the Restated Service Agreement; any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in Covanta or any other change in ownership or control of Covanta; or the absence of any notice to, or knowledge on behalf of, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses.

Section 6.2. Without limiting the generality of the foregoing, the Obligations of Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the County to assert any claim or demand or to enforce any remedy under the Restated Service Agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of Guarantor or that

would otherwise operate as a discharge of Guarantor as a matter of law or equity (other than the performance in full of all Obligations, including the indefeasible payment in full in cash of all Monetary Obligations, or the termination of all the Obligations).

Section 7. Defenses Waived. The County may compromise or adjust any part of the Obligations, make any other accommodation with Covanta or exercise any other right or remedy available to it against Covanta, without affecting or impairing in any way the liability of Guarantor hereunder except to the extent all the Obligations have been fully and finally performed, including the indefeasible payment in full of all Monetary Obligations, or terminated. To the fullest extent permitted by applicable law, Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against Covanta or any security. Guarantor waives each right and all defenses to which it may be entitled under applicable law as in effect or construed from time to time.

Section 8. Representations and Warranties of Guarantor. Guarantor represents and warrants to the County as follows:

Section 8.1 Organization. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

Section 8.2 Authority Relative to this Guaranty. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by Guarantor of this Guaranty and performance by

Guarantor of its obligations hereunder have been duly and validly authorized by the Board of Directors of Guarantor and no other corporate proceedings on the part of Guarantor are necessary to authorize this Guaranty or performance by Guarantor of its obligations hereunder. This Guaranty has been duly and validly executed and delivered by Guarantor and, as of the Effective Date, this Guaranty constitutes a valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

Section 8.3 Consents and Approvals; No Violation.

Section 8.3.1 Neither the execution and delivery of this Guaranty by Guarantor nor performance by Guarantor of its obligations hereunder will (i) conflict with or result in any breach of any provision of the organizational or governing documents or instruments of Guarantor, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Guarantor, or any of its assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults and violations which would not, individually or in the aggregate, have a material adverse effect on the ability of Guarantor to discharge its obligations under this Guaranty (a "Guarantor Material Adverse Effect").

Section 8.3.2 No declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for performance by Guarantor of its obligations hereunder, other than such declarations, filings, registrations,

notices, authorizations, consents or approvals which, if not obtained or made would not, individually or in the aggregate, have a Guarantor Material Adverse Effect.

Section 9. Agreement to Perform and Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the County has at law or in equity against Guarantor by virtue hereof, upon the failure of Covanta, to perform or pay any Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith, as the case may be, (a) perform, or cause to be performed, such unperformed Obligations and (b) pay, or cause to be paid, to the County the amount of such unpaid Monetary Obligations. Upon payment by Guarantor of any sums to the County as provided above, all rights of Guarantor against Covanta, arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the Monetary Obligations. If any amount shall erroneously be paid to Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of Covanta, such amount shall be held in trust for the benefit of the County and shall forthwith be paid to the County to be credited against the payment of the Monetary Obligations or performance in accordance with the terms of the Restated Service Agreement.

Section 10. Information. Guarantor assumes all responsibility for being and keeping itself informed of Covanta's financial condition and assets, and of all other circumstances bearing upon the risk of nonperformance of the Obligations (including the nonpayment of Monetary Obligations) and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder, and agrees that the County does not have any duty to advise Guarantor of information known to it regarding such circumstances or risks.

Section 11. Termination and Reinstatement. This Guaranty shall be effective as of the Effective Date (a) shall terminate when all the Obligations have been (i) performed in full,

including the indefeasible payment in full of the Monetary Obligations or (ii) terminated and (b) shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the County upon the bankruptcy or reorganization of Covanta or Guarantor or for any other reason.

Section 12. Assignment; No Third Party Beneficiaries. This Guaranty and all of the provisions hereunder shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and nothing herein express or implied will give or be construed to give any entity any legal or equitable rights hereunder. Neither this Guaranty nor any of the rights, interests and obligations hereunder shall be assigned by Guarantor, including by operation of law, without the prior written consent of the County; provided, however, that no assignment or transfer of rights or obligations by Guarantor shall relieve it from the full liabilities and the full financial responsibility, as provided for under this Guaranty, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and the County has consented in writing to such assumption.

Section 13. Amendment and Modification; Extension; Waiver. This Guaranty may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Guaranty shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Guaranty to assert any of its rights under this Guaranty or otherwise shall not constitute a waiver of such rights.

Section 14. Governing Law. It is the express intention of the Parties that all legal actions and proceedings related to this Guaranty or to any rights or any relationship between the Parties

arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State of Florida and the laws of that State shall govern the validity, interpretation, construction and performance of this Guaranty, excluding any conflict-of-law rules which would direct the application of the law of another jurisdiction.

Section 15. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a facsimile communication, of the times of confirmation) if delivered personally, facsimile (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to the County:

Lee County Contracts Management
PO Box 398
Fort Myers, Florida 33902-0398

With copy to:

Lee County Attorney
PO Box 398
Fort Myers, Florida 33902-0398

And copy to:

Lee County Solid Waste Division
10500 Buckingham Road
Fort Myers, Florida 33905

If to the Guarantor:

Covanta Energy Corporation
40 Lane Road
Fairfield, NJ 07007
Attn: General Counsel

With copy to:

Covanta Lee, Inc.
40 Lane Road
Fairfield, NJ 07007
Attn: Project Manager

And copy to:

Covanta Lee, Inc.
10500 Buckingham Road
Fort Myers, Florida 33905
Attn: Business Manager

Section 16. Jurisdiction and Enforcement.

Section 16.1. Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Circuit Court of the State of Florida for the 20th Judicial Circuit and (ii) the United States District Court for the 11th Circuit in the Southern District of Florida for the purposes of any suit, action or other proceeding arising out of this Guaranty or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the Circuit Court of the State of Florida for the 20th Judicial Circuit or the United States District Court for the 11th Circuit in the Southern District of Florida, unless such suit, action or proceeding may not be brought in such courts for jurisdictional reasons. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 15 (or such other address specified by such Party from time to time pursuant to Section 15) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Guaranty or the transactions contemplated hereby in

(i) the Circuit Court of the State for the 20th Judicial Circuit and (ii) the United States District Court for the 11th Circuit in the Southern District of Florida and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 16.2. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Guaranty were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled equitable relief, including without limitation, an injunction or injunctions to prevent breaches of this Guaranty and to specifically enforce the terms and provisions of this Guaranty, this being in addition to any other remedy to which they are justly entitled to, whether at law or in equity.

Section 17. Survival of Guaranty. All covenants, agreements, representations and warranties made by Guarantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Guaranty shall be considered to have been relied upon by the County and shall unconditionally survive the consummation of the transactions contemplated by Amendment No. 6, regardless of any investigation made by the County or on its behalf, and shall continue in full force and effect as long as any Obligations remain outstanding.

Section 18. Effectiveness; Counterparts. This Guaranty shall become effective on the Effective Date. This Guaranty may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

Section 19. Rules of Interpretation. The rules of interpretation specified in Section 2.03 of the Restated Service Agreement shall be applicable to this Guaranty.

Section 20. Severability.

Section 20.1 If any term or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guaranty so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law, in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 20.2. In the event that the provisions of this Guaranty are claimed or held to be inconsistent with any other agreement or instrument evidencing the Obligations, the terms of this Guaranty shall remain fully valid and effective.

Section 21. Entire Guaranty. As of the Effective Date, this Guaranty will embody the entire agreement and understanding of the Parties in respect of the matters contemplated hereby. As of the Effective Date, there shall be no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. As of the Effective Date, this Guaranty shall supersede all prior agreements and understandings between the Parties with respect to the matters contemplated hereby.

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor as of the date first above written.

COVANTA ENERGY CORPORATION

By:_____
Name:
Title:

SCHEDULE 2

PERFORMANCE GUARANTEES

AND

MINIMUM ACCEPTANCE STANDARD

PART A. PERFORMANCE GUARANTEES

Whether the requirements of any of the following paragraphs 1 through 12 have been satisfied shall be determined by testing (except for paragraphs 2 (b), 6(c), 6(d), 9 and 10 which shall be calculated annually in accordance with the requirements of the Acceptance Test plan developed in accordance with Schedule 5 and Section 7.8.2 of Amendment No. 6 of the Service Agreement. The Parties acknowledge that as of the Contract Date, the performance levels of the Expansion cannot be determined at this time. Therefore, several guarantees set forth below shall be determined based on the actual performance of the Expansion.

1. ENERGY EFFICIENCY GUARANTEE

(a) The Energy Efficiency Guarantee for the original two units and associated turbine generator of the Facility is as follows: The Facility shall generate (at the average annual ambient conditions and in accordance with the technical characteristics required by the Power Purchase Agreement) for export and sale at least 610 kWh per Ton of Reference Waste as specified in Table 1 below, when the Facility is operated at a rate of twelve hundred (1200) Tons of Reference Waste per Day. KWh generated for export and sale shall not include energy generated and consumed by the Facility.

TABLE 1

COMPOSITION OF REFERENCE WASTE

5000 HHV

Component	Percent by Weight
Carbon	28.5
Hydrogen	3.8
Oxygen	25.1
Nitrogen	0.5
Sulfur	0.1
Chlorine	0.4
Ash and Inerts	20.9
Moisture	20.7
Total	100.0

(b) As of the Effective Date, the Energy Efficiency Guaranty for the Expansion (expansion unit and associated turbine generator) shall be based on the actual energy efficiency (at the average annual ambient conditions and in accordance with the technical characteristics required by the Power Purchase Agreement) established pursuant to performance testing conducted pursuant to Amendment Number 6 and shall be calculated as follows:

As indicated in the November 28, 1994 Acceptance Test Report the Energy Efficiency Guarantee Tests for the original two units and associated turbine generator of the Facility demonstrated an averaged energy efficiency rate of 679.7 kWh/ton of Reference Waste which was 11.4 percent better then the guaranteed value of 610 kWh/ton of Reference Waste. This same margin shall be used to determine the Energy Efficiency Guarantee for the Expansion. Therefore the Energy Efficiency Guarantee for the Expansion shall be the as tested results divided by 1.114.

For example if the results of the Expansion's Energy Efficiency Test is 630 kWh/ton of Reference Waste then the Expansion's Energy Efficiency Guarantee will be 630/1.114 = 565.5 kWh/ton of Reference Waste.

(c) Should the supply of water or the water treatment system ~~of~~to the Facility limit the processing of Solid Waste for reasons other than Covanta Fault, any such periods of reduced processing must be excluded when determining whether or not the Energy Efficiency Guarantee is being met.,

2. CAPACITY GUARANTEES

(a) Daily Guaranteed Capacity. (i) The Daily Guaranteed Capacity for the original two units of the Facility is as follows: The original two units of the Facility shall Process during a Day not less than twelve hundred (1200) Tons of Reference Waste (the "Daily Guaranteed Capacity").

(ii) The Daily Guaranteed Capacity for the Expansion shall be based on the actual throughput performance testing conducted pursuant to Amendment Number 6 up to a maximum of 636 TPD of Reference Waste. Once the Guarantee is established for the Expansion, the Parties shall combine the Guarantees to establish one Daily Guaranteed Capacity for the entire Facility.

(b) Processing Guarantee.(i) The Processing Guarantee for the original two units of the Facility is as follows: The original two units of the Facility shall Process in a Billing Year of twelve months not less than three hundred seventy two thousand three hundred (372,300) tons of Processible Waste, subject to Part B Section 2 of Schedule 5, except that in the last Billing Year the original two units of the Facility shall Process an amount of Processible Waste not less

than seven thousand one hundred forty (7,140) Tons times the number of full weeks in such Billing Year.

(ii) The Processing Guarantee for the Expansion shall be based on the actual throughput performance testing conducted pursuant to Amendment Number 6 and shall be calculated as follows: The product of (1) the Expansion's actual Daily Guaranteed Capacity (up to a maximum of 636 TPD of Processible Waste subject to Part B Section 2 of Schedule 5) (2) 365 and (3) 0.85 except that in the first and last Billing Year the Expansion shall Process an amount of Processible Waste not less then seven times the Expansions actual Daily Guarantee Capacity (up to a maximum of 636 TPD) of Processible Waste times the number of full weeks in such Billing Year

iii) The Processing Guarantee for the Facility is then the sum of (i) The Processing Guarantee for the original two units of the Facility and (ii) The Processing Guarantee for the Expansion

(iv) Should the supply of water ~~or the water treatment system of~~to the Facility limit the processing of Solid Waste for reasons other than Covanta Fault, any such periods of reduced processing must be excluded when determining whether or not the Processing Guarantee is being met.,

3. PROCESS RESIDUE QUALITY GUARANTEE

(a) The Process Residue Quality Guarantee for the original two units of the Facility is as follows: Subject to Part B.3 of Schedule 5, the original two units of the Facility shall produce (measured prior to ferrous metal removal) Residue when Processing Processible Waste not more

than (i) four percent (4%) combustible matter (dry weight) after taking into account the effect of mercury reduction reagent (ii) thirty percent (30%) moisture (by weight).

~~(b) The Process Residue Quality Guarantee for the Expansion shall be based on the actual performance testing of the Expansion conducted pursuant to Amendment Number 6 and shall be (i) four percent (4%) combustible matter (dry weight) after taking into account the effect of mercury reduction reagent and (ii) thirty percent (30%) moisture (by weight) subject to Part B.3 of Schedule 5 unless the as demonstrated combustible matter during the Expansion's 7 day Daily Capacity Test exceeds four (4%) percent in which case the Process Residue Quality Guarantee for the Expansion shall be (i) the actual percent of combustible matter (dry weight) demonstrated during the Expansion's 7 day Daily Capacity Test after taking into account the effect of mercury reduction reagent and (ii) thirty percent (30%) moisture (by weight) subject to Part B.3 of Schedule 5.~~

~~(iii) The Process Residue Quality Guarantee for the Facility is then determined as follows: The sum of (1) 4% times 1200 and (2) the Process Residue Quality Guarantee for the Expansion in percent as calculated in (ii) above times the Daily Guaranteed Capacity for the Expansion all divided by the sum of (3) 1200 and (4) the Daily Guaranteed Capacity for the Expansion except when an performance test of the Expansion unit is being performed then the Expansion's unit residue Quality Guarantee will be the Residue Quality demonstrated during the Expansion's original performance testing.~~

4. EFFLUENT GUARANTEE

The Facility shall comply with the conditions of all applicable governmental laws, ordinances regulations, licenses, approvals and permits which are in effect on the Contract Date pertaining to (a) storm water management, and (b) the more stringent of (i) all applicable industrial

pretreatment standards for industrial discharges to publicly owned wastewater treatment facilities or (ii) Table 2 below.

TABLE

SANITARY SEWER INDUSTRIAL PRETREATMENT
STANDARDS MAXIMUM CONCENTRATIONS
AND RESTRICTIONS FOR WASTEWATER

Material Characteristic	Maximum Allowable Concentration/Value	
Aluminum (dissolved)	15.0	pmm
Antimonby as (Sb)	0.50	ppm
Arsenic as AS	0.05	ppm
Barium as BA	2.5	ppm
Boron as B	1.0	ppm
Cadmium as CD	0.01	ppm
Chromium as Cr+6	0.05	ppm
Chromium (total)	1.5	ppm
Cobalt as (Co)	5.00	ppm
Copper as Cu	0.4	ppm
Cyanide as (Cn)	0.05	ppm
~~Floride~~Fluoride as F	10.0	ppm
Iron as Fe	5.0	ppm
Lead as Pb	0.1	ppm
Manganese as Mn	0.5	ppm
Mercury as Hg	0.015	ppm
Nickle as Ni	0.5	ppm
Phenols	0.4	ppm
Selenium as Se	0.75	ppm
Silver as Ag	0.5	ppm
Titanium Dissolved (Ti)	1.0	ppm
Zinc as Zn	2.0	ppm

The total of the above cannot exceed 10 mg/l.

Total Dissolved Solids	1875	ppm
ph	6.0 – 10.0	
Temperature	104	°F
Oil and grease	100	ppm
Total Sulfides	0.5	ppm
BOD	300.0	ppm

COD	600.0	ppm
TSS	300.0	ppm
Total Nitrogen (TKN)	30	ppm
Total Nitrogen	10	ppm

None of the following shall be discharged to the treatment works unless certain conditions of pretreatment concentrations and volumes have been especially described and approved by the County:

Berylium	Tin
Bismuth	Uranyl ion
Molybdenum	Rhenium
Tellurium	Strontium

Cyanides or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of 0.05 mg/1 by weight as CN are prohibited from discharge to the treatment works.

5. ENVIRONMENTAL GUARANTEE

(a) The Environmental Guarantee for the original two units of the Facility is as follows: Subject to Article V of the Restated Service Agreement, the Facility shall comply with all applicable environmental federal, State and local laws, rules or regulations and applicable County ordinances and rules and regulations, and any federal, State, County or local permits, licenses or approvals issued thereunder with respect to the Facility; Except permit conditions that are specifically obligations of the County (or which may be outside the control of the Contractor and the Facility Site) such as recycling, flow control, transportation and landfill; and air emissions of heavy metals other than mercury provided that the Contractor demonstrates compliance with the Operating Parameters contained in Schedule 3 B.1, 2 and 3, particulate, and

acid gas permit emission limitations during any such time that emissions of one or more heavy metals exceed the applicable permit limitation

(b) The Environmental Guarantee for the Expansion is as follows: The least stringent of (1) the results during the Acceptance Test for the Expansion and (2) subject to Article V of the Restated Service Agreement, the Expansion shall comply with all applicable environmental federal, State and local laws, rules or regulations and applicable County ordinances and rules and regulations, and any federal, State, County or local permits, licenses or approvals issued thereunder with respect to the Facility; except permit conditions that are specifically obligations of the County (or which may be outside the control of the Contractor and the Facility Site) ~~such as contract compliance by County's contractors associated with the design and construction of the Expansion,~~ opacity measured outside of the Facility's stack, recycling, flow control, transportation and landfill; and air emissions of heavy metals other than mercury provided that the Contractor demonstrates compliance with the Operating Parameters contained in Schedule 3 B.1, 2 and 3, particulate, and acid gas permit emission limitations during any such time that emissions of one or more heavy metals exceed the applicable permit limitation.

6. MAXIMUM UTILITY UTILIZATION GUARANTEE

a. Electricity:

(i) The Maximum Utilization Guarantee for the original two units of the Facility is as follows: The Facility shall not utilize and consume more than 115 kWh of electricity, if purchased, per Ton of Reference Waste.

(ii) As of the Effective Date, the Maximum Utilization Guarantee for the Expansion shall be based on the actual inhouse electricity consumption established pursuant to performance testing conducted pursuant to Amendment Number 6 and shall be calculated as follows:

As indicated in the November 28, 1994 Acceptance Test Report, the original two unit Facility demonstrated an average electricity consumption rate of 89.8 kWh/ton of Reference Waste which is 78.1 percent of the guaranteed value of 115 kWh/ton. This same margin shall be used to determine the guarantee for the Expansion. Therefore the Maximum Utility Utilization Guarantee for the Expansion shall be the as tested results divided by 0.781.

For example if the results of the Expansion's inhouse electricity consumption test is 95 kWh/ton of reference waste then the Expansion's guarantee will be 95 / 0.781= 121.6 kWh/ton of Reference Waste.

(iii) Should the supply of water ~~or the water treatment system of~~to the Facility limit the processing of Solid Waste for reasons other than Covanta Fault, any such periods of reduced processing must be excluded when determining whether or not the Maximum Utilization Guarantee for the Facility is met.,

b. Sanitary Sewage: The Facility shall not require disposal of more than a total of 40 gallons ~~(not to exceed 83 gallons of waste water per Ton of Reference Waste)~~ of wastewater per Ton of Reference Waste and the sanitary wastewater and Facility water systems blowdown discharged from the Facility ~~together~~to the sanitary wastewater system shall comply with the Effluent Guarantee.

c. Propane Gas: The mass burn boilers shall not utilize or consume more than 15,900 million Btu of propane gas per year. . Propane gas is to be used to meet environmental permit conditions during start-up and shutdown of the boiler units, to meet minimum furnace temperature requirements and during occasional short periods when maintenance prevents Waste from being inputted into the boilers such that the temporary firing of propane will enable the repair to be made without requiring a shutdown and startup of the unit (which would utilize even more propane gas). The Contractor will provide a schedule with its monthly Service Fee invoice which reflects the actual gas usage by day and by boiler unit.

d. Potable Water: The Facility shall not utilize or consume more than ~~806.800~~67,233 gallons of potable water per ~~year~~month for domestic uses only; provided that such limit shall not apply ~~to the extent~~during periods that ~~potable~~reclaimed water is ~~needed for process needs which are~~unavailable for reasons outside of the Contractor's control.

7. LIME CONSUMPTION AND AMMONIA CONSUMPTION GUARANTEE

a. Lime:

(i) Prior to December 1, 2014, the Lime Consumption Guarantee for the original two units of the Facility is as follows: The Facility when tested in accordance with Schedule 5 shall not consume more than 20 pounds of Pebble Lime (CaO – 90% reactive) per Ton of Reference Waste Processed (provided that inlet concentrations of SO_2 and HCl do not exceed the levels specified in Schedule 14 to the Construction Agreement, Part B(1)(a)(1)(b)).

(ii) The Lime Consumption Guarantee for the Expansion shall be based on the actual performance testing of the Expansion conducted pursuant to Amendment Number 6 plus a 20 percent margin (provided that inlet concentrations of SO_2 and HCl do not exceed the levels specified in Amendment No. 6, Schedule ~~14~~ 3, Table A to the Construction Agreement, Part B(1)(a)(1)(b)). The Lime Consumption Guarantee for the Expansion shall be adjusted annually based upon the actual performance during the annual environmental testing plus a 20% margin.

(iii) Prior to December 1, 2014, the Lime Consumption Guarantee for the Facility is then determined as follows: The sum of (1) 20 times 1200 and (2) the Lime Consumption Guarantee for the Expansion calculated in (ii) above times the Daily Guaranteed Capacity for the Expansion all divided by the sum of (3) 1200 and (4) the Daily Guaranteed Capacity for the Expansion.

(iv) Prior to November 30, 2014 the Facility's Lime Consumption Guarantee will be evaluated by the Parties for possible increase or decrease based on actual usage for an adjustment as of December 1, 2014 for the original two units. Prior to December 1, 2014 the Parties will consider application of the process used for the Project's combustion unit (annual adjustment with 20% margin) for use with all three (3) units. Each time the Lime Consumption Guarantee is adjusted it shall be adjusted to pounds per Ton of Reference Waste basis for all tons Processed based on the agreed rates for the Facility's original two units and for the Expansion unit.

(v) The County (or its agent) will have the right to participate in the lime feed rate adjustment process used for the annual stack test.

b. Ammonia: ~~If applicable, the~~The original two units of the Facility~~, when tested in accordance with Schedule 5,~~ shall not consume more than 3.5 pounds of Ammonia per Ton of Reference Waste to achieve an NOx emission rate of 180 ppmdv at 7% O2, 24 hour block average.

8. FERROUS REMOVAL GUARANTEE

The Facility, when tested in accordance with Schedule 5, shall recover from the Residue 80% (by weight) of all magnetic ferrous metals contained therein, which does not pass through a one inch (1") diameter screen, except that if Residue contains less than 8% (by wet weight) of magnetic ferrous metals, the Facility shall recover from the Residue only as much magnetic ferrous metal as is reasonably practicable.

9. ANNUAL AVERAGE ENERGY GUARANTEE

The Annual Average Energy Guarantee for the original two units and associated turbine generator of the Facility is as follows: In each Billing Year the original two units and associated turbine generator of the Facility shall generate in accordance with the technical characteristics required by the Power Purchase Agreement for export and sale a number of KWh which, when divided by the number of Tons of Processible Waste Processed during such Billing Year, shall be at least equal to 610 KWh/Ton, provided that, if the difference between the number of Tons delivered by the County to the Facility in a given Billing Year plus the number of Tons rejected by the Company other than pursuant to Section 4.01(b) of the Service Agreement is less than the Processing Guarantee for the Facility (as determined in this Schedule 2 Part A.2), then said guarantee shall be adjusted downward on a pro rata basis such that where such difference is equal to twenty five (25%) percent the guarantee shall be reduced by 20 KWH per Ton; and further provided that, if such difference is greater than twenty five (25%)percent in a given Billing Year, then said guarantee shall be adjusted on an equitable basis to be determined by the Parties. For purposes of this Guarantee KWh generated for export and sale include all energy generated and available for export or sale, including all energy exported to or consumed by

County facilities, but shall not include energy generated and consumed by the original two units and the associated equipment of the Facility.

The Annual Average Energy Guarantee for the Expansion and associated turbine generator is as follows: In each Billing Year the Expansion shall generate in accordance with the technical characteristics required by the Power Purchase Agreement for export and sale a number of KWh which, when divided by the number of Tons of Processible Waste Processed during such Billing Year, shall be at least equal to the Energy Efficiency Guarantee for the Expansion (as determined in this schedule2 Part A.1.b), provided that, if the difference between the number of Tons delivered by the County to the Facility in given Billing Year plus the number of Tons rejected by the Company other than pursuant to Section 4.01(b) of the Service Agreement is less than the Processing Guarantee for the Facility (as determined in this Schedule 2 Part A.2), then said guarantee shall be adjusted downward on a pro rata basis such that where such difference is equal to twenty five (25%) percent the guarantee shall be reduced by 20 KWH per Ton; and further provided that, if such difference is greater than twenty five (25%)percent in a given Billing Year, then said guarantee shall be adjusted on an equitable basis to be determined by the Parties. For purposes of this Guarantee KWh generated for export and sale include all energy generated and available for export or sale, including all energy exported to or consumed by County facilities, but shall not include energy generated and consumed by the ~~Project~~Expansion.

10. MERCURY REAGENT CONSUMPTION GUARANTEE

The Facility~~, when tested in accordance with Schedule 5,~~ shall not consume more than 1.4 pounds of activated carbon per Ton of Reference Waste to achieve a mercury emission rate of 70 micrograms per dry standard cubic meter corrected to 7% 0_2, or a ~~70~~85% (by weight)

reduction rate of uncontrolled mercury emissions , whichever is less stringent, calculated as an average of three test runs for the original two units, and 28 micrograms per dry standard cubic meter corrected to 7% 0_2, or a 85% (by weight) reduction rate of uncontrolled mercury emissions , whichever is less stringent, calculated as an average of three test runs for the Expansion (the "Mercury Reagent Consumption Guarantee"). If the mercury emission limit is lowered from that set forth above or if another chemical additive (excluding lime) is used for mercury reduction purposes, this Mercury Reagent Consumption Guarantee shall be appropriately adjusted.

11. UREA CONSUMPTION GUARANTEE

The Urea Consumption Guarantee relates only to the Expansion and will be initially established after the expiration of the two (2) year period following the Effective Date and such Guarantee will (a) be based on the performance testing conducted pursuant to Amendment Number 6 and the actual results of Expansion operations during the ensuing two (2) year period and (b) will include a twenty percent (20%) margin above the actual ~~Expansion operating data~~quantity of urea required to meet the Environmental Guarantee. In the event that either the County or the Contractor reasonably demonstrates that there has been a change in the waste stream such that uncontrolled NOx emissions decrease or increase to the extent that the Contractor needs less or more urea than the amount set forth in the Urea Consumption Guarantee, in order to control emissions within permit requirements, then the Urea Consumption Guarantee shall be modified accordingly. The Urea Consumption Guarantee will be measured in gallons of fifty percent (50%) concentration urea per Ton of Reference Waste processed by the Expansion.

12. DOLOMITIC LIME CONSUMPTION GUARANTEE

The Facility shall not utilize and consume in any Billing Year more than ten (10) lbs of dolomitic lime (having a minimum magnesium oxide (MgO) content of thirty-five percent (35%)) per Ton

of Processible Waste Processed. In the event that dolomitic lime with a minimum magnesium oxide (MgO) content of at least thirty-five percent (35%) is not available or should the County request that the Contractor use dolomitic lime with lower than thirty-five percent (35%) magnesium oxide, then the Dolomitic Lime Consumption Guarantee (ten (10) pounds per Ton of Processible Waste Processed) and the level below which the Contractor shares in savings pursuant to Section 5.05(b) (eight (8) pounds per Ton of Processible Waste Processed) shall be appropriately adjusted as reasonably agreed by the Parties. The Contractor shall monitor pH and adjust the use of dolomitic lime in an attempt to maintain the pH of sampled ash in the targeted range of between eight (8) and ten (10). The County will have the ability to monitor the performance of all pH testing and the Contractor shall provide the County with copies of all of the Facility's ash residue conditioning pH monitoring reports. Notwithstanding any provision or definition in this Agreement to the contrary, the first Billing Year shall commence on the Commencement Date (as defined in Amendment No. 6) and end on the last Day of September immediately succeeding such Commencement Date.

For any Billing Year, the actual pounds of dolomitic lime per Ton of Processible Waste Processed consumed by the Facility in such Billing Year shall be compared to the Dolomitic Lime Consumption Guarantee to determine if such guarantee has been met. The actual pounds of dolomitic lime per Ton of Processible Waste Processed consumed by the Facility shall be calculated by dividing the actual pounds of dolomitic lime consumed by the actual Tons of Processible Waste Processed. The actual pounds of dolomitic lime consumed by the Facility shall be calculated as the pounds of dolomitic lime delivered to the Facility during the Billing Year plus the pounds of dolomitic lime in storage at the Facility at the beginning of the first Day

of the Billing Year less the pounds of dolomitic lime in storage at the Facility at the end of the last Day of the Billing Year.

PART B. MINIMUM ACCEPTANCE STANDARD

In order to achieve the Minimum Acceptance Standard, the Facility shall (1) comply with the performance guarantees set forth at Part A.4 and A.5 of this Schedule 2 and (2) comply with not less than eighty five percent (85%) of the performance guarantee set forth at Part A.2 (a) of this Schedule 2.

SCHEDULE 3

OPERATING PARAMETERS

PART A

The Following parameters shall be continuously measured and recorded by the Contractor for each boiler for items, 1, 2 and 3 below when it is Processing Processible Waste and for the Facility for items 4 and 5 below:

Parameters		Tolerance Level
1.	Wet Flue Gas Oxygen (O_2) level when Processing Waste	Average for each Day not to exceed the Operating Condition plus 1.5%
2.	Flue Gas Carbon Monoxide (CO) level when Processing Waste	Four day average not to exceed 100 ppmv.
3.	Economizer or Air Preheater Exit Temperature	Net less than the Contractor's Minimum Operating Condition and On average for each Day not to Exceed the Contractor's Operating Condition plus 125° F.
4.	Condenser Vacuum	An average variance during each day not to exceed plus ~~0.5~~ 50.55 inches Hg from condenser manufacturer's performance curve as shown on Figure 1.
5.	Temperature of Inlet Cooling Water to Condenser	An average variance during each Day not to exceed plus 5 degrees F from cooling tower manufacturer's performance curve as shown on Figure 2.

The Operating Condition for each of the above parameters shall be as set forth in Part B of this Schedule 3. The tolerance levels set forth above will then be applied to the Operating Conditions set forth in Part B of this Schedule3.

Part B

THE CONTRACTOR'S OPERATING CONDITIONS

1.	Wet Flue Gas Oxygen (O_2) level when Processing Waste (average for each Day)	Maximum 9.3% (Not to exceed 9.3%)
2.	Flue Gas Carbon Monoxide (CO) level when Processing Waste (4 day average)	~~100~~<u>≤50</u> ppmv
3.	Economizer or Air Preheater Exit Temperature	Minimum 375°F (not less than 375°F); provided that, if a boiler is operated below 95% maximum continuous rating due to insufficient quantities of Acceptable Waste being delivered, then the minimum temperature shall be reduced to 350°F; further provided that if the County and Contractor observe, during normal inspections, abnormal or excessive corrosion at the outlet to the boiler or inlet to the scrubber or associated ductwork between them, such temperature shall be maintained at a higher temperature to be mutually agreed upon by the parties and the Annual Average Energy Guarantee shall be modified accordingly.
4.	Condenser Vacuum	Condenser manufacturer's performance curve as shown on Figure 1 on Page 3-4 of this Schedule 3.
5.	Temperature of Inlet Cooling Water to Condenser	Cooling tower manufacturer's performance curve as shown on Figure 2 on Page 3-5 of this Schedule 3.

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SCHEDULE 4

SCHEDULED AND UNSCHEDULED MAINTENANCE

During any Billing Year, the County and the Contractor County agree that sixty five thousand seven hundred (65,700) Tons of Processible Waste may be rejected by the Contractor as a result of scheduled and unscheduled downtime of the Facility. The Contractor and the County shall agree, in writing, to the scheduled maintenance periods for the Facility for each Billing Year as required by Section 4.01 (a), and the projected date and duration of each scheduled maintenance period. The Contractor shall specify in writing in a form reasonably acceptable to the County a description of the scheduled maintenance to be performed, and the number of Line Hours of Maintenance for each scheduled maintenance period (not less than 876 total line hours for a 2 combustion/steam generating unit per Billing Year or less if otherwise requested by the Contractor and agreed by the County), and the number of Tons (not in excess of sixty five thousand seven hundred (65,700) Tons) expected to be rejected as a result of the scheduled maintenance, based upon the Nameplate Capacity of one combustion, steam generator line, in tons per hours, times the total number of Line Hours of Maintenance for the Billing Year. The total number of Tons of Processible Waste which are projected to be rejected during the Billing Year as a result of the scheduled maintenance periods shall account for at least twenty-one thousand nine hundred (21,900) Tons of Processible Waste allowed to be rejected by the Contractor pursuant to this Schedule 4. Such projected amount shall be subtracted from sixty five thousand seven hundred (65,700) and the remaining number of Tons shall be the "Unscheduled Maintenance Bank". For any Billing Year in which the total number of Tons actually rejected as a result of scheduled maintenance exceeds twenty-one thousand nine hundred (21,900) Tons but is less than the number of Tons originally projected to be so rejected,

such difference shall be allocated to the Unscheduled Maintenance Bank for the then current Billing Year. In addition, in the event and to the extent in any such Billing Year that any unscheduled maintenance occurs which the Contractor demonstrates incorporates scheduled maintenance as specified in writing hereinabove required for such Billing Year, then the Tons of Processible Waste rejected as a result of such unscheduled maintenance shall be allocated between scheduled maintenance as specified in writing and the Unscheduled Maintenance Bank referred to above prepared pursuant to this Schedule 4.

During any Billing Month in which scheduled or unscheduled maintenance occurs, the Daily Guaranteed Capacity times then number of Days in said Billing Month shall be reduced by the number of Tons which are permitted to be diverted during the period (s) of such maintenance in accordance with the foregoing provisions of this Schedule 4: provided, however, that the foregoing provisions of this Schedule 4 shall not be construed to reduce the Processing Guarantee or Contractor's obligations set forth in Section 4.01 (a). Any unused Line Hours of Scheduled Maintenance or Tons remaining in the Unscheduled Maintenance Bank at the end of the last Day in any Billing Year shall reduced to zero for purposes the next succeeding Billing Year.

SCHEDULE 5

PERFORMANCE TEST PROCEDURES

The purpose of this Schedule 5 is to provide an outline of the procedures for performance tests to be incorporated in the test plan to be developed pursuant to Section 7.8.2 and Schedule 3 of Amendment No. 6 of the Service Agreement. Whenever the Amended and Restated Service Agreement refers to performance tests, such reference shall be deemed to mean the applicable performance testing pursuant to the approved test plan developed in accordance with Section 7.8.2 of Amendment No. 6 of the Service Agreement. For the purposes of performance tests all measured readings and test results shall not be adjusted to account for margin of error.

PART A. PERFORMANCE TESTING

1. COMMENCEMENT

Prior to the commencement of performance testing, the Contractor shall meet with the County and the Consulting Engineer to discuss and review procedures and protocol for the conduct of performance testing in accordance with the County approved test plan.

The Contractor's detailed test plan shall be based on the latest edition as of the Contract Date of the American Society of Mechanical Engineers Power Test Code (ASME PTC) 4 Steam Generating Units and, at the Contractor's option, other ASME PTC'S as required for definitions, symbols, instruments and apparatus used during testing, an the like.

2. GENERAL PROCEDURES FOR PERFORMANCE TESTING.

The purpose of performance testing is to determine the extent to which the Facility complies with all performance guarantees except the Processing Guarantee and the Annual Average Energy Guarantee.

Tons Processed by the actual Processing hours during the test period, excluding allowable shutdown time. Shutdown time for a combustion/steam generation unit shall commence when the steam flow drops below fifty percent (50%) of its normal operating range and shall end when steam flow is restored to fifty percent (50%) of its normal operating range.

The test plan shall provide a method for adjusting the results (or retesting) if the Processible Waste is outside the range of 3800 to 6000 Btu/lb. If the Contractor repeats a performance test more than two times, for reason other than County Fault or Uncontrollable Circumstance, the Contractor shall pay the County's Consulting Engineer's fees associated with such repeat testing.

PART B. PERFORMANCE TESTS

1. ENERGY EFFICIENCY GUARANTEE TEST

The Energy Efficiency Guarantee Test shall be conducted to determine the extent to which the Facility complies with the Energy Efficiency Guarantee. The Energy Efficiency Guarantee Test shall consist of two independent analyses. Each analysis shall be conducted separately for an eight (8) hour period (the "analysis period") and the second such analysis shall be conducted no less than six (6) Days after completion of the first such analysis period; provided, that during the interval between such analysis the Facility shall Process Processible Waste subject to minor Processing interruptions, routine equipment maintenance outages and require equipment testing and installation, all as described in Part A.2 except that the one half Day limitation shall not apply for such 6 Day period for the purposes of this Energy Efficiency Guarantee Test. The Contractor shall use all reasonable efforts to not use propane fuel during the Energy Efficiency Test. Use of auxiliary fuel during the first two analysis periods shall invalidate the test. The

The test plan shall require overall satisfactory operation of the Facility during the performance testing. During performance testing, the Contractor shall operate the Facility in accordance with normal operating procedures and staffing (except that special staffing required to observe, supervise, perform tests, record measurements and take samples is acceptable) and as contemplated by the Service Agreement; and all operations shall be conducted, including weighing of all Solid Waste Delivery vehicles, routing equipment operation and maintenance service, and loading of Residue and normal quantities of Nonprocessible Waste. All instrumentation, meters and recording devices shall be calibrated prior to the tests. The Contractor shall furnish, prior to commencement of performance testing, documentation confirming the calibrations of the instruments to be used during such performance tests. Processing interruptions during performance testing shall not necessarily invalidate performance testing or any individual test (s). Occasional and minor Processing interruptions are considered part of normal Facility Operation. During performance testing, routine equipment maintenance shall be conducted as scheduled and resulting outages shall not necessarily invalidate the performance testing or any individual tests (s). Shutdown of all or part of the Facility to make necessary repairs to equipment or to correct normal operational problems will be permitted. Shutdown time, up to one-half Facility Day or equivalent individual unit hours, may be excluded from the seven (7) Day Capacity Guarantee Test. Shutdown time which can be demonstrated by the Contractor, to the reasonable satisfaction of the County, to be solely caused by the inadvertent Processing of Nonprocessible Waste shall be added to the maximum shutdown allowance, provided that any maintenance performed during such shutdown time shall be charged against the above one-half Facility Day shutdown time. The amount of such time shall be at the County's reasonable discretion. Facility capacity shall be determined by dividing the

protocol shall set forth the method to be used to calculate and subtract the heat added in the event that propane fuel is required to be used during any later analysis periods.

(a) The Measured and Recorded Parameters.

As part of the Energy Efficiency Guarantee Test, the following parameters shall be continuously measured or sampled and recorded during each analysis period:

(i) the weight and feed rate of Processible Waste for each boiler as determined with the crane load cells, using the procedures set forth in Part B.2 (a);

(ii) feedwater rate, temperature and pressure for each boiler;

(iii) ~~attempereator~~attemperator water rate, temperature and pressure for each boiler (except if included above in feedwater measurement);

(iv) steam drum pressure and temperature for each boiler

(v) superheater outlet steam rate, temperature and pressure for each boiler;

(vi) blowdown rate and temperature for each boiler;

(vii) throttle stream flow, temperature and pressure for each turbine;

(viii) electrical output (including kva and power factor) for each turbine generator;

(ix) flue gas rate measured at the stack or the economizer outlet, composition (CO2, O2 and water vapor) and temperature at economizer out for each boiler;

(x) exhaust pressure (condenser vacuum) and temperature for each turbine;

(xi) Facility electrical usage;

(xii) weight and discharge rate of Residue and the percentage of combustible matter in Residue determined in accordance with the Residue Quality Guarantee Test (~~The~~the amount of carbon reagent that results from operation of the carbon injection system for

the Facility shall be subtracted from the unburned carbon results);(xiii) propane quantity use;

(xiv) Combustion and flue gas recirculation flow rates and temperatures;

(xv) Lime, carbon and urea consumption;

(xvi) SNCR carrier water (Project design is based upon 7,000 lb/hr of carrier water). Carrier water use above or below this value will be adjusted for in the calculation of performance; and

(xiv) any other required ~~date~~data.

(b) Determination ~~if~~of HHV

The HHV of Processible Waste delivered during each analysis period shall be determined by using the Facility as a calorimeter in accordance with the ASME PTC 4 for steam generating units and as set fort in this Part B.1 (b). Utilizing the data and measurements from each analysis, averaged for each boiler during the analysis period, calculations shall be made in accordance with ASME PTC 4 to determine, with respect to each boiler, heat losses, heat outputs and heat credits.

Calculations for heat losses shall be in accordance with ASME PTC 4 and shall include:

(i) heat loss in the dry flue gas assuming that the carbon on hydrogen ratio (C/H) is equal to that of Reference Waste);

(ii) heat loss due to moisture in the combustion air and all other moisture in the flue gas;

(iii) heat loss of the boiler blowdown;

(iv) heat loss of the Residue for

(A) unburned carbon in the Residue;

(B) moisture fraction of the Residue; and

(C) dry fraction of the Residue (as determined by ASTM D-2015;

(v) miscellaneous heat loses such as heat loss due to jacket cooling water, e.g., charging chutes and the like; and

(vi) heat loss due to radiation and convection as determined from ASME PTC 4.

The HHV of Processible Waste shall be calculated by dividing the heat input by the weight of Processible Waste Processed as determined with the crane load cells. The heat input shall be the total of all heat output and losses minus heat credits, averaged for the three boilers.

$$\frac{\text{HHV= Output + Losses – Credits =}}{\text{Processible Waste Processed}} \qquad \frac{\text{Input}}{\text{Processible Waste Processed}}$$

(c) Determination of Adjusted Throughout. After the HHV of Processible Waste is determined, the measured waste throughput shall be adjusted to Reference Waste throughout. This adjustment shall be accomplished by multiplying the measure waste (Tons) by the determined HHV and dividing the product thereof by 5000 Btu/lb (Reference Waste).

(d) Adjustment for Steam Flow and Turbine Performance. By determining the actual HHV during each analysis while generating power, each turbine generator's electrical output shall be corrected to the output obtainable at average ambient conditions with Reference Waste as set forth in this Part B.1 (d). After adjustments to heat losses and heat credits as set forth in Part B.1. (b) above, each turbine's throttle steam flow shall be adjusted to the corresponding turbine throttle steam flow which would have been obtained from Reference Waste as set forth in this Part B.1 (d). As shown below, these adjustments shall be utilized to calculate the adjusted turbine throttle steam flow (lbs/hr) which represents each turbine's throttle steam flow that would have resulted if Reference Waste had been Processed during the Energy Efficiency Guarantee test.

Adjusted Turbine Throttle Steam Flow	=	Actual Turbine Throttle Steam Flow	x	Calculated Heat Recovery Efficiency of Boiler Firing Reference Waste / Actual Heat Recovery Efficiency of Boiler

The above term "Calculated Heat Recovery Efficiency of Boiler Firing ~~Boiler Firing~~ Reference Waste" includes corrections due to the Reference Waste Composition per ASME PTC 4. The "Actual Heat Recovery Efficiency of the Boiler" shall be determined by using the combustion/steam generation unit as a calorimeter which shall be accomplished after the calculation of heat losses and heat credits per ASME PTC 4. Each turbine generator's adjusted gross electrical output shall be determined which corresponds to Reference Waste and the local annual average ambient conditions by reason of the adjustment of each turbine's throttle steam flow as set forth above and the associated condenser performance.

(d) Actual Efficiency.

The sum of the adjusted net electrical output from both turbines shall be the adjusted gross electrical output determined pursuant to Part B.1 (c) less the Facility electrical usage as measured during the analysis period. The adjusted net electrical output shall then be divided by the adjusted waste throughput (Tons) which was calculated pursuant to paragraph (c) above to determine the actual energy efficiency of the Facility (the "Actual Efficiency"). The average of the two analyses shall be deemed the sole Actual Efficiency provided however that if the two results differ from the average by more than 5%, the test shall be deemed not valid. The Actual Efficiency shall be compared to the Energy Efficiency Guarantee to determine the extent to which the Facility meets the Energy Efficiency Guarantee.

2. CAPACITY GUARANTEE TEST.

(a) Daily Guaranteed Capacity Test.

The Daily Guaranteed Capacity Test of the Facility shall be conducted during (7) consecutive Days (the "DGC test period") to determine the extent to which the Facility complies with the Daily Guaranteed Capacity. The Distributed control system shall be utilized to the fullest extent possible.

The Tons of Processible Waste required to commence and conduct the Daily Guaranteed Capacity Test shall be specified in the test plan. All Processible Waste delivered to the Facility during the Daily Guaranteed Capacity Test shall be weighed and recorded in accordance with the provisions of the Service Agreement. The delivered Processible Waste shall be mixed and evenly distributed in the pit by the cranes to minimize the variation of the composition of the Processible Waste.

The following ~~parameter~~parameters shall be measured and recorded during the DGC test period:

(i) the weight and feed rate of Processible Waste, total for each combustion/steam generation unit as determined with the crane load cells;

(ii) the percentage of combustible matter in Residue determined in accordance with the Process Residue Quality Guarantee Test (The amount of carbon reagent that results from operation of the carbon injection system for the Facility shall be subtracted from the unburned carbon results) (the frequency of Residue sampling will be at least every two hours) (Note: Ambiguous – Needs discussion);

(iii) the parameters required to be measured and recorded for the Energy Efficiency Guaranteed Test;

(iv) pebble lime consumption, as determined in accordance with the Lime Consumption Guarantee Test (Note: Ambiguous – Needs discussion);

(x) ~~(iv)~~ Ferrous metals recovery, as determined in accordance with Ferrous Removal Guarantee Test;

(xi) ~~(ivi)~~ ammonia consumption, as determined in accordance with the Ammonia Consumption Guarantee Test;

(xii) ~~(ivii)~~ urea consumption, as determined in accordance with the Urea Consumption Guarantee Test;

(xiii) ~~(iviii)~~ carbon consumption, as determined in accordance with the Mercury Reagent Consumption Guarantee Test;

(xiv) ~~(iix)~~ dolomitic lime consumption, as determined in accordance with the Dolomitic Lime Consumption Guarantee Test; and

(vi) the parameters for which CEM's are provided.

During the DGC Test period, the steam flow shall be measured by the difference between the boiler feedwater meters and the blowdown meters, and the hourly average steam flow shall not exceed, at any time during the DGC test period, the hourly average steam flow, which was measured and recorded during the ~~air quality~~most recent annual stock tests for each unit. The number of Tons of Processible Waste Processed during any period in which the steam flow exceeds that measured and recorded during the air quality tests shall be reduced in proportion to the steam generated in excess of that measured and recorded during the air quality tests. For each hour that the average hourly steam flow exceeds the average hourly steam flow demonstrated in the air quality tests, the reduction in Tons shall be calculated as the product of (i) Tons Processed during such period multiplied by (ii) a fraction the numerator of which is the

difference between the average steam flow during such period and the average hourly steam flow measured and recorded during the air quality tests and the denominator of which is the average hourly steam flow recorded during the air quality tests. The total reduction in Tons for the DGC test shall be the sum of the hourly reductions calculated in the previous sentence. Reference to average hourly steam flow in this paragraph shall be deemed to be the ~~less stringent of an one hour average or the~~ averaging period specified in the Facility Title V Permit by the ~~USPA~~DEP for determining maximum ~~Facility capacity.~~hourly steam flow for each unit

The total Processible Waste Processed for the DGC test period shall be measured with the crane load cells. The crane load cells shall be calibrated at the start of the DGC test period and recalibrated once each shift and re-tared every two hours during the DGC test period. As each crane load is lifted from the pit, the load cell shall be allowed to settle in a location directly above the charging hopper of the furnace to be fed before the load weight is recorded. A representative of the County and a representative of the Contractor shall jointly determine and record the calibration and each load weight in a log, provided that the entire crane load is placed in the charging hopper. Loads partially discharged into the hopper shall be prorated. Each representative shall be required to initial each log entry.

The average HHV during the DGC test period shall be determined by at least five (5) HHV determinations of eight-hours each. The above five HHV determinations shall be used to determine the average HHV of the waste during the DGC test period. If the Processible Waste Processed does not have an HHV between 3800 and 5000 Bt/lb., the actual number of Tons of Processible Waste Processed shall be adjusted to an equivalent number of Tons of Reference Waste Processed (the "Adjusted Waste Processed") by multiplying the actual number of Tons of Processible Waste Processed (i) by the actual HHV of the Processible Waste Processed and

dividing by 5000, when the actual energy content is greater than 5000 HHV, or (ii) by the difference between 2.00 and the ratio of the actual HHV divided by 3800, when the actual energy content is less than 3800 HHV.

If the Processible Waste Processed has an HHV between 3800 and 5000 Btu/lb., then the Tons of adjusted Waste Processed shall be deemed to be equal to the actual number of Tons of Processible Waste Processed.

The daily capacity of the Facility (the "Daily Capacity") shall be the aggregate Tons of Adjusted Waste Processed during the DGC test period divided by the actual number of Days of the DGC test period excluding shutdown time.

The Daily Guaranteed Capacity shall be deemed to have been demonstrated if, during the DGC test period, the Daily Capacity is equal to, or greater, than The Daily Guaranteed Capacity, so long as the Residue tested during the DGC test period meets the requirements of the Residue Quality Guarantee. If the average of the results for the composite Residue samples of the Residue fails to meet the requirements of the Residue Quality Guarantee during the DGC test period but is demonstrated to vary from the Residue Quality Guarantee by no more than ten percent (10%), then the Daily Capacity for the Daily Guaranteed Capacity Test shall be reduced by the amount of combustible matter in excess of that allowed by the Residue Quality Guarantee. If the Residue varies by more than ten percent (10%) of the Residue Quality Guarantee, than the Daily Capacity for the Daily Guaranteed Capacity Test shall be deemed to be zero.

3. RESIDUE QUALITY GUARANTEE TEST.

Except when the Residue Quality Test is being performed solely comply with the requirements of other performance tests, the Facility shall be operated at a rate ~~of~~ approximately equal to the Daily Guaranteed Capacity of Processible Waste Processed for an uninterrupted

twenty-four (24) hour period (the "RQG test period"). During the RQG test period Residue shall be segregated from Residue produced outside of the RQG Test period.

As part of the Residue Quality Guarantee Test, the weight and feed rate of Processible Waste Processed as determined with the crane load cells, using the procedure set forth in Part B.2 (a) shall be continuously measured and recorded during the RQG test period.

Representative samples of Residue produced during the RQG test period shall be taken at least every two hours during the RQG test period from the discharge point of the Residue conveyor at a time during which the ferrous and non-ferrous metal recovery systems are not operating. Alternatively, the Parties may agree upon another appropriate composite sampling method. The representative samples of Residue may exclude those items which because of their substantial bulk or general nature can be considered noncombustible, such as Solid Waste bundled by metal or otherwise noncombustible straps or ties (for example, baled newspapers), canned goods in unopened noncombustible containers whose contents have not been exposed to the flame, tree limbs and timbers greater than forty (40) millimeters in diameter, and the like. The composited samples produced during the RQG test period shall be weighed, sampled and analyzed to determine moisture content and dry weight percentage of unburned combustible matter in accordance with procedures described below:

(i) For the determination of the percentage of combustible matter, ASTM D-2015 using an adiabatic bomb calorimeter shall be used. Such determination shall take into account the effect of mercury reduction reagent.

(ii) For the determination of moisture content ASTM method D-3302 shall be utilized.

The foregoing results shall be compared with the Residue Quality Guarantee ("RQG") to determine the extent to which the Facility complies with the RQG.

The test plan shall provide (i) a method of calculating the difference in the weight of Residue if the Residue does not meet the Residue Quality Guarantee and (ii) a method of adjusting the RQG if the heating value of the Processible Waste Processed ~~in~~15 below 3800 Btu/lb.

4. EFFLUENT GUARANTEE TEST.

The test plan shall (a) specify a method of determining whether the Facility complies with the Effluent Guarantee and (b) provide that the Contractor shall perform all tests and monitor all activities required by all laws, ordinances, rules, regulations, license, approvals and permits relating to water quality and effluent disposal. Such test plan shall include provisions for the adjustment of wastewater discharge quantity guarantees if the constituent concentrations in the County influent varies from the concentrations set forth in Schedule 2 which variance adversely affects the Contractor's ability to meet the Effluent Guarantee.

5. ENVIRONMENTAL GUARANTEE TEST.

The Environmental Guarantee Test shall be conducted on each combustion train to determine whether each combustion train and the Facility comply with the Environmental Guarantee.

The Environmental Guarantee Test shall include the testing ~~on~~of air quality, water quality and noise levels by the mutually agreed upon testing laboratory experienced in ~~the~~ testing and evaluating combustion systems. All tests required in connection with any license, approval or permit for the Facility shall also be performed. Monitoring, sampling and testing methods and procedures shall be in compliance with the requirements of all regulatory agencies.

(a) Air Quality Test.

The following parameters shall be measured and recorded during the test:

Emissions, including

(i) Flue gas rate (acfm) and temperature at economizer outlet and stack;

(ii) the items (and at the locations) enumerated in Schedule ~~14.~~2, unless otherwise specified (except with respect to mercury) in any applicable permit for the Facility, in which case the permit requirements shall be followed;

(iii) ambient wet and dry bulb temperature;

(iv) barometric pressure;

(v) particulates per EPA Method 5, excluding condensibles;

(vi) the substances required to be measured for the Facility by applicable permits and any applicable regulations in effect as of the Construction Date;

(vii) lime consumption as determined pursuant to the Lime Consumption Guarantee Test;

(viii) ammonia consumption as determined pursuant to the Ammonia Consumption Guarantee Test;

(xv) ~~(ix)~~ urea consumption as determined pursuant to the Urea Consumption Guarantee Test;

(x) carbon consumption as determined pursuant to the Mercury Reagent Consumption Guarantee Test, and

(xi) feedwater and blowdown rates for each boiler.

During the air quality tests, the steam flow shall measured by the difference between the boiler feedwater meter (s) and the blowdown meter (s). The steam flow during the air

quality tests shall be not less than that which was demonstrated during the ~~initial Acceptance Test for the original units 1 and 2 and the last Acceptance Test for the Expansion (pursuant to Amendment Number 6) for air quality.~~most recent annual compliance test for the respective unit.

(a) Noise Emission Test.

Noise emission levels shall be tested at (i) fifty (50) feet from each of the four sides of the principal structure, (ii) points along the boundary of the Facility Site, (iii) surrounding areas or (iv) elsewhere as appropriate to determine whether the Facility (excluding noise emissions from motor vehicles on the Facility Site and noise emissions not caused by the Facility) complies with all regulations, license, approvals and permits relating to noise emission.

(c) Water Quality Test.

The test plan shall provide a method of determining compliance with any applicable water quality permits.

6. AMMONIA CONSUMPTION GUARANTEE TEST.

The test plan shall specify a method of determining the extent to which the NO control system complies with the Ammonia Consumption Guarantee. Such method shall provide that the ammonia Consumption Guarantee Test to be conducted during the Air Quality NOx Test.

7. LIME CONSUMPTION GUARANTEE TEST.

A. The Contractor shall test the Facility to determine the extent to which the Facility complies with the Lime Consumption Guarantee. The Lime Consumption Guarantee ("LC") test shall be seven (7) Days in duration (the "LC test period") and shall performed during the Air Quality Tests for HC1 and SO2.

The lime quality (in percent weight reactive CaO) shall be measured during the LC test period by submitting a composite of daily samples taken every eight (8) hours to a mutually agreed testing laboratory for analysis. Method of lime sampling shall be developed in the test protocol. If the laboratory analysis indicates a variation in CaO weight percent from the guarantee (90% by weight CaO), then the lime consumed during the test shall be adjusted as follows:

$$\text{Adjusted Lime Consumption} = \text{Lime Consumed During Test} \times \frac{\%\ \text{CaO Measured by Weight}}{90}$$

If the results of the Environmental Guarantee tests for air quality show that the number of pound equivalent weights of hydrogen ion per Ton of Processible Waste Processed for the acid gas constituents HC1 and SO2 measured at the dry scrubber inlet differs from the design concentrations (calculated based on the conversion of 100% of the Cl and S content of Reference Waste into the respective acidic compounds and 0% absorption by fly ash), then the Facility shall be deemed to comply with the Lime Consumption Guarantee if the following conditions are met:

(a) the measured removal of acidic gases from the flue gases is equal to or greater than that required to meet permit conditions, and

(b) the measured lime utilization adjusted to the actual acid gas concentrations is equal to or less than the Lime Consumption Guarantee.

8. FERROUS REMOVAL GUARANTEE TEST.

The test plan shall specify a method of determining the extent to which the magnetic ferrous metal recovery system complies with the Ferrous Removal Guarantee. The method shall address weighing recovered ferrous material and the separation and weighing of non-recovered ferrous material over a continuous twenty-four hour period.

9. ANNUAL AVERAGE ENERGY GUARANTEE TEST.

The test plan shall specify a protocol for conducting measurements and the like for determining at the end of each Billing Year the extent to which the Facility complies with the Annual Average Energy Guarantee which Guarantee shall be deemed satisfied if the Facility produces the electricity per Ton of Processible Waste Processed required by the Annual Average Energy Guarantee.

10. OTHER TESTS.

Additional tests, procedures and protocols for determining whether, and the extent to which, the Facility complies with Maximum Utility Consumption Guarantees and other ~~Guarantee~~Guarantees in Schedule 2 and with all provisions of the Service Agreement may be mutually developed as part of the test plan.

11. MERCURY REAGENT CONSUMPTION GUARANTEE TEST

The test plan shall specify a method of determining the extent to which the mercury abatement system complies with the Mercury Reagent Consumption Guarantee. Such method shall provide that the Mercury Reagent Consumption Guarantee Test be conducted during the ~~Air Quality~~ the Air Quality Test for mercury reduction.

12. AMMONIA CONSUMPTION GUARANTEE TEST.

The test plan shall specify a method of determining the extent to which the ~~NO~~NOx control system complies with the Urea Consumption Guarantee. Such method shall provide that the Urea Consumption Guarantee Test ~~to~~ be conducted during the Air Quality NOx Test.

PART C. REPORTS AND INSPECTION

(1) Upon completion of any performance test (s), the Contractor shall submit to the Consulting Engineer and to the County a written report. The test plan shall specify the contents of such report including but not limited to:

(a) a certification that testing was conducted in accordance with the test plan;

(b) a certification of the results of the testing including a determination of the extent to which the Facility complies with the applicable performance guarantee (s);

(c) all data to be measured and recorded during the test (s);

(d) any other data reasonably requested by the County to be included in such report; and

(e) a statement as to whether the Contractor intends to conduct additional testing and an estimated schedule of such testing.

SCHEDULE 6

POWER PURCHASE AGREEMENT

(TO BE PROVIDED)

Add the Amended Electric Power Purchase Agreement between the County and Seminole Electric Cooperative, Inc. dated June 25, 2003

SCHEDULE 7

INSURANCE

1. Insurance Required to be Secured and Maintained by Contractor

a. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance shall be maintained by Contractor in compliance with the Applicable Laws of the State of Florida (if separately for subcontractors, all subcontractors to addressed similarly). Employer's Liability limit shall not be less than one million dollars ($1,000,000) for each occurrence, ($1,000,000) per employee and ($1,000,000) policy limit for disease, for all of Contractor's employees to be engaged in services provided for in this Service Agreement. Contractor shall also maintain insurance covering it against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation Law. Policies hereunder shall include voluntary compensation endorsement, broad form "all states" coverage endorsement and stop gap endorsement.

b. Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability Insurance written in comprehensive form (excluding aircraft, watercraft fifty (50) feet or longer and automobiles) to protect Contractor against all claims arising from injuries to members of the public or damage to property of others, including loss of the use of tangible property damaged, arising out of any act or omission of Contractor, its agents or employees. This policy shall insure the contractual liability assumed by Contractor under the Indemnification provisions of this Service Agreement to the extent that such contractual liability would be covered under Contractor's Commercial General Liability policy.

Commercial General Liability coverage shall contain the following provisions:

(i) All premises and operations,
(ii) No exclusions for explosion, collapse, or underground damage,
(iii) Contractor's Protective coverage for independent contractors and Subcontractors employed by Contractor,
(iv) Broad Form Blanket, contractual liability and waiver of subrogation as provided in the Insurance provisions of this Service Agreement,
(v) Personal Injury Liability,
(vi) Employees included as additional insureds (excluding bodily injury to fellow employees only,
(vii) Broad Form Property Damage Liability,
(viii) Cross Liability,
(ix) Incidental Medical Malpractice coverage,

Coverage hereunder shall include:

Premises Operations
Blanket contractual liability

Independent contractor's coverage
Products and Completed Operations
Contractual Liability Endorsement

The liability limits shall not be less than One Million Dollars ($1,000,000) per occurrence, or an amount sufficient to purchase primary and excess insurance in total amount of Three Million Dollars ($3,000,000).

(c) Automobile Liability Insurance. Contractor shall maintain Motor Vehicle Liability Insurance written in Business Auto Policy during the Term of this Service Agreement to protect itself while performing services covered by this Service Agreement against all claims for injuries, including accidental death to members of the public and damage to property of others arising from such use of motor vehicles, and such policies shall cover the operation on or off the site of all motor vehicles licensed for highway use whether they are owned, non-owned, or hired. The insurance limit shall not be less than One Million Dollars ($1,000,000) Bodily Injury and Property Damage Combined Single Limit Each Accident in accordance with the Applicable Laws of the State of Florida as to the ownership, maintenance, and use of all owned, non-owned, leased, or hired and employees non-ownership and be on an occurrence basis. The policy or policies shall also provide uninsured/underinsured motorist coverage as required by Applicable Law.

(d) Umbrella Excess Liability Insurance. Covanta shall maintain a policy or policies of umbrella excess liability insurance with liability limits, that when combined with the primary limits, will not be less than Three Million Dollars ($3,000,000) per each occurrence for all liability and $3,000,000 in the aggregate per policy year. The wording of the excess liability policy or policies shall be at least as broad as the primary or underlying policy or policies and shall apply both to Contractor's general liability, employer's liability and to the automobile liability insurance (and shall be written on an occurrence basis), such that the total limit for general liability, employer's liability, automobile and umbrella liability shall be Three Million Dollars ($3,000,000). Contractor is granted the option of arranging coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy equal to the total limit(s) requested. All policies shall be endorsed to drop-down over any exhausted aggregate limits applicable to underlying policies.

2. Insurance Required to be Secured and Maintained by County.

[None]

SCHEDULE 8

ADJUSTMENT FACTOR

The Adjustment Factor for Billing Year "n" will be the greater of 1.0 or the number determined as follows:

0.325 x Labo r Index A for Billing Year "n" divided by the Labor Index for January, 2005;

plus 0.325 x Labor Index B for Billing Year "n" divided by the Labor Index for January, 2005

plus 0.30 x Machinery and Equipment Index for Billing Year "n" divided by Machinery and Equipment Index for January, 2005;

plus 0.05 x Chemical Index for Billing Year "n" divided by Chemicals Index for January, 2005.

Where:

(a) Labor Index A for any Billing Year is the Labor Index A value for the 3rd quarter of that calendar year as of November 15th of the Billing Year. Labor Index B for any Billing Year is the Labor Index B value for the 3rd quarter of that calendar year as of November 15th of the Billing Year. Machinery and Equipment Index for any Billing year is the Machinery and Equipment Index value for August of that calendar year as of November 15th of the Billing Year. Chemical Index for any Billing Year is the Chemical Index value for August of that calendar year as of November 15th of the Billing Year.

(b) The Labor Index A is the Employment Cost Index, Total Compensation Electric, Gas and Sanitary Workers, Series ID ECU12542i, published quarterly by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The value of the index as of the quarter ending December 31, 2004 was 183.3 and the value as of the quarter ending March 31, 2005 was 188.0 and the pro rated value applicable for January, 2005 is 184.9;

(c) The Labor Index B is the Employment Cost Index, Wages and Salaries, Electric, Gas and Sanitary Workers, Series ID ECU22542i, published quarterly by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The value of this index as of the quarter December 31, 2004 was 166.6 and the value as of the quarter ending March 31, 2005 was 167.9 and the pro rated value applicable for January, 2005 is 167.0;

(d) The Machinery and Equipment Index is the BLS Producer Price Index, Commodity Code 11-4, General Purpose Machinery and Equipment, Series ID wpu114 as published by the U.S. Department of Labor, Bureau of Statistics. The Machinery and Equipment Index for January, 2005 is 164.2;

(e) The Chemical Index is the Producer Price Index, Commodity Code 061, Industrial Chemicals, Series ID wpu061 as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Chemical Index for January, 2005 is 177.8.

If any index defined above will not be determined and published or if any index as it is constituted on the Contract Date is thereafter substantially changed, there will be substituted for such index another index which is determined and published on a basis substantially similar to the index being replaced as will be mutually agreed upon by the County and Covanta.

SCHEDULE 9

PASS THROUGH COSTS

For the purposes of this Service Agreement, the costs and expenses specified in this Schedule 9, are Facility costs and expenses, and except as specifically limited or excluded pursuant to the Service Agreement and this Schedule 9, the County is responsible for the payment of such costs and expenses. To the extent that any such costs and expenses which are payable by the County are paid by the Contractor, the County shall reimburse the Contractor for such expenditures as Pass Through Costs in accordance with the terms of the Service Agreement and subject to Cost Substantiation.

Beginning on the Acceptance Date and ending on the effective date of termination of the Service Agreement, the following shall be Pass Through Costs:

1. All premiums paid by the Contractor for insurance coverages as provided for in Article X and defined in Schedule 7 but only to the extent required by the Service Agreement as minimum coverages, policy limits or deductible levels.
2. Pass Through Taxes paid by the Contractor after the Acceptance Date.
3. For any Billing Year, those costs associated with the containment, removal, and clean-up of (i) any Hazardous Waste delivered to the Facility and (ii) any Residue determined to be Hazardous Waste (other than as a result of Contractor Fault), which costs are in excess of fifty thousand dollars ($50,000) in the aggregate in such Billing Year, adjusted commencing on the Contract Date in accordance with the Adjustment Factor, which shall be paid by the Contractor.
4. The cost of (i) utilities not in excess of the costs associated with Maximum Utility Utilization Guarantee levels specified in Schedule 2 for water consumption,

sanitary sewer usage, and propane gas, (ii) propane gas utilized by the Contractor when required in order to meet environmental permit conditions, and (iii) lime, dolomitic lime, urea and ammonia consumption not in excess of the Lime Consumption Guarantee, the Dolomitic Lime Consumption Guarantee, the Urea Consumption Guarantee and the Ammonia Consumption Guarantee. ~~The caps are intended to be annualized. Usage of any reagent or utility service in excess of the established cap shall be at the sole cost and expense of Covanta, on an annual basis or pro rated for any partial year of operation.~~

5. The cost of electric energy purchases not to exceed the Maximum Utility Utilization Guarantee for Electricity pursuant to paragraph 6.a of Schedule 2 by the Contractor, if any, for operation of the Facility during periods when the Facility does not generate electric energy during Qualified Turbine Outage Days or due to the occurrence of an Uncontrollable Circumstance or County Fault.

6. Any host community fee.

7. Any Direct Costs payable by the County to the Contractor pursuant to the terms of the Service Agreement.

8. The cost of tests required by permits~~, the costs related to conducting stack testing for all units of the Facility during the same time period (including any additional testing and related costs that may be incurred)~~, and the cost of additional tests developed in accordance with paragraph 10 of Schedule 5, to the extent of Cost Substantiation, including profit.

9. Governmental fees in connection with permits, licenses and other authorizations necessary for the operation of the Facility and required to be obtained by the Contractor pursuant to Part B of Schedule 12.

10. The cost of any reagent used for mercury reduction not in excess of the Mercury Reagent Consumption Guarantee.

11. Any royalty fees (the dollar amount being subject to the County's approval which shall not be unreasonably withheld) in connection with the use of any mercury reduction system other than a Contractor proprietary system.

12. The cost of any additional equipment required in connection with any testing program conducted pursuant to applicable law, regulation or permit or directed by a regulatory agency.

SCHEDULE 10

COVENANT OF ASSURANCE

THIS COVENANT, made as of this _____ day of _____, 2005, by Martin GmbH ("Martin") of Munich, West Germany, to and for the benefit of Lee County, Florida (the "County").

W I T N E S S E T H:

WHEREAS, Covanta Lee, Inc. (the "Contractor") has executed an Amended and Restated Service Agreement dated _____, 2005 ("Restated Service Agreement") with the County relating to the Facility (as defined in Amendment No. 6) incorporating the Martin combustion system;

WHEREAS, Covanta Energy Corporation, the Parent company of the Contractor, and Martin have executed a long-term licensing agreement (the "Martin Agreement") pertaining to the design, construction, and servicing of refuse combustion plants based on the Martin combustion system;

WHEREAS, the Martin Agreement provides that Martin will make available certain proprietary components of such combustion systems, including the Martin grate system, the Martin ash discharger and Martin stoker actuating equipment;

WHEREAS, the Martin Agreement provides that, even in the event of a termination of the Martin Agreement, Martin will continue to supply to Covanta Energy Corporation such Martin Propriety equipment and Martin know-how for any project incorporating the Martin combustion systems for which Covanta Energy Corporation or any of its subsidiaries was or is under contract to develop or operate;

WHEREAS, the Contractor has agreed, on behalf of itself and Covanta Energy Corporation, to waive any right at law or at equity to restrict the County relative to the Restated Service Agreement from contracting directly with Martin in the event the Restated Service Agreement is terminated by the County for default by the Contractor;

WHEREAS, the County requires as a consideration for entering into the Restated Service Agreement, that Martin proprietary components and know-how continue to be available to the County in the event of a termination of the Martin Agreement;

WHEREAS, the County is willing to enter into the Restated Service Agreement only upon the condition that Martin executes this instrument.

NOW, THEREFORE, to induce the County to enter into the Restated Service Agreement, in consideration of the foregoing and other good and valuable consideration, Martin agrees as follows:

In the event that after the Effective Date (as defined in the Restated Service Agreement) the Martin Agreement is terminated or the County terminates the Contractor for default, Martin will continue to supply its proprietary components and know-how to the Contractor or to the County on terms and conditions offered to other parties to the extent that the Contractor does not have, or continue to reasonably supply, such components and know-how.

This covenant shall continue in full force and effect during the term of the Restated Service Agreement and, in the event that the Restated Service Agreement is terminated by the County for the default by the Contractor, shall continue in full force and effect until the Restated Service Agreement would have expired by its terms had it not been so terminated.

Martin understands that this covenant may be assigned by the County to a bank as trustee for the benefit of the holders of certain bonds the proceeds of which may be used, in whole or in

part, to finance the long-term indebtedness of the Facility and hereby consents to such assignment.

IN WITNESS WHEREOF, Martin has executed this instrument the day and year first above written.

WITNESS:

MARTIN GmbH

_____
Name:
Title:

SCHEDULE 11

CALCULATION OF DISPOSAL COST

1. At least three (3) calendar months prior to start of any Billing Year, the County shall prepare a budget for such Billing Year for the purpose of establishing the Disposal Cost to the County with respect to operation of the Facility. In connection with such Billing Year budget the County shall give due consideration to, but shall not be bound by, the Service Fee estimates prepared by the Contractor pursuant to Section 6.08 (c).

   A. The budget for each Billing Year shall be based, when necessary, on reasonable estimates and, where available, on actual experience, or on a combination of estimates and projections based on actual experience. The budget shall include the following cost components:

      1. Annual Daily Debt Service.
      2. Operation and Maintenance Charge.
      3. Pass Through Costs.
      4. Energy Credit.
      5. Contractor's share of Recovered Resources Revenues.
      6. County Expenses incurred in performing its obligations under the Service Agreement
      7. Costs to fund or replenish funds under the Indenture.
      8. Contingency Fund.

The budget shall include all the project revenues.

b. The Disposal Cost shall be calculated each year as follows: the sum of cost components A 1-7 less project revenues divided by the Processing Guarantee.

c. To calculate the Disposal Cost increase resulting from an Uncontrollable Circumstance (the "Disposal Cost Increase") the cost components A 1-7 and Project Revenues, adjusted pursuant to the information provided by the Contractor pursuant to Section 7.03 with respect to the impact of Facility Revenues or costs resulting from such Uncontrollable Circumstance, and any other relevant information with respect to said Uncontrollable Circumstance including available insurance proceeds and condemnation awards, shall be compared to the cost components and Facility Revenues without such adjustment. The Difference between such amounts shall constitute the Disposal Cost Increase due to the current Uncontrollable Circumstance event.

SCHEDULE 12

PERMITS

Part A

The County will obtain and maintain the following permits for the Facility:

Power Plant Site Certification

Federal Aviation Administration (Stack Permit)

Federal Energy Regulatory Commission

FPSC Determination of Need

Coastal Zone Management Certification

NPDES Permit

The County will obtain and maintain all permits for the Expansion including, but not limited to:

Building Permits

Local Development Review Process

Lee County Development Standard Ordinance (review process)

Part B

The Contractor has obtained all other necessary permits for the original two units of the Facility not listed in Part A including, but not limited to:

Building Permits

Local Development Review Process

Lee County Development Standard Ordinance (review process)

SCHEDULE 13

(RESERVED)

SCHEDULE 14

INDENTURE

(TO BE PROVIDED)