

AMENDED WASTE HANDLING AGREEMENT

BETWEEN

CITY OF SACO

AND

MAINE ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP

Dated: January 1, 2002

Final Amended N  
(3/8/02 12:21)

## TABLE OF CONTENTS

ARTICLE ONE.	DEFINITIONS	4
ARTICLE TWO.	REPRESENTATIONS AND WARRANTIES	7
ARTICLE THREE.	OPERATION OF THE FACILITY	8
ARTICLE FOUR.	WEIGHING	10
ARTICLE FIVE.	DELIVERY OF WASTE TO COMPANY	10
ARTICLE SIX.	DETERMINATION OF TIPPING FEE	11
ARTICLE SEVEN.	TERM OF AGREEMENT	12
ARTICLE EIGHT.	UNACCEPTABLE, DISCRETIONARY AND SPECIAL WASTE	12
ARTICLE NINE.	DISPOSAL OF RESIDUE AND WASTE	13
ARTICLE TEN.	HAULER REGULATIONS	13
ARTICLE ELEVEN.	DAMAGE OR DESTRUCTION, CONDEMNATION, TERMINATION OF OPERATIONS	13
ARTICLE TWELVE.	FORCE MAJEURE	14
ARTICLE THIRTEEN.	SHUTDOWNS	15
ARTICLE FOURTEEN.	ASSIGNMENT OR TRANSFER OF THE FACILITY	15
ARTICLE FIFTEEN.	HEALTH STUDY	16
ARTICLE SIXTEEN.	DEFAULT	16
ARTICLE SEVENTEEN.	ADVISORY COMMITTEE	17
ARTICLE EIGHTEEN.	DISPUTE RESOLUTION	18
ARTICLE NINETEEN.	SPECIAL INDUCEMENTS	19
ARTICLE TWENTY.	WAIVER OF CANCELLATION PAYMENT AND ELIMINATION OF RIGHTS TO ADJUSTMENTS	20
ARTICLE TWENTY-ONE.	APPLICABLE LAW	20
ARTICLE TWENTY-TWO.	AGREEMENT AMENDMENT	20
ARTICLE TWENTY-THREE.	SEVERABILITY	20
ARTICLE TWENTY-FOUR.	RELATIONSHIP OF THE PARTIES	20
ARTICLE TWENTY-FIVE.	COOPERATION OF THE PARTIES	20
ARTICLE TWENTY-SIX.	REPRESENTATIVES	20
ARTICLE TWENTY-SEVEN.	NOTICES	20
ARTICLE TWENTY-EIGHT.	GOOD FAITH, BINDING EFFECT AND LIMITATION OF LIABILITIES	21
ARTICLE TWENTY-NINE.	OTHER DOCUMENTS	21
ARTICLE THIRTY.	HEADINGS	21
ARTICLE THIRTY-ONE.	COUNTERPARTS	21
ARTICLE THIRTY-TWO.	INTEGRATIONS	21
ARTICLE THIRTY-THREE.	CONSENTS	21
ARTICLE THIRTY-FOUR.	SPECIAL COVENANTS	21
EXHIBIT A	IMPACT PROTOCOLS	23
EXHIBIT B	CHARTER MUNICIPALITIES	

This Amended Waste Handling Agreement (hereinafter the "Amended Agreement") is entered into in the State of Maine by and between the City of Saco, Maine a municipal corporation, 300 Main Street, Saco, Maine (hereinafter "SACO") and Maine Energy Recovery Company, Limited Partnership, a Maine limited partnership, Suite 1308, 110 Main Street, Saco, Maine (hereinafter "COMPANY");

WITNESSETH:

WHEREAS, COMPANY owns a waste-to-energy facility (hereinafter "the Facility") located within the City of BIDDEFORD, Maine; and

WHEREAS, SACO and COMPANY, hereinafter referred to as "the Parties", together with the City of BIDDEFORD and the Biddeford-Saco Solid Waste Committee, executed a certain Waste Handling Agreement dated June 7, 1991 with respect to the disposal of solid waste and the operation of said Facility, (hereinafter the "1991 Contract"), which Contract will expire in June, 2007; and

WHEREAS, the 1991 Contract, specifically Article 26, permits SACO and COMPANY to amend the 1991 Contract as it relates to them; and

WHEREAS, the Parties desire to amend their contractual obligations going forward but not alter, amend or modify any rights or obligations running between COMPANY and the City of BIDDEFORD and the Biddeford-Saco Solid Waste Committee arising under the 1991 Contract; and

WHEREAS, SACO as one of the Host Communities of the Facility and its residents are directly affected by the operation of the Facility, including its sound, traffic, odor and emissions; and

WHEREAS, SACO has notified COMPANY of the need to address these issues and of SACO's desire to increase its compensation for the burdens of serving as a Host Community, and to have a long-term reduced tipping fee that extends beyond the expiration of the 1991 Contract; and

WHEREAS, SACO believes COMPANY has not complied with certain requirements of the 1991 Contract and that such actions might constitute independent tort or contract claims including claims for punitive damages, but which allegations COMPANY has vigorously denied; and

WHEREAS, COMPANY desires a release for itself and others as against all claims asserted by SACO, and the Parties intend to effectuate such a release by separate writing; and

WHEREAS, both SACO and COMPANY have negotiated concerning these issues and additional matters; and

WHEREAS, both SACO and COMPANY desire for COMPANY to manage and operate the Facility in the most prudent and most environmentally sound manner possible; and

WHEREAS, COMPANY is willing to make concessions and special arrangements provided herein in order to establish a mutually beneficial, cooperative, long term and peaceable relationship that will promote it and the Communities' common interests; and

WHEREAS, SACO and COMPANY desire to develop positive working relationships and to better integrate COMPANY as a corporate citizen into the Communities; and

WHEREAS, in recognition of the special relationship between COMPANY and SACO, this Amended Agreement includes provisions which are special to SACO and which are not included in waste disposal agreements of COMPANY with other municipalities, including but not limited to long-term reduced tipping fees; and

WHEREAS, all necessary actions by SACO's governing body and COMPANY required to approve and authorize the execution and delivery of this Amended Agreement have been taken and this Amended Agreement is being entered into by COMPANY and SACO.

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter set forth, SACO and COMPANY do hereby agree that as between them only, but not as to the City of BIDDEFORD and the Biddeford-Saco Solid Waste Committee, the 1991 Contract (which continues to have replaced the Agreement for Waste Disposal Facility dated December 7, 1983 and the Amendment to Agreement for Waste Disposal Facility dated October 30, 1985) is herein and hereafter amended as follows and that, except as otherwise specifically set forth herein, in the event of any conflict between the provisions of this Amended Agreement and the provisions of the 1991 Contract, as between SACO and COMPANY only, the provisions of this Amended Agreement shall govern and control.

## ARTICLE ONE. DEFINITIONS

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

1. Acceptable Waste. Wastes which must be accepted at the Facility, including ordinary household, municipal, institutional, commercial and industrial wastes, which consist primarily of combustible materials and which are not Unacceptable Waste (as hereinafter defined) or Discretionary Waste (as hereinafter defined) except, if they have been fully reduced to a size no larger than one foot square, the following Discretionary Wastes will be accepted at the Facility if permitted by COMPANY's Facility licenses and permits:
  - a. Mattresses
  - b. Stumps
  - c. Stuffed furniture
  - d. Wood
  - e. Building materials (excluding non-combustible materials including drywall and asphalt shingles)
  - f. Rugs, carpet and carpet underlayment
  - g. Combustible demolition and construction debris
2. Agreement. This Amended Agreement as it may be supplemented from time to time.
3. Advisory Committee. A special committee established to monitor certain matters relating to the operation of the Facility and compliance with this Amended Agreement, all as more fully set forth in Article Seventeen (17).
4. Affiliate. An entity (including a parent or subsidiary) which controls or is controlled by COMPANY, or which is under common control, i.e., controlled by the same entity which controls COMPANY, whether the control is by stock ownership, membership, partnership interest, contract, management or other arrangement which amounts to power to direct management or policies.
5. Best Available Control Technology. Certain equipment, materials and processes which can be reasonably employed at the Facility to limit adverse environmental effects.
6. Binding Decision. A decision by the Advisory Committee on a Contract Matter or on any other issue or matter mutually agreed to in writing by COMPANY and SACO.
7. Change in Law. The promulgation, adoption, enactment or change in any law, code, ordinance, rule or regulation of the City of Biddeford or the City of Saco, any administrative or regulatory agency of either of them, including, without limitation, the Zoning Board of Appeals and Planning Board, which occurs subsequent to October 29, 2001 and affects the construction, ownership, operation, use or maintenance of the Facility, the Site, the delivery or disposal of Waste, or the disposal of Residue.
8. Charter Municipalities. Those Municipalities set forth in Exhibit B.
9. Commercial Contract. An agreement having an initial or renewal term of one (1) year or more between COMPANY and a non-municipal entity, other than an Affiliate of the COMPANY, by which COMPANY is obligated to provide waste processing capacity at the Facility for Acceptable Waste.
10. COMPANY. Maine Energy Recovery Company, Limited Partnership, a Maine limited partnership, or any successor thereto or assignee thereof as permitted by this Amended Agreement.
11. Contract Matter. An issue or dispute under this Amended Agreement or the Impact Protocols.
12. CPI. The Consumer Price Index for "all urban consumers" (Boston average, all items, 1982-1984=100) as published monthly by the Bureau of Labor Statistics in a report currently entitled "CPI Detailed Report". If this Index ceases to be available at some time in the future, a comparable Index will be designated by COMPANY and SACO following consultation.
13. CPI Adjustment. The amount by which certain Tipping Fees and other amounts set forth within this Amended Agreement will be adjusted on an annual basis. The CPI Adjustment shall be calculated as of July 1<sup>st</sup> of each Operating Year by multiplying the applicable Tipping Fee or other cost (as set forth later herein) by eighty percent (80%) of the change in the reported CPI from July 1<sup>st</sup> of the prior year through July 1<sup>st</sup> of the current year; restated differently but intending the same result, the CPI Adjustment shall be made by increasing or decreasing, as the case may be, the applicable Tipping Fee or other cost by eighty percent (80%) of the percentage increase or decrease in the reported CPI from July 1<sup>st</sup> of the prior Operating Year to the same date (July 1<sup>st</sup>) in the current Operating Year; provided, however, the calculation as of July 1, 2003 shall measure the change in CPI from the Effective Date.
14. Delivery Hours. The hours per day Monday through Saturday (as further set forth in the Impact Protocols), during which deliveries of Acceptable Waste may be accepted at the Facility. COMPANY may suspend Delivery Hours due to Shutdowns, emergencies, unsafe conditions or lawful governmental orders to do so.
15. Discretionary Waste. Wastes, not otherwise defined as "Acceptable Waste" or "Unacceptable Waste", which COMPANY may accept, at its sole discretion, but which it is not otherwise obligated to accept for processing and disposal, including:
  - a. Demolition or construction debris
  - b. Tree stumps

- c. Brown goods (stereos, TVs, misc. electronics) other than those commonly disposed of in ordinary household Waste, if included in the small amounts customarily found in Waste from residential sources, or so long as the disposal and processing of such material by COMPANY at the Facility is permitted by, and will not cause or result in COMPANY being in violation of, applicable laws, statutes, rules, regulations and orders of any and all governmental entities having jurisdiction over COMPANY and/or the Facility.
  - d. Box springs, bedsprings, mattresses
  - e. White goods
  - f. Stuffed furniture
  - g. Fish nets
  - h. Wire rope, cable and banding metal
  - i. Carpets, rugs and underlayment
  - j. Rope (fibre) greater than 6 feet in length
  - k. Hoses greater than 6 feet in length
  - l. Wood greater than 24 inches in any direction
  - m. Wire fencing
  - n. Magnetic computer tape
  - o. Rolled material (e.g., rolled roofing) of any tube length exceeding a rolled diameter of 4 inches.
  - p. Other waste which in the good faith judgment of COMPANY (a) could reasonably be expected to cause jam-ups, slowdowns, stoppage, failure or damage to Facility, or (b) could reasonably be expected to cause adverse consequences to Facility or its operation because of excessive moisture, high non-combustible content or similar reasons, or (c) is an item similar in kind or effect to those enumerated above.
16. Effective Date. The date this Amended Agreement becomes effective. This Amended Agreement becomes effective on the date on or before September 30, 2002 that SACO notifies COMPANY that SACO agrees to be bound by the Amended Agreement.
  17. Facility. COMPANY's waste-to-energy facility and ancillary facilities located on the Site in Biddeford, Maine as presently constituted as of the date of this Amended Agreement, together with any ancillary facilities which may hereafter be acquired and/or constructed by COMPANY on the Site and used for, or in conjunction with, the processing of Acceptable Waste and the production of energy.
  18. Force Majeure. With regard to the performance of any obligation under this Amended Agreement, events such as an act of God, act of public enemy, sabotage, wars, blockade, insurrection, riots, explosions, fires, floods, storm, lightning, earthquake, wind, ice, perils of the sea, strikes, lockouts or other industrial disturbances, drought, appropriation and other causes not reasonably within the control of either party.
  19. Guaranteed Annual Tonnage. The number of Tons of Acceptable Waste which SACO, subject to Force Majeure, is obligated to deliver to the Facility during an Operating Year. SACO's Guaranteed Annual Tonnage shall be 10,000 Tons per Operating Year.
  20. Guaranteed Plant Capacity Share. The maximum number of Tons of Waste which COMPANY, subject to Force Majeure, is required to accept from SACO during an Operating Year. SACO shall have an initial Guaranteed Plant Capacity Share of 24,000 Tons per Operating Year, which may be modified as provided in Article Five (5) Section C.
  21. Hauler. Any entity or person delivering Waste to the Facility on behalf of SACO or others, and shall include SACO and its agents or employees when delivering its own waste.
  22. Hazardous Waste. Waste with inherent properties which make such waste dangerous to manage by ordinary means, including, but not limited to, chemicals, explosives, Pathological Waste, radioactive wastes, toxic wastes and other materials or wastes defined as hazardous, or which if were processed at the Facility would be deemed hazardous, at any time during the term of this Amended Agreement by the State of Maine or under the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state laws, regulations, orders or other actions promulgated or taken at any time and from time to time.
  23. Health Study. A report prepared pursuant to, and further detailed in, Article 15 of this Amended Agreement.
  24. Impact Protocols. Those procedures, rules, regulations, etc. adopted by COMPANY and SACO, set forth in Exhibit A attached and made a part hereof, as amended, supplemented or replaced from time to time.
  25. Life of the Facility. The period of time in which the Facility continues to process, transfer, recycle or dispose of waste.
  26. Municipal Contract. An agreement having an initial or renewal term of one (1) year or more between COMPANY and any Municipality by which COMPANY is obligated to provide waste processing capacity at the Facility for Acceptable Waste.
  27. Municipality. A city, town, district, interlocal corporation or other entity having governmental powers in respect of the collection and disposal of Waste, including without limitation the power to levy and collect taxes to pay its obligations under a Waste Handling Agreement.
  28. Odor Reduction System. A certain 2.5 million dollar physical upgrade of the Facility developed by Aquest Company and others to reduce odors produced from inside the Facility from escaping Facility, and which improvements include associated piping, conduits, fans, blowers, stacks and chemical agents have been installed, subject to further modification.

29. Operating and Maintenance Agreement. The Operating and Maintenance Agreement dated as of December 1, 1990 between COMPANY and KTI Operations, Inc. as amended, supplemented, assigned or replaced from time to time.
30. Operating Month. A calendar month.
31. Operating Year. A twelve (12) month period beginning July 1 of one calendar year and concluding June 30 in the next calendar year.
32. Operator. The person operating and maintaining the Facility for COMPANY pursuant to the Operating and Maintenance Agreement.
33. Party or Parties. The City of SACO, a municipal corporation located at 300 Main Street, Saco, Maine and Maine Energy Recovery Company, Limited Partnership, a Maine limited partnership, with a principal place of business at Suite 1308, 110 Main Street, Saco, Maine.
34. Pathological Waste. Waste consisting of (1) human and animal remains, body parts, tissues, organs, blood, excretes, secretions or body fluids, and/or so-called "red bag" or "biomedical" wastes, or (2) any and all "infectious waste", which term shall include, but not be limited to, (a) waste which contains any disease producing or carrying material, agent or organism, (b) isolation wastes, cultures and stocks of etiological agents, (c) waste generated by surgery or autopsy performed on any human or animal, (d) sharps, dialysis waste and any wastes that were in contact with pathogens, (e) waste biologicals (e.g., vaccines) produced by pharmaceutical companies for human or veterinary use, (f) food, equipment, equipment parts and other products contaminated with etiological agents, (g) animal bedding and other wastes that were in contact with diseased or laboratory research animals, (h) equipment, instruments, utensils and fomites that were in contact with persons or animals who are suspected to have or have been diagnosed as having a communicable disease, (i) laboratory wastes such as pathological specimens and disposable fomites attendant thereto, and (j) any disease causing material, including but not limited to material defined as a "Hazardous Substance" or similarly under current or future federal or state law as a result of being classified an "etiologic agent". Pathological Waste shall be defined as all of the above whether or not such waste has been pretreated in any manner, including but not limited to autoclaving, irradiating, microwaving, sanitizing or disinfecting, it being the express intent of the Parties that no such waste, pre-treated or otherwise, shall be processed or disposed of at the Facility. Tissues, diapers, sanitary napkins, kitty litter and similar items commonly disposed of in ordinary household Waste will not be deemed to be Pathological Waste if included in the small amounts customarily found in Waste from residential sources so long as the disposal and processing of such material by COMPANY at the Facility is permitted by, and will not cause or result in COMPANY being in violation of, applicable laws, statutes, rules, regulations, permits and orders of any and all governmental entities having jurisdiction over COMPANY and/or the Facility. Pathological Waste shall not include those small amounts of medical waste generated exclusively by residential waste generators and placed in the waste stream in accordance with regulations adopted by the Maine Department of Environmental Protection.
35. Person or persons. Any individual, corporation, partnership, joint venture, association, joint stock company, trust company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.
36. Residue. Materials, residues and by-products derived from the acceptance and processing of Waste and combustion of refuse-derived fuel at the Facility. Materials, residues and by-products from processing include, but are not limited to RDF, a nonprocessable fraction, a noncombustible fraction (glass, grit, organics), a non-ferrous fraction and a ferrous fraction. Materials, residues and by-products of combustion include but are not limited to, bottom ash, fly ash, lime, scrubber reagents and retained moisture from the ash quenching process and dust control.
37. Review Committee. The Committee formed pursuant to Article VII of the 1991 Contract.
38. Shutdown. A temporary cessation of operation of the Facility resulting from any event, other than a Force Majeure event, which prevents or limits the Facility from accepting Waste for a limited period of time.
39. Shutdown Waste. All Acceptable Waste which cannot be accepted at the Facility for processing during a Shutdown, but which COMPANY otherwise would be required to accept at the Facility during the period of time constituting said Shutdown.
40. Site. The real property and any and all rights and/or interests in real property upon which the Facility is located on Lincoln and Pearl Streets, Biddeford, Maine.
41. Special Waste. That waste defined in 38 M.R.S.A. Section 1303-C (34), as amended from time to time.
42. State. The State of Maine.
43. Termination of All Operations. The voluntary or involuntary cessation of waste processing, recycling, transfer, and disposal at the Facility with no intention or no capacity on part of COMPANY, or its successors and/or assigns, to resume operations.
44. Tipping Fee. The payments required to be made under this Amended Agreement by SACO to COMPANY for accepting and processing Waste at the Facility, which Tipping Fees are calculated by multiplying the Tipping Rate by the Tons of Waste delivered or which should have been delivered to the Facility on behalf of SACO.
45. Tipping Rate. The price SACO will pay per Ton for Waste delivered or which should have been delivered under this Amended Agreement as further defined in Article Six (6).
46. Ton. A quantity of 2,000 pounds. For purposes of this Amended Agreement Tons shall be calculated to one hundredth of a Ton.

47. Unacceptable Waste. Wastes which may not be delivered nor processed at the Facility as listed below:
  - a. Abandoned or junk vehicles, trailers, boats, or agricultural equipment
  - b. Any waste deemed unacceptable for processing at the Facility by federal or state laws, regulations, rules or orders
  - c. Automobile or other batteries
  - d. Biomedical wastes
  - e. Firearms, ammunition and explosives
  - f. Hazardous wastes
  - g. Liquid wastes or sludge
  - h. Pathological wastes
  - i. Propane tanks
  - j. Putrefied wastes
  - k. Radioactive wastes
  - l. Septage
  - m. Special Wastes subject to those conditions set forth to Article Eight (8) Subarticle F
  - n. Tannery or sewer sludge
  - o. Waste oil or solvents not otherwise permitted by the Maine Department of Environmental Protection
  - p. Municipal wastewater treatment plant residues and/or sludge
  - q. Waste not otherwise permitted under the COMPANY's licenses or permits
48. Waste. All personal property discarded for being of little use or useless.
49. Waste Handling Agreement. A Municipal Contract or Commercial Contract as defined herein.
50. Waste Processing Capacity. The amount of Tonnage the Facility may accept, process and dispose of under this Agreement or any other. For the purposes of this Agreement, the Parties agree the total Waste Processing Capacity of the Facility shall be 310,000 Tons in any Operating Year. The Parties agree the 310,000 Tons is based on material delivered to the Facility.
51. 1991 Contract. The Waste Handling Agreement among the City of BIDDEFORD, the City of SACO, the Biddeford-Saco Solid Waste Committee and the COMPANY dated June 7, 1991, as heretofore amended and referred to above (hereinafter the "1991 Contract").

## ARTICLE TWO. REPRESENTATIONS AND WARRANTIES

- A. COMPANY warrants and represents to SACO the following as of the date of this Agreement:
  1. COMPANY is a limited partnership duly organized and validly existing under the laws of the State of Maine; is in good standing and authorized to do business under the laws of the State of Maine; and has full power and authority to execute, deliver and perform this Amended Agreement in accordance with its terms. COMPANY is comprised of one General Partner, KTI Environmental Group, Inc., and two Limited Partners, KTI Environmental Group, Inc. and KTI Specialty Waste Services, Inc.
  2. The execution and delivery of this Amended Agreement has been duly authorized by all appropriate partnership actions and this Amended Agreement constitutes the legal, valid and binding obligation of COMPANY.
  3. The execution, delivery and performance of this Amended Agreement will not (i) violate any provision of law or any order of any court or other agency of government applicable to COMPANY or (ii) conflict with, result in a breach of, or constitute a default under any material indenture, agreement or other instrument to which COMPANY is now a party.
  4. Subject to scheduled and unscheduled maintenance requirements, (i) the Facility, taken as a whole, is in good operating order and condition and (ii) the COMPANY believes that such order and condition will continue for the foreseeable future.
  5. COMPANY represents that completion of the Odor Reduction System retrofit will help protect against violations of the Impact Protocols with respect to odor.
  6. With respect to the ownership and operation of the Facility, the COMPANY has all permits, certificates, licenses, approvals, consents and other authorizations required by law.
  7. COMPANY does not intend to enter into Municipal Contracts or Commercial Contracts after the date of this Amended Agreement which contain Tipping Rates more favorable than those offered herein, but if COMPANY does do so, COMPANY will provide SACO with matching favorable Tipping Rates.
  8. COMPANY represents it has secured, and can provide if requested, written consents from any and all lenders and financial institutions necessary to amend the 1991 Contract and enter into this Amended Agreement.
  9. At the time of execution of this Amended Agreement, COMPANY shall provide SACO an opinion of its legal counsel as to parts 1, 2 and 8 of this Subarticle.
  10. COMPANY warrants it has one (1) contractual agreement in force regarding the delivery and disposal of Special Waste, said contract dated 1/29/01 by and between COMPANY and United Industrial Services.
- B. SACO warrants and represents to COMPANY the following:
  1. The execution and delivery of this Amended Agreement by it has been duly authorized by all appropriate actions of its governing body. This Amended Agreement has been duly executed and delivered by its authorized officer, and this Amended Agreement constitutes the legal, valid and binding obligation of SACO, as applicable, enforceable in accordance with its terms.

2. To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings which would affect its legal ability to sign this Amended Agreement or perform its obligations thereunder.
3. That it is a Municipality duly organized and validly existing and organized under the laws of the State of Maine and has full power and authority to enter into and to perform this Amended Agreement in accordance with its terms, including without limitation the power to levy and collect taxes to pay its obligations under this Amended Agreement.
4. The execution, delivery and performance of this Amended Agreement will not (i) violate any provision of law or any order of any court or other agency of government or (ii) conflict with, result in breach of, or constitute a default under any material indenture, agreement or other instrument to which SACO is now a party.
5. At the time of the execution of this Amended Agreement, SACO shall provide COMPANY an opinion of its legal counsel as to parts 1, 2 and 3 of this Subarticle.

### ARTICLE THREE. OPERATION OF THE FACILITY

COMPANY shall, except as otherwise expressly provided for herein, so operate and maintain the Facility, or cause it to be so operated and maintained, as to be capable of receiving Acceptable Waste from SACO during Delivery Hours in quantities up to the Guaranteed Plant Capacity Share of SACO. Upon its acceptance thereof, COMPANY shall be responsible for processing and combusting or providing for the alternative disposal of such Acceptable Waste and that Discretionary Waste it chooses to accept.

- A. COMPANY shall be solely responsible for and exclusively entitled to the benefits of the marketing of energy produced by the Facility, including the pricing thereof.
- B. COMPANY shall be solely responsible for and exclusively entitled to the benefits of the marketing of any materials it may recover from Acceptable Waste or Discretionary Waste delivered to the Facility and accepted by COMPANY.
- C. SACO will keep COMPANY informed as to the identity of all Haulers licensed or authorized to deliver Waste to the Facility on behalf of SACO, and of any change in such authorizations. SACO will provide COMPANY such other information in the possession of SACO as COMPANY may from time to time reasonably require regarding the delivery of Waste to the Facility by or on behalf of SACO.
- D. COMPANY shall maintain and staff an office at the Facility during Delivery Hours and shall make reasonable provisions for the security of the Facility during non-Delivery Hours.
- E. COMPANY agrees to furnish its proposed Maine Department of Environmental Protection license renewal applications for review by the Advisory Committee referred to in Article Seventeen (17) and agrees to consider any comments and suggestions resulting from such review, including those proposed for incorporation in the applications.
- F. In addition to COMPANY agreeing to operate the Facility in compliance with applicable laws, regulations and permit requirements, COMPANY agrees that the Facility will be operated in a manner which limits the emission of dust, sound, odor and ash to minimum practical levels. To this end, the Parties agree to establish and comply with those Impact Protocols set forth in Exhibit A. In addition, COMPANY commits as an objective to undertake Facility improvements, including implementing Best Available Control Technology when and as operationally and financially reasonable.
- G. The Parties acknowledge and agree that SACO's execution of this Amended Agreement is not intended in any manner as a waiver, relinquishment or surrender of police powers it possesses as a municipality, but it does agree to be bound by the terms and provisions herein, including the Impact Protocols.
- H. COMPANY will make good faith efforts to complete successful installation of the Odor Reduction System by May 1, 2002.
- I. Designated officials of SACO shall have the right upon reasonable notice to enter and inspect the Site, the Facility, and any Waste deposited therein, for the purposes of testing, inspecting, sampling, examining or copying, as the case may be, Ash, RDF, Waste, equipment, materials or records in the performance of their duties. COMPANY may place reasonable conditions on any such inspection to assure the safety of SACO officials, and to assure plant operations are not interfered with. Although SACO may not use audio or video recorders or cameras when inspecting without prior approval, its designated officials shall have the right to view the videos of Facility operations in the Facility control room at all reasonable times in a manner which will not interfere with control room operations. Designated officials of SACO shall have the right to place on the Site and in the Facility such devices as are necessary to conduct testing, sampling and monitoring of Facility process and equipment, including, but not limited to, Ash produced and stack emissions, so long as the same do not interfere with or adversely affect in any way the operation or use of the Facility. SACO may conduct, at SACO's expense, up to four (4) random emissions tests in any Operating Year. Any monitoring, sampling or testing shall be conducted in accordance with industry and/or regulatory standards. If COMPANY has security or safety measures in force which would require clearance, training or wearing of special protective gear, COMPANY shall make necessary arrangements at its own expense to enable such designated officials to enter and inspect as provided by this Subarticle. This provision shall be in addition to, and shall not be construed to limit in any manner, the right of SACO under state statutes or local ordinances to inspect the Facility during an emergency in the lawful exercise of its police powers.
- J. COMPANY shall provide to SACO copies of (i) all written reports filed by COMPANY with or received by COMPANY from any governmental agencies dealing with the licensing, operation and maintenance of the Facility, and (ii) summary reports of continuous emission monitoring data and exceedence reports for each calendar quarter.
- K. COMPANY has included and intends to include in other Waste Handling Agreements the right of COMPANY to establish regulations dealing with certain matters relating to the delivery of Waste to the Facility, including without limitation the use of truck routes to and from the Facility. Acceptable routes to SACO shall be set forth in the Impact Protocols and made known to Haulers by COMPANY. COMPANY agrees to take reasonable actions to enforce said regulations. COMPANY



and SACO shall develop a procedure for notification of COMPANY by SACO of violations of these regulations so that COMPANY may take reasonable actions to enforce such regulations.

- L. COMPANY shall make periodic inspections of Waste being delivered to avoid violation of applicable environmental permits and Impact Protocols. Copies of any inspection reports will be available for review by SACO's authorized personnel.
- M. COMPANY shall store all recyclable materials, including Residue, within enclosed buildings, trailers or other containers located at the Site. COMPANY will make good faith efforts to monitor buildings, trailers and containers such to limit odors and other unpleasant effects. Such storage shall be temporary in nature and the materials will be removed on a regular basis.
- N. COMPANY shall keep the Site, including any surface roads and parking areas within the Site, in good order and repair at all times and shall be responsible for snow removal on the Site.
- O. In the event, due to a natural disaster or other emergency condition affecting SACO alone, SACO requests COMPANY to accept quantities of Acceptable Waste beyond those provided for herein or requests delivery at special hours, COMPANY shall use its best efforts to accommodate SACO's request; however, COMPANY's determination as to its ability to do so shall be final. COMPANY's best efforts will include discussions with any Affiliates to locate suitable disposal or storage site(s) for any such Acceptable Waste that it may not be able to handle. This provision is not intended, and shall not be construed, to change or modify any other provision of this Amended Agreement with respect to the Party responsible to pay the costs of any such storage or disposal.

#### ARTICLE FOUR. WEIGHING

- A. Except as otherwise provided herein, COMPANY shall install and maintain a container and/or motor truck scale(s) to weigh all vehicles of up to 60 feet in length delivering Waste to the Facility on behalf of SACO. COMPANY shall provide for regular inspections of the scale(s) by the appropriate public officials with responsibility for certifying weights and measures to ensure their reasonable accuracy, such inspections to be conducted not less than annually and at such other times as SACO, at its own expense, deems necessary.
- B. Deliveries by SACO and others shall be recorded separately. SACO shall provide COMPANY with the information reasonably necessary to allow proper vehicle identification. Each incoming waste vehicle shall be weighed full indicating gross truck weight, and weighed empty indicating tare truck weight, which information, together with Tons delivered (to nearest hundredth of a Ton), time of delivery, source of incoming Waste, truck identification number and Hauler code, shall be recorded on a weight ticket and signed by the driver. SACO, COMPANY and the driver of each weighed vehicle shall receive a copy of the weight ticket. COMPANY shall retain tickets for a period of not less than eighteen (18) months. SACO shall have the right to inspect COMPANY's weight records upon 24 hours prior written notice. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with Facility operations.
- C. If all weighing facilities are inoperative or are being tested, COMPANY shall estimate the quantity of Waste delivered by or on behalf of SACO on the basis of truck volumes and estimated data obtained through historical information pertinent to the Hauler and/or SACO. These estimates shall take the place of actual weighing records during the scale outage. COMPANY shall use reasonable efforts to avoid scale outages and to schedule maintenance and testing of weighing facilities other than during Delivery Hours.
- D. The weight records maintained by COMPANY in the ordinary course of business pursuant to this Article shall be conclusive and binding on COMPANY and SACO absent manifest error, with respect to the amount of Tons delivered by or on behalf of SACO, and such weight records shall be used as the basis for the calculations required herein.
- E. COMPANY shall, at all times, weigh all vehicles delivering waste to the Facility. However, in the event Waste is bypassed under the provisions of Articles Twelve (12) or Thirteen (13) hereof, the weight records of the place of disposal, absent manifest error, shall be used to determine the Tons of Acceptable Waste so by-passed for purposes for this Amended Agreement.

#### ARTICLE FIVE. DELIVERY OF WASTE TO COMPANY

- A. Guaranteed Annual Tonnage. Each Operating Year SACO will cause to be delivered to the Facility Acceptable Waste in an amount equal to 10,000 Tons and will use diligent, good faith efforts to adopt and enforce reasonable measures to prevent disposal of Unacceptable Waste and Discretionary Waste at the Facility by or on behalf of SACO. Except as may result by reason of recycling, if SACO shall fail to deliver in an Operating Year its Guaranteed Annual Tonnage, it shall pay a Tipping Rate of \$75.00 per Ton for each Ton less than its Guaranteed Annual Tonnage of Acceptable Waste that it does not deliver (e.g., if SACO delivers only 8,000 Tons, the 2,000 Ton shortfall will be multiplied by \$75.00 per Ton).
- B. Waste Credited Toward Guaranteed Annual Tonnage. Except as provided below, all Acceptable Waste delivered to the Facility by or on behalf of SACO shall be credited against its Guaranteed Annual Tonnage. Possible additional credits against Guaranteed Annual Tonnage are set forth in Articles Twelve (12) and Thirteen (13). No credit shall be given to SACO for any Unacceptable Waste, Discretionary Waste or Waste rejected by COMPANY in accordance with the provisions of this Amended Agreement, including without limitation Acceptable Waste rejected or not accepted by reason of violations of COMPANY's Hauler Regulations by SACO or Haulers authorized to deliver Waste on behalf of SACO.
- C. Guaranteed Plant Capacity Share. SACO may increase its Guaranteed Plant Capacity Share for any Operating Year it expects to exceed its initial Guaranteed Plant Capacity Share of 24,000 Tons upon the following conditions: (i) SACO must have delivered at least 85% of its current Operating Year Guaranteed Plant Capacity Share by May 1, (ii) SACO must notify COMPANY by May 14 of the current Operating Year of its desire to increase SACO's Guaranteed Plant Capacity Share for the following Operating Year, (iii) SACO may, however, only increase its Guaranteed Plant Capacity Share for the following Operating Year by no more than ten percent (10%) of the number of Tons of Acceptable Waste delivered (and projected for the months of May and June) during the current Operating Year in excess of its Guaranteed Annual Tonnage of 10,000 Tons (e.g., in year 2005 SACO delivers 26,000 Tons and it requests by May 14, 2005 an increase in its Guaranteed Plant Capacity Share, the increase may be no more than 10% of 26,000-10,000 or 1,600 Tons, meaning the Guaranteed Plant Capacity Share for 2006 could then be 26,000 + 1,600 = 27,600 Tons). The resulting amount shall be the amount of SACO's Guaranteed Plant Capacity Share during the following Operating Year, i.e., the amount of Tons of Acceptable Waste that COMPANY is required to accept from or on behalf of SACO during the following Operating Year. It is specifically agreed by SACO (i) that, for any Operating Year of this Amended Agreement, should it not avail itself of and use its full Guaranteed Plant Capacity Share, any unused capacity may not be bartered, sold, brokered, pledged or otherwise assigned or transferred by SACO to anyone including any municipality or any commercial entity, and (ii) that any rights SACO had to do so under the 1991 Contract are extinguished by this Amended Agreement. It is a material inducement for COMPANY to enter into this Amended Agreement that SACO waive any rights to broker its unused capacity. It is further agreed by the Parties that COMPANY has the right to use, barter, pledge or broker SACO's unused capacity as it wishes. To assist COMPANY in planning, SACO will notify COMPANY as soon as possible during an Operating Year of the approximate number of Tons of Acceptable Waste it expects to deliver during the current Operating Year.

- D. Deliveries in Excess of Guaranteed Plant Capacity Share. If SACO delivers in an Operating Year more Waste than its Guaranteed Plant Capacity Share, COMPANY will, in good faith, endeavor to accept such excess Waste.
- E. Municipal Flow Control Ordinances. SACO has enacted and will enforce a flow control ordinance pursuant to 38 M.R.S.A. § 1304-B, as amended, designating the Facility as the exclusive disposal or reclamation facility to which all Acceptable Waste generated within SACO (exclusive of materials which are being recycled) must be delivered. SACO may amend or modify its flow control ordinance in its sole discretion (i) to determine the rate and charges payable to SACO by generators of Acceptable Waste delivered by or on behalf of SACO under this Agreement, (ii) to establish rates and charges for Waste collection in SACO, (iii) to revise any recycling programs, (iv) to control delivery of Unacceptable Waste and Discretionary Waste generated in SACO, and (v) to regulate and discipline Haulers hauling Waste generated in SACO.
- F. Notice of Flow Control Violations. COMPANY will use reasonable efforts to advise SACO if it has actual knowledge of any Hauler delivering Waste in violation of SACO's flow control ordinance or of any Hauler reporting or attempting to report and/or deliver Acceptable Waste or Discretionary Waste which is not properly chargeable to SACO.
- G. Origin of Acceptable Waste. SACO agrees that it will not permit Acceptable Waste generated outside of its current boundaries to be included in the Acceptable Waste or Discretionary Waste delivered by it or on its behalf under this Amended Agreement at the Tipping Rate made available to SACO hereunder. Notwithstanding the preceding provision, COMPANY may accept recyclable materials received by SACO as part of regional recycling requirements notwithstanding such recyclable materials originated outside SACO. SACO, however, must advise COMPANY, in advance, that it desires to deliver such material, and COMPANY will have the sole option to accept or reject such recyclable material, in whole or in part. If COMPANY chooses to treat such recyclable material as Acceptable Waste under this Amended Agreement, such material shall be weighed and applied against SACO's Guaranteed Plant Capacity Share.

#### ARTICLE SIX. DETERMINATION OF TIPPING FEE

- A. Tipping Fees. Beginning on the Effective Date, SACO shall pay COMPANY Tipping Fees calculated and adjusted as provided hereunder. The Tipping Fees payable by SACO shall be calculated by multiplying the Tipping Rate then in effect by the number of Tons of Waste that SACO causes to be delivered to the Facility (or which is bypassed to another disposal alternative at the direction of COMPANY pursuant to Option 1 specified in Section A of Article Thirteen (13) below) and the number of Tons of Discretionary Waste SACO causes to be delivered and which are accepted by COMPANY based on weight records referred to in Article Four (4) which shall be tallied and formulated into invoices on a weekly basis and submitted to SACO all as provided herein. These invoices shall include any amounts in addition to the Tipping Fees then due COMPANY from SACO in accordance with the terms of this Amended Agreement.
- B. Invoices; Payment. Payment of the Tipping Fees and other amounts due COMPANY shall be made by SACO within thirty (30) days after its receipt of said invoices without deduction or set-off for any reason. Any late payments shall bear interest at 1.5% per month until paid.
- C. Initial period. From the effective date of this Agreement through June 30, 2008, the Tipping Rate for all Waste shall be \$19.00 per Ton, as adjusted each July (beginning July, 2003) by the CPI Adjustment; provided, however, that CPI Adjustment may not increase the Tipping Rate for this initial period beyond \$25.00 per Ton. Notwithstanding the preceding, the Tipping Rate during this initial period is also subject to the Change of Law Rate set forth in Section F below and such Change in Law Rate may cause the Tipping Rate to exceed the \$25.00 Tipping Rate cap during the initial period.
- D. Subsequent Periods. The Tipping Rate for the Operating Year beginning July 1, 2008 shall be the lesser of \$25.00 per Ton or the Tipping Rate in effect on June 30, 2008. For each Operating Year thereafter, the Tipping Rate shall be the Tipping Rate in effect at the end of each Operating Year as modified by the CPI Adjustment; provided, however, that the CPI Adjustment may not increase the Tipping Rate beyond \$45.00 per Ton for Guaranteed Plant Capacity Share Waste. Notwithstanding the preceding, the Tipping Rate during the subsequent periods shall at all times be subject to adjustment pursuant to Section F below, which adjustment may cause the Tipping Rate to exceed the \$25.00 Tipping Rate and the \$45.00 Tipping Rate cap referenced above in this Section D.
- E. Excess Waste. Notwithstanding Subarticles C and D above, and subject to adjustment as set forth below in Subarticle F, the Tipping Rate for Waste in excess of SACO's original Guaranteed Plant Capacity Share of 24,000 Tons shall be seventy-five percent (75%) of the average Tipping Rate for Commercial Contracts in effect or entered into over the preceding six (6) month period, but in no event shall said Tipping Rate exceed \$75.00 per Ton. Notwithstanding the preceding, the Tipping Rate during the subsequent periods for such excess Waste may exceed the \$75.00 Tipping Rate cap by virtue and application of the Change in Law Rate set forth in Section F below.
- F. Adjustment for Change in Law Costs. The Tipping Rate for each Operating Year shall be adjusted by an amount per Ton ("Change in Law Rate") representing an allocation of the capital and non-capital costs, fees and expenses incurred by the COMPANY during such Operating Year in responding to and complying with a Change in Law ("Change in Law Costs") as described in Article One. The Change in Law Rate for each Operating Year shall be determined by dividing the Change in Law Costs for that Operating Year by the number of Tons of Waste that the Company accepts during such Operating Year (See example below for further detail). The Parties also agree the Change in Law Rate portion of the Tipping Rate shall not be subject to the CPI Adjustment.

If it appears there will be Change in Law Costs, COMPANY will make a good faith estimate of the Change in Law Rate as of the first day of each calendar quarter during each Operating Year (the "Quarterly Estimated Change in Law Rate"). The Tipping Rate used for weekly invoices during each such calendar quarter will be the sum of the otherwise applicable

Tipping Rate and such Quarterly Estimated Change in Law Rate determined for such calendar quarter. COMPANY shall perform an annual reconciliation (including appropriate credits or charges to SACO) after the end of each Operating Year to determine the actual Change in Law Rate per Ton payable by SACO for such Operating Year.

Amounts due on reconciliation (i) to COMPANY shall be paid within thirty (30) days after the later of SACO's receipt of the statement therefor or (ii) to SACO shall be paid or credited on a dollar-for-dollar basis against Tipping Fees otherwise payable by SACO hereunder within thirty (30) days after SACO's receipt of the statement.

EXAMPLE: if the Change in Law Costs for an Operating Year are \$100,000 and the number of Tons of Waste accepted by the COMPANY during the Operating Year is 275,000 Tons, the Change in Law Rate would be 36.4 cents per Ton ( $\$100,000 \div 275,000$  Tons). If SACO's Tipping Rate is \$19.00 per Ton, the Tipping Rate would be adjusted to be \$19.364 per Ton. On 10,000 Tons for the Operating Year, the Tipping Rate adjusted would add \$3,640 to SACO's Tipping Fee for the Operating Year in question. This result can also be reached by dividing SACO's Tons in any Operating Year (10,000 in this example) by the total Tons of Waste for the Operating Year accepted in the Operating Year (275,000 in this example) and multiplying the resulting percentage (3.64%) by the Change in Law Costs (\$100,000 in this example) to produce the Change in Law Rate (\$0.364) which is added to the \$19.00 Tipping Rate before the adjustment to produce the adjusted Tipping Rate of \$19.364 per Ton.

#### ARTICLE SEVEN. TERM OF AGREEMENT

Subject to the other terms herein, the term of this Amended Agreement is from the Effective Date through December 31, 2012. This Amended Agreement, however, may be renewed by SACO for additional terms of ten (10) years at the sole option of SACO, by written notice not less than two (2) years before the expiration of the then existing term. Such right of renewal shall continue through the Life of the Facility.

#### ARTICLE EIGHT. UNACCEPTABLE, DISCRETIONARY AND SPECIAL WASTE

- A. COMPANY shall not accept, nor shall it be required to accept, Unacceptable Waste. COMPANY at its sole discretion may accept, but shall not be required to accept, Discretionary Waste. Any and all Unacceptable Waste delivered to the Facility, as well as Discretionary Waste delivered to and not accepted by the Facility, shall remain the property and be the sole responsibility of the Hauler or other responsible person(s) delivering such Waste. COMPANY hereby expressly reserves the right to recover from each such Hauler and any other responsible person any and all costs, fees, expenses, liabilities, claims or damages suffered or incurred by COMPANY in connection with or in any way arising out of or related to the presence, handling, processing or disposal of such Waste delivered to the Facility by such Hauler or other responsible person or their respective employees or agents, including without limitation all costs of loading, removing, transporting and disposing of such Waste delivered to the Facility by such Hauler or other responsible person or their respective employees or agents.
- B. COMPANY shall have the right, but shall not be obligated, to make a visual inspection of every load of Waste delivered hereunder prior to such load being deposited on the Facility's tipping floor. If in the reasonable judgment of COMPANY circumstances so require, COMPANY retains the right to reject any load containing Unacceptable Waste or Discretionary Waste, either upon initial inspection or, with space and time permitting, after the load of Waste has been isolated on the tipping floor for further inspection. After further inspection, COMPANY retains the right to reject the entire load of Waste if in the reasonable judgment of COMPANY circumstances so require. In addition, COMPANY retains the right to reject only the portion of any load which is Unacceptable Waste and/or Discretionary Waste. The determination of the Waste delivery coordinator or other authorized personnel of COMPANY, if made in good faith, shall be final and binding upon SACO and its Haulers. The failure of COMPANY or its personnel to make such an inspection or to discover any Unacceptable Waste or Discretionary Waste during the course of such an inspection, whether or not pursuant to the protocol to be established by COMPANY as provided below in Subarticle D, shall not relieve any Hauler or other responsible person of its liability for delivering Unacceptable Waste or Discretionary Waste to the Facility, and such failure to inspect or discover any such Unacceptable Waste or Discretionary Waste shall not impose any liability on COMPANY.
- C. COMPANY shall promptly notify SACO of any rejected loads and shall, to the extent reasonably possible, provide to it particulars about the Hauler, the reason for rejection and the information on the weight ticket provided for by Article Four (4).
- D. COMPANY agrees to maintain a reasonable protocol (consistent with industry standards and practices) for inspection of Waste delivered to the Facility and agrees to use reasonable efforts to observe such protocol in the operation of the Facility.
- E. SACO agrees to use diligent, good faith efforts to amend and enforce its flow control ordinance to require all Haulers delivering Waste on behalf of SACO (i) to comply with the Hauler Regulations of COMPANY and ordinances of SACO with respect to the delivery of Waste, including without limitation, any such regulation and/or ordinance prohibiting delivery of Unacceptable Waste or Discretionary Waste to the Facility, (ii) to obtain a license from SACO prior to, and as a condition for, delivering Waste to the Facility on behalf of SACO, which licensure shall include requirements for the Hauler to establish reasonable financial responsibility and (iii) to notify COMPANY's weight station operator and Waste delivery inspector if their load contains Discretionary Waste, Unacceptable Waste, including, but not limited to: Pathological Waste, Biomedical Waste, Hazardous Waste, Toxic Waste, or Waste from a source such as a hospital or other place likely to produce Unacceptable Waste such as Pathological Waste or Hazardous Waste.
- F. Notwithstanding that Special Waste is by agreement Unacceptable Waste, COMPANY may accept and dispose of that Special Waste for which it has an existing contract in effect at the date of this Agreement. The sole existing contract to

dispose of Special Waste may be renewed by the customer – third party, provided however, that entity alone, but not COMPANY, may invoke any rights of renewal, and said renewal will not constitute a default hereunder. Notwithstanding the preceding, COMPANY's position is that accepting more than 20,000 tons of Special Waste in any Operating Year is likely to cause operational problems, and COMPANY agrees that if this proves to be the case and it appears that the customer may attempt to deliver more than 20,000 tons of Special Waste in an Operating Year, COMPANY will notify the customer that such deliveries must be refused because of the likelihood of such problems. COMPANY agrees to discuss this issue with the Advisory Committee if requested. COMPANY further agrees it will not execute any new contracts with other third parties to accept or dispose of Special Waste; nor will it otherwise accept and dispose of Special Waste on any other basis without the written consent of SACO.

- G. COMPANY will negotiate into its future Municipal Waste Handling Agreements (i.e. Municipal Contracts) a two-tiered Tipping Fee provision with a reduced Tipping Fee as a financial incentive designed to encourage each Municipality to undertake or hold a meaningful residential or community Hazardous Waste collection program. COMPANY will provide a yearly certification to SACO detailing those Municipalities that avail themselves of the above referenced Tipping Fee reduction. COMPANY will consider enhancing the Tipping Fee incentive if an insufficient number of Municipalities participate in this program. COMPANY's judgment and decision as to the extent and nature of any Tipping Fee enhancement shall be sole and exclusive. SACO and COMPANY will also cooperate in promoting residential or community Hazardous Waste collection and recycling, including by legislative enactment and/or lobbying.

#### ARTICLE NINE. DISPOSAL OF RESIDUE AND WASTE

Subject to the other provisions of this Agreement regarding Unacceptable Waste and Discretionary Waste, COMPANY shall be responsible for the disposal of Residue and Shutdown Waste of the Facility at licensed facilities and in compliance with all applicable laws, ordinances, rules, regulations, the Impact Protocols and governmental orders; provided that COMPANY shall have no responsibility or liability hereunder for the disposal of Unacceptable Waste or any Discretionary Waste not accepted by COMPANY, or for any acts or omissions of any third parties (i.e., Persons other than Affiliates), including without limitation any independent contractors selected by COMPANY to dispose of any Residue (including Unacceptable Waste or such Discretionary Waste) so long as, to COMPANY's or Operator's knowledge, the third party selected is legally authorized to effect such disposal. This provision is not intended to permit, and does not allow, COMPANY to accept Unacceptable Waste in violation of this Agreement, or in any way relieve COMPANY of its obligation under this Agreement not to accept or process Unacceptable Waste, or from any damages arising therefrom.

#### ARTICLE TEN. HAULER REGULATIONS

COMPANY agrees to adopt reasonable regulations ("Hauler Regulations") governing the manner and time of delivery of Waste to the Facility and other matters with respect to the operation of the Facility, including provisions requiring Haulers to follow certain routes in delivering Waste to the Facility, and including any conditions and routes set forth in the Impact Protocols. SACO will itself comply and will use diligent, good faith efforts to enforce its flow control ordinance to require Haulers to comply with COMPANY's Hauler Regulations and the Impact Protocols, including without limitation those regulations respecting the transportation and delivery of Waste to the Facility, and if SACO is itself acting as a Hauler, it shall itself comply with such Hauler Regulations and the Impact Protocols. If the Hauler delivering Waste from SACO is not complying with such Hauler Regulations and the Impact Protocols, COMPANY may, after notice to such Hauler and SACO, unilaterally, and without incurring liability to SACO or any other person, suspend or revoke such Hauler's right or the right of certain drivers to deliver Waste hereunder. COMPANY in exercising its right of suspension or revocation hereunder shall act in good faith and shall not act in a capricious or arbitrary manner. The foregoing shall not limit COMPANY's right to enforce or assist enforcement of penalties set forth in the Impact Protocols. Without intending to waive any rights of the COMPANY to contest the validity of any ordinance, the Parties acknowledge that SACO may take enforcement actions against Haulers to limit a Hauler's use of roads and streets in SACO for violation of its ordinances or otherwise enforce penalties against Haulers under its ordinances or regulations.

#### ARTICLE ELEVEN. DAMAGE OR DESTRUCTION, CONDEMNATION, TERMINATION OF OPERATIONS

- A. Involuntary Termination of Operations. If the Facility in its entirety or substantially all of the Facility is damaged or destroyed by fire, the elements or other casualty, or taken by eminent domain or other condemnation proceedings then COMPANY may, at its sole option, and notwithstanding any other provisions of the Agreement to the contrary, either (i) restore, repair or reconstruct the Facility, or (ii) terminate operations within one hundred twenty (120) days after the date of damage or destruction or condemnation. COMPANY shall, at all times this Amended Agreement is in effect, maintain insurance sufficient to repair, restore or reconstruct the Facility in the event of such casualty. COMPANY will continually provide evidence to the Advisory Committee of the existence of adequate insurance to restore, repair or reconstruct the Facility. In the event of condemnation or a taking by eminent domain, Termination of Operations shall not take effect until all government orders or decisions have either been fully appealed or the time for such appeals has passed if no appeal is taken by COMPANY.
- B. Termination of All Operations. In the event of voluntary termination of all operations before December 31, 2012, the COMPANY shall be responsible for disposing of SACO's Guaranteed Plant Capacity Share Waste through December 31, 2012 but no longer; provided further such obligation is dependent upon SACO paying its Tipping Fee for such waste disposal as set forth in Article 6. In the event of involuntary termination of all operations pursuant to Section A above, or if the COMPANY after December 31, 2012 should voluntarily choose to terminate all operations at the Site, then this Amended

Agreement shall terminate. COMPANY, for itself and its successors and assigns, agrees it shall no longer and thereafter use the Site, and any portion of the Facility located thereon, for any manner of waste transfer, recycling, processing or disposal without further written consent of SACO. Upon such involuntary or voluntary termination of all operations, COMPANY shall take reasonable measures to secure the Site and remove all waste, residue, ash, recyclables, refuse derived from fuel, etc. from the Site. All further obligations hereunder to the other, except for accrued but unsatisfied obligations arising prior to the date of termination, shall thereafter cease.

- C. Voluntary Termination of Waste Incineration and Disposal Alone. After the execution of this Agreement, COMPANY, may, at its sole option, choose to cease the conversion of waste into energy and the disposal of waste (i.e. terminating waste incineration and disposal) but otherwise continue using the Facility for some other lawful purpose including waste recycling and waste transfer. If the COMPANY should voluntarily choose to terminate waste incineration and disposal alone, the COMPANY shall remain responsible for disposing of SACO's Guaranteed Plant Capacity Share; provided further such obligation is dependent upon SACO paying its Tipping Fee for such waste disposal as set forth in Article 6. The remaining terms of this Agreement shall also continue in force and effect until COMPANY terminates all operations as set forth in Section B, above.

#### ARTICLE TWELVE. FORCE MAJEURE

- A. If either Party is rendered temporarily unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, that Party shall give to the other Party prompt written notice of the Force Majeure with reasonably full particulars concerning it. Thereupon the obligations of the Party giving the notice, so far as they are affected by the Force Majeure, and any dependent obligations of the other Party shall be suspended during, but no longer than the continuance of, the Force Majeure, and for a reasonable time thereafter if required to remedy any physical damages and/or place the Facility back in operation. In the event of any Force Majeure event which results in what would otherwise be an Occurrence under the Impact Protocols, COMPANY shall be excused from accepting Acceptable Waste, it being understood, intended and agreed that COMPANY will not be obligated to incur fines or penalties under the Impact Protocols in order to continue or resume accepting and/or processing Acceptable Waste. Without limiting the generality of the foregoing, any Acceptable Waste which SACO can demonstrate was disposed of by or on behalf of SACO during a period in which COMPANY is excused from accepting delivery thereof by reason of Force Majeure shall be credited against SACO's Guaranteed Annual Tonnage and its Guaranteed Plant Capacity Share under this Amended Agreement.
- B. If COMPANY is rendered unable to accept and dispose of waste by a Force Majeure directly caused by or attributable to the City of Biddeford or the City of Saco, which the parties confirm would constitute a Force Majeure for these purposes, then COMPANY will arrange to accept and dispose of SACO's Acceptable Waste during the pendency of the Force Majeure pursuant to the following terms:
1. If the Force Majeure is caused by or attributable to the City of Biddeford, through 06/30/07 COMPANY will dispose of SACO's Waste at the contract rates set forth herein plus the added costs of transportation;
  2. If the Force Majeure is caused by or attributable to the City of Biddeford, from 07/01/07 through 12/31/12 COMPANY will dispose of SACO's Acceptable Waste at the then prevailing market rates. Alternatively, SACO may arrange for the disposal of its Waste during this time period, such disposal at those rates it negotiates, and at its expense, without being in Default of this Agreement. COMPANY will be provided the option to meet and match any offer secured by SACO for disposal of Acceptable Waste until COMPANY is otherwise able to accept such Waste.
  3. If the Force Majeure is caused by or attributable to the City of Saco, through 12/31/12 COMPANY will dispose of SACO's Acceptable Waste at the then prevailing market rates. Alternatively, SACO may arrange for the disposal of its Waste during this time period, such disposal at those rates it negotiates, and at its expense, without being in Default of this Agreement. COMPANY will be provided the option to meet and match any offer secured by SACO for disposal of Acceptable Waste until COMPANY is otherwise able to accept such Waste.

If COMPANY is rendered unable by any other Force Majeure occurrence to accept Waste for more than ten (10) days, it will assist SACO in locating an alternative place for SACO to dispose of its Acceptable Waste including making best efforts to have an Affiliate accept such Waste on terms then available from such Affiliate. Alternatively, SACO may arrange for the disposal of its Waste under a Force Majeure suspension, at such rates as it can best negotiate and at its expense, without being in Default of this Agreement. COMPANY will be provided the option to meet and match any offer secured by SACO for disposal of Acceptable Waste until COMPANY is otherwise able to accept such Waste.

- C. If SACO is rendered unable by Force Majeure to deliver Acceptable Waste to COMPANY under this Amended Agreement, then COMPANY may substitute and replace SACO's Guaranteed Plant Capacity Share with other commercial or municipal waste at its discretion and until the Force Majeure ends and SACO can resume delivery of Acceptable Waste.
- D. During any period in which COMPANY is excused from accepting and/or processing Acceptable Waste or SACO is excused from delivering such Waste by reason of the occurrence of an event of Force Majeure, the Party so excused shall promptly, diligently and in good faith take all reasonable action required in order for it to be able to commence or resume performance of its obligations under this Amended Agreement; provided, however, COMPANY shall not be required to incur fines or penalties under the Impact Protocols in order to continue or resume accepting and/or processing of Acceptable Waste.
- E. The Party whose performance is excused due to the occurrence of an event of Force Majeure shall, during such period, keep the other Party duly notified of all such actions required in order for it to be able to commence or to resume performance of its obligations under this Amended Agreement.

- F. The inability to comply with one portion of this Amended Agreement by virtue of Force Majeure, unless caused by one of the Parties, shall not relieve the Parties of complying with other provisions of this Amended Agreement (e.g., inability to accept Waste does not relieve COMPANY of requirements under Article Nineteen (19) to pay community grants; inability of COMPANY to participate in Advisory Committee does not relieve SACO of paying its Tipping Fees).

#### ARTICLE THIRTEEN. SHUTDOWNS

- A. As used herein, a full or partial "Shutdown" or "Shutdowns" shall occur when the COMPANY temporarily cannot accept delivery of Acceptable Waste at the Facility for processing, for any reason other than Force Majeure, up to the total amount of all of Acceptable Waste that COMPANY is contractually bound to accept from SACO and others. COMPANY shall promptly advise SACO of the occurrence or anticipated occurrence of any full or partial Shutdown, the effect thereof on the ability of the COMPANY to accept Acceptable Waste from SACO at the Facility, and the probable duration of such Shutdown. The COMPANY shall confirm to SACO such advice in writing. During the period of any Shutdown of the Facility (except as provided in Section C below), COMPANY shall at its option either (1) make arrangements, at COMPANY's expense, to dispose of SACO's Shutdown Waste deliverable to Facility by or on behalf of SACO, in which case SACO will pay its Tipping Fee for such Shutdown Waste to COMPANY ("Option 1"), or (2) direct SACO to make its own arrangements for the disposal of such Shutdown Waste and agree to reimburse SACO for its incremental costs of handling, transportation and disposal of such Shutdown Waste in excess of Tipping Fees which would have been otherwise payable by SACO hereunder if such Shutdown Waste had been accepted by COMPANY as provided herein, including but not limited to the incremental cost of transportation and fees of disposing of the SACO's Shutdown Waste (up to SACO's Guaranteed Plant Capacity Share) that COMPANY does not accept at the Facility for processing; provided SACO shall use its reasonable efforts to limit its incremental costs ("Option 2"). If COMPANY elects Option 2, SACO may choose to either (i) be reimbursed directly for such incremental costs of handling, transportation and disposal (any reimbursement not fully made prior to a termination of this Amended Agreement to be made within thirty (30) days after termination) or (ii) apply its incremental costs as an off-set against future Tipping Fees once COMPANY again accepts Waste. SACO shall be entitled to retain any savings if the alternate handling, transportation and disposal costs payable by it under Option 2 are less than the Tipping Fees and costs of handling and transportation which would have been payable by SACO if COMPANY had elected Option 1. In either case the Shutdown Waste which SACO can demonstrate was disposed of under the Option 1 or Option 2 shall be credited against SACO's Guaranteed Annual Tonnage and its Guaranteed Plant Capacity Share under this Amended Agreement. COMPANY shall use its best efforts to resume normal operation at the Facility at the earliest practicable time; provided, however, that COMPANY shall not be obligated to incur fines or penalties under the Impact Protocols in order to continue or resume accepting and/or processing Acceptable Waste. So long as COMPANY meets its obligations hereunder, it shall not be deemed in Default of this Amended Agreement.
- B. COMPANY may have periodic Shutdowns for maintenance purposes and shall use its reasonable efforts to schedule such maintenance Shutdowns at periods when a low quantity of Waste is anticipated based on historical data and/or at times of an energy purchaser's off-peak demand, and not during the months of June, July and August. COMPANY shall use its reasonable efforts to give thirty (30) days' prior written notice to SACO of a scheduled or reasonably foreseeable Shutdown. Such notice shall indicate the expected time, duration and nature of such Shutdown.
- C. Notwithstanding any other provision herein to the contrary, COMPANY may request SACO to curtail deliveries during a Shutdown for a period not to exceed 48 hours without COMPANY incurring any liability therefor or being in Default under this Amended Agreement. SACO will use its diligent good faith efforts to comply with such a request.

#### ARTICLE FOURTEEN. ASSIGNMENT OR TRANSFER OF FACILITY

- A. COMPANY may not assign this Amended Agreement without written consent of SACO to any person or entity, unless said assignee assumes all obligations of COMPANY arising hereunder, and said assignee has the financial, technical and operational ability and capacity to adequately perform this Amended Agreement in accord with all licenses and permits. However, COMPANY may assign this Amended Agreement as security without consent.
- B. COMPANY agrees it shall not transfer the Facility in its entirety, other than as security, without the written consent of SACO, unless the transferee agrees to assume the obligations of COMPANY to SACO, and said transferee has the financial, technical, and operational ability and capacity to adequately operate the Facility in accord with all licenses and permits.
- C. In furtherance of Subarticles A and B of this Article, COMPANY will provide reasonable notice (not less than thirty (30) days) to SACO of any proposed transfer of the Facility or assignment of this Agreement for other than security. SACO agrees it will execute and deliver such consents, assignments and/or certificates with any assignments of this Amended Agreement or transfer of the Facility as may be reasonably requested of it but without cost or charge to SACO.
- D. SACO and COMPANY agree that in the event of an assumption of the obligations of COMPANY under this Amended Agreement by an assignee of this Agreement or a transferee of the Facility (i) this Amended Agreement shall inure to the benefit of, and SACO will be bound hereunder to, such assignee or transferee, and (ii) COMPANY shall have no further liability for the payment or performance of any obligation arising under this Amended Agreement.
- E. COMPANY will make a good faith effort to cooperate with and assist SACO in its review of the financial, operational and organizational capacity/ability of assignee/transferee to assume the obligations of this Amended Agreement and the Impact Protocols, including providing information or documentation that COMPANY has that SACO needs to review the proposed assignment or transfer.

- F. This Amended Agreement shall not be assigned or delegated in whole or in part by SACO without the prior written consent of COMPANY.

#### ARTICLE FIFTEEN. HEALTH STUDY

- A. COMPANY and SACO will fund a multi-year Health Study of the community. The Study will be conducted under the auspices and direction of Southern Maine Medical Center and the University of New England, and shall generally follow the proposal set forth by Public Health Resource Group ("PHRG") of Portland, Maine dated March 12, 2001, and as amended following public review and comment which proposal anticipates a Health Assessment of the communities of BIDDEFORD and SACO.
- B. At the completion of the Study, a report of results will be provided to COMPANY and SACO.
- C. Although both SACO and COMPANY are free to comment on the proposed Study, neither SACO nor COMPANY will otherwise affect, influence or seek to alter in any way the outcome of the Study, each acknowledging that the independence of Southern Maine Medical Center, University of New England and the party performing the Study is vital to the successful completion of its work.
- D. SACO and COMPANY agree to jointly fund the work of the Health Study up to a cap of \$1,000,000.00. SACO will pay the first \$100,000.00 of expenses incurred, and thereafter expenses for the Study shall be paid on an "as you go basis" by the parties as follows: 90% COMPANY and 10% SACO. Without giving assurances of its ability to do so, COMPANY will seek to pass its share of costs through to its user-Municipalities under both its existing and future Municipal Contracts. Each dollar recovered by COMPANY through said Municipal Contracts will be retained by COMPANY. If after commencement of the Health Study, it is determined that its completion will cost more than the agreed One Million Dollars (\$1,000,000.00) cap, SACO and COMPANY shall in good faith address how to fund or arrange funding for completion of the Health Study. COMPANY shall not be asked to contribute to the cost of any follow-up study or studies that grow out of the Health Study unless it relates directly to the Facility. If and to the extent such follow-up does directly relate to the Facility, SACO and COMPANY shall fund such follow-up work as they funded the initial Study with the same 90-10 split, except SACO shall not be obligated to contribute the first \$100,000.00 as required above.

#### ARTICLE SIXTEEN. DEFAULT

- A. Events of Default. The following shall constitute a Default:

##### SACO

1. Failure by SACO to pay amounts due to COMPANY after ten (10) days written notice from COMPANY to SACO shall constitute a Default by SACO.
2. Failure of SACO to observe and perform any other obligation or covenant under this Amended Agreement, including obligations under Article 25, after thirty (30) days written notice from COMPANY specifying the failure, shall constitute a Default by SACO unless COMPANY shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice is capable of being corrected but cannot be corrected within such period, COMPANY will consent to an extension of such time for a reasonable period if corrective action is promptly instituted within such period and diligently pursued.
3. Whenever a Default by SACO shall have occurred and be continuing, which Default is substantial and concerns a material provision of this Amended Agreement, COMPANY may terminate this Amended Agreement after giving sixty (60) days written notice to SACO, or may pursue the dispute resolution process set forth in Article Eighteen (18). However, if before the effective date of termination SACO cures its Default, or invokes the dispute resolution process set forth in Article 18, then the termination shall be cancelled and the Parties shall be restored to their prior position under this Amended Agreement pending completion of the resolution process, but no such cancellation shall affect any subsequent Default or impair or exhaust any rights with respect thereto.
4. Whenever a Default by SACO shall have occurred and be continuing, subject to and within the Dispute Resolution Process set forth in Article Eighteen (18), Company may (1) pursue any lawful action available to collect the payments and other amounts then due and thereafter to become due as provided in this agreement, or (2) enforce performance and observance of any obligation, agreement or covenant herein, or (3) or seek any other remedy including suspension of benefits hereunder during the period of any Default.



#### COMPANY

1. Failure by COMPANY to accept Waste as required by this Amended Agreement after ten (10) days written notice to COMPANY from SACO shall constitute a Default by COMPANY.
  2. Failure of COMPANY to observe or perform any other obligation or covenant of this Amended Agreement after thirty (30) days written notice from SACO specifying the failure shall constitute a Default by COMPANY, unless SACO shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice is capable of being corrected but cannot be corrected within such period, SACO will consent to an extension of such time for a reasonable period if corrective action is promptly instituted within such period and diligently pursued.
  3. Whenever a Default by COMPANY shall have occurred and be continuing, which Default is substantial and concerns a material provision of this Amended Agreement, SACO may terminate this Amended Agreement after giving sixty (60) days written notice to COMPANY, or may invoke the dispute resolution process set forth in Article Eighteen (18). However, if before the effective date of termination COMPANY cures its default, or invokes the Dispute Resolution Process set forth in Article 18, then the termination shall be cancelled and the Parties shall be restored to their prior position under this Amended Agreement pending completion of the resolution process, but no such cancellation shall affect any subsequent Default or impair or exhaust any rights with respect thereto.
  4. Whenever a Default by COMPANY shall have occurred and be continuing, subject to the Dispute Resolution Process set forth in Article Eighteen (18), SACO may pursue any lawful remedy available to enforce the performance and observance of any obligations, agreement or covenant under this Agreement.
- B. In the event any condition or covenant contained in this Amended Agreement should be breached by one Party and the breach is thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- C. The running of any period of time in this Article shall be tolled if and as long as the matter is being addressed under the Dispute Resolution Process set forth in Article Eighteen (18).

#### ARTICLE SEVENTEEN. ADVISORY COMMITTEE

- A. COMPANY and SACO agree that an Advisory Committee of four (4) members and one (1) chairman, who shall act as a neutral facilitator, will be established and shall exist for the term of this Amended Agreement.
- SACO's City Administrator shall appoint two (2) members to the Advisory Committee and COMPANY shall appoint two (2) members to the Advisory Committee, one of whom shall be the Plant Manager. The Advisory Committee shall provide a forum for discussion between COMPANY and SACO of matters concerning or relating to the Facility and its operations. The Advisory Committee shall monitor and enforce the application of this Amended Agreement, including the Impact Protocols, within the limitations set forth herein and pursuant to the Dispute Resolution Process set forth in Article Eighteen (18). Further, it shall offer guidance, advice and review on general matters considered important by COMPANY or SACO as they relate to the Facility and its operations, including the Impact Protocols and proposed municipal ordinances, regulations and actions and services provided to the Parties by each other. It is understood and agreed that the Advisory Committee shall at all times act in good faith having due regard for the effect of its actions on the condition, financial and otherwise of COMPANY and SACO, and on COMPANY's ability to perform its obligations. Decisions by the Advisory Committee of issues or disputes under this Amended Agreement and the Impact Protocols, or other issues the Parties agree to in writing, shall be binding on the Parties (i.e., a "Binding Decision") and shall be in written form. All other actions or recommendations of the Advisory Committee shall be advisory only.
- B. The Advisory Committee shall be chaired by a neutral facilitator who preferably will be a professional mediator/facilitator, but who may be a retired judge or attorney if agreed to by all Parties. The role of the Chair is to properly and efficiently conduct meetings. The Chair shall have no vote but the Parties agree the Chair may offer suggestions and comments before decisions are reached.
- C. Decisions or other Action by the Advisory Committee shall require a quorum, and a majority vote of those voting members present. A quorum shall consist of the same number of representatives from COMPANY and from SACO, and the Chair. A decision shall not preclude any member of the Advisory Committee, including the Chair, from offering, as part of any findings and decision, his or her comments and opinions on an individual basis.
- D. The Advisory Committee shall meet at least quarterly (4 times a year), and as part of its duties it shall fairly investigate, detail and report on any and all disputes or violations under this Amended Agreement, including the Impact Protocols, and on other matters of interest to the COMPANY or SACO in an attempt to resolve problems by mutual agreement.
- E. The Advisory Committee shall keep minutes of each meeting and prepare a written summary of findings to support any decision, and shall provide them as soon as reasonably possible after each meeting to SACO and COMPANY. The Parties agree to abide by reasonable time periods set for making any decision that is a Binding Decision.
- F. COMPANY agrees to provide to the Advisory Committee the following:
1. All proposed capital expenditure budgets and operating budgets;
  2. Annual and quarterly financial statements including annual auditor's certifications, and operating statements and budget variance reports in an agreed upon format which shows key performance characteristics of the Facility financially and operationally;
  3. Copies of compliance or other written reports filed with the State Department of Environmental

- Protection other than on a daily or other regularly scheduled basis;
- 4. Upon request a list of all Waste Handling Agreements then in effect;
- 5. The Operating and Maintenance Agreement for the Facility then in effect; and
- 6. Copies of casualty insurance policies or of the relevant portions of such policies.
- H. The Advisory Committee will have access to the Facility during normal business hours upon reasonable notice, subject to such safety and security regulations and requirements as COMPANY may from time to time require, (i) to examine Waste Handling Agreements, (ii) to view and examine the operations of the Facility generally, (iii) to meet with or discuss matters with the Facility Manager, and (iv) to examine and inspect records, materials, Waste, data, equipment, machines, structures and devices located at and within the Facility that relate to the responsibilities of the Advisory Committee.
- I. SACO and the Advisory Committee will keep confidential any information or matters which COMPANY identifies as proprietary or confidential. SACO's and the Advisory Committee's access to such information and such matters is conditioned on COMPANY's receipt of continuing assurances of confidentiality reasonably acceptable to it.
- J. COMPANY agrees to reimburse reasonable expenses of the Advisory Committee, not to exceed \$10,000.00 per year and as modified by the CPI Adjustment year to year. Included within such COMPANY reimbursement may be professional fees such as those of the Chairman and experts such as, but not limited to, environmental, engineering or financial experts.
- K. Members of the Advisory Committee and their employers shall not be held personally liable by SACO or COMPANY, nor any third party, for actions taken in good faith as part of their duties as members of the Committee.
- L. Notwithstanding SACO's participation on the Advisory Committee, it may participate with the Review Committee established under the 1991 Contract, but such participation is voluntary, and SACO's involvement in no way is intended to, nor shall it, revive or maintain rights or interests in said 1991 Contract.

#### ARTICLE EIGHTEEN. DISPUTE RESOLUTION

COMPANY and SACO desire and intend to set up a multistep process for resolving disputes. Unless otherwise agreed to in writing, Step One set forth below must be followed as a pre-condition to any court action. COMPANY and SACO agree that failure to follow Step One under this Article shall constitute a valid legal defense permitting dismissal without prejudice of the court action brought, without consequential prejudice to the underlying claim or merits, intending only to serve as a mechanism to return all disputes to this process first. To be entitled to claim this defense or initiate and prosecute Step One or Step Two as to any matter, question, claim or dispute as to the rights or obligations of either party under this Amended Agreement or the Impact Protocols, SACO must continue to pay its Tipping Fees while COMPANY must continue to accept SACO's Acceptable Waste, but such payment by SACO or acceptance by COMPANY shall not constitute a waiver, admission or concession as to any dispute.

- A. Standing. SACO, through its City Administrator, or COMPANY, through any officer, may seek Advisory Committee review by asking one of its respective Committee members to add a proposed matter as an agenda item. The new matter will then be addressed by the Advisory Committee.
- B. Effect of Decision. A decision of the Advisory Committee shall be advisory only unless it is of a Contract Matter, or of any other issue mutually agreed to in writing by the Parties, any and all of which shall be binding on the Parties as set forth herein. (i.e. a "Binding Decision").
- C. Resolution of Issues and Disputes.
  - 1. Step One: Advisory Committee: Either Party may bring a matter, question, claim or dispute to the Advisory Committee for action at its regular scheduled quarterly meeting, or upon special notice and request in writing to the Chair with copy to the other Party. The Advisory Committee shall meet within fourteen (14) days of such notice, or earlier in the case of an emergency, to resolve the matter and issue a decision. If COMPANY or SACO remains in disagreement following a Binding Decision, or with respect to a Contract Matter concerning which the Advisory Committee fails to make a timely decision, either Party may demand that the matter be submitted to and resolved by binding arbitration under Step Three without first resorting to Step Two, but in the absence of such a demand, Step Two may be pursued by either Party with respect to a Binding Decision.
  - 2. Step Two: Non-binding Mediation/Early Neutral Evaluation: Demand for mediation or early neutral evaluation shall be made by written notice to the other within fourteen (14) days of a Binding Decision of the Advisory Committee, or if there has not been a decision by the Advisory Committee within thirty (30) days after either (i) the matter has been brought to the Advisory Committee for action at a regularly scheduled quarterly meeting or (ii) the making of the request that the matter be considered by the Advisory Committee. Such mediation or evaluation shall be non-binding, and shall take place in either York or Cumberland County, Maine. The Parties shall work in good faith to select a non-interested mediator or evaluator who may be an attorney, engineer or similar professional. The Parties shall share equally the cost of such review. Failure to agree on the selection of the mediator or reviewer within ten (10) days after request shall exhaust or complete Step Two. Step Two will otherwise be deemed completed when the mediator or evaluator renders his or her opinion or one Party gives notice to the other Party of its discontinuance of participation in Step Two. If COMPANY or SACO remain in disagreement following completion of mediation or early neutral evaluation, either Party may demand binding arbitration of the Binding Decision or the Contract Matter under Step Three.
  - 3. Step Three: Binding Arbitration: Following termination of mediation or early neutral evaluation, or if the other Party is not entitled to initiate and prosecute Step One or Step Two, either Party may demand binding arbitration of a Binding Decision by written notice to the other Party. If one Party demands binding arbitration, there shall be binding arbitration.

The arbitration decision shall resolve the matter and be final, binding and non-appealable except as provided in the Maine Uniform Arbitration Act, 14 M.R.S.A. Section 5927 et seq. The rules and procedures of the American Arbitration Association shall control unless the Parties otherwise agree in writing.

- D. Legal Review. If neither COMPANY nor SACO demands binding arbitration within thirty (30) days of the date arbitration could have been demanded, either Party may then proceed to a legal action within either the York or Cumberland County Superior Court or the U.S. District Court in Portland, Maine to resolve such dispute. These forums are chosen in advance as the exclusive jurisdiction for the resolution of disputes. The Party which prevails in any such legal action shall recover those traditional costs permitted under Maine law, as well as all costs incurred during the above three (3) step resolution process.
- E. No Admissibility. Neither the results of nor anything that occurred within Step One or Step Two shall be admissible in any subsequent arbitration or legal proceedings between the Parties.
- F. Dispute Regarding Changes in Law Costs. Notwithstanding the foregoing, if SACO notifies COMPANY within thirty (30) days after COMPANY provides SACO with the annual reconciliation statement for SACO's share of Change in Law Costs under Article Six that it disputes the amount of such share, the dispute shall be referred to a firm of independent certified public accountants of recognized national standing selected by COMPANY and acceptable to SACO for resolution of the respective amounts due SACO and/or COMPANY as shown in such statement, and SACO and COMPANY agree to cooperate with such accounting firm to assist in promptly concluding such matter and to each pay one half of the costs, fees and expenses of such accounting firm. The determinations of such mutually acceptable accounting firm shall be conclusive and binding on both parties absent manifest error.

#### ARTICLE NINETEEN. SPECIAL INDUCEMENTS

- A. Each year, beginning January 1, 2002, COMPANY shall pay to SACO the sum of \$40,000.00, which sum shall be subject to the CPI Adjustment set forth herein above, for the purposes of SACO employing a full time community recycling officer. The responsibilities of this new employee will include the following:
  - 1. Promotion of Community wide recycling;
  - 2. Promotion and coordination of a Community/Residential Hazardous Waste Collection Program;
  - 3. Coordination with COMPANY regarding the efficient collection, marketing and/or disposal of recycled materials;
  - 4. Education of SACO citizens regarding the importance of recycling;
  - 5. Any other related projects specified by the City Administrator and City Council.
- B. COMPANY will assist SACO in the creation and development of a regional recycling program based in SACO. Such assistance shall include technical advice. Further, COMPANY will negotiate into its future Municipal Waste Handling Agreements a two-tiered Tipping Fee provision with a reduced Tipping Fee as financial incentive designed to encourage Municipalities to participate in and avail themselves of SACO's recycling center or some other comparable programs. COMPANY will provide a yearly certification to SACO detailing those Municipalities that avail themselves of the above referenced Tipping Fee incentive. COMPANY agrees to consider enhancing the Tipping Fee incentive if an insufficient number of Municipalities participate in this program. COMPANY's judgment and decision as to the extent and nature of any Tipping Fee enhancement shall be sole and exclusive.
- C. It is agreed by COMPANY and an inducement for SACO to enter into this Amended Agreement that no Municipal Contract will have more favorable Tipping Fees and other terms than those contained herein, unless the same are extended to SACO. The same "most favored status" for SACO shall apply equally to Commercial Contracts of the COMPANY. If COMPANY desires to offer terms more favorable than those herein, it shall advise SACO of such offer, and make such terms available to SACO.
- D. COMPANY will assist SACO in promptly remediating road and certain infrastructure (sewer, drains, etc.) damage attributable to truck traffic accessing the Facility, as and when such work needs to be done, notwithstanding that SACO has scheduled such work as regular repair and maintenance, by funding such work so that it may be done immediately on an interest free basis. SACO will reimburse COMPANY when money is available in its budget, but in any event not later than one (1) year after the funding by the COMPANY. COMPANY's fiscal year is May 1 through April 30. SACO will give COMPANY notice by March 1 of any work it needs COMPANY to fund during the upcoming fiscal year which will have a cost in excess of \$10,000.

ARTICLE TWENTY. WAIVER OF CANCELLATION PAYMENT AND ELIMINATION OF  
RIGHTS TO ADJUSTMENTS

The COMPANY and SACO acknowledge that SACO holds, pursuant to the 1991 Contract rights called “Charter Adjustments”, “Cancellation Adjustments”, “Residual Cancellation Payments” and/or “Equity Value or Dissolution”. COMPANY does not believe those rights have presently matured or are enforceable by SACO; however, the Parties recognize the time, expense and burdens associated with resolving the issue in Court. Therefore, as part consideration for entering into this Amended Agreement COMPANY demands and SACO herein consents to release, waive and forever discharge any and all of those rights.

## ARTICLE TWENTY-ONE. APPLICABLE LAW

The laws of the State of Maine shall govern the validity, interpretation, construction and performance hereof. Any dispute regarding this Agreement not resolved through Article Eighteen (18) may only be litigated in York or Cumberland County Superior Courts for the State of Maine or in the United States District Court in Portland, Maine.

ARTICLE TWENTY-TWO. AGREEMENT AMENDMENT

No amendments to this Amended Agreement may be made except in writing signed by COMPANY and SACO.

## ARTICLE TWENTY-THREE. SEVERABILITY

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

ARTICLE TWENTY-FOUR. RELATIONSHIP OF THE PARTIES

Nothing herein shall be deemed to constitute or make any Party a partner, joint venturer, agent, fiduciary or representative of another Party. The obligations created hereunder shall run solely and exclusively between SACO and COMPANY. No part of this Agreement is intended to alter, amend or modify any existing obligations under the 1991 Contract between COMPANY and the City of BIDDEFORD and the Biddeford-Saco Solid Waste Committee, which obligations under the 1991 Contract remain in full force and effect.

## ARTICLE TWENTY-FIVE. COOPERATION OF THE PARTIES

The Parties agree the Host Community status of SACO as well as COMPANY's willingness to submit itself to the Impact Protocols, as well as the financial and non-financial considerations mutually afforded herein, contemplates a high level of trust, collaboration and communication as between SACO and COMPANY. The Parties recognize a duty of good faith and fair dealing to one another is a covenant herein.

Notwithstanding the foregoing, no part of this Amended Agreement, including the above provision, is intended to prevent or bar SACO and its public officials from performing their legislative and ministerial functions, including, without limitation, Municipal Officers from expressing public comments about COMPANY.

## ARTICLE TWENTY-SIX. REPRESENTATIVES

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

## ARTICLE TWENTY-SEVEN. NOTICES

All notices herein required or permitted to be given or furnished under this Amended Agreement by either Party to the other shall be in writing, and shall be deemed sufficiently given and served upon the other Party if sent by regular mail, postage prepaid, or hand delivered by courier service addressed as follows:

If to COMPANY: Maine Energy Recovery Company, Limited Partnership  
P.O. Box 401  
Biddeford, ME 04005  
Attention: Plant Manager

With copies to: Robert E. Stevens, Esq.  
Curtis Thaxter Stevens Broder & Micoleau, LLC  
One Canal Plaza  
Portland, ME 04112

and

Michael Brennan, Esq.  
Casella Waste Systems, Inc.  
25 Greens Hill Lane  
Rutland, VT 05701

If to SACO: City Administrator  
300 Main Street  
Saco, ME 04072

With a copy to: City Attorney  
300 Main Street  
Saco, ME 04072

Each Party shall have the right, from time to time, to designate different person[s] and/or address[es] by notice given in conformity with this section.

ARTICLE TWENTY-EIGHT. GOOD FAITH BINDING EFFECT  
AND LIMITATION OF LIABILITIES

Each Party shall act in good faith in the performance of all obligations and the exercise of all rights under this Amended Agreement. Use of the term "good faith" elsewhere in this Amended Agreement shall not be construed to limit the general applicability of that standard to all conduct of the Parties hereunder. This Amended Agreement shall be binding upon and inure to the benefit of COMPANY and SACO and their respective successors or assignees.

The obligations of COMPANY hereunder do not constitute obligations of any limited partner of Maine Energy Recovery Company, Limited Partnership or its assets (unless it is also a General Partner), and SACO hereby expressly waives and releases, to the extent it had any, all claims arising hereunder against such limited partners individually or to any of their assets, but expressly retains all rights as against COMPANY including its General Partner, that it may have for claims hereunder.

ARTICLE TWENTY-NINE. OTHER DOCUMENTS

Each Party promises and agrees to execute, attach and deliver any instruments, and to perform any acts which may be necessary or reasonably required by this Amended Agreement, including the Impact Protocols in order to give full effect hereto.

ARTICLE THIRTY. HEADINGS

Captions and headings herein are for ease of reference and do not constitute a part of this Amended Agreement.

ARTICLE THIRTY-ONE. COUNTERPARTS

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

ARTICLE THIRTY-TWO. INTEGRATIONS

Except through specific reference to the 1991 Contract, this instrument (including all Exhibits attached hereto or referenced herein) embodies the whole agreement of the Parties. Other than a Settlement Agreement and documents referred to therein and a release which has been entered into contemporaneously herewith, there are no promises, terms, conditions, or obligations other than those contained or referenced herein. This Amended Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof.

ARTICLE THIRTY-THREE. CONSENTS

To the extent that the consent of either Party to this Amended Agreement is required to any action of the other Party pursuant to any provision of this Amended Agreement, such consent will not be unreasonably withheld.

ARTICLE THIRTY-FOUR. SPECIAL COVENANTS

- A. COMPANY currently has and expects in the future to enter into contracts and agreements for or affecting the operation, financing, maintenance and use of the Facility. It is expressly intended, understood and agreed that any or all of these contracts and agreements, as well as any others affecting the ownership or operation of the Facility, may be entered into, amended, supplemented, replaced or terminated from time to time without any notice to or approval of SACO or any other person or entity, except as may be required pursuant to Article 14 or any other provision of this Agreement. It is expressly intended, understood and agreed, however, that no such contract or agreement may alter, amend, limit or restrict SACO's rights hereunder or COMPANY's obligations hereunder.
- B. In addition to specific provisions made elsewhere herein regarding survival of specific provisions of the 1991 Contract, the Parties acknowledge that the provisions of Article XXII (22) Settlement Documents of the 1991 Contract shall survive amendment of the 1991 Contract to be as set forth in this Amended Agreement.

IN WITNESS WHEREOF the Parties have executed this Amended Agreement the \_\_\_\_ day of April, 2002.

WITNESS:

CITY OF SACO

\_\_\_\_\_

By: \_\_\_\_\_  
William Johnson  
Its Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Richard Michaud  
City Administrator

MAINE ENERGY RECOVERY COMPANY,  
LIMITED PARTNERSHIP

\_\_\_\_\_

By: KTI Environmental Group, Inc.  
Its General Partner

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

**Exhibit A**  
**IMPACT PROTOCOLS**

**Table of Contents**

SECTION ONE:	Sound Control.....	24
SECTION TWO:	Dust Control.....	25
SECTION THREE:	Odor Control.....	25
SECTION FOUR:	Waste Hauler Routes, Leaking and Overweight Vehicles, Improper Waste Disposal.....	27
SECTION FIVE:	Time of Delivery and Removal of Waste .....	27
SECTION SIX:	Improper Acceptance of Waste .....	28
SECTION SEVEN:	Ash Disposal.....	28
SECTION EIGHT:	Enviroline and Response.....	29
SECTION NINE:	Response Agents and Training.....	29
SECTION TEN:	Penalties .....	29
SECTION ELEVEN:	Disputes .....	30
SECTION TWELVE:	Amendment of Protocols .....	30

### OVERALL PURPOSE

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

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

The parties agree that SACO, by entering into the Amended Agreement, and particularly this Exhibit, is not surrendering or waiving to any extent whatsoever its power to regulate the Facility, including with respect to matters which are the subject of this Exhibit by ordinance or otherwise. Notwithstanding the foregoing, the parties agree that compliance by COMPANY with the standards set forth herein shall be deemed to constitute compliance with any local ordinance, now existing or hereinafter enacted, regulating matters which are the subject of this Exhibit and SACO agrees that any penalty imposed on and paid by COMPANY for a violation of the standards contained herein shall be in lieu of any penalty which could have been imposed for the same or a similar violation of any such local ordinance, now existing or hereinafter enacted.

### SECTION ONE: SOUND CONTROL

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

1. **Definitions.** The following terms have the following meanings in these Protocols:
  - A. **Background Sound Condition.** The condition that results when there is an increase in the broadband sound level emitted from or caused by Routine Operation of the Facility of more than 10 dBA above the Daytime or Nighttime Background Sound Level, whichever is applicable, as measured by a Sound Meter at a Point of Sound Measurement.
  - B. **Daytime Background Sound Level.** The L-90 Sound Pressure Level expressed in decibels on the A-scale (dBA) between the hours of 7:00 A.M. and 10:00 P.M. during total shutdown of the Facility established as set forth in subparagraph E of this paragraph 1 by application of the sound measuring standards of the American National Standards Institute, subject to change based on remeasurement pursuant to paragraph 5 of this Section One.
  - C. **L-90.** The A-weighted Sound Pressure Level which is exceeded 90% of the time.
  - D. **Nighttime Background Sound Level.** The L-90 Sound Pressure Level expressed in decibels on the A-scale (dBA) between the hours of 10:00 P.M. and 7:00 A.M. during total shutdown of the Facility established as set forth in subparagraph E of this paragraph 1 by application of the sound measuring standards of the American National Standards Institute, subject to change based on remeasurement pursuant to paragraph 5 of this Section One.
  - E. **Points of Sound Measurement and Background Sound Levels.** Points of sound measurement are the locations at which sound was measured during 1991 (PM-1 and PM-2) and will be measured in 2002 (PM-1, PM-2 and PM-3) to determine Background Sound levels, and sound is to be measured to determine the occurrence of a Background Sound Condition or Pure Tone Condition.

The parties agree on the following schedule of locations in Saco:

- PM-1 = Easterly side of sidewalk on Water Street at Jubilee Park
- PM-2 = Sawyer Brook outfall off Lincoln Street
- PM-3 = An agreed location on Factory Island

Locations of actual measurement shall be as close to these locations as reasonably possible.

The Background Sound Levels for PM-1 and PM-2 in 1991, which will be replaced by 2002 measurements are:

Nighttime Background Sound Level                      Daytime Background Sound Level

PM-1

PM-2

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



- H. Sound Meter. A sound level meter or alternative sound level measurement system that meets performance requirements for a Type 1 or Type 2 sound level meter as specified in Specifications for Sound Level Meters established by the American National Standards Institute.
  - I. Sound Occurrence. A Background Sound Condition and/or a Pure Tone Condition. Pure Tone Condition does not have a permitted level and Background Sound Condition means a permitted level has been exceeded.
  - J. Sound Pressure Level. Twenty times the logarithm to the base ten of the ratio of the sound pressure to the referenced sound pressure of 20 micropascals (Unit: decibel, dB). The sound pressure is the root-mean-square of the instantaneous sound pressures in a stated frequency band during a specified time period.
2. Instrumentation and Calibration. Sound levels shall be recorded using a tripod-mounted Sound Meter equipped with a microphone and windscreen recommended by the meter's manufacturer. The Sound Meters shall be purchased by SACO and maintained, calibrated and replaced by SACO as necessary, with calibration in any event to be at least every twelve (12) months. Calibration records shall be maintained by SACO, and the records and Sound Meters shall be available for review and inspection by COMPANY.
  3. Measurement Procedures. Measurements shall be conducted by a Response Agent (see Section Eight). Attempts shall be made to obtain measurements during weather conditions when community sounds are clearly noticeable. The position of the microphone shall be 4 to 5 feet above ground level and oriented in accordance with the manufacturer's instructions. There shall be no vertical reflective surface exceeding the microphone height located within thirty (30) feet.  
During the measurement period, Sound Pressure Level shall be recorded by electronic media. The results of each measurement shall be summarized on a measurement report prepared by the Response Agent, a copy of which shall be furnished to COMPANY within twenty-four (24) hours after the measurement. Each measurement report of broadband ambient sound levels shall contain the following information:
    - A. Location (Point of Measurement) and Time of Measurement. The specific location where and time when measurements were taken.
    - B. Equipment. Makes and models of Sound Meter and microphone used.
    - C. Results. A written determination of the exceedence of the applicable permissible Sound Levels, the duration of such occurrence, and the amount of db exceedence.
    - D. Sound Source. Whether the Facility is determined to be the source of the sound.
    - E. Meteorological Conditions. Temperature, wind speed and direction, barometric pressure, humidity, and sky condition (i.e. percent cloud cover), all in general terms.
    - F. Comments. A brief description of the sound sources affecting the measured Sound Pressure Levels.
  4. Establishment of No Sound Occurrence. There shall be no Sound Occurrence if inspection of the Sound Meter used indicates that it has not been properly calibrated or is not capable of measuring Sound Pressure Levels accurately, or if it is established that the Sound Meter was not operated properly or that the sound was not emitted from the Facility.
  5. Re-measurement of Background Sound Levels. Either party may from time to time at its expense cause Background Sound Levels to be re-measured in accordance with ANSI standards and such levels shall then be substituted for the levels previously in effect hereunder.

## SECTION TWO: DUST CONTROL

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

1. Dust Cleaning. COMPANY agrees to vacuum, vactor clean or use other means to remove dust throughout the entry vestibules, processing room and the tipping room from floor to ceiling, including machinery, equipment, piping, conduits, doors, partitions, etc., as is necessary to suppress the emission of dust from the Facility and to avoid the accumulation of dust which may create a fire hazard. COMPANY shall also sweep, vacuum or otherwise clean the outside grounds of the Site as necessary to avoid the accumulation of dust.
2. Reports. The COMPANY records of vacuum/vactor cleaning activities shall be available for review by the Advisory Committee and the Chief of the SACO Fire Department.
3. Suppression/Prevention. COMPANY shall employ an entry and exit system for handling incoming and exiting trucks that will minimize the release of dust, odor and ash from the Facility and into the Community as is reasonably practical.
4. Haulers. COMPANY shall require all arriving and departing trucks to have operating covers, etc. to minimize and/or prevent the escape of dust. If dust is dispersed by the Facility into SACO, unless COMPANY timely takes necessary remedial actions after learning of the dispersion SACO may do so, in which event COMPANY agrees to pay SACO's costs of reasonable remedial actions.

## SECTION THREE: ODOR CONTROL

GOAL. COMPANY recognizes that Saco holds concern over odors escaping from the Facility. It is agreed such odors can be offensive. The parties, however, acknowledge that COMPANY is sited in its location by the choice of the Cities of SACO and

Biddeford, and that it is the nature of waste to have odor by virtue of its state and decomposition; and that COMPANY cannot necessarily control the state of the waste it receives for processing. However, COMPANY and SACO want to curb, if not eliminate, odors from escaping the Facility and provide a system for detecting Odor Occurrences.

1. Odor Control. COMPANY at all times shall maintain an odor control system for the Facility. The COMPANY shall operate its odor control system so as to minimize the emission of odors from the Facility into the community, but the parties acknowledge the system may be offline at times of COMPANY's choosing. The COMPANY expects to modify the system to make it more effective. COMPANY will, each year, continue to investigate new methods, science and technology which may improve odor suppression performance, and will, if necessary and needed, invest in such improvements to combat odor impacts. COMPANY'S activities, findings, suggestions and actions will be reported to the Advisory Committee.
2. Odor Investigation Procedure. After the City or Enviroline receive a call/complaint regarding odor and a City Response Agent has arranged a meeting time and place as provided in paragraph 2 of Section Eight below, the following actions will be taken:
  - A. The Response Agent and the COMPANY representative will travel to the site of complaint, and assess the odor's "character" as defined below, and from such assessment determine if COMPANY is the most likely source.
  - B. If either or both of the Response Agent and the COMPANY representative determine that the odor is of a character or type likely to have come from the Facility and most likely is coming from the Facility, the Response Agent and the COMPANY representative shall use their N-butanol kits to determine the intensity of the odor.  
Until May 31, 2002, the date by which the COMPANY expects to have completed break-in of its odor control system as to be modified, the odor shall not exceed an intensity greater than 3 on the so-called N-butanol scale; but beginning June 1, 2002, the odor shall not exceed an intensity greater than 2 on said scale; provided that the Advisory Committee may extend the date for application of the reduced intensity standard of 2 if it concludes that COMPANY has not completed break-in of its modified system because of causes beyond its reasonable control. Exceedence of the permitted level of intensity shall be an Odor Occurrence.
  - C. If the Response Agent and the Company representative disagree on the character, source or intensity of the odor, an additional Response Agent shall be summoned who shall determine the character and source of odor, as well as measure the intensity of the odor. The second Response Agent will advise the First Response Agent of his/her arrival time, which must be within one (1) hour of being summoned. After being told when the second Response Agent will arrive, the first Response Agent and COMPANY representative are free to leave. The second Response Agent shall make his or her own determination regarding source and intensity of odor before being told the findings determined by the first Response Agent and the COMPANY representative. The determination of the second Response Agent as to the character, source and intensity of the odor shall be determinative.
  - D. If it is determined that there has been an Odor Occurrence, a written report shall be made by the Response Agent (both if a second is called) of the Occurrence specifying the location, time and intensity of the odor and the identity of the Response Agent(s) and Company representative involved, and copies of the report shall be furnished promptly to SACO, COMPANY and the Advisory Committee.
  - E. COMPANY and SACO will investigate the use of so-called "sniffer" technology (a union of sensing technology and computer detection software) as a replacement for the use of response agents and N-butanol. If the Parties can be adequately assured that sniffer technology fairly assesses odor strength and character, they will work cooperatively to implement such technology pursuant to Article Three Section F above, and will amend these Protocols accordingly.
3. Standards/Definitions.  
Odor: A sensation or conscious reaction to a stimulus of the olfactory sense organs by odorous compounds in the air. Odor has two (2) principal properties: character and intensity.  
Odor Character: Common understanding of a particular smell such as "rotten eggs", sewage", "garbage", "coffee", "bacon", etc.  
Odor Intensity: The strength of a perceived odor such as "faint" or "strong" or "overpowering" and as measured against the N-butanol intensity scale.
4. N-butanol Intensity Scale/Kit. The standard and agreed tool used for determining an occurrence. The portable butanol scale kit consists of eight (8) 125-ml bottles containing various concentrations of aqueous solutions of N-butanol. Bottle labeled 1 has a solution concentration of 150 ppm of N-butanol. The concentration of N-butanol doubles in each successive bottle until it reached a concentration of 20,000 ppm in Bottle 8. Thus, the approximate N-butanol concentrations are:

Bottle #	Aqueous Concentration of Butanol ppm	Headspace Concentration ppm
1	150	15
2	300	30
3	625	60
4	1250	125
5	2500	250
6	5000	500
7	10000	1000
8	20000	2000

#### SECTION FOUR: WASTE HAULER ROUTES, LEAKING AND OVERWEIGHT VEHICLES, IMPROPER WASTE DISPOSAL

**GOAL:** Both SACO and COMPANY recognize that a large number of heavily weighted trucks must pass through Saco on their way to and from the Facility. These trucks create noise and exhaust fumes, and can leak and be overweight. Further, such Waste Haulers may intentionally deliver Unacceptable Waste (as defined in the Restated Agreement) to the Facility which Waste may be particularly dangerous or offensive. It is important for public health, safety and well-being that SACO address these concerns. Notwithstanding SACO's ordinance and regulations, the parties recognize that they need to cooperate to minimize adverse effects. COMPANY will provide assistance as set forth below.

A. SACO by ordinance will establish the following regulations:

1. Waste Hauler Routes. The following routes have been designated or will be designated by ordinance as routes to be used by Waste Haulers passing into, through and out of Saco, and will not be changed without the consent of COMPANY.

COMPANY will advise Haulers of these routes.

1. Arriving Trucks.

From Scarborough or Other Points North:

- a. Waste Haulers will exit the Maine Turnpike at Exit 5, and will take the I-195 spur to Route 1 South, from there to the Facility.
- b. Waste Haulers may take Route 1 directly to the Facility if coming from Scarborough.

From Points West of SACO:

- a. Route 5 to Spring Street, right onto Spring Street to Lincoln Street, left onto Lincoln Street, right onto Route 1 and then to Facility; or
- b. Route 112 to Spring Street, right onto Spring Street, all the way to Lincoln Street, left onto Lincoln Street and then right onto Route 1 all the way to Facility.

2. Departing Trucks.

To Points North:

Waste Haulers will take Route 1 North to the I-195 spur and then to the Maine Turnpike, or they may continue North on Route 1 into Scarborough.

To Points West:

- a. Waste Haulers will turn left onto Lincoln Street after crossing Saco River, and then right onto Spring Street; trucks may then proceed one of two ways: Left onto Bradley Street/Route 5. but trucks must stay on Route 5 until over the Saco River; or
- b. Left onto North Street/Route 112 to other points West.

To Points South:

- a. Waste Haulers entering Saco will take Route 1 North to the I-195 spur and then onto the Maine Turnpike for points South.
  - b. Waste Haulers may use Route 1 to points South.
  - c. Packer trucks or other trash collectors may go off route within Saco if they are collecting trash from a location, place, business, home in Saco but upon completion shall return by the most expeditious manner to an approved route.
  - d. All other carriers may transit Saco as permitted under and only in compliance with Federal and State law.
2. Leaking Vehicles. No vehicle shall leak, spill or otherwise discharge any material or liquid from its waste load/cargo onto a Saco city street or way, or upon Saco city property.
  3. Overweight Vehicles. No vehicle shall traverse, cross or enter Saco with a combined vehicle and cargo weight in excess of that permitted under State law.
  4. Improper Waste Disposal. No Waste Hauler shall deliver to the Facility any Waste as "Saco Waste" if that Waste did not originate within Saco, nor will any Waste Hauler traverse, cross or enter SACO to knowingly deliver Unacceptable Waste to the Facility.

- B. COMPANY Action: To permit COMPANY to take action which may help prevent further violations of these Protocols, SACO will provide as feasible, COMPANY notice of off-route, leaking and overweight vehicles. COMPANY, independent of SACO, may take action with respect to the vehicle, the Hauler which owns or operates the vehicle, and/or the driver of the vehicle which violates these Protocols. Without intending to limit what COMPANY may do, the parties acknowledge that action by the COMPANY may include temporary or permanent barring of the Hauler, vehicle or driver from the Facility, and imposition of conditions relevant to the offense for continued or restored access to the Facility, e.g., proof of correction of a defect that caused the violation. In addition, COMPANY may notify SACO of what it believes may be violations of the Protocols and COMPANY records regarding vehicles it identifies as leaking or overweight will be regularly available for inspection by SACO.
- B. SACO Discretion. If it is determined by Saco Police that permitting an arriving off-route overweight or leaking vehicle to proceed to the Facility and deliver its load will cause less damage to public property or the residents of Saco than requiring the vehicle to leave Saco without delivery, the Saco Police may permit the vehicle to deliver its load to the Facility.

#### SECTION FIVE: TIME OF DELIVERY AND REMOVAL OF WASTE

**GOAL:** The parties recognize that the delivery or removal of Waste by a great number of trucks at the same time or at specific times may contribute to congestion or make vehicle operational sound more noticeable, and may disrupt the peace and quiet

of certain neighborhoods. However, hours of delivery of Waste are determined principally by Hauler schedules. Nevertheless, COMPANY will inform Haulers of the limited hours of delivery specified below and require them to modify their schedules of delivery accordingly so as to assist COMPANY in its efforts to minimize the effect of the truck traffic on SACO.

1. Time of Delivery. Waste will be delivered to the Facility and accepted only at the following times:

Inbound Waste

Monday – Friday	5:00 a.m. – 9:00 p.m.
Saturday	5:00 a.m. – 1:00 p.m.
Sunday	No Hours

2. Time of Removal. Materials (Waste, RDF, recyclables, etc.) may be transported from the Facility as needs dictate.
3. Holidays. COMPANY, except in verifiable emergencies, will not accept deliveries of Waste at the Facility at any time on:
  - a. New Years Day
  - b. Memorial Day
  - c. Fourth (4<sup>th</sup>) of July
  - d. Labor Day
  - e. Thanksgiving, or
  - f. Christmas
4. SACO will not impose time restraints on delivery or traveling through SACO by Waste Haulers or trucks removing Waste from the Facility stricter than those set forth in this paragraph.

SECTION SIX: IMPROPER ACCEPTANCE OF WASTE

GOAL. This Amended Agreement provides that COMPANY will not intentionally accept Unacceptable Waste as defined therein. The parties acknowledge it is entirely possible some Unacceptable Waste may arrive at the Facility without the knowledge or consent of the COMPANY. The parties intend to separate intentional acceptance and disposal from unintended or accidental acceptance and to treat the first as an Occurrence but not the second provided COMPANY takes protective actions.

1. Any intentional acceptance and processing by COMPANY of Unacceptable Waste shall constitute a Waste Occurrence.
2. If COMPANY discovers Unacceptable Waste upon its tipping at the Facility, delivered without its knowledge or consent, COMPANY shall take the following steps:
  - A. COMPANY shall make and retain records of such Waste including the type and estimated amount of the Waste and, to the extent known, the identity of the Hauler delivering the Waste and the time and date of delivery.
  - B. If feasible, have the Hauler remove such Waste or attempt to segregate such Waste for special handling and disposal and arrange for the alternate disposal of such Waste.
  - C. COMPANY shall retain records on the delivery to the Facility of Biomedical and/or Pathological Waste, Radioactive Waste, Hazardous Waste or Firearms, Ammunition or Explosives, which records shall be regularly available for inspection by SACO.
5. The failure of COMPANY to comply with requirements of Paragraph 2 shall constitute a Waste Occurrence.
6. Inspection. SACO may inspect Waste from any Hauler, on any day, with notice to COMPANY's Plant Manager, once the Waste is tipped onto the processing floor or at the Facility before the truck has tipped, provided that the Plant Manager determines that the inspection can be completed safely.

SECTION SEVEN: ASH DISPOSAL

GOAL. The parties recognize that ash is a byproduct of COMPANY'S operation. This ash must be controlled and disposed of safely, and in a licensed facility. The parties remember the unfortunate process upset in 1988–1989 which resulted in ash falling out and into the Community. Both parties desire to prevent any such similar event from occurring.

- A. Ash Occurrence: A discharge of ash by the Facility as a by-product of the incineration of solid waste by the Facility.
- B. Ash Occurrence Procedure: A Response Agent and a COMPANY representative shall each collect a sample of the alleged Ash. If the Response Agent and the COMPANY representative agree it is an Ash from the Facility then the Response Agent and the COMPANY representative shall record the occurrence as an Ash Occurrence. If they do not agree that there has been an Ash Occurrence, both of them shall note their observations concerning the composition and likely source of the emission, and ash samples shall be jointly collected and submitted to a mutually agreed independent laboratory for analysis. The determination by the laboratory whether the ash is from the Facility shall be conclusive.
- C. Collection Procedure: The Response Agent and the COMPANY representative shall jointly use adequate and appropriate steps to collect ash samples for analysis, and shall do their best to ensure that the samples are not contaminated by other materials. Ash samples shall be placed in sealed containers which shall be marked and handled in a manner which will assure proper identification and maintenance of the integrity of the samples.
- D. COMPANY shall regularly dispose of ash from its operations and only in licensed facilities. Failure to dispose of Facility Ash in a licensed location shall constitute a Waste Occurrence.
- E. COMPANY will make available for inspection weight slips of all vehicles including those hauling Ash, RDF, and other Waste recyclables from Facility.

## SECTION EIGHT: ENVIROLINE AND RESPONSE

### 1. Enviroline and Notice to Response Agent and COMPANY

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

The answering service company shall, as a requirement of its contract, keep records reflecting the complaint information and notification information. Such records shall, at a minimum, include (a) the above required complaint information to identify the source and nature of the complaint, (b) the time the complaint was received, (c) the time of each notification of SACO and COMPANY and (d) the identity of the person spoken with at SACO's Public Safety Communications Center the Response Agent and the person at the COMPANY notified.. These records shall be available for inspection by SACO, COMPANY and the Advisory Committee.

Complaints may come directly to SACO which will handle such complaints through Public Safety. In such event, Public Safety will gather the same information regarding the complaint and follow the same procedure regarding notifications and record keeping as set forth above.

### 2. Response.

Following notification from Enviroline, or Public Safety a Response Agent shall call the COMPANY and arrange a meeting location and meeting time which shall be within twenty (20) minutes of the notification. Both the Response Agent and a COMPANY representative shall arrive within ten (10) minutes of the agreed time. After the Response Agent and the COMPANY representative meet at the site, they will take no more than fifteen (15) minutes to make their assessments. If either the Response Agent or COMPANY representative fails to arrive within ten (10) minutes of the agreed time, the one who has arrived on time may proceed with the measurement, assessment or sample taking, and if the other person fails to arrive before completion of such process, the measurement, assessments or sample taking of the one who arrived on time shall be determinative.

## SECTION NINE: RESPONSE AGENTS AND TRAINING

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

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

## SECTION TEN: PENALTIES

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

#### A. Sound Occurrence:

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

#### B. Odor Occurrence:

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

#### C. Ash Occurrence:

Any Occurrence	\$10,000.00 and cost of remediation
----------------	-------------------------------------

#### D. Waste Occurrence

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

\*If the Waste Occurrence is with respect to Biomedical and/or Pathological Waste, Radioactive Waste, Hazardous Waste, or Firearms, ammunition or explosives, the penalty shall be \$2,500.00.

2. There shall be only one (1) Occurrence within any twenty four (24) hour period for any particular category of Occurrence, although there may be more than one category of occurrence in a twenty four (24) hour period.
3. Fines. Any fine required under these Protocols will be paid no later than thirty (30) days after its assessment.
4. CPI. All fines set further in these Protocols shall be subject to the CPI Adjustment set forth in the Amended Agreement.
5. Change in Operational Procedures or Installation of Equipment. The parties acknowledge that a Sound Occurrence or

Odor Occurrence may result from changes in operational procedures at the Facility or from the installation of new or additional equipment at the Facility. COMPANY agrees that it will notify SACO in advance of any proposed changes in operational procedures or intended equipment installation that, in the good faith judgment of COMPANY, or its consultants, may result in the creation of a Sound Occurrence or Odor Occurrence. Notwithstanding the otherwise applicable penalty schedule set forth in this Section, SACO agrees that any Sound Occurrence or Odor Occurrence resulting from operation of newly installed equipment or operational procedure changes at the Facility will not be subject to penalties during the first fifteen (15) days after the first Occurrence with respect thereto so as to permit COMPANY an opportunity to eliminate the cause of the Occurrence. With the consent of SACO, which consent shall not be unreasonably withheld, the period for non-imposition of penalties may be extended upon evidence that COMPANY is using due diligence to eliminate the cause of the Occurrence.

#### SECTION ELEVEN: DISPUTES

GOAL. The parties have structured this Amended Agreement so that administrative matters, operational issues and actual disputes must be discussed, negotiated and resolved cooperatively if at all possible.

Certain matters are specified herein to be resolved by the Advisory Committee. In addition, if any party has a question or concern as to the procedures used, determinations made or results reached under these Protocols, that question or concern must be brought first to the Advisory Committee. In the absence of an applicable time requirement in the Amended Agreement, the Advisory Committee will resolve the question or concern not more than thirty (30) days after it has been requested to do so in writing by one of the parties. If one of the parties remains dissatisfied with the decision of the Advisory Committee, then that party may invoke any applicable further remedies set forth in Article Eighteen (18) of the Amended Agreement.

#### SECTION TWELVE: AMENDMENT OF PROTOCOLS

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

1. The parties agree these Protocols may be revised following review, discussion and agreement of SACO and COMPANY. No revision will be permitted until it is reviewed and, if appropriate, investigated by the Advisory Committee.
2. Any amendment will be in writing and must reference the provisions of these Protocols which are amended or replaced.
3. Notice of the prospective change will be published in a local paper of record.

O:\RES\47550-103 MERC\RESTATED Agreement\Final Amended N (RS) Clean.doc