

10/26/2004

**WASTE DISPOSAL AND ELECTRICITY  
GENERATING AGREEMENT**

**between**

**COVANTA LAKE II, INC.**

**AND**

**LAKE COUNTY, FLORIDA**

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**THIS AGREEMENT HAS BEEN PREPARED SUBJECT TO FLORIDA STATUTES SECTION 90.408 (1999), WHICH PROVIDES THAT “EVIDENCE OF AN OFFER TO COMPROMISE A CLAIM WHICH WAS DISPUTED AS TO VALIDITY OR AMOUNT, AS WELL AS ANY RELEVANT CONDUCT OR STATEMENTS MADE IN NEGOTIATIONS CONCERNING A COMPROMISE, IS INADMISSIBLE TO PROVIDE LIABILITY OR ABSENCE OF LIABILITY FOR THE CLAIM OR ITS VALUE.” THE GOAL IS TO HELP ENABLE SETTLEMENT DISCUSSIONS**

WASTE DISPOSAL AND ELECTRICITY GENERATING AGREEMENT, dated as of \_\_\_\_\_, 2004 (this “Agreement”), between Covanta Lake II, Inc. (the “Company”), a Florida corporation, with offices at 3830 Rogers Industrial Park Road, Okahumpka, Florida, and Lake County (the “County”), a political subdivision of the State of Florida, acting by and through its Board of Commissioners, with its principal office at 315 West Main Street, Tavares, Florida.

#### **RECITALS**

WHEREAS, the County desires to enter into this Agreement in order to benefit the citizens of the County through environmentally sound disposal of the County’s waste and the generating and sale of electric energy for in-plant use and transmission and distribution, to produce revenues to help defray disposal costs;

WHEREAS, the Company owns and operates a waste to energy facility in Okahumpka, Florida at which the Company is willing to accept, process and dispose of Acceptable Waste delivered or caused to be delivered to the Company by the County, and to produce saleable electric energy, all in accordance with the terms hereof; and

WHEREAS, the Company and the County propose to refinance certain outstanding indebtedness of the County, and to pay debt service on such refinanced indebtedness through the application of a portion of the payments under this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual obligations undertaken herein, the parties hereby agree as follows:

**ARTICLE I - CERTAIN DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptable Waste” means that portion of solid waste which has characteristics such as that collected and disposed of as part of normal collection of solid waste in the County, such as, but not limited to: garbage, trash, rubbish, refuse, offal, automobile or small vehicle tires, as well as processible portions of commercial (including cannery) and industrial solid waste, and logs if no more than four (4) feet long and/or six (6) inches in diameter, branches, leaves, twigs, grass and plant cuttings, excepting, however, Unacceptable Waste and Hazardous Waste.

“Additional Waste Service Fee” has the meaning specified in Section 6.06.

“Affiliate” means a Person that controls, is controlled by or is under common control with the Company.

“Billing Period” means each calendar month in each Contract Year, except that (a) the first Billing Period shall begin on the Effective Date and shall continue to the last day of the month in which the Effective Date occurs and (b) the last Billing Period shall end on the last day of the final Contract Year or such earlier termination date as permitted under this Agreement, whether or not such day is the last day of a calendar month.

“Bonds” mean any debt obligations to be issued by the County in connection with the Facility.

“Business Days” means Monday through Friday excluding Legal Holidays.

“Capacity Payment” means, for any Billing Period, the Energy Credit less that portion thereof that represents payment for energy or thermal energy.

“Capital Project” means (a) an alteration of the Facility, other than an alteration under Section 3.03, (b) replacement of all or any portion of the Facility that is damaged or otherwise removed from service due to Unforeseen Circumstances or County Fault, or (c) the construction, alteration or repair of additional facilities pursuant to this Agreement.

“Change in Law” shall mean (a) the adoption, promulgation or modification after the Effective Date of (i) any federal statute or regulation not adopted, or officially published in The Congressional Record or The Federal Register, on or before the Effective Date or (ii) any State or County statute, ordinance or regulation that was not so adopted, promulgated or modified on or before the Effective Date, or (b) the imposition of any material conditions in connection with the issuance, renewal or modification of any official permit, license or approval after the Effective Date, which in the case of either (a) or (b) establishes requirements affecting the operation or maintenance of the Facility more burdensome than the most stringent requirements (x) in effect as of Effective Date, (y) agreed to in any applications of the Company for official permits, licenses or approvals pending as of Effective Date or (z) contained in any official permits, licenses, or approvals with respect to the Facility obtained as of Effective Date.

“Company” means Covanta Lake II, Inc., and its permitted successors and assigns.

“Company Fault” shall mean the unexcused non-performance by the Company of its obligations under this Agreement.

“Consulting Engineer” shall mean Malcolm Pirnie or other nationally recognized consulting engineer or firm having experience with respect to the design, construction, acceptance, operation and maintenance of solid waste disposal and resource recovery facilities.

“Contract Year” means the fiscal year ending September 30th. The first Contract Year shall commence on the Effective Date and shall end on the following September 30th. The last

Contract Year shall commence on October 1<sup>st</sup> and end on the last day of the term of this Agreement as determined pursuant to Section 9.01. Respective yearly guarantees shall be ratably adjusted if the first or last Contract Years are less than three hundred sixty-five (365) days. Each Contract Year after the first Contract Year shall commence on the October 1st following the termination of the prior Contract Year.

“Cost Substantiation” shall mean, with respect to any costs, a certificate signed by an authorized representative of the party requesting payment, setting forth the reasons for incurring the cost, the amount of such cost with supporting invoices and other pertinent available documentation that such cost is at a competitive price for the services or materials supplied, and the event or Section of this Agreement giving rise to the right to incur such cost.

“County By-Pass Waste” means (a) waste (i) that the Company is obligated to accept, but that is wrongfully rejected upon delivery at the Facility or is removed from the Facility before processing, or (ii) that is otherwise disposed of by or on behalf of the County pursuant to Section 6.08(a)(i).

“County Fault” shall mean the unexcused non-performance by the County of its obligations under this Agreement.

“County Performance Damages” has the meaning set forth in Section 6.09.

“Debt Service” has the meaning specified in Section 6.02 hereof.

“Directed Handling Waste” means Acceptable Waste that is required to be disposed of in a specified, supervised fashion (including, by way of example, bank records, oily waste, pharmaceutical waste, plant trash and consumer packaged waste).

“Effective Date” means 12:01 a.m. on the day next following the date the last party to the Agreement executes the Agreement.

“Energy Contracts” means the Power Sales Agreement and any other contract or arrangement for the sale or other compensable disposition to third parties of capacity, electricity or thermal energy produced by the Facility.

“Energy Credit” has the meaning specified in Section 6.05 hereof.

“Energy Credit Multiplier” means nine-tenths (0.9).

“Energy Efficiency Damages” has the meaning specified in Section 6.08(a)iv) hereof.

“Escalation Adjustment” shall mean that adjustment computed in accordance with Schedule 1 hereto.

“Event of Default” has the meaning specified in Sections 8.02 and 8.03 hereof.

“Facility” means the Mass Burn Resource Recovery, steam and electric generating facility, together with all additions, replacements, appurtenant structures and equipment, located on the Site.

“Fault” of any party to this Agreement means any action or failure to act by such party that results from the negligence, gross negligence, omission or willful misconduct of such party.

“Guaranteed Annual Tonnage” shall mean 163,000 Tons of Acceptable Waste delivered during the Contract Year, provided that tonnages for any year, including the first and last Contract Years of this Agreement, if less than a full year, shall be pro rated on the basis of the total number of days in such year during which this Agreement is in effect over a period at three hundred sixty-five (365) days.

“Guaranty Agreement” shall mean the Covanta Energy Corporation Performance Guarantee in the form of Schedule 4.

“Hazardous Waste” shall mean any material or substance, or combination of materials or substances, which as of the Effective Date by reason of composition or characteristic is

(a) a hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 (Supp. 1987), including but not limited to all materials listed or identified as hazardous waste under Subtitle C of the Resource Conservation & Recovery Act of 1976, as amended, 42 U.S.C.A. § 6921 (1983 and Supp. 1987) and implementing regulations adopted by the United States Environmental Protection Agency found at 40 C.F.R., Part 261, and all materials listed or identified as hazardous waste pursuant to Section 403.72, Florida Statutes (1981) and the implementing regulations of the State of Florida Department of Environmental Regulation found at Rule 17-30.030, Florida Administrative Code or as defined in the Toxic Substances Control Act. 15 U.S.C.A. § 2601 et seq. as amended, and related regulations;

(b) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 11023(c) (1987 Supp.); and

(c) a special nuclear or byproduct material within the meaning of the Atomic Energy Act of 1934, 42 U.S.C.A. § 2014 (1975 and 1987 supp.).

With regard to materials or substances which are not Hazardous Waste as of the Effective Date, if any governmental agency or unit having appropriate jurisdiction shall thereafter determine, pursuant to a Change in Law that such materials or substances are Hazardous Waste, then such materials or substances shall be considered to be Hazardous Waste for the purposes of this Agreement as of the effective date of such governmental determination.

“Hazardous Waste Costs” means the costs of the removal and disposal of Hazardous Waste delivered to the Site other than by or for the account of the Company and all other costs, liabilities, fines and expenses associated with or arising from the delivery, clean-up, removal, transportation, disposal or processing of such Hazardous Waste; provided, however, that Hazardous Waste Costs shall not include (1) any costs or liabilities incurred due to the Company’s Fault in connection with any material it knows to be Hazardous Waste, or (2) any costs or liabilities paid by any third party or under an insurance policy. Hazardous Waste Costs shall also include the cost of any repairs or alterations to the Facility or the Site to the extent necessitated by the presence or inadvertent processing of such County Hazardous Waste at the Facility and all liabilities, damages, claims, demands, expenses, suits or actions including reasonable appeals, fines, penalties and attorneys fees in connection with any civil or administrative proceeding arising from the presence of such Hazardous Waste at the Site or the processing, removal or disposal of such Hazardous Waste (including, without limitation, any suit for personal injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or processing of such Hazardous Waste).

“Higher Heating Value” or (“HHV”) means the as-received fuel value of Acceptable Waste expressed as Btu per pound of waste.

“Indenture” means the trust indenture between County and the Trustee pursuant to which the Bonds will be issued, as amended from time to time; and if Bonds are issued under two or more trust indentures, the “Indenture” means each or all of such trust indentures, as amended from time to time, individually or collectively as the context requires.

“Landfill” shall mean the suitable disposal site or sites designated by the County from time to time pursuant to the terms hereof which is permitted under all applicable laws for the disposal of Unacceptable Waste, Process Residue and County By-Pass Waste.

“Legal Holidays” means those holidays observed by the County and specified by the County in a list delivered to the Company thirty (30) days before the beginning of each Contract Year.

“Loan Agreement” means the Loan Agreement, dated as of September 1, 1988, by and between the Company and the County, including any amendments and supplements thereto as permitted thereunder.

“Lost Energy Performance Adjustments” means, for any Billing Period in which the Company does not process Acceptable Waste through the Facility due to the Fault of the company (i.e., County By-Pass Waste), an amount equal to the product of (a) the difference between (i) the energy revenues that would have accrued for such Billing Period assuming (a) delivery during the Billing Period of one-twelfth (1/12) of the Guaranteed Annual Tonnage; (b) actual energy prices in effect for such Billing Period and (c) the average kilowatt-hours per Ton of Acceptable Waste available for sale by the Facility during the most recent twelve months of operation of the Facility and (ii) the actual energy revenues accrued for such Billing Period and (b) the Energy Credit Multiplier.

“Lost Energy Revenues” means, for any Billing Period, the product of (A) one tenth (0.1), and (B) the difference between (1) the Projected Energy Revenues for such Billing Period, and (2) the actual revenues from the sale of energy and capacity pursuant to the Power Sales Agreement for such Billing Period.

“Operating Charge” has the meaning specified in Section 6.03 hereof.

“Overdue Rate” means the maximum annual rate of interest permitted by the laws of the State of Florida, if applicable, or twelve percent (12%) per annum, whichever rate is lower.

“Parent” means Covanta Energy Corporation.

“Pass Through Costs” has the meaning specified in Section 6.04 and Schedule 5 hereof.

“PEC” means Progress Energy Company, and its successors and assigns.

“Performance Adjustments” has the meaning specified in Section 6.08(a).

“Performance Guarantees” shall mean those guaranteed performance standards for the Facility as set forth in Schedule 6 hereto.

“Performance Tests” has the meaning specified in Schedule 7.

“Person” means a corporation, partnership, business trust, trust, joint venture, company, firm or individual.

“Power Sales Agreement” shall mean the Standard Offer Contract for the Purchase of Firm Energy and Capacity from a Qualifying Facility dated October 12, 1988, in the form attached hereto as Schedule 8, as amended, supplemented or replaced with similar agreements from time to time.

“Process Residue” means bottom ash, fly ash, grate siftings and other material derived from Acceptable Waste which remains after the combustion of Acceptable Waste.

“Project Agreements” shall mean all ordinary course agreements entered into by the Company and disclosed to the County in connection with the permitting, ownership, use, operation, maintenance or repair of the Facility or the financing thereof including, without limitation, this Agreement, the Power Sales Agreement, the Bonds or other indebtedness issued or incurred to finance or refinance the acquisition, construction or installation of the Facility, the Indenture, Loan Agreement, and any Mortgage and Security Agreement securing the obligations

of the Company thereunder, and any related documents executed in connection with the delivery of such indebtedness approved by the County.

“Projected Energy Revenues” means, for any Billing Period, the energy and capacity revenues that would have accrued for such Billing Period assuming (a) delivery during the Billing Period of one-twelfth (1/12) of the Guaranteed Annual Tonnage, (b) actual energy and capacity prices in effect for such Billing Period, and (c) the average kilowatt-hours per Ton of Acceptable Waste available for sale by the Facility during the most recent twelve months of operation of the Facility. If the Facility fails to continue to qualify for the Capacity Payment under the Power Sales Agreement due to the failure or refusal of the County to deliver the Guaranteed Annual Tonnage, the computation of Projected Energy Revenues shall be based upon the capacity payments actually made to the Company by PEC for the last 12-month period during which such payments were made, escalated as provided in the Power Sales Agreement as if PEC continued to pay such capacity payment.

“Receiving Time” shall mean between 5:00 a.m. and 5:00 p.m., Monday through Saturday, during which deliveries of Acceptable Waste will be normally accepted at the Facility excluding, however, New Year’s Day, Thanksgiving, Christmas, and July 4<sup>th</sup>. Such hours may be adjusted by written mutual agreement of the parties or as otherwise expressly provided herein.

“Secondary Materials” means metals and any other substances the Company recovers for subsequent sale or other compensable disposal from Acceptable Waste, either before or after combustion.

“Site” shall mean that parcel of real property located in Lake County, Florida on which the Facility is situated as further described in Schedule 2.

“Ton” means 2,000 pounds.

“True-up Adjustment” means a net charge or net credit to the County to reflect amounts that may be owed to the Company or the County with respect to the Contract Year most recently ended.

“Trustee” means the trustee named under the Indenture, including any successor trustee.

“Unacceptable Waste” shall mean items in quantities or concentrations which, if accepted at the Facility, would be likely to materially and adversely affect the operation of the Facility, damage the Facility or result in a violation of any permit for the Facility or any applicable law, including, without limitation, the items listed below; provided, however, that no such items shall constitute Unacceptable Waste if and to the extent that such items (i) are normally found in household waste, or in commercial or institutional waste in small quantities and concentrations and (ii) may be processed at the Facility under applicable law, excluding the items listed in (a) through (k) below to the extent that they damage the Facility or result in a violation of any permit for the Facility:

(a) Demolition or construction debris from building and roadway projects or locations (other than demolition or construction debris that consist primarily of combustible materials and is not likely to adversely affect the operation of the Facility or result in a violation of any permit for the Facility or applicable law).

(b) Liquid wastes or any sludges (unless the County has approved the inclusion of equipment as a Required Change to allow the processing of dry sludge).

(c) marine vessels, or motor vehicles or any major parts or components thereof.

(d) Dead animals or portions thereof.

(e) Water treatment residues.

(f) Tree stumps, stems, branches or other combustibles over six inches (6”) in diameter or in excess of four feet (4’) in length (unless the County has approved the inclusion of equipment as a Required Change to reduce the size of such materials in the specifications for the Facility)

(g) Waste oil.

(h) Machinery (other than small household appliances) or equipment including, without limitation, discarded “white goods” such as freezers, refrigerators, washing machines, etc.

(i) Industrial wastes unless such material is reviewed by the Company and the County and is determined to meet the requirements set forth above.

(j) Other large, bulky or unsuitable items such as mattresses, beds, furniture, carpets, bicycles, baby carriages and the like.

(k) a danger to health or safety including but not limited to, any material or substance or combination of materials or substances which are explosive, toxic, corrosive, flammable, reactive, an irritant, or a strong sensitizer, or which generate pressure through decomposition, heat, or other means if such materials or substances may cause injury, illness or harm to humans, to domestic animals or livestock, or to wildlife, or

(l) prohibited by any federal, state, or local law, regulation, or ordinance from being deposited in the Landfill then generally being used for disposal in connection with the Facility.

Notwithstanding the above limitations, Unacceptable Waste shall not include Directed Handling Waste.

“Unforeseen Circumstance” means any act, event or condition, whether affecting the Facility, the County or the Company, that has, or may reasonably be expected to have, a material adverse effect on the Company or the County, or on any of the Project Agreements or on the Facility or the Site or the testing, operation, ownership or possession of either of them, or on the handling, transportation, removal or disposal of Process Residue, County By-Pass Waste or Unacceptable Waste, if such event or condition is beyond the reasonable control, and not attributable to the Fault of the party (the “Non-Performing Party”) relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder, except that an Unforeseen Circumstance shall not, except as provided in (d) below, include a labor strike by employees of the Company. Such acts, events or conditions may include, but shall not be limited to, the following:

(a) an act of God, such as a hurricane, lightning, fire, explosion, nuclear radiation, tornadoes, earthquake, flood, landslide, or other cataclysmic phenomenon of nature;

(b) an act of public enemy, war, blockade, insurrection, riot, general unrest or restraint by government or people, civil disorder or disturbance, fires and explosions;

(c) governmental preemption of materials in connection with a public emergency;

(d) the failure of contractors, subcontractors or suppliers, other than the Company, to furnish labor, services, materials, or equipment on the dates agreed to; provided such failure is (A) caused by an act, event or circumstance affecting performance of such party that would be an Unforeseen Circumstance if directly affecting the Company or results from labor difficulties, and (B) materially adversely affects the Company’s ability to perform its

obligations and (C) the Company is not able reasonably to obtain substitute services, materials or equipment on the agreed upon dates at comparable prices.

(e) any Change in Law or County Fault, when used only with respect to an Unforeseen Circumstance claimed by the Company or any Company Fault when used only with respect to an Unforeseen Circumstance claimed by the County;

(f) a default by an energy purchaser under its power sales agreement (or wheeling agreement) with the Company;

(g) with respect to the County only, the delivery to the Facility of Hazardous Waste by the Company;

(h) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Site, the Project Agreements or any material portion or part thereof by the action of the Federal or state government.

(i) surface or underground site conditions or obstructions which are discovered or arise after November 8, 1988 which are beyond the reasonable control of the Company and have a materially adverse effect on the ability of the Company to perform;

(j) with respect to the Company only, the failure by the County to provide a Landfill for the disposal of Process Residue, Unacceptable Waste and County By-Pass Waste as provided in this Agreement or the delivery other than by or for the account of the Company of Hazardous Waste to the Facility; and

(k) the loss of or inability, in either case, for reasons other than the Fault of the party claiming such event, to obtain any utility services, including road access, natural gas, water, sewerage and electrical power which results in the total or partial curtailment of operations at the Facility.

The Company may not claim that a negation, modification, suspension, termination, delay, revision or other alteration of any County preliminary or final permit or other approval issued by or on behalf of the County for the Facility or the Site is an Unforeseen Circumstance except to the extent it constitutes a Change in Law.

“Waste Disposal Fee” has the meaning set forth in Section 6.01.

## ARTICLE II - REPRESENTATIONS

2.01 Representations of the County. The County represents that as of the Effective Date:

(a) The County is a political subdivision of the State of Florida and is empowered and authorized under the laws of the State of Florida to enter into this Agreement and to perform its obligations hereunder.

(b) The execution and delivery of this Agreement has been duly authorized by all appropriate actions of the County's governing body, and this Agreement constitutes the legal, valid and binding obligation of the County, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors rights, and by application of equitable principles if equitable remedies are sought).

(c) To the best of its knowledge, there is not pending or threatened litigation or governmental proceedings pertaining to the County which would adversely affect the operation of the Facility or the County's obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the County is now a party or by which it or any of its properties, revenues or assets are bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties, revenues or assets of the County other than as required in connection with the refinancing of the Facility as contemplated herein.

2.02 Representations of the Company. The Company represents that as of the Effective Date:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, is authorized to do business under the laws of the State of Florida, and has full power and authority to execute and perform this Agreement and is qualified to perform this Agreement in accordance with its terms.

(b) The execution and delivery of this Agreement has been duly authorized by all appropriate actions of its stockholders, and this Agreement constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors' rights and by application of equitable principles if equitable remedies are sought).

(c) The execution, delivery and performance of this Agreement will not violate any provision of law, any order of any court or other agency of government, its articles of incorporation, or any indenture, material agreement or other instrument to which the Company is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company other than as required in connection with the refinancing of the Facility as contemplated herein.

(d) To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings, including a Change in Law, which could adversely

affect, the Facility, the Company's ability to operate the Facility or would affect its ability to perform its obligations under this Agreement.

(e) The Guaranty Agreement constitutes the legal, valid and binding obligation of the Parent enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy or similar laws affecting creditors' rights and by application of equitable principles if equitable remedies are sought) and is in full force and effect between the parties thereto.

(f) The Company and its contractual agents, engineers, and contractors have recognized expertise and experience in the field of solid waste management and power plant construction and operation, and the Company shall exercise and apply the same in performance of all of its obligations hereunder.

(g) Other than the Project Agreements, the Company has not entered into, nor intends to enter into, any agreement with any third Person regarding the terms hereof, in the nature of a profit-sharing, joint venture, partnership or other legal or equitable ownership interest in the Facility, the Site or the revenues to be derived under this Agreement.

(h) The Company is the sole owner of the Facility and Site and no other person or entity has any legal or equitable ownership in such Facility or Site other than a mortgagee who holds an interest in connection with the Bonds.

### **ARTICLE III - FINANCING**

#### 3.01 Bonds.

(a) The Company and the County agree to cooperate fully together in the event the County elects to issue or refinance any existing Bonds.

(b) In connection with the issuance or refinancing of any Bonds, the Company shall bear the expense of its own employees, including in-house counsel. All other costs and expenses associated with such issuance or refinancing of Bonds shall be borne by the County.

#### 3.02 Capital Projects.

(a) It is the intention of the parties to give prompt notice to each other upon learning of any material credible information that leads the notifying party reasonably to believe that a Capital Project is likely to be necessary in order to respond to an Unforeseen Circumstance (including but not limited to a Change in Law) which will take effect after the Effective Date. The County and the Company shall each provide to the other copies of any correspondence relating to a required or possibly required Capital Project due to the occurrence of an Unforeseen Circumstance which is received from or sent to any federal, state or county agency regarding the Facility. Neither County nor Company shall propose or consent to any term or condition in connection with the issuance, renewal or modification of any official permit which may affect the operation or maintenance of the Facility in any way which might impose on the County any increase in capital cost, and associated operating cost, combined with any revenue reduction or other negative financial impact of \$25,000 or greater per capital item in any Contract Year without reasonable prior notice to the other as provided in subsection (b) below.

(b) The County and the Company will cooperate with each other in good faith to eliminate or minimize the adverse financial or operational impact that any Unforeseen

Circumstance occurring after the Effective Date might have on the Facility. Such cooperation shall include but not be limited to (i) notifying each other and allowing the attendance of each other at any meeting with a federal, state or county agency regarding a Capital Project or possible Capital Project at the Facility, (ii) providing advance notice to the other and the opportunity to comment upon any written materials, including but not limited to correspondence, reports, and permit applications (it being understood that a failure to obtain prior comment on routine and ordinary course communications with respect to a Capital Project or possible Capital Project shall not be deemed a violation of this clause), to be submitted by the County or the Company to any federal, state or county agency regarding a Capital Project or possible Capital Project at the Facility necessitated by an Unforeseen Circumstance, (iii) not proposing or consenting to any term or condition in connection with the issuance, renewal or modification of any official permit which may affect the operation or maintenance of the Facility by imposing on either party any increase in capital cost, and associated operating cost, combined with any revenue reduction or other negative financial impact of \$25,000 or greater per capital item in any Contract Year without the prompt written approval of the other (it being understood that the absence of prompt written approval may constitute a dispute necessitating compliance with the dispute resolution provisions), unless the dispute resolution provisions of Section 9.04 have occurred, or (iv) allowing participation in and review and comment upon the design and implementation plan for any Capital Project necessitated by an Unforeseen Circumstance.

(c) If, following the discussions and cooperation referred to above (including dispute resolution, if necessary), the Company determines to undertake a Capital Project due to the occurrence of an Unforeseen Circumstance or resulting from the Fault of the County, it shall do so as agreed between the parties, or as determined by dispute resolution. The

agreement of the parties or the result of dispute resolution, may address, without limitation, issues such as costs for the preparation of written proposals relating to the Capital Project, technology and design preferences, financing alternatives, overhead charges by the Company and the amount of the Company's markup in connection with the construction of the Capital Project.

(d) If a Capital Project is undertaken as a result of an Unforeseen Circumstance, the Company shall, unless emergency conditions make it impractical to do so or unless otherwise timely agreed to in writing by the County, solicit competitive bids in respect of the design and construction of any such Capital Project, and in such case, the Company may submit its own bid for such Capital Project. In the event that a Capital Project is undertaken as a result of a competitive bid of a third party other than the Company pursuant to this Section, the Company shall not be responsible, except with respect to its own work associated with the design or construction of such Capital Project, for liability of any kind based on theories of contract, tort, implied warranties or otherwise with respect to such Capital Project. The Company agrees, in connection with any such competitive bidding, to include a requirement that the bidder propose appropriate warranties in relation to such bidder's materials, workmanship and allow the County to enforce warranty rights against such bidder in connection with the Capital Project. In lieu of the Company seeking competitive bids, the County may request that the Company undertake a Capital Project for its cost of completing such Capital Project plus ten percent (10%) of such costs, or at a fixed price upon which the County and the Company shall agree. The capital cost of any Capital Project as determined pursuant to Section 3.02 shall be financed by the County.

3.03 Company Alterations. The Company hereby reserves the right, without the County's prior approval, but only after prior written notice to the County, to make, at the Company's cost and expense, including all increased operational costs, alterations to the Facility if such alterations shall improve the efficiency of the Facility or (b) to make, at the Company's cost and expense, including all increased operational costs, alterations to the Facility if such alterations shall help the Company to comply with any or all Performance Guarantees. In no event shall Company alterations pursuant to this Section increase the County's costs or reduce the County's revenues.

**ARTICLE IV - OPERATION OF FACILITY;  
DELIVERY AND PROCESSING OF WASTE**

4.01 Commitment to Deliver Waste. On and after the Effective Date, the County shall cause to be delivered to the Facility the Guaranteed Annual Tonnage, subject to the Company's rejection rights set forth in Section 4.07. At the request of the Company, the County shall cooperate with the Company to obtain substitute Acceptable Waste from sources outside the County to the extent necessary to allow the Facility to operate continually at its capacity. If the County fails to deliver the Guaranteed Annual Tonnage, the County nevertheless shall be responsible for the payment of the Waste Disposal Fee as provided in Article VI hereof. To the extent Acceptable Waste is obtained by the Company, it shall be credited toward the County's obligation to deliver the Guaranteed Annual Tonnage. For the avoidance of doubt, the Waste Disposal Fee shall be payable by the County irrespective of the amount of Acceptable Waste delivered, if the County delivers no Acceptable Waste, or if the Facility is rendered incapable of receiving and processing Acceptable Waste.

4.02 Commitment to Accept, Process and/or Dispose of Waste.

(a) The Company, in each Contract Year commencing on the Effective Date, agrees, subject to the terms of this Agreement, to accept, process and/or dispose of Acceptable Waste delivered to the Facility in an amount at least equal to the Guaranteed Annual Tonnage, adjusted if necessary for the HHV content of the Acceptable Waste, as provided in Schedule 3. Except as may be excused by an Unforeseen Circumstance or County Fault, the foregoing obligations of the Company to accept, process and/or dispose of the Guaranteed Annual Tonnage on and after the Effective Date shall be absolute and unconditional. The Company, however, shall have no obligation to accept Hazardous Waste, Unacceptable Waste, or Acceptable Waste that is rightfully rejected in accordance with Section 4.07 hereof. The Company may accept and process up to 8,000 Tons per year of Acceptable Waste (including but not limited to Directed Handling Waste), without the prior consent of the County and may accept and process any additional Acceptable Waste to which the County consents. The Company may keep all revenues derived therefrom, provided the Company pays to the County the amount provided for in Section 6.07(a).

(b) The County and the Company shall consult in good faith and shall determine, within thirty (30) days prior to the end of any Contract Year, the timing of scheduled major maintenance for the Facility for the coming Contract Year and the approximate levels of Acceptable Waste to be delivered by the County on a monthly basis for such coming Contract Year. The Company may upon thirty (30) days written notice request a change in the timing of scheduled major maintenance for the Facility. The Company shall notify the County as soon as reasonably practicable regarding any unscheduled maintenance.

(c) In the event the Facility is unable to process the Acceptable Waste, the Company shall be entitled to fulfill its obligations hereunder by notifying the County as provided below to deliver Acceptable Waste to the Landfill or such other landfill as the County may determine. In that event, the Company shall, as promptly as practicable, notify the County by telephone (which notice shall be confirmed by fax, email or other writing within one (1) Business Day) of such determination and shall consult with the County with regard to (i) the use of any alternate facility and (ii) the amount of Acceptable Waste per day to be caused to be delivered by the County to such alternate facility or facilities; provided that the Company shall continue to accept Acceptable Waste at the Facility for thirty-six (36) hours after giving such notice to the extent that such acceptance will not violate any environmental permit or applicable laws and regulations. The Company shall give the County prompt notice of its intention to resume processing Acceptable Waste at the Facility and will consult with the County regarding the need for any additional alternate facility.

(d) For all purposes of this Agreement, all deliveries of Acceptable Waste to the Facility, up to 163,000 Tons per year, shall be deemed to be deliveries by the County, irrespective of the identity of the party delivering or arranging the delivery of such Acceptable Waste.

#### 4.03 Service Coordinator.

(a) The County shall by the Effective Date designate in writing a person to act as the County's service coordinator with respect to matters which may arise during the performance of this Agreement, such person to have authority pursuant to such written designation to transmit instructions and receive information and confer with the Company's service coordinator.

(b) The Company shall by the Effective Date designate in writing a person to act as the Company's service coordinator with respect to matters which may arise during the performance of this Agreement, such person to have authority pursuant to such written designation to transmit instructions and receive information and confer with the County's service coordinator.

(c) At any time after the initial designation by either party of its service coordinator, such party may designate a successor service coordinator by notice to the other party.

#### 4.04 Facility Maintenance.

(a) Employees. The Company shall at its cost and expense staff the Facility (except for the scale house, which will be staffed by the County) during the term of this Agreement with the appropriate number of hourly and salaried employees consistent with good management practices.

(b) Storage of Waste. The Company shall store all recyclable materials and wastes, including Process Residue, at the Facility only within an area appropriately fenced and screened and for a period not to exceed sixty (60) days. All Process Residue shall be stored in the residue storage area at the Facility. No solid waste or refuse shall be stored outside except immediately following an emergency (e.g., hurricanes, storms or tornados which generate abnormal amounts of garbage and yard wastes).

(c) Traffic Flow Regulation. The Company may reasonably regulate the flow of traffic through the Facility scales and into the Facility receiving area, may deny admission to the Site to any vehicle carrying Hazardous Waste or Unacceptable Waste (if separation of such Unacceptable Waste other than Hazardous Waste is impractical, or if the

person delivering such waste will not make such separation), any vehicle that may unreasonably leak, spill or allow Acceptable Waste to be blown or scattered, and any vehicle, that is not in a safe condition, and may otherwise promulgate reasonable safety and traffic rules applicable to the Site. Neither the Company nor the County shall give preferential treatment to any vehicle delivering waste to the Facility, except for emergencies and maintenance issues.

4.05 County Visits and Inspections; Record Keeping and Reporting; Testing.

(a) Subject to Federal Terror/Threat Level Restrictions and Company policy in effect to support those restrictions, the County and its representatives shall have (i) at any time on and after the Effective Date and during the term of this Agreement and upon prior reasonable notice to the Company, the right to visit, and (ii) upon reasonable notice by the County and the consent of the Company which shall not be unreasonably withheld or delayed, to take visitors through the Facility in order to observe and to permit others to observe the various services which the Company performs; provided, however, that such visits shall be conducted in a manner so as to minimize interference with the Company's performance.

(b) (i) The County may, at its cost and expense and with full cooperation of the Company, conduct inspections of the Facility to determine whether the Company is maintaining the Facility consistent with industry standards for similar waste-to-energy facilities. The County shall give the Company reasonable notice of such inspections and shall furnish the Company with a copy of any report made as a result of such inspection. The Company shall, within thirty (30) days from the receipt of any such report, respond to the findings of such report. Any disagreements regarding such findings shall be subject to dispute resolution under Article IX hereof.

(ii) The Company shall maintain and calibrate all Facility instrumentation at its cost and expense, except that calibration of the scales is the responsibility of the County.

(c) (i) The Company shall maintain an information system to provide storage and ready retrieval of Facility operating data, including all information necessary to verify calculations made pursuant to this Article IV or Schedule 9. The County's scale house reports to the Company shall be in a format mutually agreed to by the parties.

(ii) The Company shall prepare and maintain proper, accurate, and complete books and records and accounts of all transactions related to the Facility.

(iii) The Company shall provide the County and the Consulting Engineer with monthly operations reports no later than fifteen (15) Business Days after the last day of the previous calendar month, including, but not limited to, the following operating data: (A) the total Tonnage received and processed by the Facility; (B) the total amount of County Tons, including any Tons that would subject the County to the Additional Waste Service Fee pursuant to Section 6.06; (C) the amount of Directed Handling Waste received by the Company; (D) the total quantity of Unacceptable Waste leaving the Facility; (E) the total amount of Process Residue leaving the Facility; (F) the total amount of Secondary Materials (by way of example, ferrous) leaving the Facility; (G) the Tons of County By-Pass Waste; (H) the Company's "Monthly Operation Report" which lists refuse received, refuse processed, ash shipped, ferrous shipped, non-processibles, steam produced, gross electric, net electric, purchased electric, in-plant electric, estimated gross energy recovery, estimated net energy recovery, boiler availability (for each unit and an average for all units) and turbine availability; with regard to gross and net energy generated for any given period, the actual numbers as stated by PEC on the monthly

statement for the given period will in all cases be the official number for all payments hereunder; and (I) the Company's "Production and Performance Summary which lists in addition to some of the above, water and chemical usage and performance statistics; (J) copies of all environmental reports sent to or from the Company to any state or federal permitting agencies related to the Facility; (K) the Company's tangible personal property tax return when prepared; and (L) copies of each statement rendered by PEC or any other energy purchaser pursuant to an Energy Contract for energy sold to PEC or such other purchaser. These reports shall present the data in a form acceptable to the County and the Consulting Engineer. In addition, the Company will furnish other data, as requested by the County, excluding such items as are confidential or proprietary. The County will provide to the Company the final monthly tonnage numbers from the scale house records no later than three (3) Business Days after the last day of the previous calendar month. This information will in part be the basis for the data provided by the Company in subsections (A) through (I) above. The records shall include but not be limited to the information necessary to determine appropriate identification of the trucker delivering waste, including date and time of arrival and departure.

(iv) The County shall provide the Company, its auditors, and the Consulting Engineer with reasonable access, including a computer data communication link in a manner mutually agreed to by the parties, to the scale house facility and records. The Company shall provide the County, its auditors and the Consulting Engineer with reasonable access to the Company's meters, instruments and records necessary to substantiate the Waste Disposal Fee including records relating to quantities of Acceptable Waste and Directed Handling Waste delivered to the Facility, gross and net electric energy generated at the Facility, County By-Pass

Waste, Process Residue leaving the Facility and the price at which electric energy was sold pursuant to the Power Sales Agreement.

(d) The Company shall at the request of the County, test the Facility in accordance with Schedule 7 to determine whether the Company is in compliance with the Performance Guarantees as enumerated in Schedule 6. The County shall, at least one (1) month prior to any such test, notify the Company that the Company is not substantially in compliance with its obligations under this Article IV and specify the Company's failure(s). The Company shall either (i) correct such failure(s) and notify the County in writing of such correction and state that no test is required, or (ii) notify the County that the Company is substantially in compliance with such obligations. Prior to any test, the Company shall clean the boilers to the conditions in accordance with the Facility's maintenance guidelines. If the County nonetheless requests that such test be undertaken and the results of such test indicate that such failure(s) (a) do not exist, the County shall pay the cost of such test and the Company's loss of energy revenues during such test, if any, or (b) do exist, the Company shall pay the cost of such test, the County's loss of energy revenues during such test, if any, and any other damages that may arise from the results of such test pursuant to the obligations of the Company under this Agreement.

4.06 Company's Guarantees of Performance. The Company, as an inducement to the County to enter into this Agreement, hereby guarantees to the County that the Performance Guarantees as described in Schedule 6 are of the essence of this Agreement. Accordingly, the Company hereby guarantees to the County that the Company shall fully comply with each and every Performance Guarantee pursuant to the terms of this Agreement.

4.07 Rejection Rights.

(a) Rejection of Deliveries. The Company may reject Acceptable Waste pursuant to its rejection rights as set forth in Schedule 3. Acceptable Waste which the Company shall refuse to accept pursuant to this Section shall not be included in the computation of the Guaranteed Annual Tonnage, and the Company shall incur no liability to the County for its failure or refusal to accept such Acceptable Waste. If the Company elects to accept such waste even though it has a right to reject, the waste shall be applied towards the County's Guaranteed Annual Tonnage.

(b) Composition of Acceptable Waste. Nothing in this Agreement shall be construed to mean that the County guarantees the composition of any Acceptable Waste as it pertains to the proportion of any material contained therein, the energy value thereof, or any other aspect thereof; nor, except as provided in Schedule 10, shall the guarantees of the Company under this Agreement be construed to have diminished due to any variation in the composition of the Acceptable Waste.

4.08 Receiving and Operating Hours.

(a) On and after the Effective Date, the Company shall keep the Facility open for the receiving of Acceptable Waste during the Receiving Time.

(b) If the Company requests and the County agrees, the County shall deliver and the Company shall accept Acceptable Waste at times other than the Receiving Time at no additional cost to the County.

(c) Upon the County's request, the Company shall accept deliveries of Acceptable Waste at times other than the Receiving Time upon seven (7) days' prior written notice, (or such shorter notice as may be practicable in the event of the occurrence of a natural

disaster or other emergency condition). The County shall pay all additional costs, if any, incurred by the Company as a result of such additional hours of operation upon submission of Cost Substantiation.

(d) On and after the Effective Date, the Company shall operate the Facility on a twenty-four (24) hour per day, seven (7) day per week basis, consistent with normal steam and electrical generating plant practice, even though the Facility shall be open for receiving Acceptable Waste only as stated in this Section.

(e) The Company shall maintain and staff an office at the Facility during office hours.

4.09 Weighing of Acceptable Waste Deliveries, Etc.

(a) Scale Operation. The County shall maintain two (2) container and/or motor truck scales to weigh all vehicles delivering waste to the Facility and all Process Residue, County By-Pass Waste and Unacceptable Waste removed from the Facility. The scales shall be large enough to weigh a 70-foot vehicle. The County shall operate and control the scales in accordance with the procedures specified herein and shall employ qualified staff to operate it. The County at its own expense shall maintain the scales and gatehouse in good condition and cause periodic calibrations of the scales as hereinafter set forth. The Company shall have the right to be present at or review the results of such calibrations.

(b) Weighing Procedures. The Company and the County shall jointly establish reasonable procedures to insure proper vehicle identification and to predetermine vehicle tare weights so that net vehicle load can be established. Each incoming vehicle, and outbound vehicle carrying Process Residue, County By-Pass Waste and Unacceptable Waste shall be weighed, indicating gross weight, tare weight, time and truck identification on a weight

record. Such records shall be maintained by the County and shall be used by the Company and the County as a basis for calculations required herein. The County shall provide the records in a computerized format mutually agreed to by the parties. The Company shall have the right to inspect the books and records of the scale house at any time, without prior notice; provided, however, that such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with scale house operations.

(c) Inspections. The County shall provide for regular inspections of the scales by qualified officials to ensure their reasonable accuracy, such inspections to be conducted not less than annually. Recalibration of the scales shall be done as necessary at the County's expense. The Company may at any time, at the Company's expense, during business hours, perform spot inspections of the scales. If the inspection by qualified officials determines that recalibration is necessary, the Company shall provide the County with a written copy of the inspection report, upon receipt of which, the County will arrange, at the County's expense, for the recalibration of the scales. Said recalibration must be done within thirty (30) days of the date the County is advised that recalibration is necessary.

(d) Inoperative Scales. If all weighing facilities are inoperative or are being tested, the County shall estimate the quantity of wastes delivered on the basis of truck volumes and estimated data obtained through historical information pertinent to the hauler. These estimates shall take the place of actual weighing records during the scale outage. The County shall notify the Company within one (1) hour if all weighing facilities will be inoperative for more than one day.

(e) Weight Records.

(i) Copies of all current weight records shall be delivered to the Company on a daily basis, or with such other frequency as is agreed to by the parties, in a data processing format agreed to by the parties.

(ii) The County shall maintain records of Acceptable Waste tonnage accepted at the Facility, and of Process Residue, County By-Pass Waste and Unacceptable Waste, on a daily, weekly, monthly, and annual basis and copies of all weight tickets will be retained for a period of five (5) years.

(f) Weight Tickets. The County and the operator of each weighed vehicle shall receive a copy of the weight ticket and shall, upon request, provide a copy of any such weight ticket to the Company. Each weight ticket shall include at least the following information:

- (i) Date and Time
- (ii) Hauler Code
- (iii) Vehicle I.D. number
- (iv) Tons delivered
- (v) Type of material weighed

(g) Detection of Unacceptable Waste. The County will train all scale operators to recognize Hazardous Waste and Unacceptable Waste. The County shall also instruct all haulers delivering waste to the Facility as to what constitutes Unacceptable Waste and direct such haulers to deliver such wastes directly to the Landfill. If the County becomes aware that Unacceptable Waste is observed to be delivered to the Facility, the County scale operators will promptly advise the Company that Unacceptable Waste has been delivered to the Facility. The

Company shall also train all of the Company's personnel responsible for tipping floor activity to recognize Hazardous Waste and Unacceptable Waste.

(h) Waste Deliveries by Third Parties. The County may screen all deliveries of waste by third parties to the Facility from the gatehouse. The County shall be permitted to have a County inspector on site at the tipping floor to inspect each such delivery. Any Acceptable Waste delivered to the Facility shall count toward the Guaranteed Annual Tonnage hereunder.

4.10 Title to Waste. Nothing in this Agreement shall impose upon the County or the Company title to any waste.

**ARTICLE V - HANDLING OF PROCESS RESIDUE, COUNTY BY-PASS WASTE,  
UNACCEPTABLE WASTE AND HAZARDOUS WASTE**

5.01 Disposal. The Company shall be responsible for removing from the Facility and transporting to the Landfill all Process Residue and, except as otherwise expressly provided herein, all County By-Pass Waste. Such removal and transport shall be accomplished by the Company in accordance with all applicable federal, state and local codes, rules and laws and regulations governing such material, its transportation and disposal. The Company will be responsible for the loading of these materials onto trucks at the Facility. The County is responsible for the costs of transportation, and disposal of Unacceptable Waste and Process Residue; provided, however, that the County shall only be responsible, in the case of Process Residue, for transportation costs in excess of twenty (20) highway miles from the Facility. The Company shall bear seventy-five percent (75%) of the disposal costs and the incremental increase, if any, in the transportation costs to transport and dispose of County By-Pass Waste.

5.02 Unacceptable Waste.

(a) The County shall use its best efforts to cause only Acceptable Waste to be delivered to the Facility by or on behalf of the County. However, the parties hereby agree that inadvertent deliveries by or on behalf of the County of Unacceptable Waste to the Facility shall not constitute a breach of the County's obligations hereunder.

(b) If the Company discovers that Unacceptable Waste has been delivered to the Facility by or on behalf of the County, the Company may elect to process it, in which event the tonnage associated with such Unacceptable Waste shall be applied to the County's Guaranteed Annual Tonnage.

(c) If the Company elects not to process Unacceptable Waste, the Company shall segregate it from the Acceptable Waste to the extent practicable, notify the County of its election not to process such Unacceptable Waste, and the County shall be responsible for the immediate removal thereof, excluding any Unacceptable Waste delivered to the Facility by the Company, in a safe and proper manner. If the County does not promptly remove such Unacceptable Waste, the Company may contract with third parties for the removal and disposal thereof on the County's behalf. The County shall pay for all costs of removal, transportation, disposal and clean up of such Unacceptable Waste, and all costs related to health and safety risks with respect thereto, whether incurred by the County directly or by the Company on the County's behalf, in accordance with all applicable Federal, state and local laws, regulations and ordinances and this Agreement. Any recovery from any other Person, net of the expenses incurred in such recovery, shall be used to offset the respective costs of the County and the Company.

5.03 Provision of Disposal Site. The County shall cause one or more properly permitted sanitary Landfills to be available between the hours of 8:00 a.m. and 5:00 p.m., Monday through Saturday, exclusive of Legal Holidays, for proper disposal of (i) Process Residue, (ii) Unacceptable Waste, and (iii) County By-Pass Waste, in accordance with this Article V. If, because of an Unforeseen Circumstance, the County is unable to make or to continue to make available to the Company any Landfill previously in use or proposed to be used pursuant to this Section, the County shall nevertheless make available to the Company other properly permitted sanitary Landfills or suitable emergency disposal sites sufficient to satisfy the provisions of this Article V.

If the County fails to provide or designate a suitable Landfill for Process Residue, County By-Pass Waste and Unacceptable Waste, the Company may use any other available landfill and shall be entitled to reimbursement for (i) all tipping fees and disposal charges with respect thereto, and (ii) all costs of transportation over those which the Company would have incurred for such waste if such landfill were twenty (20) highway miles from the Facility; provided, however, that the Company shall use commercially reasonable efforts to minimize the cost of transportation and disposal at any such landfill.

5.04 Obligations with Respect to Hazardous Waste. (a) In addition to its other obligations under this Article V, the County shall be responsible, at its own cost and expense, for any handling, transporting, disposing and cleaning up of any and all Hazardous Waste delivered to the Facility by or on behalf of the County, excluding any Hazardous Waste contained in waste delivered to the Facility by the Company, under this Agreement, all in accordance with applicable laws, rules and regulations. The Company shall notify the County of any Hazardous Waste delivered to the Facility by or on behalf of the County which the Company discovers, is

made aware of or suspects, and the County shall remove and dispose of the same immediately. The Company shall have no obligation or liability whatsoever with respect to any costs associated with Hazardous Waste delivered by or on behalf of the County (including waste the content or composition of which results in Process Residue being classified as Hazardous Waste) and, to the extent permitted by State of Florida law, the Company shall be indemnified for any and all Hazardous Waste Costs incurred by the Company, unless such Hazardous Waste was delivered to the Facility through waste brought by or on behalf of the Company. The County shall pay such Hazardous Waste Costs incurred by the Company with respect to Hazardous Waste delivered by or on behalf of the County within fifteen (15) days of receipt of an invoice therefor, accompanied by Cost Substantiation of such Hazardous Waste Costs. If, after the date on which the County makes a payment under this subsection, the Company receives proceeds from insurance or any other third party for any Hazardous Waste Costs, the Company shall reimburse the County for its share of such proceeds. All Performance Guarantees and any other obligations of the Company under this Agreement shall be adjusted to such extent as may be necessary to relieve the Company of any incremental obligation, cost, risk, exposure, or liability which it might otherwise incur or be exposed to, including, without limitation, as a result of work stoppages or slowdowns, shutdown of or damage to or contamination of the Facility resulting from the delivery, handling, removing or cleanup of Hazardous Waste delivered by the County.

(b) The Company shall not produce Hazardous Waste as a result of a change after the Effective Date in the methods of processing waste, except for any reclassification of Process Residue as Hazardous Waste as a result of a Change in Law.

**ARTICLE VI - WASTE DISPOSAL FEE AND OTHER PAYMENTS**

6.01 Waste Disposal Fee. Commencing with the first Billing Period and for each Billing Period thereafter, the Company shall be paid a Waste Disposal Fee by the County for accepting, processing and/or disposing of the Guaranteed Annual Tonnage and recovering energy therefrom pursuant to the terms of this Agreement and in accordance with the following formula:

$$\text{WDF} = \text{DS} + \text{OC} + \text{PT} + \text{AWF} - \text{EC} +/- \text{PD} +/- \text{AP}$$

Where:

- DS = Debt Service
- OC = Operating Charge
- PT = Pass Through Costs
- EC = Energy Credit
- AWF = Additional Waste Service Fee
- PD = County Performance Damages to be added, if any, and Company Performance Damages to be subtracted, if any.
- AP = Additional Payments subtracted if due and payable to the County under Section 6.07(a) and added if due and payable to the Company under Section 6.07(b), or both.

The Company shall be exclusively entitled to all revenues derived from the sale of Secondary Materials such as recoverable by-products and any other materials it may elect to recover from Acceptable Waste either before or after combustion. Thirty (30) days prior to the end of the Contract Year, the Company shall provide to the County a written statement setting forth its reasonable estimate of the aggregate Waste Disposal Fee for the next Contract Year.

6.02 Debt Service. Debt Service for any Billing Period shall mean an amount equal to the sum of (i) (A) one-twelfth (1/12) of the principal of and premium on the Bonds, if any, due on the annual principal payment date on the Bonds which next follows the close of the calendar month following the Billing Period for which Debt Service is calculated or (B), if principal has been accelerated on all of the Bonds pursuant to the terms of the Indenture, the remaining principal amount of the Bonds plus any premium and accrued interest on the Bonds;

(ii) (A), for periods during which interest on the Bonds is payable at a floating rate, the interest due for the second calendar month following the Billing Period for which Debt Service is calculated, estimated based on the rate in effect during the last full weekly interest period of such Billing Period or (B), for periods during which interest on the Bonds is payable at a fixed rate, one-sixth (1/6) of the interest on the Bonds due on the semi-annual interest payment date on the Bonds which next follows the close of the calendar month following the Billing Period for which Debt Service is calculated; and (iii) any replenishment of a deficiency in any fund required to be maintained by the Trustee pursuant to the Indenture in the second calendar month following the Billing Period for which Debt Service is calculated; less (iv) (A) interest income earned during such Billing Period from any fund created under the Indenture which is available for payment of principal or interest in such Billing Period, and (B) any amount available for the payment of principal or interest or for the replenishment of any deficiency required pursuant to (iii) above for the second calendar month following such Billing Period from the debt service reserve fund or any other fund or account (other than a fund or account for current revenues) created under the Indenture (provided that such availability does not result from the failure of either party to this Agreement to pay when due any amount payable under this Agreement).

6.03 Operating Charge. For any Billing Period, Operating Charge shall be \$543,982.50 (as of January 1, 2004), which shall be adjusted, if necessary, pursuant to Sections 6.9, 6.10 and 6.11 hereof and escalated each October 1<sup>st</sup> thereafter by the Escalation Adjustment Factor which is computed in accordance with Schedule 1.

6.04 Pass Through Costs. Pass Through Costs for any Billing Period shall be the sum of those costs and expenses accrued for such Billing Period set forth in Schedule 5. The Company shall make a good faith effort to reduce the Pass Through Costs payable by the

County. Company will provide information and documentation to the County to allow County to determine the validity and propriety of amounts charged as Pass Through Costs. The documents and/or information provided shall allow the County to make an independent verification of the individual Pass Through Costs. Supporting documentation and information should be provided for all invoices or bills. In certain cases where the information needed may be confidential or proprietary or unavailable without reviewing confidential or proprietary information, Company may elect to provide the information in summary form in a report prepared and certified by an outside consultant such as an insurance company or auditor.

6.05 Energy Credit. For any Billing Period, the Energy Credit shall be the product of (a) all revenues actually received during such Billing Period from the sale of energy, thermal energy and Capacity pursuant to the Energy Contracts following the Effective Date, including any amount paid as liquidated damages and the amount of recovery on any judgment against PEC or any other energy purchaser pursuant to an Energy Contract in such Billing Period in respect of any dispute regarding the amounts due to the Company pursuant to any Energy Contract, net of all applicable costs of obtaining such judgment recovery and (b) the Energy Credit Multiplier.

6.06 Additional Waste Service Fee. At the end of each Billing Period, if the cumulative number of Tons of Acceptable Waste delivered in such Contract Year for the account of the County through and including such Billing Period exceeds the Guaranteed Annual Tonnage, the County shall pay the Company an Additional Waste Service Fee for each such excess Ton delivered during such Billing Period. The amount of the Additional Waste Service Fee shall be \$22.00 (as of January 1, 2004) for each ton delivered by or on behalf of the County during such Billing Period in excess of 163,000 Tons in any Contract Year. If, as a result of a

BTU Adjustment pursuant to this Agreement, the Guaranteed Annual Tonnage is reduced below 163,000 Tons, the amount of the Additional Waste Service Fee for each Ton of Acceptable Waste delivered by or on behalf of the County between such adjusted Guaranteed Annual Tonnage (to the extent reduced as a result of BTU Adjustment) and 163,000 Tons shall be \$12.00 (as of January 1, 2004). The \$22.00 and \$12.00 amounts shall be escalated each October 1<sup>st</sup> thereafter by the Escalation Adjustment Factor which is computed in accordance with Schedule 1. No Additional Waste Service Fee shall be payable to the Company in any Contract Year with respect to a number of Tons of Acceptable Waste processed by the Company equal to the number of Tons of County By-Pass Waste in such Contract Year.

6.07 Additional Payments.

(a) By the Company. At the end of each Billing Period, for each Ton of Acceptable Waste delivered to the Facility by the Company, the Company shall pay the County \$40.00 per Ton (as of January 1, 2004), escalated each October 1<sup>st</sup> thereafter by the Escalation Adjustment Factor which is computed in accordance with Schedule 1. Except for the payments to the County provided for herein, the Company may receive and retain all revenues derived from the acceptance of the Acceptable Waste described in this Section.

(b) By the County. As reimbursement for certain capital costs, the County (i) has paid the Trustee the sum of \$850,000.00 upon the execution of this Agreement, which amount shall be disbursed by the Trustee to the Company upon the earlier to occur of (A) the final redemption of all Bonds outstanding immediately prior to the Effective Date or (B) thirty (30) days following the Effective Date and (ii) shall pay the Company an additional \$850,000.00 on each of July 1, 2005 and 2006.

6.08 Company Non-Performance.

(a) (i) If during any Billing Period, the Company does not process Acceptable Waste through the Facility due to the Fault of the Company, the County shall dispose of such Acceptable Waste by utilizing alternate facilities (i.e., the Landfill, and the County shall make the Landfill available to the Company for that purpose), the County shall pay the Waste Disposal Fee, and the Company shall pay Performance Adjustments for such Billing Period. Performance Adjustments means, for any Billing Period, an amount equal to the sum of (A) the Capacity Payment for such Billing Period, to the extent lost as a result of Company Fault, plus (B) 75% of the disposal costs and the incremental increase, if any, in the transportation costs to transport and dispose of County By-Pass Waste during such Billing Period. In addition, the Company will pay any Lost Energy Performance Adjustments due pursuant to and in accordance with the provisions of Section 6.13. The County shall use all reasonable efforts to minimize its costs as described above and shall substantiate and document such costs in a manner reasonably satisfactory to the Company for the amounts payable under this Section 6.08(a)(i). After delivering an invoice to the Company for all charges owed by the Company under Section 6.08(a)(i), the County may offset the amounts due against the Waste Disposal Fee then due to the Company in any Billing Period. In the event the amount which the County may offset under this Section is greater in any Billing Period than the Waste Disposal Fee payable by the County in such Billing Period, then the County shall invoice the Company for any such amounts promptly following the end of each month and the Company shall pay each such invoice within fifteen (15) days of receipt.

(ii) No Performance Adjustments shall be payable for failure to produce electricity during maintenance of the turbine-generator; provided that such maintenance

downtime shall not exceed the cumulative amount of three (3) weeks for each successive three (3) year period under this Agreement.

(iii) If at or at any time prior to the end of any Contract Year, the Company shall have received Acceptable Waste in an amount equal to or greater than the Guaranteed Annual Tonnage, no further payments for such Contract Year will be due under Section 6.08(a)(i) and the County shall refund to the Company within fifteen (15) days all amounts paid by the Company thereunder (but not including any Capacity Payment to the extent lost as a result of Company Fault) with interest thereon calculated at the rate of eight percent (8%) simple interest per annum.

(iv) Verification of the energy efficiency of the Facility will be accomplished on a daily basis using the procedures and parameters specified in Schedule 9. If at the end of any Contract Year or portion of a Contract Year following the Effective Date (A) the Facility shall have operated continuously within the Operating Parameters set forth in Schedule 9 or (B) the average electric energy production by the Facility per ton of Acceptable Waste during such Contract Year or portion thereof is equal to or greater than 519.5 kWh per ton, the Company shall not be obligated to pay the County any Energy Efficiency Damages. If at the end of any Contract Year, (A) for any day of said Contract Year following the Effective Date with respect to any boiler processing Acceptable Waste on such day, the Facility failed to achieve one or more of the Operating Parameters monitored pursuant to Schedule 9 and (B) the average electric energy production by the Facility per ton of Acceptable Waste processed at the Facility during such Contract Year following the Effective Date is less than 519.5 kWh per ton, the Company shall pay to the County damages for energy revenues lost for each day during such period that the Facility failed to achieve one or more of the Operating Parameters in an amount

equal to ninety percent (90%) of the difference, if positive, between (A) the product of the number of tons of Acceptable Waste processed during such date (up to 528 tons per day) times 519.5 kWh per ton times the weighted average on-peak and off-peak price per kWh during the applicable month pursuant to the Power Sales Agreement and (B) the actual energy revenues received for such day from the sale of electricity pursuant to the Power Sales Agreement (the “Energy Efficiency Damages”).

(b) Any amounts due the County under subparagraph (a) of Section 6.08 shall be offset by all revenues received by the County during a Contract Year which result from the production of energy at the Facility in excess of 519.5 kWh per ton of waste processed.

(c) The County may at any time (but no more frequently than monthly) require an unburned carbon Performance Test to be conducted at the Facility pursuant to Schedule 7. Payment for conducting the test shall be in accordance with Schedule 7. If the Facility fails to meet the unburned carbon Performance Guarantee as reflected in such test, the Company shall pay to the County monthly, an amount calculated pursuant to Schedule 7 hereto. Such amount may be applied by the County as an offset to the Waste Disposal Fee in any Billing Period.

(d) The payments specified herein for non-performance or non-compliance with the Performance Guarantee shall be the County’s sole remedy against the Company for such non-performance or non-compliance.

6.09 County Non-Performance and County Performance Damages.

In addition to any damages for failure to deliver Acceptable Waste as provided in Section 4.01, if during any Billing Period, the Facility is temporarily shut down, either partially or totally, or is otherwise unable to accept or process the Acceptable Waste in accordance with the

Performance Guarantees due to the Fault of the County or its officials, agents, employees, contractors or subcontractors (other than the Company), the Company shall have no obligation to accept, process and/or dispose of Acceptable Waste, and the County shall pay the Waste Disposal Fee and shall pay an adjustment (“County Performance Damages”) equal to the sum of (i) the increase in the Company’s direct costs of operation and maintenance of the Facility, for which the Company shall provide Cost Substantiation, and (ii) the Lost Energy Revenues. The Company shall nonetheless continue to process Acceptable Waste through the Facility to the extent capacity is available.

6.10 BTU Adjustment to Service Fee. Notwithstanding the adjustments in the Guaranteed Annual Tonnage specified in Schedule 3, if, in the Company’s reasonable judgment, the energy content of Acceptable Waste delivered to the Facility shall, on a monthly average basis over any period of four consecutive (4) months or more, either be more than 6,000 BTU per pound or be less than 3,800 BTU per pound on an HHV basis, the Company may propose in writing to the County adjustments in the Waste Disposal Fee, the Guaranteed Annual Tonnage and the Additional Waste Service Fee to reflect such a change in operating conditions of the Facility. In its proposal, the Company shall provide documentation for the calculations performed in accordance with the methodology set forth in Schedule 13 for the period in question, to be confirmed by the Consulting Engineer, demonstrating that Acceptable Waste with an average energy content outside the above limits was processed through the Facility during such period. As soon as practicable after the County receives the Company’s proposal, the County and the Company shall undertake discussions of such proposal in good faith and shall use their best efforts to agree on an equitable adjustment of the Waste Disposal Fee, the Guaranteed Annual Tonnage, the number of Tons with respect to which the Additional Waste

Service Fee is payable and the number of Tons of Acceptable Waste (including Directed Handling Waste) which the Company is permitted to deliver pursuant to this Agreement. If the County and the Company shall fail to agree on such adjustment within four (4) weeks after commencement of such discussions, the matter shall be referred to dispute resolution pursuant to Section 9.04. If any adjustment is agreed to or results from the pursuit of dispute resolution procedures, such adjustment shall be applied retroactively to the beginning of the four consecutive (4) month period during which the average energy content of Acceptable Waste delivered to the Facility exceeded 6,000 BTU per pound or was less than 3,800 BTU per pound on an HHV basis.

6.11 Unforeseen Circumstances. An Unforeseen Circumstance shall not relieve either party of any payment obligations hereunder.

(a) If during any Billing Period, the Facility is unable to accept and process Acceptable Waste for any reason, including by way of example the occurrence of an Unforeseen Circumstance; the inability to timely complete a Capital Project necessitated by an Unforeseen Circumstance as a result of the failure of the parties to timely reach an agreement or successfully complete the dispute resolution process; or the inability or failure of the County to deliver Acceptable Waste; then in any and all such events the County shall pay the Waste Disposal Fee.

(b) If during any Billing Period, due to the occurrence of an Unforeseen Circumstance, there shall be a decrease or increase in the Company's costs of operation and maintenance of the Facility, the Operating Charge shall be increased or decreased, as the case may be, subject to Cost Substantiation; provided that any increase in the costs of operation and

maintenance of the Facility shall be limited to the incremental cost increases to the Company, for which the Company shall provide Cost Substantiation.

(c) If an Unforeseen Circumstance causes a permanent increase in the costs of operation and maintenance of the Facility and a Capital Project is not required in the Company's judgment under Section 3.02(c), the Company shall as promptly as possible notify the County of its determination whether such costs can be reduced by a Capital Project and, if so, request the County to approve a Capital Project for such alteration pursuant to such Section. If the Company determines that such costs cannot be reduced by an alteration of the Facility, or if the County does not approve the request of the Company for a Capital Project pursuant to the last preceding sentence, the Waste Disposal Fee shall be adjusted by increasing the Operating Charge to reflect such increased costs; provided that any increase in the Operating Charge shall be limited to the increase in incremental costs to the Company of operating and maintaining the Facility, for which the Company shall provide Cost Substantiation.

(d) Except as may be provided in this Section, neither the County nor the Company shall be liable to the other for any failure or delay in performance of any obligation under this Agreement due to the occurrence of an Unforeseen Circumstance.

(e) The party experiencing an Unforeseen Circumstance shall promptly notify the other party by telephone, on or after the date the party experiencing such Unforeseen Circumstance first knew of the commencement thereof and its impact on the operating charges and/or capital costs of the Facility, followed within fifteen (15) days by a written description, of (i) the beginning of such Unforeseen Circumstance, (ii) its estimated duration and cost impact, if any, on the Operating Charge, (iii) its estimated impact on the obligations under this Agreement, and (iv) the areas where costs can be reduced and the approximate amount of such cost

reductions. Additionally, either party shall provide prompt written notice of the cessation of such Unforeseen Circumstance. Whenever such Unforeseen Circumstance shall occur, the party claiming to be adversely affected thereby shall, as quickly as possible, eliminate the cause therefor, reduce costs and resume performance under this Agreement. The parties will cooperate to eliminate, or to mitigate, costs resulting from an Unforeseen Circumstance, including a Change in Law.

6.12 Billing and Payments.

(a) For each Billing Period the Company shall render a statement to the County by the 15<sup>th</sup> day of the then-current Billing Period, which shall set forth the Waste Disposal Fee, and a summary of its calculation. Each such statement shall also include, for such Billing Period, (i) all other amounts payable by the County to the Company hereunder, (ii) all amounts payable by the Company to the County hereunder, (iii) with respect to items (i) and (ii) the balance due to or from the County and (iv) with respect to items (i) and (ii) any adjustments necessary to reconcile the prior Billing Period (the "Other Payments Balance"). Provided that the Company renders its statement to the County by the 15<sup>th</sup> day of the Billing Period, the County shall pay the Waste Disposal Fee (if positive) and any Other Payments Balance due to the Company on the last business day of such Billing Period. If the Company's bill is rendered after the 15<sup>th</sup> day of a Billing Period, the County shall pay the Waste Disposal Fee within fifteen (15) days thereafter. All amounts due under this Section that are not paid when due shall bear interest at the Overdue Rate.

(b) To the extent that the actual value of any item in any Billing Period statement cannot be accurately determined at the Billing Period statement date, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the difference between

such estimated amount and the actual amount of such item on the Billing Period statement next following the date on which the Company learns the exact amount of such item.

(c) The Company shall provide the County with copies of each statement rendered by PEC or any other energy purchaser pursuant to an Energy Contract for energy sold to PEC or such other purchaser.

6.13 Year-End Adjustment. Within sixty (60) days after the end of any Contract Year, the Company and the County will agree in writing upon any amounts owed by either party to the other, including without limitation any Lost Energy Performance Adjustments (except to the extent the Company has been reimbursed for Performance Adjustments pursuant to Section 6.08(a)(iii)), any Energy Efficiency Damages, any unpaid County Performance Damages, unpaid interest, reimbursement of penalties, unpaid Pass Through Costs, disputed amounts which have been resolved by agreement or dispute resolution and any other amounts provided for under this Agreement with respect to which a balance remains at the end of any Contract Year. Any refund amount will bear interest at the annual rate of 8% from the date of original payment. In order to aid in the calculation of amounts owed by either party to the other, and for illustrative purposes, Schedule 14 sets forth examples of the impact of certain events on the payments due by the parties.

6.14 Covenant to Budget and Appropriate. To satisfy the County's obligations hereunder, the County, to the extent permitted by applicable law, covenants and agrees to appropriate in its annual budget, by amendment if required and to the extent permitted and in accordance with budgetary procedures provided by the laws of the State of Florida, and to pay when due directly to the Company, sufficient amounts of Non-Ad Valorem Revenues of the County or other legally available funds sufficient to satisfy its obligations to the Company

hereunder. Such covenant and agreement on the part of the County to budget and appropriate such amounts of Non-Ad Valorem Revenues or other legally available funds shall be cumulative, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all required payments as and when due shall have been budgeted, appropriated and actually paid as required hereunder. The County further agrees that its obligations to include the amount of any deficiency in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues or other legally available funds may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein. The obligations of the County pursuant to this Agreement will not constitute a general indebtedness of the County within the meaning of any constitutional or statutory provision or limitation and the County is not obligated to levy any ad-valorem taxes for the payment thereof. Neither the full faith and credit nor the taxing power of the County, the State of Florida or any political subdivision thereof is pledged to such payment. Notwithstanding, the foregoing, or any provision of this Agreement to the contrary, the County does not covenant to maintain any services or programs now provided or maintained by the County which generate Non-Ad Valorem Revenues other than solid waste-services required to meet the obligations of the County under this Agreement, but only to the extent that Non-Ad Valorem Revenues are available therefor, and nothing in this Agreement shall require the County to appropriate or expend ad valorem taxes to maintain any services or programs, now provided or maintained by the County which generate Non-Ad Valorem Revenues.

For purposes of the foregoing, "Non-Ad Valorem Revenues" shall mean all legally available revenues and taxes of the County derived from any source whatever other than ad valorem taxation on real and personal property, which are legally available for the payments due

hereunder.

## **ARTICLE VII - FURTHER AGREEMENTS**

7.01 Licenses, Approvals and Permits. The Company shall maintain the Facility in compliance with all applicable laws. The County shall provide all such cooperation as may reasonably be requested by the Company in connection with the obtaining in a timely manner and the maintaining of the permits, licenses and approvals required to be obtained by the Company in connection with the operation of the Facility, as set forth in Schedule 11. The Company will maintain all such permits, licenses, and approvals required to be maintained by the Company in connection with the operation of the Facility, except that the failure of the Company to maintain such permit, license or approval through no Fault of the Company shall not be considered an Event of Default by the Company.

7.02 Power Sales Agreement.

(a) The Company shall not, without the consent of the County, which consent will not be unreasonably withheld, amend the Power Sales Agreement. Should the Company propose to amend the Power Sales Agreement in any manner which would have the effect, if applied to the quantities of electric energy actually sold over the previous twelve (12) Billing Periods, of reducing the Energy Credit or the Capacity Payment for such Billing Periods, the County may withhold its consent if it, in its sole discretion, determines the amendment has an overall negative material effect on the value of this Agreement to the County.

(b) The Company shall not, without the County's prior written consent, sell or use steam generated from the processing of Acceptable Waste other than for the production of electricity or for the processing of residue to reduce the volume of residue which, after processing, is delivered to the Landfill. The parties intend that prior to the County's

consenting to the steam sales, a mutually agreeable revenue sharing formula shall be developed. If the steam is used in the processing of residue in a manner that reduces electrical generation by the Facility, the electrical power equivalent of the steam that is so used shall be determined, in kWh per ton, by using standard engineering calculations and methodology and the County shall be entitled to receive its proportionate share of the energy revenues that it otherwise would have received hereunder had such steam instead been used to produce electricity. For purpose of this Section, the sale or use of hot water or other forms of thermal energy shall be considered the same as the sale of steam.

7.03 Insurance. It is intention of the parties to mitigate, to the extent practicable, risks associated with Unforeseen Circumstances, and the Company shall maintain the insurance coverages set forth in Schedule 12 and any other coverage that the County may request, provided that in each case (i) the cost of such coverage is a Pass Through Cost and (ii) such coverage is reasonably commercially available.

The County shall be named as an additional insured on said policies. The Company shall obtain and show written proof of such insurance from all insuring companies by providing insurance certificates to the County. The Company further agrees that no such insurance shall be cancelled or changed except with previous written notice to County; provided, however, that any such notice shall not relieve the Company of its obligation to procure insurance under this Agreement. Any proceeds of such insurance received by the Company shall be promptly paid by the Company to the County to the extent that such amounts have previously been paid or reimbursed to the Company by the County, whether in connection with an Unforeseen Circumstance or otherwise. The Company shall be unable to treat as an Unforeseen

Circumstance an insurable loss incurred by the Company with respect to which the Company failed to procure insurance which it was obligated to procure under this Agreement.

### **ARTICLE VIII - DEFAULT AND TERMINATION**

8.01 Remedies for Breach. Either party may terminate this Agreement on the occurrence of an Event of Default by the other party in accordance with this Article VIII.

8.02 Events of Default by Company. The following shall constitute Events of Default on the part of the Company:

(a) persistent and repeated failure or refusal of the Company to timely perform any material obligation under this Agreement, such as, but not limited to, operation of the Facility in violation of the environmental standards or permits in Schedule 11; provided that the failure of the Facility to operate at or above the Performance Guarantees shall not be an Event of Default if the Company is meeting its other obligations under this Agreement; provided further that those events for which the County's sole remedy is as set forth in Section 9.08(a) and for which the Company has paid such damages provided for in Section 9.08(a), shall not be considered an Event of Default.

(b) failure of the Company to pay undisputed amounts owed to the County under this Agreement within sixty (60) days following receipt of a County invoice therefor;

(c) (i) the Company's or the Parent's 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 the Facility or for any substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Company or the Parent under the laws of any jurisdiction, which proceeding has not been stayed

or dismissed within thirty (30) days, or (iii) any action or answer by the Company or the Parent approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Company which shall substantially interfere with its performance hereunder or the performance of the Parent under the Parent Guaranty.

(d) The commencement of any action or proceeding by or on behalf of the Company which seeks to challenge the lawfulness or enforceability of this Agreement, or which asserts a lack of authority on the part of the Company to enter into this Agreement or perform its obligations hereunder.

8.03 Events of Default by County. The following shall constitute Events of Default on the part of the County:

(a) persistent and repeated failure or refusal of the County to timely perform any material obligation under this Agreement; provided, however, that those events for which the Company's sole remedy is as set forth in Section 9.08(b) and for which the County has paid such damages provided in Section 9.08(b), shall not be considered an Event of Default;

(b) failure of the County to pay undisputed amounts owed to the Company under this Agreement within sixty (60) days following receipt of a Company invoice therefor;

(c) (i) the County's 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) 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 stayed or dismissed within thirty (30) days, or (iii)

any action or answer by the County approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the County which shall substantially interfere with its performance hereunder.

(d) To the extent it is not unlawful for this Agreement to provide that such action is an Event of Default, and to the extent that this Section may be enforced in a court of law, the condemnation or attempted condemnation of, or the commencement of condemnation proceedings by the County for all or any part of the Facility, the Site, or any interest in any of the Project Agreements.

(e) To the extent it is not unlawful for this Agreement to provide that such action is an Event of Default, and to the extent that this Section may be enforced in a court of law, the commencement of any action or proceeding by or on behalf of the County which seeks to challenge the lawfulness or enforceability of this Agreement, or which asserts a lack of authority on the part of the County to enter into this Agreement or perform its obligations hereunder.

#### 8.04 Termination of Agreement by the County.

(a) If, within a period of sixty (60) days after the Company shall have received notice from the County that an Event of Default has occurred under Section 8.02(a) (such notice describing in reasonable detail the nature of the Event of Default), the Company has neither remedied, nor has commenced and continued to pursue with due diligence a remedy, nor paid any undisputed amounts due, for any such Event of Default, the County may terminate this Agreement upon sixty (60) days prior written notice to the Company and pursue all available legal remedies, without prejudice to the limitations set forth in Section 9.08.

(b) If an Event of Default described in Sections 8.02(b) or (c) shall occur and be continuing, then the County may terminate this Agreement upon thirty (30) days prior written notice to the Company and pursue all available legal remedies, without prejudice to the limitations set forth in Section 9.08.

(c) If at any time after October 1, 2011, there is a Change in Law that would necessitate a Capital Project expenditure greater than the lesser of (i) five million dollars (\$5,000,000) or (ii) one-third (1/3) of the principal amount of the Bonds then outstanding or which would increase other annual Waste Disposal Fee more than seven percent (7%), the County may elect to terminate this Agreement and defease the Bonds. If the Company chooses to bear the increased capital costs and operating expenses, however, the County's right to terminate this Agreement would be extinguished. In either case, the Company would continue to own the Facility. In no event shall Company alterations pursuant to this Section increase the County's costs or reduce the County's revenues.

8.05 Termination of Agreement by the Company.

(a) If an Event of Default described in Section 8.03(a) shall occur, and if such Event of Default shall continue for a period of sixty (60) days after the County shall have received notice from the Company (describing in reasonable detail the nature of the Event of Default), and the County has neither remedied, nor has commenced and continued to pursue a remedy for any such Event of Default with due diligence, then the Company may terminate this Agreement upon sixty (60) days prior written notice to the County and pursue all available legal remedies, without prejudice to the limitations set forth in Section 9.08.

(b) If an Event of Default described in Sections 8.03(b) or (c) shall occur and be continuing, then the Company may terminate this Agreement upon thirty (30) days prior

written notice to the County and pursue all available legal remedies, without prejudice to the limitations set forth in Section 9.08.

(c) If any Event of Default described in Section 8.03 shall occur, and the Company elects to terminate this Agreement, the County shall be solely responsible for payment of the Bonds and shall forgive all indebtedness of the Company to the County arising under any Project Agreement. In addition, the Company may pursue any and all remedies available to it at law or in equity.

8.06 Manner of Termination Payment. Within ninety (90) days following termination of this Agreement under this Article VIII, the County, the Company and the Trustee shall reconcile all amounts then due and payable to each other under the terms of this Agreement. Upon reaching, as a result of the accounting reconciliation, the total amount of the outstanding unpaid balance which the County, the Company or the Trustee, if any, owes the other(s), the County, the Company or the Trustee, if any, as the case may be, shall, within ninety (90) days thereof, make its final payment in complete discharge of its obligations under this Agreement, except those obligations which survive the termination of this Agreement. If there shall be a disagreement as to the amount the Company or the County shall be entitled to receive, there shall nevertheless be timely paid, to the Company, the undisputed amount the Company shall have earned hereunder through the date of termination and, to the County, such sums as the County may be entitled under this Agreement. Any remaining balance shall be payable promptly by the appropriate party after resolution of said dispute. In any event, to the extent either the County or the Company elects or is obligated to defease or assume all undisputed liability on all or any portion of the Bonds, the County or the Company shall be entitled to have the Trustee, if

any, first apply to the principal of and premium on, if any, and interest on such Bonds such amount of reserves held by the Trustee, if any, pursuant to the Indenture as the Trustee shall be expressly permitted by the Indenture, consistent with applicable law, to apply; and if in any case both the County and the Company shall be entitled to such application, such application shall be made for the ratable benefit of the County and the Company in accordance with the outstanding principal amount of the Bonds to be defeased or the liability on which is to be assumed by the County and the Company respectively.

#### **ARTICLE IX - MISCELLANEOUS**

9.01 Term. Unless sooner terminated in accordance with the terms hereof, this Agreement shall continue in effect until July 1, 2014.

9.02 Qualification to do Business. The Company agrees that during the term of this Agreement it will maintain its qualification to do business in the State of Florida and will obtain and maintain all approvals, permits and licenses necessary to perform its obligations under this Agreement except that the failure of the Company to obtain or maintain such permit, license or approval through no Fault of the Company shall not be considered an Event of Default by the Company.

9.03 Assignment.

(a) This Agreement may not be assigned by either party without the prior consent of the other party, except that the Company may, without such consent, assign its interest hereunder to: (i) the County or the Trustee as collateral for or otherwise in connection with arrangements for the financing or refinancing of all or part of the Facility or (ii) to any Affiliate that shall assume all the obligations and performance guarantees under this Agreement, provided that the Parent shall acknowledge the continuing effectiveness of the Parent Guaranty.

(b) This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto pursuant to this Section. Any attempted assignment made contrary to this Section shall be void.

9.04 Dispute Resolution.

(a) Initiation of Proceeding. To help bring about a quick and efficient resolution of disputes which may arise under this Agreement at the lowest possible cost, the parties do hereby establish this procedure to be in existence and available for use during the term of this Agreement.

(b) Informal Resolution by Negotiation. If a dispute arises involving any amounts owed, any performance under this Agreement, any interpretation of this Agreement, or any disputed default under this Agreement, a party affected by the dispute may deliver a written notice of a pending dispute to the other party affected by the dispute, in which event the parties shall proceed as described below:

(i) Within fifteen (15) Business Days of the date of receipt of such notice, each person first listed below shall provide to the other person first listed below a report detailing the facts relevant to such dispute.

(ii) Upon receipt of the other person's report, each person first listed below shall provide to the second person, in his or her organization, listed below copies of both reports.

(iii) Each person first listed below shall then meet or communicate telephonically as frequently as necessary to resolve the dispute within thirty (30) Business Days of the date detailed reports were received.

(iv) If persons first listed below are unable to resolve the dispute within such thirty (30) Business Day period, the matter shall be referred to the persons second listed below. Each person second listed below shall then meet or communicate telephonically as frequently as necessary to resolve the dispute within fifteen (15) Business Days after the date the dispute is referred to them.

(v) Each party shall endeavor in good faith to have the second person listed below be the immediate superior of the first person listed below. Any party may change such party's names listed below by notice to each other party.

(vi) Upon resolution of the dispute, the parties shall execute a statement acknowledging such resolution and the terms thereof. All parties to this Agreement shall continue to perform their respective obligations under this Agreement without regard to whether the dispute has been resolved, unless and until such obligations are terminated or expire in accordance with the provisions hereof.

<u>Number</u>	<u>County</u>	<u>Company</u>
1.	Department Director	Vice President and Regional Business Manager
2.	County Manager	Senior Vice President, Waste-to-Energy

(c) Resolution by Mediation. If any dispute referred to in Section 9.04(b) above cannot be settled as provided in that Section, the parties agree that before resorting to binding arbitration, they will attempt to resolve the dispute through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association before a Florida Supreme Court-Certified mediator who is not a resident of Lake County, Florida.

(d) Continuation of Performance. Unless otherwise agreed in writing, the Company and the County shall continue to perform their respective obligations under this Agreement during any dispute resolution process.

(e) Costs of Mediation. If mediation is employed, the costs of mediation shall be borne equally by the parties.

(f) Site of Mediation. Mediation shall, unless the County and the Company otherwise agree in writing, take place in Lake County, Florida.

(g) Binding Arbitration. (i) If any dispute referred to in Section 9.04(b) above cannot be resolved through non-binding mediation as provided in Section 9.04(c), the parties agree that they will resolve the dispute through binding arbitration. Non-technical matters shall be decided by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be selected and the matter resolved using the process described below. Disputes regarding technical matters shall be referred to an independent engineer who is not the Consulting Engineer. Any arbitration decision hereunder shall be conclusive as to the matters submitted, shall be final and binding upon the parties, and may be enforced in any court of competent jurisdiction in the State of Florida. The parties agree to the entry of such judgment in any court of competent jurisdiction in the State of Florida. Either party may give to the other written notice of its intention to have a matter submitted to arbitration hereunder, in which event a hearing thereon shall commence within a reasonable time (not to exceed fifteen (15) days, unless expressly provided otherwise in this Agreement) thereafter.

(ii) The parties shall mutually agree on a single commercial arbitrator or independent engineer, as applicable. In the event the parties cannot agree, the following

procedure shall be used to select the commercial arbitrator or independent engineer, as applicable: the parties shall each submit to the other the name of one commercial arbitrator or independent engineer, as applicable, which each believes is qualified; together, these two shall select a third commercial arbitrator or independent engineer, as applicable. The individual so selected shall arbitrate the dispute and is referred to hereafter as the “Arbitrator.” The Arbitrator may be relieved of employment by either party; provided, however, that during a hearing or pending a decision, the Arbitrator shall not be relieved of employment except by mutual agreement of the parties. If such an event occurs, the parties shall immediately select a new Arbitrator utilizing the above-described procedure.

(iii) In the event either party submits a dispute to arbitration and the other party disagrees as to whether the subject matter of such dispute is within the scope of this Section 9.04(g), the Arbitrator shall first determine whether the subject matter is within such scope. If the Arbitrator determines that the subject matter is within its scope, it shall resolve the matter. If the Arbitrator determines the subject matter is not within the scope of this Section 9.04(g), the Arbitrator shall not resolve the dispute and the matter shall be resolved by any other means available at law or in equity.

(iv) The services of the Arbitrator shall be paid for, together with any additional costs incurred in excess of the Arbitrator’s fee, including but not limited to any costs incurred in enforcing the arbitration decision, by the nonprevailing party.

9.05 Indemnification.

(a) Company Indemnification. The Company agrees that it shall protect, indemnify, and hold harmless the County and its officials, officers, members, employees and agents (the “County Indemnified Parties”) from and against all liabilities, actions, damages,

claims, demands, judgments, losses, costs, expenses, suits, or actions and 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 not parties to this Agreement, or loss or damage to property of persons not parties to this Agreement arising out of (i) the Fault of the Company or any of its officials, agents or employees in connection with its obligations or rights under this Agreement, (ii) the operation of the Facility by or under the direction of the Company or (iii) the performance (or nonperformance) of the Company's obligations under this Agreement; provided, however, that, with respect to Hazardous Waste, the Company's obligation to indemnify the County shall be limited to loss or liability to the extent arising from the Fault of the Company in connection with its express obligations hereunder with regard to Hazardous Waste. The Company is not, however, required to reimburse or indemnify any County Indemnified Party for loss or claim to the extent arising from the Fault of any County Indemnified Party.

(b) County Indemnification. The County agrees, to the extent permitted by Section 768.28, Florida Statutes, that it shall protect, indemnify, and hold harmless the Company, the Parent, the Company's officers, members, employees and agents (the "Company Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and attorneys' fees, and shall defend the Company Indemnified Parties in any suit, including appeals, for personal injury to, or death, of any person or persons not parties to this Agreement, or loss or damage to property of persons not parties to this Agreement arising out of (i) the Fault of the County or any of its officials, agents or employees, contractors or subcontractors (other than Company) in connection with the County's obligations or rights under this Agreement, (ii) performance (or nonperformance) of the County's obligations under this Agreement, and (iii) Hazardous Waste delivered to the

Facility by the County; provided, however, that with respect to Hazardous Waste, the County's obligation to indemnify the Company shall be limited to loss or liability to the extent arising from the Fault of the County in connection with its obligations hereunder with regard to Hazardous Waste. The County is not required to reimburse or indemnify any Company Indemnified Party for loss or claim to the extent arising from the Fault of any Company Indemnified Party.

(c) Waiver of Subrogation. As more fully described in Schedule 12 the Company and the County hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

9.06 Effect of Termination. Upon the termination of this Agreement for any reason, any obligation, for the payment of money or otherwise (other than the payment of Waste Disposal Fee for any Billing Period or portion thereof that would have occurred after the date of such termination), arising from the conduct of the parties pursuant to this Agreement prior to such termination shall not be affected by such termination and shall remain in full force and effect. The duties and obligations of the parties under the following provisions of this Agreement shall survive termination of this Agreement: Sections 5.04, 6.13, 8.06, 9.05, 9.06, 9.07, 9.08, 9.09, 9.18 and 9.19.

9.07 Overdue Obligations to Bear Interest. All amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest from the due date at the Overdue Rate on the amount outstanding from time to time, on the basis of a 360-day year, counting the actual number of days elapsed, and all such interest

accrued at any time shall, to the extent permitted by law, be deemed added to the amount due, as accrued.

9.08 Limitation of Liability.

(a) For Company. THE PARTIES ACKNOWLEDGE AND AGREE THAT BECAUSE OF THE UNIQUE NATURE OF THE FACILITY, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY THE COUNTY AS A RESULT OF THE CIRCUMSTANCES SPECIFIED IN SECTION 6.08 OF THIS AGREEMENT RESULTING FROM THE FAULT OF THE COMPANY. ACCORDINGLY, WITH RESPECT TO THE COMPANY'S FAILURE TO ACCEPT THE GUARANTEED ANNUAL TONNAGE AS SPECIFIED IN SECTION 6.08, THE COUNTY'S SOLE REMEDY SHALL BE TO REQUIRE THE COMPANY TO PAY TO THE COUNTY THOSE DAMAGES AND OTHER AMOUNTS AS MAY BE SPECIFICALLY DUE AND PAYABLE UNDER THE TERMS OF SECTION 6.08 OF THIS AGREEMENT. ANY OTHER REMEDIES SET FORTH IN THIS AGREEMENT ARE CUMULATIVE AND IN ADDITION TO THOSE AVAILABLE TO THE COUNTY AT LAW OR IN EQUITY, PROVIDED THAT IN NO EVENT, WHETHER BECAUSE OF A BREACH OF WARRANTY CONTAINED IN THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY THE COMPANY, OR ITS SUBCONTRACTORS OF ANY TIER OF ANY OBLIGATIONS UNDER THIS AGREEMENT, SHALL THE COMPANY BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INDIRECT DAMAGES.

THE COMMISSIONERS, OFFICERS AND EMPLOYEES OF THE COUNTY SHALL NOT BE PERSONALLY LIABLE FOR ANY COSTS, LOSSES, DAMAGES OR LIABILITIES CAUSED OR INCURRED BY THE COUNTY IN CONNECTION WITH THIS AGREEMENT, OR FOR THE PAYMENT OF ANY AMOUNT OR FOR THE PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT. THE EXECUTION OR DELIVERY OF THIS AGREEMENT SHALL NOT IMPOSE ANY PERSONAL LIABILITY ON THE COMMISSIONERS, OFFICERS, EMPLOYEES OR AGENTS OF THE COUNTY. NO RECOURSE SHALL BE HAD BY THE COMPANY FOR ANY CLAIMS BASED ON THIS AGREEMENT AGAINST ANY COMMISSIONER, OFFICER, EMPLOYEE OR OTHER AGENT OF THE COUNTY IN HIS INDIVIDUAL CAPACITY, ALL SUCH LIABILITY, IF ANY, BEING EXPRESSLY WAIVED BY THE COMPANY BY THE ACCEPTANCE OF THIS AGREEMENT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE LIABILITY OF THE COUNTY IN CONNECTION WITH THIS AGREEMENT, OR PRECLUDE THE INSTITUTION OF ANY PROCEEDING (WHETHER JUDICIAL, ADMINISTRATIVE OR OTHERWISE) AGAINST ANY COMMISSIONER, OFFICER, EMPLOYEE OR OTHER AGENT OF THE COUNTY IN HIS OFFICIAL CAPACITY SO LONG AS SUCH PROCEEDINGS DO NOT SEEK RECOURSE AGAINST SUCH PERSON IN HIS OR HER INDIVIDUAL CAPACITY.

(b) For County. THE PARTIES ACKNOWLEDGE AND AGREE THAT BECAUSE OF THE UNIQUE NATURE OF THE FACILITY, IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY COMPANY AS A RESULT OF CIRCUMSTANCES SET FORTH IN SECTIONS 4.01 and 6.09 OF THIS AGREEMENT.

ACCORDINGLY, WITH RESPECT TO SUCH CIRCUMSTANCES, THE COMPANY'S SOLE REMEDY SHALL BE TO REQUIRE THE COUNTY TO PAY THOSE DAMAGES AND OTHER AMOUNTS AS MAY BE SPECIFICALLY DUE AND PAYABLE IN ACCORDANCE WITH SECTIONS 4.01 and 6.09 OF THIS AGREEMENT. ANY OTHER REMEDIES SET FORTH IN THIS AGREEMENT ARE CUMULATIVE AND IN ADDITION TO THOSE AVAILABLE TO THE COMPANY AT LAW OR IN EQUITY; PROVIDED THAT IN NO EVENT, WHETHER BECAUSE OF A BREACH OF WARRANTY CONTAINED IN THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY THE COUNTY OR ANY OBLIGATIONS UNDER THIS AGREEMENT, SHALL THE COUNTY BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INDIRECT DAMAGES.

IT IS UNDERSTOOD AND AGREED TO BY THE COUNTY THAT NOTHING CONTAINED HEREIN SHALL CREATE ANY OBLIGATION OF OR RIGHT TO LOOK TO ANY STOCKHOLDER, DIRECTOR, OFFICER OR EMPLOYEE OF THE COMPANY OR OF ANY AFFILIATE OF THE COMPANY (OTHER THAN PARENT UNDER THE PARENT GUARANTY AGREEMENT) FOR THE SATISFACTION OF THE OBLIGATIONS OF THE COMPANY UNDER THIS AGREEMENT AND THAT NO JUDGMENT, ORDER OR EXECUTION ENTERED IN ANY SUIT, ACTION OR PROCEEDING, WHETHER LEGAL OR EQUITABLE, WITH RESPECT TO OR IN CONNECTION WITH THIS AGREEMENT SHALL BE TAKEN AGAINST ANY STOCKHOLDER, DIRECTOR, OFFICER OR EMPLOYEE OF THE COMPANY OR OF ANY AFFILIATE OF THE

COMPANY FOR THE PURPOSE OF OBTAINING SATISFACTION AND PAYMENT OF ANY CLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(c) THE REMEDIES PROVIDED IN SECTION 6.08, 6.09 AND 6.12 TO THE APPLICABLE PARTY IN THIS AGREEMENT SHALL BE EXCLUSIVE OF ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY FOR THE CIRCUMSTANCES DESCRIBED IN THOSE SECTIONS; PROVIDED THAT THE PARTIES HERETO MAY ENFORCE SUCH OBLIGATIONS BY APPROPRIATE PROCEEDINGS IN COURTS OF EQUITY OR LAW HAVING JURISDICTION.

9.09 Industrial Property Rights. The Company shall pay all royalties and license fees relating to the ownership and operation of the Facility. The Company hereby warrants that the operation of the Facility or the use of any component unit thereof or the use of any patent, patented article, machine or process, or a combination of any or all of the aforesaid, as contemplated by this Agreement do not infringe any patent, trademark or copyright or constitute the unauthorized use of a third person's trade secrets. The Company shall (i) defend any claim or lawsuit brought against the County or any of its officials, agents, employees or representatives for infringement of any such patent, trademark or copyright, or for the unauthorized use of trade secrets by reason of the design, construction or operation of the Facility, or (ii), at the Company's option, may 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 infringe, and the Company shall indemnify the County or any of its officials, agents employees or representatives and hold harmless against all liability, judgments, decrees, damages, interest, costs and expenses (including reasonable attorneys' fees) recovered against the County or any of

its officials, agents, employees or representatives sustained by any or all by reason of any actual or alleged infringement or unauthorized use. The Company is not, however, required to reimburse or indemnify any person for loss or claim due to the negligence or intentional wrongful conduct of such person.

9.10 Relationship of the Parties. Except as otherwise explicitly provided herein, neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, agent or legal representative of any other party or to create any fiduciary relationship between or among the parties. The Company shall not, through this Agreement or otherwise, be deemed to be a public agency or instrumentality or a public records depository. The County shall not have, through this Agreement or otherwise, (a) any title to or ownership interest in the Facility or (b) physical possession of or control over the Facility, during the term of this Agreement.

9.11 Notices. Any notices or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, postage prepaid, as follows:

If to the Company:

Business Manager or Facility Administrator  
Covanta Lake II, Inc.  
3830 Rogers Industrial Park Road  
Okahumpka, Florida

With a copy to:

Covanta Energy Corporation  
40 Lane Road  
CN 2615  
Fairfield, New Jersey 07007-2615  
Attention: General Counsel

If to the County:

County Manager  
Lake County Administration Building  
315 West Main Street  
Post Office Box 7800  
Tavares, Florida 32778-7800

With a copy to:

County Attorney  
Lake County Administration Building  
315 West Main Street  
Post Office Box 7800  
Tavares, Florida 32778-7800

If to the Consulting Engineer:

Malcolm Pirnie, Inc.  
1425 South Andrews Ave.  
Ft. Lauderdale, Florida 33316

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party.

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

9.13 Entire Agreement, Modifications. The provisions of this Agreement, including the present and all future Schedules, together with the agreements specifically incorporated by reference, shall (a) constitute the entire agreement between the parties for the operation of the Facility, superseding all prior agreements and negotiations with respect thereto;

and (b) be modified, unless provided herein to the contrary, only by written agreement duly executed by both parties.

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

9.15 Governing Law. This Agreement and any question concerning its validity, construction or performance shall be governed by the laws of the State of Florida, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance.

9.16 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

9.17 Severability. In the event that any provision of this 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 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 Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

9.18 Cooperation Regarding Claims. If either party hereto shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in either (i) a claim for indemnification by such party against the other party pursuant to Section 9.04, or (ii) an Unforeseen Circumstance as to such party, such party shall, as promptly as possible, give the other party notice of such claim, demand, action, suit or proceeding, including a reasonably

detailed description of the facts and circumstances relating to such claim, demand, action, suit or proceeding and a complete copy of all notices, pleadings and other papers related thereto, and, in the case of a claim for indemnification pursuant to Section 9.05, such claim and the basis therefor in reasonable detail; provided that failure promptly to give such notice or to provide such information and documents shall not relieve the other party of any obligation of indemnification it may have under Section 9.05 unless such failure shall materially diminish the ability of such other party to respond to or to defend the party failing to give such notice against, such claim, demand, action suit or proceeding. The parties hereto shall consult with each other regarding and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Section 9.05, the party against whom indemnification is claimed shall, upon its acknowledgement in writing of its obligation to indemnify the party seeking indemnification, be entitled to assume the defense or to represent the interests of the party seeking indemnification in respect of such claim, demand, action, suit or proceeding, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such party and to propose, accept or reject offers of settlement reasonably agreeable to the indemnified party.

9.19 Venue. The County and the Company hereby agree that any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby may be brought in any state or federal court in Lake County, Florida.

9.20 Further Assurances. The Company and the County further covenant to cooperate with one another in all respects necessary to insure the successful consummation of the transactions contemplated by this Agreement, and each will take all actions within its authority

to insure cooperation of its officials, officers, agents and other third parties, and neither party shall interfere with the ability of the other party to perform its obligations hereunder.

9.21 Schedules. All Schedules are hereby attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Company and the County have executed this Agreement.

Witnesses:

The Company

\_\_\_\_\_

By: \_\_\_\_\_  
President

\_\_\_\_\_

ATTEST:

LAKE COUNTY BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Chairman

APPROVED AS TO FORM AND  
CORRECTNESS:

(COUNTY SEAL)

\_\_\_\_\_  
COUNTY ATTORNEY