

**SOLID WASTE FACILITY  
OPERATING AGREEMENT  
BETWEEN  
THE TOWN OF COLONIE, NEW YORK  
AND  
CAPITAL REGION LANDFILLS, INC.**

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## SOLID WASTE FACILITY OPERATING AGREEMENT

**THIS SOLID WASTE FACILITY OPERATING AGREEMENT** (this “Agreement”), executed as of this 4<sup>th</sup> day of August, 2011, by and between the TOWN OF COLONIE, a municipal corporation of the State of New York, having its principal offices located at Memorial Town Hall, Newtonville, New York 12128 (“Town”), and CAPITAL REGION LANDFILLS, INC. a New York corporation and wholly-owned subsidiary of WASTE CONNECTIONS, INC., having its principal offices located at 2295 Iron Point Road, Suite 200, Folsom, California 95630 (“Company”). Town, Company and their respective successors and assigns, are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

### RECITALS:

A. Town is the owner of the Solid Waste Facility (as defined below), which includes the Landfill (as defined below); and

B. Town wishes to contract with Company and Company wishes to contract with Town to manage, maintain and operate (including effectuating the Closure (as defined below) of portions of) the Solid Waste Facility, pursuant to the terms and conditions hereof.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and all of the agreements, covenants and conditions herein contained, Town and Company hereby agree as follows:

#### **I. Incorporation of Recitals; Definitions**

The foregoing recitals are agreed to and accepted and incorporated herein by this reference.

All of the capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned thereto, if any, in 6 NYCRR 360. Additional words and phrases are defined in this Agreement.

“Adjacent Property” – That certain real property adjacent to the southern boundary of the Solid Waste Facility that Town acquired, as more particularly described on the map attached hereto a **Exhibit D**.

“Ancillary Facilities” – The Weigh Station, the Transfer Station, the Compost Facility, the MRF, the RMW Facility, the HHW Facility, the Residential Convenience Area, the Leachate Bioxide Chemical Treatment System, the Other Existing Buildings and the Adjacent Property.

“Applicable Law” – The Constitutions of the United States and New York State, respectively, any law, rule, code, standard, regulation, requirement, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued or deemed to be issued by, any governmental body having jurisdiction, applicable from time to time to any activities associated with the Solid Waste Facility and any other obligations of the Parties under this Agreement.

“Beneficial Use Determination” or “BUD” – Solid wastes which are approved in advance, in writing, by the New York State Department of Environmental Conservation for use as alternative cover material or other landfill liner or final cover system components or other beneficial uses pursuant to the provisions of subdivision 360-2.13(w) of 6 NYCRR Part 360 when these materials are received at the Landfill.

“Residential Convenience Area” – The citizen convenience station facility currently located at the Solid Waste Facility, which consists of an asphalt pad approximately one (1) acre in size with upper areas to accommodate citizen vehicle backing and unloading and lower areas to accommodate large roll-off boxes where citizens can place waste and recyclable materials. The lower area can accommodate ten (10) roll-off containers.

“Class 3 Inactive Site” – That certain area adjacent to the Landfill (also known as the “Unnamed” area) that is a Class 3 State Superfund site (Site Code 401004) approximately twelve (12) acres in area which was closed in 1983 with a low permeability soil cap. For the sake of clarity, for all purposes of this Agreement, the defined terms “Landfill”, “Ancillary Facilities” and “Solid Waste Facility” shall be deemed to exclude the Class 3 Inactive Site and the LGE Plant.

“Closure” – Those acts and activities required by New York State Environmental Conservation Law which result in a permanent cessation of use of a municipal landfill, as those requirements and regulations may be amended from time to time and which result in a stabilized municipal landfill which is not in active use, excluding those acts and activities which are required for Post-Closure Care.

“Commencement Date” – The date upon which Town and Company execute this Agreement.

“Compost Facility” – That certain yard waste composting facility located at the Solid Waste Facility, which consists of an asphalt pad approximately twelve (12) acres in size and which is located on top of former Landfill Area 1. Stockpiling, grinding, windrow composting and screening are all accomplished in this area and the pad is equipped with two (2) concrete storage bunkers.

“Contract Year” – The twelve (12)-month period commencing on the Effective Date or anniversary thereof, as applicable, and ending on the day before the anniversary of the Effective Date.

“CPI-U” – The Consumer Price Index – All Urban Consumers, Series Id: CUSR0000SEHG02, Seasonally Adjusted, U.S. city average, Garbage and Trash Collection, Base Period: December 1983=100, as periodically published by the United States Department of Labor’s Bureau of Labor Statistics.

“Director” – Director of Environmental Services of Town of Colonie, New York, or their duly authorized representative.

“Effective Date” – The date on which Company takes operational control of the Solid Waste Facility.

“Existing Contracts” – All waste disposal contracts currently maintained by Town, as listed on Exhibit E.

“Gas Agreements” – The following agreements between Town and Innovative/Colonie LLC, a Delaware limited liability company (as the successor in interest to Innovative Energy Systems, LLC and Zelif Holdings, Inc. (formerly known as Innovative Energy Systems, Inc.)) (“ICL”), of which true and correct copies are attached hereto as Exhibit F:

- (i) Gas Assignment Agreement, dated as of December 9, 2004;
- (ii) Lease, dated as of August 10, 2005;
- (iii) Assignment, Assumption, Consent and Waiver Agreement, dated as of August 31, 2010;
- (iv) Colonie Utilities Agreement, dated as March 21, 2011; and
- (v) Memorandum of Lease, dated as March 21, 2011.

“Gate Rate” – The price paid by customers entering the Solid Waste Facility without a valid contract with Company.

“HHW Facility” – That certain household hazardous waste (“HHW”) storage facility located at the Solid Waste Facility, which consists of a retrofitted metal shipping container located to the north of the Transfer Station and which is equipped with ventilation and fire suppression systems.

“Known Pre-existing Environmental Conditions” – The presence or existence of contaminants, leachate, landfill gas and/or other emissions into the air, introduced into, on, over or about the air, soil, surface water and/or groundwater, originating from operation of the Landfill prior to the Effective Date and which has been identified on Exhibit G.

“Landfill” – That certain real property located in Town of Colonie, County of Albany, State of New York, with an address of 1319 Loudon Road, Cohoes, New York 12047, as more particularly described in Exhibit A attached hereto, comprised of approximately 195 acres, which is the subject of a permit authorizing solid waste management and landfill construction and operations under 6 NYCRR 360, permit no. 4-0126-00033/00001 (the “Part 360 Permit”), a copy of which is attached as Exhibit B-1, and an Air Title V Facility Permit, permit ID no. 4-0126-00033/00009 (the “Title V Permit”), a copy of which is attached as Exhibit B-2, commonly known as the Colonie Landfill, including any expansions thereof, excluding, however, (i) the LGE Plant, and (ii) the Class 3 Inactive Site.

“Landfill Footprint” – The existing NYSDEC permitted area or as modified in the future where solid waste is intentionally placed for disposal within the Landfill.

“Leachate Bioxide Chemical Treatment System” – The Landfill suppression system for controlling and mitigating hydrogen sulfide formations in leachate discharge located at the Landfill and the Town of Colonie Pure Waters pump station at 86 Fonda Road.

“LGE Plant” – That certain landfill gas to energy plant, which consists of a 4.8-megawatt facility located in the southeast corner of the Solid Waste Facility. It is owned and operated by ICL under an agreement with Town. Copies of the Gas Agreements are attached hereto as Exhibit F. For the sake of clarity, for all purposes of this Agreement, the defined terms “Landfill”, “Ancillary Facilities” and “Solid Waste Facility” shall be deemed to exclude the LGE Plant.

“MRF” – That certain material recovery facility located at the Solid Waste Facility, which consists of an approximately 17,000 sq. ft. pre-engineered metal building with a two-level floor/roof arrangement with the tipping floor elevation above the processing area. The building is currently equipped with a Mayfran conveyor, a Selco-Harris horizontal baler and a smaller conveyor with two small vertical balers.

“NYSDEC” – The New York State Department of Environmental Conservation or agency of the government of the State of New York created by Chapter 140 of the Laws of 1970, and having the jurisdiction, powers, and duties described in the Environmental Conservation Law of the State of New York, or any successor agency thereto.

“Operations and Maintenance Plan” – The Operations and Maintenance Manual for Town of Colonie Landfill, a copy of which is attached hereto as Exhibit H, as such may be amended or modified, from time to time, when Company deems such necessary or advisable by Company for the operation of the Solid Waste Facility.

“Other Existing Buildings” – That certain four (4)-bay heavy equipment maintenance building, which is located on the west side of Landfill Area 5 immediately adjacent to the Landfill, and that certain pre-engineered metal office building with both office and locker room facilities, which is located adjacent to the Solid Waste Facility entrance road.

“Permit(s)” – Any and all permits, licenses, approvals, certificates of public convenience and necessity, franchises or authorizations which must be issued by any governmental body having jurisdiction thereof to legally enable Company to occupy and operate the Solid Waste Facility and dispose of materials within the Landfill Footprint, including, but not necessarily limited to, the Title V Air Permit for the Landfill and the 6 NYCRR Part 360 permits, including, but not limited to the Part 360 Permit, to construct and operate the Landfill and undertake other solid waste management activities at the Ancillary Facilities.

“Permitted Use” – Operating the Landfill and the Ancillary Facilities, each in accordance with the applicable Permits, including but not limited to: weighing waste, testing waste for nature and consistency, preparation of waste for disposal, disposal of waste, compaction of waste, preparing and applying daily, interim and final cover, working face conditions, construction of temporary roads and other temporary access, installation and monitoring of ground water wells, installation, operation, maintenance and monitoring of a landfill gas collection and control system, maintenance and operation of a leachate collection system, disposal of leachate, stormwater management, cutting and grading existing slopes, establishing new contours, any other uses ancillary to the operation of the Landfill and the Ancillary Facilities, and conducting other operations incidental to the solid waste disposal and landfill business as further detailed in the Operations and Maintenance Plan.

“Post-Closure Care” – Those acts and activities which are required by Applicable Law for post-closure care of the Landfill including monitoring, reporting and maintenance for the time set forth in the relevant environmental statutes and regulations, as they may be amended from time to time.

“RMW Facility” – The certain regulated medical waste (“RMW”) storage facility located at the Solid Waste Facility, which consists of a pre-engineered metal shipping container located to the west of the scale building. This facility was developed by Town for use by its residents and its emergency service units, for disposal of RMW. The facility is also used for the storage of any RMW that is discovered during the course of Solid Waste Facility operations.

“Qualified Waste” – All non-hazardous solid waste, BUDs and sludge meeting the requirements of the Landfill’s 6 NYCRR Part 360 Operating Permit that can be accepted at the Landfill, excluding waste that Company deems potentially harmful to its on-site employees or damaging to the Landfill.

“Solid Waste Facility” – The Landfill and the Ancillary Facilities, including the real property on which such are situated, and other improvements located thereon, all as more particularly described in the map attached hereto a Exhibit C, excluding, however, the LGE Plant and the Class 3 Inactive Site.

“State” – The State of New York.

“Standard Industry Practices” – The commonly accepted usual and customary practices of the solid waste industry in the State.

“Tipping Fee” – The charge(s) established from time to time for one Ton of waste disposed in the Landfill or otherwise handled at the Solid Waste Facility.

“Ton(s)” – 2,000 pounds.

“Town Designated Wastes” – Qualified Waste generated in Town and directed from Town facilities and/or designated by Town for disposal at the Solid Waste Facility pursuant to Section 7(c), in the Village of Colonie, the Village of Menands and the Maplewood Collection District, and by the Town of Colonie Pure Waters Department Wastewater Treatment Plant, the Town of Colonie Latham Water District Water Treatment Plant and the Town of Colonie Department of Public Works.

“TPY” – Tons per year.

“Transfer Station” – That certain solid waste transfer station located at the Solid Waste Facility, which consists of an approximately 9,500 sq. ft. pre-engineered metal building enclosed on three sides with a concrete tipping floor and a trailer load-out bay located below the tipping floor elevation. As of the date hereof, this facility is used to accept waste deliveries from residents and small haulers for transfer to the working face. The facility is fully permitted for use of open top transfer trailers to haul and dispose of waste to other disposal facilities. Access to the building for commercial traffic is from a paved staging area on the north side of the



building. The south side of the building has a smaller paved access area and three overhead doors allowing for residential convenience drop-off from above the tipping floor grade.

**“Unknown Pre-existing Environmental Conditions”** – The presence or existence of contaminants, leachate, landfill gas and/or other emissions into the air, introduced into, on, over or about the air, soil, surface water and/or groundwater, originating from operation of the Landfill prior to the Effective Date and not set forth on **Exhibit G**, and including any migration of such contaminants, leachate, landfill gas and/or other emissions into the air, soil, surface water and/or groundwater.

**“USEPA”** – United States Environmental Protection Agency.

**“Weigh Station”** – That certain weigh station located at the Solid Waste Facility, which is comprised of a scale house equipped with a sixty (60)-foot truck scale and a seventy (70)-foot truck scale. In addition to an office and sanitary facilities for the scale operator, the building also has a two (2) bay garage and is equipped with a backup generator.

**“Year”** – A calendar year commencing on January 1<sup>st</sup> and ending on December 31<sup>st</sup> (or, in the case of the final year of this Agreement, ending upon the expiration of the Agreement in accordance with **Section 2**).

## **II. Terms and Conditions**

1. **Operation of Solid Waste Facility.** Town hereby authorizes and directs Company, and Company hereby covenants and agrees to manage, maintain and operate the Solid Waste Facility in accordance with the agreements, covenants and conditions set forth herein.

2. **Commencement Date/Conditions; Term.** The term (the **“Term”**) of this Agreement shall commence on the Commencement Date and shall continue for a period of twenty-five (25) years from the Commencement Date, unless earlier terminated pursuant to the terms and conditions of this Agreement; provided, however, that commencing on the fifth (5<sup>th</sup>) anniversary of the Commencement Date, and every five (5) years thereafter until and through the twenty-fifth (25<sup>th</sup>) anniversary of the Effective Date, the Term shall automatically be extended by five (5) years. Notwithstanding the foregoing, except upon any early termination of this Agreement based upon a Town Event of Default (as defined in **Section 18(a)**), Company’s liability obligation under **Section 33** will extend until such time as the Closure and Post-Closure Care requirement of 6 NYCRR 360 are met and the NYSDEC has formally indicated that all said requirements have been satisfied.

### **3. Payments.**

(a) **Initial Payments.** As the initial payments in exchange for the right to retain various revenues generated by Company’s operations of the Solid Waste Facility during the Term of this Agreement, Company shall pay to Town, in lawful money of the United States of America, at Town’s address set forth in **Section 25** below, or to such other person or at such other place as Town may from time to time designate by notice to Company, without any set off, abatement or deduction, as follows:

(i) Twenty-Three Million Dollars (\$23,000,000.00) upon the Effective Date;

(ii) Commencing on the Effective Date and continuing for the next five (5) years thereafter, annual payments of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) each, which annual payments shall be paid in four (4) equal quarterly installments, with the initial installment payable on the Effective Date, and each subsequent installment payable as of the first (1<sup>st</sup>) day of each subsequent quarter until the fifth (5<sup>th</sup>) anniversary of the Effective Date;

(iii) Commencing on the fifth (5<sup>th</sup>) anniversary of the Effective Date and continuing until the last day on which the Landfill accepts Qualified Waste for disposal, annual payments of One Million One Hundred Thousand Dollars (\$1,100,000.00) each, which annual payments shall be paid in four (4) equal quarterly installments, with the initial installment payable on the fifth (5<sup>th</sup>) anniversary of the Effective Date, and each subsequent installment payable as of the first (1<sup>st</sup>) day of each subsequent quarter until the last day on which the Landfill accepts Qualified Waste for disposal.

In the event that the Term ends during a partial year, then the payment amounts set forth in Sections 3(a)(ii) and (iii), as applicable, shall be prorated based on actual full weeks of operation of the Landfill divided by fifty-two (52). For the avoidance of doubt, the schedule of payments contemplated by this Section 3(a) is set forth on Exhibit I attached hereto.

(b) **Personal Property Payment.** On the Effective Date (or at such other times as may be dictated by the applicable lease-to-purchase agreements), Company shall pay to Town, in lawful money of the United States of America, at Town's address set forth in Section 25 below, or to such other person or at such other place as Town may from time to time designate by notice to Company, without any set off, abatement or deduction, the amount of Eight Hundred Sixty Thousand Dollars (\$860,000.00) for the rolling stock, tools, miscellaneous equipment and other non-fixed assets set forth on Exhibit J. Town shall provide Company with applicable and customary "transfers of title" or "bills of sale" for said equipment.

(c) **Contingent Landfill Expansion Payments.** Any potential future Landfill expansion shall be determined in consultation between the Town and the Company. During the Term, in the event of any final and unappealable approval(s) of expansion(s) of the permitted expansion airspace of the Landfill that occurs after the Effective Date, Company shall make the following payments to Town:

(i) For the first (1<sup>st</sup>) five million (5,000,000) cubic yards of final and unappealable, fillable disposal capacity approved for the Landfill, Company shall pay to Town an amount equal to Forty Cents (\$0.40) per cubic yard of fillable disposal capacity; and

(ii) Thereafter, for any additional, final and unappealable, fillable disposal capacity approved for the Landfill in excess of five million (5,000,000) cubic yards, Company shall, instead of the payments owed pursuant to Section 3(c)(i), pay to Town an amount equal to Two Dollars (\$2.00) per cubic yard of fillable disposal capacity.

Such payments shall be made upon Town's receipt of all necessary and unappealable permits to

operate and construct such expansion airspace.

(iii) There will not be any expansions to the Landfill or modifications to the current Part 360 Permit without first conducting an environmental review pursuant to SEQRA and Town filing an application for modifications of the Part 360 and receiving all necessary approvals from any federal, state and local governments.

(iv) In the event of any application for the expansion of the Landfill that occurs after the Effective date, Company shall pay all expenses incurred with the application process, including but not limited to, any and all permit or application fees, and other reasonably necessary Town expense incurred in connection with the application process, including, but not limited to, reasonable environmental consultants and attorney's fees.

(d) **Contingent Additional Annual Tonnage Receipts Payment.** Commencing on the fifth (5<sup>th</sup>) anniversary of the Effective Date and continuing for the remainder of the Term, in any Contract Year after the fifth (5<sup>th</sup>) anniversary of the Effective Date when the Landfill disposes of more than One Hundred Seventy Thousand Five Hundred (170,500) tons of municipal solid waste and/or construction and demolition debris in the Landfill, then Company shall pay Town an amount equal to Six Dollars (\$6.00) per ton of such waste for the number of tons over the One Hundred Seventy Thousand Five Hundred (170,500) tons, with the such payments to be paid in arrears on a quarterly basis, with such payments payable as of the twentieth (20<sup>th</sup>) day following the end of the applicable quarter. For the sake of clarity, the payments contemplated by this Section 3(d) will not apply to, or be paid on, any BUD materials, alternative daily cover materials or any other beneficial reuse materials disposed of at the Landfill or otherwise used by Company at the Solid Waste Facility or elsewhere; provided, however, that in any Contract Year where BUD materials disposed of at the Landfill exceeds Thirty Percent (30%) of the permitted annual tonnage cap (which as of the Effective Date is One Hundred Seventy Thousand Five Hundred (170,500) tons), Company shall include all BUD materials in excess of such Thirty Percent (30%) in the computation of the payments contemplated by this Section 3(d). In the event that, on the fifteenth (15<sup>th</sup>) anniversary of the Effective Date, the average (as measured over the twelve (12) month period preceding such fifteenth (15<sup>th</sup>) anniversary) Tipping Fees charged to third party customers of the Landfill (excluding County Waste & Recycling Service, Inc. ("County Waste"), any other affiliate of Company and Town) are Forty Percent (40%) greater than the Tipping Fees being charged as of the Effective Date, Company and Town shall commence good faith negotiations regarding a reasonable increase to the contingent payments contemplated by this Section 3(d).

There will not be any expansions to the Landfill or modifications to the current Part 360 Permit without first conducting an environmental review pursuant to SEQRA and Town filing an application for modifications of the Part 360 and receiving all necessary approvals from any federal, state and local governments.

4. **Permit Name.** The Parties shall cooperate to ensure compliance with Special Condition no. 4 to the Part 360 Permit. The Part 360 Permit shall remain in Town's name until such time, if ever, as NYSDEC approves a transfer of the Part 360 Permit to Company. In the event either Party so requests, the Parties agree to use reasonable efforts to list Company as a "co-permittee" or obtain a transfer or other modification of the Part 360 Permit pursuant to Special

Condition no. 4 to the Part 360 Permit so as to allow Company to operate the Solid Waste Facility pursuant to the terms and conditions hereof. In the event of an early termination of this Agreement due to a Company Event of Default, Company waives all rights and benefits accruing to Company due to its status as a co-permittee on the Part 360 Permit if any exist at that time.

**5. Taxes and Other Charges.**

(a) Company agrees to pay and discharge, before delinquency, all taxes, assessments, utility rates and fees, levies or other charges of any kind which are or may be levied, charged, assessed or imposed upon or against the Solid Waste Facility or any buildings or improvement which are now or hereafter located thereon, or against any of Company's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the rights created hereby, or which may be levied upon or measured by the consideration payable hereunder during the Term of this Agreement, including without limitation, any gross receipts tax levied by the County, the State or the Federal government with respect to consideration paid hereunder. All taxes, assessments and other charges covered by this Section shall be prorated between Town and Company as of the Effective Date and Termination Date of the Term of this Agreement. If at any time during the Term of the Agreement any tax, assessment or other charge is levied for a benefit which shall have a useful life longer than the then remaining Term of this Agreement, such tax, assessment or other charge shall be paid in installments, with Company paying such installment during the Term of this Agreement and Town paying any installments thereafter.

(b) Anything herein to the contrary notwithstanding, Company shall not be required to pay any franchise, capital levy or transfer tax of Town, or any income, profits, or excess profits tax, or any tax which may, at any time during the Term of this Agreement, be required to be paid on any gift, or demise, deed, mortgage, descent or other alienation of any part or all of the estate of Town in and to the Solid Waste Facility or any buildings or improvements which are now or hereafter located thereon.

(c) Town agrees not to impose any tax, assessment, fees, levies or other charges of any kind, on the operations at the Solid Waste Facility or the collection, transportation, disposal or handling, in each case of wastes, at or to the Solid Waste Facility.

**6. Town's General Representations.** As of the date hereof:

(a) Town hereby represents to Company that, to the best of its knowledge, Town has fee simple title to the Solid Waste Facility, free and clear of all claims, liens and encumbrances other than exceptions that do not hinder or impair in any material respect Town's title to the Solid Waste Facility or the utilization of the Solid Waste Facility for the Permitted Use.

(b) Town hereby represents that (i) to the best of its knowledge, as of the Effective Date, Town is not in default in any material respect under any Existing Contracts; (ii) all Permits required for the lawful operation of the Solid Waste Facility as conducted prior to the Effective Date are in place and without appeal; (iii) the execution and delivery of this Agreement

will not cause a default under any Existing Contracts or a violation under any of such Permits; and (iv) the Existing Contracts are assignable to Company in accordance with Section 34.

(c) Town represents that, to the best of its knowledge, it has (a) fully disclosed all material information regarding the operation and condition of the Solid Waste Facility, including all information and documentation relating to any administrative, regulatory or judicial proceedings, and has provided or made available to Company all studies, reports, investigations, analyses in its possession or control, along with all correspondence and other communications with regulatory authorities, including, without limitation, disclosure of all geotechnical and hydrological reviews and analyses, environmental conditions, and the structural and operational conditions of all buildings, fixtures, vehicles and equipment; and (b) maintained all building and improvements in good working order and repair and shall continue to so maintain until the Effective Date.

(d) Town has, to the best of its knowledge, operated and maintained the Solid Waste Facility in full compliance with the Permits and all Applicable Law and shall continue to so maintain and operate the Solid Waste Facility until the Effective Date. Town has not received any notice of violation of any Permits, licenses or Applicable Laws except as disclosed herein.

#### **7. Use and Operations.**

(a) Company shall utilize the Solid Waste Facility for the Permitted Use in accordance with the Permits, as such may be modified from time to time.

(b) All of such operations and activities shall at all times be conducted and maintained in accordance with the Operations and Maintenance Plan, all Applicable Law, in all material respects, and particularly in accordance with the Part 360 Permit, as same may be amended from time to time during the Term of this Agreement. Town shall cooperate with Company to amend or modify the Permits and to amend or modify major provisions of the Operations and Maintenance Plan from time to time when Company and the Town deem it necessary or advisable for the operation of the Solid Waste Facility in accordance with the Section 3(c)(iv) above.

(c) During the Term of this Agreement, Company will guarantee that it will operate under this Agreement in such manner as to assure proper disposal, in compliance with all Applicable Law, of all Town Designated Waste. The terms and conditions under which Company will accept and dispose of such Town Designated Waste are set forth in Section 37. During the Term of this Agreement, Company shall provide free disposal at the Landfill for all of the following:

(i) up to three hundred fifty (350) tons of Qualified Waste each Contract Year to the Maplewood Collection District;

(ii) up to one thousand (1,000) tons of Qualified Waste each Contract Year generated by Town's Department of Public Works; and

(iii) up to 25,000 tons of Town Generated Green Waste each Contract Year. In the event that the Town Generated Green Waste exceeds 25,000 tons in a Contract

Year, the Town may apply unused tonnage, if any, available to the Town pursuant to subsections (i) and/or (ii) immediately above to offset any amount due to Company for Town Generated Green Waste in excess of the said 25,000 tons. If no excess tonnage pursuant to subsections (i) and (ii) immediately above are available to the Town, or if the Town determines not to apply such excess tonnage to any amounts due the Company on account of Town Generated Green Waste in excess of 25,000 tons in a Contract Year, the Town shall pay the Company the amount of \$48.00 per ton for each ton of Town Generated Green Waste in excess of the said 25,000 tons per Contract Year.

#### **8. Repairs, Governmental Regulations and Waste.**

(a) Subject to Section 9(a) below, Company shall, during the Term of this Agreement, at its own cost and expense and without any cost or expense to Town:

(i) Keep and maintain all buildings and real estate improvements now or hereafter located at the Solid Waste Facility and all appurtenances thereto in good working order, ordinary wear and tear excepted, and repair;

(ii) Keep and maintain all buildings and real estate improvements now or hereafter located at the Solid Waste Facility and all appurtenances thereto in good working order, ordinary wear and tear excepted, and repair;

(iii) Take good care of and maintain the Landfill in accordance with Standard Industry Practices (including in particular, the Landfill Footprint), ordinary wear and tear excepted, and make all repairs as and when needed to preserve the Solid Waste Facility and all appurtenances thereto in good working order and condition, ordinary wear and tear excepted; and

(iv) Comply with and abide by all Applicable Law, in all material respects, affecting the Solid Waste Facility, including, but not limited to, all permit and regulatory requirements specific to the operation of a municipal solid waste landfill.

(b) Company acknowledges that, prior to the date hereof, it has had the full and complete opportunity to conduct its inspection and assessment with respect to the Solid Waste Facility, including, without limitation, geotechnical and hydrological reviews and analyses, environmental conditions, structural and operational conditions of all buildings, fixtures, vehicles and equipment. Except as herein provided, Town shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Solid Waste Facility or any buildings or improvements, fixtures, equipment or vehicles now or hereafter located thereon.

#### **9. Improvements, Changes and Alterations by Company.**

(a) Company shall have the obligation and the right to design and engineer, construct and finance all capital improvements necessary to operate the Solid Waste Facility consistent with the Permits as such are effective on the date hereof or any subsequent amendments thereof, including any changes (i) necessitated by changes in the Applicable Law governing the Solid Waste Facility, or (ii) deemed advisable by Company to maintain and operate

the Solid Waste Facility in a manner consistent with Standard Industry Practices. Without limiting the foregoing, Company shall have the right to relocate, demolish and/or modify any of the Ancillary Facilities and other improvements located at the Solid Waste Facility as Company may deem necessary or advisable, from time to time, to maintain and operate the Solid Waste Facility in a manner consistent with Standard Industry Practices; provided, however, that Company shall provide reasonable notice to Town prior to undertaking any such actions. Company shall have no obligation to rebuild any Ancillary Facility or other improvement it demolishes in connection with the operation of the Solid Waste Facility; provided, however, prior to the Closure of the Landfill, Company shall build Town a transfer station located at the Solid Waste Facility that is as large or larger than the transfer station located at the Solid Waste Facility as of the Effective Date unless Town shall authorize the construction of a smaller transfer station. Company shall design and construct all future capital improvements to meet or exceed any and all federal and state requirements pertaining to municipal solid waste landfills in the state of New York. Any capital improvements shall inure to the benefit of and be owned by Town upon expiration of the Term, subject to the terms of this Agreement, including any subsequent amendments hereof.

(b) Any work referred to in Section 9(a) above shall be undertaken in all cases subject to the following additional conditions which Company covenants to observe and perform:

(i) No work shall be undertaken until Company shall have obtained municipal and other governmental permits and authorizations of the municipal departments and governmental subdivisions, so far as the same may be necessary to proceed with such work. Town agrees to join in and fully support the application for such permits or authorizations whenever the action is necessary or deemed advisable by Company.

(ii) Company shall protect the adjacent properties against damage resulting from the performance of any work performed by Company on the Solid Waste Facility and shall indemnify, defend and hold Town harmless against all claims, liens, damages or liability in any way or however described arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power in connection therewith.

(iii) Company shall give Town written notice of its intent to begin any work that requires governmental permits, after obtaining all necessary governmental permits, not later than thirty (30) days prior to the date of commencement of such work, to allow Town to post appropriate notices of non-responsibility.

(iv) All work done in connection with any improvement, change, alteration or in the event of an expansion of the Landfill Footprint shall be done promptly and in a good and workmanlike manner and in compliance with all Applicable Law. In the event of an expansion of the Landfill Footprint, Company acknowledges that a full SEQRA review will be required. All such work shall be at the sole cost and expense of Company, including, but not limited to, permit and or application fees and reasonable engineering and attorney's fees incurred by Town as a result of its status as a Part 360 permittee, and, upon completion thereof, shall be (subject to the provisions of Section 14 hereof) free and clear of all liens and encumbrances of any nature whatsoever related to that work, including mechanics' liens. The work with respect to any improvement, change, alteration or in the event of expansion of the Landfill Footprint

shall be prosecuted with reasonable dispatch, Force Majeure Events (as hereinafter defined) excepted.

(v) In addition to the insurance coverage referred to in Section 12 below, workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Town, Company or the Solid Waste Facility, shall be maintained by Company or Company's sub-contractors, at their sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be obtained and kept in force as otherwise provided in Section 12 below.

(c) Town shall execute and deliver to Company all applications for permits, licenses or other governmental authorizations, if any, relating to the use and occupancy of the Solid Waste Facility required by any municipal, County, State or Federal authorities. Town shall fully cooperate with Company to execute, acknowledge and deliver any and all instruments required to grant existing rights-of-way and easements in favor of Town, or in the control of Town as of the Effective Date, incident to the installation of water lines, sewer or waste water lines, fire hydrants, sewers, electricity, telephone, gas, steam and similar utility facilities and utilities reasonably required or deemed advisable by Company for the efficient and economic operation and maintenance of the Solid Waste Facility. Town shall review any reasonable request by Company to execute, acknowledge and deliver all other instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, sewer or waste water lines, fire hydrants, sewers, electricity, telephone, gas, steam and similar utility facilities and utilities reasonably required or deemed advisable by Company for the efficient and economic operation and maintenance of the Solid Waste Facility and shall determine in Town's sole discretion whether to comply with Company's request.

(d) Company agrees that Town shall have no responsibility or liability for the design or construction of capital improvements undertaken by Company after the Effective Date and pertaining to the Solid Waste Facility.

(e) The Parties acknowledge that on occasion emergencies, environmental or otherwise, may arise in which Company's compliance with the provisions of this Section 9, particularly with respect to receiving prior approval of Town or providing advance notice to Town, may not be possible. In such event, Company shall give Town the best advance notice practical under the circumstances and shall, in all cases, provide a written summary of any such emergency and the actions taken to address such emergency within five (5) business days thereafter.

#### 10. **Damage or Destruction.**

(a) No loss or damage by fire or other cause required to be insured against hereunder, resulting in either partial or total destruction of any building or improvement at the Solid Waste Facility, shall, except as otherwise provided herein, operate to terminate this Agreement, or to relieve or discharge Company from the payment of consideration as it becomes



due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Company to be performed and observed.

(b) Except as otherwise provided in Section 9(a), if any buildings or improvements located at the Solid Waste Facility, or any fixtures, equipment or machinery located thereon or therein, and are actually being used as of the Effective Date in connection with the operation of the Solid Waste Facility, at any time during the Term of this Agreement shall be damaged or destroyed by fire or other cause, then Company, with all reasonable diligence, shall repair, reconstruct or replace such buildings or improvements and such fixtures, equipment and machinery to a condition substantially similar to their condition immediately prior to such destruction. All such repair, reconstruction or replacements shall be at the sole cost and expense of Company and, upon completion thereof, shall be (subject to the provisions of Section 14 hereof) free and clear of all liens and encumbrances of any nature whatsoever, including mechanics' liens. The Parties acknowledge that all buildings at the Solid Waste Facility are in use as of the date of this Agreement.

11. **Subcontracting and Encumbrances.** Pursuant to New York State General Municipal Law Section 109, Company covenants that it shall not, by operation of law or otherwise, assign or encumber its rights under this Agreement or permit the Solid Waste Facility to be used by others without the prior written consent of Town in each instance, which consent will not be unreasonably withheld, conditioned or delayed. Company shall not, without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed, subcontract any of its obligations under this Agreement.

12. **Insurance.**

(a) Company agrees, at Company's sole cost and expense, to keep all buildings and real estate improvements on the Solid Waste Facility insured at all times throughout the Term of this Agreement (including any period or periods of time during which any building is in the course of demolition, remodeling, or construction) against loss or damage by fire and such other hazards as are embraced by the standard extended coverage endorsement approved for use in the State of New York in an amount not less than Eighty Percent (80%) of the actual replacement cost of the buildings and improvements, provided that such insurance will be subject to a deductible provision not in excess of Five Hundred Thousand Dollars (\$500,000).

(b) Company agrees, at Company's sole cost and expense, to maintain comprehensive general liability insurance covering the Solid Waste Facility during the Term of the Agreement with combined single limits of not less than Ten Million Dollars (\$10,000,000) for bodily injury and property damage liability. Company shall maintain an environmental liability policy with a Twenty Million Dollar (\$20,000,000) limit (the "Environmental Policy"). If either or both of said policies is a claims made policy, the policy must include at least a one (1)-year "tail" or reporting provision after the termination of the Agreement.

(c) All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of New York and approved by Town, and shall name Town as an additional insured. A certificate of each insurance policy shall be provided to Town upon commencement of the Term

of this Agreement and upon the renewal of each policy. All insurance carriers for the policies of insurance required herein must carry a B++ or better BEST rating. Copies of current policies and any amendments thereto shall be provided to Town on or before the Effective Date.

(d) Nothing in this Agreement shall prevent Company from taking out insurance of the kind and in the amount provided for in this Section 12 under a blanket insurance policy, excess umbrella policy or policies which can cover other properties as well as the Solid Waste Facility.

(e) All amounts that shall be received under any property insurance policy specified in Section 12(a) above shall be first applied to the payment of the cost of repair, reconstruction or replacement of any buildings or improvements, or furniture, fixtures, equipment and machinery, that is damaged or destroyed. Any amount remaining from the proceeds of any such insurance funds, after the repairing, reconstructing and replacing of any buildings or improvements, or furniture, fixtures, equipment and machinery, as herein required, shall be immediately paid to and be the sole property of Company. If said insurance proceeds shall be insufficient in amount to cover the cost of repairing, reconstructing or replacing any buildings or improvements, or furniture, fixtures, equipment and machinery, as herein required, then Company shall promptly pay any deficiency.

(f) Company will notify Town of all notices of loss or claim against the policies maintained by Company pursuant to this Agreement in excess of Twenty Thousand Dollars (\$20,000.00) with respect to losses or claims arising in Town. Company also will notify Town of all notices of loss or claim against the Environmental Policy. If such claims reduce the aggregate coverage amount available from those limits described herein, or as subsequently amended by agreement between the Parties, then Town may require that Company acquire additional insurance coverage to ensure that the aggregate limits applicable to Town pursuant to this Agreement are maintained at the levels described above. The cost of acquiring such additional insurance shall be paid for by Company. Furthermore, Company agrees to, at all times, maintain the coverage provided by the Environmental Policy at the levels described above, except to the extent the coverage provided by the Environmental Policy has been reduced as a result of claims made pursuant to Section 14(d).

13. **Mechanics' and Other Liens.** Company agrees to keep the Solid Waste Facility free and clear of any and all mechanics', materialmen's and other liens for work or labor done, services performed or materials used in, on or about the Solid Waste Facility for or in connection with any operations of Company on or at the Solid Waste Facility, any alterations, improvements, repairs or additions which Company may make or permit or cause to be made, or any work or construction by, for or permitted by Company on or about the Solid Waste Facility.

14. **Right to Contest; Indemnity; Notice.**

(a) Company and Town each shall have the right, but not the obligation, to contest the amount or validity of any lien of the nature set forth in Section 13 hereof or the amount or validity of any tax, assessment, charge or other item to be paid by Company under Section 5 hereof by giving Town written notice of Company's intention to do so within twenty (20) days after the recording of such lien or at least ten (10) days prior to the delinquency of such

tax, assessment, charge or other item, as the case may be. In any such case Company shall not be in default hereunder, and Town shall not satisfy and discharge such lien nor pay such tax, assessment, charge or other item, as the case may be, until ten (10) days after the final determination of the amount or validity thereof, within which time Company shall satisfy and discharge such lien or pay such tax, assessment, charge or other item to the extent held valid and all penalties, interest and costs in connection therewith; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such tax, assessment, charge or other item, together with penalties, interest and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part of the Solid Waste Facility on account thereof. In the event of any such contest, Company shall protect and indemnify Town against all loss, cost, expense and damage resulting therefrom. Town shall not be required to join in any proceeding to contest the amount or validity of any such lien, tax, assessment, charge or other item, except that if any law shall require that such proceeding be brought by or in the name of Town, Town agrees to join in any such proceeding, or permit the same to be brought in its name; and Company covenants to indemnify and hold harmless Town from any costs or expense in connection therewith, including reasonable attorney's fees. Provided that same shall be without cost or expense to Town, Town agrees that it will cooperate with Company in any such proceeding. Company shall be entitled to any refund of any tax, assessment, charge or other item, and any penalties or interest thereon, which shall have been paid by Company, or paid by Town and reimbursed by Company.

(b) Except as provided in Sections 14(d) and (e) below, without regard to the extent of insurance coverage provided in this Agreement, or the lapse, cancellation or renewal thereof, Company covenants and agrees that Town shall not be liable, responsible or in any way accountable for any loss, injury, death or damage to persons or property to the extent relating to, arising from, or caused by (i) the Known Pre-existing Environmental Conditions, and (ii) Company's operation of the Solid Waste Facility pursuant to the terms and conditions of this Agreement, whether in or on the Solid Waste Facility, or in any way connected with the Solid Waste Facility or with the buildings and improvements or personal property therein or thereon, including, without limitation, any liability for injury or death to the person or damage to or loss of property of Company, its agents, officers, servants, or employees, other than where said loss, injury, death or damage is caused by the willful misconduct or gross negligence of Town or its elected officials, officers, employees, consultants, agents, contractors (other than Company) or invitees. Company shall indemnify and defend Town, its elected officials, officers, employees, consultants, agents, contractors and invitees, and hold them harmless from any and all liability, loss, costs, or obligations, including reasonable attorneys' fees, on account of, or arising out of, any such loss, injury, death or damage, however occurring, including but not limited to: (i) the Known Pre-existing Environmental Conditions; (ii) the Unknown Pre-existing Environmental Conditions (but only as specifically provided in Section 14(d)); (iii) Company's use, possession, operation and management of the Solid Waste Facility, (iv) Company's failure to obtain (to the extent that Company is required to obtain) and conform (to the extent that Company is required to conform) to all required governmental permits and consents or the failure to comply with any and all requirements of any governmental agency whether arising during the Term of the Agreement or thereafter if relating in any way to the operation of the Solid Waste Facility by Company during the Term of the Agreement, and (v) any groundwater or surface water contamination or any other contamination to the extent caused by Company; in all cases except where said loss,

injury, death or damage is caused by Town or its elected officials, officers, employees, consultants, agents, contractors (other than Company) or invitees. Company, its agent, officers, servants, and employees shall assume all risks of injury or death of person or persons, or damage to or loss of any and all property of Company and any and all property under the control or custody of Company while upon the Solid Waste Facility or damage to or loss of any and all property stored at the Solid Waste Facility, except for any such injury, death, damage or loss caused by the willful misconduct or gross negligence of Town or its elected officials, officers, employees, consultants, agents, contractors (other than Company) or invitees.

(c) The indemnification and protections by Company set forth above shall extend and benefit Town, and its elected officials, officers, employees, agents, contractors and invitees.

(d) Company shall be responsible for any damages or liability arising out of or in any way related to the Unknown Pre-existing Environmental Conditions but only in an aggregate amount equal to the first One Million Dollars (\$1,000,000) of such damages or liability arising out of or in any way related to any Unknown Pre-existing Environmental Conditions plus any amounts covered by the Environmental Policy (as referred to in Section 12(b)) as such may apply to and/or cover the Unknown Pre-existing Environmental Conditions. Except for as provided in the immediately preceding sentence and in Section 14(b) with respect to Known Pre-existing Environmental Conditions, Company shall not be responsible for any damages or liability arising out of or in any way related to the prior Solid Waste Facility operations or activities of any predecessor in such operations except as provided herein, including, without limitation, Unknown Pre-existing Environmental Conditions, the LGE Plant, and the Class 3 Inactive Site. Should Town fail to reimburse Company for any properly documented costs or expenses incurred hereunder, Company may reimburse itself out of any money due or to become due to Town under this Agreement, including the annual payments provided for in Sections 3(a)(ii) and (iii).

(e) Except as otherwise provided for in Section 14(d), Town shall indemnify and defend Company, its directors, officers, employees, consultants, agents, contractors and invitees, and hold them harmless from any and all liability, loss, costs, or obligations, including reasonable attorneys' fees, on account of, or arising out of, any such loss, injury, death or damage, however occurring, including but not limited to: (i) Town's use, possession, operation and management of the Solid Waste Facility and the Class 3 Inactive Site; (ii) acts or omissions of Town or Town's employees relating to or arising from Town's use, possession, operation and management of areas/facilities subject to the Gas Agreements, including the LGE Plant; (iii) Town's failure to obtain (to the extent that Town is required to obtain) and conform to all required governmental permits and consents or the failure to comply with any and all requirements of any governmental agency whether arising before, during or after the Term of the Agreement; (iv) any groundwater or surface water contamination or any other contamination other than contamination caused by or relating to the operation of the Solid Waste Facility prior to the Effective Date; and (v) any groundwater or surface water contamination or any other contamination other than contamination caused by or relating to the LGE Plant and the Class 3 Inactive Site; in all cases except where said loss, injury, death or damage is caused by the willful misconduct or gross negligence of Company or its directors, officers, employees, consultants, agents, contractors or invitees.

(f) **Notice of Indemnity Claim.**

(i) In the event that any claim ("Claim") is hereafter asserted against or arises with respect to Town as to which Town may be entitled to indemnification hereunder, Town shall notify Company in writing thereof (the "Claims Notice") within sixty (60) days after (i) receipt of written notice of commencement of any third party litigation against Town (a "Third Party Claim"); (ii) receipt by Town of written notice of any Third Party Claim pursuant to an invoice, notice of claim or assessment against Town; or (iii) Town becomes aware of the existence of any other event in respect of which indemnification may be sought from Company. The Claims Notice shall describe the Claim and the specific facts and circumstances in reasonable detail, and shall indicate the amount, if known, or an estimate, if possible, of the losses that have been or may be incurred or suffered by Town. The failure to timely deliver a Claims Notice or otherwise notify Company of the commencement of such actions in accordance with this Section 14(f) shall not relieve Company from the obligation to indemnify hereunder except to the extent that Company establishes by competent evidence that it has been prejudiced thereby.

(ii) Company shall have the right to join or intervene, at Company's expense, in any Third Party Claim with Company's own counsel. Town may participate, at Town's own expense, in the defense of any Claim joined or intervened in by Company.

(iii) Company shall keep Town reasonably informed at all times of the progress and development of its defense of and compromise efforts with respect to any Claim and shall furnish Town with copies of all relevant pleadings, correspondence and other papers. In addition, the parties to this Agreement shall cooperate with each other and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Claim.

(iv) Neither party will consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Claim without the prior consent of the other party (which consent shall not be unreasonably withheld or delayed) unless the judgment or proposed settlement (i) includes an unconditional release of all liability of each party with respect to such Third-Party Claim, and (ii) involves only the payment of money damages and does not impose an injunction or other equitable relief on Company or impose any restrictions on the operation of the business of Company or affiliates of Company.

(v) In the event both Company and Town are named as defendants in an action or proceeding initiated by a third party, they may both be represented by the same counsel (on whom they shall agree), unless Company or Town shall determine that such counsel has a conflict of interest in representing both Company and Town in the same action or proceeding and Company and Town do not waive such conflict to the satisfaction of such counsel.

(vi) In the event Company elects to dispute or otherwise challenge any Claim to which Town may be entitled to indemnification hereunder and the amount of such fine or penalty is in excess of Five Hundred Thousand Dollars (\$500,000), Company shall post a surety bond in favor of Town in an amount sufficient to cover such fine or penalty (including any

interest accrued thereon) plus the amount of any reasonable costs and expenses incurred therewith, including, without limitation, reasonable attorneys' fees.

15. **Eminent Domain.**

(a) If, during the Term of this Agreement, the entire Solid Waste Facility shall be taken as a result of the exercise of the right of eminent domain, or if less than the entire Solid Waste Facility shall be taken, but Company, in its reasonable discretion, shall determine that the Solid Waste Facility cannot be repaired, restored, or replaced to an economically profitable unit for the Permitted Use at a reasonable expense, this Agreement may, at the option of Company, be terminated on the date of such taking, and the rights of Town and Company in and to the award or awards upon any such taking shall be determined in accordance with Section 15(c) hereof. As used in this Section 15, the terms "taken" and "taking" shall mean an acquisition and/or damaging, including severance damage, by eminent domain, or by inverse condemnation, or by deed or transfer in lieu thereof, or for any public or quasi-public use under any statute or law; and the taking shall be considered to take place as of the earlier of (i) the date actual physical possession is taken by the condemnor; or (ii) the date on which title vests in the condemnor.

(b) If less than the entire Solid Waste Facility shall be taken, but Company determines that all or any part of the remaining portion of the Solid Waste Facility can be repaired, restored or replaced to an economically profitable unit for the Permitted Use, Company shall notify Town and this Agreement shall not terminate but shall continue in full force and effect for the remainder of the term, subject to the provisions hereof. The rights of Town and Company in and to the award or awards upon any such taking shall be determined in accordance with Section 15(c) hereof. Company shall restore, repair, and replace that portion of the Solid Waste Facility not so taken. For the balance of the term of this Agreement, consideration payable by Company shall be equitably reduced in accordance with the reduced economic return to Company, if any, which will occur by reason of such taking, as determined by Town in its reasonable discretion.

(c) The rights of Town and Company in and to any award or awards upon any such taking shall be determined as follows:

(i) Entire taking: In the event of any taking of the nature covered by Section 15(a) above, all compensation and damages therefor shall be payable as determined pursuant to the eminent domain laws of the State of New York and any other Applicable Law.

(ii) Partial taking: In the event of any taking of the nature covered by Section 15(b) above, all compensation and damages therefor shall be applied first to the restoration, repair and replacement of the Solid Waste Facility by Company pursuant to this Section 15, and the remainder thereof shall be divided between Town and Company in the manner provided by Section 15(c)(i) above on an equitable basis in light of the taking.

(d) If the Solid Waste Facility or any portion thereof or any buildings or improvements thereon should be taken for governmental occupancy for a limited period, this Agreement shall not terminate and Company shall continue to perform and observe all of its obligations hereunder as though such taking had not occurred, except only to the extent that it

may be prevented from performing such obligations by reason of such taking and Company shall be further relieved of its financial obligations to Town to the extent not compensated therefore by any award until Company is again able to operate the Solid Waste Facility at a level at least equal to that in the five (5) years immediately preceding such taking. In such event, Company shall be entitled to receive the entire amount of any awards, compensation and damages made for such taking, and Town hereby assigns such awards, compensation and damages to Company to the extent that the governmental occupancy does not extend beyond the expiration of the term hereof.

(e) Town and Company shall all have the right to participate in any settlement of awards, compensation and damages and may contest any such awards, compensation and damages and prosecute appeals therefrom.

**16. Town's Right of Inspection; Company's Record Keeping and Reporting Requirements.**

(a) Company shall permit Town and its Agents and consultants, at all reasonable times, to enter upon the Solid Waste Facility to inspect Company's operations and to inspect during customary business hours any books and records maintained with respect to Company's operations of the Solid Waste Facility, and any and all reports and documentation with respect to the Permits. Company shall keep Town advised as to the place where it maintains such records, books, reports and documentation with respect to the Solid Waste Facility.

(b) Company shall be responsible for developing and submitting any and all reports required in compliance with all Federal, State and local requirements for the operation of the Solid Waste Facility by the Permits issued to Town or Company in a timely manner and in such a form as to comply with the appropriate issuing agency's requirements. Concurrent with the submittal of these reports, Company shall provide Town and any other appropriate party a copy of each report submitted. Reports shall be furnished in a bound, professional looking, typed, report format and, if applicable, certified by a registered professional engineer in the State.

**17. Company's Defaults and Town's Remedies; Termination.**

(a) If (i) a default shall be made by Company or any of its officers, employees, consultants, agents, contractors, or directors in the unexcused payment when due of any consideration or other moneys due hereunder and shall continue for a period of ten (10) days after written notice thereof to Company; (ii) a default shall be made by Company in the performance or observance of any material agreement, covenant or condition of this Agreement on the part of Company to be performed and observed including, specifically any material violation of Applicable Law, which default has the potential to impose significant environmental damage or public health risk or which may result in a termination of the Part 360 Permit for the Solid Waste Facility, and such default shall continue for a period of thirty (30) days after written notice thereof to Company, or, in the case of a default which cannot be cured by the payment of money and cannot reasonably be cured within thirty (30) days, Company shall fail to commence curing thereof within said thirty (30)-day period and thereafter shall fail diligently to prosecute such cure to completion; (iii) Company shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the Federal

government or any state government or any sub-division of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Solid Waste Facility; (iv) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Company or of the whole or any substantial part of the Solid Waste Facility, and such order, judgment or decree shall not be vacated, set aside or stayed within ninety (90) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (v) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Company under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within ninety (90) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; then any such event shall constitute an event of default by Company (each, a "Company Event of Default"). Upon the occurrence of any Company Event of Default, Town shall, in addition to all other rights and remedies of Town provided hereunder or by Applicable Law, have the right to terminate this Agreement upon notice to Company.

(b) If this Agreement shall have been terminated pursuant to Section 17(a) above, then Town and/or Town's agents and employees, may, without notice to Company, immediately or at any time thereafter re-enter into or upon the Solid Waste Facility or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, to the extent legally permitted, without being liable to indictment, prosecution or damages therefor, and may repossess the same, and may remove any persons or property therefrom. The words "re-enter", "re-entry" and "re-entered" as used in this Agreement are not restricted to their technical legal meanings. In the event of any termination of this Agreement under the provisions of Section 17(a) above, Company shall thereupon pay to Town all consideration and any other charges payable hereunder by Company to Town, or of such recovery of possession of the Solid Waste Facility by Town, as the case may be, plus the expenses incurred or paid by Town in terminating this Agreement or of re-entering the Solid Waste Facility and securing possession thereof, including reasonable attorneys' fees and costs of removal and storage of Company's property, and Company shall also pay to Town damages as provided in Section 17(c) below.

(i) In the event of a material breach or threatened breach on the part of Company with respect to any of the covenants, agreements, terms, provisions or conditions on the part of or on behalf of Company to be kept, observed or performed, Town shall also have the right to obtain injunctive relief.

(ii) Except as otherwise provided in Section 19, in the event of (y) the termination of this Agreement under the provisions of Section 17(a) above, or (z) the re-entry of the Solid Waste Facility by Town under the provisions of this Section 17(b), Town shall be entitled to retain all consideration, if any, paid by Company to Town, but such monies shall be credited by Town against any consideration or any other charge due from Company at the time of such termination or, at Town's option, against any damages payable by Company under Section 17(c) or pursuant to law.



(iii) The specified remedies to which Town may resort under this Agreement are cumulative and concurrent, and are not intended to be exclusive of each other or of any other remedies or means of redress to which Town may lawfully be entitled at any time, and Town may invoke any remedy allowed under this Agreement or at law or in equity as if specific remedies were not herein provided for, and the exercise by Town of any one or more of the remedies allowed under this Agreement or in law or in equity shall not preclude the simultaneous or later exercise by Town of any or all other remedies allowed under this Agreement or in law or in equity.

(c) Nothing contained in this Section 17 shall be construed as limiting or precluding the recovery by Town against Company of any payments or damages to which, in addition to the damages particularly provided above, Town may lawfully be entitled by reason of any default hereunder on the part of Company.

(d) Notwithstanding anything contained herein to the contrary, upon termination of this Agreement pursuant to this Section 17, Company shall be and continue to be responsible for maintaining in place the financial assurances for Closure and Post-Closure for all airspace consumed by Company during the term hereof or consumed by Town prior to the Effective Date (except with regard to the Class 3 Inactive Site and the LGE Plant) and any substitution of financial assurances shall not reduce or affect Company's obligations hereunder. Notwithstanding the foregoing, in the event Town or its designee takes possession of the Landfill to perform remedial activities (including to prepare the Landfill for Closure), such activities shall not constitute taking over operations of the Landfill for purposes of this Section 17(d).

(e) Company certifies that all information provided by Company to Town with respect to New York State Finance Law Section 139-k is complete, true and accurate. Town reserves the right to terminate this Agreement in the event it is found that the certification filed by Company pursuant to New York State Finance Law Section 139-k(5) was intentionally false or intentionally incomplete. Upon such finding, Town may exercise its termination right by providing written notification to Company. Such termination shall be effective immediately upon receipt by Company of such written notice.

(f) The provisions of this Section 17 shall survive the expiration or sooner termination of this Agreement.

## **18. Town's Defaults and Company's Remedies; Termination.**

(a) If a default shall be made by Town or any of its officers, employees, consultants, agents, contractors, or board members in the performance or observance of any material agreement, covenant or condition of this Agreement on the part of Town to be performed and observed including, specifically any material Permit violation, which default has the potential to impose significant environmental damage or public health risk or which may result in a termination of the Part 360 Permit for the Solid Waste Facility, and such default shall continue for a period of thirty (30) days after written notice thereof to Town, or, in the case of a default which cannot be cured by the payment of money and cannot reasonably be cured within thirty (30) days, Town shall fail to commence curing thereof within said thirty (30) day period and thereafter shall fail diligently to prosecute such cure to completion; then any such event shall constitute an event

of default by Town (a "Town Event of Default"). Upon the occurrence of any Town Event of Default, Company shall, in addition to all other rights and remedies of Company provided hereunder or by Applicable Law, have the right to terminate this Agreement upon notice to Town.

(i) In the event of a material breach or threatened breach on the part of Town with respect to any of the covenants, agreements, terms, provisions or conditions on the part of or on behalf of Town to be kept, observed or performed, Company shall also have the right to obtain injunctive relief.

(ii) The specified remedies to which Company may resort under this Agreement are cumulative and concurrent, and are not intended to be exclusive of each other or of any other remedies or means of redress to which Company may lawfully be entitled at any time, and Company may invoke any remedy allowed under this Agreement or at law or in equity as if specific remedies were not herein provided for, and the exercise by Company of any one or more of the remedies allowed under this Agreement or in law or in equity shall not preclude the simultaneous or later exercise by Company of any or all other remedies allowed under this Agreement or in law or in equity.

(b) Nothing contained in this Section 18 shall be construed as limiting or precluding the recovery by Company against Town of any payments or damages to which, in addition to the damages particularly provided above, Company may lawfully be entitled by reason of any default hereunder on the part of Town.

(c) The provisions of this Section 18 shall survive the expiration or sooner termination of this Agreement.

**19. Reimbursement of Company Payments and Invested Capital upon Termination.** Notwithstanding anything to the contrary in this Agreement, upon a termination of this Agreement by Town for any reason other than Company's material violation of Applicable Law or breach of a material agreement, covenant or condition of this Agreement, in each case pursuant to Section 17(a), Town shall repay to Company an amount equal to a prorated amount of: (i) the initial Twenty-Three Million Dollar (\$23,000,000) initial payment made by Company to Town; plus (ii) the amount of any capital that Company has invested in the Solid Waste Facility, including, without limitation, any amounts expended by Company in connection with any proposed expansion of the Landfill (the "Invested Capital"). The pro rated amount owed by Town to Company shall be calculated by dividing (a) the Twenty-Three Million Dollar (\$23,000,000) initial payment plus the Invested Capital by (b) the number of years of remaining airspace the Landfill has under the then current Permits, as measured from the Effective Date, and then multiplying the result by (c) the number of years of remaining airspace the Landfill has under the then current Permits, as measured from the date of termination of this Agreement

**20. Cooperation Upon Termination.**

(a) Within thirty (30) days of expiration or notice of termination of this Agreement for any reason, the Parties shall negotiate a termination transition agreement (the "Transition Agreement"). The Transition Agreement shall include, at a minimum, provisions that, during the transition period between the expiration or notice of termination and the date on

which the management, maintenance and operation of the Solid Waste Facility is assumed by another contractor, which may include Town (the "Transition Period"): (1) Company shall use commercially reasonable effort to provide any necessary training and assistance required to transfer the management of the Solid Waste Facility to such other person or Town; (2) Company shall not jeopardize or incapacitate the Landfill or neglect to do anything, the effect of which may be to jeopardize or incapacitate the Landfill; (3) Company shall continue to provide those management, operation, maintenance and repair services specifically required by Town; (4) Town shall pay to Company a fixed fee of an amount to be determined by the Parties, having regard to the services provided by Company during the Transition Period; and (5) the term of the Transition Period be set for a fixed period to be determined by the Parties, allowing for extensions to the Transition Period, where both Parties agree to such extensions.

(b) Upon termination or expiration of this Agreement or any applicable Transition Period, Company shall return management of the Solid Waste Facility to Town, the Solid Waste Facility to be in substantially the same condition as upon the Effective Date, ordinary wear and tear and consumed airspace excepted, together with all improvements made by Company, including permitted changes in the Landfill Footprint. Upon termination of this Agreement pursuant to Section 17(a), Company shall return to Town all equipment and vehicles purchased or otherwise provided pursuant to this Agreement.

(c) Upon termination or expiration of this Agreement or any applicable Transition Period, Company shall comply with all reasonable directions of Town with regard to the removal of Company's property from the Solid Waste Facility. If Company fails to comply with those directions, Town may remove and dispose of Company's property at Company's expense. Town may purchase such property at its option by paying Company the fair market value of Company's property, or such other price as may be agreed by the Parties, including permitted changes in the Landfill Footprint.

(d) Each Party shall pay the other all amounts due and payable and otherwise owing as of the date of expiration or earlier termination of the Term or any applicable Transition Period. Company will cooperate with Town in providing such services, including personnel, as may be reasonably necessary to transfer management of the Solid Waste Facility to Town or to a new operator or manager of the Solid Waste Facility. The Parties agree that the same principles as set forth in this Agreement with respect to the transfer of management and operation of the Solid Waste Facility to Company as of the Effective Date will apply upon the expiration or earlier termination thereof.

21. **[Intentionally Omitted.]**

22. **Failure of Company to Perform Required Acts.** Subject to Company's right of contest under Section 14(a) above, if at any time during the Term of this Agreement, Company intentionally fails or neglects, in any material respect, to do any of the things herein required to be done by Company, Town shall have the right, but not the obligation, to perform the required action, but at the cost of and for the account of Company; provided, however, that Town shall in no case take such action sooner than thirty (30) days after giving Company written notice of such failure, refusal, or neglect and allowing said period within which Company may cure the same in accordance with Section 17 hereof; excepting, however, where such earlier performance of the

action may be necessary to maintain any applicable Permit. The amount of any money so expended by Town shall be additional consideration to be paid by Company to Town and shall be repaid to Town forthwith upon written demand therefor together with interest thereon at an annual rate (the "Interest Rate") equal to the lesser of: (x) the then prevailing prime rate (which, for the purposes hereof, includes any equivalent or successor interest rate, however denominated) of interest for unsecured ninety (90)-day loans by Pioneer Commercial Bank or if Pioneer Commercial Bank shall not then have an established prime rate or the prime rate of any major banking institution doing business in New York City, as selected by Town, if none of the aforementioned banks shall be in existence or have an established prime rate) plus four (4) percentage points, or (y) the maximum rate allowed by law. Any interest payable by Company pursuant to this Agreement at the Interest Rate shall be calculated from the day such expenditure is made or obligation is incurred until the date when such payment is finally and completely paid by Company to Town.

23. **Nonwaiver.** No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any rights, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by Town or Company shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Town or Company, as the case may be. The receipt by Town of and consideration with knowledge of any default under this Agreement shall not constitute or operate as a waiver of such default.

24. **No Partnership or Joint Venture.** It is expressly understood and agreed that nothing herein contained shall make or constitute Town, in any way or for any purpose, a partner of Company in the conduct of Company's business, or otherwise, or a joint venturer or a member of a joint enterprise with Company.

25. **Notices.** Any notice or communication hereunder to Town or Company shall be in writing and be mailed by first-class, certified mail, postage prepaid. Notices or communications shall be addressed to Town at Town of Colonie, Town Attorney's Office, Memorial Town Hall, 534 Loudon Road, Newtonville, New York 12128, or such other address or addresses as Town shall from time to time designate by notice in writing to Company. Notices or communications shall be addressed to Company at P.O. Box 790, Clifton Park, New York 12065 (with a copy to Capital Region Landfills, Inc. c/o Waste Connections, Inc., 2295 Iron Point Road, Suite 200, Folsom, California 95630, Attention: General Counsel), or such other address or addresses as Company shall from time to time designate by notice in writing to Town. Any notice mailed in the manner above set forth shall be deemed to have been received on the third (3<sup>rd</sup>) day after the date of mailing, unless returned to the sender by the post office.

## 26. **Obligations of Town**

(a) Town agrees that, during the entire Term of this Agreement, Town shall not amend any provision of any Existing Contract pertaining to waste disposal, or any other agreement to which Town is a party which relates to the Solid Waste Facility.

(b) Town shall assist Company in transitioning the operations of the Solid Waste Facility to Company after the Commencement Date, including assisting in transferring all billing and collection functions for waste that is delivered directly to the Solid Waste Facility under Existing Contracts (bypassing the Transfer Station) and assist Company in notifying all customers that such billing and collection activities will be performed by Company.

(c) Prior to the Effective Date, Town shall provide to Company complete and accurate billing records for all customers of the Solid Waste Facility.

(d) Town agrees that, from and after the date hereof and during the entire Term of this Agreement, it shall promptly deliver (or, in the case of oral communications, communicate) to Company any and all (i) information and documentation relating to any administrative, regulatory or judicial proceedings relating to the operation of the Solid Waste Facility; (ii) studies, reports, investigations and/or analyses relating to the Solid Waste Facility that, from time to time, are generated by Town or otherwise come into Town's possession or control; and (iii) written or oral notices, correspondence and other communications with any governmental and/or regulatory authorities relating to the operation of the Solid Waste Facility.

(e) Town agrees to join in and fully support any application for permits or authorizations whenever such action is necessary or deemed advisable by Company and the Town for the operation or in the event of an expansion of the Landfill. In addition, Town shall review any reasonable request by Company to exercise its authority to acquire any real property the Company deems is necessary for the operation of, or an expansion of the Solid Waste Facility and shall determine in the Town's sole discretion, whether to comply with Company's request to exercise said authority.

(f) Town shall invoice Company on a quarterly basis for all costs incurred by Town for the disposal of leachate generated by the Solid Waste Facility, and Company shall pay such invoices within thirty (30) days of the receipt thereof. Town agrees to negotiate and enter into leachate disposal agreements with Albany County and the City of Cohoes that contain terms and conditions, including pricing, that are substantially similar to those currently enjoyed by Town.

27. **Estoppel Certificates.** Company or Town, as the case may be, shall execute, acknowledge and deliver to the other, promptly upon request, its certificate certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which all consideration due hereunder has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by Town of any agreement, covenant or condition hereof on the part of Company to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by Company in the performance or observance by Company of any agreement, covenant or condition hereof on the part of Company to be performed or observed and whether any notice has been given to Company of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser or mortgagee of the Solid Waste Facility or any part thereof.

28. **Unavoidable Delays – Force Majeure.** If either Party shall be delayed or prevented from the performance of any act required by this Agreement by reason of weather, acts of God, strikes, lockouts, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or other similar or dissimilar cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted) (collectively, a “Force Majeure Event”), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that nothing in this Section shall excuse Company from the prompt payment of any consideration or other monetary charges required of Company. Performance will not be excused due to events that affect the cost or availability of equipment, labor, materials or supplies, or strikes, lockouts or other labor disputes with respect to Company (or its subcontractors and vendors, as applicable). The Party delayed or prevented from the performance of any act as above described shall notify the other of such delay or prevention within fifteen (15) days of the inception thereof, and shall thereafter keep said Party regularly informed of the status of such delay or prevention.

29. **Gases.**

(a) Company understands that Town and ICL are parties to the Gas Agreements. Company agrees that it shall use commercially reasonable efforts to not interfere with Town’s and ICL’s ability to perform their respective obligations under the Gas Agreements; provided, however, nothing in this Section 29(a) shall be deemed to override the obligations of Company set forth in this Agreement, the Permits or Applicable Law.

(b) Company agrees that the existing gas collection system which consists of horizontal trenches and vertical shafts with stone, pipe, fabric and valves is acceptable as built and expandable for landfill gas management. Except as required by the existing Gas Agreements, Town will not provide any financial support to expand this existing gas collection system. Company agrees to only maintain and expand the existing gas collection system as required by the Permits, Applicable Law and the Gas Agreements as such agreements are in effect as of the date hereof.

(c) During the entire Term of this Agreement, Company shall be responsible for and shall control any and all migration of all methane, carbon dioxide and other gases produced by decomposition of refuse and other material within the Landfill (but not the LGE Plant) as required by the Permits and all Applicable Law. Nothing in this Agreement is intended to modify the existing terms of the existing Gas Agreements.

(d) The Parties agree that, during the entire Term of this Agreement, Town and/or ICL shall be responsible for and shall control any and all migration of all methane, carbon dioxide and other gases produced by decomposition of refuse and other material at the LGE Plant as required by the Permits and all Applicable Law.

(e) Company will engineer, construct, operate and maintain a landfill gas collection and control system that meets or exceeds USEPA and NYSDEC regulatory requirements. This system will be installed sequentially as landfilling progresses, in a manner

that will meet USEPA and NYSDEC regulatory requirements and Standard Industry Practices, while not interfering with routine landfill disposal operations.

(f) In accordance with requirements of the *USEPA's New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills*, published on March 12, 1996, the Landfill Footprint is in the 'new' landfill category. Town has conducted two Tier 2 landfill gas tests at the required five (5) year intervals on the Landfill to determine whether site specific concentrations of non-methane organic compounds ("NMOC") would result in emissions exceeding 50 Mg per year. The Tier 2 test results showed that the Landfill was not required to proceed with a collection and control system design and installation. Based on the site-specific NMOC value determined from Tier 2 testing, annual re-calculated emission rates remain below the regulatory limit. Tier 2 gas testing must be performed every five (5) years if the Landfill is still active and below the 50 Mg/year NMOC limit. Company will be required to perform this re-test and subsequent annual re-calculations, or design and install an approved gas collection and control system and comply with the appropriate NSPS requirements for that gas system.

(g) Town reserves all oil, natural gas and mineral rights on or under the Solid Waste Facility and the right to enter upon the Solid Waste Facility for the purpose of exploration and/or development of and removal of oil, natural gas and mineral resources but only to the extent such entry and development does not materially interfere with Company's operation of the Solid Waste Facility. Town shall have the right to grant licenses to others for such purposes, and Town and/or its licensee shall cooperate with Company and conduct such operations in such a manner so as to cause minimal interference with Company's use of the Solid Waste Facility.

(h) Town shall indemnify, defend and hold harmless Company, its officers, employees, consultants, agents, contractors and invitees, from any and all liability, loss, costs, or obligations, including reasonable attorneys' fees, on account of, or arising out of, any such loss, injury, death or damage, relating to or arising from the acts or omissions of Town or Town's employees in connection with Town's use, possession, operation and management of areas/facilities subject to the Gas Agreements, including the LGE Plant.

(i) Town shall use its best efforts to cause ICL to, execute a limited assignment agreement, in the form attached hereto as Exhibit K (the "Assignment Agreement"), allowing the Town to assign to the Company certain of the Town's rights arising from the Gas Agreements.

30. **Company's Covenant to Operate Continuously.** As a material consideration to Town for the execution of this Agreement, Company covenants and agrees that during the entire Term of this Agreement, Company shall, excepting during a Force Majeure Event, continuously conduct and carry on the Permitted Use in a proper manner on the Landfill and shall keep and maintain the Landfill Footprint open for business and continuously cause the Permitted Use to be conducted therein during each and every business day for such number of hours each day as is allowed under the Permits.

31. **Utilities.**

(a) Company shall pay before delinquency all charges Company incurs for utilities used in or upon the Solid Waste Facility.

(b) Town agrees that when the Solid Waste Facility is served by Town of Colonie Pure Waters Sewer District or the sewer system is located in close proximity to the Solid Waste Facility, Company shall have access and be able to discharge, through an existing tie-in, Solid Waste Facility leachate and other Solid Waste Facility related wastewater directly to the District sewer system. Company will comply with all regulations and permit conditions specified by Town of Colonie Pure Waters Sewer District, as amended from time to time, by Town.

32. **Surrender.** Upon the termination of this Agreement, Company shall surrender the Solid Waste Facility in such repair and condition in accordance with the provisions of Sections 8 and 9 above; provided, however, that Company shall retain ownership of all personal property and trade fixtures to the Solid Waste Facility. Upon such termination, Company shall, within six (6) months, remove all its personal property and trade fixtures and reasonably restore the Solid Waste Facility, as it was affected by such personal property and trade fixtures.

33. **Closure, Post Closure and Financial Assurance.**

(a) During the Term of this Agreement and upon any early termination of this Agreement based upon a Company Event of Default, Company shall be solely responsible for any and all Federal, State and local governmental Closure and Post-Closure Care and financial assurance requirements and responsibilities relating to the Landfill up to the date of termination of this Agreement and any and all landfill operations conducted therein by Company with respect to the Landfill. This shall include, but is not necessarily limited to:

- Permitting and all issues and costs related thereto;
- Closure design and all issues and costs related thereto;
- Construction and inspection services and costs related thereto;
- On-going cap maintenance thereto;
- On-going leachate collection and disposal thereto;
- On-going gas management on the Landfill thereto;
- Provide and maintain financial assurance in a format approved by NYSDEC;
- Compliance with all Applicable Law and the Permits; and
- Corrective Measures Reports and a Corrective Measures Program.



For the avoidance of doubt, the Parties agree that Town shall be solely responsible for any and all Federal, State and local governmental Closure and Post-Closure Care and financial assurance requirements and responsibilities relating to the Class 3 Inactive Site and the LGE Plant.

(b) The indemnifications contained in Section 14(b) above shall specifically include the indemnification related to any and all such Closure and Post-Closure Care requirements. Notwithstanding the foregoing and in addition to such indemnification (and not in lieu of same) by Company in favor of Town, Company shall comply with and satisfy any and all Federal and State requirements (as amended from time to time) and all local requirements in existence as of the Effective Date with respect to the operation of the Landfill, including, but not limited to, the establishment of and continued funding of any trust or bonding with respect to the operation of the Landfill by Company (and/or any prior party), Closure and Post-Closure Care costs and any requirements with respect to the Landfill notwithstanding any termination of the Agreement. In accordance with any and all Federal and State requirements (as amended from time to time) with respect to Post-Closure Care, Company's obligations under this Section 33 shall survive for a minimum period of thirty (30) years following the Closure of the Landfill.

(c) Subject to the expiration of the Term of this Agreement, Town agrees to provide to Company access to the Solid Waste Facility and all adjacent properties to which Town has access as of the Commencement Date in order to allow Company the ability and opportunity to perform its obligations pursuant to the terms and conditions of this Section including, without limitation any monitoring, testing or other Post-Closure Care activities.

(d) Company shall be deemed the "operator" of the Landfill as that term is used in 6 NYCRR section 360-2.19. Company must establish, in a manner in accordance with subdivision (e) of 6 NYCRR section 360-2.19, financial assurance for the costs of Post-Closure Care of the Landfill as required under said section 360-2.15. Except as otherwise provided in Section 14, Company must provide continuous coverage for Post-Closure Care of the Landfill until released from financial assurance requirements for Post-Closure Care by the NYSDEC demonstrating compliance with 6 NYCRR 360-2.15.

(e) Company, as operator of the Landfill and as the entity required to undertake corrective measures under the terms of this Agreement (except in the event this Agreement is terminated early pursuant to a Town Event of Default) and 6 NYCRR section 360-2.20, must establish, in accordance with subdivision (e) of 6 NYCRR section 360-2.19, financial assurance for the most recent corrective measures program. Except as otherwise provided in Section 14, Company as operator must provide continuous coverage for corrective measures until released from financial assurance requirements for corrective measures by the NYSDEC by demonstrating compliance with 6 NYCRR section 360-2.20.

(f) Company will obtain and provide at its sole cost and expense a form of financial assurance mechanism, in a manner in accordance with subdivision (e) of 6 NYCRR section 360-2.19 and that is acceptable to the NYSDEC, and the mechanism(s) used to demonstrate financial assurance under this Section must ensure that the funds necessary to meet the costs of Closure, Post-Closure Care, and corrective measures for known releases will be available whenever they are needed.

34. **Existing Contracts.** To the extent permitted by Applicable Law, Town shall assign all Existing Contracts to Company, which assignment shall be effective as of the Effective Date. To the extent permitted by Applicable Law, Company and Town agree to honor all of the Existing Contracts through their respective terms, including, but not limited to, any options which may have been granted by Town under such Existing Contracts; provided, however, that Company shall have the same rights to terminate the Existing Contracts as Town. Town shall have no obligation to participate in such efforts to extend the Existing Contracts; provided, however, Town agrees to cooperate with Company in entering into intergovernmental or inter-municipal agreements on terms and conditions acceptable to Town, subject, however, to any necessary legislative approvals and provided, further, that such agreements shall not result in any financial responsibility on the part of Town. Town agrees to use commercially reasonable efforts to enforce the terms and conditions of the Existing Contracts throughout their specific terms (except that Company shall be responsible for collections of any amounts billed by Company). To the extent any suit for collection needs to be instituted, Town shall cooperate with Company in instituting a collection action, at Company's cost, or if enforceable, Town shall assign such cause of action to Company, and Company shall prosecute such cause of action in its own name.

35. **Parent Guaranty.** Company shall deliver to Town on or before the Effective Date a Guaranty executed by Waste Connections, Inc., which is the sole owner of Company, to secure all of Company's payment and performance obligations under this Agreement. The Guaranty shall be in the form attached as Exhibit L.

36. **Source of Waste.** Company hereby agrees that, without the prior written consent of Town, Company shall not accept for disposal at the Solid Waste Facility Qualified Waste that Company knows, or has reason to believe, has originated within the metropolitan areas of New York City, New York, Boston, Massachusetts or Hartford, Connecticut.

37. **Solid Waste Facility Gate and Residential Collection Rates.**

(a) Except with regard to the free disposal of Town Designated Waste provided for in Section 7(c), Company agrees that, from the Effective Date until April 1, 2012, the rates Company will charge (i) to residents and businesses located in Town, (ii) to the Villages of Colonie and Menands and (iii) for the disposal of Town Designated Waste, are as set forth in the 2011 Rate Table attached hereto as Exhibit M. Except with regard to the free disposal of Town Designated Waste provided for in Section 7(c), Company hereby agrees to limit increases to the Solid Waste Facility gate rates charged (i) to residents and businesses located in Town, and (ii) for the Disposal of Town Designated Waste, to no greater than Five Percent (5%) in the first Contract Year and thereafter such rates may be adjusted on an annual basis in an amount not greater than the increases in the CPI-U and on a periodic basis to reflect Company's increased costs resulting from fuel prices and changes to existing, or adoption of new, laws, rules, regulations, taxes, fees and other similar obligations imposed by federal, state and local governments and agencies. Company reserves the right to set the gate rates charged to all other third parties at whatever levels Company deems advisable.

(b) Company agrees to cause its affiliate, County Waste, to limit the residential solid waste collection rate adjustments County Waste imposes on residential solid waste collection customers of County Waste that are residing within the limits of the Town of

Colonie to (i) annual adjustments equal to the greater of Three and 5/10 Percent (3.5%) or the annual increase in the CPI-U; and (ii) periodic adjustments to reflect Company's increased costs resulting from fuel prices and changes to existing, or adoption of new, laws, rules, regulations, taxes, fees and other similar obligations imposed by federal, state and local governments and agencies. Under no circumstances, however, will this Section 37(b) apply to any customers of County Waste residing outside the limits of the Town of Colonie.

(c) For purposes of this Section 37, all fuel price adjustments shall be determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE")'s Weekly Retail On Highway Diesel Prices for the Central Atlantic. The EIA/DOE currently publishes these prices on their website as follows: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.

**38. Maintenance and Monitoring of the Class 3 Inactive Site.** During the Term of this Agreement, Company shall conduct the following activities on the Class 3 Inactive Site:

- On-going maintenance of vegetative cover; and
- On-going, routine environmental monitoring, as such is required as of the Effective Date.

Nothing in this Section 38 shall relieve Town of the obligations set forth in Section 14(e). Following the Effective Date, to the extent the NYSDEC or any other governmental authority requires or imposes environmental monitoring requirements on the Class 3 Inactive Site that are in addition to or more extensive than the environmental monitoring that is being conducted thereon as of the Effective Date, Town shall be responsible for such additional or more extensive environmental monitoring. Town shall be responsible for any and all remedial activities relating to or arising from the Class 3 Inactive Site.

**39. Venue.** In the event that any litigation arises under this Agreement, any such action shall be filed in the Supreme Court, County of Albany, New York or the U.S. District Court for the Northern District of New York. Each Party does hereby agree to submit to the jurisdiction and venue of such courts and to accept service of process by mail in accordance with the procedures therefore in the New York Civil Practice Laws and Rules or the Federal Rules of Procedure, as applicable.

**40. General Provisions.**

(a) Each Party hereby agrees to indemnify the other Party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Agreement.

(b) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

(c) Whenever in this Agreement the consent or approval of either Town or Company is required or permitted, the Party requested to give such consent or approval shall act promptly and shall not unreasonably withhold, delay or condition its consent or approval.

(d) The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(e) This Agreement shall be interpreted in accordance with and governed by the laws of the State of New York. The language in all parts of this Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against Town or Company.

(f) This instrument constitutes the entire agreement between Town and Company with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Town and Company.

41. **Late Charges.** If Company shall fail to pay any consideration or other payment within thirty (30) days after the date when due, Company shall pay to Town, in addition to such consideration, as a late charge, a sum equal to annual interest at the Interest Rate (defined in Section 22) on the amount unpaid, computed from the date such payment was initially due (*i.e.*, without any grace period) to the date of payment in full.

42. **Reference to Applicable Law.** Each and every provision of Applicable Law and clause required by Applicable Law to be inserted in this Agreement shall be deemed to be inserted therein and this Agreement shall be read and enforced as though it were included and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then, upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion.

43. **Drafting of Agreement.** The Parties acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each Party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular Party or its legal counsel.

44. **Exculpation.**

(a) All covenants, stipulations, promises, agreements and obligations of Town contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of Town and not of any member, director, officer, employee or agent of Town in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of Town.

(b) All covenants, stipulations, promises, agreements and obligations of Company contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of Company and not of any partner, director, officer, employee or agent of

Company in his/her or its individual capacity, and no recourse shall be had for any claim hereunder against any partner, director, officer, employee or agent of Company.

45. **No Third Party Beneficiary.** This Agreement shall not be deemed to grant any rights to any person except the Parties hereto, as expressly provided herein, and the terms hereof shall be enforceable only against said Parties.

46. **Binding Agreement.** This Agreement shall be binding upon the Parties hereto and their successors and assigns, provided, however, that in the event that either of the Parties hereto is reorganized, merged or otherwise combined with another person such that it does not survive such reorganization, merger or other combination, the prior consent of the other Party shall be required for this Agreement to continue in effect. This Agreement may be executed in two (2) counterparts, each one of which shall be deemed an original, but all together shall constitute one and the same agreement. Signatures by facsimile or electronic mail shall be deemed original signatures for all purposes hereof.

47. Company agrees that this agreement is subject to and subordinate to a certain Cellular Tower Lease Agreement between Town and Sprint Spectrum, L.P., dated January 7, 1999, which agreement is attached hereto as exhibit "N".

*[Balance of this page intentionally left blank; Signature page follows.]*

IN WITNESS WHEREOF, Town and Company have executed this Operating Agreement by proper persons thereunto duly authorized as of the date first hereinabove written.

**THE TOWN OF COLONIE**

By: Paula A. Mahan  
Name: Paula A. Mahan  
Title: Town Supervisor

**CAPITAL REGION LANDFILLS, INC.**

By: J. M. Little  
Name: James M Little  
Title: SR Vice President