



sanitation

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July 18, 2012

Mr. Michael B. Francois
The Port Authority of New York & New Jersey
225 Park Avenue South, 19th Floor
New York, NY 10003

NOTICE OF AWARD

PIN: 82705RR00010

Dear Mr. Francois:

An Agreement is hereby awarded between the Port Authority of New York and New Jersey and the New York City Department of Sanitation; the term of the Agreement shall be 20 years from the Notice to Proceed, for an amount not to exceed \$754,900,000.00, with no renewal options, to furnish all services required for:

Waste Disposal Services at Essex County Resource Recovery Facility

The following executed documents must be provided to the Department:

- | <u>Document #</u> | <u>Description of Documents/# of signed originals</u> |
|-------------------|--|
| 1. | Service Agreement Between The City Of New York Acting Through The New York City Department of Sanitation And The Port Authority Of New York And New Jersey for Waste Disposal Services at Essex County Resource Recovery Facility (10 signed originals); |
| 2. | Certificates of Required Insurance under Section 5.11 of the Agreement; and |
| 3. | Insurance Broker's Certification(s) relating to all policies of required insurance in accordance with Section 5.11 (c) of the Agreement (1 signed original). |

Please forward the documents listed above within ten (10) business days to Sarah Dolinar, DSNY Bureau of Long Term Export, 44 Beaver Street, 12th Floor, New York, NY 10004.

This award is contingent upon receiving all required approvals in a timely manner.


Sincerely,

Ronald W. Blendermann

c: D/C R. Orlin
D/C H. Szarpanski
Distribution

www.nyc.gov/sanitation

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THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

DATE: 08/02/2012

ADVICE OF AWARD
EXPENSE/GENERAL CONTRACT

PAGE: 1

FINAL BATCH ID: CT1 827

CONTRACT NUMBER: CT1 827 20131402840

TAXPAYER ID: 136400654

AMENDMENT NUM:

VERSION NUM: 1

VENDOR: 0000947155

VENDOR ADDR IND: 2

OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

CONTACT: STEVEN BORRELLI

PHONE: 212-435-5835

ADDRESS: 225 PARK AVENUE SOUTH

NEW YORK

NY

10003

CONTRACT TITLE: AGREEMENT BET PORT AUTHORITY OF NY& NY

PIN: 82705RR00010

DESCRIPTION: W.D.SVCS AT ESSEX COUNTY RESOURCE RECOVERY FACILITY

ORIGINAL AMT: \$754,900,000.00

ORIGINAL START: 01/01/2013

END: 12/31/2032

REVISED AMT: \$754,900,000.00

REVISED START: 01/01/2013

END: 12/31/2032

RESP AGENCY: 827

SUBMITTING AGCY: 827

CONTRACT OFFICER: H. SZARPANSKI

PHONE: 212-437-4500

COMMENTS:

CONTRACT TYPE: 47

CLASS: G

AWARD METHOD: 17

AWARD LEVEL:

CATEGORIES 1: 019

2:

3:

4:

5:

CONSTRUCTION RELATED: N

REDUCED ADVERTISING: N

HEARING DATE:

MINORITY: WOMAN

LOCAL:

NOT-FOR-PROFIT:

MWBE UTILIZATION CLAUSE: N

LOCATION INFORMATION

SERVICE LOCATION: NY/NJ

ZIP CODE: 10003

BOROUGH:

BLOCK:

LOT:

COUNCIL DISTRICT:

DELIVERY DATE:

DELIVER TO:

INVOICE TO:

DEPT: 827

SHIP CODE:

DEPT: 827

BILL CODE:

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

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PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

CONTRACT INFORMATION

REFERENCE INFORMATION

REFERENCE CODE: NEW

REFERENCE CONTRACT:

INTERNAL AWARD NUMBER:

SOLICITATION NUMBER:

REPLACES CONTRACT:

NUMBER OF RESPONSES: 1

OUT OF NUM OF SOLICITATION: 1

COMPLIANCE INFORMATION

COMPLIANCE CRITERIA	1.	MCBRIDE	Y	2.	OLIVINGWAG	N	3.		N
	4.		N	5.					

NON COMPLY REASON: NOT APPLICABLE

WORKSITES / COMMUNITY / BOARD CODES

WORKSITES	1.	ALL	2.		3.		4.		5.
	6.		7.		8.		9.		10.

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

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OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

RENEWAL INFORMATION

RENEWAL CODE:

RENEWAL OPTIONS RENEWAL PERIOD EFFECTIVE FROM EFFECTIVE TO

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

DATE: 08/02/2012

ADVICE OF AWARD
EXPENSE/GENERAL CONTRACT

PAGE: 4

FINAL BATCH ID: CT1 827

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VERSION NUM: 1

VENDOR: 0000947155

VENDOR ADDR IND: 2

OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

COMMODITY INFORMATION

LINE #	COMMODITY	QTY	UNIT	UNIT COST	TOTAL COST
1	91027000000	50000.00000	EACH	\$1.00	\$50,000.00

DESCRIPTION:

WASTE DISPOSAL SVCS AT ESSEX

FOB DESTINATION DELIVERY:

DELIVER TO:

INVOICE TO:

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

DATE: 08/02/2012

ADVICE OF AWARD
EXPENSE/GENERAL CONTRACT

PAGE: 5

FINAL BATCH ID: CT1 827

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VENDOR: 0000947155

VENDOR ADDR IND: 2

OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

SUBCONTRACTOR INFORMATION

CONTRACT ADDRESS:

CODE:

VENDOR:

ALIAS/DBA:

TAXPAYER ID:

CONTACT:

PHONE:

ADDRESS:

ESTIMATED AMOUNT:

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

DATE: 08/02/2012

ADVICE OF AWARD
EXPENSE/GENERAL CONTRACT

PAGE: 6

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VERSION NUM: 1

VENDOR: 0000947155

VENDOR ADDR IND: 2

OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

ACCOUNTING INFORMATION

COMM LINE	ACTG LINE	FUND	DEPT	APPR UNIT	BUDGET CD	DTL OBJ/SUB	REPT CAT/ QUICK	CAP PROJ	UNIT/ SUNIT	TASK	LINE AMT
1	1	001	827	106	1304	6000					\$50,000.00

THE CITY OF NEW YORK
FINANCIAL MANAGEMENT SYSTEM

DATE: 08/02/2012

ADVICE OF AWARD
EXPENSE/GENERAL CONTRACT

PAGE: 7

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VERSION NUM: 1

VENDOR: 0000947155

VENDOR ADDR IND: 2

OCA NUMBER: 1001848963

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ALIAS/DBA:

I HAVE EXAMINED THIS ADVICE OF AWARD OF CONTRACT AND CERTIFY THAT THE AWARD WAS MADE TO THE LOWEST RESPONSIBLE BIDDER, AND/OR IN ACCORDANCE WITH THE PROVISIONS OF THE APPROPRIATE SECTIONS OF THE NYC CHARTER, AT THE PRICE BID BY SUCH BIDDER, AND THAT IT IS CORRECT AS TO CALCULATION AND EXTENSION AND THAT THE AWARD WAS PROPERLY MADE.

I CERTIFY THAT I HAVE CHECKED THE CONTRACTOR'S RECORD PURSUANT TO SECTIONS 6-116.1 AND 6-116.2 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

I FURTHER CERTIFY THAT THIS AWARD IS A PROPER EXPENDITURE AND THE LIABILITY HAS BEEN CHARGED TO THE PROPER FUND OR FUNDS.

AGENCY

827

TELEPHONE #

212.437.5056

PREPARED BY (PRINT)

Dolores Henry

PREPARED BY (SIGNATURE)

Dolores Henry

AUTHORIZED OFFICIAL'S NAME & TITLE

Kirk Eng DDCO

TELEPHONE #

212.437.5045

AUTHORIZED AGENCY OFFICIAL (SIGNATURE)

Kirk Eng

AGREEMENT
BETWEEN THE
CITY OF NEW YORK
ACTING THROUGH THE
NEW YORK CITY DEPARTMENT OF SANITATION
AND
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
Dated as of July 1, 2012

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AGREEMENT
BETWEEN THE
NEW YORK CITY DEPARTMENT OF SANITATION
AND THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY

THIS AGREEMENT, dated as of July 1, 2012, is entered into between The City of New York (the “City”) acting through the Department of Sanitation (“DSNY”), with DSNY offices located at 125 Worth Street, New York, New York 10013, and The Port Authority of New York and New Jersey, a bi-state agency created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States (the “Port Authority”), with offices at 225 Park Avenue South, New York, New York 10003.

RECITALS

WHEREAS, the City is responsible for the collection, transport and disposal of municipal solid waste generated in the City; and

WHEREAS, the City, as a result of the closing of the Fresh Kills Landfill in Staten Island, is currently seeking alternative sites and methods for the acceptance and disposal of municipal solid waste originating in the City; and

WHEREAS, the Port Authority owns a mass burn facility located in Essex County, New Jersey, which Covanta Essex Company, a New Jersey general partnership (“Covanta”) having an office at 445 South Street, Morristown, New Jersey 07960, leases and operates pursuant to and in accordance with a certain Amended and Restated Service Agreement, dated as of February 28, 1986, as amended, and related documents entered into with the Port Authority; and

WHEREAS, in 2006 the New York State Department of Environmental Conservation approved the City’s comprehensive Solid Waste Management Plan which, in part, contemplates that certain municipal solid waste collected by or on behalf of the City will be delivered to the Port Authority’s mass burn facility; and

WHEREAS, the City has determined that it is in the City's best interests to contract with the Port Authority on a long-term basis for the City to deliver, and to have the Port Authority cause Operator to receive, process and dispose of a portion of the municipal solid waste generated in the City; and

WHEREAS, the City is authorized to enter into this Agreement, as a contract between governmental entities without the need for a competitive procurement, pursuant to Section 3-13 of the rules and regulations of the City Procurement Policy Board; and

WHEREAS, The Port Authority, contemporaneously with entering into this Agreement, is entering into an amendment, dated ^{MEP} as of 7/19 2012, to the Amended and Restated Services Agreement, dated as of February 28, 1986, between Covanta and the Port Authority, which is authorized pursuant to a Port Authority resolution; and

WHEREAS, the City and the Port Authority have made certain representations and warranties to each other and each relies upon such representations and warranties of the other in the execution hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

"Accepted Waste" means MSW delivered by Collection Vehicles to, and dumped on the tipping floor at, the Mass Burn Facility or a Substitute Facility pursuant to this Agreement. Accepted Waste shall not include MSW delivered to the Mass Burn Facility or to a Substitute Facility pursuant to this Agreement that is weighed in by passing over the Weigh Scales, but whose contents are not unloaded, or Unacceptable Waste tendered for delivery to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement that is weighed in by passing over the Weigh Scales, but which is removed in accordance with Section 4.10.

“Additional Amounts Payable” means the amounts payable by the City as set forth in Section 7.6.

“Additional Capital Investment” has the meaning set forth in subsection 8.6(A).

“Adjusted Processing Capacity” means: (i) the revised annual combustion processing capacity of the Mass Burn Facility resulting from a Mass Burn Facility Expansion, an Uncontrollable Circumstance or change in the steaming rate of the Mass Burn Facility set forth in a modification to a Permit or Authorization; or (ii) the actual changed annual processing capacity of the Mass Burn Facility resulting from an Uncontrollable Circumstance which changed the annual processing capacity and which is not reflected in a modification to a Permit or Authorization; or (iii) the unchanged annual combustion processing capacity of the Mass Burn Facility resulting from Mass Burn Facility Expansion, if such capacity remains unchanged in the modification to a Permit or Authorization.

“Adjustment Date” means January 1, 2015.

“Affiliate” means with respect to either party under this Agreement, the Operator or any Subcontractor (each an “Entity”), any other business entity which is and continues to be controlled by such Entity, which controls such Entity, which is under common control with such Entity, or into or with which the Entity is merged or consolidated.

“Agreement” means this Agreement between the City, acting through DSNY, and the Port Authority, as the same may be amended or modified from time to time in accordance herewith.

“Agreement Services” means all the services that the Port Authority is required to provide under this Agreement, whether directly by the Port Authority or through the Operator pursuant to the Operator Agreement.

“Annual Settlement Due Date” means 60 days following delivery of an Annual Settlement Statement with respect to any amounts due pursuant to such Annual Settlement Statement.

“Annual Settlement Statement” has the meaning set forth in Section 7.12.

“Applicable Law” means: (1) any federal, state or local law, code, or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented in writing by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or other similar agreement between either the City or the Port Authority and any Governmental Body, in each case having the force of law and applicable from time to time: (a) to the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of solid waste facilities, including the Mass Burn Facility; (b) to the receipt, transfer, transportation, handling, processing, containerization or disposal of solid waste, including any activity relating to the Mass Burn Facility; and (c) to any other transaction or matter contemplated hereby (including any of the foregoing that pertain to procurement, contracting, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). Applicable Law includes the terms and conditions of all Permits or Authorizations.

“Authorized Disposal Site” has the meaning set forth in subsection 4.16(B).

“Baghouse” means an air pollution control device, equipment or facility, that is required to be installed in or at the Mass Burn Facility pursuant to the Baghouse Agreement, in which particulates are removed from a stream of exhaust gases as the stream passes through a filtration medium (e.g., fabric bags, cartridges) to capture, separate or filter particulate matter in the stream. The cleaned exhaust gas emerges from one side of the filtration medium, while the particulate matter is collected on the other side. Periodically the collected particulate matter is removed from the filtration medium by some means, such as a pulse of air, shaking, sonic horns, or temporary reversal of the exhaust gases.

“Baghouse Agreement” means the Agreement between the Operator and New Jersey Department of Environmental Protection, dated April 18, 2012, relating to the installation of the Baghouse at the Mass Burn Facility.

“Baseline Processing Capacity” means 985,000 Tons per Contract Year, which is the permitted capacity of the Mass Burn Facility as of the Execution Date.

“Capital Improvement” means any material change to the Mass Burn Facility, including the installation of new structures, equipment, systems, or technology, that is amortizable under generally accepted accounting principles over a period greater than one year following the date of completion.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. and applicable regulations promulgated thereunder, each as amended from time to time.

“Change in Law” means any of the following that occur after the Execution Date:

(A) a change in, or adoption of, any federal, state, county, city or other local law, ordinance, code, rule, regulation or similar legislation, or legislative, administrative, judicial or regulatory interpretation thereof,

(B) the imposition, resulting from any federal, state, county, city or other local law, ordinance, code, rule, regulation or similar legislation or legislative, administrative, judicial or other regulatory interpretation, of any conditions to the issuance, renewal or continuation of any official governmental permit, official governmental license or official governmental approval, or

(C) the order and/or judgment of a federal, state, county, city or other local court, administrative agency or Governmental Body; that, in the case of any of clause (A), (B) or (C) establishes requirements or conditions (i) pertaining to the reconstruction, operation or maintenance of the Mass Burn Facility, (ii) affecting the revenues or the operating or capital costs of the Mass Burn Facility, (iii) affecting the delivery of MSW to the Mass Burn Facility, or (iv) affecting the disposal or transportation costs in connection with Process Residue.

The fact that in this Agreement, amendments and supplements to certain laws, ordinances, codes, rules, regulations or similar legislation or legislative, administrative or judicial interpretations thereof that may become effective from time to time are incorporated by

reference, shall not in any manner be determinative of whether any such amendment or supplement would be a Change in Law.

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

(A) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Execution Date; or

(B) adverse judgments or orders of any court or other Governmental Body resulting from litigation involving the Port Authority or the Operator (unless the subject matter of such litigation is itself a Change in Law); or

(C) the imposition of a Non-Reimbursable Host Municipality Payment.

“City” means The City of New York, New York, a municipal corporation organized and existing under the laws of the State.

“City Alternate Facility” means a waste transfer station, other solid waste facility or landfill, or any combination of the foregoing chosen by the City, in its sole discretion, to dispose of MSW.

“City Breach” has the meaning set forth in subsection 9.4(A).

“City Contract Administrator” has the meaning set forth in subsection 5.9(B).

“City Default” has the meaning set forth in subsection 9.5(A).

“City Disputed Amount” has the meaning set forth in subsection 7.9(D).

“City Fiscal Year” means the City’s fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

“City Invoice” means the invoice submitted by the City to the Port Authority for Port Authority Amounts Payable, if any, pursuant to Section 7.10.

“City Limitation of Liability” means, for any and all City Defaults and City Breaches taken together in the aggregate, the product of: (i) \$50,000,000; and (ii) the Escalation Factor.

“Collection Vehicle” means a vehicle used by the City or the City’s authorized representatives to collect MSW. Collection Vehicles, include packer trucks, front-loading collection trucks, hoist-fitted chassis vehicles, roll-on/roll-off container vehicles and such other vehicles as the City or its authorized representatives use in their MSW collection activities.

“Collection Vehicle Processing Rate” means the number of Collection Vehicles processed at the Mass Burn Facility (or the Substitute Facility if so required pursuant to Section 4.9) during an hour, measured as set forth in subsection 4.11(C).

“Comptroller” means the Comptroller of The City of New York or his or her duly authorized representative.

“Contract Administration Memorandum” has the meaning set forth in subsection 5.10(B).

“Contract Year” means a twelve month period commencing on January 1 and ending on December 31; provided, however, that the first Contract Year shall commence on the Service Commencement Date and shall end on December 31 following the Service Commencement Date, and the last Contract Year shall commence on January 1 prior to the date this Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Term.

“Cost Substantiation” means, with respect to any cost, a certificate signed by an authorized representative of the party making a claim for payment of (or reimbursement for) such cost pursuant to this Agreement which sets forth detailed facts pertaining to such cost sufficient to permit the other party to verify such cost and to determine that such cost is a proper charge pursuant to this Agreement, including the applicable Section or subsection, the event giving rise to such cost, the reason for incurring such cost, the amount of such cost, the amount of any Insurance Proceeds to be applied in payment of such cost (or expected in the future to be applied in payment of such cost) and, where the services or materials supplied are supplied by the party incurring such cost or any Affiliate of such party (or by the Operator or an Affiliate of the Operator), an affidavit that in the reasonable belief of the party incurring such costs, such cost is at a fair and reasonable price for the services or materials supplied.

The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be reasonably necessary to demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred, including, to the extent reasonably necessary, copies of timesheets, invoices, canceled checks, expense reports, receipts and other similar documents, as appropriate. Such documentation shall be in a format reasonably acceptable to the other party and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work: (1) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property taxes; (2) a statement of the equipment used and any rental payable therefor; (3) employee hours, duties, wages, salaries, benefits and assessments; and (4) bonds, insurance, taxes, premiums and other expenses. Self-performed work, or work performed by Affiliates, shall not include an allocation for profit and shall not include any administrative or supervisory costs, but may include 10% of the cost of such work (excluding any administrative or supervisory costs) for administrative and supervisory costs, unless a fixed allocation for such administrative and supervisory costs is otherwise expressly provided for in this Agreement (in which case such fixed allocation shall apply). No allowance for administrative or supervisory costs shall be allowed for work performed by persons other than the Port Authority, the City, the Operator or an Affiliate. If the Port Authority and the City agree on a fixed price or other arrangement for services provided under this Agreement that are otherwise subject to Cost Substantiation, such fixed price or other arrangement shall be used in lieu of the requirements of Cost Substantiation, and shall serve as the required Cost Substantiation.

To the extent the requirements of this definition may be inconsistent with the definition of Designated Wasteshed Damages, where Designated Wasteshed Damages apply, the provisions of such definition shall govern with respect to any inconsistency with this definition.

“Covanta” has the meaning set forth in the Recitals.

“CPI-U” means the Consumer Price Index, All Urban Consumers (CPI-U), not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for all items, New York-Northern New Jersey-Long Island (Series ID: CUURA101SA0). In the

event that such CPI-U reporting is discontinued, the City and the Port Authority shall identify and apply an index that approximates the effect of the CPI-U that is mutually acceptable.

“Daily Guaranteed MSW Capacity” has the meaning set forth in subsection 4.4(B).

“Delivery Day” means any calendar day (the full 24-hour period) during which the Mass Burn Facility is required to be open under the terms of this Agreement.

“Delivery Information” means all of the information about a delivery of MSW that must be included on a Delivery Receipt.

“Delivery Receipt” means DSNY Forms DS66 and DS66A, or any successor forms, the documents on which all of the Delivery Information about the delivery of a load of MSW by a Collection Vehicle to the Mass Burn Facility (or to a Substitute Facility pursuant to Section 4.9) is recorded. A copy of such forms is included in Appendix 5.

“Designated Wasteshed Damages” means, for each Ton of MSW that the City fails to deliver to the Mass Burn Facility in violation of its obligations pursuant to subsection 4.1(B), the positive difference, if any, between: (a) the Service Fee per Ton that otherwise would have been payable by the City pursuant to this Agreement as the minuend; and (b) 85% of the tipping fees paid by entities who deliver Solid Waste to the Mass Burn Facility pursuant to a short-term agreement (agreements with a term of not more than 90 days) or a daily rate as the subtrahend.

“Designated Wastesheds” means the West 135th Street and West 59th Street Wastesheds, as described in Appendix 1, or substitute wastesheds designated by the City in accordance with subsection 4.1(C).

“Disposal Charge” has the meaning set forth in subsection 7.2(B) and subsection 7.4.

“Disposal Charge Escalation Factor” has the meaning set forth in subsection 7.8(B).

“Disposal Liquidated Damages” has the meaning set forth in clause (3)(a) of subsection 9.2(D)

“Disputed Amounts” means City Disputed Amounts and Port Authority Disputed Amounts.

“DSNY” means the Department of Sanitation of The City of New York.

“Due Date” means: (1) with respect to Port Authority payment of a City Invoice, the date that is 45 days following delivery by the City of such City Invoice in the form required by subsection 7.10(B), and (2) with respect to City payment of a Port Authority Billing Statement, the date that is 45 days following delivery by the Port Authority of such Port Authority Billing Statement in the form required by subsection 7.9(B).

“ECUA” means the Essex County Utilities Authority, a public body corporate and politic of the State of New Jersey organized and existing under the Municipal and County Utilities Authorities Law of the State of New Jersey.

“Effective Date” has the meaning set forth in Section 3.1.

“EPA” means the United States Environmental Protection Agency and any predecessor or successor agency.

“Escalation Factor” has the meaning set forth in subsection 7.8(A).

“Event Response Measure” means proposals made pursuant to subsection 8.4(A), as applicable, as approved by the other party.

“Execution Date” means the date this Agreement has been duly executed and delivered by both of the parties hereto.

“Fixed UCC Costs” has the meaning set forth in subsection 8.5(A).

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by the Port Authority or the Operator or any Subcontractors or others with respect to the Agreement Services.

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Guaranteed MSW Capacity” has the meaning set forth in Section 4.4.

“Hazardous Waste” means any: (a) waste, material or substance that by reason of its composition or character is regulated as a toxic or hazardous waste or a “Hazardous Substance” (as defined under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and any applicable law of the State of New Jersey) under any applicable laws, including, without limitation, (i) the Solid Waste Disposal Act/Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), (ii) the Toxic Substances Control Act (15 U.S.C. 260 et seq.), and (iii) N.J. Administrative Code Title 7:26G-8.1, et seq., as each of the foregoing may be replaced or amended from time-to-time, and the rules, regulations and written policies or guidelines promulgated at any time under each of the foregoing; (b) radioactive material that is “source”, “special”, “nuclear” or “by-products” material under the Atomic Energy Act of 1954, as replaced or amended from time-to-time, and the rules, regulations and written policies or guidelines promulgated at any time thereunder; (c) Pathological Waste; and (d) any other waste, material or substance characterized or defined as toxic or hazardous by the New Jersey Department of Environmental Protection and/or the EPA or any other state or federal regulatory agency having jurisdiction over the Mass Burn Facility pursuant to any written regulation, policy, guideline or order having the force of law. Hazardous Waste does not include de minimis amounts of the foregoing that normally occurs in household waste.

“Host Municipality Agreement” means an agreement between the Port Authority or the Operator, relating to the Mass Burn Facility or a Substitute Facility, and the state or locality in which the facility is located.

“Insurance Proceeds” means: (1) any proceeds received from insurance (regardless of whether such insurance is Required Insurance); (2) if Required Insurance has not been maintained, any proceeds that should have been received pursuant to Required Insurance;

and (3) any damage payments or compensation received from third parties with respect to the applicable Uncontrollable Circumstance.

“Interim Service Period” means the period commencing on the Service Commencement Date and ending at midnight on December 31, 2014.

“Invoice Period” means each calendar month during the Term, except that: (1) the first Invoice Period shall begin on the Service Commencement Date and shall continue to the last day of the calendar month in which the Service Commencement Date occurs; and (2) the last Invoice Period shall end on the last day of the Term.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, referendum, initiative and other legal or equitable proceeding having a bearing upon this Agreement, and all appeals therefrom.

“Liquidated Damages” means Disposal Liquidated Damages and Processing Liquidated Damages.

“Long-Term Service Period” means the period commencing on January 1, 2015 and ending on the last day of the Term.

“Loss-and-Expense” means, and is limited to, any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, tax, cost or expense relating to third party claims for which either party is obligated to indemnify the other hereunder, except as explicitly excluded or limited under any provision of this Agreement.

“Mass Burn Facility” means the mass burn resource recovery facility, and ancillary facilities for the processing of Solid Waste, located at 183 Raymond Boulevard, Newark, New Jersey 07105-4798.

“Mass Burn Facility Expansion” means any addition to or modification of the Mass Burn Facility to construct additional combustion processing or electric generating capacity above the levels set forth in the permit in effect as of the Execution Date. Mass Burn Facility Expansion does not include any New Transfer Capacity or any new metals recovery system.

“Minimum Collection Vehicle Processing Rate” has the meaning set forth in subsection 4.11(A) or 4.11(B), as applicable.

“Minimum Processing Obligation” has the meaning specified in subsection 4.11(B).

“MSW” means putrescible municipal solid waste that the City or its authorized representative has collected in the City. Except for de minimis amounts as normally occur in household waste, MSW does not include Recyclables, Hazardous Waste or Non-Processible Waste.

“MSW Delivery Shortfall” means, for any Invoice Period, the number of Tons of MSW that the City wrongfully fails to deliver in accordance with subsection 4.1(B).

“MSW Delivery Surplus” means, for any Invoice Period, the excess of (i) the sum of the number of Tons of (x) Accepted Waste, (y) Wrongfully Rejected Waste, and (z) MSW delivered to a City Alternate Facility pursuant to subsection 4.9(E) over (ii) the number of Tons of MSW that the City is required to deliver pursuant to subsection 4.1(B).

“New Jersey Recycling Tax” means the \$3.00 per ton recycling tax imposed by New Jersey Bill A-1910(3R), signed by Governor Corzine on March 26, 2008, which amends the Recycling Tax law (P.L. 2007, c.311).

“New Transfer Capacity” means any transfer station or similar waste transfer operation either not existing or not having permits required by Applicable Law as of the Execution Date on the site of the Mass Burn Facility, and which is subsequently constructed, installed or is granted permits required by Applicable Law on the site of the Mass Burn Facility. New Transfer Capacity does not constitute a Mass Burn Facility Expansion.

“Non-Processible Waste” means that portion of those items included in the City’s deliveries of MSW to the Mass Burn Facility that is not or are not within the scope of existing Permits or Authorizations or are not reasonably capable of being processed at the Mass Burn Facility.

“Non-Reimbursable Host Municipality Payment” means any payment, however characterized, made by the Port Authority or the Operator under any Host Municipality Agreement, other than a Reimbursable New or Increased Host Municipality Payment.

“Notice of City Breach” has the meaning set forth in subsection 9.4(B).

“Notice of Overdue Payment” means: (1) with respect to a Port Authority payment due in accordance with a City Invoice, a notice from the City stating that the Due Date for payment of such City Invoice has occurred without payment of the sum that has become due; (2) with respect to a City payment due in accordance with a Port Authority Billing Statement, a notice from the Port Authority stating that the Due Date for payment of such Port Authority Billing Statement has occurred without payment of the sum that has become due; and (3) with respect to any payment due pursuant to an Annual Settlement Statement, a notice from the party to whom such payment is due, stating that the Annual Settlement Due Date has occurred without payment of the sum that has become due.

“Notice of Port Authority Breach” has the meaning set forth in subsection 9.2(B).

“Notice to Commence Service” has the meaning set forth in Section 3.2.

“Operating Hours” means Monday through Saturday, 24 hours per day, excluding Port Authority Holidays.

“Operating Notice” means a notice given by any of the Port Authority, the City or the Operator to the others relating to routine operational matters arising under this Agreement specifically required to be given hereunder as an Operating Notice pursuant to Section 5.9, or such other notices as may be agreed to by the Port Authority, the City and the Operator.

“Operator” means Covanta or any successor or assign approved by the City.

“Operator Agreement” means that Amended and Restated Service Agreement, dated as of February 28, 1986, between Covanta and the Port Authority, as further amended by the Operator Agreement Amendment.

“Operator Agreement Amendment” means that supplemented agreement, of even date herewith, between the Operator and the Port Authority, amending and supplementing the Operator Agreement as then in effect.

“Operator Site Supervisor” has the meaning set forth in Section 5.9.

“Overdue Rate” means the lesser of: (a) Prime Rate plus 100 basis points per annum, applied on the Due Date and adjusted and compounded every month on the first business day of every successive month; or (b) the maximum rate permitted by law.

“Pathological Waste” means waste that may be considered infectious or biohazardous originating from hospitals, public or private medical clinics, departments or research laboratories, pharmaceutical industries, doctors or dental offices, nursing homes, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste, surgical facilities, bedding and utensils and equipment, sharps (hypodermic needles, syringes, etc.), dialysis unit waste, biological materials (vaccines, medicines), animal carcasses, body parts and offal, and other similar material.

“Performance Impairing Uncontrollable Circumstance” means an Uncontrollable Circumstance that adversely affects the ability of the Port Authority or the Operator to perform the Agreement Services, other than through cost impact alone.

“Permit” or “Authorization” means any document required by Applicable Law for (a) the siting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of the Mass Burn Facility or other solid waste facilities, respectively; (b) the receipt, transfer, transportation, handling, processing, containerization or disposal of solid waste at the Mass Burn Facility or other solid waste facilities, respectively; and (c) any other transaction or matter contemplated hereby (including any of the foregoing that pertain to procurement, contracting, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). “Permit” or “Authorization” includes the Title V Operating Permit bearing number BOP090003 PIN: 07736 issued on July 4, 2004 by the New Jersey Department of Environmental Protection for operation of the Mass Burn Facility, for which a renewal application was made on May 6, 2008.

“Person” has the meaning set forth in subsection 1.2(C).

“Port Authority Alternate Facility” means a waste transfer station, other solid waste facility or landfill, or any combination of the foregoing, chosen by the Port Authority, in its sole discretion, to dispose of MSW.

“Port Authority Amounts Payable” has the meaning set forth in Section 7.7.

“Port Authority Billing Statement” means the monthly invoice submitted by the Port Authority to the City for the Agreement Services, the initial form of which is attached hereto as Appendix 3, and which form may be modified from time to time in accordance with subsection 7.9(B).

“Port Authority Breach” has the meaning set forth in subsection 9.2(A).

“Port Authority Contract Administrator” has the meaning set forth in subsection 5.9(A).

“Port Authority Costs of Reimbursable Uncontrollable Circumstances” means, with respect to any Reimbursable Uncontrollable Circumstance, those costs of the Port Authority resulting from such Reimbursable Uncontrollable Circumstance and for which the Port Authority is entitled to an adjustment to the Service Fee (whether as a UCC Cost or as Additional Amounts Payable), as set forth in Article VIII and before any prorating allocations are made pursuant to Article VIII.

“Port Authority Default” has the meaning set forth in subsection 9.3(A).

“Port Authority Disputed Amounts” has the meaning set forth in subsection 7.10(D).

“Port Authority Holidays” means New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

“Port Authority Limitation of Liability” means, for any and all Port Authority Defaults and Port Authority Breaches taken together in the aggregate, the product of: (i) \$50,000,000; and (ii) the Escalation Factor.

“PPB Rules” has the meaning set forth in subsection 1.2(U).

“PPIFG” means the Producer Price Index, Finished Goods, Not Seasonally Adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (Series ID WPUSOP3000). In the event that such PPIFG reporting is discontinued, the City and the Port Authority shall identify and apply an index that approximates the effect of the PPIFG that is mutually acceptable.

“PPIFSMP” means the Producer Price Index for Fabricated Structural Metal Products, Not Seasonally Adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics (Series ID WPU107). In the event that such PPIFSMP reporting is discontinued, the City and the Port Authority shall identify and apply an index that approximates the effect of the PPIFSMP that is mutually acceptable.

“Prime Rate” means the prime rate as published in *The Wall Street Journal*, or a mutually agreeable alternative source of the prime rate if it is no longer published in *The Wall Street Journal* or if the method of computation thereof by *The Wall Street Journal* is substantially modified.

“Process Residue” means: (1) the ash material that remains after Solid Waste has been combusted at the Mass Burn Facility (“Ash”); (2) non-combustible materials that are mixed with the Ash following combustion of MSW; and (3) bulky waste and noncombustible MSW (which may include recovered resources that have not been sold) removed from the Mass Burn Facility’s tipping floor and mixed in with the Ash for common disposal.

“Process Residue Disposal Services” means services for the transportation of Process Residue from the Mass Burn Facility and disposal of such Process Residue at a Process Residue Disposal Site. For purposes of this definition, Process Residue shall not include Non-Processible Waste that is removed from the Mass Burn Facility’s tipping floor by the Port Authority or the Operator and the removal cost of which is charged back to the City pursuant to Section 4.7.

“Process Residue Disposal Site” means, with respect to a type of Process Residue, any site permitted under Applicable Law to accept and dispose of such type of Process Residue. A Process Residue Disposal Site may include the beneficial use of such Process Residue (e.g. landfill cover or incorporation in composite materials).

“Processing Liquidated Damages” has the meaning set forth in paragraph (b) of clause (3) of subsection 9.2(D).

“Processing Liquidated Damages Cap” has the meaning set forth in paragraph (b) of clause (3) of subsection 9.2(D).

“Recyclables” means certain recyclable materials actually collected separately from residential buildings by, or on behalf, of the City for sale or beneficial use, including, but not limited to, paper, corrugated cardboard, metal, glass and plastic that are designated for collection by the City under a separate program pursuant to the provisions of the New York City Administrative Code, as amended.

“Reimbursable New or Increased Host Municipality Payment” means the imposition by state or local Applicable Law and payment by the Port Authority or the Operator of a new, or an increase in an existing, mandated minimum fee or charge payable to a local Governmental Body by owners of waste disposal facilities in the State of New Jersey, to the extent that the imposition of such a fee results in a Host Municipality Payment that exceeds the amount payable by the Port Authority or the Operator under any Host Municipality Agreement in effect with respect to the Mass Burn Facility on the Execution Date, as such amount may be increased in accordance with the terms of the Host Municipality Agreement in question.

“Reimbursable Uncontrollable Circumstances” means (i) installation of a Baghouse, and (ii) any of the following Uncontrollable Circumstances that have had or may reasonably be expected to have a material and adverse effect on the Port Authority’s or the Operator’s costs of performing the Agreement Services during the Long-Term Service Period:

- (1) Uncontrollable Circumstances described in clause (a) in the list titled “Inclusions” in the definition of Uncontrollable Circumstances;
- (2) Uncontrollable Circumstances comprising a Change in Law, but not including any Non-Reimbursable Host Municipality Payment; and
- (3) Uncontrollable Circumstances caused by the City's delivery of Hazardous Waste to the Mass Burn Facility.

There shall expressly not be included in the effects of Reimbursable Uncontrollable Circumstances any costs incurred as the result of an act, event or circumstance that the Port Authority or the Operator is obligated to insure against under the Required Insurance, to the extent of coverage required to be maintained under the Required Insurance.

“Required Insurance” has the meaning set forth in Appendix 2.

“Service Commencement Date” has the meaning set forth in Section 3.2.

“Service Fee” has the meaning set forth in Article 7.

“Service Fee Cost Increase Limitation” means the greater of: (1) the product of (a) \$14.35 per Ton and (b) the Escalation Factor; or (2) if the City has agreed to accept adjustments to the Service Fee based on Reimbursable Uncontrollable Circumstances in excess of the Service Fee Cost Increase Limitation, such greater amount to which the City has agreed.

“Solid Waste” means materials that are classified as solid waste under Applicable Law.

“Solid Waste Permit” means the permit bearing number 133546 issued on August 16, 2006 by the New Jersey Department of Environmental Protection for operation of the Mass Burn Facility.

“State” means the State of New York.

“Subcontract” means any agreement, lease or purchase order entered into by the Port Authority in order to perform Agreement Services.

“Subcontractor” means every person (other than employees of the Port Authority) employed or engaged by the Port Authority or any person directly or indirectly in privity with the Port Authority (including all subcontractors and every sub-subcontractor of whatever tier) for the purpose of performing any portion of the Agreement Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise; provided however, that in performing services under the Operator Agreement, the Operator shall not be deemed a Subcontractor.

“Substantiated Costs” means the reasonable direct costs for which Cost Substantiation has been provided.

“Substitute Facility” has the meaning set forth in subsection 4.9(A).

“Substitute Facility Portion” has the meaning set forth in subsection 4.9(D).

“Term” has the meaning set forth in Section 3.5.

“Termination Date” means: (1) the twentieth anniversary of the Service Commencement Date or (2) the date of termination pursuant to Article VIII or Article IX if earlier.

“Tier 1 Capacity Day” has the meaning set forth in subsection 4.4(B).

“Tier 2 Capacity Day” has the meaning set forth in subsection 4.4(B).

“Tier 3 Capacity Day” has the meaning set forth in subsection 4.4(B).

“Ton” means a short ton of 2,000 pounds.

“Total UCC Costs Per Ton” has the meaning set forth in subsection 8.5(D).

“TPD” means Tons per day.

“TPW” means Tons per week.

“TPY” means Tons per year.

“UCC Costs” has the meaning set forth in Section 7.5.

“UCC Costs Per Ton” has the meaning set forth in subsection 8.5(D).

“Unacceptable Waste” means Non-Processible Waste and Hazardous Waste; provided that MSW that includes de minimis amounts of Hazardous Waste or Non-Processible Waste that normally occur in household waste shall not be Unacceptable Waste.

“Uncontrollable Circumstance” means (A) the installation of a Baghouse, and (B) any act, event or condition occurring on or after the Execution Date that has had, or may reasonably be expected to have, a material and adverse effect on a right or an obligation of any one or more of the Port Authority, the Operator, or the City, with respect to either: (1) the Port Authority’s or the City’s ability to perform their respective obligations under this Agreement, or (2) the Port Authority’s or the Operator’s ability to perform their respective obligations under the Operator Agreement, if such act, event or condition is beyond the reasonable control of the party relying thereon. It shall likewise constitute an Uncontrollable Circumstance if any act, event or condition described in the preceding sentence or in any of clause (a), (b), (c), or (d) of the list of “inclusions” of this definition occurs with respect to any person or entity now or hereafter engaged to transport or dispose of Process Residue, Non-Processible Waste, Hazardous Waste,

or Pathological Waste from the Mass Burn Facility, and results in a failure by the Operator to transport and dispose of Process Residue. Uncontrollable Circumstances shall not include any act, event or condition as it may relate to or affect: (1) a Substitute Facility; (2) any New Transfer Capacity; (3) any landfill or other disposal site that may be used as the disposal site for Solid Waste processed at or transferred from any New Transfer Capacity; or (4) if a Mass Burn Facility Expansion is to be constructed, such Mass Burn Facility Expansion (but only during the period commencing with the beginning of construction and ending when the Mass Burn Facility goes into full scale operation (“Mass Burn Facility Expansion Construction Period”), nor shall it include any effect of any act, event or condition at any Mass Burn Facility Expansion (during the Mass Burn Facility Expansion Construction Period only) resulting from the actions or inactions of the Port Authority or Covanta’s contractors or their respective subcontractors working on the Mass Burn Facility Expansion.

Inclusions. Uncontrollable Circumstances shall include, without limitation, the following events or occurrences, if such acts, events or conditions are beyond the reasonable control of the party relying thereon:

- (a) an act of God, landslide, lightning, earthquake, fire, explosion, flood, nuclear radiation, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance or any similar occurrence, or a condemnation or other taking by or on behalf of any public, quasi-public or private entity, but not including reasonably anticipated weather conditions for the geographic area of the Mass Burn Facility or the Process Residue Disposal Site;
- (b) the suspension, termination, interruption, denial or failure of renewal or continuation of any official governmental permit, official governmental license, official governmental consent, official governmental authorization or official governmental approval required for the reconstruction, operation or maintenance of the Mass Burn Facility or the transportation or disposal of Process Residue, Hazardous Waste or Pathological Waste;
- (c) a Change in Law;

(d) the loss of or inability to obtain any utility services, including water, sewerage, fuel oil, gasoline and electric power, other than that generated by the Mass Burn Facility, necessary for operation of the Mass Burn Facility or any disposal site used by the Port Authority or the Operator for the disposal of Process Residue, Hazardous Waste, Pathological Waste or Non-Processible Waste;

(e) any change by the purchaser of electrical energy and generation capacity or thermal energy pursuant to an agreement entered into by the Operator for the sale of electrical or thermal energy produced by the Mass Burn Facility, or the electrical generation capacity of the Mass Burn Facility, of the location of the point of interconnection with the Mass Burn Facility's electric distribution system or the Mass Burn Facility's thermal energy distribution system, or in the equipment necessary for Operator to make such interconnections;

(f) any surface or subsurface condition, including the presence of Hazardous Waste at the parcel of land upon which the Mass Burn Facility is located: (1) discovered after the Execution Date, or (2) determined by any court or governmental unit or agency after the Execution Date to require a redesign or change in the physical structure or operation of the Mass Burn Facility;

(g) the delivery to, or acceptance at, the Mass Burn Facility, or the processing, of Hazardous Waste, Pathological Waste or Non-Processible Waste;

(h) strikes that prevent the City from fulfilling its obligation to deliver MSW to the Mass Burn Facility as required under this Agreement or that involve persons other than those working for or on behalf of the Port Authority or Operator that prevent the removal, transportation and/or disposal of Process Residue; and

(i) strikes that prevent the Port Authority from fulfilling its obligations to perform the Agreement Services (including strikes directed at the Operator).

To the extent that a judicial, administrative, regulatory, investigative or other official proceeding would otherwise be an Uncontrollable Circumstance, the fact that such proceeding was threatened (but not yet commenced) or pending on the date hereof shall not preclude the treatment of such proceeding as an Uncontrollable Circumstance. No event or occurrence that

would otherwise constitute an Uncontrollable Circumstance shall be deemed to constitute an Uncontrollable Circumstance if such event or occurrence is the result of the willful or negligent action or inaction of the party relying thereon.

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

(1) changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions except to the extent any of the foregoing are directly mandated by a Change in Law;

(2) any Legal Proceeding brought against the Port Authority or the Operator and not the City, whether or not the Port Authority or the Operator subsequently seeks to join the City as an additional party, unless the subject matter of such Legal Proceeding is a failure of the Port Authority or the Operator to comply with a Change in Law, in which case the exclusion shall be limited to those costs or effects exceeding and/or different from those costs or effects that would have been incurred had the Port Authority or the Operator complied with the Change in Law;

(3) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by the Port Authority or the Operator or otherwise increasing the cost to the Port Authority or the Operator of performing the Agreement Services except to the extent any of the foregoing are directly mandated by a Change in Law; and

(4) mechanical failure of equipment or power outages to the extent not resulting from a condition that is independently an Uncontrollable Circumstance.

“Variable UCC Cost” has the meaning set forth in subsection 8.5(B).

“Waste Acceptance Obligation” has the meaning set forth in subsection 4.2(A).

“Weekly Guaranteed MSW Capacity” has the meaning set forth in subsection 4.4(A).

“Weigh Scale” means a scale that accurately weighs Collection Vehicles.

“Weigh Scale Computer” means a computer that obtains MSW weight readings directly from a Weigh Scale and is linked electronically to both the Weigh Scale and a City computer.

“Weigh Scale Malfunction” means a circumstance in which no Weigh Scale or no Weigh Scale Computer at the Mass Burn Facility or, during such period that a Substitute Facility is being used, such Substitute Facility, is operating in accordance with its specifications, or otherwise in accordance with the requirements of this Agreement.

“Wrongfully Rejected Waste” has the meaning specified in clause (2) of subsection 4.1(D), subsection 4.3(B), and clause (3) of subsection 4.12(F).

“Yearly Guaranteed MSW Capacity” has the meaning set forth in subsection 4.4(A).

SECTION 1.2. INTERPRETATION. In this Agreement notwithstanding any other provision hereof:

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

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

(C) Persons. Words importing persons include, and the term “Person” means, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

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

(E) Liquidated Damages. This Agreement provides for the payment of liquidated damages in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party’s actual damages in each such circumstance would be difficult or

impossible to ascertain and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred, and not to constitute a penalty, and each of the City and the Port Authority expressly waive any right they may have under Applicable Law to challenge the validity of any provision expressly providing for liquidated damages in this Agreement. In no event shall both liquidated damages and any other damages be applicable to the same Ton of MSW. To the extent that any liquidated damages provision is determined to be invalid under Applicable Law for any reason (other than a claim or assertion of invalidity by the City or the Port Authority), such provision will be deemed to be replaced by a calculation of actual damages, to the extent that such actual damages can be calculated.

(F) Causing Performance. A party shall itself perform, or shall cause to be performed, the obligations affirmatively undertaken by such party under this Agreement, subject to the qualifications set forth in Section 6.2.

(G) Party Bearing the Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other party or through an adjustment to the Disposal Charge.

(H) Cost of Performing Excludes Costs Resulting from Legal Proceeding. The “cost of performing” a party’s obligations hereunder, when used with respect to one party’s obligation to pay additional costs incurred by the other party, shall not include any Loss-and-Expense incurred by the party resulting from any Legal Proceeding, unless the subject matter of such Legal Proceeding is a failure of the Port Authority or the Operator to comply with a Change in Law, in which case the exclusion shall be limited to those costs or effects exceeding and/or different from those costs or effects that would have been incurred had the Port Authority or Operator complied with the Change in Law.

(I) Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party’s personnel resources to the extent reasonably available in the context of performing their

normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(J) Approvals and Consents. Any approval, consent, or satisfaction required of either party hereunder shall not unreasonably be withheld, delayed or conditioned, except where such approval, consent or satisfaction may be given in the sole discretion of the approving or consenting party under an express provision hereof.

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

(L) Drafting Responsibility. Notwithstanding the City having assumed primary drafting responsibility for the main body and certain Appendices to this Agreement, or the Port Authority's having assumed primary drafting responsibility for certain portions of this Agreement, neither party shall be held to a higher standard than the other party in the interpretation or enforcement of this Agreement as a whole or any portion hereof as a result of having assumed such drafting responsibility.

(M) No Third Party Rights. This Agreement is exclusively for the benefit of the City and the Port Authority and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights, except that the Operator shall have the rights expressly granted to the Operator under this Agreement.

(N) References to Days, Weeks and Years. Except as otherwise provided herein, all references to days are references to calendar days, all references to weeks are to a 7-day period beginning on Sunday and ending with the following Saturday, and all references to years are to calendar years.

(O) References to Including. All references to "include" or "including" herein shall be interpreted as meaning "include without limitation" or "including without limitation".

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

(Q) References to Promptly. All references to “promptly” shall be interpreted as meaning “as promptly as reasonably possible under the circumstances”.

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

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

(T) Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with the definitions used in the recitals hereto.

(U) Non-Applicability of PPB Rules. Except as set forth in subsection 2.1(E), in accordance with subsection 1-02(f) of the rules of the New York City Procurement Policy Board as in effect on the Execution Date, such rules and regulations do not apply to this Agreement as this Agreement is a contract between a City agency and another governmental entity as described in subsection 2.1(A).

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE PORT AUTHORITY. The Port Authority represents and warrants that:

(A) Existence and Powers. The Port Authority is a validly authorized and existing bistate agency created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States, with full right and power to execute, deliver and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Port Authority. When all of the conditions to the Effective Date set forth in Section 3.1 have been fulfilled, this Agreement will constitute a legal, valid and binding obligation of the Port Authority, enforceable against the Port Authority in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy or by equitable principles of general application.

(C) No Selling Agency. No person or selling agency (other than the Operator and any Affiliates or related entities with respect to any benefits it or they may receive under the terms of the Operator Agreement as a result of the Port Authority entering into this Agreement) has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation and no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties.

(D) No Conflict. Neither the Port Authority nor any of its directors, officers, members, partners or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Agreement Services provided in this Agreement. The Port Authority further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it.

(E) No Unfair Practices. The Port Authority and each person signing on behalf of the Port Authority represents and warrants and certifies that, to the best of its knowledge and belief, the Port Authority has not engaged in any unfair practices in obtaining this Agreement, this Agreement having been negotiated as a government to government contract in accordance with Section 3-13 of the PPB Rules.

(F) Mass Burn Facility Permits or Authorizations. The Port Authority warrants and represents that the Mass Burn Facility: (1) has all applicable operating Permits or Authorizations; and (2) is the subject of a Permit, Host Municipality Agreement, or other Authorization that does not prohibit the acceptance of MSW from the City.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents and warrants that:

(A) Existence and Powers. The City is a municipal corporation duly organized and validly existing under the laws of the State, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. This Agreement shall be duly authorized, executed and delivered by all necessary corporate action of the City. When all of the conditions to the Effective Date set forth in Section 3.1 have been fulfilled, this Agreement will constitute a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy or by equitable principles of general application, and subject in all respects to the provisions of Section 7.16.

(C) No Conflict. No elected officials or other officer or employee of the City, nor any person whose salary is payable, in whole or part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Agreement or in its proceeds.

ARTICLE III

EFFECTIVENESS OF AGREEMENT; TERM

SECTION 3.1. EFFECTIVE DATE. This Agreement shall be effective, and the Effective Date shall be deemed to have occurred, when:

- (1) the Execution Date has occurred;
- (2) if and to the extent required by Applicable Law, the Agreement has been:
 - (a) approved by the Mayor of The City of New York (the “Mayor”) pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval;
 - (b) certified by the Mayor (Mayor’s Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance of this Agreement will be in accordance with the City’s financial plan;
 - (c) approved by the New York State Financial Control Board (the “Board”) pursuant to the New York State Financial Emergency Act for The City of New York, as amended, (the “Act”), in the event regulations of the Board pursuant to the Act require such approval;
- (3) the Agreement has been registered by the Comptroller;
- (4) the Baghouse Agreement has been executed by the Operator and the New Jersey Department of Environmental Protection; and
- (5) the Operator Agreement Amendment has been executed by the Port Authority and the Operator.

The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for the expenditure of City funds.

SECTION 3.2. NOTICE OF EFFECTIVE DATE; SERVICE COMMENCEMENT DATE. The City shall promptly notify the Port Authority when the conditions set forth in clauses (2) and (3) of Section 3.1 have been satisfied. The Port Authority shall promptly notify the City when the conditions set forth in clauses (4) and (5) of Section 3.1

have been satisfied, and shall provide the City with such confirming documentation as to the effectiveness of the Operator Agreement Amendment as may be reasonably requested by the City. Within ten (10) days following the confirmation of the Effective Date by the respective City and Port Authority notices delivered pursuant to this Section 3.2, the City shall deliver a notice to the Port Authority (a “Notice to Commence Service”) designating the date (the “Service Commencement Date”) on which service is to begin under this Agreement. The date of the Service Commencement Date set forth in the Notice to Commence Service shall be at the sole discretion of the City.

SECTION 3.3. PORT AUTHORITY OPTION TO TERMINATE IF SERVICE COMMENCEMENT DATE DOES NOT OCCUR ON OR PRIOR TO SIX MONTH ANNIVERSARY OF EXECUTION DATE. If the Service Commencement Date established pursuant to Section 3.2 is a date that is later than six (6) months following the Execution Date, then the Port Authority may, at its sole option and sole discretion, terminate this Agreement by notice delivered to the City not later than ten (10) days following delivery by the City of the Notice to Commence Service (or, if no Notice to Commence Service shall have been delivered by the six (6) month anniversary following the Execution Date, within 90 days following such six (6) month anniversary).

SECTION 3.4. TERMINATION IF OPERATOR AGREEMENT AMENDMENT AND BAGHOUSE AGREEMENT DO NOT BECOME EFFECTIVE. If the Port Authority does not provide the notice and documentation to the City required by Section 3.2 within 300 days following the Execution Date, this Agreement shall automatically terminate on the 300th day following the Execution Date, unless the City and the Port Authority agree otherwise.

SECTION 3.5. TERM. This Agreement shall expire on the twentieth (20th) anniversary of the Service Commencement Date, unless earlier terminated pursuant to the termination provisions of this Agreement, in which event the term of this Agreement shall be deemed to have ended as of such Termination Date. The period from the Service Commencement Date to the twentieth anniversary of the Service Commencement Date (or other termination date, if earlier) is referred to herein as the “Term”.

ARTICLE IV

WASTE DELIVERY AND ACCEPTANCE

SECTION 4.1. CITY DELIVERY OF WASTE.

(A) City Delivery Rights. The City shall have the right to deliver MSW to the Mass Burn Facility during the Operating Hours from any wasteshed in the City, but subject to: (1) the Port Authority's rejection rights set forth in Section 4.3; and (2) the Port Authority's and the Operator's right to direct MSW to a Substitute Facility pursuant to Section 4.9.

(B) City Delivery Obligations.

(1) Generally. Except as otherwise expressly permitted or required under this Agreement, the City shall deliver to the Mass Burn Facility (or a Substitute Facility to the extent required pursuant to Section 4.9) all MSW collected by or on behalf of the City from the Designated Wastesheds, up to (i) during any Contract Year, the Yearly Guaranteed MSW Capacity, (ii) during any week, the Weekly Guaranteed MSW Capacity applicable during such week determined as set forth in subsection 4.4(A), and (iii) during any Delivery Day, the Daily Guaranteed MSW Capacity applicable on such day as determined by subsection 4.4(A). The City may satisfy the obligation to deliver MSW collected by or on behalf of the City from the Designated Wastesheds by delivering an equivalent number of Tons of MSW from anywhere within the City.

(2) No City Minimum Delivery Requirements. Notwithstanding the obligations of the City set forth in this subsection, the City is not obligated to deliver any minimum number of Tons of MSW to the Mass Burn Facility or a Substitute Facility during any given period (other than those Tons of MSW actually collected by or on behalf of the City from the Designated Wastesheds or the same number of Tons of MSW collected by or on behalf of the City from anywhere within the City).

(3) Credit For Certain MSW Not Delivered. For purposes of determining the City's compliance with clause (1) of this subsection, the City will be treated as having delivered to the Mass Burn Facility (or a Substitute Facility to the extent required

pursuant to Section 4.9) pursuant to this Agreement (i) all Wrongfully Rejected Waste, and (ii) all MSW diverted to a City Alternate Facility pursuant to subsection 4.9(E).

(4) No City Delivery Obligations if Mass Burn Facility Cannot Open on Sunday or Port Authority Holiday for Weather-Related or Emergency Condition. Notwithstanding the City's delivery obligations set forth in clause (1) of this subsection, the City shall have no obligation to deliver to the Mass Burn Facility or Substitute Facility the amounts of MSW set forth in subsection 4.6(C), and may deliver such MSW to one or more City Alternate Facilities.

(C) Right to Change Designated Wastesheds. The City shall have the right to change the boundaries of the Designated Wastesheds, or to replace all or portions of the then-applicable Designated Wastesheds with other geographical areas within the City, either on a temporary or a permanent basis, provided that the resultant geographic area generates a substantially similar amount of MSW as the then-applicable Designated Wastesheds. Calculations of the amounts of MSW generated shall be based on the average annual Tons of MSW collected by or on behalf of the City in the then-applicable Designated Wastesheds and in the proposed new or revised geographical area for each of the previous five years, as demonstrated by historical data maintained by the City. Upon substitution of a new or revised geographical area within the City for the then-applicable Designated Wastesheds, the new or revised geographical area shall then become the "Designated Wastesheds". The designation of a new or revised geographical area as Designated Wastesheds shall not change the Guaranteed MSW Capacity. The City shall provide notice and description of any change in the boundaries of the Designated Wastesheds, or replacement of all or portions of the then-applicable Designated Wastesheds with other geographical areas within the City at least ninety (90) days before such change or replacement.

(D) City Right to Divert Waste Upon Certain Port Authority Breaches.

(1) Breach of Waste Acceptance Obligation or Minimum Processing Obligation. If the Port Authority is in breach of the Waste Acceptance Obligation or the Minimum Processing Obligation, the City shall have the right to immediately suspend deliveries of MSW to the Mass Burn Facility, or if applicable, a Substitute Facility, and

avail itself of one or more City Alternate Facilities but only to the extent reasonably necessary to: (a) maintain uninterrupted disposal of the MSW that would have been delivered to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement; (b) limit the disruption to the City's collection, transport and disposal of MSW generated within the Designated Wastesheds; or (c) mitigate increased costs to the City of such collection, transportation and disposal. When availing itself of alternative disposal arrangements, the City shall take into account the then-available processing capacity of the Mass Burn Facility, or if applicable, a Substitute Facility. The City shall deliver to the Port Authority an Operating Notice of the City's decision to suspend deliveries as soon as practicable. MSW delivered to a City Alternate Facility pursuant to this clause shall constitute Wrongfully Rejected Waste.

(2) When Processing Liquidated Damages Cap Has Been Exceeded. The City shall have the right, in its sole discretion, to suspend deliveries of MSW to the Mass Burn Facility or, if applicable, a Substitute Facility, and avail itself of one or more City Alternate Facilities during any period when the Processing Liquidated Damages Cap has been exceeded. MSW delivered to a City Alternate Facility pursuant to this clause shall constitute Wrongfully Rejected Waste only if such waste is diverted in accordance with clause (1) of this subsection.

(3) When Amounts Payable By The Port Authority Are Overdue. The City shall have the right, in its sole discretion, to suspend deliveries of MSW to the Mass Burn Facility or, if applicable, a Substitute Facility, and avail itself of one or more City Alternate Facilities during any period when there is a Port Authority Breach described in clause (1) of subsection 9.2(A) for the Port Authority's failure to make a payment. MSW delivered to a City Alternate Facility pursuant to this clause shall not constitute Wrongfully Rejected Waste.

(4) End of City's Right to Divert. The City's right to suspend deliveries pursuant to this subsection shall terminate when: (i) in the case of a diversion pursuant to clause (1) of this subsection, the Port Authority or the Operator provides reasonable assurances to the City that the Port Authority will resume accepting MSW at the Mass

Burn Facility in compliance with the Waste Acceptance Obligation and processing Collection Vehicles in compliance with the Minimum Processing Obligation and allowing for a period reasonably sufficient (which period shall not, without the consent of the City, be less than 4 hours) for the City to direct Collection Vehicles back to the Mass Burn Facility, (ii) in the case of a diversion pursuant to clause (2) of this subsection, Processing Liquidated Damages again become available to the City as a damage remedy, and (iii) in the case of a diversion pursuant to clause (3) of this subsection, the applicable Port Authority Breach no longer exists.

(E) Port Authority Right to Obtain City Waste Collection Data. The Port Authority shall have the right to request from the City data setting forth the daily and annual Tons of MSW collected by or on behalf of the City from the Designated Wastesheds. The City shall maintain such records and, upon request by the Port Authority, shall provide such information to the Port Authority promptly upon it becoming available. The City shall not be required to provide such information more frequently than monthly.

(F) Notice of High Delivery Days. The City shall make all reasonable efforts to deliver an Operating Notice to the Operator at least 24 hours prior to the beginning of a Delivery Day during which the City expects deliveries of MSW pursuant to this Agreement to exceed 1,800 Tons. The Operating Notice shall state the expected amount of projected deliveries during the applicable Delivery Day. Failure by the City to deliver such an Operating Notice shall not relieve the Port Authority of its obligations under Section 4.2.

SECTION 4.2. WASTE ACCEPTANCE OBLIGATION.

(A) Obligation to Accept MSW. Subject to the rejection rights set forth in Section 4.3, the Port Authority shall cause the Operator, during Operating Hours, to accept at the Mass Burn Facility all MSW delivered to the Mass Burn Facility (or a Substitute Facility to the extent directed by the Operator pursuant to Section 4.9) during such Operating Hours by or on behalf of the City pursuant to this Agreement: (1) up to (a) during any Contract Year, the Yearly Guaranteed MSW Capacity, (b) during any week, the Weekly Guaranteed MSW Capacity, and (c) during any Delivery Day, the Daily Guaranteed MSW Capacity applicable on such day; and (2) in excess of the foregoing limits, if capacity is available at the Mass Burn Facility as

determined by the Operator in its sole discretion. The Port Authority and Operator shall have no right to make up waste acceptance shortfalls below the Guaranteed MSW Capacity on any particular day, week or year by accepting excess deliveries on subsequent days, weeks or years. The obligations of the Port Authority (or the Operator acting at the direction of the Port Authority) set forth in this Section shall constitute the “Waste Acceptance Obligation”.

(B) Port Authority Right to Procure Other Waste; Suspend Accepting MSW Upon Certain City Breaches.

(1) Breach of City Obligation to Deliver MSW. If the City is in breach of its obligation to deliver MSW pursuant to subsection 4.1(B), the Port Authority shall have the right to cause the Operator (confirmed by the delivery of written notice by the Port Authority to the City as soon practicable) to immediately arrange and accept alternative deliveries of solid waste to the Mass Burn Facility from one or more third parties to replace the MSW that the City has not delivered as required under this Agreement, but only to the extent and in accordance with the standards set forth in clause (2) of subsection 9.4(D).

(2) When Amounts Payable By The City Are Overdue. The Port Authority shall have the right, in its sole discretion, to suspend accepting deliveries of MSW made by or on behalf of the City to the Mass Burn Facility or, if applicable, a Substitute Facility, pursuant to this Agreement during any period when there is a City Breach described in clause (1) of subsection 9.4(A). During a period when the Port Authority is exercising its right to suspend accepting deliveries of MSW pursuant to this clause, the City shall not be deemed to be in breach of the City’s waste delivery obligations set forth in subsection 4.1(B).

(3) End of Port Authority’s Right to Suspend Service. The Port Authority’s right to suspend service pursuant to clause (2) of this subsection shall terminate when the breach is cured in accordance with clause (1) of subsection 9.4(A).

SECTION 4.3. RIGHT TO REJECT WASTE.

(A) Right to Reject. On any Delivery Day the Port Authority may reject, and may permit the Operator to reject, at the Mass Burn Facility (or a Substitute Facility to the extent permitted by Section 4.9) delivery of:

(1) MSW tendered for delivery pursuant to this Agreement after the number of Tons equal to the Daily Guaranteed MSW Capacity (reduced by the amount of Wrongfully Rejected Waste during such Delivery Day), the Weekly Guaranteed MSW Capacity (reduced by the amount of Wrongfully Rejected Waste during such week), or Yearly Guaranteed MSW Capacity (reduced by the amount of Wrongfully Rejected Waste during such year) has been delivered and accepted by the Port Authority (unless the Port Authority accepts such excess MSW pursuant to clause (2) of the first sentence of subsection 4.2(A));

(2) MSW which cannot be accepted due to the occurrence of an Uncontrollable Circumstance;

(3) Unacceptable Waste tendered for delivery pursuant to this Agreement;

(4) MSW tendered for delivery pursuant to this Agreement from any Collection Vehicle operated by a driver or hauler who intentionally or negligently violates the rules and regulations on a repeated basis established by the Port Authority or the Operator pursuant to subsection 5.3(D);

(5) MSW tendered for delivery pursuant to this Agreement in any Collection Vehicle if necessary to protect the safety of any person or property present at or located on the Mass Burn Facility; and

(6) If MSW tendered for delivery pursuant to this Agreement exceeds 1,800 Tons and MSW has been delivered from outside the Designated Wastesheds, all Tons of MSW in excess of the lesser of (i) the number of Tons delivered from outside the Designated Wastesheds, and (ii) the difference between the total number of Tons delivered on that Delivery Day (if over 1,800 Tons) and 1,800 Tons.

MSW tendered for delivery at the Mass Burn Facility or a Substitute Facility pursuant to this Agreement that is rejected other than as permitted by this subsection or otherwise deemed to be wrongfully rejected pursuant to this Agreement shall constitute “Wrongfully Rejected Waste”.

(B) Wrongful Rejection of MSW. If the Port Authority (or the Operator) wrongfully rejects the delivery of MSW in violation of the Waste Acceptance Obligation or MSW is otherwise deemed to be Wrongfully Rejected Waste pursuant to this Agreement, the Port Authority shall, subject to the limitation set forth in paragraph (a) of clause (4) of subsection 9.2(D), be subject to payment of Disposal Liquidated Damages.

SECTION 4.4. GUARANTEED MSW CAPACITY.

(A) Generally. The Guaranteed MSW Capacity means the following:

- (1) 1,800 TPD on each Delivery Day;
- (2) above 1,800 TPD and up to and including 2,500 TPD on not more than 65 Delivery Days per full Contract Year, but:
 - (a) not above 2,250 TPD on more than 15 Delivery Days per full Contract Year; nor
 - (b) above 2,250 TPD on any two consecutive Delivery Days; nor
 - (c) above 2,000 TPD on more than 35 Delivery Days per full Contract Year;
- (3) 10,000 TPW (the “Weekly Guaranteed MSW Capacity”); and
- (4) 500,000 TPY (the “Yearly Guaranteed MSW Capacity”).

Examples of how Guaranteed MSW Capacity limitations are applied are set forth in Appendix 7.

(B) Determination of Which Guaranteed MSW Capacity Applies on a Given Delivery Day.

(1) Definitions.

As used herein:

“Tier 1 Capacity Day” means any Delivery Day on which either: (i) the actual number of Tons of MSW accepted at the Mass Burn Facility pursuant to the Waste Acceptance Obligation is above 1,800 Tons; or (ii) the number of Tons set forth in the City’s Operating Notice delivered to the Operator pursuant to subsection 4.1(F) is above 1,800 Tons;

“Tier 2 Capacity Day” means any Delivery Day on which either: (i) the actual number of Tons of MSW accepted at the Mass Burn Facility pursuant to the Waste Acceptance Obligation is above 2,000 Tons; or (ii) the number of Tons set forth in the City’s Operating Notice delivered to the Operator pursuant to subsection 4.1(F) is above 2,000 Tons; and

“Tier 3 Capacity Day” means any Delivery Day on which either: (i) the actual number of Tons of MSW accepted at the Mass Burn Facility pursuant to the Waste Acceptance Obligation is above 2,250 Tons; or (ii) the number of Tons set forth in the City’s Operating Notice delivered to the Operator pursuant to subsection 4.1(F) is above 2,250 Tons.

(2) Daily Guaranteed MSW Capacity Applicable on a Given Delivery Day.

On a given Delivery Day, the Daily Guaranteed MSW Capacity shall be:

- (a) 2,500 Tons, if there are Tier 3 Capacity Days available.
- (b) 2,250 Tons, if there are Tier 2 Capacity Days available but no Tier 3 Capacity Days available.
- (c) 2,000 Tons, if there are Tier 1 Capacity Days available but no Tier 2 or Tier 3 Capacity Days available.
- (d) 1,800 Tons, if there are no Tier 1, 2 or 3 Capacity Days available.

(3) Rules Determining the Number and Types of Tiered Capacity Days Available.

- (a) There may not be more than 65 Tier 1 Capacity Days per Contract Year.
- (b) There may not be more than 35 Tier 2 Capacity Days per Contract Year.

(c) There may not be more than 15 Tier 3 Capacity Days per Contract Year. In addition, there may not be two consecutive Tier 3 Capacity Days.

(d) On any Delivery Day, more than one tier of capacity day may be used (e.g. if the Operator accepts 2,300 Tons on a Delivery Day, a Tier 1, 2 and 3 Capacity Day will have been used).

(4) Adjustments to Tonnage Levels Set Forth in this Subsection. As used in this subsection, all Tonnage amounts are intended to correspond to the Tonnage amounts set forth in the definition of Daily Guaranteed MSW Capacity in subsection (A) of this Section, and upon any adjustment of the Tonnage Amount pursuant to subsection (C) of this Section, the corresponding Tonnage Amounts in this subsection shall be similarly adjusted.

(5) Daily Guaranteed MSW Capacity if Weekly Guaranteed MSW Capacity is Exceeded. During any week, if the City has delivered and the Port Authority has accepted pursuant to this Agreement a number of Tons of MSW equal to the Weekly Guaranteed MSW Capacity, the Daily Guaranteed MSW Capacity shall be 0 for the remainder of that week.

(6) Daily and Weekly Guaranteed MSW Capacity if Yearly Guaranteed MSW Capacity is Exceeded. During any Contract Year, if the City has delivered and the Port Authority has accepted pursuant to this Agreement a number of Tons of MSW equal to the Yearly Guaranteed MSW Capacity, the Daily Guaranteed MSW Capacity and the Weekly Guaranteed MSW Capacity shall each be 0 for the remainder of that Contract Year.

SECTION 4.5. NO CITY GUARANTEE OF MSW QUANTITY. The City makes no representation or guarantee as to the actual quantity (daily, weekly, monthly, annually or any other total or average amounts) of MSW to be delivered to the Mass Burn Facility pursuant to this Agreement. This Section is not intended to limit in any way the obligations of the City in subsection 4.1(B).

SECTION 4.6. SPECIAL DELIVERIES OF MSW.

(A) Sunday and Port Authority Holiday Deliveries.

(1) City Request. The City may request, for operational needs in connection with weather-related or emergency conditions, the Port Authority to cause the Operator to operate the Mass Burn Facility and accept MSW pursuant to this Agreement on Sundays or Port Authority Holidays, if permitted by Applicable Law. As part of its request, the City shall deliver to the Port Authority and the Operator an Operating Notice detailing the City's expected MSW deliveries to the Mass Burn Facility pursuant to this Agreement during such Sunday or Port Authority Holiday. Within 24 hours of receipt of the City's Operating Notice, the Port Authority (or the Operator) shall deliver to the City an Operating Notice specifying whether the Operator will operate the Mass Burn Facility during the periods of times requested by the City in its Operating Notice. An adjustment will be made to the Service Fee as set forth in subsection 7.6(H) for MSW accepted at the Mass Burn Facility pursuant to this subsection.

(2) Solid Waste Permit Waiver. Upon request by the City pursuant to clause (1) of this subsection, the Port Authority shall cause the Operator to promptly request a waiver under the Solid Waste Permit to operate the Mass Burn Facility and accept MSW on Sundays or Port Authority Holidays, as applicable.

(3) Operator Operating Notice Regarding Impact. If the Operator reasonably expects that, because of deliveries of MSW to the Mass Burn Facility pursuant to this Agreement on Sundays or Port Authority Holidays, the Operator will be unable to fully comply with the Collection Vehicle Processing Rate or the Waste Acceptance Obligation, the Port Authority (or the Operator) shall deliver to the City an Operating Notice setting forth the Operator's reasonable estimate of the impact of the Sunday or Port Authority Holiday operations on the Operator's ability to satisfy the Collection Vehicle Processing Rate and the Waste Acceptance Obligation.

(B) Limited Excuse from Performance Guarantees. The City and the Operator acknowledge that in certain circumstances, the exercise by the City of its rights under subsection (A) of this Section may cause the Operator to be unable to comply with the Collection Vehicle

Processing Rate, the Waste Acceptance Obligation or the Operator's obligation to operate the Mass Burn Facility in accordance with all Applicable Law. In order to mitigate the effects of such limitations, the City and the Port Authority shall, and the Port Authority shall cause the Operator to, agree to the following remedial actions:

(1) Petitioning Permitting Authorities. The City agrees to cooperate with the Port Authority and the Operator in petitioning applicable permitting authorities to waive, during the course of the event for which excuse is being sought under this subsection and the adjustment period immediately thereafter, applicable daily waste acceptance limits, Mass Burn Facility clean floor time requirements and on-site waste storage time limitations, to the extent such waiver is required to allow the Operator to accept the City's deliveries in compliance with Applicable Law.

(2) Limited Excuse From Damages. If, because of the Operator's acceptance of MSW at the Mass Burn Facility pursuant to this Agreement in excess of the Weekly Guaranteed MSW Capacity pursuant to subsection (A) of this Section, the Operator is unable to satisfy the Collection Vehicle Processing Rate or the Waste Acceptance Obligation, the Port Authority shall be granted excuse from monetary damages for failure to comply with the Collection Vehicle Processing Rate and the Waste Acceptance Obligation to the extent:

(a) the Operator uses such efforts to mitigate as would be required if the event were an Uncontrollable Circumstance;

(b) on at least a daily basis, the Port Authority (or the Operator) delivers to the City an Operating Notice setting forth, (i) the Operator's mitigation measures and reasonable estimate of the impact, if any, of the emergency, Sunday or Port Authority Holiday operations, as applicable, on the Operator's ability to satisfy the Collection Vehicle Processing Rate and the Waste Acceptance Obligation during the course or as a result of the emergency, Sunday or Port Authority Holiday delivery, and (ii) every day with respect to which the Operator is requesting performance relief, if any, pursuant to this subsection; and

(c) the Operator demonstrates that noncompliance with the Collection Vehicle Processing Rate and the Waste Acceptance Obligation is caused by such City deliveries in excess of the Weekly Guaranteed MSW Capacity.

(C) If Mass Burn Facility Cannot Accept Special Deliveries. If: (i) the Port Authority (or the Operator) deliver to the City an Operating Notice stating that the Mass Burn Facility cannot accept MSW during the times requested by the City pursuant to subsection (A) this Section; or (ii) if such Operating Notice is not delivered to the City within 24 hours after the City delivers its Operating Notice pursuant to subsection (A) of this Section:

(1) No City Delivery Obligation. The City shall have no obligation to deliver to the Mass Burn Facility any MSW that would have been delivered to the Mass Burn Facility or Substitute Facility during such times, and may deliver such MSW to one or more City Alternate Facilities.

(2) Port Authority and Operator Option to Provide Alternate Facility. The Port Authority and the Operator may offer the use of one or more substitute disposal locations at which the City may dispose of such MSW. The City shall have the right to choose, in its sole discretion, whether it disposes of such MSW at such substitute disposal locations. Each such substitute disposal location shall be a solid waste facility with all Permits or Authorizations required by Applicable Law to operate. Any MSW disposed of pursuant to this clause shall not be counted toward the Substitute Facility Portion.

(D) Port Authority Request for Permit Modification. The Port Authority shall cause the Operator to request from NJDEP a permit modification to the Solid Waste Permit to allow a waiver of restrictions from the acceptance of MSW on Sundays and Port Authority Holidays for the City's operational needs in connection with weather-related or emergency conditions.

SECTION 4.7. PROCESS RESIDUE DISPOSAL SERVICES. The Port Authority shall cause the Operator to be solely responsible to provide Process Residue Disposal Services. The parties acknowledge that the cost of the Process Residue Disposal Services has been included in the Disposal Charge.

SECTION 4.8. PRIORITY OF SOLID WASTE DELIVERIES AT THE MASS BURN FACILITY.

(A) Priority of ECUA Solid Waste Over MSW Delivered By or on Behalf of the City. Solid Waste delivered to the Mass Burn Facility by or on behalf of ECUA that has been generated and collected within Essex County, New Jersey has a priority over MSW delivered to the Mass Burn Facility by or on behalf of the City pursuant to this Agreement, unless the parties agree otherwise.

(B) Priority of MSW Over Solid Waste Other Than ECUA Waste. MSW delivered to the Mass Burn Facility by or on behalf of the City up to the Guaranteed MSW Capacity shall be granted priority by the Port Authority and the Operator over all Solid Waste delivered to the Mass Burn Facility other than Solid Waste delivered to the Mass Burn Facility by or on behalf of ECUA. ECUA's Solid Waste has priority as contemplated by subsection (A) of this Section.

(C) Meaning of Priority. As used in this Agreement, the term priority means that during any period in which the Mass Burn Facility is unable to accept all Solid Waste being delivered to the Mass Burn Facility, or which would be delivered but for the Mass Burn Facility's inability to accept such Solid Waste, the vehicles having priority shall be turned away (if such vehicles arrive at the Mass Burn Facility) or directed not to bring loads of Solid Waste to the Mass Burn Facility (if such vehicles have not already arrived at the Mass Burn Facility), as applicable, only after vehicles with a lower priority have been turned away or directed not to bring loads of Solid Waste to the Mass Burn Facility, as applicable. Having priority shall not create any implication of any other preference, such as advancing vehicles with higher priority to the head of a queue.

(D) Priority Does Not Apply to Excess Waste. The priority set forth in subsection (B) of this Section does not apply to excess waste delivered pursuant to clause (2) of the first sentence of subsection 4.2(A).

(E) No Effect on Other Rights and Obligations. The Port Authority's and the City's rights pursuant to this Section do not affect any other rights and obligations under this Agreement, including, but not limited to, whether a breach has occurred.

SECTION 4.9. SUBSTITUTE FACILITY.

(A) Requirement for a Substitute Facility. The Port Authority shall cause the Operator to establish, and the Port Authority and the Operator shall have the right, but not the obligation, to use one or more substitute disposal locations (each a "Substitute Facility"). Each Substitute Facility shall be a solid waste facility with all Permits or Authorizations required by Applicable Law to operate and be located within a geometric radius of 15 miles of the Mass Burn Facility. New Transfer Capacity shall not be a Substitute Facility. A Substitute Facility may be used during Operating Hours to provide capacity (up to but not exceeding the Substitute Facility Portion in any full Contract Year) when the Mass Burn Facility is unable to physically accept the full Guaranteed MSW Capacity.

(B) Notice of Use of Substitute Facility. The Port Authority shall cause the Operator to provide the City with an Operating Notice at least 24 hours prior to the commencement of the use of a Substitute Facility, stating: (1) the time of commencement of use of such Substitute Facility; (2) the number of Tons of MSW to be diverted by the City to such Substitute Facility; and (3) the anticipated duration of the diversion. Unless the City elects to deliver such MSW to a City Alternate Facility pursuant to subsection (E) of this Section, the City shall abide by the provisions of such Operating Notice, up to the Substitute Facility Portion.

(C) No Adjustment to Service Fee for Use of Substitute Facility. There shall be no adjustment to the Service Fee relating to the use of a Substitute Facility.

(D) Limitation on Use of Substitute Facility.

(a) Substitute Facility Portion. The Port Authority's or the Operator's right to direct the City to use a Substitute Facility shall be limited to the

Substitute Facility Portion. “Substitute Facility Portion” means 75,000 Tons per Contract Year (or pro rata portion thereof for any Contract Year that is less than a full year). If the full Substitute Facility Portion is not used in any Contract Year, then the number of Tons not used in that Contract Year shall carry forward to the next Contract Year(s) until used in full, but in no event shall the Substitute Facility Portion ever exceed 100,000 Tons in any Contract Year.

(b) Identification of Nearest Substitute Facility. In directing the City to deliver MSW to a Substitute Facility pursuant to this Section, the Port Authority or the Operator shall use as the Substitute Facility that facility at which the Port Authority or the Operator has capacity capable of accepting the applicable number of Tons of MSW that is closest by driving distance to the Mass Burn Facility.

(E) City Right to Use City Alternate Facility Instead of Substitute Facility.

(1) Generally. If the City receives a notice from the Operator to direct MSW to a Substitute Facility pursuant to subsection (B) of this Section, the City shall have the option to deliver all or a portion of such MSW to either: (1) the Substitute Facility; or (2) a City Alternate Facility. MSW delivered by or on behalf of the City to a City Alternate Facility pursuant to this Section: (i) shall not constitute Wrongfully Rejected Waste; (ii) shall not constitute a breach of the City’s delivery obligations under subsection 4.1(B); (iii) shall count as Tons applied against the Guaranteed MSW Capacity; (iv) shall count as Tons applied against the Substitute Facility Portion for purposes of subsection 4.9(D); and (v) shall not be included in the calculation of the Disposal Charge. The City will be responsible for all costs associated with the transportation and disposal of MSW delivered to a City Alternate Facility pursuant to this subsection.

(2) City’s Notice to Operator as Condition to Use of City Alternate Facility. Not later than 12 hours following receipt by the City of an Operating Notice requesting that MSW be delivered to a Substitute Facility pursuant to this Section, the City shall deliver an Operating Notice to the Operator advising the Operator of (1) the portion of the applicable MSW to be delivered to the Substitute Facility, and (2) the portion of the

applicable MSW to be delivered to a City Alternate Facility. Failure by the City to deliver an Operating Notice pursuant to this clause shall be deemed an election to deliver the MSW to the Substitute Facility.

SECTION 4.10. WRONGFUL DELIVERY OF UNACCEPTABLE WASTE.

(A) The Mass Burn Facility is Not an Unacceptable Waste Disposal Facility.

The parties acknowledge and agree that the Mass Burn Facility is not, nor is it intended to be, a facility for the disposal of Unacceptable Waste. The City shall use commercially reasonable efforts to avoid and minimize tender of Unacceptable Waste for delivery to the Mass Burn Facility, other than those de minimis amounts described in the last sentence of the definition of MSW. The Port Authority and the Operator shall use commercially reasonable efforts to avoid and minimize the acceptance of Unacceptable Waste at the Mass Burn Facility, other than those de minimis amounts described in the last sentence of the definition of MSW.

(B) Deliveries of Unacceptable Waste Not Off-Loaded. If the City tenders Unacceptable Waste for delivery to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement and the Port Authority (or the Operator) identifies such waste as Unacceptable Waste prior to off-loading it from the Collection Vehicle, the Port Authority shall cause the Operator to permit the Collection Vehicle to pass over the Weigh Scales without off-loading such Unacceptable Waste and the Port Authority shall not charge the City for such delivery.

(C) Deliveries of Unacceptable Waste Identified Following Off-Loading and Prior to Commingling. If the City delivers Unacceptable Waste to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement and the Port Authority (or the Operator) identifies such waste as Unacceptable Waste following off-loading from the Collection Vehicle and prior to commingling of such Unacceptable Waste with waste not delivered pursuant to this Agreement, the Port Authority (or the Operator) shall immediately notify the driver of the Collection Vehicle of the delivery of Unacceptable Waste. The Port Authority (or the Operator) shall, to the extent reasonably possible, also deliver an Operating Notice to the City. If the City fails to remove such Unacceptable Waste within two (2) business days of delivery of such Operating Notice to the City (or such shorter period which may be required for compliance with Applicable Law), the Port Authority or Operator may assume responsibility for the removal,

transport and disposal of such Unacceptable Waste in accordance with Applicable Law and the City shall reimburse the Port Authority for the Substantiated Costs of such removal, transportation and disposal as Additional Amounts Payable (as described in subsection 7.6(A)).

(D) Deliveries of Unacceptable Waste Identified Following Off-Loading and Commingling. The Port Authority and the City acknowledge that MSW delivered to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement may be commingled with other waste at the Mass Burn Facility. Following commingling of such waste, it may or may not be possible to identify particular Unacceptable Waste as having been delivered pursuant to this Agreement. If the Port Authority (or the Operator) identifies any such waste as Unacceptable Waste delivered pursuant to this Agreement, and if the Port Authority wishes to assert its rights under this subsection, the Port Authority shall cause the Operator to immediately segregate such Unacceptable Waste, notify the City of such delivery of Unacceptable Waste (with an Operating Notice), deliver documentation to the City reasonably evidencing that such Unacceptable Waste was delivered by Collection Vehicles pursuant to this Agreement, and declare its intent to exercise its rights under this subsection. Upon delivery of the foregoing, the Port Authority shall promptly request the City to remove such Unacceptable Waste from the Mass Burn Facility or a Substitute Facility, as applicable. If, upon receipt of proper documentation, the City fails to remove such Unacceptable Waste within two (2) business days of delivery of such Operating Notice to the City (or such shorter period which may be required for compliance with Applicable Law), the Port Authority or Operator may assume responsibility for the removal, transport and disposal of such Unacceptable Waste in accordance with Applicable Law and the City shall reimburse the Port Authority for the Substantiated Costs of such removal, transportation and disposal as Additional Amounts Payable (as described in subsection 7.6(A)).

(E) Correcting Billing Records. Unacceptable Waste that has been delivered to and unloaded at the Mass Burn Facility by or on behalf of the City pursuant to this Agreement, but which has been removed from the Mass Burn Facility in accordance with subsection (B), (C) or (D) of this Section, shall not be considered when calculating the Disposal Charge portion of the Service Fee; provided however, costs of removal and disposal of such Unacceptable Waste that the City is responsible for pursuant to subsection (C) or (D) of this Section shall be included as Additional Amounts Payable (as described in subsection 7.6(A)).

SECTION 4.11. COLLECTION VEHICLE PROCESSING RATES.

(A) Processing of Collection Vehicles from 7:00 A.M to 3:00 P.M. During the hours beginning at 7:00 A.M. and ending at 3:00 P.M., the Minimum Collection Vehicle Processing Rate is 15 Collection Vehicles per hour at the Mass Burn Facility. During this time period, the Port Authority shall cause the Operator to use commercially reasonable efforts to process Collection Vehicles at the Mass Burn Facility at the Minimum Collection Vehicle Processing Rate, provided that 15 Collection Vehicles are available to be processed during the applicable hour. If there are fewer than 15 Collection Vehicles available to be processed during an hour, the Port Authority shall cause all such Collection Vehicles to be processed during the applicable hour, and shall further cause the Operator to process such Collection Vehicles without undue delay. The Port Authority and the City acknowledge that the time period identified in this subsection is the time period during which the majority of Solid Waste delivered by or on behalf of ECUA is expected to be delivered to the Mass Burn Facility. Therefore, the Port Authority's rights with respect to granting priority to Solid Waste delivered to the Mass Burn Facility by or on behalf of ECUA shall be considered in determining the commercial reasonableness of the efforts employed in processing the Collection Vehicles.

(B) Processing of Collection Vehicles from 3:00 P.M. to 7:00 A.M. During the hours beginning at 3:00 P.M. and ending at 7:00 A.M. the following day, the Minimum Collection Vehicle Processing Rate is 22 Collection Vehicles per hour at the Mass Burn Facility. During this time, the Port Authority shall cause the Operator to maintain the ability to process Collection Vehicles at the Mass Burn Facility at the Minimum Collection Vehicle Processing Rate, provided that 22 Collection Vehicles are available to be processed during the applicable hour. If there are fewer than 22 Collection Vehicles available to be processed during an hour, the Port Authority shall cause all such Collection Vehicles to be processed during the applicable hour, and shall further cause the Operator to process such Collection Vehicles without undue delay. The Port Authority shall cause the Operator to use all reasonable efforts to minimize queuing time for Collection Vehicles prior to being weighed in at the Mass Burn Facility. This subsection is not intended to override the waste delivery priority set forth in subsection 4.8(A). The obligations of the Port Authority under this subsection shall constitute the "Minimum Processing Obligation."

(C) Determination of Collection Vehicle Processing Rates. The Collection Vehicle Processing Rate shall be calculated using the outbound scale records and shall be the number of Collection Vehicles that have delivered MSW (excluding Collection Vehicles that have delivered Unacceptable Waste) as recorded by all of the outbound scales in any given hour.

(D) Applicability at Substitute Facility. The requirements set forth in this Section shall apply at a Substitute Facility when such Substitute Facility is being used to receive MSW pursuant to this Agreement.

SECTION 4.12. WEIGH SCALES.

(A) Weigh Scales. The Port Authority shall cause the Operator to have one or more operational Weigh Scales at the Mass Burn Facility and at each Substitute Facility, each able to accommodate all of the dimensions of all of the Collection Vehicles. The Operator may satisfy the foregoing requirement by using temporary or portable Weigh Scales during any period when the regular Weigh Scales are not operational.

(B) Weigh Scale Computers, Delivery Information and Delivery Receipts. The Port Authority shall cause the Operator to equip the Mass Burn Facility and each Substitute Facility with Weigh Scale Computers. The Weigh Scale Computers shall record the Delivery Information, and shall be capable of reading Delivery Information directly from transponders located on Collection Vehicles. The Delivery Information shall be the official record of the weight of each load of MSW delivered to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement. The appropriate Weigh Scale Computer shall print the Delivery Information for each load of MSW delivered in a Collection Vehicle onto all copies of a Delivery Receipt. Each Delivery Receipt shall include the following information, which shall be obtained by the Port Authority from the Operator: (1) all Delivery Information; and (2) the signature and printed name of the Operator's representative. The Port Authority shall cause the Operator to give the Collection Vehicle driver a copy of the Delivery Receipt. The Port Authority shall cause the Operator to electronically transmit the Delivery Information for each load of MSW delivered in Collection Vehicles on an hourly basis to the location designated in writing by the City. Each Weigh Scale Computer shall assign a load number to each load in sequence and without any omitted load numbers. For each Invoice Period, the Weigh Scale Computer shall transfer this

data to a CD-ROM, or to an otherwise mutually acceptable computer readable data storage medium and format, and the Port Authority shall cause the Operator to deliver it to the City along with the Port Authority Billing Statement.

(C) Certification of Weigh Scales. Without any cost to the City, the Port Authority shall cause the Operator to obtain all of the required certifications and seals for the Weigh Scales. Upon request by the City, the Port Authority shall provide the City with documentation showing that the Operator has renewed the required certifications and seals prior to the expiration of the existing certifications and seals. Weigh Scales shall meet the standards and specifications of the State of New Jersey.

(D) Weigh Scale Calibration, Observation and Testing. The City may observe the weighing of MSW and test the accuracy and precision of any Weigh Scale or Weigh Scale Computer at any reasonable time, upon reasonable prior notice. The City may authorize a representative or agent to conduct the observation and testing, and assign the representative or agent to the Mass Burn Facility for that purpose. The Port Authority shall cause the Operator to provide appropriate space on site for the City's observer.

(E) Weighing Waste. The Port Authority shall cause the Operator to record the weight of each Collection Vehicle delivering MSW to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement prior to and after unloading MSW, and give a record to the City in the manner specified in subsection (B) of this Section. After a Collection Vehicle delivering MSW has been weighed by a Weigh Scale, both prior to and after unloading, the associated Weigh Scale Computer shall record and print a Delivery Receipt. The City has the right to withhold payment for any delivery of MSW delivered to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement for which the Port Authority fails to provide a complete Delivery Receipt.

(F) Weigh Scale or Weigh Scale Computer Malfunction.

(1) Notification of a Weigh Scale Malfunction. The Port Authority shall cause the Operator to immediately notify the City of a Weigh Scale Malfunction including but not limited to:

(a) failure of a Weigh Scale or a Weigh Scale Computer to assign a sequential number to each load delivered by Collection Vehicles;

(b) failure of a Weigh Scale or a Weigh Scale Computer to provide a complete and legible Delivery Receipt, including all required copies;

(c) failure of the Port Authority to cause the Operator to calibrate and seal a Weigh Scale as required by state or local law, rule or regulation, or to have the required certifications and seals for a Weigh Scale renewed; or

(d) failure of the Weigh Scale or a Weigh Scale Computer to accurately record weights of Collection Vehicles, within tolerances consistent with industry standards or Applicable Law.

(2) City Estimates During Weigh Scale Malfunctions. During any Weigh Scale Malfunction, the Port Authority shall accept the City's reasonable estimate of the weight of the MSW delivered to the Mass Burn Facility or a Substitute Facility pursuant to this Agreement as the official record of the measurement. The City, at its sole option, may make its reasonable estimate by: (a) weighing the Collection Vehicle at a City facility; (b) using a weight derived from the actual daily average of MSW that Collection Vehicles have delivered to the Mass Burn Facility during a period that the City determines is reasonable; or (c) any other reasonable means. Any costs to the City of such alternate weighing or additional record keeping shall constitute a Port Authority Amounts Payable. If a Weigh Scale Malfunction which causes the Port Authority to be unable to provide a complete Delivery Receipt continues for a period of 24 hours or longer, the City may, at its sole option, require a City representative to be stationed at the Mass Burn Facility to observe Collection Vehicle deliveries of MSW during the remaining period of the Weigh Scale Malfunction. Subject to Cost Substantiation, the Port Authority shall be liable for all reasonable additional expenses incurred by the City

resulting from a Weigh Scale Malfunction, including the City representative's salary and benefits, which shall be Port Authority Amounts Payable. Except as provided in clause (3) of subsection (F) of this Section, such Port Authority Amounts Payable shall be the City's sole remedy for a Weigh Scale Malfunction.

(3) Weigh Scale Malfunctions Occurring For More Than Ten Consecutive Delivery Days. If a Weigh Scale Malfunction continues for a period of more than ten consecutive Delivery Days, the City may choose to deliver MSW pursuant to this Agreement to a City Alternate Facility, in which case diverted waste shall be deemed to be Wrongfully Rejected Waste and the Port Authority shall be subject to payment of Disposal Liquidated Damages. Except as provided in clause (2) of subsection (F) of this Section, such payment shall be the City's sole remedy for such Weigh Scale Malfunction.

(4) Repair of Weigh Scale or Weigh Scale Computer. The Port Authority shall cause the Operator to use commercially reasonable efforts to repair or replace any inoperable Weigh Scale or the Weigh Scale Computer as soon as practicable.

SECTION 4.13. LOAD INSPECTION. Prior to unloading a Collection Vehicle, the City has the right to divert the Collection Vehicle from the Mass Burn Facility (or a Substitute Facility, if applicable) tipping floor to another part of the Mass Burn Facility (or a Substitute Facility, if applicable) in order to allow one or more City employees, its authorized representatives, or police or law enforcement officers to inspect the contents of one or more Collection Vehicles: (1) to attempt to locate lost or stolen items; or (2) for any other reason related to an ongoing police or law enforcement investigation.

SECTION 4.14. PROVISIONS RELATING TO LABOR.

(A) Supervision by the Port Authority. All Agreement Services shall be performed in a skillful and workmanlike manner. In the performance of this Agreement, the Port Authority shall utilize, and shall cause the Operator to utilize, competent and qualified employees or subcontractors. All such persons are the employees of the Port Authority, the Operator or of a subcontractor of the Port Authority or of the Operator, as the case may be, and neither employees nor contractors of the City.

(B) Notice of Labor Disputes. Whenever the Port Authority has knowledge that any actual or potential labor dispute interferes with or threatens to interfere with the timely performance of this Agreement, the Port Authority shall promptly give notice to the City, including all relevant information. The Port Authority shall cause the Operator to provide a substantially similar notice to the City whenever the Operator has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement.

SECTION 4.15. TITLE TO MSW. Title to and responsibility for MSW delivered by or on behalf of the City to the Mass Burn Facility (or to a Substitute Facility if delivered there pursuant to Section 4.9) shall remain with and in the City until acceptance of such MSW by the Port Authority or the Operator. Wrongfully Rejected Waste and Unacceptable Waste delivered to the Mass Burn Facility or a Substitute Facility, as applicable, by or on behalf of the City shall not be deemed to have been accepted at the Mass Burn Facility or a Substitute Facility, as applicable, for purposes of this Section, and title thereto shall at all times remain in the City.

SECTION 4.16. DISPOSAL OF MSW NOT INCINERATED AT THE MASS BURN FACILITY.

(A) General. If MSW delivered by or on behalf of the City pursuant to this Agreement to the Mass Burn Facility is not incinerated at the Mass Burn Facility, the Port Authority shall cause the Operator to dispose of such MSW at an Authorized Disposal Site.

(B) Authorized Disposal Site Requirements. An Authorized Disposal Site means any site for the disposal of MSW, but only if such site: (1) is located in the United States; (2) possesses all Governmental Approvals required to operate and accept MSW; (3) operates in compliance with Applicable Law, as evidenced by the absence of any significant regulatory sanctions or any significant enforcement actions with respect to material environmental matters; (4) does not appear on any federal or state list of sites, including the EPA's national priority list, which list is maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation due to the release or threat of release of Hazardous Waste; (5) is allowed to accept MSW that is the subject of this Agreement or regardless of

origin; and (6) does not otherwise unreasonably expose the City to any material risk as a “generator” or “transporter” of waste under CERCLA or any similar law, or to any material risk under product liability, tort, environmental impairment or any similar law, notwithstanding the indemnities provided by the Port Authority hereunder. Notwithstanding the foregoing, the City and the Port Authority may agree, in their absolute discretion, that a disposal site not meeting all of the requirements set forth in this subsection may be designated an Authorized Disposal Site by Contract Administration Memorandum.

SECTION 4.17. DEVELOPMENT OF NEW TRANSFER CAPACITY. The Port Authority will cause the Operator to use commercially reasonable efforts for so long as is commercially reasonable to develop, obtain permits for, construct and operate new waste transfer capacity at the Mass Burn Facility in a timely manner such that it becomes available for use under this Agreement as promptly as is reasonably practicable. Such transfer capacity shall be substantially as described in the permit application dated May 21, 2009 submitted to New Jersey Department of Environmental Protection, subject to such modifications as may be required by New Jersey Department of Environmental Protection as a condition of obtaining the required permits. Such new waste transfer capacity at the Mass Burn Facility, when completed, shall be New Transfer Capacity.

ARTICLE V

FACILITY OPERATIONS

SECTION 5.1. OPERATIONS AND MAINTENANCE PLAN. The Port Authority shall cause the Operator to submit to the City a copy of an operations and maintenance plan for the Mass Burn Facility that, at a minimum, complies with federal and New Jersey law (the “Operations and Maintenance Plan”). The Port Authority must cause its Operator to operate and maintain the Mass Burn Facility pursuant to such Operations and Maintenance Plan. The Operations and Maintenance Plan and any updates made shall be in accordance with and shall be consistent with this Agreement. Nothing in the Operations and Maintenance Plan shall: (1) relieve the Port Authority of any of its responsibilities under this Agreement; (2) be deemed to constitute a representation by the City that performing the services pursuant to the Operations and Maintenance Plan will be sufficient to comply with this Agreement; or (3) impose any liability on the City, except as expressly provided for in this Agreement.

SECTION 5.2. OPERATING EQUIPMENT. The Port Authority shall cause the Operator to provide all the equipment necessary to accept and process MSW at the Mass Burn Facility pursuant to this Agreement. The Port Authority shall cause the Operator to own, lease or contract for, all such equipment. The Port Authority shall cause the Operator, at its own cost and expense and without any adjustment to the Service Fee, except as expressly provided for in this Agreement, to maintain, repair and replace all such equipment, as necessary in order to perform Agreement Services.

SECTION 5.3. SAFETY AND CITY ACCESS.

(A) Mass Burn Facility Safety Requirements. In addition to all requirements established by Applicable Law with respect to operation of the Mass Burn Facility or each Substitute Facility, the Port Authority shall cause the Operator to perform the following:

- (1) Maintain safe travel conditions on all roads and rights of way on which Collection Vehicles may be expected to travel on the premises of the Mass Burn Facility or of each Substitute Facility. At a minimum, the Port Authority shall cause the Operator to provide: (a) adequately paved surfaces; (b) suitable lighting from dusk to dawn and

during inclement weather; and (c) the prompt removal of all hazards including, but not limited to, ice, snow and oil.

(2) Provide sufficient personnel to direct each and every Collection Vehicle entering the Mass Burn Facility or each Substitute Facility. These employees must assist Collection Vehicle drivers in safe backing and turning maneuvers, and must direct and control traffic to ensure that Collection Vehicles may safely enter and exit the Mass Burn Facility or each Substitute Facility, as applicable.

(3) Post and maintain suitable traffic control signs, including, but not limited to, stop, yield and speed limit signs.

(4) Ensure that the Port Authority and the Operator, their employees, agents, subcontractors, and representatives, do not operate any Collection Vehicles or any other City equipment.

(B) Safety Inspections. The City reserves the right to inspect the Mass Burn Facility and each Substitute Facility for compliance with operational and safety requirements at any reasonable time upon reasonable notice to the Port Authority or the Operator.

(C) Right of City Representative to be Present at Mass Burn Facility and Each Substitute Facility. To facilitate the performance of this Agreement or the City's obligations pursuant to this Agreement, the City shall have the right to have representatives be present on site at the Mass Burn Facility and each Substitute Facility at all times. The Port Authority shall cause the Operator to provide the City representative with reasonable access to: (1) a telephone, with telephone service enabling the City representative to contact New York City; (2) a fax machine; (3) a computer terminal that will provide access to Port Authority and Operator files relating to the Agreement Services; (4) rest room facilities; and (5) electric outlets.

(D) Rules and Regulations for Delivery of MSW to the Mass Burn Facility. The City acknowledges that the Port Authority and the Operator may implement and enforce rules and regulations for the delivery of MSW to the Mass Burn Facility, including but not limited to rules and regulations governing safe driving and offloading practices, appropriate driver conduct and designated truck routes for streets in the vicinity of, and with respect to entering and exiting, the Mass Burn Facility, provided that such rules and regulations shall

comply with Applicable Law, are uniformly applied to all haulers delivering solid waste to the Mass Burn Facility and are not inconsistent with this Agreement. If a driver or hauler is to be denied access to the Mass Burn Facility, the Port Authority or the Operator shall, if reasonably possible, deliver to the City an Operating Notice within a reasonable period of time before such driver or hauler is denied access, or, if prior notice is not reasonably possible, immediately after such denial of access.

SECTION 5.4. PERMITS.

(A) Copies. The Port Authority shall cause the Operator to submit to the City copies of all Permits or Authorizations, and Host Municipality Agreements, and copies of all modifications or renewals to such documents, including those pertaining to any disposal facility to which the Operator transports and delivers Process Residue. If a modification to any Permits or Authorizations, or Host Municipality Agreement affects the ability of the Port Authority, the Operator, the Mass Burn Facility, a Substitute Facility, or other disposal facility to accept or process, or dispose of MSW from the City, or Process Residue from the Mass Burn Facility or a Substitute Facility, the Port Authority shall cause the Operator to give written notice of the modification to the City within three business days after receipt of, or it has knowledge of, the terms of such modification, whichever is earlier, and must deliver a copy of the modification to the City as soon as practicable. The Port Authority shall cause the Operator to give the City reasonable opportunity to review and comment on such proposed modifications.

(B) Port Authority Responsibilities. The Port Authority shall be responsible for causing the Operator to apply for, obtain, comply with and maintain in force all Permits or Authorizations required for the performance of the Agreement Services.

(C) Permit Compliance. The Port Authority shall, and shall cause the Operator to, report to the City, promptly upon obtaining knowledge thereof, all material violations of the terms and conditions of any Permit and Authorization. In addition, at the beginning of each Contract Year, the Port Authority shall cause the Operator to deliver to the City a written annual report identifying all violations of the terms and conditions of any Permits or Authorizations that occurred during the course of the preceding Contract Year. The Port

Authority shall cause the Operator to promptly remedy any violation, as determined by applicable regulatory authorities, of any Permits or Authorizations.

(D) Potential Regulatory Change. The Port Authority shall use good faith efforts, and shall cause the Operator to use good faith efforts, to keep the City regularly advised as to potential changes in regulatory requirements affecting the municipal solid waste industry as it relates to this Agreement that are known to the Port Authority or the Operator, and shall provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the City should a Change in Law actually occur.

(E) Third Party Responsibilities. To the extent a Person other than the Operator is directly or indirectly responsible for or in control of a portion of the Mass Burn Facility or related assets, such that such Person is responsible for obtaining Permits or Authorizations required for the performance by the Port Authority or the Operator of the Agreement Services, the Port Authority may comply with the requirements of this Section by causing such Person, or causing the Operator to cause such Person, to perform the obligations under this Section as if such Person were directly responsible for such obligations under this Section.

(F) Notification of Permit Revocation. Either party to this Agreement shall promptly notify the other of any action or proposed action of which it has knowledge or the occurrence of any event of which it becomes aware that would or could lead to the revocation or suspension of any Permit or Authorization or any other approval issued by federal, state or local governmental authorities required for the operation and maintenance of the Mass Burn Facility. The Port Authority shall cause the Operator to promptly notify both the City and the Port Authority of events set forth in this Section.

SECTION 5.5. MASS BURN FACILITY CONDITION. The Port Authority shall cause the Operator to keep the Mass Burn Facility and related assets in a condition consistent with good operating practices in the industry.

SECTION 5.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Port Authority shall cause the Operator, either directly or through the Operator's subcontractors, to comply and promptly remedy all

noncompliance with all Applicable Law in performing the Agreement Services. The failure of the Port Authority, the Operator or any of the Operator's subcontractors to comply with Applicable Law in performing the Agreement Services shall constitute a breach of this Agreement by the Port Authority.

(B) Clean Air Act and Federal Water Pollution Act. The Port Authority shall cause the Operator to comply, with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857B, et seq.) and the Federal Water Pollution Act (33 U.S.C. 1251, et seq.)

(C) Fines, Penalties and Remediation. In the event that the Port Authority, the Operator, an Affiliate of either or any respective subcontractor fails at any time to comply with Applicable Law with respect to the performance of the Agreement Services or the management of the Mass Burn Facility, the Port Authority shall, or shall cause the Operator to, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this Agreement: (1) promptly take steps to correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Port Authority and/or Operator, as applicable, and indemnify and hold harmless the City from any Loss-and-Expense resulting therefrom; (3) pay or reimburse the City for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law shall not recur; and (5) comply with any final and non-appealable corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Port Authority or the Operator to comply with Applicable Law.

(D) Third Party Responsibilities. To the extent that a Person other than the Operator is directly or indirectly responsible for or in control of a portion of the Mass Burn Facility and related assets such that such Person is responsible for any non-compliance with Applicable Law with respect to the performance of Agreement Services, the Port Authority may comply with the requirements of this Section by causing such Person, or causing the Operator to cause such Person, to perform the obligations under this Section as if such Person were directly responsible for such obligations under this Section.

SECTION 5.7. MAPS. The Port Authority shall cause the Operator to submit to the City a map showing the truck routes approved for use by Collection Vehicles operated by the City and its authorized representatives traveling from Hudson River crossings.

SECTION 5.8. RECORDS.

(A) Maintenance of Records. The Port Authority shall maintain, and shall cause the Operator to maintain, separate and accurate books, records, documents and other evidence relating to the performance of the Agreement Services.

(B) Retention of Records. The Port Authority shall retain, and shall cause the Operator to retain, all books, records, and other documents relevant to this Agreement for ten years after the creation of the book, record or document. These documents shall include, but not be limited to, those showing: (i) all Weigh Scale Delivery Information; (ii) the Tons of MSW delivered by the City; (iii) the Tons of Solid Waste processed at the Mass Burn Facility; (iv) the amount of Process Residue disposed of by the Operator; (v) all financial accounts maintained, and transactions undertaken, in connection with this Agreement; and (vi) the invoices, receipts and expenditures related to this Agreement.

(C) Audit Right. The City, the State, federal auditors, and any other persons duly authorized by the City, shall, upon reasonable notice and at reasonable times, have full access to and the right to examine any of the materials described in this Section.

(D) No Removal of City Records From Premises. Where performance of this Agreement involves use by the Port Authority or the Operator of City papers, files, data or records at City facilities or offices, the Port Authority or the Operator shall not remove any such papers, files, data or records therefrom without the prior written approval of the City's designated official.

SECTION 5.9. OPERATOR SITE SUPERVISOR, CONTRACT ADMINISTRATORS AND OPERATING NOTICES.

(A) Port Authority Contract Administrator. The Port Authority shall designate an individual to administer this Agreement and act as the Port Authority's liaison with the City and the Operator in connection with the Agreement Services (the "Port Authority Contract Administrator"). The Port Authority shall keep the City and the Operator informed on a current basis of all business telephone, mobile telephone, fax and beeper numbers, e-mail addresses and other means by which the Port Authority Contract Administrator may be contacted. The Port Authority Contract Administrator shall be the Director, Real Estate Services Department (or any successor department) or such director's designee.

(B) City Contract Administrator. The City shall designate an individual to administer this Agreement and act as the City's liaison with the Port Authority and the Operator in connection with the Agreement Services (the "City Contract Administrator"). The City shall keep the Port Authority and the Operator informed on a current basis of all business telephone, mobile telephone, fax and beeper numbers, e-mail addresses and other means by which the City Contract Administrator may be contacted. The City Contract Administrator shall be the Director of the Export Contract Management Unit (or any successor unit) or such director's designee.

(C) Operator Site Supervisor. The Port Authority shall cause the Operator to designate an Operator Site Supervisor to supervise all aspects of the day-to-day performance of those Agreement Services to be performed at the Mass Burn Facility (the "Operator Site Supervisor"). The Operator Site Supervisor shall be appropriately trained, experienced and knowledgeable in all aspects of the Agreement Services to be performed at the Mass Burn Facility so as to knowledgeably interact and communicate with the Port Authority, the City and, as needed, subcontractors, regarding the Mass Burn Facility and the providing of the Agreement Services and appropriately oversee the day-to-day performance of the Agreement Services to be performed at the Mass Burn Facility. The Operator Site Supervisor shall maintain his or her primary office at the Mass Burn Facility and shall have as his or her primary work duty responsibility for managing the performance of the Agreement Services to be performed at the Mass Burn Facility. The Port Authority shall cause the Operator Site Supervisor to keep the City

informed on a current basis of all business telephone, mobile telephone, fax and beeper numbers, e-mail addresses and other means by which the Operator Site Supervisor may be contacted. The Port Authority shall cause the Operator Site Supervisor to be available to be contacted by the City on a continuous 24 hours per day, 7 days per week, 365 days per year basis for emergency response, information, coordination or any other purpose hereunder. The Operator Site Supervisor shall be the Business Manager, Essex Facility, and in the business manager's absence, the Facility Manager, Essex Facility, or their respective designees.

(D) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices from the City to the Port Authority shall be given to the Operator Site Supervisor (unless otherwise specifically provided herein to be given to the Port Authority's shift supervisor) with a copy to the Port Authority Contract Administrator. Operating Notices from the Port Authority to the City shall be given to the City Contract Administrator with a copy to the Operator Site Supervisor. Operating Notices given on behalf of the Port Authority by the Operator to the City shall be given to the City Contract Administrator with a copy to the Port Authority Contract Administrator. The City will comply with Operating Notices issued by the Operator as set forth in Section 6.5.

SECTION 5.10. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administration matters will routinely arise throughout the Term. These matters will, by their nature, involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications (except to the extent that the resolution of any such matter requires an amendment to this Agreement pursuant to subsection (D) of this Section), once resolution is reached, can be formally reflected in the common records of the parties, and, if applicable, the Operator, so as to permit the orderly and effective administration of this Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Agreement between the parties shall be a “Contract Administration Memorandum.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Port Authority, and if applicable, the Operator, as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) the determination of the specific relief to be given the Port Authority under Section 8.1 as a result of an Uncontrollable Circumstance; (2) the determination of the specific amount of any increase or decrease of the Service Fee to which the Port Authority is entitled under any provision of this Agreement (including the parties’ agreement as to the treatment and designation of the payment of any Additional Amounts Payable under Section 7.7 and Amounts Payable by the Port Authority under Section 7.8); (3) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (4) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (5) other similar contract administration matters.

(C) Procedures. Either the City or the Port Authority may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by the City, and acknowledged by the Port Authority, and if applicable, the Operator, reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed on behalf of the Port Authority by the Port Authority Contract Administrator or his or her designee in writing, and on behalf of the City by the Director of the Export Contract Management Unit of the City, or his or her designee, and if applicable, a duly authorized officer of the Operator. The City, the Port Authority and the Operator each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation, application and performance of this Agreement and are not intended to amend, alter or modify this Agreement. Any material change, amendment, alteration, revision or modification of this Agreement shall be effectuated solely through a formal agreement

amendment authorized, approved or ratified by the City in accordance with Applicable Law and properly authorized by the Port Authority.

SECTION 5.11. REQUIRED INSURANCE.

(A) Required Insurance. On or prior to the Execution Date, the Port Authority shall cause the Operator to obtain the Required Insurance. Receipt by the Port Authority of a certificate or certificates of insurance for the Required Insurance shall constitute compliance with the Port Authority's obligation set forth in this subparagraph.

(B) Insurers, Deductibles and City Rights. Insurance obtained from a third party shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the requirements of the Port Authority. The insurance coverage may be written with deductible amounts as and to the extent permitted by Appendix 2. Without limiting the provisions of Article VII and VIII, the Port Authority shall cause the Operator to pay all deductible amounts related to the Required Insurance obtained from third-parties. If the Operator fails to pay such deductible amounts, the Port Authority shall pay them. All policies provided by third parties evidencing Required Insurance, to the extent obtainable, shall provide for at least 60 days' prior written notice of the cancellation thereof to the City (except with respect to cancellation for non-payment of premiums, to which a ten-day written notice shall be required). All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the City.

(C) Certificates of Insurance. The Port Authority shall cause the Operator to deliver certificates of insurance for the Required Insurance to the City at the following times: (1) on or prior to the Execution Date; (2) not later than 30 days prior to the beginning of each Contract Year; (3) if the Required Insurance policies are renewed or replaced; or (4) as otherwise reasonably requested by the City. Each certificate of insurance (or renewal certificate of insurance) furnished hereunder shall: (a) evidence the existence and coverage amounts of the Required Insurance; (b) show the City as an "additional insured" or a "loss payee", as applicable, with respect to the liabilities arising out of the Agreement Services on each policy of Required Insurance; (c) not include text limiting the right of the City to rely on the information in the

certificate of insurance; (d) otherwise be in a form reasonably acceptable to the City; and (e) be accompanied by an Insurance Broker's Certification.

(D) Insurance Broker's Certification.

(1) Form of Insurance Broker's Certification. An "Insurance Broker's Certification" shall mean a notarized certificate of the Operator's insurance broker in the form set forth below:

INSURANCE BROKER'S CERTIFICATION

The undersigned certifies to The City of New York that the policies set forth in the attached Certificate of Insurance are in full force and effect, and that they fully comply with the requirements applicable to the Operator set forth in Appendix 2 in the Agreement between The City of New York Acting Through the New York City Department of Sanitation and the Port Authority of New York and New Jersey.

[APPROPRIATE NAME,
SIGNATURE AND
AUTHORITY BLOCKS]

(2) Multiple Insurance Brokers. To the extent that the Required Insurance is provided by more than one insurance broker, the Port Authority shall cause the Operator to direct that each insurance broker provide a separate Insurance Broker's Certification to the City in the form set forth in clause (1) of this subsection certifying as to the compliance of the policy or policies of insurance provided by that insurance broker, so that, in the aggregate, all applicable provisions in clause (1) of this subsection have been certified to by the Operator's insurance brokers.

(E) City Right to Review and Copy. Upon request made to the Port Authority, the Port Authority shall cause the Operator to make complete copies of the Required Insurance policies available for review by the City at a mutually convenient location in New York County.

(F) Maintenance of Insurance Coverage.

(1) Requirement to Maintain Insurance. The Port Authority shall cause the Operator to maintain the Required Insurance (and to the extent unavailable in the insurance marketplace on commercially reasonable terms, the maximum amounts and most favorable forms, terms and deductible limits that are so available in the insurance marketplace), and pay any and all premiums with respect thereto as the same become due and payable. The Port Authority shall cause the Operator to comply with the terms and conditions of all the Required Insurance, and take all steps necessary to assure that the Required Insurance remains continuously in effect in accordance with the requirements of this Agreement, and shall immediately notify the City of any change in insurance coverage that could materially and adversely affect the City. The failure of the Port Authority to cause the Operator to obtain and maintain Required Insurance shall not relieve the Port Authority of its liability for any losses intended to be insured thereby.

(2) City Right to Obtain Replacement Coverage. At the City's sole discretion, following notice to the Port Authority, the City may pay a premium to the insurer or procure similar insurance coverage from another company or companies: (a) if the Port Authority fails to cause the Operator to pay any premium for Required Insurance; (b) if any insurer cancels any Required Insurance policy and the Port Authority fails to, or fails to cause the Operator to, obtain replacement coverage so that the Required Insurance, is maintained on a continuous basis. Upon such payment by the City, the amount thereof shall be immediately reimbursable to the City by the Port Authority as part of the Port Authority Amounts Payable. The purchase of insurance by the City to satisfy the Port Authority's obligations under this Section shall not be a satisfaction of any Port Authority liability under this Agreement or in any way limit, modify or satisfy the Port Authority's indemnity obligations under subsection 10.17(B).

ARTICLE VI

OPERATOR, PORT AUTHORITY AND CITY RELATIONSHIPS

SECTION 6.1. OPERATOR AGREEMENT. The Port Authority and the City acknowledge that during the Term they expect the Mass Burn Facility to be operated by the Operator pursuant to the Operator Agreement. The Port Authority agrees to comply with the terms of the Operator Agreement and to not take any action or omit to take any action that would constitute a breach by the Port Authority thereof, which breach would give the Operator a right to terminate or initiate proceedings to terminate the Operator Agreement.

SECTION 6.2. PORT AUTHORITY'S ARRANGEMENTS WITH OPERATOR. As long as the Operator Agreement remains in full force and effect, wherever this Agreement refers to the performance by the Port Authority of obligations: (a) regarding the operation and maintenance of the Mass Burn Facility, (b) regarding compliance with Applicable Law as it may apply to the Mass Burn Facility (including, specifically, and without limitation, the Permits or Authorizations), whether or not the Operator is referred to in connection therewith, or (c) to cause the Operator to comply with or perform certain obligations under this Agreement, the parties understand that such obligations are expected to be performed by the Operator and that the Port Authority is obligated to enforce such obligations under the terms of the Operator Agreement to the fullest extent of available legal remedies. Notwithstanding the understanding that the Port Authority will not directly be performing the Agreement Services to be performed at the Mass Burn Facility, the Port Authority shall nevertheless remain liable under this Agreement for the payment of damages pursuant to (i) Section 9.2 for the non-performance by the Operator of such Agreement Services, and (ii) Section 9.3 upon termination for a Port Authority Default, and the City shall retain all rights and remedies for non-performance of the Agreement Services (including Agreement Services to be performed by the Operator) under this Agreement directly against the Port Authority.

SECTION 6.3. LIMITATION ON AMENDMENTS TO OPERATOR AGREEMENT. The Port Authority shall not enter into any amendment, change or modification of the Operator Agreement, if such amendment, change or modification would have a material adverse effect on the Port Authority's or Operator's performance of the Agreement Services or

would have the effect of increasing the liabilities or obligations of the City under this Agreement. Prior to entering into any proposed amendment, change or modification of the Operator Agreement, the Port Authority shall provide written notice to the City setting forth the nature of such proposed amendment, change or modification and the projected impact that such proposed amendment, change or modification may have on the performance by the Port Authority or Operator of the Agreement Services.

SECTION 6.4. NOTICE OF BREACH, DEFAULT OR TERMINATION OF OPERATOR AGREEMENT.

(A) Notice of Material Breach of Default Under Operator Agreement. The Port Authority shall notify the City promptly of any material breach or event of default occurring under the Operator Agreement, and the probable effect on this Agreement. The Port Authority shall keep the City apprised of all material developments related to the dispute and shall advise the City of its ultimate resolution.

(B) Notice Before Operator Agreement Termination. The Port Authority shall not terminate or otherwise suspend operations under the Operator Agreement without prior written notice to the City, which shall be delivered to the City as soon as reasonably possible following the events leading to such termination or suspension. Such notice shall set forth the reasons for the proposed termination or suspension, the arrangements that the Port Authority has made to operate the Mass Burn Facility, if any, following such termination or suspension, and the projected impact that such proposed termination or suspension may have on the performance by the Port Authority of the Agreement Services.

SECTION 6.5. OPERATIONAL RELATIONSHIP BETWEEN CITY AND THE OPERATOR. The Port Authority and the City recognize that the Operator of the Mass Burn Facility has the authority to issue Operating Notices with respect to the Agreement Services to be performed at the Mass Burn Facility or a Substitute Facility. Such Operating Notices shall apply to the City, as a deliverer of MSW to the Mass Burn Facility or a Substitute Facility under this Agreement. The City agrees to abide by such Operating Notices to the extent that such Operating Notices are consistent with this Agreement as if such Operating Notices were given by the Port Authority, unless the Port Authority expressly rescinds in writing the Operator's

authority to issue Operating Notices and delivers a copy of such rescission to the City. The Operator shall deliver to the Port Authority Contract Administrator copies of all Operating Notices delivered to the City. Operating Notices may include the following:

- (1) Claims that (a) the City has failed to comply with the waste delivery obligation set forth in subsection 4.1(B), or (b) that the Operator has the right to reject waste pursuant to subsection 4.3(A).
- (2) Claims that an Uncontrollable Circumstance excuses performance under the Agreement, and proposed costs and mitigation measures.
- (3) Operating procedures for the Mass Burn Facility.
- (4) Denials of access to the Mass Burn Facility for safety purposes or for violations of rules or regulations.
- (5) Directions to deliver MSW to a Substitute Facility pursuant to Section 4.9.
- (6) Diversions of MSW from the Mass Burn Facility or Substitute Facility.

SECTION 6.6. EMPLOYEES OF THE PORT AUTHORITY. Experts, consultants, subcontractors, or employees of the Port Authority who are employed by the Port Authority to perform Agreement Services (including experts, consultants, subcontractors or employees of the Operator) are not employees of the City. This Agreement does not create a contractual relationship between the City and any of the Port Authority's experts, consultants, subcontractors, or employees, or between the City and the Operator. The Port Authority alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement; provided that the City and the Port Authority acknowledge that the Operator shall be performing operations of the Mass Burn Facility as set forth in Sections 6.1 and 6.2. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Port Authority or any person, firm, company, agency, association, corporation or organization engaged by the Port Authority as expert, consultant, subcontractor, independent contractor, specialist, trainee, employee, servant, or agent or for taxes or any insurance, workers' compensation, disability benefits or social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

SECTION 6.7. INDEPENDENT CONTRACTOR STATUS. The Port Authority and the City agree that the Port Authority is an independent contractor, and not an employee of the City, and that in accordance with such status as independent contractor, the Port Authority covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer of or employee of the City, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or employee retirement membership or credit. Nothing in this Agreement shall be deemed to constitute either party as a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 6.8. SUBCONTRACTORS.

(A) Standards for Subcontractors. The Port Authority agrees not to enter into any Subcontracts, and to cause the Operator not to enter into any subcontracts, with respect to performance of the Agreement Services, unless the relevant subcontractors are competent and qualified. Each subcontractor must meet the standards with respect to responsibility, fitness, and integrity that have been established by applicable State or City authorities. A copy of each subcontract shall be submitted to the City. For purposes of this subsection, a subcontractor of the Operator shall not include any Person entering into a contract with the Operator for performing services that either (i) do not occur on a day-to-day basis, such as turbine maintenance, boiler maintenance, and other non-routine maintenance of the Mass Burn Facility, or (ii) relate to the day-to-day operations of the Mass Burn Facility but are not integral to the waste processing and handling operations comprising the Agreement Services, such as janitorial or utility services.

(B) Responsibility of Subcontractor Actions. The Port Authority shall not in any way be relieved of any responsibility under this Agreement by any Subcontract or by the Operator Agreement. The Port Authority shall be responsible for settling and resolving with all Subcontractors and with the Operator all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by a Subcontractor or inflicted on the Port Authority or a Subcontractor by the actions of another Subcontractor or of the Operator.

(C) Indemnity for Subcontractor Claims. The Port Authority shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts, and to the Operator all amounts due in accordance with the Operator Agreement. Neither a Subcontractor nor the Operator shall have any right against the City for labor, services, materials or equipment in connection with the furnishing of Agreement Services. The Port Authority acknowledges that its indemnity obligations under subsection 10.17(B) shall extend to all claims for payment or damages by the Operator or any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the furnishing of the Agreement Services.

(D) Notice to City of Breaches and Defaults. The Port Authority shall notify the City promptly of any material breach or event of default occurring under a Subcontract, and the probable effect on this Agreement. The Port Authority shall keep the City apprised of the course of the dispute and shall advise the City of its ultimate resolution.

ARTICLE VII

SERVICE FEE; OTHER PAYMENTS AND INVOICES

SECTION 7.1. SERVICE FEE GENERALLY. The City shall pay the Service Fee to the Port Authority as compensation for the Port Authority's performing the Agreement Services. The Service Fee shall be calculated according to this Article. The Service Fee is calculated monthly, and is the sum of its various components. The Service Fee includes all costs associated with processing Accepted Waste and Process Residue Disposal Services, including, but not limited to, tipping fees, the cost of using the Mass Burn Facility, Host Municipality Agreement fees, transport of any Process Residue to a disposal facility and any fees imposed by such disposal facility to accept and dispose of Process Residue, as well as the cost of processing, handling, transferring, transporting or disposing of MSW delivered to and accepted at a Substitute Facility when the Port Authority or the Operator, as applicable, directs the City to deliver MSW to a Substitute Facility in accordance with Section 4.9. Examples of the calculation of the Service Fee and the application of the various adjustment factors are included in Appendix 8. The Service Fee set forth in this Article and the example Service Fee calculations set forth in Appendix 8 shall, to the extent possible, be interpreted in a manner that reconciles any differences or ambiguities, but if there are any irreconcilable inconsistencies between Article VII and Appendix 8, the provisions of this Article shall govern.

SECTION 7.2. SERVICE FEE DURING THE INTERIM SERVICE PERIOD.

(A) Generally. During the Interim Service Period, the Service Fee for an Invoice Period shall be calculated in accordance with the following formula:

$$SF = DC + AA$$

where,

SF = Service Fee for an Invoice Period

DC = Disposal Charge for an Invoice Period

AA = Additional Amounts Payable for an Invoice Period

(B) Disposal Charge During the Interim Service Period. During the Interim Service Period, the Disposal Charge for each Invoice Period (or portion thereof occurring during the Interim Service Period) shall be equal to the product of: (a) the applicable Unit Disposal Charge; and (b) the number of Tons of Accepted Waste during the applicable Invoice Period.

(C) Unit Disposal Charge. During the Interim Service Period, the Unit Disposal Charge shall be as follows:

Prior to December 31, 2012	\$67.60
January 1, 2013 through December 31, 2013	\$68.90
January 1, 2014 through December 31, 2014	\$70.20

(D) No Other Adjustments. During the Interim Service Period, except as provided in Section 7.6 (as described below in this subsection), the Service Fee shall not be subject to any adjustment for any reason whatsoever, including Uncontrollable Circumstances, planned or unplanned outages, the New Jersey Recycling Tax, or any other reason. Additional Amounts Payable made pursuant to Section 7.6 (but excluding those Additional Amounts Payable set forth in subsection 7.6(E)) and Port Authority Amounts Payable pursuant to Section 7.7 (but excluding those Port Authority Amounts Payable set forth in subsections 7.7(E), and 7.7(H)) shall be applicable during the Interim Service Period.

SECTION 7.3. SERVICE FEE DURING LONG-TERM SERVICE PERIOD.
During the Long-Term Service Period, the Service Fee for an Invoice Period shall be calculated in accordance with the following formula:

$$SF = DC + UCC + AA$$

where,

SF = Service Fee for an Invoice Period

DC = Disposal Charge for an Invoice Period

UCC = Uncontrollable Circumstances Costs for an Invoice

Period

AA = Additional Amounts Payable for an Invoice Period

SECTION 7.4. DISPOSAL CHARGE DURING THE LONG-TERM SERVICE PERIOD. The Disposal Charge, for each Invoice Period (or portion thereof) occurring during the Long-Term Service Period shall be equal to the product of: (1) \$82.50 per Ton; (2) the number of Tons of Accepted Waste during the applicable Invoice Period; and (3) beginning with the Contract Year starting January 1, 2016, the Disposal Charge Escalation Factor. The Disposal Charge is inclusive of the New Jersey Recycling Tax and the cost of Process Residue Disposal Services.

SECTION 7.5. UNCONTROLLABLE CIRCUMSTANCES COSTS ADJUSTMENT DURING THE LONG-TERM SERVICE PERIOD.

(A) Invoice Period Computations. For any Invoice Period during the Long-Term Service Period, UCC Costs shall be the product of: (x) Total UCC Costs Per Ton (which may be a positive or negative number); and (y) the number of Tons of Accepted Waste during the applicable Invoice Period (or portion thereof).

(B) Annual Adjustments. To the extent that UCC Costs are calculated on an estimated basis pursuant to subsection 8.5(E), any annual adjustment made pursuant to subsection 8.5(F) shall (except by mutual agreement as provided in subsection 8.5(E)), if payable by the City to the Port Authority, be included in the Service Fee as Additional Amounts Payable and, if payable by the Port Authority to the City, be a Port Authority Amount Payable, in each case in the Port Authority Billing Statement or City Invoice, as applicable, for the Invoice Period during which such adjustment is made.

SECTION 7.6. ADDITIONAL AMOUNTS PAYABLE BY THE CITY. With respect to each Invoice Period, the City shall pay to the Port Authority, as Additional Amounts Payable, the following amounts:

(A) Unacceptable Waste. Pursuant to Section 4.10, the amount the Port Authority is entitled to receive as reimbursement for Substantiated Costs of removal, transportation and disposal of Unacceptable Waste delivered by or on behalf of the City to the

Mass Burn Facility or a Substitute Facility and unloaded on the tipping floor (and not removed by the City).

(B) Designated Wasteshed Damages. For failure by the City to comply with the waste delivery obligations set forth in subsections 4.1(B), the amount of damages due pursuant to paragraph (a) of clause (3) of subsection 9.4(D).

(C) Other City Non-Performance. For any other City non-performance not otherwise specifically addressed in subsection (A) or (B) of this Section, the amount of damages due pursuant to paragraph (b) of clause (3) of subsection 9.4(D).

(D) City Indemnification. A charge equal to any indemnification payments owed by the City pursuant to subsection 10.17(A) or any other provision hereof.

(E) Annual Adjustments for UCC Costs. A charge equal to the amount of UCC Costs payable by the City to the Port Authority pursuant to an annual adjustment pursuant to subsection 8.5(F). This charge shall apply only during the Long-Term Service Period.

(F) Interest Owed for Late Payment. Amounts payable by the City relating to interest owed to the Port Authority for any overdue Service Fee pursuant to subsection 7.9(C).

(G) Adjustment for Mistakes. Any amount equal to any underpayment by the City or overpayment by the Port Authority resulting from a billing error, pursuant to Section 7.15.

(H) Adjustment for Special Deliveries. For deliveries of MSW by the City pursuant to subsection 4.6(A) during any one 24-hour period, the amount equal to: (i) \$2,250 for any and all deliveries made from 6 AM to 6 PM; and (ii) \$2,500 for any and all deliveries made from 6:01 PM to 5:59 AM.

(I) Other Charges. A charge equal to any other increase in the Service Fee provided for under any other provision of this Agreement and not expressly provided for in UCC.

SECTION 7.7. AMOUNTS PAYABLE BY THE PORT AUTHORITY. With respect to each Invoice Period, the Port Authority shall pay to the City, as Port Authority Amounts Payable, the following amounts:

(A) Wrongfully Rejected Waste. For Wrongfully Rejected Waste, the amount of damages due pursuant to paragraph (a) of clause (3) of subsection 9.2(D).

(B) Non-Compliance With Minimum Processing Obligation. For noncompliance with the Minimum Processing Obligation with respect to Collection Vehicles that off-load MSW at the Mass Burn Facility or Substitute Facility, the amount of damages due pursuant to paragraph (b) of clause (3) of subsection 9.2(D).

(C) Other Port Authority Non-Performance. For any other Port Authority non-performance not otherwise specifically addressed in subsections (A) or (B) of this Section, the amount of damages due pursuant to paragraph (c) of clause (3) of subsection 9.2(D).

(D) Port Authority Indemnification. An amount equal to any indemnification payments owed by the Port Authority pursuant to subsection 10.17(B) or any other provision of this Agreement.

(E) Annual Adjustments for UCC Costs. A charge equal to the amount of UCC Costs payable by the Port Authority to the City pursuant to an annual adjustment pursuant to subsection 8.5(F) (This charge shall apply only during the Long-Term Service Period.)

(F) Weigh Scale Malfunction. With respect to any Invoice Period, a charge equal to the amounts due to the City pursuant to subsection 4.12(F).

(G) Interest Owed for Late Payment. Amounts payable by the Port Authority to the City for any overdue Port Authority Amounts Payable pursuant to subsection 7.10(C).

(H) Reimbursable Insurance Proceeds. An amount equal to the proceeds of insurance required to be applied to reimburse the City pursuant to subsection 8.7(B) (This charge shall apply only during the Long-Term Service Period.)

(I) Reimbursement for Cost of Replacement Insurance. An amount equal to any amount paid by the City for replacement insurance coverage pursuant to clause (2) of subsection 5.11(F).

(J) Damage Adjustment For Periodic Reconciliation. An amount equal to any amount paid by the City as Designated Wasteshed Damages that has been reduced pursuant to a periodic reconciliation pursuant to paragraph (a)(ii) of clause (3) of subsection 9.4(D).

(K) Adjustments for Mistakes. An amount equal to any overpayment made by the City or underpayment made by the Port Authority resulting from a billing error, pursuant to Section 7.15.

(L) Other Amounts. An amount equal to any other amount payable by the Port Authority to the City under any other provision of this Agreement and not otherwise expressly provided for herein.

SECTION 7.8. ESCALATION FACTOR AND DISPOSAL CHARGE
ESCALATION FACTOR.

(A) Escalation Factor. The Escalation Factor, which may be either a positive or negative number, shall be an amount equal to the sum of (x), (y) and (z) below (“EF”):

(x) fifty percent (50%) of a fraction, the numerator of which is the CPI-U for the month of June in the calendar year in which EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the CPI-U for the month of June 2011; plus

(y) thirty percent (30%) of a fraction, the numerator of which is the PPIFG for the month of June in the calendar year in which EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFG for the month of June 2011; plus

(z) twenty percent (20%) of a fraction, the numerator of which is the PPIFSMP for the month of June in the calendar year in which EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFSMP for the month of June 2011.

The Escalation Factor applicable to a Contract Year (and to each Invoice Period within the Contract Year) shall be determined prior to the beginning of such Contract Year and shall remain

in effect unchanged for the full Contract Year. Such Escalation Factor shall be rounded to six (6) decimal places. Whenever an Escalation Factor is applied to a number, the resulting number shall be rounded to the nearest penny.

(B) Disposal Charge Escalation Factor. The Disposal Charge Escalation Factor, which may be either a positive or negative number, shall be an amount equal to the sum of (x), (y) and (z) below (“DCEF”):

(x) fifty percent (50%) of a fraction, the numerator of which is the CPI-U for the month of June in the calendar year in which DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the CPI-U for the month of June 2014; plus

(y) thirty percent (30%) of a fraction, the numerator of which is the PPIFG for the month of June in the calendar year in which DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFG for the month of June 2014; plus

(z) twenty percent (20%) of a fraction, the numerator of which is the PPIFSMP for the month of June in the calendar year in which DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFSMP for the month of June 2014.

The Disposal Charge Escalation Factor applicable to a Contract Year (and to each Invoice Period within the Contract Year) shall be determined prior to the beginning of such Contract Year and shall remain in effect unchanged for the full Contract Year. Such Disposal Charge Escalation Factor shall be rounded to six (6) decimal places. Whenever a Disposal Charge Escalation Factor is applied to a number, the resulting number shall be rounded to the nearest penny.

(C) Unavailability of Indices at Time of Calculation. In the event that any of the indices in subsections (A) or (B) of this Section are not available at any time that EF or

DCEF are to be calculated, the calculation shall be made using a comparable index reasonably satisfactory to the Port Authority and the City, and if the base used in any such index is altered, EF or DCEF shall be calculated to reflect the actual percentage change in such index from such index for June 2010 (for EF), June 2014 (for DCEF), to the date on which EF or DCEF, as applicable, is calculated.

SECTION 7.9. BILLING AND PAYMENT OF AMOUNTS DUE FROM CITY.

(A) Billing. Following each Invoice Period, the Port Authority shall deliver to the City a Port Authority Billing Statement for such Invoice Period.

(B) Form of Port Authority Billing Statement. The Port Authority Billing Statement shall contain the information set forth in, and shall be in the form set forth in, Appendix 3 and shall include the data required by subsection 4.12(B). A Port Authority Billing Statement shall not be complete without all of the components, computations, information and supporting documentation required by the form set forth in Appendix 3. Subject to the approval of the Port Authority which shall not be unreasonably withheld, the City may, from time to time, modify the form of Port Authority Billing Statement to require additional or different supporting documentation as may be deemed reasonable or necessary by the City to verify the accuracy of the Port Authority Billing Statements submitted by the Port Authority.

(C) Payment. The Service Fee for each Invoice Period shall be compensation for the Agreement Services. Following the end of each Invoice Period, the Port Authority shall deliver to the City a complete Port Authority Billing Statement for the applicable Invoice Period as described in subsection (B) of this Section. Payment from the City shall be due 45 days following receipt by the City of a Port Authority Billing Statement in proper form required by this Agreement (the “Due Date”). Late payments, other than payment of City Disputed Amounts (which shall be governed by subsection (D) of this Section), shall bear interest at the Overdue Rate from the Due Date to the date such amounts are paid. All payments made by or due from the City under this Agreement shall be subject to audit by the City in accordance with Applicable Law and as set forth in subsection (F) of this Section.

(D) Payment of City Disputed Amounts. If the City disputes any amount included in a Port Authority Billing Statement or the completeness or adequacy of the Port Authority Billing Statement with respect to any amount (each a “City Disputed Amount”), the City may either (i) pay the City Disputed Amount when due, and contemporaneously provide the Port Authority with a written objection indicating the amount of the City Disputed Amount and providing reasons then known to the City for its objection to or disagreement with the City Disputed Amount, or (ii) withhold payment of the disputed amount and provide the Port Authority with a written objection as aforesaid not later than the applicable due date for the City Disputed Amount. Any City Disputed Amount shall be identified by the City in a written notice delivered to the Port Authority prior to the applicable Due Date for such amount. When a billing dispute is finally resolved, if payment of a disputed amount by a party to the other is required, such payment shall be made within forty-five (45) days following the date of resolution. Unless the Port Authority Billing Statement fails to comply with the requirements of subsection (B), any disputed amount required to be paid shall bear interest at the Overdue Rate from the original Due Date to the date such amount is paid.

(E) Manner of Payment. Payments of the Service Fee shall be made to the Port Authority or to such other institution or account as the Port Authority may direct the City in writing from time to time, subject to the requirements of Section 7.13. Payments of the Service Fee by the City to an institution or account upon the direction of the Port Authority shall be deemed to be payment of the Port Authority. The Port Authority may direct the City in writing to make payments of various components or subcomponents of the Service Fee by separate fund transfers to separate institutions or accounts, and the City shall comply with such instructions. Any change in payment instructions given by the Port Authority to the City pursuant to this subsection shall be given not less than thirty (30) days prior to the date on which the City is being directed to implement such instructions.

(F) Audit Right by City and the Comptroller.

(1) City Audit Right. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the City and by the Comptroller.

(2) Supporting Documentation. The Port Authority shall submit any and all documentation and justification in support of expenditures or fees under this Agreement, including invoices and supporting documentation provided by the Operator to the Port Authority, as may be required by the City and Comptroller so that they may evaluate the reasonableness of the charges, and shall make its records available to the City and to the Comptroller as they consider necessary.

(3) Audit Rights of Persons Authorized by City. All books, vouchers, records, reports, cancelled checks and any and all similar material related to this Agreement may be subject to periodic inspection, review and audit by the City, the State of New York, the federal government and other persons duly authorized by Applicable Law. Such audit may include examination and review of the source and application of all funds whether from the City, any state, the Federal Government, private sources or otherwise.

(4) Final Payment. The Port Authority shall not be entitled to final payment under the Agreement until all requirements pursuant to this Agreement have been satisfactorily met.

SECTION 7.10. BILLING AND PAYMENT OF AMOUNTS DUE FROM THE PORT AUTHORITY.

(A) Billing. Following each Invoice Period, the City shall deliver to the Port Authority a City Invoice for such Invoice Period if Port Authority Amounts Payable are due.

(B) Form of City Invoice. The City Invoice shall contain the information set forth in, and shall be in the form set forth in, Appendix 4. A City Invoice shall not be complete without all of the components, computations, information and supporting documentation required by the form set forth in Appendix 4.

(C) Payment. Within fifteen (15) days following the end of each Invoice Period for which Port Authority Amounts Payable are due, the City shall deliver to the Port Authority a complete City Invoice for that Invoice Period as described in subsection (B) of this Section. Payment from the Port Authority shall be due 45 days following receipt by the Port Authority of a City Invoice in proper form required by this Agreement (the “Due Date”). Late

payments, other than payment of Port Authority Disputed Amounts, which shall be governed by subsection (D) of this Section, shall bear interest from the Due Date to the date such amounts are paid, at the Overdue Rate.

(D) Payment of Port Authority Disputed Amounts. If the Port Authority disputes any amount included in a City Invoice or the completeness or adequacy of the City Invoice with respect to any amount (each a “Port Authority Disputed Amount”), the Port Authority may either (i) pay the Port Authority Disputed Amount when due, and contemporaneously provide the City with a written objection indicating the amount of the Port Authority Disputed Amount and providing reasons then known to the Port Authority for its objection to or disagreement with the Port Authority Disputed Amount, or (ii) withhold payment of the disputed amount and provide the City with a written objection as aforesaid not later than the applicable due date for the Port Authority Disputed Amount. Any Port Authority Disputed Amount shall be identified by the Port Authority in a written notice delivered to the City prior to the applicable Due Date for such amount. When a billing dispute is finally resolved, if payment of a disputed amount by a party to the other is required, such payment shall be made within forty-five (45) days following the date of resolution. Unless the City Invoice fails to comply with the requirements of subsection (B) of this Section, any disputed amount required to be paid shall bear interest at the Overdue Rate from the original Due Date to the date such amount is paid.

(E) Manner of Payment. Payments of the Port Authority Amounts Payable shall be made to the City or to such other institution or account as the City may direct the Port Authority in writing from time to time or, if so directed by the City, shall remain unpaid and be claimed by the City as an offset pursuant to Section 7.11. Any change in payment instructions given by the City to the Port Authority pursuant to this subsection shall be given not less than thirty (30) days prior to the date on which the Port Authority is being directed to implement such instructions.

SECTION 7.11. CITY RIGHTS OF OFFSET.

(A) Service Fee Offset Rights. Subject to subsection (B) of this Section, the City shall have the right to offset against the Service Fee payable by the City an amount equal to

any Port Authority Amounts Payable or otherwise payable by the Port Authority to the City under this Agreement (whether as liquidated damages or otherwise).

(B) Limitations on Right of Offset. For any Invoice Period, the City's right of offset shall be limited to amounts: (i) for which the City has sent a City Invoice to the Port Authority relating to that Invoice Period or any Invoice Period in the preceding six (6) years; (ii) for which payment has not been made by the Port Authority; (iii) for which an offset has not previously been taken by the City; and (iv) which amounts have not been contested by the Port Authority within ten days following the date of delivery of the applicable City Invoice.

(C) City Right to Elect Offset in Lieu of Payment. For any Invoice Period, the City may, in the City Invoice, direct the Port Authority not to directly pay amounts due to the City, but to accept in lieu of payment an offset to the Service Fee otherwise payable.

(D) Timing of Offset. Offsets may be claimed with respect to any Port Authority Billing Statement that has been delivered and remains unpaid, and any offsets to which the City is entitled but for which there are insufficient Service Fees against which to offset, will be carried forward, plus interest at the Overdue Rate, to the next succeeding Invoice Periods and Port Authority Billing Statements until exhausted.

SECTION 7.12. ANNUAL SETTLEMENT. Within 45 days after the end of each Contract Year (including following expiration of the Term), the Port Authority shall provide to the City an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the City with respect to such Contract Year. The City or the Port Authority, as appropriate, shall pay all known and undisputed amounts by the Annual Settlement Due Date. Late payments, other than disputed amounts, shall bear interest from the Annual Settlement Due Date to the date such amounts are paid, at the Overdue Rate. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Port Authority of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Port Authority

shall file with the City an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section. With respect to the final Contract Year, any undisputed amount that would have been includable as an adjustment to the following year's Service Fee or as a Port Authority Amounts Payable shall be paid by the party owing such amount, within 30 days following delivery of the final Annual Settlement Statement, and any disputes shall be resolved pursuant to the terms of this Agreement, notwithstanding expiration of the Term. The City may direct that it receive any payment owing to it pursuant to the Annual Settlement Statement through an offset to the Service Fee in accordance with Section 7.11.

SECTION 7.13. ELECTRONIC FUNDS TRANSFER.

(A) Port Authority Enrollment to Receive Electronic Funds. In accordance with Section 6-107.1 of the Administrative Code of The City of New York, the Port Authority agrees to accept payments under this Agreement (whether payment is made directly to the Port Authority or to another institution or account designated by the Port Authority) from the City by electronic funds transfer ("EFT"). An EFT is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Port Authority shall designate one financial institution or other authorized payment agent and shall complete the City's "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance of The City of New York with information necessary for the Port Authority to receive EFT payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Port Authority shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Port Authority to facilitate the EFT shall remain confidential to the fullest extent provided under Applicable Law.

(B) Waiver Requirements. The Commissioner of the Department of Finance of The City of New York and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following

circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

SECTION 7.14. PAYMENTS ABSOLUTE AND UNCONDITIONAL. The respective payment obligations of the City and the Port Authority under this Article shall be absolute and unconditional and shall remain in full force and effect throughout the Term and shall not be affected, modified or impaired by the occurrence from time to time of any event, whether or not with notice to, or the consent of, any party hereto. With respect to such payments, except as expressly permitted pursuant to Section 7.11, no set-off, counterclaim, reduction or diminution of any payment obligation of the City or, except as permitted pursuant to subsection 7.9(D) or 7.10(D), any defense of any nature that either party has against the other, shall be available to either party against the other under this Agreement.

SECTION 7.15. MISTAKES (OVERCHARGES AND UNDERCHARGES).

(A) Correction of Overcharges and Undercharges. If either party discovers that there has been an error resulting in an overcharge or undercharge relating to any Invoice Period, the party shall promptly notify the other. Such overcharge or undercharge shall be corrected (regardless of whether the overcharge or undercharge relates to an Invoice Period for which payment has previously been made), and a correction shall be made in the Invoice Period immediately following the determination of the nature and amount of the billing error.

(B) Overcharges or Undercharges to the City. Any overpayment by the City shall be credited against the next monthly Service Fee payment and reflected in the Port Authority Billing Statement for that Invoice Period. Any underpayment by the City from prior months shall be added to the next monthly Service Fee payment.

(C) Overcharges or Undercharges to the Port Authority. Any overpayment of Port Authority Amounts Payable shall be either (i) credited against subsequent Port Authority Amounts Payable or (ii) added to the next Port Authority Billing Statement as an Additional Amount Payable. Any underpayment of Port Authority Amounts Payable shall be included in the next City Invoice.

(D) Interest on Overcharges or Undercharges. Amounts owing from one party to the other as a result of overcharges shall bear interest at the Overdue Rate from the date of payment of the overcharge until the date such overcharges have been refunded.

SECTION 7.16. SUBJECT TO AVAILABILITY OF APPROPRIATED FUNDS. All payment obligations of the City created under this Agreement shall be conditioned upon the availability of City funds duly appropriated and authorized for the payment of such obligations. Since the period of performance contemplated by this Agreement involves performance by the Port Authority in subsequent City Fiscal Years, funding for this Agreement is subject to the appropriation of funds for such subsequent City Fiscal Years. If the City does not appropriate or make available sufficient funds to continue the level of services provided for in the Agreement in any subsequent City Fiscal Year, the City will either: (1) terminate the Agreement; or (2) deliver to the Port Authority a written notice proposing to continue the Agreement and detailing the level of funding available and services required. The Agreement shall automatically terminate 30 days after the delivery of a notice described in clause (2) unless the parties agree to such level of funding and service, which agreement shall be set forth in a Contract Administration Memorandum. The Port Authority shall not be entitled to any cancellation or termination payment pursuant to this Agreement in the event of any termination of the Agreement or reduction in level of funding and services pursuant to this Section. This Section will not affect the rights of the City or the Port Authority under any other termination clause in the Agreement. Notwithstanding the foregoing, both parties recognize that the waste processing and disposal services described herein are essential City services.

ARTICLE VIII

UNCONTROLLABLE CIRCUMSTANCES

SECTION 8.1. GENERAL RELIEF PROVISIONS.

(A) Relief from Obligations. Except as otherwise expressly provided in this Agreement, and subject to the obligations to mitigate set forth in subsection (C) of this Section, neither party to this Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that (i) the performance relief described in this Agreement for an Uncontrollable Circumstance shall apply to all obligations in this Agreement, and (ii) the price relief described in this Agreement for a Reimbursable Uncontrollable Circumstance shall apply to all obligations in this Agreement but only for obligations arising during the Long-Term Service Period, whether the Uncontrollable Circumstance occurred during the Interim Service Period or the Long-Term Service Period, using the Service Fee adjustment protocols set forth in this Article, except to the extent specifically provided otherwise and notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies due under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance. The party claiming to be adversely affected by an Uncontrollable Circumstance shall reasonably demonstrate the occurrence and adverse effect of such Uncontrollable Circumstance.

(B) Notice of Uncontrollable Circumstances. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other by delivery of an Operating Notice on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of its occurrence, followed within 15 days after the initial Operating Notice (or at a later time if additional time is granted by the party not asserting the claim of Uncontrollable Circumstances) by a written description of: (1) the Uncontrollable Circumstance and the cause thereof; (2) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected; (3) the estimated impact of the Uncontrollable Circumstance on

all obligations of such party under this Agreement affected by the Uncontrollable Circumstance; and (4) what steps the affected party plans to take to mitigate the effects of the Uncontrollable Circumstance. The affected party shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party. While the Uncontrollable Circumstance continues, the affected party shall deliver an Operating Notice to the other party before the first day of each succeeding month (or more frequently if circumstances change prior to such date), updating the information previously submitted. The affected party shall also provide prompt written notice of the cessation of any Uncontrollable Circumstance and of the effects of such Uncontrollable Circumstance. Operating Notices delivered by the Operator (instead of by the Port Authority) directly to the City shall satisfy the requirements of this subsection for such notices to be delivered by the Port Authority.

(C) Obligation to Mitigate. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly as practicable and after consultation with the other party, use all commercially reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit adverse impacts, including additional costs, to the other party, and resume full performance under this Agreement. Except as provided in clause (6) of subsection 8.2(A), the obligations set forth in this subsection shall not create an express or implied obligation upon the Port Authority to provide alternate disposal facilities if, as a consequence of the Uncontrollable Circumstances, the Port Authority is unable to provide the Agreement Services at the Mass Burn Facility.

(D) Extent of and Conditions to Port Authority Performance Relief and Service Fee Adjustment.

(1) Extent of Performance Relief. If and to the extent that a Performance Impairing Uncontrollable Circumstance interferes with or delays the Port Authority's performance of the Agreement Services, the Port Authority shall be entitled to relief from its performance obligations or an extension of performance deadlines, as applicable, as set forth in this Article, only to the extent reasonably required as a result of the Performance Impairing Uncontrollable Circumstance. In no event shall any relief from performance obligations or extension of performance deadlines include any right to an

increase in Service Fee, which is addressed separately in clause (2) of this subsection. The Port Authority shall perform or cause the Operator to perform all Agreement Services to the extent not affected by such Performance Impairing Uncontrollable Circumstance.

(2) Extent of Service Fee Adjustment. During the Long-Term Service Period only, if and to the extent that Reimbursable Uncontrollable Circumstances (whether occurring during the Interim Service Period or the Long-Term Service Period) increase the Port Authority's cost of performing the Agreement Services during the Long-Term Service Period, the Port Authority shall be entitled to an adjustment to the Service Fee as set forth in this Article, to the extent reasonably required as a result of such Reimbursable Uncontrollable Circumstances. Only Substantiated Costs properly incurred or amortized during the Long-Term Service Period resulting from the Reimbursable Uncontrollable Circumstances, less Insurance Proceeds, and less costs that are expressly payable by the City to the Port Authority as an Additional Amounts Payable (which shall be paid as such and not as Uncontrollable Circumstance costs) will be eligible in determining whether a cost is permitted to be applied towards calculating adjustments to the Service Fee based on the Reimbursable Uncontrollable Circumstance. Such costs shall be prorated and converted into per Ton amounts as set forth in subsection 8.5(D). Costs resulting from a Reimbursable Uncontrollable Circumstance expended, accrued or amortized according to the procedures set forth in this Article prior to the Long-Term Service Period shall not be recoverable at any time.

(3) Notice to Request Performance Relief. If the Port Authority believes it is entitled to any performance relief as a result of any Uncontrollable Circumstance, it shall deliver to the City a written notice of the specific relief requested, detailing the event giving rise to the claim and the proposed performance relief. If and to the extent the Port Authority directs the City to divert MSW from the Mass Burn Facility, the City shall use reasonable efforts to do so, and to the extent that such diversion was caused by the Uncontrollable Circumstance, such diverted waste shall not be Wrongfully Rejected Waste.

(4) Notice to Request Service Fee Adjustments. If the Port Authority believes it is entitled to (or, if with respect to a Reimbursable Uncontrollable Circumstance occurring prior to the Long-Term Service Period, will be entitled to during the Long-Term Service Period because the effects of such Uncontrollable Circumstance will affect performance or price during the Long-Term Service Period) any adjustment to the Service Fee as a result of any Reimbursable Uncontrollable Circumstance, it shall deliver to the City a written notice detailing the event giving rise to the claim and the proposed amount by which the Service Fee is proposed to be adjusted as a result of such Reimbursable Uncontrollable Circumstance, together with applicable Cost Substantiation.

(5) Timing of Notices; Disputes. The notices described in clauses (3) and (4) of this subsection shall be delivered by the Port Authority within 30 days, or as soon as reasonably possible, after the giving of notice delivered pursuant to subsection (B) of this Section (to the extent it is then known and, if it is not then known promptly when it becomes known). Within 30 days after receipt of such a timely submission from the Port Authority, the City shall issue a written determination as to the extent, if any, it concurs with the Port Authority's claim for performance relief or Service Fee adjustment, and the reasons for any disagreement. The Port Authority acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the relief to the Port Authority or the additional cost to be borne by the City under this subsection should be reduced to account for such adverse effect, the Port Authority shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in relief to the Port Authority and the reduction in additional cost to the City asserted by the City in such circumstances shall be effective. With respect to a particular Uncontrollable Circumstance, the parties may agree to waive the notice and timing requirements of this paragraph and address cost and relief measures through the Event Response Measure as set forth in Section 8.4.

(6) Cost Reductions. Any cost reduction achieved through the mitigation measures undertaken by the Port Authority upon the occurrence of an Uncontrollable

Circumstance shall be reflected in a reduction of the amount by which the Service Fee would have otherwise been increased or shall serve to reduce the Service Fee to reflect such mitigation measures, as applicable.

(E) Acceptance of Relief Constitutes Release. The Port Authority's acceptance of all of the agreed-upon performance or price relief under this Section shall be construed as a release of the City by the Port Authority (and all persons claiming by, through, or under the Port Authority) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the Uncontrollable Circumstance giving rise to the relief claimed. If any amount is in dispute, the Port Authority may, in its sole discretion, accept partial performance or price relief, which will release the City from all Loss-and-Expense, other than the amount in dispute.

(F) Failure or Delay Because of Uncontrollable Circumstance Not a Breach. The failure or delay in the performance of any obligation (other than payment obligations) arising under this Agreement by (i) the Port Authority or the Operator as a necessary consequence of an Uncontrollable Circumstance shall not constitute a Port Authority Breach, and (ii) the City as a necessary consequence of the Uncontrollable Circumstance shall not constitute a City Breach, in each case to the extent and only for so long as the Uncontrollable Circumstance delays or prevents such performance and the affected party is complying with its obligations under subsections (C) and (D) of this Section.

(G) No Effect on Use of Substitute Facility. Nothing in this Article shall affect the right of the Port Authority or the Operator to direct the City to deliver MSW pursuant to this Agreement to a Substitute Facility to the extent set forth in Section 4.9.

SECTION 8.2. WASTE DELIVERY AND ACCEPTANCE RIGHTS AND OBLIGATIONS DURING UNCONTROLLABLE CIRCUMSTANCES.

(A) Uncontrollable Circumstances Resulting in a Temporary Inability to Perform Agreement Services. Upon the occurrence of a Performance Impairing Uncontrollable Circumstance that is expected to be temporary in duration, or subject to cure until its effects are eliminated, the following will apply:

(1) Port Authority Directions To City. Through delivery of Operating Notices, the Port Authority shall, in good faith, advise the City of the number of Tons of

MSW that the Mass Burn Facility will accept on each Delivery Day, and the anticipated effect on the Minimum Collection Vehicle Processing Rates, if any, at least 24 hours prior to the beginning of each Delivery Day, to the extent that the Port Authority is reasonably able to do so. The Port Authority shall provide further Operating Notices to the extent adjustments are required to the amounts of MSW that can be accepted on a Delivery Day, or at various times during the Delivery Day, or if a Collection Vehicle Processing Rate will be less than the applicable Minimum Collection Vehicle Processing Rate.

(2) City Obligations to Deliver; City Right to Divert. The City shall, in good faith, comply with the Operating Notices delivered by the Port Authority and continue to perform its obligations pursuant to subsection 4.1(B), but only to the extent that the Port Authority can reliably accept the MSW delivered by or on behalf of the City. Notwithstanding the foregoing, if the Collection Vehicle Processing Rate described in subsection 4.11(B) is or is reasonably expected to be less than the Minimum Collection Vehicle Processing Rate, the City shall have the right to immediately suspend deliveries of MSW to the Mass Burn Facility, and avail itself of one or more City Alternate Facilities but only to the extent reasonably necessary to (a) maintain uninterrupted disposal of the MSW that would have been delivered to the Mass Burn Facility pursuant to this Agreement, (b) limit disruption to the City's collection, transport and disposal of MSW generated within the Designated Wastesheds, or (c) mitigate increased costs to the City of such collection, transportation and disposal. When availing itself of alternative disposal arrangements, the City shall take into account the then available processing capacity of the Mass Burn Facility. Further, if the Collection Vehicle Processing Rate described in subsection 4.11(B) is or is reasonably expected to be less than 15 Collection Vehicles per hour at the Mass Burn Facility, the City shall have the absolute right to suspend all deliveries to the Mass Burn Facility. The City shall deliver to the Port Authority an Operating Notice of the City's decision to suspend deliveries as soon as practicable.

(3) Reasonable Assurances. The City shall have the right to require reasonable assurances from the Port Authority (which may be satisfied by the Operator)

that the Port Authority will be able to accept, or cause the Operator to accept, at the Mass Burn Facility, the quantities of MSW that the Port Authority advises the City that it can accept at the Mass Burn Facility while processing Collection Vehicles at the Collection Vehicle Processing Rate set forth in the Operating Notices given pursuant to clause (1) of this subsection. If the Port Authority or the Operator confirm in an Operating Notice to the City that Collection Vehicles will be processed at a specified processing rate, failure to comply with such processing rate will subject the Port Authority to Processing Liquidated Damages, notwithstanding the applicable Uncontrollable Circumstance.

(4) End of City's Right to Divert. The City's rights to suspend deliveries pursuant to this subsection shall terminate when the Port Authority or the Operator provides reasonable assurances to the City that the Port Authority will resume accepting MSW at the Mass Burn Facility in compliance with the Waste Acceptance Obligation and processing Collection Vehicles at a Collection Vehicle Processing Rate at least equal to the Minimum Collection Vehicle Processing Rate and allowing for a period reasonably sufficient (which period shall not, without the consent of the City be less than 4 hours) for the City to direct Collection Vehicles back to the Mass Burn Facility.

(5) City Right to Use City Alternate Facility. The City shall have the right to deliver MSW that it is excused from delivering to the Mass Burn Facility pursuant to this subsection to one or more City Alternate Facilities.

(6) Port Authority and City Option to Use Port Authority Alternate Facility. The Port Authority and the City may agree that MSW that cannot be accepted at the Mass Burn Facility due to an Uncontrollable Circumstance may be delivered to a Port Authority Alternate Facility, upon such terms and conditions, including price, delivery times, numbers of Tons, performance conditions (which may include guarantees) and other factors as set forth in a Contract Administration Memorandum. Either party, in its sole discretion, may choose not to agree to such deliveries. Amounts payable by the City relating to deliveries pursuant to this clause to a Port Authority Alternate Facility shall be included as Additional Amounts Payable. For each Uncontrollable Circumstance affecting the ability of the Operator to accept the Guaranteed MSW Capacity, the Port

Authority shall cause the Operator to make available, on commercially reasonable terms, an alternate facility for the disposal of up to 10,000 Tons of MSW pursuant to this clause, provided that the Operator has such disposal capacity available as determined by the Operator in its sole discretion.

(B) Uncontrollable Circumstances Resulting in a Permanent Reduction in Waste Processing Capacity of the Mass Burn Facility. Upon the occurrence of an Uncontrollable Circumstance that permanently affects the Operator's ability to perform the Agreement Services at the Mass Burn Facility, including permanent reductions in the waste processing capacity of the Mass Burn Facility, that is expected to extend through the remainder of the Term, the following will apply:

(1) Determination of Waste Processing Capacity of the Mass Burn Facility; Adjustments to Guaranteed MSW Capacity and Minimum Collection Vehicle Processing Rate. The Event Response Measure developed pursuant to Section 8.4 shall include agreed upon adjustments to (i) the Guaranteed MSW Capacity (as so adjusted, the "Revised Guaranteed MSW Capacity"), (ii) the projected Adjusted Processing Capacity, if applicable, (iii) the applicable Collection Vehicle Processing Rate that is proposed as a new Minimum Collection Vehicle Processing Rate, provided that the City shall have no obligation to agree to any Collection Vehicle Processing Rate below 15 Collection Vehicles per hour as a new Minimum Collection Vehicle Processing Rate (and further provided that any duty of the City to agree to adjustments to a Collection Vehicle Processing Rate below 22 Collection Vehicles per hour shall be subject to the considerations set forth in clause (2) of subsection (A) of this Section), and (iv) the date(s) (or the means of establishing the date(s)) when the adjustments made pursuant to this clause shall become effective, to the extent adjustments are required as a consequence of the Uncontrollable Circumstance. Such adjustments shall be set forth in a Contract Administration Memorandum.

(2) Delivery and Acceptance Obligations Until Effective Date. Until the effective date of the parties' agreement made pursuant to clause (1) of this subsection, the

provisions of subsection (A) of this Section shall apply to the parties' waste delivery and acceptance obligations.

(C) Uncontrollable Circumstances Affecting City Collection or Delivery of MSW.

(1) City Rights. Upon the occurrence of an Uncontrollable Circumstance that affects the City's delivery obligations set forth in subsection 4.1(B), the City shall have the right to suspend deliveries of MSW to the Mass Burn Facility and avail itself of one or more City Alternate Facilities to the extent reasonably necessary to (a) maintain uninterrupted operation of the City's MSW collection, transportation and disposal within the Designated Wastesheds, (b) limit disruption to the City's collection, transport and disposal of MSW generated within the Designated Wastesheds, or (c) mitigate increased costs to the City of such MSW collection, transportation and disposal.

(2) Port Authority Rights. Upon the occurrence of an Uncontrollable Circumstance that affects the City's delivery obligations set forth in subsection 4.1(B), the Port Authority shall have the right to cause the Operator (confirmed by the delivery of written notice by the Port Authority to the City as soon practicable) to arrange and accept alternative deliveries of solid waste to the Mass Burn Facility from one or more third parties to replace the MSW that the City has not delivered as required under this Agreement to the extent reasonably necessary to (a) maintain uninterrupted operation of the Facility, (b) limit disruption to the Operator's acceptance of waste at the Facility, or (c) mitigate increased costs to the Port Authority or the Operator of the acceptance of waste at the Facility.

SECTION 8.3. EXTENT OF PRICE RELIEF TO PORT AUTHORITY DUE TO REIMBURSABLE UNCONTROLLABLE CIRCUMSTANCES.

(A) During the Interim Service Period. During the Interim Service Period, the Port Authority shall not be entitled to any price relief whatsoever through an adjustment to the Service Fee or otherwise as a result of an Uncontrollable Circumstance.

(B) During the Long-Term Service Period. During the Long-Term Service Period, the Port Authority shall be entitled to price relief for Reimbursable Uncontrollable

Circumstances (and not for any other Uncontrollable Circumstances) through an adjustment to the Service Fee on account of the costs incurred by the Port Authority to the extent that such costs result from such Reimbursable Uncontrollable Circumstances. Notwithstanding the foregoing, the Port Authority shall not be entitled to an adjustment to the Service Fee for any costs incurred as the result of an act, event or circumstance that the Port Authority or the Operator is obligated to insure against under the Required Insurance, to the extent of coverage or financial responsibility, as applied, required to be maintained under the Required Insurance.

(C) Uncontrollable Circumstances Resulting in Cost Savings to the Port Authority. If an Uncontrollable Circumstance has the effect of reducing the Port Authority's actual cost of performing the Agreement Services during the Long-Term Service Period, the Service Fee during the Long-Term Service Period shall be reduced in an amount equal to a prorated amount of the cost savings actually experienced by the Port Authority as a result of such Uncontrollable Circumstance. Such prorated amount shall be calculated in a manner similar to the methods set forth in Section 8.5 for the sharing of increased costs of a Reimbursable Uncontrollable Circumstance.

SECTION 8.4. DEVELOPING A RESPONSE TO AN UNCONTROLLABLE CIRCUMSTANCE.

(A) Event Response Measure.

(1) When Cost is Affected. If a Reimbursable Uncontrollable Circumstance is reasonably expected to have an impact on the Port Authority's (or the Operator's) cost of performing the Agreement Services during the Long-Term Service Period over an extended period of time, the affected party shall make all reasonable efforts to minimize the effects and cost of the Reimbursable Uncontrollable Circumstance on the other party, taking into account the views of the other party. Capital, operating, and combined capital and operating options shall be considered where appropriate.

(2) Performance Impairing Uncontrollable Circumstance. If a Performance Impairing Uncontrollable Circumstance is reasonably expected to have an impact on either party's ability to perform under this Agreement over an extended period of time, the affected party shall make all reasonable efforts to address the effects of the

Performance Impairing Uncontrollable Circumstance, taking into account the views of the other party, to restore, as quickly as possible, the ability to perform the Agreement Services at the levels contemplated by this Agreement absent the Performance Impairing Uncontrollable Circumstance.

(3) When Both Cost is Affected and There is a Performance Impairing Uncontrollable Circumstance. If both a Reimbursable Uncontrollable Circumstance and a Performance Impairing Uncontrollable Circumstance occur over an extended period of time, the affected party shall make reasonable efforts to address both the cost and performance consequences of the Uncontrollable Circumstances, taking into account the views of the other party, to achieve the highest level of restoration of the ability to perform the Agreement Services at the levels contemplated by this Agreement at the lowest cost to the City as soon as possible. In balancing the costs and performance requirements of this subsection, standards of commercial reasonableness shall apply.

(4) Approval of Other Party. The proposals set forth pursuant to clauses (1), (2) or (3) of this subsection, as applicable, shall be subject to the approval of the other party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing: (1) the City shall have no obligation to agree to any Collection Vehicle Processing Rate below 15 Collection Vehicles per hour during the time periods set forth in subsection 4.11(A); (2) any duty of the City to agree to adjustments to a Collection Vehicle Processing Rate below 22 Collection Vehicles per hour during the time periods set forth in subsection 4.11(B) shall be subject to the considerations set forth in clause (2) of subsection 8.2(A)); and (3) the City shall have no obligation to agree to any proposal that would result in a City right to terminate this Agreement pursuant to Sections 8.9 or 8.10.

(B) Determining the Projected Cost of the Event Response Measure. The projected per Ton cost of an Event Response Measure shall be calculated using the methodology set forth in Sections 8.5 and 8.6, using reasonable estimates of capital costs and operating expenses expected to result from implementation of the Event Response Measure.

(C) Purpose of Preparing the Event Response Measure. The purposes for developing the Event Response Measure are primarily to determine: (i) the response that the affected party will make to overcome the effects of the Uncontrollable Circumstance; (ii) the long-term adjustments that may be made to the Mass Burn Facility's operating capabilities (and any related adjustments to the Guaranteed MSW Capacity, the Waste Acceptance Obligation, Minimum Processing Obligation, and other Agreement Services); (iii) whether the proposed Event Response Measure will result in a right to terminate this Agreement pursuant to Section 8.9; and (iv) to what extent the proposed Event Response Measure will increase any costs to the City which are not reflected in the Service Fee.

SECTION 8.5. CALCULATION OF UCC COSTS.

(A) Fixed UCC Costs. Fixed UCC Costs means Port Authority Costs of Reimbursable Uncontrollable Circumstances that generally do not vary with the number of Tons of Solid Waste processed at the Mass Burn Facility (e.g., the capital cost of a physical modification of the Mass Burn Facility that is required to comply with a Change in Law).

(B) Variable UCC Costs. Variable UCC Costs means Port Authority Costs of Reimbursable Uncontrollable Circumstances that generally vary with the number of Tons of Solid Waste processed at the Mass Burn Facility (e.g., chemical/reagent costs for a new pollution control system required by a Change in Law).

(C) Determination of Fixed UCC Cost and Variable UCC Costs. The determination of whether a cost is fixed or variable should be based on normal operations of the Facility and not when the plant is shut down. A particular UCC Cost may have both a fixed and variable portions. For example, as Tons increase, there may be a step or jump in cost. In this case, the steps or jumps should be treated as Fixed UCC Costs while the portions in between the steps or jumps would be treated as Variable UCC Costs.

(D) UCC Costs Per Ton and Total UCC Costs Per Ton Calculation. The UCC Costs applicable during a Contract Year relating to a particular Reimbursable Uncontrollable Circumstance shall be calculated as set forth in this Section and Section 8.6.

(1) Calculation of UCC Costs Per Ton With No Permanent Change In Processing Capacity. If there is no permanent change in the Processing Capacity of the

Mass Burn Facility, the UCC Costs Per Ton applicable to a particular Reimbursable Uncontrollable Circumstance shall be an amount equal to the sum of: (i) the Fixed UCC Costs attributable to that Reimbursable Uncontrollable Circumstance during the applicable Contract Year, divided by the Baseline Processing Capacity; plus (ii) the Variable UCC Costs attributable to that Reimbursable Uncontrollable Circumstance during the applicable Contract Year, divided by the total number of Tons of Solid Waste delivered to and accepted at the Mass Burn Facility during the applicable Contract Year.

(2) Calculation of UCC Costs Per Ton With Permanent Change in Processing Capacity. If there is a permanent change in the Processing Capacity of the Mass Burn Facility resulting in an Adjusted Processing Capacity, the UCC Costs Per Ton applicable to a particular Reimbursable Uncontrollable Circumstance shall be an amount equal to the sum of: (i) the Fixed UCC Costs attributable to that Reimbursable Uncontrollable Circumstance during the applicable Contract Year, divided by the Adjusted Processing Capacity; plus (ii) the Variable UCC Costs attributable to that Reimbursable Uncontrollable Circumstance during the applicable Contract Year, divided by the total number of Tons of Solid Waste delivered to and accepted at the Mass Burn Facility during the applicable Contract Year.

(3) Adjustments for Partial Contract Years. If Fixed UCC Costs or Variable UCC Costs as a consequence of the Reimbursable Uncontrollable Circumstance will be applicable for less than a full Contract Year, in determining UCC Costs Per Ton in clauses (1) or (2), the Baseline Processing Capacity or Adjusted Processing Capacity, as applicable, in the denominator shall be prorated to reflect the proportionate share of Baseline Processing Capacity or Adjusted Processing Capacity allocable to such portion of the Contract Year, assuming the applicable processing capacity is allocated equally among each day in the Contract Year, and the total number of Tons of Solid Waste delivered to and accepted at the Mass Burn Facility shall be measured over the portion of the applicable Contract Year during which Variable UCC Costs are incurred.

(4) Calculation of Total UCC Costs Per Ton. The Total UCC Costs Per Ton at any time shall be the sum of the then applicable UCC Costs Per Ton of all prior and then current Reimbursable Uncontrollable Circumstances.

(5) Adjustments for Subsequent Reimbursable Uncontrollable Circumstances. If and to the extent a subsequent Reimbursable Uncontrollable Circumstance has an impact on the UCC Costs Per Ton related to a prior Reimbursable Uncontrollable Circumstance, appropriate adjustments will be made.

(6) Separate Calculations for Separate Categories of Cost. With respect to a single Reimbursable Uncontrollable Circumstance, if various categories of the costs for which the Port Authority is entitled to an adjustment of the Service Fee are payable over different periods of time, the foregoing calculations may be performed separately for each such category of cost, and the adjustment to the Service Fee for each category of cost will apply only during the period in which the Port Authority is incurring such reimbursable cost. With respect to multiple Reimbursable Uncontrollable Circumstances, the foregoing calculations may be performed separately for each Reimbursable Uncontrollable Circumstance, and the adjustment to the Service Fee for each Reimbursable Uncontrollable Circumstance will apply only during the period in which the Port Authority is incurring such reimbursable costs. When performing calculations in accordance with this subsection, capital costs will be calculated separately from other costs.

(E) Projections of Total UCC Costs With Respect to a Contract Year. Estimates and projections of UCC Costs shall be prepared by the Port Authority and reviewed by the City. These estimates may, by mutual agreement, provide the basis for agreeing on an estimated UCC Costs Per Ton prior to the availability of Cost Substantiation as required by Section 8.8. The Port Authority and the City may agree to adjust the Service Fee by the estimated UCC Costs as set forth in a Contract Administration Memorandum. This Service Fee adjustment may be revised upon receipt of Cost Substantiation.

(F) Adjustments of Total UCC Costs With Respect to a Contract Year. Within thirty (30) days following the end of a Contract Year in which UCC Costs are paid on an

estimated basis pursuant to subsection (D) of this Section, the Port Authority shall provide the City with a reconciliation showing the projected Port Authority Costs of Reimbursable Uncontrollable Circumstances and the actual Port Authority Costs of Reimbursable Uncontrollable Circumstances during the applicable Contract Year. The Total UCC Costs Per Ton shall be recalculated using the actual Port Authority Costs of Reimbursable Circumstances, and to the extent the City has underpaid or overpaid the Port Authority for UCC Costs, any underpayment or overpayment shall be payable by the applicable party within 30 days following agreement on the amount due. The parties may, by mutual agreement, convert the total amount into a per Ton UCC Cost for a specified number of Tons to be paid by the City or credited by the Port Authority in the following Contract Year.

SECTION 8.6. CALCULATION OF ADDITIONAL CAPITAL INVESTMENT.

(A) Obligation to Finance Additional Capital Costs. If Capital Improvements are required as a result of a Reimbursable Uncontrollable Circumstance, and the Port Authority or the Operator proceed to implement the required Capital Improvements, the Port Authority shall (or shall cause the Operator to) pay or finance the cost of such Capital Improvements, provided: (i) the Additional Capital Investment required to complete the Capital Improvements can be paid for or financed on or before December 31, 2020; (ii) the Capital Improvements can be fully implemented on a commercially reasonable basis for the Port Authority; and (iii) the cost of the Additional Capital Investment required will not cause the ‘Service Fee’ to exceed the ‘Service Fee Increase Limitation’, both as defined in and calculated pursuant to the Operator Agreement. “Additional Capital Investment”, for any Capital Improvement, means the reasonable direct Substantiated Costs incurred by the Port Authority arising from the occurrence of the Reimbursable Uncontrollable Circumstance and less the amount of any Insurance Proceeds. The Additional Capital Investment may include the costs of borrowing, capitalized interest during the construction of the Capital Improvement, and the costs of issuance of the financing.

(B) Calculation of UCC Cost Relating to Cost of a Capital Improvement. The portion of the UCC Cost attributable to the Additional Capital Investment required as a result of

a particular Reimbursable Uncontrollable Circumstance, for purposes of calculating the UCC Costs Per Ton in accordance with Section 8.5, shall be an amount equal to the annual debt service that would be payable on a hypothetical loan having a principal amount equal to that determined in accordance with subsection (A) of this Section and bearing interest at a rate equal to the average of the 25 Revenue Bond Index as published in *The Bond Buyer* (or if such index is no longer published, a substantially equivalent published index selected by the Port Authority after consultation with the City) for the six-week period prior to the date of the determination of the Event Response Measure in accordance with Section 8.4 and amortized on a level debt service basis over a period beginning on the reasonably estimated date of completion of construction or installation of the Additional Capital Investment and ending upon (1) the expiration of the Term or (2) the end of the useful life of the applicable Capital Improvement, if earlier than the expiration of the Term (at which time such UCC Costs would be equal to zero).

(C) City's Obligation for Baghouse Reimbursable Uncontrollable Circumstance Costs. The City's obligation for UCC Cost attributable to the Additional Capital Investment required as a result of a Reimbursable Uncontrollable Circumstance attributable to installation of a Baghouse based on the formula set forth in subsection (B) of this Section shall not exceed \$3.11 per Ton of MSW, such amount to be increased annually by the Escalation Factor until such time as the per Ton cost of the Additional Capital Investment relating to the installation of the Baghouse is determined pursuant to subsection 8.5(D) and subsection (B) of this Section. The City's obligation for UCC Costs relating to the Baghouse shall be based on only such portion of such costs that is properly allocable to the Mass Burn Facility as it currently exists (which for this purpose may include up to a 10% increase in the Mass Burn Facility's capacity attributable to efficiency or innovation), and shall be excluded for any portion of such cost properly allocable to a future Mass Burn Facility Expansion.

SECTION 8.7. INSURANCE PROCEEDS; THIRD-PARTY PAYMENTS.

(A) Application of Insurance Proceeds. If a Capital Improvement is required as a result of an insured event, Insurance Proceeds shall be applied to the costs of such Capital Improvements (or any Additional Capital Investment relating thereto).

(B) Adjustments for Insurance Payments Received. If, after payment of costs resulting from a Reimbursable Uncontrollable Circumstance for which the City is responsible for paying a portion of the cost as a UCC Cost, Insurance Proceeds are applied to reimburse the Port Authority (or the Operator), (1) the City shall be reimbursed for that portion of the UCC Cost paid by the City allocable to such reimbursed amount as a Port Authority Amount Payable and (2) to the extent such reimbursement relates to UCC Costs that have been treated as financed in accordance with subsection 8.6(B) and have yet to be paid by the City, such future UCC Costs not yet due and payable shall be reduced by treating such reimbursements as repayments of all or a portion of the principal amount of the Additional Capital Investment and recalculating the UCC Cost in accordance with subsection 8.6(B) treating any un-reimbursed Additional Capital Investment as if it were being refinanced at such time. The Port Authority's obligations to reimburse the City pursuant to this subsection shall survive termination or expiration of this Agreement.

SECTION 8.8. UNCONTROLLABLE CIRCUMSTANCES COST SUBSTANTIATION. If the Service Fee is to be adjusted to reflect costs resulting from Reimbursable Uncontrollable Circumstances through an increase in UCC Costs, the Port Authority (or, if directed by the Port Authority, the Operator) shall consult with the City concerning the information required by subsection 8.1(B) and the definition of Cost Substantiation to the City. Only Substantiated Costs resulting from Reimbursable Uncontrollable Circumstances will be considered in determining permissible adjustments to the Service Fee as a UCC Cost. If there is a dispute as to the reasonableness of any of the costs presented for reimbursement by the Port Authority to the City pursuant to this Section, and the parties are unable to resolve such dispute within 30 days after a Cost Substantiation certificate is delivered by the Port Authority to the City for its approval, the parties shall have all rights and remedies available under applicable law.

SECTION 8.9. SPECIAL TERMINATION RIGHT FOR EXCEEDING THE SERVICE FEE COST INCREASE LIMITATION. If, with respect to any Reimbursable Uncontrollable Circumstance, the Total UCC Cost per Ton: (i) at any time during the Term exceeds the Service Fee Cost Increase Limitation, or (ii) as set forth in an Event Response Measure proposed by the Port Authority, is projected to exceed the Service Fee Cost Increase

Limitation at any time during the Term (taking into account the proposed remedial action to address the consequences of the Uncontrollable Circumstance), then the City may, at its sole option, by written notice delivered to the Port Authority within the time period set forth in subsection 8.11(A), terminate this Agreement. Notwithstanding the foregoing, the Port Authority may (by written notice to the City) waive its rights to include in the Total UCC Cost per Ton any portion of the UCC Cost that would otherwise cause the Total UCC Cost per Ton to exceed the Service Fee Cost Increase Limitation for each Ton of MSW delivered by or on behalf of the City pursuant to this Agreement, in which event this Agreement shall not be terminated and the termination notice served by the City shall be null and void and of no force and effect. Such Port Authority waiver must be given within sixty (60) days after its receipt of the City's notice of termination.

SECTION 8.10. SPECIAL TERMINATION RIGHT FOR MATERIAL PERFORMANCE IMPAIRMENT CAUSED BY UNCONTROLLABLE CIRCUMSTANCES.

(A) Mutual Termination Rights. The City and the Port Authority shall each have the right to terminate this Agreement if, as a result of Uncontrollable Circumstances, either of the following occurs:

(1) Loss of Availability of the Mass Burn Facility. The Mass Burn Facility is substantially inoperable for a period of at least two years.

(2) Reduction in Processing Capacity. There shall have occurred a reduction in the waste processing capacity of the Mass Burn Facility such that the Adjusted Processing Capacity is reduced to less than 50% of the Baseline Processing Capacity for a period of at least two years.

(B) City Termination Rights for Reduction in Collection Vehicles. The City shall have the right to terminate this Agreement if, as a result of Uncontrollable Circumstances, the Collection Vehicle Processing Rate is reduced below either (i) 12 Collection Vehicles per hour during the time periods described in subsection 4.11(A) and such condition lasts or is reasonably expected to last for a period of 6 months or longer, or (ii) when the Collection Vehicle Processing Rate is reduced below 18 Collection Vehicles per hour during the time periods described in subsection 4.11(B) such that in the reasonable judgment of the City service

at the Mass Burn Facility is impaired sufficiently so that the City is entitled to the rights to divert MSW set forth in subsection 4.1(D), and such condition lasts or is reasonably expected to last for a period of two years or longer.

SECTION 8.11. NOTICE OF TERMINATION.

(A) Notice of Termination For Exceeding the Service Fee Cost Increase Limitation. A notice of termination delivered by the City pursuant to Section 8.9 may be delivered at any time after an event permitting termination pursuant to Section 8.9 has occurred, provided such notice may not be delivered later than sixty (60) days following either: (1) delivery of a notice by the Port Authority to the City that a Reimbursable Uncontrollable Circumstance has caused the Total UCC Cost per Ton resulting from Uncontrollable Circumstances to exceed the Service Fee Increase Limitation at any time during the Term, or (2) delivery of a proposed Event Response Measure to the City which projects that the Service Fee Cost Increase Limitation will be exceeded at some time during the Term. Notwithstanding the foregoing, if the City agrees to any increase in the Service Fee resulting from a Reimbursable Uncontrollable Circumstance in excess of the Service Fee Increase Limitation, the City's right to deliver a notice of termination pursuant to Section 8.9 and this subsection with respect to only such Reimbursable Uncontrollable Circumstance (but not any subsequent Reimbursable Uncontrollable Circumstance) shall no longer apply.

(B) Notice of Termination for Material Performance Impairments Caused by Uncontrollable Circumstances. A notice of termination delivered by either the City or the Port Authority pursuant to Section 8.10 must be delivered to the other party within sixty (60) days after: (1) a failure to agree upon an Event Response Measure pursuant to Section 8.4 by the two year anniversary of the occurrence of a Reimbursable Uncontrollable Circumstance or Performance Impairing Uncontrollable Circumstance; (2) in the case of clause (1) of subsection 8.10(A), it is determined that the inoperability of the Mass Burn Facility for a period of at least two years has occurred or will occur; (3) in the case of clause (2) of subsection 8.10(A), it has been determined that the reduction in Adjusted Processing Capacity is or will be less than 50% of the Baseline Processing Capacity for a period of at least two years has occurred or will occur; and (4) in the case of subsection 8.10(B), it has been determined that the conditions for

termination set forth in such clause have occurred or will occur. Any notice of termination delivered pursuant to this subsection shall set forth a Termination Date which shall be not less than thirty (30) days and not more than two hundred seventy (270) days after such notice is delivered. Either party may waive any of its rights of termination pursuant to Section 8.10 in a Contract Administration Memorandum.

SECTION 8.12. PAYMENTS UPON TERMINATION PURSUANT TO CITY'S SPECIAL TERMINATION RIGHTS. If the City exercises its right to terminate this Agreement pursuant to Section 8.9, or either party exercises its right to terminate this Agreement pursuant to Section 8.10, each party shall pay to the other all amounts accrued and unpaid to the Termination Date. There shall be no other amounts due from either party upon such termination.

SECTION 8.13. REINSTATEMENT OF AGREEMENT UPON REMEDYING AN UNCONTROLLABLE CIRCUMSTANCE. If following one or more Uncontrollable Circumstances, the Port Authority fails to repair, rebuild or replace the Mass Burn Facility pursuant to subsection 8.6(A), this Agreement is terminated, and subsequent thereto the Port Authority or the Operator restores the Mass Burn Facility, or causes the Mass Burn Facility to be restored, to commercial operations within a period of 5 years following the termination of the Agreement, the City shall have the option to reinstate the Agreement for the then-remaining portion of the Term, on the same terms and conditions set forth herein.

ARTICLE IX

BREACHES, REMEDIES AND TERMINATION

SECTION 9.1. REMEDIES FOR BREACH. In the event that either party breaches this Agreement, the other party shall be entitled to recover monetary damages as follows: (i) Liquidated Damages where specified, (ii) Designated Wasteshed Damages where specified, or (iii) actual damages where neither Liquidated Damages nor Designated Wasteshed Damages are specified. Such right to recover monetary damages shall constitute the exclusive remedy for any such breach, except where a non-monetary remedy is expressly provided for in this Agreement, in which case such additional remedy shall be available. All other remedies for breach at law or in equity are hereby waived.

SECTION 9.2. BREACHES BY THE PORT AUTHORITY.

(A) Types of Port Authority Breaches. Any one or more of the following events shall constitute a breach by the Port Authority (a “Port Authority Breach”):

(1) Failure to Make Payment. Failure by the Port Authority to make a payment of money owed to the City as set forth in a City Invoice within forty-five (45) days following delivery by the City to the Port Authority of a Notice of Overdue Payment with respect to such City Invoice, except for any portion of any such payment that is subject to a good faith dispute in accordance with Section 7.10. A payment breach shall be deemed cured only when payment is made in full with interest at the Overdue Rate.

(2) Failure to Comply with Other Obligations or Covenants. Failure by either the Port Authority or the Operator to comply with any of the Port Authority’s obligations or covenants under this Agreement (including failure by the Port Authority to cause the Operator to do anything as required pursuant to this Agreement) other than as set forth in clause (1) of this subsection.

(3) Bankruptcy. The Port Authority becoming insolvent, making an assignment for the benefit of its creditors, filing a voluntary petition in bankruptcy, having an involuntary petition in bankruptcy filed against it, or having a receiver appointed to take charge of the Port Authority’s property or affairs.

(B) Notice of Port Authority Breach. If there is a Port Authority Breach, the City shall deliver a written notice to the Port Authority (a “Notice of Port Authority Breach”) specifying: (1) the nature of the Port Authority Breach; (2) the date of the occurrence of such Port Authority Breach; and (3) whether such Port Authority Breach is continuing.

(C) Cure Periods for Certain Port Authority Breaches.

(1) Cure Rights and Obligations For Certain Breaches.

(a) General Cure Right and Obligation. The Port Authority shall cure a Port Authority Breach described in clause (2) of subsection (A) of this Section as promptly as is reasonably practicable, but in no event (except as provided in paragraph (b) of this clause of this subsection) shall such breach be cured later than ten (10) business days after the delivery of the Notice of Port Authority Breach.

(b) Port Authority Breaches That Cannot Be Cured Within Ten (10) Business Days. If a Port Authority Breach described in clause (2) of subsection (A) of this Section cannot reasonably be cured within a ten (10) business day period, the Port Authority shall cure such Port Authority Breach as promptly as is reasonably practicable, provided that the Port Authority promptly commences and diligently pursues the cure within such ten (10) business day period, and that, in no event, shall the breach remain uncured more than 270 days after the delivery of the Notice of Port Authority Breach.

(2) Cure Period for Bankruptcy. The Port Authority shall have the right to cure a Port Authority Breach described in clause (3) of subsection (A) of this Section, by (i) obtaining, within 90 days following the delivery of the Notice of Port Authority Breach, and maintaining in effect after such 90-day period, a stay, bonding or injunctive relief to prevent the prosecution or enforcement of such proceeding; and (ii) promptly commencing and diligently pursuing an appropriate action to vacate or discharge such proceeding.

(D) City Remedies for Port Authority Breaches. The City shall have the following exclusive remedies for Port Authority Breaches.

(1) Remedies for Overdue Payment. In addition to interest on late payments payable by the Port Authority pursuant to subsection 7.9(C), the sole remedies for a Port Authority Breach described in clause (1) of subsection 9.2(A) are: (i) to institute actions to collect amounts past due; and (ii) the diversion rights set forth in clause (3) of subsection 4.1(D).

(2) City Right to Divert for Failure to Comply with Waste Acceptance Obligation or Minimum Processing Obligation. In addition to any monetary damages assessed pursuant to this subsection for Port Authority Breaches resulting from the failure of the Port Authority to comply with the Waste Acceptance Obligation or the Minimum Processing Obligation, the City may exercise the diversion rights set forth in subsection 4.1(D).

(3) Monetary Damages for Port Authority Breaches. Subject to the Port Authority Limitation of Liability and the limitations set forth in clause (4) of this subsection, the City has the right to recover, and the Port Authority shall owe and pay for as a Port Authority Amounts Payable:

(a) Liquidated Damages for Wrongfully Rejected Waste. The City shall have the right, as its sole and exclusive measure of monetary damages for Wrongfully Rejected Waste applicable during an Invoice Period, to assess liquidated damages equal to the product of: (i) \$200.00, (ii) the Escalation Factor, and (iii) the number of Collection Vehicles carrying Wrongfully Rejected Waste during the applicable Invoice Period (the “Disposal Liquidated Damages”).

(b) Liquidated Damages for the Failure to Comply with the Minimum Processing Obligation. The City shall have the right, as its sole and exclusive measure of monetary damages for the Port Authority’s failure to comply with the Minimum Processing Obligation (regardless of whether such noncompliance was caused directly or indirectly by the ECUA waste priority set forth in subsection 4.8(A)), until the Processing Liquidated Damages Cap has been reached, to assess liquidated damages equal to the product of: (i) \$400; and (ii) the number of Collection Vehicles which off-load MSW pursuant to this

Agreement that the Operator fails to turn in compliance with the Minimum Processing Obligation (“Processing Liquidated Damages”). Processing Liquidated Damages shall not be available for Collection Vehicles which are diverted from and do not off-load MSW at the Mass Burn Facility (or Substitute Facility, if applicable). “Processing Liquidated Damages Cap” means the maximum amount of liquidated damages that may be assessed pursuant to this paragraph, which is equal to: (1) on a daily basis, the product of (a) \$7,500 and (b) the Escalation Factor; and (2) on a weekly basis, the product of (a) \$12,500 and (b) the Escalation Factor.

(c) Damages for Other Port Authority Breaches. For any Port Authority Breach, other than those described in clauses (a) and (b) of this subparagraph (3), the City has the right to recover actual damages resulting from such Port Authority Breach.

(4) Certain Limitations of Damages.

(a) Limitation on Damages When Deliveries Exceed 2,000 Tons for Two or More Consecutive Days. Notwithstanding clauses (a) and (b) of subparagraph (3) of this subsection, if the Port Authority has accepted more than 2,000 TPD of MSW pursuant to this Agreement on any one Delivery Day, and then accepts 2,000 TPD or more of MSW pursuant to this Agreement on the next one or more consecutive Delivery Days, the Port Authority shall not be subject, with respect to such next one or more consecutive Delivery Days, to: (i) the Disposal Liquidated Damages that otherwise could be assessed pursuant to clause (a) of subparagraph (3) of this subsection; and (ii) Processing Liquidated Damages that otherwise could be assessed pursuant to clause (b) of subparagraph (3) of this subsection.

(b) Limitation on Damages When Guaranteed MSW Capacity Is Exceeded. The Port Authority shall not be liable for Processing Liquidated Damages, Disposal Liquidated Damages or actual damages assessed against the Port Authority or owed by the Port Authority for any Collection Vehicle which

arrives at the Mass Burn Facility (or the Substitute Facility, to the extent permitted pursuant to Section 4.9) after the Tons of MSW accepted at the Mass Burn Facility (and the Substitute Facility, to the extent permitted pursuant to Section 4.9) during the applicable Delivery Day, week or year pursuant to this Agreement has exceeded, or would thereby exceed, the Guaranteed MSW Capacity (as reduced by the amount of Wrongfully Rejected Waste) for the applicable period.

(E) City Right to Injunctive Relief to Restrain Disclosure. Nothing in this Section shall restrict the right of the City to seek appropriate injunctive relief to restrain disclosure by the Port Authority or Operator of confidential information in violation of Section 10.12.

(F) Failure or Delay Because of Uncontrollable Circumstance. The failure or delay in the performance of any obligation arising under this Agreement by the Port Authority as a necessary consequence of the occurrence of an Uncontrollable Circumstance, to the extent excused pursuant to Article VIII, shall not constitute a Port Authority Breach.

SECTION 9.3. PORT AUTHORITY DEFAULT; REMEDIES.

(A) Port Authority Defaults. Each of the following constitutes a Port Authority Default:

(1) Extended Payment Breach. A Port Authority Breach set forth in clause (1) of subsection 9.2(A) that remains uncured for six months following delivery by the City of the Notice of Overdue Payment.

(2) Other Uncured Port Authority Breaches. A Port Authority Breach set forth in clause (2) of subsection 9.2(A) that either (i) the Port Authority is not proceeding diligently to cure, or that continues after the end of the applicable cure period set forth in clause (1) of subsection 9.2(C), or (ii) is not reasonably capable of being cured within any applicable cure period.

(3) Persistent and Repeated Breach. A persistent and repeated Port Authority Breach referred to in clauses (1) or (2) of subsection 9.2(A), following delivery of a

Notice of Port Authority Breach pursuant to subsection 9.2(B), regardless of whether the most recent Port Authority Breach has been cured.

(4) Bankruptcy. A Port Authority Breach described in clause (3) of subsection 9.2(A) that either (i) continues after the applicable cure period set forth in clause (2) of subsection 9.2(C), or (ii) for which a cure described in clause (2) of subsection 9.2(C) is no longer effective.

(5) Reaching or Exceeding Limitation of Liability. The sum of (i) the amount of damages previously paid by the Port Authority pursuant to subsection 9.2(D), plus (ii) the amount of damages currently payable by the Port Authority pursuant to subsection 9.2(D), is equal to or greater than the Port Authority Limitation of Liability.

(B) Notice and Termination Remedy. If there is a Port Authority Default set forth in clause (1), (2) or (3) of subsection (A) of this Section, the City shall have the right to terminate this Agreement by delivering 30 days' written notice of termination to the Port Authority. If there is a Port Authority Default set forth in clause (4) of subsection (A) of this Section, the City shall have the right to terminate this Agreement immediately by delivering a notice to the Port Authority. If there is a Port Authority Default described in clause (5) of subsection (A) of this Section, the City shall have the right to terminate this Agreement by delivering to the Port Authority a notice of termination within 180 days following delivery to the City of the Port Authority Billing Statement indicating that the threshold set forth in such clause (5) has been equaled or exceeded, with such termination to be effective not less than 30 days and not later than 90 days following delivery of such termination notice by the City.

(C) Damages Upon Termination. If the City terminates this Agreement pursuant to this Section, the City shall have the right, as its sole and exclusive measure of monetary damages, to recover liquidated damages equal to the present value (using a discount rate equal to the then applicable Prime Rate) of the Disposal Liquidated Damages that would be due during the remainder of the Term (assuming this Agreement had not been terminated) based on historical data on waste deliveries by the City pursuant to this Agreement, projected to the end of the Term (and assuming that all such Tons of MSW would have been delivered to the Mass Burn Facility pursuant to this Agreement and that all such Tons constitute Wrongfully

Rejected Waste for which Disposal Liquidated Damages would be due), subject to the Port Authority Limitation of Liability, together with other amounts owing and unpaid under this Agreement as of the Termination Date. If the foregoing measure of termination liquidated damages shall be determined to be unavailable or unenforceable under Applicable Law for any reason other than the claim or the assertion thereof by the City or the Port Authority, the City shall be entitled to such other measure of damages as may be available under Applicable Law.

(D) Sole and Exclusive Remedies. Notwithstanding any other remedies that may be provided at law or in equity, the remedies described in this Section are the City's sole and exclusive remedies for Port Authority Defaults.

SECTION 9.4. BREACHES BY THE CITY.

(A) Types of City Breaches. Any one or more of the following events shall constitute a breach by the City (a "City Breach"):

(1) Failure to Make Payment. Failure by the City to make a payment of money owed to the Port Authority as set forth in a Port Authority Billing Statement within forty-five (45) days following delivery by the Port Authority to the City of a Notice of Overdue Payment with respect to such Port Authority Billing Statement, except for any portion of any such payment that is subject to a good faith dispute in accordance with Section 7.9. A payment breach shall be deemed cured only when payment is made in full with interest at the Overdue Rate.

(2) Failure to Comply with Other Obligations or Covenants. Failure by the City to comply with any of the City's obligations or covenants under this Agreement other than as set forth in clause (1) of this subsection.

(3) Bankruptcy. The City becoming insolvent, making an assignment for the benefit of its creditors, filing a voluntary petition in bankruptcy, having an involuntary petition in bankruptcy filed against it, or having a receiver appointed to take charge of the City's property or affairs.

(B) Notice of City Breach. If there is a City Breach, the Port Authority shall deliver a written notice to the City (a "Notice of City Breach") specifying: (1) the nature of the

City Breach; (2) the date of occurrence of such City Breach; and (3) whether such City Breach is continuing.

(C) Cure Periods for Certain City Breaches.

(1) Cure Rights and Obligations For Certain Breaches.

(a) General Cure Right and Obligation. The City shall cure a City Breach described in clause (2) of subsection (A) of this Section as promptly as is reasonably practicable, but in no event (except as provided in paragraph (b) of this clause of this subsection) shall such breach be cured later than ten (10) business days after the delivery of the Notice of City Breach.

(b) City Breaches That Cannot Be Cured Within Ten (10) Business Days. If a City Breach described in clause (2) of subsection (A) of this Section cannot reasonably be cured within a ten (10) business day period, the City shall cure such City Breach as promptly as is reasonably practicable, provided that the City promptly commences and diligently pursues the cure within such ten (10) business day period, and that, in no event, shall the breach remain uncured more than 270 days after the delivery of the Notice of City Breach.

(2) Cure Period for Bankruptcy. The City shall have the right to cure a City Breach described in clause (3) of subsection (A) of this Section, by: (i) obtaining, within 90 days following delivery of the Notice of City Breach, and maintaining in effect after such 90-day period, a stay, bonding or injunctive relief to prevent the prosecution or enforcement of such proceeding; and (ii) promptly commencing and diligently pursuing an appropriate action to vacate or discharge such proceeding.

(D) Port Authority Remedies for City Breaches. The Port Authority shall have the following exclusive remedies for City Breaches.

(1) Remedies For Overdue Payments. In addition to interest on late payments payable by the City pursuant to subsection 7.10(C), the sole remedies for a City Breach for the City's failure to make a payment as set forth in clause (1) of subsection (A) of this Section are: (i) to institute actions to collect amounts past due; and (ii) the right of the

Port Authority to suspend service set forth in subsection 4.2(B) until such City Breach has been cured.

(2) Remedy For City Breach of Obligations to Deliver MSW. In addition to any monetary damages assessed pursuant to this subsection for City Breaches resulting from the failure by the City to deliver MSW pursuant to subsection 4.1(B), the sole remedy for a City Breach for the City's failure to deliver MSW pursuant to subsection 4.1(B) shall be the right to cause the Operator (confirmed by the Port Authority's written notice as soon practicable) to immediately arrange alternative deliveries of solid waste to the Mass Burn Facility from one or more third parties to replace the MSW that the City is not delivering as required under this Agreement, but only to the extent reasonably necessary to cause uninterrupted flow of solid waste to the Mass Burn Facility up to its then-available processing capacity. In arranging such alternative deliveries of solid waste to the Mass Burn Facility, the Port Authority shall have the right to obtain solid waste at such prices as are reasonably determined by the Port Authority to be necessary to obtain and replace the MSW that the City is required to deliver pursuant to subsection 4.1(B) but is not delivering. The Port Authority's rights to use alternative deliveries pursuant to this paragraph (2) shall terminate when the City provides reasonable assurances to the Port Authority that the City will resume delivering MSW in accordance with subsection 4.1(B) and allowing for a period reasonably sufficient (which period shall not, without the consent of the Port Authority, be less than 4 hours nor more than 24 hours).

(3) Monetary Damages for City Breaches. Subject to the City Limitation of Liability, the Port Authority has the right to recover, and the City shall owe and pay for as an Additional Amounts Payable:

(a) Damages For Breach of City Delivery Obligations.

(i) Generally. For a breach of the City's delivery obligations set forth in subsection 4.1(B), the sole monetary damages payable by the City shall be Designated Wasteshed Damages. Designated Wasteshed Damages may be assessed at the end of each Invoice

Period as applicable (and included as an Additional Amount Payable in the Port Authority Billing Statement for such Invoice Period).

- (ii) Periodic Reconciliation. If, with respect to an Invoice Period, the Port Authority Billing Statement includes an assessment for Designated Wasteshed Damages based on an MSW Delivery Shortfall, and if during the period starting with the Invoice Period for which such Port Authority Billing Statement applies and ending at the end of the Invoice Period immediately following the Invoice Period during which such Port Authority Billing Statement was delivered to the City (the “Reconciliation Period”), there is an MSW Delivery Surplus, the amount of such MSW Delivery Surplus in each Invoice Period within the Reconciliation Period shall be applied to reduce any MSW Delivery Shortfall during the Reconciliation Period (an “MSW Delivery Shortfall Reduction”), in sequential order starting with the earliest Invoice Period within the Reconciliation Period. If Designated Wasteshed Damages have already been paid by the City with respect to an MSW Delivery Shortfall that is reduced pursuant to this paragraph, an amount equal to the Designated Wasteshed Damages paid that is attributable to the MSW Delivery Shortfall Reduction shall be due as a Port Authority Amount Payable, and shall be included in the next City Invoice delivered to the Port Authority. If such Designated Wasteshed Damages have not yet been paid, an amount equal to the Designated Wasteshed Damages attributable to the MSW Delivery Shortfall Reduction shall no longer be due and the applicable Port Authority Billing Statements shall be adjusted accordingly. With respect to any dispute regarding the existence or magnitude of an MSW Delivery Shortfall (and only with respect to the disputed portion of such shortfall), the Reconciliation Period

set forth above shall be extended to end at the close of the first full Invoice Period immediately following resolution of such dispute.

(b) Damages for Other City Breaches. For any City Breach, other than that described in clause (a) of this subparagraph (3) of this subsection, the Port Authority has the right to recover actual damages resulting from such City Breach.

(E) Failure or Delay Because of Uncontrollable Circumstance. The failure or delay in the performance of any obligation arising under this Agreement by the City as a necessary consequence of the occurrence of an Uncontrollable Circumstance, to the extent excused pursuant to Article VIII, shall not constitute a City Breach.

SECTION 9.5. CITY DEFAULT; REMEDIES.

(A) City Defaults. Each of the following constitutes a City Default:

(1) Extended Payment Breach. A City Breach described in clause (1) of subsection 9.4(A) that remains uncured for six months following delivery by the Port Authority of the Notice of Overdue Payment.

(2) All Other Uncured City Breaches. A City Breach set forth in clause (2) of subsection 9.4(A) that either (i) the City is not proceeding diligently to cure, or that continues after the end of the applicable cure period set forth in clause (1) of subsection 9.4(C), or (ii) is not reasonably capable of being cured within any applicable cure period.

(3) Persistent and Repeated Breach. A persistent and repeated City Breach referred to in clauses (1) or (2) of subsection 9.4(A), following delivery of a Notice of City Breach pursuant to subsection 9.4(B), regardless of whether the most recent City Breach has been cured.

(4) Bankruptcy. A City Breach described in clause (3) of subsection 9.4(A) that continues after the applicable cure period set forth in clause (2) of subsection 9.4(C).

(5) Reaching or Exceeding Limitation of Liability. The sum of (i) the amount of damages previously paid by the City pursuant to Section 9.4(D), plus (ii) the amount

of damages currently payable by the City pursuant to Section 9.4(D), is equal to or greater than the City Limitation of Liability.

(B) Notice and Termination Remedy. If there is a City Default set forth in clause (1), (2) or (3) of subsection (A) of this Section, the Port Authority shall have the right to terminate this Agreement by delivering 30 days' written notice of termination to the City. If there is a City Default set forth in clause (4) of subsection (A) of this Section, the Port Authority shall have the right to terminate this Agreement immediately by delivering a notice to the City. If there is a City Default described in clause (5) of subsection (A) of this Section, the Port Authority shall have the right to terminate this Agreement by delivering to the City a notice of termination within 180 days following delivery to the Port Authority of the first City Invoice indicating that the threshold set forth in such clause (5) has been equaled or exceeded, with such termination to be effective not less than 30 days and not later than 90 days following delivery of such termination notice by the Port Authority.

(C) Damages Upon Termination. If the Port Authority terminates this Agreement pursuant to this Section, the Port Authority shall have the right to recover any actual damages incurred in connection therewith, subject to the City Limitation of Liability, together with other amounts owing and unpaid as of the Termination Date. Damages shall not exceed the amount that would have been payable by the City to the Port Authority had the City terminated the Agreement for convenience pursuant to Section 9.12. For purposes of determining the appropriate amount of damages, the City will be deemed to have delivered its 730 day notice of termination for convenience on the effective date of the termination of the Agreement by the Port Authority.

(D) Sole and Exclusive Remedies. Notwithstanding any other remedies that may be provided at law or in equity, the remedies described in this Section are the Port Authority's sole and exclusive remedies for City Defaults.

SECTION 9.6. TERMINATION OF THIS AGREEMENT UPON TERMINATION OF THE OPERATOR AGREEMENT. Upon a termination of the Operator Agreement, this Agreement shall automatically terminate, unless by agreement of the City and the Port Authority the parties agree to continue this Agreement, with such modifications as the

parties agree to in writing to take into account that there will be no Operator Agreement, or a new operator and a new operator agreement. If at the time of such termination there is a City Default or a Port Authority Default, as applicable, that would otherwise permit the non-defaulting party to terminate this Agreement pursuant to Section 9.5 (in the case of a City Default) or pursuant to Section 9.3 (in the case of a Port Authority Default), the termination shall be treated as a termination under Section 9.3 or Section 9.5, as applicable, and the non-breaching party shall be entitled to applicable damages. Otherwise, no damages shall be due relating to the termination.

SECTION 9.7. RIGHT TO REPROCURE. In the event that the City terminates this Agreement pursuant to Article VIII or as provided in this Article, the City may procure, upon such terms and in such manner deemed appropriate, supplies or services similar to those provided hereunder.

SECTION 9.8. NOTICE AND HEARING BEFORE TERMINATION. Before either party shall exercise its right to terminate the Agreement under subsections 9.3(B) or 9.5(B), the other party shall be given an opportunity to be heard, on five business days' written notice, at which hearing the other party may have a stenographer present and a copy of such stenographic notes, if any, shall be furnished to the party that wishes to terminate this Agreement by reason of the other party's default.

SECTION 9.9. NO WAIVERS. No action of the City or the Port Authority pursuant to this Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the City or the Port Authority in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Port Authority under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 9.10. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other any special, incidental, indirect, consequential, punitive or similar damages based upon claims

arising out of or in connection with the performance or non-performance of its obligations under this Agreement, or the material falseness or inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory; provided, however, that nothing in this Section shall limit the obligation of either party to indemnify the other party for any special, indirect, incidental, consequential, punitive or similar damages claimed by third parties as a result of any act or circumstance for which a party is obligated to indemnify the other party hereunder.

SECTION 9.11. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request non-binding mediation of any dispute arising under this Agreement, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply.

(B) Procedure. The mediator shall be a professional engineer or attorney licensed in the State, or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes relating to this Agreement. No mediator shall be empowered to render a binding decision.

(D) Relation to Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Agreement to commence Legal Proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

SECTION 9.12. CITY CONVENIENCE TERMINATION.

(A) General Right of Termination for Convenience. The City shall have the right, exercisable in its sole discretion, for its convenience and without cause, to terminate this

Agreement upon not less than 730 days' written notice delivered to the Port Authority; provided that no termination pursuant to this Section shall be effective earlier than January 1, 2025.

(B) Consideration for Convenience Termination. If the City exercises its right to terminate this Agreement pursuant to this Section, the City shall pay to the Port Authority the amount set forth in the Schedule of Convenience Termination Payments included in Appendix 6 for the applicable termination date, together with all amounts accrued and unpaid up to the Termination Date. There shall be no other amounts due from the City upon such termination. This Section is an essential provision that the City has bargained and exchanged consideration for, and may be exercised in the absolute discretion of the City. The Port Authority irrevocably waives all rights it may have in law or equity to contest the City's exercise of its rights under this Section for any reason whatsoever.

SECTION 9.13. TERMINATION RELATING TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of any of the circumstances described in Section 8.9 or 8.10, the City or the Port Authority, as applicable, shall have the right to terminate this Agreement as set forth therein, subject to the notice requirements of Section 8.11.

SECTION 9.14. COST SUBSTANTIATION OF DAMAGES. Any request by one party to another for Designated Wasteshed Damages or actual damages shall be subject to Cost Substantiation. Any City claim for damages for Wrongfully Rejected Waste shall document the Tonnages in accordance with the principles set forth in the definition of 'Cost Substantiation'.

SECTION 9.15. LIMITATION OF LIABILITY.

(A) Port Authority Limitation of Liability. The Port Authority's liability under this Agreement for any and all Port Authority Defaults and Port Authority Breaches taken together may not exceed the Port Authority Limitation of Liability. The term "liability" as used in this subsection means only those amounts paid or payable by the Port Authority to the City (whether as direct payments or offsets pursuant to Section 7.11) as Disposal Liquidated Damages, Processing Liquidated Damages or actual damages pursuant to subsection 9.2(D) and reflected in City Invoices.

(B) City Limitation of Liability. The City’s liability under this Agreement for any and all City Defaults and City Breaches taken together may not exceed the City Limitation of Liability. The term “liability” as used in this subsection means only those amounts paid or payable by the City to the Port Authority as either Designated Wasteshed Damages or actual damages pursuant to subsection 9.4(D) and reflected in Port Authority Billing Statements.

SECTION 9.16. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION OR EXPIRATION. The following provisions, rights and obligations shall survive the Termination Date: (A) all representations and warranties of the parties contained in Article II; (B) each of the indemnity obligations of each party in this Agreement with respect to events that occurred prior to the Termination Date; (C) all provisions of this Agreement that expressly establish post-termination obligations; and (D) all obligations that have accrued prior to the Termination Date and have not been performed or satisfied. No termination of this Agreement shall: (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. CLAIMS AND ACTIONS. The Port Authority shall report to the City, in writing, within three working days of the initiation by or against the Port Authority of any legal action or proceeding in connection with or relating to this Agreement.

SECTION 10.2. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES. No claim whatsoever shall be made by either party against any commissioner, officer, agent or employee of the other in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement

SECTION 10.3. WAIVER. Waiver by either party hereto of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until the same shall be agreed to in writing by both parties.

SECTION 10.4. VENDEX. The Port Authority shall cause the Operator, and shall cause the Operator to require each subcontractor of the Operator, and shall cause each Subcontractor of the Port Authority, and each of their respective principals, to complete a separate VENDEX Questionnaire and submit such questionnaire to the New York City Mayor's Office of Contract Services. Each principal must provide any additional information requested by the City. For purposes of this Section, a subcontractor of the Operator shall not include any Person entering into a contract with the Operator for performing services that either (i) do not occur on a day-to-day basis, such as turbine maintenance, boiler maintenance, and other non-routine maintenance of the Mass Burn Facility or (ii) relate to the day-to-day operations of the Mass Burn Facility but are not integral to the waste processing and handling operations comprising the Agreement Services, such as janitorial or utility services.

SECTION 10.5. CONTRACT NOTICES.

(A) Contract Notices. The City and the Port Authority designate the address(es) and addressee(s) specified below as the places where all notices from one party to the other party may be delivered or mailed. Actual delivery of any such notices to a party at the

addresses given below, whether in person, or by means of a commercial delivery service that provides signed receipts for delivery, or delivery by certified mail, return receipt requested, will be conclusive and deemed to be sufficient service upon such party as of the date the notice was received by a party. If certified mail or notice whose delivery was attempted by a commercial delivery service is refused or returned to the sending party as non-deliverable, the service of the notice will be deemed conclusive and sufficient as of the date the U.S. Post Office has stamped the certified mail as refused or undeliverable or the date on which the commercial delivery service has stamped the notice as refused or undeliverable.

(B) Port Authority Notice Address. All notices (other than Operating Notices) required to be given to the Port Authority shall be addressed as follows:

Executive Director
The Port Authority of New York and New Jersey
225 Park Avenue South - 15th Floor
New York, N.Y. 10003

with a copy to:

General Counsel
The Port Authority of New York and New Jersey
225 Park Avenue South - 15th Floor
New York, New York 10003

with a copy to:

Director, Real Estate Department
The Port Authority of New York and New Jersey
225 Park Avenue South - 19th Floor
New York, N.Y. 10003

(C) City Notice Address. All notices (other than Operating Notices) required to be given to the City shall be addressed as follows:

Director, Bureau of Waste Disposal
City of New York Department of Sanitation
125 Worth Street
New York, New York 10013

with a copy to:

Deputy Commissioner of Long-Term Export
City of New York
Department of Sanitation
44 Beaver Street, 12th Floor
New York, New York 10004

with a copy to:

Assistant Commissioner for Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 708
New York, New York 10013

(D) These addresses may be changed at any time by written notice of the change of address to the other party in the manner as specified in subsection (A) of this Section. Nothing in this Section will be deemed to serve as a waiver of any requirements for the service of notice of process in the institution of an action or proceeding as provided by law.

SECTION 10.6. ALL LEGAL PROVISIONS DEEMED INCLUDED. It is the intent and understanding of the parties to this Agreement that each and every provision of law required by law to be inserted in this Agreement shall be and is inserted in this Agreement. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted in this Agreement, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then, upon the application of either party, this Agreement shall promptly be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

SECTION 10.7. SEVERABILITY. If any provision of this Agreement that is not an essential part of this Agreement and that shall not appear to have been a controlling or material inducement to the making thereof shall be determined for any reason to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the same shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. If any provision so determined to be invalid, illegal or unenforceable is an essential part of this Agreement that has been a controlling or material inducement to the making of this Agreement, the parties hereto shall negotiate in good faith and

agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such judicial determinations, shall implement and give effect to the intentions of the parties as reflected herein. Notwithstanding any determination that a provision is invalid, illegal or unenforceable, the same shall not invalidate or render any other provision hereof unenforceable.

SECTION 10.8. NO ESTOPPEL. Neither party, nor any department, officer, agency or employee of either party, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by either party hereto, by any commissioner or member of either, by any project manager or any other officer, agent or employee, either before or after the final completion and acceptance of the Agreement Services and payment therefor: (a) from showing the true and correct classification, amount, quality or character of the Agreement Services actually done, or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular; and (b) from demanding and recovering any overpayment made to the other party, or from demanding and recovering from the other party any underpayment, or such damages as that party may sustain by reason of the other party's failure to perform each and every part of this Agreement in strict accordance with its terms, or both.

SECTION 10.9. MODIFICATION. This Agreement may be modified by the parties in writing upon agreement of the parties, and in accordance with Applicable Law. It may not be altered or modified orally.

SECTION 10.10. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE. This Agreement shall be deemed to be executed in the City, regardless of the domicile of the Port Authority, and shall be governed by and construed in accordance with the laws of the State. The parties agree that any and all claims asserted by or against the other party arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States ("Federal Courts") or in the courts of the State ("New York State Courts"), in each case located in the City and County of New York. To effectuate this Agreement and intent the Port Authority agrees:

(A) If the City initiates any action against the Port Authority, service of process may be made on the Port Authority either in person, at the Office of the Secretary, The Port Authority of New York and New Jersey, 225 Park Avenue South – 15th Floor, New York, New York, 10003, or by registered mail addressed to the Port Authority at its address as set forth in this Agreement, or to such other address as the Port Authority may provide to the City in writing;

(B) With respect to any action between the City and the Port Authority in Federal Court located in the City and County of New York, the Port Authority expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City and County of New York;

(C) If the Port Authority commences any action against the City in a court located other than in the City and County of New York, upon request of the City, the Port Authority shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and County of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Port Authority shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in the City and County of New York; and

(D) Nothing in this Agreement shall be deemed to waive any restriction upon, requirement for, or condition of bringing suit against (i) the Port Authority set forth in laws of either, or both, the State of New York or the State of New Jersey or (ii) the City set forth in the laws of the State of New York.

SECTION 10.11. LAWS APPLICABLE TO THE PORT AUTHORITY OR THE CITY. Other than explicitly provided for in this Agreement, no provision of this Agreement shall be construed as a submission by the Port Authority or the City to the jurisdiction of any federal, state or local law, rule or regulation that otherwise is not applicable to the Port Authority or the City. No alleged or purported immunity or exemption from any federal, state or local law, rule or regulation that otherwise applies to the Port Authority or the City shall excuse compliance with the terms of this Agreement or be grounds for nonperformance by either party to this Agreement.

SECTION 10.12. CONFIDENTIALITY. All of the reports, information or data, furnished to or prepared, assembled or used by the Port Authority or the Operator under this Agreement are to be held confidential, except as otherwise provided by law and the Port Authority's policy of Freedom of Information adopted August 13, 1992, and, except as otherwise required, the Port Authority agrees that the same shall not be made available to any individual or organization without the prior written approval of the City. The provisions of this Section shall remain in full force and effect following termination of, or cessation of, the Agreement Services.

SECTION 10.13. INVESTIGATIONS. The Port Authority agrees to cooperate, and shall cause the Operator to cooperate, fully and faithfully with any investigation, audit, or inquiry relating to the subject matter of this Agreement conducted by a State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry. Any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

SECTION 10.14. ASSIGNMENT OF THIS AGREEMENT.

(A) By the Port Authority.

(1) General. The Port Authority shall not assign, transfer, convey, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the City, which shall not be unreasonably withheld. Any such approval given in one instance shall not relieve the Port Authority of its obligation to obtain the prior written approval of the City to any further assignment. Any assignment of this Agreement that is approved by the City shall require the assignee of the Port Authority to assume the performance of and observe all obligations and, except for the representation and warranty set forth in subsection 2.1(B) hereof, all representations and warranties of the Port Authority under this Agreement which shall remain in full force and effect during the Term. The approval of any

assignment, transfer or conveyance shall not operate to release the Port Authority in any way from any of its obligations under this Agreement unless such approval specifically provides otherwise. The provisions of this clause shall not hinder, prevent, or affect an assignment for the benefit of creditors made pursuant to the laws of the State.

(2) If Port Authority Assigns this Agreement Without City Consent. In the event that the Port Authority assigns, transfers, conveys or otherwise disposes of this Agreement as specified in clause (1) of this subsection without the prior written consent of the City, the City may, 30 days after delivering written notice to the Port Authority, unilaterally terminate this Agreement and the City shall be relieved and discharged from any and all liability and obligations growing out of this Agreement to the Port Authority, its assignees, transferees following the effective date of such assignment.

(B) By the City. This Agreement may be assigned by the City to any public corporation, agency, or instrumentality within The City of New York having authority to accept such assignment. No such assignment will relieve the City of any obligation under this Agreement.

SECTION 10.15. ANTITRUST. The Port Authority hereby assigns, sells and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods and services purchased or procured by the City under this Agreement.

SECTION 10.16. POLITICAL ACTIVITY. No partisan political activity or any activity shall be undertaken to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

SECTION 10.17. INDEMNIFICATION.

(A) City Indemnity. The City hereby covenants and agrees that it will indemnify and save harmless the Port Authority, its commissioners, the Operator, and their respective officers, agents, representatives and employees against any and all claims, demands, penalties, fines, settlements, damages, injuries, losses, costs, expenses and judgments of whatever kind or nature to the extent arising out of the negligent or wrongful acts or omissions of

the City or any of its commissioners, officers, agents, representatives and employees, provided that the City shall have no obligation with respect to damages to the extent caused by the negligent and/or intentional tortious acts of the Port Authority, its commissioners, the Operator, and their respective officers, agents, representatives and employees arising out of the performance of this Agreement. The City and the Port Authority agree that each shall be responsible for its own defense in connection with any claims or liabilities arising from the performance of this Agreement. Neither the Port Authority nor the City will settle any such claim, liability or action without the other party's written consent, provided that if the party whose consent is requested shall unreasonably refuse to consent to any such settlement or shall fail to do so within a reasonable time after such request is made, then, in addition to the obligation to indemnify the requesting party for all amounts, including those in excess of the proposed settlement, such non-consenting party shall also be responsible for any legal fees and expenses incurred by the other party in connection with its defense after the date of such non-consent.

(B) Port Authority Indemnity. The Port Authority hereby covenants and agrees that it will indemnify and save harmless the City, its commissioners, officers, agents, representatives and employees against any and all claims, demands, penalties, fines, settlements, damages, injuries, losses, costs, expenses and judgments of whatever kind or nature to the extent arising out of the negligent or wrongful acts or omissions of the Port Authority or any of its commissioners, officers, agents, representatives and employees, provided that the Port Authority shall have no obligation with respect to damages to the extent caused by the negligent and/or intentional tortious acts of the City, its commissioners, officers, agents, representatives and employees arising out of the performance of this Agreement. The City and the Port Authority agree that each shall be responsible for its own defense in connection with any claims or liabilities arising from the performance of this Agreement. Neither the City nor the Port Authority will settle any such claim, liability or action without the other party's written consent, provided that if the party whose consent is requested shall unreasonably refuse to consent to any such settlement or shall fail to do so within a reasonable time after such request is made, then, in addition to the obligation to indemnify the requesting party for all amounts, including those in excess of the proposed settlement, such non-consenting party shall also be responsible for any

legal fees and expenses incurred by the other party in connection with its defense after the date of such non-consent.

(C) No Assertion of Governmental Status. In any suit arising out of this Agreement in which either party or its insurance carrier is obligated to indemnify the other as provided in this Section, such party and/or its insurance carrier shall not assert or maintain any defense involving in any way the jurisdiction of the tribunal over the person of such party, its commissioners, elected officials, officers, agents or employees, the governmental nature of such entity or the provisions of any statutes regarding suits against such entity, without the prior written consent of such entity by such persons as are authorized to grant such consent.

SECTION 10.18. ENTIRE AGREEMENT. This Agreement, including any attachment or references which have been incorporated in this Agreement, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties or to vary any of the terms contained in this Agreement.

IN WITNESS WHEREOF: John J. Doherty, acting on behalf of the City, and Patrick J. Foye, acting on behalf of the Port Authority have executed four original counterparts of this Agreement. Two counterparts will remain with the City, the third will be filed with the Comptroller, and the fourth will be delivered to the Port Authority.

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
<u>HAF</u>	<u>AKC</u>

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: *Patrick J. Foye*

Name: Patrick J. Foye

Title: Executive Director

THE CITY OF NEW YORK, DEPARTMENT OF SANITATION

By: *John J. Doherty*

Name: John J. Doherty

Title: Commissioner

Approved as to Form
Certified as to Legal Authority

[Signature]
Acting Corporation Counsel

JUN 06 2012

ACKNOWLEDGMENT OF THE Commissioner OF THE DEPARTMENT OF
SANITATION OF THE CITY OF NEW YORK

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On this 2nd day of August, 2012, before me personally came
John J. Doherty, to me known and known to me to be the Commissioner of the
Department of Sanitation of The City of New York, the person described as such in and who as
such executed the foregoing instrument and he/she acknowledged to me that he/she executed the
same as Commissioner for the purpose therein mentioned.

Subscribed and sworn to before me

this 2nd day of August, 2012

Ellen Cooper

Notary Public

ELLEN COOPER
NOTARY PUBLIC-STATE OF NEW YORK
No. 02CO6163633
Qualified In Richmond County
My Commission Expires March 26, 2015

ACKNOWLEDGMENT OF THE Exr. Dir. OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On this 30th day of July, 2012, before me personally came Patrick J. Falvey who being by me duly sworn, did depose and say that he/she resides in the city of New York; that he/she is the Executive Director of The Port Authority of New York and New Jersey described as such in and which executed the foregoing instrument; ~~that he/she knows the seal of said The Port Authority of New York and New Jersey; that it was so affixed by order of the~~ of said Authority; and that he or she signed his or her name thereto by like order.

Subscribed and sworn to before me

this 30th day of July, 2012

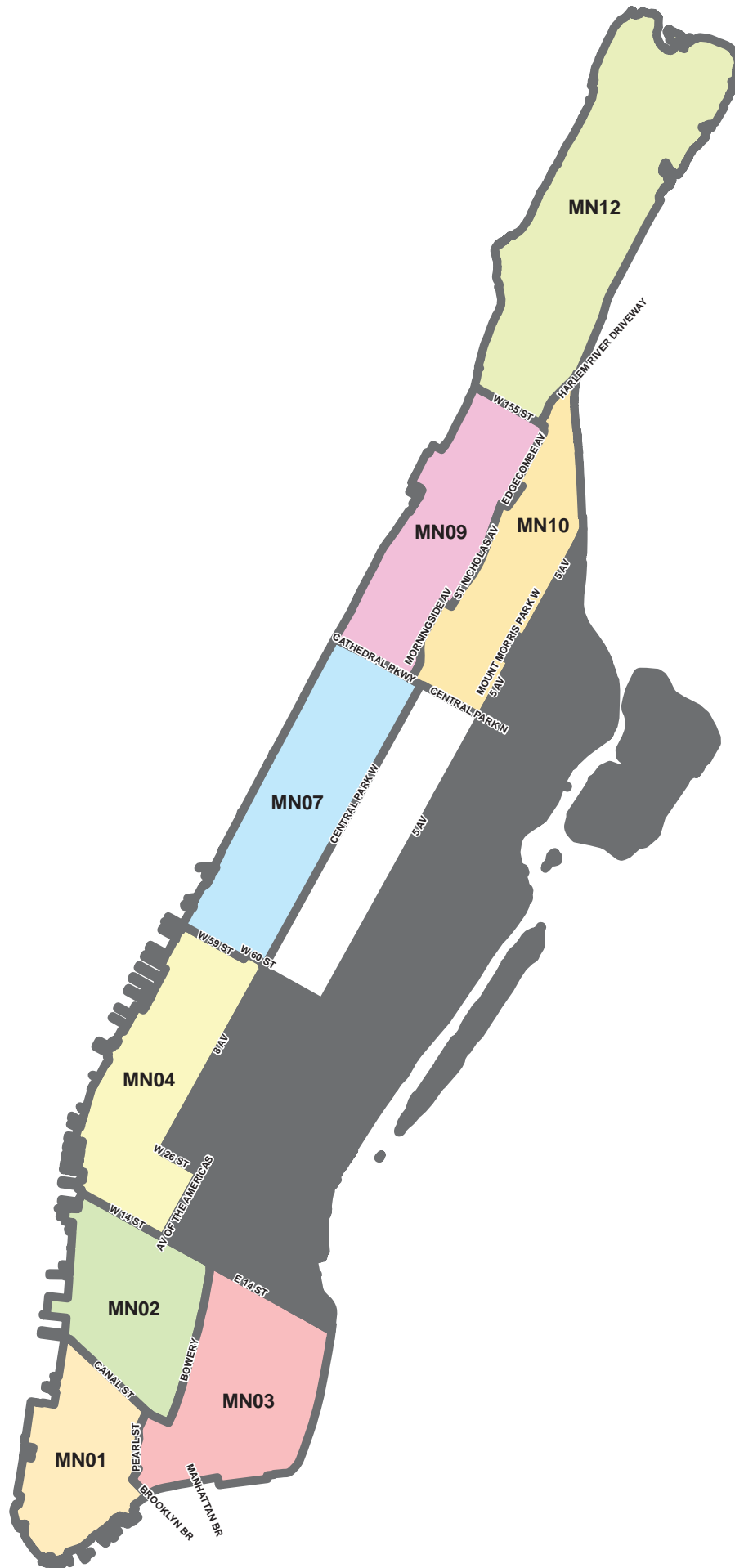


Notary Public

RISA A. RESNICK
Notary Public, State of New York
No. 02RE5075256
Qualified in New York County
Commission Expires 9/5, 2015

APPENDIX 1
DESIGNATED WASTESHEDS

Designated Wastesheds



APPENDIX 2
REQUIRED INSURANCE

APPENDIX 2

REQUIRED INSURANCE

The Operator, as insured, shall at all times during the operations period (as defined by the insurer), secure and pay the premiums for each of the policies of insurance set forth in paragraphs I, II, III, IV, VIII, X, and XI of this Section.

I. Comprehensive General Liability Insurance having a minimum combined single limit of \$1,000,000 per occurrence, such insurance to include the below-named coverages and clauses.

A. Premises - Operations

B. Completed Operations

C Blanket Contractual Liability covering obligations assumed by the Operator under Section 9.06(a) of the Operator Agreement and including operations performed within 50 feet of a railroad

D. Independent Contractors

E. Broad Form Property Damage including Completed Operations

F. Personal Injury

G. Advertising Injury

H. Host Liquor Liability

I. Employees as Additional Insureds

J. Incidental Malpractice

K. Premises Medical Payments

L. Non-owned watercraft

M. X, C, U exclusions deleted

N. No aggregate shall be applicable except for Completed Operations coverage

O. Bodily Injury and Property Damage arising out of design error.

II. Automobile Liability Insurance covering all owned, non-owned or hired vehicles used at the Mass Burn Facility or in connection with its operation with a minimum combined single limit coverage of \$1,000,000. Automatic coverage shall be provided for newly acquired vehicles.

III. Umbrella Liability Insurance having a minimum combined single limit per occurrence of \$50,000,000 if available, and if unavailable, the next highest level available, subject to Section 5.03 of the Operator Agreement. The Umbrella Liability Insurance shall include all the coverages and clauses set forth in clauses A through O of paragraph I of this

Section, as well as Automobile Liability and Workers' Compensation - Coverage B (Employer's Liability), in each case in excess of the primary coverage limits.

IV. Pollution Legal Liability insurance relating to the Agreement Services with limits equal to (a) \$25,000,000 per claim. Pollution legal liability insurance shall include coverage for off-site third party bodily injury and property damage resulting from pollution conditions related to the Agreement Services and pollution clean-up costs for third party claims.

V. Each policy of liability insurance as described in paragraphs I and III of this Section, if available, shall be written to provide coverage for occurrences during the policy period without limitation as to discovery and/or filing of any claim. If such policy or policies is unavailable, the Operator shall (1) provide evidence of the purchase of a 3 year discovery period coverage and (2) provide that any retroactive date is not later than the inception date of the first policy so provided.

VI. Each policy of insurance described in paragraphs I, II, III, and IV of this Section shall have provisions to include the following:

In the event of any claim being made by reason of personal injury, including death, by whomsoever suffered, including but not limited to any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder.

In the event of claims being made by reason of property damage, regardless of who owns the property, for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder.

The coverage afforded by this policy of insurance shall be primary and without the right of contribution from any other insurances that are carried (or self-insured) by each of the additional insureds with respect to their interest. Any similar insurance shall be considered excess insurance.

VII. Each policy of liability insurance shall endorse, and evidence on the certificate of insurance that "The insurer shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."

VIII. Business Interruption Insurance for loss of revenue and continuing expenses covering the Operator and the Port Authority as joint loss payees in accordance with their interests on an actual loss sustained basis for a period of not less than 12 months with a waiting period of no more than two weeks. If, after reasonable efforts to obtain joint coverage shall be taken by the Operator, joint coverage cannot be obtained, each party shall have the option to purchase insurance or self-insure its own interest with respect to business interruptions.

IX. Each policy of insurance described in paragraphs I, II, III, and IV of this Section shall include the City and the Port Authority in each case as an additional insured for claims arising out of the existence, use, or operations of the Mass Burn Facility. Each policy of

insurance shall provide that the insurers shall have no recourse against the City or the Port Authority for payment of any insurance premium.

X. Workers' Compensation Insurance in accordance with the requirements of the law and including coverage for Voluntary Compensation, All States Endorsement, and a \$500,000 limit of liability for Workers' Compensation - Coverage B (Employer's Liability).

XI. Boiler and machinery insurance covering all boilers, pressure vessels and machinery operated by the Operator or others at the Mass Burn Facility, in such amounts as the Operator may determine to be reasonable coverage against the hazards and perils occasioned by the existence and operation of such boilers, pressure vessels and machinery. Business Interruption Insurance coverage for loss of revenue and continuing expenses covering the Operator and the Port Authority as joint loss payees in accordance with their respective interests on an actual loss sustained basis for a period of not less than 12 months with a waiting period of no more than two weeks, subject to the last sentence of paragraph VIII.

XII. Each policy of insurance described in Paragraphs I, II, IV, VII, VIII, and X of this Section shall provide for a per occurrence deductible not in excess of \$50,000.

APPENDIX 3
FORM OF THE PORT AUTHORITY BILLING STATEMENT

APPENDIX 3

FORM OF THE PORT AUTHORITY BILLING STATEMENT

Form of the Interim Service Period Invoice

SAMPLE PORT AUTHORITY BILLING STATEMENT INTERIM SERVICE PERIOD

PORT AUTHORITY OF NEW YORK AND NEW JERSEY MUNICIPAL SOLID WASTE DISPOSAL ESSEX COUNTY WASTE TO ENERGY FACILITY

Remit To:
Port Authority of New York and New Jersey
Address

Contract No.: xxxxxxx
Billing Date: xxxxxxx
Invoice No.: xxxxxxx
Pin No.: xxxxxxx

Invoice Period: December 1, 2012 - December 31, 2012

Summary of the Service Fee

Disposal Charge	\$2,240,982.59
Additional Amounts Payable	0.00
Amount Due this Period	<u>\$2,240,982.59</u>

Part I: Disposal Charge Summary (Section 7.2)

Disposal Charge

District	Total Loads	Net Tons	Unit Disposal Charge	Disposal Charge
Designated Wasteshed				
MN01	146	1,389.30	\$67.60	\$93,916.68
MN02	264	2,665.40	\$67.60	\$180,181.04
MN03	661	6,277.10	\$67.60	\$424,331.96
MN04	314	3,169.00	\$67.60	\$214,224.40
MN07	565	5,484.50	\$67.60	\$370,752.20
MN09	311	2,865.30	\$67.60	\$193,694.28
MN10	618	5,751.60	\$67.60	\$388,808.16
MN12	481	5,527.10	\$67.60	\$373,631.96
Subtotal		33,129.30		\$2,239,540.68
Other Districts				
BK1	1	8.84	\$67.60	\$597.58
BK18	1	12.49	\$67.60	\$844.32
Subtotal		21.33		\$1,441.91
Totals		33,150.63		<u>\$2,240,982.59</u>

Part II: Tier Capacity Days for Current Contract Year (Section 4.4(B))

Tier	Number Days Available	Days Used Prior Periods	Days Used This Month	Total Days Used	Days Remaining
Tier 1 Capacity Day	65	39	4	43	22
Tier 2 Capacity Day	35	22	2	24	11
Tier 3 Capacity Day	15	12	1	13	2

Days Used This Month ^{(a) (b)}

Date	Tonnage	Tier 1 Day 1800	Tier 2 Day 2000	Tier 3 Day 2250
Threshold				
Friday, December 07, 2012	1,886.72	1		
Tuesday, December 18, 2012	2,432.95	1		1
Friday, December 21, 2012	2,001.87	1	1	
Monday, December 24, 2012	1,704.95	1		

(City notice of Tier 1 Capacity Day)

Total		4	2	1
-------	--	---	---	---

(a) List all Tier Capacity 1, 2 and 3 Days

(b) Identify days where Operating Notice determined the Tier.

Part III: Daily Disposal Charge Detail

Load No.	Vehicle ID	DOS Ticket	Time Out	Net Tons	District	Unit Disposal Charge	Disposal Charge
Work Date: xx/xx/xx							
7796	23W 001	3687524	12:04:05 AM	9.25	MN03	\$67.60	\$625.30
7797	23W 312	3887525	12:07:50 AM	6.94	MN10	\$67.60	\$469.14
7804	25DC878	3687526	12:09:17 AM	7.44	MN09	\$67.60	\$502.94
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
7896	25DF131	3687624	10:02:39 PM	12.22	MN12	\$67.60	\$826.07
7897	25DF171	3687625	11:00:16 PM	13.11	MN07	\$67.60	\$886.24
7898	25DC261	3687626	11:13:49 PM	11.64	MN07	\$67.60	\$786.86
Sub Totals				1,744.51			\$117,928.88
Work Date: xx/xx/xx							
7796	23W 001	3687625	12:07:03 AM	8.44	MN03	\$67.60	\$570.54
7797	23W 312	3887626	12:08:49 AM	7.21	MN10	\$67.60	\$487.40
7804	25DC878	3687627	12:10:17 AM	8.00	MN09	\$67.60	\$540.80
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
7896	25DF131	3687624	10:10:09 PM	10.93	MN12	\$67.60	\$738.87
7897	25DF171	3687625	11:05:45 PM	12.42	MN07	\$67.60	\$839.59
7898	25DC261	3687626	11:53:49 PM	10.77	MN07	\$67.60	\$728.05
Sub Total				1,689.92			\$114,238.59
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

Part IV: Additional Amounts Payable (Section 7.6)

Additional Amounts Payable	Amount ^(a)
Unacceptable Waste (Section 7.6(A))	\$0.00
Designated Wasteshed Damages (Section 7.6(B))	0.00
Other City Non-Performance (Section 7.6(C))	0.00
City Indemnification (Section 7.6(D))	0.00
Annual Adjustments for UCC Costs ^(b) (Section 7.6(E))	-
Interest Owed for Late Payment (Section 7.6(F))	0.00
Adjustment Mistakes (Section 7.6(G))	0.00
Other Charges (Section 7.6(H))	0.00
Total Additional Amounts Payable	\$0.00

(a) Provide detailed explanations, calculations, and other supporting information for each Additional Amounts Payable. The form of such back-up shall be determined by mutual agreement.

(b) Not applicable during Interim Period.

Part V: Limitation of Liabilities (Section 9.15)

Liabilities Counting Toward Limitation

Port Authority		City	
Prior	\$xxx.xx	Prior	\$xxx.xx
This Month	\$xxx.xx	This Month	\$xxx.xx
Total	\$xxx.xx	Total	\$xxx.xx

Current Limitation of Liability

Base	Escalation Factor ^(a)		Current
\$50,000,000.00	1.0000	=	\$50,000,000.00

(a) Attach calculation of Escalation Factor for current Contract Year.

Form of the Long-Term Service Period Invoice

SAMPLE PORT AUTHORITY BILLING STATEMENT LONG-TERM SERVICE PERIOD

PORT AUTHORITY OF NEW YORK AND NEW JERSEY MUNICIPAL SOLID WASTE DISPOSAL ESSEX COUNTY WASTE TO ENERGY FACILITY

Remit To:
Port Authority of New York and New Jersey
Address

Contract No.: xxxxxxx
Billing Date: xxxxxxx
Invoice No.: xxxxxxx
Pin No.: xxxxxxx

Invoice Period: January 1, 2015 - January 31, 2015

Summary of the Service Fee

Disposal Charge	\$3,387,878.19
Uncontrollable Circumstance Cost	0.00
Additional Amounts Payable	0.00
Amount Due this Period	<u>\$3,387,878.19</u>

Part I: Disposal Charge Summary (Section 7.4)

Disposal Charge

District	Total Loads	Net Tons	Unit Disposal Charge ^(a)	Disposal Charge
Designated Wasteshed				
MN01	178	1,692.31	\$82.50	\$139,615.58
MN02	328	3,309.26	\$82.50	\$273,013.95
MN03	813	7,722.45	\$82.50	\$637,102.13
MN04	393	3,966.00	\$82.50	\$327,195.00
MN07	680	6,593.80	\$82.50	\$543,988.50
MN09	385	3,538.37	\$82.50	\$291,915.53
MN10	780	7,256.66	\$82.50	\$598,674.45
MN12	608	6,986.34	\$82.50	\$576,373.05
Subtotal		41,065.19		\$3,387,878.19
Other Districts				
Subtotal		0.00		\$0.00
Totals		41,065.19		<u>\$3,387,878.19</u>

Part II: Tier Capacity Days for Current Contract Year (Section 4.4(B))

Tier	Number Days Available	Days Used Prior Periods	Days Used This Month	Total Days Used	Days Remaining
Tier 1 Capacity Day	65	0	5	5	60
Tier 2 Capacity Day	35	0	2	2	33
Tier 3 Capacity Day	15	0	1	1	14

Days Used This Month ^{(a) (b)}

Date	Tonnage	Tier 1 Day 1800	Tier 2 Day 2000	Tier 3 Day 2250
Threshold				
Monday, January 05, 2015	1,805.02	1		
Thursday, January 15, 2015	2,300.51	1	1	1
Tuesday, January 20, 2015	2,198.45	1	1	
Thursday, January 22, 2015	1,792.88	1		
(City notice of Tier 1 Capacity Day)				
Monday, January 26, 2015	1,899.99	1		
Total		5	2	1

- (a) List all Tier Capacity 1, 2 and 3 Days
(b) Identify days where Operating Notice determined the Tier.

Part III: Daily Disposal Charge Detail

Load No.	Vehicle ID	DOS Ticket	Time Out	Net Tons	District	Unit Disposal Charge	Disposal Charge
Work Date: xx/xx/xx							
7796	23W 001	3687524	12:04:05 AM	9.25	MN03	\$82.50	\$763.13
7797	23W 312	3887525	12:07:50 AM	6.94	MN10	\$82.50	\$572.55
7804	25DC878	3687526	12:09:17 AM	7.44	MN08	\$82.50	\$613.80
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
7896	25DF131	3687624	10:02:39 PM	12.22	MN12	\$82.50	\$1,008.15
7897	25DF171	3687625	11:00:16 PM	13.11	MN07	\$82.50	\$1,081.58
7898	25DC261	3687626	11:13:49 PM	11.64	MN07	\$82.50	\$960.30
Sub Totals				1,744.51			\$143,922.08
Work Date: xx/xx/xx							
7796	23W 001	3687625	12:07:03 AM	8.44	MN03	\$82.50	\$696.30
7797	23W 312	3887626	12:08:49 AM	7.21	MN10	\$82.50	\$594.83
7804	25DC878	3687627	12:10:17 AM	8.00	MN08	\$82.50	\$660.00
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
7896	25DF131	3687624	10:10:09 PM	10.93	MN12	\$82.50	\$901.73
7897	25DF171	3687625	11:05:45 PM	12.42	MN07	\$82.50	\$1,024.65
7898	25DC261	3687626	11:53:49 PM	10.77	MN07	\$82.50	\$888.53
Sub Total				1,689.92			\$139,418.40
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

Part IV: Uncontrollable Circumstance Cost (Section 7.5)

Provide mutually agreed to detailed explanation, calculations, and other supporting information for each Uncontrollable Circumstance

Part V: Additional Amounts Payable (Section 7.6)

Additional Amounts Payable	Amount ^(a)
<input type="checkbox"/> unacceptable Waste (Section 7.6(A))	\$0.00
Designated Wasteshed Damages (Section 7.6(B))	0.00
Other City Non-Performance (Section 7.6(C))	0.00
City Indemnification (Section 7.6(D))	0.00
Annual Adjustments for <input type="checkbox"/> CC Costs (Section 7.6(E))	0.00
Interest Owed for Late Payment (Section 7.6(F))	0.00
Adjustment Mistakes (Section 7.6(G))	0.00
Other Charges (Section 7.6(H))	0.00
Total Additional Amounts Payable	\$0.00

(a) Provide detailed explanations, calculations, and other supporting information for each Additional Amounts Payable. The form of such back-up shall be determined by mutual agreement.

Part VI: Limitation of Liabilities (Section 9.15)

Liabilities Counting Toward Limitation

Port Authority		City	
Prior	\$xxx.xx	Prior	\$xxx.xx
This Month	\$xxx.xx	This Month	\$xxx.xx
Total	\$xxx.xx	Total	\$xxx.xx

Current Limitation of Liability

Base	<input type="checkbox"/> Escalation Factor ^(a)		Current
\$50,000,000.00	1.0966460	<input type="checkbox"/>	\$54,832,300.00

(a) Attach calculation of ☐ Escalation Factor for current Contract Year. ☐ Escalation Factor is rounded to six (6) decimal places.

APPENDIX 4
FORM OF THE CITY INVOICE

APPENDIX 4

FORM OF THE CITY INVOICE

SAMPLE CITY INVOICE LONG-TERM SERVICE PERIOD

PORT AUTHORITY OF NEW YORK AND NEW JERSEY MUNICIPAL SOLID WASTE DISPOSAL ESSEX COUNTY WASTE TO ENERGY FACILITY

Invoice To:
City of New York
Address

Contract No.: xxxxxx
Billing Date: xxxxxx
Invoice No.: xxxxxx
Pin No.: xxxxxx

Invoice Period: December 1, 2012 to December 31, 2012

Summary of the Port Authority Amounts Payable

Port Authority Amounts Payable (Section 7.7)	Amount ^(a)
Wrongfully Rejected Waste (Section 7.7(A))	\$0.00
Non-Compliance with Minimum Processing Obligations (Section 7.7(B))	0.00
Other Port Authority Non-Performance (Section 7.7(C))	0.00
Port Authority Indemnification (Section 7.7(D))	0.00
Annual Adjustment for O&M Costs ^(b) (Section 7.7(E))	0.00
Weigh Scale Malfunction (Section 7.7(F))	0.00
Interest Owed for Late Payment (Section 7.7(G))	0.00
Reimbursable Insurance Proceeds (Section 7.7(H))	0.00
Reimbursable for Cost of Replacement Insurance (Section 7.7(I))	0.00
Damage Adjustment for Periodic Reconciliations (Section 7.7(J))	0.00
Adjustments for Mistakes (Section 7.7(K))	0.00
Other Amounts (Section 7.7(L))	0.00
Total Port Authority Amounts Payable	<u>\$0.00</u>

(a) Provide detailed explanations, calculations, and other supporting information for each Port Authority

Additional Amounts Payable. The form of such back-up shall be determined by mutual agreement.

(b) Only applies during the Long Term Service Period.

APPENDIX 5
FORM OF DELIVERY RECEIPT

**sanitation**

DSNY EXPORT TONNAGE DELIVERY RECEIPT DS 66 (11-08)

VENDOR'S NAME (PRINT)						WEIGHT TYPE	
ADDRESS (SITE)				STATE	ZIP	PHONE NO.	
SCALE NO.	DISTRICT NO.	VEHICLE NO.	LOAD NO.	DATE OUT	TIME OUT	TIME IN	
REFUSE DELIVERED							
MATERIAL TYPE		LADEN WEIGHT (LBS)	UNLADEN WEIGHT (LBS)	NET WEIGHT (LBS)		NET WEIGHT (TONS)	
VENDOR'S REPRESENTATIVE NAME (PRINT)		DRIVER'S NAME (PRINT)			BCC SUPV. NAME (PRINT)		
VENDOR'S REPRESENTATIVE SIGNATURE		DRIVER'S SIGNATURE			BCC SUPV. SIGNATURE		DATE
REMARK							
FOR SANITATION SUPERVISOR		R/L	EZ	RORO	OTHER	DATE COLLECTED	SECTION DISTRICT

WHITE —BWD/EXPORT (HQ)
YELLOW —BCC (DISTRICT)GREEN —BCC (BORO OFFICE)
PINK & GOLD —VENDORDIRECT ALL
CORRESPONDENCE
TO: →NYC Department of Sanitation
Bureau of Waste Disposal
125 Worth Street, Room 723
New York, N.Y. 10013 (646) 885-4700**sanitation**

DSNY EXPORT TONNAGE DELIVERY RECEIPT DS 66 (11-08)

VENDOR'S NAME (PRINT)						WEIGHT TYPE	
ADDRESS (SITE)				STATE	ZIP	PHONE NO.	
SCALE NO.	DISTRICT NO.	VEHICLE NO.	LOAD NO.	DATE OUT	TIME OUT	TIME IN	
REFUSE DELIVERED							
MATERIAL TYPE		LADEN WEIGHT (LBS)	UNLADEN WEIGHT (LBS)	NET WEIGHT (LBS)		NET WEIGHT (TONS)	
VENDOR'S REPRESENTATIVE NAME (PRINT)		DRIVER'S NAME (PRINT)			BCC SUPV. NAME (PRINT)		
VENDOR'S REPRESENTATIVE SIGNATURE		DRIVER'S SIGNATURE			BCC SUPV. SIGNATURE		DATE
REMARK							
FOR SANITATION SUPERVISOR		R/L	EZ	RORO	OTHER	DATE COLLECTED	SECTION DISTRICT

WHITE —BWD/EXPORT (HQ)
YELLOW —BCC (DISTRICT)GREEN —BCC (BORO OFFICE)
PINK & GOLD —VENDORDIRECT ALL
CORRESPONDENCE
TO: →NYC Department of Sanitation
Bureau of Waste Disposal
125 Worth Street, Room 723
New York, N.Y. 10013 (646) 885-4700

APPENDIX 6

SCHEDULE OF CONVENIENCE TERMINATION DATES AND PAYMENTS

Schedule of Convenience Termination Dates and Payments ^(a) ^(b)

Year	January	February	March	April	May	June	July	August	September	October	November	December
2011	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2012	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2013	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2014	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2015	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2016	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2017	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2018	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2019	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2020	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2021	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2022	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2023	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2024	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2025	25,000,000	24,464,286	23,935,026	23,412,220	22,895,869	22,385,972	21,882,530	21,385,542	20,895,009	20,410,929	19,933,305	19,462,134
2026	18,997,418	18,539,157	18,087,349	17,641,997	17,203,098	16,770,654	16,344,664	15,925,129	15,512,048	15,105,422	14,705,250	14,311,532
2027	13,924,269	13,543,460	13,169,105	12,801,205	12,439,759	12,084,768	11,736,231	11,394,148	11,058,520	10,729,346	10,406,627	10,090,361
2028	9,780,551	9,477,194	9,180,293	8,889,845	8,605,852	8,328,313	8,057,229	7,792,599	7,534,423	7,282,702	7,037,435	6,798,623
2029	6,566,265	6,340,361	6,120,912	5,907,917	5,701,377	5,501,291	5,307,659	5,120,482	4,939,759	4,765,491	4,597,676	4,436,317
2030	4,281,411	4,132,960	3,990,964	3,855,422	3,726,334	3,603,701	3,487,522	3,377,797	3,274,527	3,177,711	3,087,349	3,003,442
2031	2,925,990	2,854,991	2,790,448	2,732,358	2,680,723	2,635,542	2,596,816	2,564,544	2,538,726	2,519,363	2,506,454	2,500,000
2032	0	0	0	0	0	0	0	0	0	0	0	0
(a) Payment is determined on the termination date. Termination values are for the first day of each month. The termination payment on other days shall be determined by linear interpolation.												
(b) City will not have a convenience termination option until January 1, 2025												

APPENDIX 7

SAMPLE CALCULATIONS OF GUARANTEED MSW CAPACITY

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APPENDIX 7

GUARANTEED MSW CAPACITY

7.1. EXAMPLE APPLICATIONS OF GUARANTEED MSW CAPACITY

The Guaranteed MSW Capacity is defined in Section 4.4(A) of the Agreement. In particular, the following capacity is being made available to the City:

- (1) 1,800 TPD on each Delivery Day;
- (2) above 1,800 TPD and up to and including 2,500 TPD on not more than 65 Delivery Days per full Contract Year, but:
 - (a) not above 2,250 TPD on more than 15 Delivery Days per full Contract Year; nor
 - (b) above 2,250 TPD on any two consecutive Delivery Days; nor
 - (c) above 2,000 TPD on more than 35 Delivery Days per full Contract Year;
- (3) 10,000 TPW; and
- (4) 500,000 TPY.

To determine which Guaranteed MSW Capacity applies on a particular day refer to Section 4.4(B).

The data in the Exhibit 1 table (provided at the end of this Appendix) are actual tonnages generated in the Designated Wastesheds from January 1, 2007 through and including December 31, 2007. Although the dates in the Exhibit 1 table are chronological, only 26 weeks of data are provided. The actual daily tonnage generated was less than 1,800 for every day in which data is not provided. Every day during calendar year 2007 in which more than 1,800 TPD was generated is shown in the table. This example assumes that all of the tonnage generated in the Designated Wastesheds was delivered to the Mass Burn Facility (or a Substitute Facility to the extent permitted by Section 4.9 of the Agreement).

Every day that exceeded any of the thresholds set forth above is marked with a "1" in the Exhibit 1 table to indicate that a tier capacity day has been used. In the Exhibit 1 table there were only 12 days that exceeded 1,800 TPD, as shown on the bottom of the last page of the example. Of the 12 days that exceeded 1,800 TPD, 10 exceeded 2,000 TPD. Of the 10 days that exceeded 2,000 TPD, 6 exceeded 2,250 TPD. Finally, of the 6 days that exceeded 2,250, 1 day exceeded 2,500 TPD.

In calendar year 2007, fewer than 65 days had waste deliveries that exceeded 1,800 TPD, fewer than 35 exceeded 2,000 TPD, and fewer than 15 exceeded 2,250 TPD. One day, October 10, 2007, however, exceeded 2,500 TPD. If capacity was not available at the Mass Burn Facility as determined by the Operator in its sole discretion, then on that day the Operator would have the right to reject up to 76 Tons, i.e., the tonnage in excess of 2,500 Tons.

For the week beginning on Sunday, March 18, 2007 and ending on Saturday, March 24, 2007, more than 10,000 TPW were generated. If capacity was not available at the Mass Burn Facility

as determined by the Operator in its sole discretion, then the Operator could reject the amount in excess of the 10,000 TPW limit. In this example, this would be 9 Tons.

Assuming the City provided appropriate Operating Notices in accordance with Sections 4.1(F) and 4.4(B) of the Agreement, then the Operator would have been obligated to accept all of the other waste generated in the Designated Wastesheds during calendar year 2007.

The data used in the Exhibit 1 table was modified to illustrate other aspects of the Guaranteed MSW Capacity as shown in Exhibit 2. As with the first example, Exhibit 2 assumes that all of the tonnage generated in the Designated Wastesheds was delivered to the Mass Burn Facility (or a Substitute Facility to the extent permitted by Section 4.9 of the Agreement).

In Exhibit 2 there are 66 days that exceed 1,800 TPD, as shown on the bottom of the last page of the example. Of the 66 days that exceeded 1,800 TPD, 36 exceed 2,000 TPD. Of the 36 days that exceeded 2,000 TPD, 16 exceed 2,250 TPD. Finally, of the 16 days that exceeded 2,250, none exceed 2,500 TPD. None of the deliveries during any week in this example, exceed 10,000 Tons.

The tonnage delivered on both Wednesday, January 3rd and Thursday, January 4th exceeds 2,250 TPD. If capacity was not available at the Mass Burn Facility as determined by the Operator in its sole discretion, then on the second day (January 4th) the Operator would have the right to reject the tonnage in excess of 2,250 Tons (i.e., in this example 124 Tons. Note that the Operator has no rejection rights in the following week (January 7th – January 13th) even though one day was above the 2,250 Tons threshold and the following day was just under the 2,250 Tons threshold and that the total tonnage delivered during this week was greater than the prior week.

In this example, the total tonnage assumed to be generated in the Designated Wastesheds and available for delivery to the Mass Burn Facility exceeds the 500,000 Ton Yearly Guaranteed MSW Capacity. Therefore, if capacity was not available at the Mass Burn Facility as determined by the Operator in its sole discretion, then the Operator could reject any delivery after the 500,000 Ton Yearly Guaranteed MSW Capacity limit was reached. In this example, as much as 5,955 Tons could be rejected toward the end of the Contract Year, i.e., after December 26th. In this example, the Daily Guaranteed MSW Capacity for December 28th through December 31st will be zero.

Now assume the total tonnage accepted prior to December 27th is only 483,288 Tons, well below the Yearly Guaranteed MSW Capacity of 500,000 Tons. Then on December 27th, given that the City had 2,499 Tons available for delivery, if accepted by the Operator, would result in a 16th Tier 3 Capacity Day (this would also be the 35th Tier 2 Capacity Day and the 65th Tier 1 Capacity Day, both of which are below the maximum for a Contract Year). Therefore, if capacity was not available at the Mass Burn Facility as determined by the Operator in its sole discretion, then the Operator could reject the amount in excess of the 2,250 Tons. In this example, this would be 249 Tons.

Furthermore, on December 28th the City had 2,106 Tons available for delivery, which if accepted by the Operator would result in a 36th Tier 2 Capacity Day and the 66th Tier 1 Capacity Day. Therefore, if capacity was not available at the Mass Burn Facility as determined by the Operator in its sole discretion, then the Operator could reject the amount in excess of the 1,800 Tons. In this example, this would be 306 Tons.

Assuming the City provided appropriate Operating Notices in accordance with Section 4.4 of the Agreement, then for the Operator would have been obligated to accept all of the other waste assumed to be generated in the Designated Wastesheds in Example 2.

7.2. DISPOSAL LIQUIDATED DAMAGES FOR WRONGFULLY REJECTED WASTE

Example 1: Assume the City on a particular Delivery Day delivered 1,580 Tons to the Mass Burn Facility.

If the Operator accepted all the tonnage delivered, then there would be no Wrongfully Rejected Waste and no Disposal Liquidated Damages.

If the Operator wrongfully rejected two Collection Vehicles, then the Disposal Liquidated Damages due the City would be two (2) times \$200.00 times the Escalation Factor applicable for that Contract Year.

Example 2: Assume the City did not give an Operating Notice indicating that it expected to deliver more than 1,800 Tons on a particular Delivery Day and delivered 2,289.5 Tons from the Designated Wastesheds. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available to use and did not deliver more than 2,250 Tons on the previous day.

If the Operator accepted all the tonnage delivered, then there would be no wrongfully rejected Waste and no Disposal Liquidated Damages. In this case the City would use a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

If the Operator accepted 2,230.7 Tons and wrongfully rejected six Collection Vehicles with an aggregate tonnage of 58.8 Tons, then the Disposal Liquidated Damages due the City would be six (6) times \$200.00 times the Escalation Factor applicable for that Contract Year. In this case the City would use a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Example 3: Assume the City did not give an Operating Notice indicated that it expected to deliver more than 1,800 Tons on a particular Delivery Day and the City delivered 2,240.6 Tons from the Designated Wastesheds and another 48.9 Tons from outside the Designated Wastesheds. The total tonnage delivered to the Mass Burn Facility is 2,289.5, i.e., the same amount as assumed in example 1. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available for use and did not deliver more than 2,250 Tons on the previous day.

If the Operator accepted all the tonnage delivered, then there would be no Wrongfully Rejected Waste and no Disposal Liquidated Damages. In this case the City would use a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Assume the Operator accepted 2,230.7 Tons and rejected six Collection Vehicles with an aggregate tonnage of 58.8 Tons. The 48.9 Tons delivered from outside the Designated Wastesheds is less than the difference between the total number of Tons available for delivery and 1,800 (i.e., $2,289.5 \text{ minus } 1,800 = 489.5$). Therefore, in this example, only 58.8 minus 48.9, or 9.9 Tons, are Wrongfully Rejected Waste. The average number of Tons per Collection Vehicle in this example is 9.8 (58.8 divided by 6). Therefore, the number of Collection Vehicles wrongfully rejected is 9.9 divided by 9.8, or 1.01 Collection Vehicles and the Disposal Liquidated Damages due the City would be 1.01 times \$200.00 times the Escalation Factor applicable for that Contract Year. In this case the City would use a Tier 1 Capacity Day and Tier 2 Capacity Day. A Tier 3 Capacity Day is not used because the sum of the 2,230.7 Tons accepted and 9.9 Tons of Wrongfully Rejected Waste is less than 2,250.

Now assume that 703.5 Tons were delivered from outside the Designated Wastesheds and the Operator accepted 1,779.4 Tons and rejected 50 Collections Vehicles with an aggregate tonnage

of 510.1 during this Operation Day. In this case 489.5 Tons (i.e., the difference between the 2,289.5 Tons available for delivery and 1,800 Tons) is less than the 510.1 Tons not accepted by the Operator. Therefore, in this example, the Operator had the right to reject 489.5 Tons and only 20.6 Tons are Wrongfully Rejected Waste. The average number of Tons per Collection Vehicle in this example is 10.21 (510.1 divided by 50). Therefore, the number of Collection Vehicles wrongfully rejected is 20.6 divided by 10.21, or 2.02 Collection Vehicles and the Disposal Liquidated Damages due the City would be 2.02 times \$200.00 times the Escalation Factor applicable for that Contract Year. Furthermore, the City did not use any of the tiered capacity days because only 1,779.4 Tons were accepted.

On the other hand, if the City gave an Operating Notice that it expected to deliver more than 1,800 but less than or equal to 2,000 Tons on that Operating Day, then the City would use a Tier 1 Capacity Day. Delivering such an Operating Notice in this example does not affect the calculation above of the amount of Wrongfully Rejected Waste.

Example 4: Assume the City did not give an Operating Notice indicating that it expected to deliver more than 1,800 Tons on a particular Delivery Day and the City delivered 2,260.6 Tons from the Designated Wastesheds. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available to use and delivered more than 2,250 but less than or equal to 2,500 Tons on the previous day.

Further, assume the Operator accepted 2,253.5 Tons and rejected one Collection Vehicle containing 7.1 Tons. Because, in this example, this was the second consecutive day that the Operator accepted more than 2,250 Tons there are no Disposal Liquidated Damages (see Section 9.2(D)(4)(a)). In this case the City would use a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Example 5: Assume the City gave an Operating Notice indicating that it expected to deliver up to 2,500 Tons on a particular Delivery Day and delivered 2,050.5 Tons from the Designated Wastesheds. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available to use and did not deliver more than 2, 250 Tons on the previous day.

If the Operator accepted all the tonnage delivered, then there would be no Wrongfully Rejected Waste and no Disposal Liquidated Damages. Because, in this example, the City gave an Operating Notice indicating that it expected to deliver up to 2,500 Tons, the City would use up a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

If the Operator accepted 1,991.1 Tons and wrongfully rejected six (6) Collection Vehicles with an aggregate tonnage of 59.4 Tons, then the Disposal Liquidated Damages due the City would be six (6) times \$200.00 times the Escalation Factor applicable for that Contract Year. Because, in this example, the City gave an Operating Notice indicating that it expected to deliver up to 2,500 Tons, the City would use up a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Example 6: Assume the City gave an Operating Notice indicating that it expected to deliver up to 2,250 Tons on a particular Delivery Day and delivered 2,289.5 Tons from the Designated Wastesheds. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available to use and did not deliver more than 2, 250 Tons on previous day.

If the Operator accepted all the tonnage delivered, then there would be no Wrongfully Rejected Waste and no Disposal Liquidated Damages. Because, in this case, the actual tonnage accepted is greater than 2,250 Tons, the City would use up a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Assume the Operator accepted 2,268.4 Tons and rejected two (2) Collection Vehicles containing a total of 21.1 Tons during the Delivery Day. If the rejection occurred prior to the Operator accepting 2,250 Tons, then the rejected Collection Vehicles and tonnage would be wrongfully rejected (unless caused by an Uncontrollable Circumstance) even though the Operator accepted more than 2,250 Tons during the day. In this case the Operator would owe Disposal Liquidated Damages equal to two (2) times \$200.00 times the Escalation Factor applicable for that Contract Year. On the other hand, if the Operator rejected the two (2) Collection Vehicles after it had already accepted at least 2,250 Tons because the Operator did not have the capacity at the Mass Burn Facility, as determined by the Operator in its sole discretion, then the rejection would not be a Wrongfully Rejected Waste and no Disposal Liquidated Damages would be due. In either of these two cases in this paragraph because the actual tonnage accepted is greater than 2,250 Tons, the City would use up a Tier 1 Capacity Day, a Tier 2 Capacity Day and a Tier 3 Capacity Day.

Example 7: Assume the City gave an Operating Notice indicating that it expected to deliver up to 2,250 Tons on a particular Delivery Day and delivered 2,289.5 Tons from the Designated Wastesheds. Furthermore, the City had at least one Tier 1 Capacity Day, Tier 2 Capacity Day and Tier 3 Capacity Day available to use and did not deliver more than 2, 250 Tons on previous day.

Assume the Operator accepted 2,230.1 Tons and rejected six (6) Collection Vehicles containing a total of 59.4 Tons during the Delivery Day. Of this amount only 19.9 Tons (i.e., 2,250 minus 2,230.1) would be wrongfully rejected and the balance of 39.5 Tons would not be wrongfully rejected provided the Company did not have available capacity to accept the additional rejected tonnage. In this cases the City would use up a Tier 1 Capacity Day and a Tier 2 Capacity Day.

The average number of Tons per Collection Vehicle in this example is 9.90 (59.4 divided by 6). Therefore, the number of Collection Vehicles wrongfully rejected is 19.9 divided by 9.90, or 2.01 Collection Vehicles and the Operator would owe Disposal Liquidated Damages equal to 2.01 times \$200.00 times the Escalation Factor applicable for that Contract Year.

Example 8: Assume the City delivered during a week the following: Monday – 2,182.1 Tons; Tuesday – 2,453.9 Tons; Wednesday – 1,400.0 Tons; Thursday – 1,281.7 Tons; Friday 1,427.3 Tons and Saturday 1,290.2 Tons. The total tonnage delivered for this week is 10,035.2 Tons. Further assume that: (a) the City gave an Operating Notice that it expected to deliver up to 2,250 Tons on Monday and up to 2,500 Tons on Tuesday; (b) the Operator accepted all the waste delivered on Monday and Tuesday; and (c) the City had at least two Tier 1 Capacity Day and Tier 2 Capacity Days and at least one Tier 3 Capacity Day available to use prior to the beginning of the week.

If the Operator accepted all the tonnage delivered, then there would be no Wrongfully Rejected Waste and no Disposal Liquidated Damages.

Assume the Operator accepted 10,014.1 Tons and rejected two (2) Collection Vehicles containing a total of 21.1 Tons during the week, then: (a) If the rejections occurred on Wednesday, Thursday or Friday, then the rejected Collection Vehicles and tonnage would be Wrongfully Rejected Waste (unless caused by an Uncontrollable Circumstance) even though the Operator accepted more than 10,000 Tons during the week; (b) If the Operator rejected the two (2) Collection Vehicles on Saturday prior to accepting at least 10,000 Tons, then the rejections would also be Wrongfully Rejected Waste; and (c) If the Operator rejected the two (2) Collection Vehicles on Saturday after it had already accepted at least 10,000 Tons because the Operator did not have the capacity at the Mass Burn Facility, as determined by the Operator in its sole discretion, then the rejection would not be Wrongfully Rejected Waste and no Disposal Liquidated Damages would be due. For cases (a) and (b) in this paragraph, the Operator would owe Disposal Liquidated Damages equal to two (2) times \$200.00 times the Escalation Factor

applicable for that Contract Year. If one Collection Vehicle was rejected prior to the acceptance of 10,000 Tons and the other after the acceptance of 10,000 Tons, then only one Collection Vehicle would be wrongfully rejected.

Example 9: Assume the City delivered and the Operator accepted 500,000 Tons prior to December 31st of a Contract Year. In this case after the acceptance of the 500,000 Tons, the Operator will have the right to reject Collection Vehicles during the remainder of the Contract Year provided the Operator did not have the capacity to accept the Collection Vehicle at the Mass Burn Facility, as determined by the Operator in its sole discretion. Any such rejections, no matter how many would not be Wrongfully Rejected Waste and no Disposal Liquidated Damages would be due.

Please note that the examples in this Section would still apply if MSW was properly diverted by the City before being delivered to the Mass Burn Facility.

7.3. DESIGNATED WASTESHED DAMAGES FOR CITY FAILURE TO MEET ITS DELIVERY OBLIGATIONS

Assume an MSW Delivery shortfall of 45.7 Tons during an Invoice Period, then the City will be assessed Designated Wasteshed Damages.

If the Service Fee per Ton that otherwise would have been payable by the City was \$93.42 and the tipping fees paid by entities who deliver Solid Waste to the Mass Burn Facility pursuant to a short-term agreement (agreements with a term of not more than 90 days) or a daily rate was \$82.30, then the Designated Wasteshed Damages would be:

$$(\$93.42 - 0.85 \times \$82.30) \times 45.7 = \$23.47 \times 45.7 = \$1,072.35.$$

In this example, if the City delivers an MSW Delivery surplus of at least 45.7 Tons during the reconciliation period associated with this Invoice Period, then the Port Authority will reimburse the City all of the Designated Wasteshed Damages paid. If the MSW Delivery surplus during the reconciliation period associated with this Invoice is less than the MSW Delivery shortfall, then the Port Authority shall reimburse the City for a portion of the Designated Wasteshed Damages based on the MSW Delivery surplus. Assume, for example, there was a 32.1 Ton MSW Delivery surplus during the reconciliation period, then, if the Designated Wasteshed Damages were already paid, the Port Authority would reimburse the City an amount equal to:

$$\$23.47 \times 32.1 = \$753.23.$$

If the Designated Wasteshed Damages were not previously paid, then this amount would no longer be due by the City.

If the Service Fee per Ton that otherwise would have been payable by the City was \$67.60 and the tipping fees paid by entities who deliver Solid Waste to the Mass Burn Facility pursuant to a short-term agreement (agreements with a term of not more than 90 days) or a daily rate was \$82.30, then there would be no Designated Wasteshed Damages because the difference between (a) \$67.60 and (b) 85% of \$82.30 is negative.

EXHIBITS

Exhibit 1

EXHIBIT 1									
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier Capacity Days (Section 4.4(B))					
				Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, December 31, 2006									
Monday, January 01, 2007	439								
Tuesday, January 02, 2007	1,236								
Wednesday, January 03, 2007	2,157			1	1				
Thursday, January 04, 2007	2,024			1	1				
Friday, January 05, 2007	1,308								
Saturday, January 06, 2007	1,351	8,515							
Sunday, January 07, 2007									
Monday, January 08, 2007	1,414								
Tuesday, January 09, 2007	1,772								
Wednesday, January 10, 2007	1,419								
Thursday, January 11, 2007	1,214								
Friday, January 12, 2007	1,277								
Saturday, January 13, 2007	1,184	8,280							
Sunday, January 14, 2007									
Monday, January 15, 2007	1,170								
Tuesday, January 16, 2007	1,351								
Wednesday, January 17, 2007	1,718								
Thursday, January 18, 2007	1,128								
Friday, January 19, 2007	1,139								
Saturday, January 20, 2007	1,243	7,749							
Sunday, January 21, 2007									
Monday, January 22, 2007	1,477								
Tuesday, January 23, 2007	1,502								
Wednesday, January 24, 2007	1,374								
Thursday, January 25, 2007	1,109								
Friday, January 26, 2007	1,114								
Saturday, January 27, 2007	1,181	7,757							
Sunday, January 28, 2007									
Monday, January 29, 2007	1,406								
Tuesday, January 30, 2007	1,500								
Wednesday, January 31, 2007	1,310								
Thursday, February 01, 2007	1,167								
Friday, February 02, 2007	1,087								
Saturday, February 03, 2007	1,227	7,697							
Sunday, February 04, 2007									
Monday, February 05, 2007	1,263								
Tuesday, February 06, 2007	1,605								
Wednesday, February 07, 2007	1,245								
Thursday, February 08, 2007	1,228								
Friday, February 09, 2007	1,157								
Saturday, February 10, 2007	975	7,473							
Sunday, February 11, 2007									
Monday, February 12, 2007	455								
Tuesday, February 13, 2007	1,637								
Wednesday, February 14, 2007	1,205								
Thursday, February 15, 2007	569								
Friday, February 16, 2007	1,319								
Saturday, February 17, 2007	2,389	7,574		1	1	1			

Exhibit 1 (continued)

EXHIBIT 1									
Date	Tier Capacity Days (Section 4.4(B))								
	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, February 18, 2007	112								
Monday, February 19, 2007	1,464								
Tuesday, February 20, 2007	1,442								
Wednesday, February 21, 2007	1,510								
Thursday, February 22, 2007	1,127								
Friday, February 23, 2007	1,266								
Saturday, February 24, 2007	1,420	8,341							
Sunday, February 25, 2007									
Monday, February 26, 2007	1,148								
Tuesday, February 27, 2007	1,748								
Wednesday, February 28, 2007	1,496								
Thursday, March 01, 2007	1,244								
Friday, March 02, 2007	1,279								
Saturday, March 03, 2007	1,339	8,254							
Sunday, March 04, 2007									
Monday, March 05, 2007	1,516								
Tuesday, March 06, 2007	1,499								
Wednesday, March 07, 2007	1,355								
Thursday, March 08, 2007	1,039								
Friday, March 09, 2007	1,332								
Saturday, March 10, 2007	1,200	7,941							
Sunday, March 11, 2007									
Monday, March 12, 2007	1,301								
Tuesday, March 13, 2007	1,607								
Wednesday, March 14, 2007	1,498								
Thursday, March 15, 2007	1,281								
Friday, March 16, 2007	488								
Saturday, March 17, 2007	120	6,295							
Sunday, March 18, 2007									
Monday, March 19, 2007	2,182			1	1				
Tuesday, March 20, 2007	2,453			1	1	1			
Wednesday, March 21, 2007	1,400								
Thursday, March 22, 2007	1,257								
Friday, March 23, 2007	1,427								
Saturday, March 24, 2007	1,290	10,009						1	
Sunday, May 27, 2007									
Monday, May 28, 2007	517								
Tuesday, May 29, 2007	1,229								
Wednesday, May 30, 2007	2,338			1	1	1			
Thursday, May 31, 2007	1,279								
Friday, June 01, 2007	1,505								
Saturday, June 02, 2007	1,354	8,222							
Sunday, July 01, 2007									
Monday, July 02, 2007	1,361								
Tuesday, July 03, 2007	1,563								
Wednesday, July 04, 2007	589								
Thursday, July 05, 2007	1,073								
Friday, July 06, 2007	1,891			1					
Saturday, July 07, 2007	1,461	7,938							

Exhibit 1 (continued)

EXHIBIT 1				Tier Capacity Days (Section 4.4(B))					
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, August 19, 2007									
Monday, August 20, 2007	1,231								
Tuesday, August 21, 2007	1,512								
Wednesday, August 22, 2007	1,370								
Thursday, August 23, 2007	1,230								
Friday, August 24, 2007	1,162								
Saturday, August 25, 2007	1,403	7,908							
Sunday, August 26, 2007									
Monday, August 27, 2007	1,374								
Tuesday, August 28, 2007	1,529								
Wednesday, August 29, 2007	1,402								
Thursday, August 30, 2007	1,143								
Friday, August 31, 2007	1,338								
Saturday, September 01, 2007	1,184	7,970							
Sunday, September 02, 2007									
Monday, September 03, 2007	528								
Tuesday, September 04, 2007	1,385								
Wednesday, September 05, 2007	2,371			1	1	1			
Thursday, September 06, 2007	1,427								
Friday, September 07, 2007	1,229								
Saturday, September 08, 2007	1,499	8,439							
Sunday, October 07, 2007									
Monday, October 08, 2007	568								
Tuesday, October 09, 2007	1,109								
Wednesday, October 10, 2007	2,576			1	1	1	1		
Thursday, October 11, 2007	1,358								
Friday, October 12, 2007	1,566								
Saturday, October 13, 2007	1,221	8,398							
Sunday, November 04, 2007									
Monday, November 05, 2007	1,349								
Tuesday, November 06, 2007	602								
Wednesday, November 07, 2007	1,162								
Thursday, November 08, 2007	2,021			1	1				
Friday, November 09, 2007	1,745								
Saturday, November 10, 2007	1,245	8,124							
Sunday, November 11, 2007									
Monday, November 12, 2007	542								
Tuesday, November 13, 2007	1,498								
Wednesday, November 14, 2007	2,309			1	1	1			
Thursday, November 15, 2007	1,470								
Friday, November 16, 2007	1,455								
Saturday, November 17, 2007	1,195	8,469							
Sunday, November 18, 2007									
Monday, November 19, 2007	1,624								
Tuesday, November 20, 2007	1,579								
Wednesday, November 21, 2007	1,396								
Thursday, November 22, 2007	548								
Friday, November 23, 2007	1,521								
Saturday, November 24, 2007	1,588	8,256							

Exhibit 1 (continued)

EXHIBIT 1				Tier Capacity Days (Section 4.4(B))					
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, November 25, 2007									
Monday, November 26, 2007	1,536								
Tuesday, November 27, 2007	1,899			1					
Wednesday, November 28, 2007	1,532								
Thursday, November 29, 2007	1,166								
Friday, November 30, 2007	1,627								
Saturday, December 01, 2007	1,281	9,041							
Sunday, December 02, 2007									
Monday, December 03, 2007	1,436								
Tuesday, December 04, 2007	1,614								
Wednesday, December 05, 2007	1,561								
Thursday, December 06, 2007	1,403								
Friday, December 07, 2007	1,274								
Saturday, December 08, 2007	1,345	8,633							
Sunday, December 09, 2007									
Monday, December 10, 2007	1,293								
Tuesday, December 11, 2007	1,728								
Wednesday, December 12, 2007	1,382								
Thursday, December 13, 2007	1,189								
Friday, December 14, 2007	1,555								
Saturday, December 15, 2007	1,164	8,311							
Sunday, December 16, 2007									
Monday, December 17, 2007	1,253								
Tuesday, December 18, 2007	1,621								
Wednesday, December 19, 2007	1,581								
Thursday, December 20, 2007	1,261								
Friday, December 21, 2007	1,247								
Saturday, December 22, 2007	1,388	8,351							
Sunday, December 23, 2007									
Monday, December 24, 2007	1,495								
Tuesday, December 25, 2007	542								
Wednesday, December 26, 2007	1,312								
Thursday, December 27, 2007	1,739								
Friday, December 28, 2007	1,606								
Saturday, December 29, 2007	1,472	8,166							
Sunday, December 30, 2007									
Monday, December 31, 2007	1,258		428,025						
SUMMARY EXAMPLE 1	Thresholds			1,800	2,000	2,250	2,500	10,000	500,000
	Number of day exceeded Threshold			12	10	6	1	1	0

Exhibit 2

EXHIBIT 2									
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, December 31, 2006									
Monday, January 01, 2007	439								
Tuesday, January 02, 2007	1,236								
Wednesday, January 03, 2007	2,457			1	1	1			
Thursday, January 04, 2007	2,374			1	1	1			
Friday, January 05, 2007	1,308								
Saturday, January 06, 2007	1,351	9,165							
Sunday, January 07, 2007									
Monday, January 08, 2007	1,414								
Tuesday, January 09, 2007	690								
Wednesday, January 10, 2007	2,469			1	1	1			
Thursday, January 11, 2007	2,249			1	1				
Friday, January 12, 2007	1,277								
Saturday, January 13, 2007	1,184	9,283							
Sunday, January 14, 2007									
Monday, January 15, 2007	1,170								
Tuesday, January 16, 2007	2,351			1	1	1			
Wednesday, January 17, 2007	1,718								
Thursday, January 18, 2007	2,128			1	1				
Friday, January 19, 2007	1,139								
Saturday, January 20, 2007	1,243	9,749							
Sunday, January 21, 2007									
Monday, January 22, 2007	1,477								
Tuesday, January 23, 2007	2,452			1	1	1			
Wednesday, January 24, 2007	1,874			1					
Thursday, January 25, 2007	1,109								
Friday, January 26, 2007	1,114								
Saturday, January 27, 2007	1,181	9,207							
Sunday, January 28, 2007									
Monday, January 29, 2007	1,406								
Tuesday, January 30, 2007	1,800			1					
Wednesday, January 31, 2007	1,810			1					
Thursday, February 01, 2007	1,867			1					
Friday, February 02, 2007	1,087								
Saturday, February 03, 2007	1,227	9,197							
Sunday, February 04, 2007									
Monday, February 05, 2007	1,263								
Tuesday, February 06, 2007	1,805			1					
Wednesday, February 07, 2007	1,845			1					
Thursday, February 08, 2007	1,228								
Friday, February 09, 2007	1,157								
Saturday, February 10, 2007	975	8,273							
Sunday, February 11, 2007									
Monday, February 12, 2007	455								
Tuesday, February 13, 2007	1,837			1					
Wednesday, February 14, 2007	1,805			1					
Thursday, February 15, 2007	569								
Friday, February 16, 2007	1,319								
Saturday, February 17, 2007	2,389	8,374		1	1	1			

Exhibit 2 (continued)

EXHIBIT 2									
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, February 18, 2007	112								
Monday, February 19, 2007	1,464								
Tuesday, February 20, 2007	1,842			1					
Wednesday, February 21, 2007	1,810			1					
Thursday, February 22, 2007	1,127								
Friday, February 23, 2007	1,266								
Saturday, February 24, 2007	1,420	9,041							
Sunday, February 25, 2007									
Monday, February 26, 2007	1,148								
Tuesday, February 27, 2007	1,948			1					
Wednesday, February 28, 2007	1,896			1					
Thursday, March 01, 2007	1,244								
Friday, March 02, 2007	1,279								
Saturday, March 03, 2007	1,339	8,854							
Sunday, March 04, 2007									
Monday, March 05, 2007	1,516								
Tuesday, March 06, 2007	1,899			1					
Wednesday, March 07, 2007	1,855			1					
Thursday, March 08, 2007	1,039								
Friday, March 09, 2007	1,332								
Saturday, March 10, 2007	1,200	8,841							
Sunday, March 11, 2007									
Monday, March 12, 2007	1,301								
Tuesday, March 13, 2007	1,807			1					
Wednesday, March 14, 2007	1,898			1					
Thursday, March 15, 2007	1,881			1					
Friday, March 16, 2007	488								
Saturday, March 17, 2007	120	7,495							
Sunday, March 18, 2007									
Monday, March 19, 2007	2,182			1	1				
Tuesday, March 20, 2007	2,453			1	1	1			
Wednesday, March 21, 2007	1,400								
Thursday, March 22, 2007	1,257								
Friday, March 23, 2007	1,417								
Saturday, March 24, 2007	1,290	9,999							
Sunday, May 27, 2007									
Monday, May 28, 2007	517								
Tuesday, May 29, 2007	1,229								
Wednesday, May 30, 2007	2,338			1	1	1			
Thursday, May 31, 2007	1,279								
Friday, June 01, 2007	1,505								
Saturday, June 02, 2007	1,354	8,222							
Sunday, July 01, 2007									
Monday, July 02, 2007	1,861			1					
Tuesday, July 03, 2007	2,163			1	1				
Wednesday, July 04, 2007	589								
Thursday, July 05, 2007	1,073								
Friday, July 06, 2007	2,191			1	1				
Saturday, July 07, 2007	1,461	9,338							

Exhibit 2 (continued)

EXHIBIT 2									
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier Capacity Days (Section 4.4(B))					
				Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, August 19, 2007									
Monday, August 20, 2007	1,931			1					
Tuesday, August 21, 2007	2,112			1	1				
Wednesday, August 22, 2007	2,070			1	1				
Thursday, August 23, 2007	1,230								
Friday, August 24, 2007	1,162								
Saturday, August 25, 2007	1,403	9,908							
Sunday, August 26, 2007									
Monday, August 27, 2007	1,874			1					
Tuesday, August 28, 2007	2,129			1	1				
Wednesday, August 29, 2007	1,902			1					
Thursday, August 30, 2007	1,143								
Friday, August 31, 2007	1,338								
Saturday, September 01, 2007	1,184	9,570							
Sunday, September 02, 2007									
Monday, September 03, 2007	528								
Tuesday, September 04, 2007	1,885			1					
Wednesday, September 05, 2007	2,371			1	1	1			
Thursday, September 06, 2007	2,027			1	1				
Friday, September 07, 2007	1,229								
Saturday, September 08, 2007	1,499	9,539							
Sunday, October 07, 2007									
Monday, October 08, 2007	568								
Tuesday, October 09, 2007	1,109								
Wednesday, October 10, 2007	2,496			1	1	1			
Thursday, October 11, 2007	1,358								
Friday, October 12, 2007	1,566								
Saturday, October 13, 2007	1,221	8,318							
Sunday, November 04, 2007									
Monday, November 05, 2007	1,849			1					
Tuesday, November 06, 2007	602								
Wednesday, November 07, 2007	2,012			1	1				
Thursday, November 08, 2007	2,021			1	1				
Friday, November 09, 2007	2,245			1	1				
Saturday, November 10, 2007	1,245	9,974							
Sunday, November 11, 2007									
Monday, November 12, 2007	542								
Tuesday, November 13, 2007	1,898			1					
Wednesday, November 14, 2007	2,309			1	1	1			
Thursday, November 15, 2007	1,870			1					
Friday, November 16, 2007	1,855			1					
Saturday, November 17, 2007	1,195	9,669							
Sunday, November 18, 2007									
Monday, November 19, 2007	2,324			1	1	1			
Tuesday, November 20, 2007	2,079			1	1				
Wednesday, November 21, 2007	1,896			1					
Thursday, November 22, 2007	548								
Friday, November 23, 2007	1,521								
Saturday, November 24, 2007	1,588	9,956							

Exhibit 2 (continued)

EXHIBIT 2				Tier Capacity Days (Section 4.4(B))					
Date	Daily Tonnage	Weekly Tonnage	Annual Tonnage	Tier 1 1800 tpd	Tier 2 2000 tpd	Tier 3 2250 tpd	Max. 2500 tpd	Weekly 10,000	Annual 500,000
Sunday, November 25, 2007									
Monday, November 26, 2007	1,536								
Tuesday, November 27, 2007	1,899			1					
Wednesday, November 28, 2007	2,032			1	1				
Thursday, November 29, 2007	1,166								
Friday, November 30, 2007	2,027			1	1				
Saturday, December 01, 2007	1,281	9,941							
Sunday, December 02, 2007									
Monday, December 03, 2007	2,036			1	1				
Tuesday, December 04, 2007	2,114			1	1				
Wednesday, December 05, 2007	1,821			1					
Thursday, December 06, 2007	2,403			1	1	1			
Friday, December 07, 2007	274								
Saturday, December 08, 2007	1,345	9,993							
Sunday, December 09, 2007									
Monday, December 10, 2007	1,293								
Tuesday, December 11, 2007	2,460			1	1	1			
Wednesday, December 12, 2007	2,082			1	1				
Thursday, December 13, 2007	1,189								
Friday, December 14, 2007	1,555								
Saturday, December 15, 2007	1,164	9,743							
Sunday, December 16, 2007									
Monday, December 17, 2007	1,253								
Tuesday, December 18, 2007	2,021			1	1				
Wednesday, December 19, 2007	2,481			1	1	1			
Thursday, December 20, 2007	1,261								
Friday, December 21, 2007	1,247								
Saturday, December 22, 2007	1,388	9,651							
Sunday, December 23, 2007									
Monday, December 24, 2007	1,495								
Tuesday, December 25, 2007	542								
Wednesday, December 26, 2007	1,812			1					
Thursday, December 27, 2007	2,499			1	1	1			
Friday, December 28, 2007	2,106			1	1				
Saturday, December 29, 2007	1,472	9,926							
Sunday, December 30, 2007									
Monday, December 31, 2007	1,258		505,955						1
SUMMARY	Thresholds			1,800	2,000	2,250	2,500	10,000	500,000
EXAMPLE 2	Number of day exceeded Threshold			66	36	16	0	0	1

APPENDIX 8
SAMPLE SERVICE FEE CALCULATIONS

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APPENDIX 8

EXAMPLE SERVICE FEE CALCULATIONS

Example Service Fee calculations pursuant to Article VII of the Agreement are presented herein. These examples are presented to illustrate the methods and procedures used to determine the Service Fee and are not calculations of the actual Service Fee.

Some of the assumptions used for these examples are provided in Exhibit A at the end of this appendix.

8.1. SERVICE FEE DURING THE INTERIM SERVICE PERIOD

During the Interim Service Period, the Service Fee is calculated in accordance with the following formula:

$$SF = DC + AA$$

$$DC = UDC \times T$$

Where

SF = Service Fee

DC = Disposal Charge

AA = Additional Amounts Payable

UDC = Unit Disposal Charge

T = Tons of Accepted Waste

- A. Unit Disposal Charge During the Interim Period (UDC). During the Interim Service Period, the Unit Disposal Charges are:

Service Contract Date through December 31, 2012	\$67.60
January 1, 2013 through December 31, 2013	\$68.90
January 1, 2014 through December 31, 2014	\$70.20

- B. Additional Amounts Payable During the Interim Service Period (AA). During the Interim Service Period, the City shall pay to the Port Authority, Additional Amounts Payable made pursuant to Section 7.7 (but excluding those Additional Amounts Payable set forth in subsection 7.7(E)).
- C. Port Authority Amounts Payable. In addition, during the Interim Service Period the Port Authority may owe the City an amount equal to the Port Authority Amounts Payable pursuant to Section 7.8 (but excluding those Port Authority Amounts Payable set forth in subsections 7.8(E) and 7.8(H)). The City's right to offset against the Service Fee the Port Authority Amounts Payable is governed by Section 7.11 of the Agreement.

8.1.1 EXAMPLE 1: INTERIM SERVICE PERIOD - SERVICE FEE FOR JUNE 2012

The results of Example 1 are provided in Table 1. This example assumes a Service Date of June 11, 2012 and that there are no Additional Amounts Payable. The Disposal Charge for June 2012, assuming that 34,459.0 Tons were delivered and accepted from June 11, 2012 through June, 30, 2012, is equal to \$67.60 (the Unit Disposal Charge applicable from the Service Contract Date through and including December 31, 2012) times 34,459.0, or \$2,329,428.40.

Since it is assumed there are no Additional Amounts Payable, this is also the value for the Service Fee.

Table 1
Interim Service Period - Service Fee for June 2012

Invoice Period (Month)	Symbol	Jun
		06/11/2012-06/30/2012
		Partial Month
Tons of Accepted Waste	T	34,459.0
Unit Disposal Charge	UDC	\$67.60
Disposal Charge	DC	\$2,329,428.40
Additional Amount Payable	AA	\$0.00
Service Fee	SF	\$2,329,428.40

8.1.2 EXAMPLE 2: INTERIM SERVICE PERIOD - SERVICE FEE FOR DECEMBER 2013

The results of Example 2 are provided in Table 2. This example assumes that 40,835.7 Tons were delivered and accepted from December 1, 2013 through and including December 31, 2013. The Unit Disposal Charge in December 2013 is \$68.90 per Ton, therefore, the Disposal Charge for that period is equal to \$68.90 times 40,835.7, or \$2,813,579.73 (as shown in Table 2). This example also assumes that there are no Additional Amounts Payable, therefore, the Service Fee is equal to \$2,813,579.73.

Table 2
Interim Service Period - Service Fee for December 2013

Invoice Period (Month)	Symbol	Dec
		12/1/13-12/31/13
Tons of Accepted Waste	T	40,835.7
Unit Disposal Charge	UDC	\$68.90
Disposal Charge	DC	\$2,813,579.73
Additional Amount Payable	AA	\$0.00
Service Fee	SF	\$2,813,579.73

8.2. SERVICE FEE DURING THE LONG-TERM SERVICE PERIOD

During the Long-Term Service Period the Service Fee is calculated in accordance with the following formula:

$$SF = DC + UCC + AA$$

$$DC = UDC \times T$$

$$UDC = \$82.50 \times DCEF$$

Where

SF	=	Service Fee
DC	=	Disposal Charge
UCC	=	Uncontrollable Circumstance Costs
AA	=	Additional Amounts Payable
UDC	=	Unit Disposal Charge
DCEF	=	Disposal Charge Escalation Factor
T	=	Tons of Accepted Waste

8.2.1 EXAMPLE 3: LONG-TERM SERVICE PERIOD - SERVICE FEE FOR JANUARY 2015

The results of Example 3 are provided in Table 3. This example illustrates how the Service Fee is calculated during the first year of the Long-Term Service Period that begins on January 1, 2015. This example assumes there are no Additional Amounts Payable and Uncontrollable Circumstance costs.

Because the Disposal Charge Escalation Factor is not applied until January 1, 2016, the Long-Term Service Period Unit Disposal Charge on January 1, 2015 will be \$82.50/Ton.

Assuming that 34,535.1 Tons were delivered and accepted from January 1, 2015 through and including January 31, 2015, then the Disposal Charge for January 2015 in this example is equal to \$82.50 times 34,535.1, or \$2,849,145.75 (as shown in the table below for Example 3). Since this example assumes there are no Additional Amounts Payable and Uncontrollable Circumstance costs this is also the value for the Service Fee.

Table 3
Long-Term Service Period - Service Fee for January 2015

Invoice Period (Month)	Symbol	Jan
		1/1/2015
Tons of Accepted Waste	T	34,535.1
Unit Disposal Charge	UDC	\$82.50
Disposal Charge	DC	\$2,849,145.75
Uncontrollable Circumstance Cost	UCC	\$0.00
Additional Amount Payable	AA	\$0.00
Service Fee	SF	\$2,849,145.75

8.2.2 EXAMPLE 4: LONG-TERM SERVICE PERIOD - SERVICE FEE FOR MARCH AND APRIL 2016 (INCLUDES EXAMPLE OF A PORT AUTHORITY AMOUNTS PAYABLE (DISPOSAL LIQUIDATED DAMAGES))

The results of this Example are provided in Table 4.

The Unit Disposal Charge is subject to escalation (or de-escalation) starting in January 2016. The Disposal Charge Escalation Factor (DCEF), which may be either a positive or negative number, is equal to the sum of (x), (y) and (z) below:

- (x) fifty percent (50%) of a fraction, the numerator of which is the CPI-U for the month of June in the calendar year in which

DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the CPI-U for the month of June 2014; plus

(y) thirty percent (30%) of a fraction, the numerator of which is the PPIFG for the month of June in the calendar year in which DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFG for the month of June 2014; plus

(z) twenty percent (20%) of a fraction, the numerator of which is the PPIFSMP for the month of June in the calendar year in which DCEF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFSMP for the month of June 2014.

Since the value of DCEF applicable in January 2016 is calculated in 2015, the numerators used for determining DCEF are values of the indices in June 2015.

As shown in the tables in Exhibit A, the values of these indices are assumed to be in June 2014 and June 2015, respectively: (a) CPI-U – 266.443 and 274.063; PPIFG – 200.3 and 204.8; PPIFSMP – 228.6 and 234.6. For this example, the Disposal Charge Escalation Factor for the calendar year beginning on January 1, 2016 is:

$$\text{DCEF} = (.50) \times (274.063/266.443) + (.30) \times (204.8/200.3) + (.20) \times (234.6/228.6) = 1.026289.$$

The Unit Disposal Charge for January 1, 2016 through December 31, 2016 would be:

$$\$82.50 \times 1.026289 = \$84.67.$$

When making this calculation the value of DCEF is rounded to six (6) decimal places and the Unit Disposal Charge is rounded to the nearest penny.

In this example, the Disposal Charge in March 2016 is \$3,680,393.23, which is equal to the assumed tonnage of 43,467.5 times the Unit Disposal Charge of \$84.67. The Disposal Charge in April 2016 is \$2,986,082.29, which is equal to the assumed tonnage of 35,267.3 times the Unit Disposal Charge of \$84.67.

Now assume that in April 2016, in addition to accepting 35,267.3 Tons, the Port Authority wrongfully rejected two City Collection Vehicles. In accordance with Section 9.2(D) of the Agreement the Disposal Liquidated Damages is equal to the number of wrongfully rejected City Collection Vehicles times \$200 times the Escalation Factor.

The Escalation Factor, which may be either a positive or negative number, is equal to the sum of (x), (y) and (z) below:

(x) fifty percent (50%) of a fraction, the numerator of which is the CPI-U for the month of June in the calendar year in which EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the CPI-U for the month of June 2011; plus

(y) thirty percent (30%) of a fraction, the numerator of which is the PPIFG for the month of June in the calendar year in which

EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFG for the month of June 2011; plus

(z) twenty percent (20%) of a fraction, the numerator of which is the PPIFSMP for the month of June in the calendar year in which EF is calculated (to be applied with respect to the immediately succeeding Contract Year), and the denominator of which is the PPIFSMP for the month of June 2011.

The Escalation Factor applicable to a Contract Year (and to each Invoice Period within the Contract Year) shall be determined prior to the beginning of such Contract Year and shall remain in effect unchanged for the full Contract Year.

As shown in the tables in Exhibit A the values of these indices are assumed to be in June 2011 and June 2015, respectively: (a) CPI-U – 248.505 and 274.063; PPIFG – 191.4 and 204.8; PPIFSMP – 212.3 and 234.6. For this example, the Escalation Factor for the calendar year beginning on January 1, 2016 is:

$$EF = (.50) \times (274.063/248.505) + (.30) \times (204.8/191.4) + (.20) \times (234.6/212.3) = 1.093435.$$

The Disposal Liquidated Damages unit cost for January 1, 2016 through December 31, 2016 would be:

$$\$200.00 \times 1.093435 = \$218.69.$$

When making this calculation the value of EF is rounded to six (6) decimal places and the Disposal Liquidated Damages unit cost is rounded to the nearest penny.

Therefore, the Disposal Liquidated Damages in this example is \$218.69 times 2, or \$437.38, which is the Port Authority Amounts Payable shown in Table 4.

Since in this example, values of UCC and AA are each assumed to be equal to zero, the amount owed by the City is equal to \$2,986,082.29 offset (if the Port Authority is not disputing the amount) by the Port Authority Amounts Payable of \$437.38, or \$2,985,644.91. If the Port Authority disputes its liability for the \$437.38, that amount will not be offset in the Service Fee but will be billed to the Port Authority in a City Invoice.

Table 4
Long-Term Service Period - Service Fee for March and April 2016

Invoice Period (Month)	Symbol	Mar	Apr
		3/1/2016 - 3/31/16	4/1/2016 - 4/30/16
Tons of Accepted Waste	T	43,467.5	35,267.3
Unit Disposal Charge	UDC	\$84.67	\$84.67
Disposal Charge	DC	\$3,680,393.23	\$2,986,082.29
Uncontrollable Circumstance Cost	UCC	\$0.00	\$0.00
Additional Amount Payable	AA	\$0.00	\$0.00
Service Fee	SF	\$3,680,393.23	\$2,986,082.29
Port Authority Amount Payable - Offset ^(a)			(\$437.38)
Net Amount Due the Port Authority			\$2,985,644.91

(a) If not contested.

8.2.3 EXAMPLE 5: LONG-TERM SERVICE PERIOD - SERVICE FEE FOR JUNE 2017 (INCLUDES EXAMPLE OF DESIGNATED WASTESHED DAMAGES)

The results of this Example are provided in Table 5.

As shown in the tables in Exhibit A the indices used to calculate DCEF for 2017 are assumed to be in June 2014 and June 2016, respectively: (a) CPI-U – 266.443 and 281.901; (b) PPIFG – 200.3 and 209.6; and (c) PPIFSMP – 228.6 and 240.6. For this example, the Disposal Charge Escalation Factor for the Contract Year beginning on January 1, 2017 is:

$$\text{DCEF} = (.50) \times (281.901/266.443) + (.30) \times (209.6/200.3) + (.20) \times (240.6/228.6) = 1.053436.$$

The Unit Disposal Charge for January 1, 2017 through December 31, 2017 would be:

$$\$82.50 \times 1.053436 = \$86.91.$$

This example assumes that the City wrongfully diverted two (2) trucks containing an aggregate 20.5 tons of Acceptable Waste collected in the Designated Wasteshed to another disposal location. In this case, the Port Authority was able to mitigate the loss of tons, but to do so had to lower the tip fee to \$40.00/ton.

In this example, the City would incur Designated Wasteshed Damages in this Invoice Period of \$1,084.66, i.e.,

$$\$1,084.66 = 20.5 \times (\$86.91 - (0.85 \times \$40.00)).$$

See Table 5 table below.

Table 5
Long-Term Service Period - Service Fee for June 2017
(with example of Designated Wasteshed Damages)

Invoice Period (Month)	Symbol	Jun
		6/1/2017 - 6/30/2017
Tons of Accepted Waste	T	45,310.9
Unit Disposal Charge	UDC	86.91
Disposal Charge	DC	\$3,937,970.32
Uncontrollable Circumstance Cost	UCC	\$0.00
Additional Amount Payable	AA	\$1,084.66
Service Fee	SF	\$3,939,054.98

8.3. INSTALLATION OF BAGHOUSE

In accordance with Section 8.6(C) of the Service Fee the City's obligation for UCC Costs attributable to the Additional Capital Investment required attributable to the installation of a Baghouse is calculated based on the formula set forth in subsection 8.6(B) and will not exceed \$3.11 per Ton of MSW, such amount to be increased annually by the Escalation Factor.

In this example, first assume:

1. The Service Commencement Date is June 11, 2012;
2. The Baghouse becomes operational on June 11, 2015, therefore, there are 17 years from the time the Baghouse became operational and the end of the Term;
3. No permanent change in the Processing Capacity;
4. The Additional Capital Cost Investment of the Baghouse is \$30 million dollars,
5. The interest at a rate equal to the average of the 25 Revenue Bond Index as published in *The Bond Buyer* (or if such index is no longer published, a substantially equivalent published index selected by the Port Authority after consultation with the City) for the six-week period prior to the date of the determination of the Event Response Measure in accordance with Section 8.4 is 5.0%; and
6. The useful life of the Baghouse is 30 years.

In this case the UCC Costs Per Ton would be \$2.70 as shown in the table below.

Parameter	Cost
Additional Capital Investment	\$30,000,000
Baseline Processing Capacity	985,000
Useful Life	17
Interest Rate	5.00%
Annual Amortization	\$2,660,974.25
Cost per Ton	\$2.70

In this example, since the expected useful life of the Baghouse is expected to be greater than the 17 year remaining Term, the amortization period is 17 years. The annual amortization is calculated as:

$$\$30,000,000 \times (.05 / (1 - 1 / (1.05)^{17})) = \$2,660,974.25.$$

Since it is assumed there is no permanent change in the Processing Capacity the UCC Costs Per Ton is $\$2,660,974.25 / 985,000 = \$2.70/\text{Ton}$.

The Escalation Factor for 2012 is (see Appendix A for assumed index values):

$$EF = (.50) \times (266.443 / 248.505) + (.30) \times (200.3 / 191.4) + (.20) \times (228.6 / 212.3) = 1.065397.$$

The cap on the UCC Costs Per Ton payable by the City for the Baghouse would be:

$$\$3.11 \times 1.065397 = \$3.31.$$

When making this calculation the value of EF is rounded to six (6) decimal places and the cap on the UCC Costs Per Ton is rounded to the nearest penny.

Since the UCC Costs Per Ton of \$2.70 is less than City cap of \$3.31/Ton, the City in this example would pay additional UCC Costs for the Baghouse of \$2.70/Ton for the balance of the Term.

Now assume the Additional Capital Cost Investment of the Baghouse is \$40 million dollars and all the other assumptions remain unchanged. In this case the UCC Costs Per Ton would be \$3.60 as shown in the table below.

Parameter	Cost
Additional Capital Investment	\$40,000,000
Baseline Processing Capacity	985,000
Useful Life	17
Interest Rate	5.00%
Annual Amortization	\$3,547,965.67
Cost per Ton	\$3.60

In this example, since the expected useful life of the Baghouse is expected to be greater than the 17 year remaining Term, the amortization period is 17 years. The annual amortization is calculated as:

$$\$40,000,000 \times (.05 / (1 - 1 / (1.05)^{17})) = \$3,547,965.67.$$

Since it is assumed there is no permanent change in the Processing Capacity the UCC Costs Per Ton is $\$3,547,965.67 / 985,000 = \$3.60/\text{Ton}$.

Since the City cap of \$3.31/Ton is less than the UCC Costs Per Ton of \$3.60, the City would only, in this example, pay additional UCC Costs for the Baghouse of \$3.31/Ton for the balance of the Term.

EXHIBIT A

Assumed CPI-U

Consumer Price Index - All Urban Consumers		50.0%									
Area:	New York-Northern New Jersey-Long Island, NY-NJ-CT-PA										
Series Id:	CUURA101SA0										
Not Seasonally Adjusted											
Area:	New York-Northern New Jersey-Long Island, NY-NJ-CT-PA										
Item:	All items										
Base Period:	1982-84=100										
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Jan	233.402	238.970	242.639	249.322	256.009	263.331	270.862	278.608	286.576	294.772	303.202
Feb	234.663	238.862	243.832	250.285	256.611	263.951	271.499	279.263	287.250	295.465	303.915
Mar	235.067	240.101	245.617	250.064	257.215	264.572	272.138	279.920	287.926	296.160	304.630
Apr	235.582	240.529	246.489	250.652	257.820	265.194	272.778	280.579	288.603	296.857	305.347
May	235.975	241.075	248.073	251.242	258.427	265.818	273.420	281.239	289.282	297.555	306.065
Jun	237.172	240.817	248.505	251.833	259.035	266.443	274.063	281.901	289.963	298.255	306.785
Jul	237.600	241.147	249.164	252.425	259.644	267.070	274.708	282.564	290.645	298.957	307.507
Aug	238.282	241.569	250.058	253.019	260.255	267.698	275.354	283.229	291.329	299.660	308.230
Sep	238.568	241.485	250.559	253.614	260.867	268.328	276.002	283.895	292.014	300.365	308.955
Oct	238.380	241.981	250.051	254.211	261.481	268.959	276.651	284.563	292.701	301.072	309.682
Nov	238.777	241.960	249.317	254.809	262.096	269.592	277.302	285.232	293.390	301.780	310.411
Dec	238.427	241.874	248.307	255.408	262.713	270.226	277.954	285.903	294.080	302.490	311.141
Annual	236.825	240.864	247.718	252.240	259.348	266.765	274.394	282.241	290.313	298.616	307.156
HALF1	235.310	240.059	245.859	250.566	257.520	264.885	272.460	280.252	288.267	296.511	304.991
HALF2	238.339	241.669	249.576	253.914	261.176	268.646	276.329	284.231	292.360	300.721	309.321

Assumed PPIFG

Producer Price Index-Commodities											
Item:	Finished goods										
Series Id:	WPUSOP3000										
	Not Seasonally Adjusted										
Group:	Stage of processing										
Item:	Finished goods										
Base Date:	198200										
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Jan	170.4	178.0	184.4	191.6	195.2	198.8	202.8	207.6	212.4	217.2	222.0
Feb	169.9	177.0	186.6	191.9	195.5	199.1	203.2	208.0	212.8	217.6	222.4
Mar	169.1	179.1	189.1	192.2	195.8	199.4	203.6	208.4	213.2	218.0	222.8
Apr	170.3	179.5	191.4	192.5	196.1	199.7	204.0	208.8	213.6	218.4	223.2
May	171.1	179.8	192.5	192.8	196.4	200.0	204.4	209.2	214.0	218.8	223.6
Jun	174.3	179.0	191.4	193.1	196.7	200.3	204.8	209.6	214.4	219.2	224.0
Jul	172.4	179.5	192.2	193.4	197.0	200.6	205.2	210.0	214.8	219.6	224.4
Aug	174.2	179.9	191.7	193.7	197.3	200.9	205.6	210.4	215.2	220.0	224.8
Sep	173.2	180.0	192.5	194.0	197.6	201.2	206.0	210.8	215.6	220.4	225.2
Oct	173.8	181.2	191.9	194.3	197.9	201.6	206.4	211.2	216.0	220.8	225.6
Nov	175.7	181.6	192.0	194.6	198.2	202.0	206.8	211.6	216.4	221.2	226.0
Dec	176.0	182.6	191.3	194.9	198.5	202.4	207.2	212.0	216.8	221.6	226.4
Annual	172.5	179.8	190.6	193.3	196.9	200.5	205.0	209.8	214.6	219.4	224.2

Assumed PPIFSMP

Producer Price Index-Commodities											
Item:	Fabricated structural metal products										20.0%
Series Id:	WPU107										
Not Seasonally Adjusted											
Group:	Metals and metal products										
Item:	Fabricated structural metal products										
Base Date:	198200										
Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Jan	211.5	197.2	205.3	214.2	220.1	226.1	232.1	238.1	244.1	250.1	256.1
Feb	207.8	197.9	206.5	214.6	220.6	226.6	232.6	238.6	244.6	250.6	256.6
Mar	206.3	198.8	208.7	215.1	221.1	227.1	233.1	239.1	245.1	251.1	257.1
Apr	203.4	200.1	211.2	215.6	221.6	227.6	233.6	239.6	245.6	251.6	257.6
May	201.4	201.8	211.5	216.1	222.1	228.1	234.1	240.1	246.1	252.1	258.1
Jun	199.7	201.9	212.3	216.6	222.6	228.6	234.6	240.6	246.6	252.6	258.6
Jul	197.8	202.3	213.3	217.1	223.1	229.1	235.1	241.1	247.1	253.1	259.1
Aug	197.5	203.2	213.2	217.6	223.6	229.6	235.6	241.6	247.6	253.6	259.6
Sep	197.1	202.5	213.0	218.1	224.1	230.1	236.1	242.1	248.1	254.1	260.1
Oct	197.5	202.3	213.7	218.6	224.6	230.6	236.6	242.6	248.6	254.6	260.6
Nov	197.0	202.1	213.7	219.1	225.1	231.1	237.1	243.1	249.1	255.1	261.1
Dec	196.9	202.8	213.8	219.6	225.6	231.6	237.6	243.6	249.6	255.6	261.6
Annual	201.2	201.1	211.4	216.9	222.9	228.9	234.9	240.9	246.9	252.9	258.9