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INCINERATION FACILITIES  
LEASE AGREEMENT

among

THE BOROUGH OF NAUGATUCK, CONNECTICUT,  
as Lessor

and

THE WATER POLLUTION CONTROL AUTHORITY  
OF THE BOROUGH OF NAUGATUCK,  
as Lessor

and

NAUGATUCK ENVIRONMENTAL TECHNOLOGIES, LLC  
as Lessee

Dated

October 25, 2001

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INCINERATION FACILITIES  
LEASE AGREEMENT

THIS INCINERATION FACILITIES LEASE AGREEMENT is made and entered into as of this 25<sup>th</sup> day of October, 2001 among the Borough of Naugatuck, a political subdivision organized and existing under the laws of State of Connecticut, the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes (the "WPCA"; the WPCA and the Borough of Naugatuck are collectively referred to herein as the "Lessor") and Naugatuck Environmental Technologies, LLC, a limited liability corporation organized and existing under the laws of the State of Connecticut and authorized to do business in the State of Connecticut (the "Lessee").

RECITALS

(A) The Lessor owns the Borough of Naugatuck sludge incineration facilities, consisting of the dedicated merchant wastewater and septage holding tank, the sludge dewatering building and equipment, the sludge incinerator and the ash lagoons.

(B) The sludge incineration facilities are operated by U.S. Filter Operating Services, Inc. under a contract which expires on April 30, 2002, or such earlier time as provided in such contract.

(C) The Lessor is authorized under NPDES Sewage Sludge Incinerator Permit No. CTL000002, Title V Permit No. 109-0059-TV and State of Connecticut permits to operate nos. 109-0001 and 109-0002 to dispose of sewage sludge by means of the sludge incineration facilities.

(D) The Lessor has determined that it is in the Lessor's best interests to contract with a private company on a long-term basis to lease, operate, maintain, repair, replace and manage certain sludge incineration facilities, and to permit (except for the State air permit to construct the fluidized bed incinerator portion of the initial capital improvements), design, construct, startup and test certain initial capital improvements to the sludge incinerator facilities to meet the requirements of applicable law.

(E) The Lessor and the State of Connecticut Department of Environmental Protection (DEP) have heretofore consented to the entry of a consent order pursuant to a complaint filed by the DEP alleging that the Lessor had been or would be in violation of the applicable laws by emitting nitrogen oxide from the sludge incineration facilities not within the limitations prescribed by such applicable laws. The consent order is effective from its issuance until May 1, 2003 or such other time as may be granted by the Commissioner of the DEP.

(F) The Lessor issued a request for proposals on February 5, 1999 to provide capital improvement and asset management services for, among other things, the sludge incineration facilities, and set forth in the RFP the criteria for selection of the preferred proposer. RFP Addenda were issued on March 18, 1999, March 30, 1999, April 8, 1999, April 20, 1999 and April 23, 1999.

(G) Proposals submitted in response to the RFP were received on May 25, 1999 from two firms. A proposal clarification process was conducted commencing in September, 1999 and post-proposal clarification submittals were received from the Lessee in October, 1999, December, 1999 and February, 2000. The other proposer declined to submit a proposal clarification response and formally withdrew its proposal.

(H) Based on further evaluation of the Lessee's clarified proposal, the Borough's Board of Mayor and Burgesses, on behalf of the Borough of Naugatuck and the WPCA, voted in February, 2000 to proceed with negotiations with the Lessee.

(I) In March, 2000, the Lessor initiated the contract negotiations with the Lessee which have concluded with this Lease Agreement.

(J) On October 11, 2001, the Borough's Board of Mayor and Burgesses adopted a resolution on behalf of the Borough of Naugatuck and the WPCA authorizing the execution and delivery of this Lease Agreement.

(K) Vivendi Environnement, S.A., an affiliate of the Lessee, will guarantee the performance of the obligations of the Lessee under the Lease Agreement pursuant to a guaranty agreement executed concurrently herewith.

(L) The sludge incineration facilities will continue to be owned by the Lessor and will be leased to the Lessee.

(M) The Lessee will be responsible for permitting (except with respect to the State air permit to construct the fluidized bed incinerator portion of the initial capital improvements) designing, constructing, starting up, testing and achieving acceptance of certain initial capital improvements to the sludge incineration facilities pursuant to this Lease Agreement.

(N) The Lessor desires to lease the sludge incineration facilities, and the Lessee desires to perform the leasehold obligations under the terms of this Lease Agreement.

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

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

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

"Acceptable Disposal Site" has the meaning specified in subsection 9.2(A).

"Acceptance Criteria for Trucked-In Materials" means the physical, chemical or biological standards governing the acceptance of Trucked-In Materials, as established pursuant to the NPDES Permit, the 503 Permit or any other applicable Governmental Approval or Applicable Law, or any applicable agreement for the receipt of Trucked-In Material.

"Access Road" means the access road to the Wastewater Treatment Complex across CMCI's property located at 280 Elm Street, Naugatuck, Connecticut, as delineated in Attachment 1 to Appendix 1, or such alternate access route as may be determined and designated by the Lessor and CMCI from time to time in accordance with the Discharge and Access Agreement.

"Adjustment Factor" has the meaning specified in Section 13.5.

"Advancement Work" has the meaning set forth in subsection 4.5(B).

"Advancement Work Commencement Date" has the meaning set forth in subsection 4.5(A).

"Advancement Work Period" means the period from and including the Advancement Work Commencement Date to and including the day preceding the Commencement Date.

"Affiliate" means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

"Annual Distributable Net Revenue Deficit" has the meaning specified in subsection 13.3(E).

"Annual Distributable Net Revenue Surplus" has the meaning specified in subsection 13.3(D).

"Annual Period" means each of the 20 one-year periods ending on the anniversary of the Commencement Date.

"Annual Settlement Statement" has the meaning specified in Section 13.9.

"Appendix" means any of the Appendices attached to this Lease Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" means: (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate

regulatory Governmental Body if such interpretation is documented by such regulatory body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or other similar agreement between the Lessor and the DEP or EPA, in each case having the force of law and applicable from time to time: (a) to the siting, design, acquisition, construction, equipping, financing, ownership, possession, startup, testing, acceptance, operation, maintenance, repair, replacement or management of the Incineration Facilities; (b) to the conveyance, treatment, storage and incineration of sludge; (c) to the air emissions therefrom; and (d) to the transfer, handling, processing, transportation or disposal of ash and other residuals produced thereby. Applicable Law shall include the NPDES Permit, the 503 Permit, the Consent Order, the Title V Permit, the Incinerator Air Permits and the 503 Regulations, but shall be deemed not to include the Excluded Conditions.

"Approval Period" means that period between the Contract Date and the Commencement Date during which the parties will carry out their obligations under Article IV.

"Ash Lagoon" means the lagoons constituting part of the Incineration Facilities used for the temporary storage of Ash Residue slurries.

"Ash Residue" means ash residue generated from the incineration of Incinerator Sludge by the Incineration Facilities.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. 101, et seq., as amended from time to time and any successor statute thereto. "Bankruptcy Code" shall also include (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

"Base Rent" has the meaning specified in Section 13.2.

"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Lease Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

"Borough" means, collectively, the Borough of Naugatuck, a political subdivision of the State, and the WPCA.

"By-Passed Waste" means any liquid or solid material other than Ash Residue resulting from the incineration, partial incineration or by-passing of Incinerator Sludge which requires disposal under Applicable Law.

"Capital Modification" means any material change, alteration, improvement, upgrade or modification of any of the Incineration Facilities or any installation of new equipment or

systems, including any of the foregoing that results from a replacement of any of the Incineration Facilities (other than replacements in-kind) or the installation of new equipment, machinery, systems or other property at the Incineration Facilities pursuant to the Lessee's responsibilities under Article VIII (other than replacements in kind). A "Capital Modification" shall include any modification of the Initial Capital Improvements, before, during or after their construction.

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

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance therewith materially increases the cost of performing or materially increases the scope of a party's obligations hereunder:

(a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date;

(b) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Lessee or of the Lessor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(c) a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in effect as of the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Lessee or of the Lessor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Contract Date shall not constitute a "Change in Law".

"Change Order" means a written order of the Lessor signed by the Lessor's Contract Representative authorizing and approving a Capital Modification pursuant to Section 12.1.

"Clean Water Act" means the Clean Water Act (formally referred to as the Federal Water Pollution Control Act), 33 U.S.C. 1251 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Collection System" means the Lessor's wastewater collection system and the real property on which it is located, as described in Appendix 1, consisting generally of sanitary sewers, drains, manholes, force mains and interceptors (including those portions of the West Side Interceptor not located within the Plant Site, the pump stations, and sewer trunk lines and mains, but excluding service connections), together with all improvements and capital modifications thereto, as the same shall be acquired, installed, constructed or reconstructed from time to time. The Collection System also includes: (1) the pneumatic ejector station located in the Platts Mills section of the Borough of Naugatuck and the 4-inch force main up to the Bristol Street Pump Station in the City of Waterbury; and (2) those portions of the sanitary sewer located in the Town of Beacon Falls. The Collection System does not include the Borough of Naugatuck storm water system.

"Commencement Date" means the first date on which all of the Commencement Date Conditions shall be satisfied or waived, as agreed to in writing by the parties pursuant to Section 4.4.

"Commencement Date Conditions" has the meaning specified in Section 4.3.

"Community Septage" means Septage from the Borough and the Participating Entities which is delivered to the Plant other than through the Collection System, except for Middlebury Septage which is delivered to the Incineration Facilities as provided hereunder.

"Company" means U.S. Filter Operating Services, Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

"Consent Order" means the Consent Order No. 1626 entered into by the Lessor and the DEP, dated February 5, 2001, and attached hereto as a Reference Document, relating to the compliance of nitrogen oxide emissions from the Incineration Facilities with Applicable Law.

"Consumables" means fuel oil, diesel fuel, liquid chlorine, liquid sulfur dioxide, liquid defoamant, quick lime, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the operation of the Incineration Facilities.

"Consumer Price Index" or "CPI" means the final reported non-seasonally adjusted Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for Metropolitan Areas in the Northeast Region of the United States with populations less than 1.5 million people.

"Contract Administration Memorandum" has the meaning set forth in subsection 6.6(B).

"Contract Administrator" has the meaning specified in subsection 6.5(C).

"Contract Date" means the date this Lease Agreement is executed and delivered by the parties hereto.

"Contract Representative" means, in the case of the Lessee, the individual specified in writing by the Lessee as the representative of the Lessee from time to time for all purposes of this Lease Agreement and, in the case of the Lessor, the individual designated in writing by the Board of Mayor and Burgesses from time to time.

"Contract Standards" means the terms, conditions, methods, techniques, practices and standards imposed or required by: (1) Applicable Law; (2) the ICI Design and Construction Requirements; (3) Good Engineering and Construction Practice; (4) Prudent Industry Practice; (5) the Operation and Maintenance Manual; (6) applicable equipment manufacturers' specifications; (7) applicable Insurance Requirements; and (8) any other standard, term, condition or requirement specifically provided in this Lease Agreement to be observed by the Lessee. Subsection 1.2 (O) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

"Contract Year" means the Lessor's fiscal year commencing on July 1 in any year and ending on June 30 of the following year; provided, however, that the first Contract Year shall commence on the Commencement Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Lease Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Lease Agreement or the effective date of any termination, whichever is appropriate. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

"Cost Substantiation" has the meaning specified in Section 17.4.

"Crompton" or "CMCI" means Crompton Manufacturing Company, Inc.

"Crompton Sludge" means all sludge generated from CMCI's pretreatment plant and discharged to the Incineration Facilities for treatment and disposal pursuant to the Discharge and Access Agreement.

"Cumulative Carryforward Deficit" has the meaning set forth in subsection 13.3(I).

"Deliverable Material" has the meaning specified in Section 10.10.

"DEP" means the Connecticut Department of Environmental Protection or any predecessor or successor agency.

"Designated Disposal Site" has the meaning specified in subsection 9.2(B).

"Designated Disposal Site Change in Law" has the meaning specified in subsection 9.5(D).

"Discharge and Access Agreement" means the Discharge and Access Agreement, dated April 12, 2001 between the Lessor and Crompton pertaining to the disposal of Crompton Sludge at the Incineration Facilities and the use of the Access Road, and attached hereto as a Reference Document.

"Dramatic Market Change" has the meaning specified in Section 13.4.

"Encumbrance" means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Incineration Facilities.

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

"Event of Default" means, with respect to the Lessee, those items specified in Section 14.2, and with respect to the Lessor, those items specified in Section 14.3.

"Excluded Conditions" means those conditions of the Consent Order which the Lessee is not required to perform hereunder, including the Lessor's obligation to purchase nitrogen oxide emission reduction credits under the Consent Order for any failure (other than a failure resulting from the Lessee's failure to comply with Prudent Industry Practice) of the Incineration Facilities to comply with the nitrogen oxide emissions requirements thereunder. The Excluded Conditions are defined in Appendix 9.

"Existing Contracts" means the contracts of the Lessor or NTC listed in Appendix 17.

"Exit Transition Plan" means the transition services, including plans for temporary, short-term, operational procedures and activities relating to and after termination of this Lease Agreement, to be undertaken by the Lessee when and as more fully specified in Appendix 19.

"Extension Period" has the meaning specified in Section 11.8.

"Facilities Equipment" means all manufactured equipment constituting part of the Incineration Facilities as of the Commencement Date and further described in Appendix 15.

"Facilities Manager" has the meaning specified in subsection 6.5(A).

"Facilities Plan" means the Wastewater Facilities Report (Draft Report), dated September 1991, and attached as a Reference Document hereto, prepared for the Lessor by Stearns & Wheler pursuant to the NPDES Permit issued on July 25, 1991.

"Facilities Registry" means the registry of Incineration Facilities prepared pursuant to Appendix 15.

"Facilities Structures" means all structures and buildings, other than Facilities Equipment, constituting part of the Incineration Facilities as of the Commencement Date and further described in Appendix 15.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

"Final Completion" means, with respect to the Initial Capital Improvements, completion of the ICI Design/Build Work in compliance with the ICI Design and Construction Requirements and the requirements of Section 11.11.

"Final Design" means the detailed plans and specifications necessary and sufficient to allow complete construction of the Initial Capital Improvements in conformance with the requirements of this Lease Agreement.

"Final Punch List" has the meaning specified in subsection 11.1(B).

"Financing Commitment Date" means the date on which the Lessor and a third-party lessor have agreed upon the definitive terms and conditions regarding the lease-purchase of the Initial Capital Improvements and the final principal and interest schedules for the financing of such Initial Capital Improvements; provided that the Financing Commitment Date shall not be more than 15 days prior to the Commencement Date.

"503 Permit" means the National Pollutant Discharge Elimination System Sewage Sludge Incinerator Permit No. CTL000002 issued on October 14, 1994 and expiring on November 14, 1999, and attached hereto as a Reference Document.

"503 Regulations" means 40 CFR Part 503 as in effect on the Contract Date.

"Fixed ICI Design/Build Price" has the meaning specified in subsection 10.5(C).

"Fixed ICI Design/Build Price Adjustments" has the meaning specified in subsection 10.5(D).

"Good Engineering and Construction Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the sludge incineration industry as followed in the northeast region of the United States. Good Engineering and Construction Practice shall include, without limitation, adherence to the "design criteria" set forth in Appendix 4 as such criteria may be amended, modified or updated from time to time as of the commencement of work for the Initial Capital Improvements or any Capital Modification.

"Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Leasehold Obligations, including the NPDES Permit, the 503 Permit, the Consent Order, the Title V Permit and the Incinerator Air Permits.

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

"Guarantor" means Vivendi Environnement, S.A.

"Guaranty Agreement" or "Guaranty" means the Guaranty Agreement entered into concurrently with this Lease Agreement from the Guarantor to the Lessor in substantially the form

set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

"Hazardous Incinerator Residuals" means any portion of the Incinerator Residuals which (1) constitutes a "hazardous waste" (as defined in RCRA or counterpart state environmental laws); or (2) contains "hazardous substances" (as defined in CERCLA or counterpart state environmental laws) or other Regulated Substances in such concentrations or volumes as to render the Incinerator Residuals that would normally be handled at a Designated Disposal Site unacceptable for treatment or disposal at such Designated Disposal Site.

"Hazardous Material" means any waste, substance, object or material deemed hazardous under Applicable Law, including without limitation "hazardous substances" as defined in CERCLA and "hazardous waste" as defined in RCRA.

"ICI" means the Initial Capital Improvements.

"ICI Acceptance" means demonstration by the Lessee in accordance with Article XI and Appendix 7 that the ICI Acceptance Tests have been conducted, the ICI Acceptance Test Procedures and Standards have been achieved and the other ICI Acceptance Date Conditions set forth in Section 11.5 have been achieved.

"ICI Acceptance Date" means the date on which ICI Acceptance occurs or is deemed to have occurred under Article XI.

"ICI Acceptance Date Conditions" has the meaning specified in Section 11.5.

"ICI Acceptance Test Procedures and Standards" means the test procedures and standards for ICI Acceptance set forth in Appendix 7.

"ICI Acceptance Tests" means the inspections and tests for ICI Acceptance set forth in Appendix 7.

"ICI Design and Construction Requirements" means the ICI Design and Construction Requirements for the Initial Capital Improvements set forth in Appendix 4, as the same may be changed or modified in accordance herewith.

"ICI Design/Build Period" means the period from and including the Commencement Date to and including the day preceding the ICI Acceptance Date.

"ICI Design/Build Price" has the meaning specified in subsection 10.5(B).

"ICI Design/Build Work" means the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Lessee's permitting (except with respect to the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements) design, engineering, construction, start-up, shakedown, ICI Acceptance Testing, ICI Acceptance, and related obligations with respect to the Initial Capital Improvements during the Advancement Work Period and the ICI Design/Build Period under this Lease Agreement, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Lessee's

administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever under this Lease Agreement pertaining to such obligations. A reference to ICI Design/Build Work shall mean any part and all of the ICI Design/Build Work, including the Advancement Work, unless the context otherwise requires, and shall include all extra ICI Design/Build Work authorized by Change Order.

"ICI Design Contract" means any material Subcontract relating to the design of the Initial Capital Improvements.

"ICI Start-Up" means, with respect to each Initial Capital Improvement, the process for start-up testing, to the extent practical, of all or any component thereof after construction or installation for the purpose of demonstrating that the equipment or system being tested operates properly, as described in Section 11.2 and Appendix 7.

"ICI Substantial Completion" has the meaning specified in subsection 11.1(A).

"Incineration Facilities" means the facilities for the processing, incineration and disposal of Incinerator Sludge which are identified in the diagram in Attachment 1 to Appendix 1 and located on the Incineration Facilities Site adjacent to the Plant Site, including the dedicated merchant septage and wastewater holding tank, the sludge dewatering building and equipment, the sludge incinerators, air emissions control equipment and the Ash Lagoons, and the Initial Capital Improvements and any other Capital Modifications made thereto from time to time hereunder.

"Incineration Facilities Cost" has the meaning specified in subsection 13.3(G).

"Incineration Facilities Site" means the parcel of real property on which the Incineration Facilities are located, as described in Appendix 1. The boundaries of the Incineration Facilities Site are set forth in Attachment 1 to Appendix 1.

"Incineration Process Filtrate" means any wastewater generated from the operation of the Incineration Facilities in accordance herewith, including filtrate resulting from Merchant Sludge and Merchant Septage and Wastewater treatment operations, wastewater from the air emissions control equipment for the incinerators and quenchwater removed from the Ash Lagoons.

"Incinerator Air Permits" means the State Permits to Operate Nos. 109-0001 and 109-0002 issued by DEP on August 1, 1985 for the operation of the multiple-hearth sewage sludge incinerators at the Incineration Facilities by the Lessor, and attached hereto as Reference Documents.

"Incinerator Residuals" means Ash Residue, Incineration Process Filtrate and By-Passed Waste.

"Incinerator Residuals Responsibilities" means the On-Site Residuals Handling Obligations and the Off-Site Residuals Disposal Obligations.

"Incinerator Sludge" means Plant Sludge, Crompton Sludge, Merchant Sludge and any sludge resulting from the treatment of Merchant Septage and Wastewater at the Incineration Facilities.

"Initial Capital Improvements" or "ICI" means the improvements to the Incineration Facilities described in Appendix 2 to be permitted (except for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements), designed, constructed, installed, started up and tested by the Lessee in accordance with the ICI Design and Construction Requirements.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy of Required Leasehold Period Insurance or Required ICI Design/Build Period Insurance under this Lease Agreement, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

"Interim Service Contract" mean the Interim Service Contract for Wastewater Treatment System Asset Management, dated April 12, 2001, among the Borough of Naugatuck, the Water Pollution Control Authority of the Borough of Naugatuck and U.S. Filter Operating Services, Inc., including the appendices and reference documents thereto, as the same may be amended or modified from time to time in accordance therewith.

"Lease Agreement" means this Incineration Facilities Lease Agreement, entered into concurrently with the Service Contract, between the Lessor and the Lessee, including the Appendices, Transaction Forms and Reference Documents, as the same may be amended from time to time in accordance herewith.

"Leasehold Obligations" means the Lessee Responsibilities and the ICI Design/Build Work.

"Leasehold Period" means the period from and including the Commencement Date to and including the last day of the Term of this Lease Agreement.

"Leasehold Rights" has the meaning specified in Section 5.2.

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

"Lessee" means Naugatuck Environmental Technologies, LLC, a limited liability corporation organized and existing under the laws of the State of Connecticut, and its permitted successors and assigns.

"Lessee Construction Superintendent" has the meaning specified in subsection 10.11(C).

"Lessee Fault" means any breach (including the untruth or breach of any Lessee representation or warranty herein set forth), failure, nonperformance or noncompliance by the Lessee with respect to its obligations under this Lease Agreement to the extent not directly

attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Lessor's rights, obligations or ability to perform under this Lease Agreement.

"Lessee Responsibilities" means everything required to be furnished and done for and relating to the Incineration Facilities by the Lessee pursuant to this Lease Agreement during the Term hereof, other than the ICI Design/Build Work. Lessee Responsibilities include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Lessee's operation, maintenance, repair, replacement, management and related obligations under this Lease Agreement, and all of the Lessee's administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Lease Agreement pertaining to such obligations.

"Lessor" means, collectively, the Borough of Naugatuck, a political subdivision of the State, and the WPCA.

"Lessor Engineer" means Alternative Resources, Inc. (ARI), or if ARI shall be unavailable, then another nationally recognized consulting engineer or firm of consulting engineers, having experience with respect to the permitting, design, construction, testing, operation, maintenance, repair, replacement and management of sludge incineration facilities, designated as the Lessor Engineer in writing by the Lessor.

"Lessor Fault" means any breach (including the untruth or breach of any Lessor representation or warranty herein set forth), failure, nonperformance or noncompliance by the Lessor with respect to its obligations under this Lease Agreement to the extent not directly attributable to any Uncontrollable Circumstance, and which materially and adversely affects the Lessee's rights, obligations or ability or costs to perform under this Lease Agreement.

"Lessor Indemnitee" has the meaning specified in Section 15.7.

"Lessor Property" means any structures, improvements, equipment, fire alarm systems, wastewater and water mains, valves, pumping systems, hydrants, hydrant connections, duct lines, streets, lamps, lampposts, monuments, sidewalks, curbs, trees or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by the Lessor.

"Letter of Credit" has the meaning specified in Section 16.3.

"Lien" means any and every lien against the Incineration Facilities or against any monies due or to become due from the Lessor to the Lessee under this Lease Agreement, for or on account of the Leasehold Obligations, including without limitation mechanics', materialmen's, laborers' and lenders' liens.

"Loss-and-Expense" means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, cost or expense, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Lease Agreement.

"Material Decline in Guarantor's Credit Standing" has the meaning specified in subsection 16.1(B).

"Merchant Septage and Wastewater" means all septage and wastewater received for treatment and disposal at the Incineration Facilities including Septage from the Town of Middlebury.

"Merchant Sludge" means all liquid and dewatered sludge, other than Plant Sludge and Crompton Sludge, received for disposal at the Incineration Facilities.

"Non-Binding Mediation" means the voluntary system of dispute resolution established by Section 14.12 for the resolution of disputes arising under this Lease Agreement.

"NPDES Permit" means National Pollutant Discharge Elimination System Permit No. CT0100641 issued on August 7, 2001 and expiring on August 7, 2006, and attached hereto as a Reference Document.

"NTC" means the Naugatuck Treatment Company, an affiliate of Crompton and operator of the Incineration Facilities prior to April 16, 2001.

"Odor Control Plan" means the Lessee's plan for controlling odor at the Incineration Facilities as set forth in Appendix 16.

"Odor Litigation" means the legal proceedings initiated in Jones, et al. v. Borough of Naugatuck, No. CV-98-0146754-S, including any subsequent appeals, remands or related proceedings relating to alleged odor conditions at the Plant and the Incineration Facilities prior to April 16, 2001.

"Off-Site" means elsewhere than on or at the Incineration Facilities.

"Off-Site Residuals Disposal Obligations" means the obligations of the Lessee hereunder with respect to Incineration Residuals which take place Off-Site, including the obligations of the Lessee to transport and dispose of Incinerator Residuals and all related Off-Site handling, processing, storage and stockpiling rights, obligations and activities.

"On-Site" means on, at or within the Incineration Facilities.

"On-Site Residuals Handling Obligations" means the obligations of the Lessee hereunder with respect to the Incinerator Residuals which take place On-Site, including the obligations of the Lessee to handle, load and transfer for disposal all Incinerator Residuals.

"Operation and Maintenance Manual" means the manual and related computer programs prepared and maintained by the Lessee containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Lessee Responsibilities, in accordance with Article VI and Appendix 14.

"Operations Collateral Bond" has the meaning set forth in subsection 16.2(C).

"Operations Surety Bond" has the meaning set forth in subsection 16.2(B).

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate plus 2%, whichever is lower.

"Participating Entities" means the Town of Oxford, the Town of Middlebury, the Town of Beacon Falls, Crompton and any other entity which the Borough may contract with from time to time for the disposal of wastewater and septage at the Plant.

"Percentage Rent" has the meaning specified in Section 13.3.

"Performance Guarantees" means the guarantees of performance made by the Lessee specifically set forth in Sections 7.2 and 7.3.

"Plant" or "WWTP" means the Borough of Naugatuck Wastewater Treatment Plant and the real property on which it is located, consisting generally of that separate and contiguous part of the System comprised of buildings, structures and equipment (including the raw sewage pump station and screening building), and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment, secondary treatment and advanced biological treatment (nitrification) of System Influent, Plant effluent disinfection and dechlorination, Plant Sludge storage, laboratory functions and administration and management of the Plant, including the initial capital improvements and any other capital modifications made thereto from time to time. The Plant is identified in the diagram in Attachment 1 to Appendix 1.

"Plant Site" means the parcel of real property on which the Plant is located, as described in Appendix 1. The boundaries of the Plant Site are set forth in Attachment 1 to Appendix 1.

"Plant Sludge" means all liquid and dewatered sludge generated from the treatment of System Influent by the Plant.

"Pre-Existing Environmental Condition" means, and is limited to, (1) the presence anywhere in, on or under the Incineration Facilities on the Contract Date of underground storage tanks (for the storage of chemicals or petroleum products) that are not then in use in connection with operation of the Incineration Facilities; and (2) the presence of Hazardous Materials or Regulated Substances in environmental media anywhere in, on or under the Incineration Facilities (including the presence in surface water, groundwater, soils or subsurface strata) as of April 16, 2001, whether or not disclosed to the Lessee.

"Pretreatment Permit" means CMCI's pretreatment permit, dated January 30, 2001, pertaining to the discharge of Crompton Sludge to the Incineration Facilities, and attached hereto as a Reference Document.

"Prime Rate" means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

"Private Management Approvals" means all approvals, authorizations, consents or clearances, if any, necessary to be obtained by the Lessor from the EPA, the DEP or any other Governmental Body in connection with the Lessee Responsibilities to be performed under this Lease Agreement.

"Projected Rebuild/Replacement Schedule" has the meaning set forth in Appendix 15.

"Prudent Industry Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as prudent in the operation, maintenance, repair, replacement and management of sludge incineration facilities in the sludge incineration industry as practiced in the northeast region of the United States.

"Rating Service" means Moody's Investors Service, Inc. or Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any of their respective successors and assigns and, if such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Rating Service" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Lessor.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Reference Documents" means the documents attached hereto and made a part of this Lease Agreement.

"Reference Price" has the meaning specified in subsection 13.3(H).

"Regulated Substance" means (a) any oil, petroleum or petroleum product and (b) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law.

"Rent" has the meaning specified in Article XIII.

"Required ICI Design/Build Period Insurance" has the meaning specified in Appendix 10.

"Required Insurance" means the Required ICI Design/Build Period Insurance and the Required Leasehold Period Insurance.

"Required Leasehold Period Insurance" has the meaning specified in Appendix 10.

"Required Lessor Insurance" has the meaning specified in Appendix 10.

"Requisition" means a written submission by the Lessee on the form of requisition as agreed to by the parties, together with accompanying submittals, requesting payment with respect to the Fixed ICI Design/Build Price as set forth in Section 10.5 hereof.

"Response Action" means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Hazardous Material or any Pre-Existing Environmental Condition. "Response Actions" include, without limitation, any action which constitutes a "removal", "response", or "remedial action" as defined by Section 101 of CERCLA.

"RFP" means the Lessor's Request for Proposals to Operate and Maintain and Make Improvements to the Borough of Naugatuck Wastewater Treatment Plant and Sludge Incinerators issued on February 5, 1999, as amended.

"SCADA" means, in the context of data gathering and telemetry systems, "Supervisory Control and Data Acquisition".

"Scheduled ICI Acceptance Date" has the meaning specified in Section 11.9, and shall reflect all adjustments provided for therein.

"Security Instruments" means the Guaranty Agreement, the Letter of Credit, the Operations Collateral Bond and the Operations Surety Bond.

"Senior Supervisors" has the meaning specified in subsection 6.5(B).

"Septage" means the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a domestic septage holding tank, during cleaning located within the Borough of Naugatuck, the Participating Entities and any other municipality under contract with the Lessor for the processing of Septage at the Plant except for Middlebury Septage which delivered to the Incineration Facilities as provided hereunder.

"Service Contract" means the Service Contract for Wastewater Treatment System Capital Improvements and Asset Management, entered into concurrently with this Lease Agreement, between the Borough and the Company, including the appendices, the transaction forms and the reference documents thereto, as the same may be amended or modified from time to time in accordance therewith.

"Sewer Influent" means all flows reaching the Plant through the System from all connected sources, including residential, commercial, municipal and industrial sources. Sewer Influent includes wastewater, infiltration and inflows, pretreatment flow from the Participating Entities and landfill leachate from the Laurel Park Superfund Site, but does not include Community Septage.

"Shared Services Agreement" means the Shared Services Agreement, entered into concurrently with this Lease Agreement, between the Lessee and the Company, as the same may be amended from time to time in accordance therewith, and attached hereto as a Reference Document.

"Small Scale Capital Modification" means a Capital Modification requested by the Lessee, and not required as a result of Uncontrollable Circumstances or directed by the Lessor, which has a cost of less than \$50,000, as adjusted by the Adjustment Factor.

"Specified Site Conditions" means, and is limited to, (1) the presence at the Incineration Facilities of subsurface structures, materials or conditions having historical, archaeological, religious or similar significance, and (2) the presence at the Incineration Facilities of any habitat of an endangered or protected species as provided in Applicable Law.

"SRF" means the State's state revolving fund established pursuant to Subchapter VI of the Clean Water Act, as administered by the State's Clean Water Fund and its successors and assigns.

"Staffing Plan" means the Lessee's plan for staffing the Incineration Facilities.

"State" means the State of Connecticut.

"Subcontract" means an agreement or purchase order by the Lessee or a Subcontractor to the Lessee, as applicable.

"Subcontractor" means every person (other than employees of the Lessee) employed or engaged by the Lessee or any person directly or indirectly in privity with the Lessee (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Leasehold Obligations, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"System" means the Plant and the Collection System.

"System Influent" means Sewer Influent, Incineration Process Filtrate and Community Septage.

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

"Term" has the meaning set forth in Article III.

"Termination Date" means the last day of the Term of this Lease Agreement.

"Title V Permit" means the Title V Permit No. 109-0059-TV issued on November 27, 2000 and expiring on November 27, 2005, and attached hereto as a Reference Document.

"Transaction Form" means any of the Transaction Forms appended to this Lease Agreement.

"Transferred Property" means all vehicles, rolling stock, spare parts and consumables in stock at the Incineration Facilities and having operational utility which are to be transferred to the Lessee on the Commencement Date for its use.

"Transition Plan" means the plan relating to certain transition responsibilities of the Lessee for the Incineration Facilities as set forth in Appendix 13.

"Trucked-In Materials" means Merchant Sludge and Merchant Septage and Wastewater.

"Uncontrollable Circumstance" means any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Lease Agreement, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations), to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Lease Agreement on the part of such party.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include, and shall not be limited to, the following:

- (a) a Change in Law, except as otherwise provided in this Lease Agreement;
- (b) the receipt of Hazardous Material at the Incineration Facilities, subject to the terms of Section 7.5;
- (c) the existence of a Pre-Existing Environmental Condition;

- (d) the existence of a Specified Site Condition;
- (e) the existence of Hazardous Incinerator Residuals at the Incineration Facilities, subject to the terms of Section 7.5;
- (f) contamination of the Incineration Facilities from groundwater, soil or airborne Hazardous Material migrating from sources outside the Incineration Facilities to the extent not caused by Lessee Fault;
- (g) naturally occurring events (except weather conditions normal for the Borough of Naugatuck) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes, floods, epidemics, and other acts of God;
- (h) explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (i) labor disputes, except labor disputes involving employees of the Lessee, its Affiliates, or Subcontractors which affect the performance of the Leasehold Obligations;
- (j) any act, event, circumstance or Change in Law occurring outside the United States affecting the fabrication of, or transportation to the United States of, equipment that is expected to be incorporated in the Incineration Facilities through the construction of the Initial Capital Improvements; provided that, except for the imposition of Taxes by a non-United States Governmental Body which are more stringent than those in effect as of the Contract Date for which price may be afforded, the Lessee shall be afforded only schedule or performance relief, as appropriate, hereunder;
- (k) the failure of any Subcontractor, to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Lessee directly, and the Lessee is not able after exercising all reasonable efforts to timely obtain substitutes;
- (l) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Incineration Facilities are located to provide and maintain Utilities to the Incineration Facilities which are required for the performance of this Lease Agreement;
- (m) any failure of title to the Incineration Facilities or any placement or enforcement of any Encumbrance on the Incineration Facilities not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;
- (n) the preemption, confiscation, diversion or destruction of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Incineration Facilities;

(o) any failure of the Lessor to obtain the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements not due to Lessee Fault;

(p) a violation of Applicable Law by a person other than the affected party or its Subcontractors;

(q) with respect to the Lessee, any Lessor Fault and Lessor-requested Change Orders not due to Lessee Fault; and

(r) with respect to the Lessor, any Lessee Fault.

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

(a) any act, event or circumstance with respect to which the Lessee has assumed the "as-is" risk under Section 6.4, except as specifically provided herein as to the Excluded Conditions and in subsection 6.4(C);

(b) receipt of any Crompton Sludge that is in compliance with any then-applicable pretreatment permit, subject to the provisions of Section 6.19;

(c) any act, event or circumstance that would not have occurred if the affected party had complied with its obligations hereunder;

(d) changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions, except as otherwise specifically provided in this Lease Agreement;

(e) changes in the financial condition of the Lessor, the Lessee, the Guarantor, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(f) the consequences of error, neglect or omissions by the Lessee, the Guarantor, any Subcontractor, any of their Affiliates or any other person in the performance of the Leasehold Obligations;

(g) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Incineration Facilities or otherwise increasing the cost to the Lessee of performing the Leasehold Obligations;

(h) any impact of prevailing wage or similar laws, customs or practices on the Lessee's costs;

(i) weather conditions normal for the Borough of Naugatuck;

(j) any surface or subsurface geotechnical or hydrological conditions, including without limitation the existence of compressible soil layers, masses, unstable soils, manmade deposits, and water table fluctuations not otherwise associated with an Uncontrollable Circumstance (other than Pre-Existing Environmental Conditions or Specified Site Conditions);

(k) any act, event, circumstance or Change in Law occurring outside of the United States, except as specifically provided in item (j) in the "Inclusions" section of this definition;

(l) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

(m) power failures to the extent not caused by third party Utilities or resulting from a condition that is listed in the "Inclusions" section of this definition;

(n) failure of the Lessee to secure patents which it deems necessary for the performance of the Leasehold Obligations;

(o) a Change in Law pertaining to Taxes, except to the extent provided in Section 13.11;

(p) any changes in electricity rates or costs, in the availability of electricity or in the market for electricity, but not including any Change in Law relating to electricity; and

(q) any Change in Law (including the issuance of any Governmental Approval, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Lessee than are imposed by the Contract Standards in effect as of the Contract Date.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, and telecommunications), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Wastewater Treatment Complex" means the Plant Site, the Plant, the Incineration Facilities Site and the Incineration Facilities.

"WPCA" means the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes.

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

(A) References Hereto. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms refer to this Lease Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

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

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

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

(E) Entire Lease Agreement. This Lease Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Lease Agreement. Without limiting the generality of the foregoing, this Lease Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the proposal of the Lessee submitted in response thereto, and any amendments or supplements to the RFP or the proposal.

(F) Responsibilities of the Borough of Naugatuck and the WPCA. All obligations of the Lessor hereunder shall be performed by the Borough of Naugatuck except where required under Applicable Law to be performed on behalf of the Borough of Naugatuck by the WPCA, in which case such actions shall be taken by the WPCA and shall be deemed to be binding on the Lessor. Each of the Borough of Naugatuck and the WPCA shall be jointly and severally responsible for the performance of all of the Lessor's obligations hereunder.

(G) ICI Design and Construction Requirements. The ICI Design and Construction Requirements are intended to include the basic design principles, concepts and requirements for the ICI Design/Build Work but do not include the final, detailed design, plans, drawings or specifications or indicate or describe each and every item required for full performance of the physical ICI Design/Build Work and for achieving ICI Acceptance. The Lessee agrees to prepare all necessary complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all ICI Design/Build Work in conformity with the ICI Design and Construction Requirements and the final designs, plans, drawings and specifications based thereon.

(H) Standards of Workmanship and Materials. Any reference in this Lease Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, Appendices or otherwise) shall be construed to require the Lessee to furnish the same in accordance with the grades and standards therefor indicated in this Lease Agreement. Where this Lease Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Lessee shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the ICI Design and Construction Requirements, and the ICI Design and Construction Requirements are to be interpreted accordingly.

(I) Technical Standards and Codes. References in this Lease Agreement to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications

shall apply as if incorporated in the ICI Design and Construction Requirements and (2) if any material revision occurs, to the Lessee's knowledge, after the Contract Date, and prior to completion of the applicable ICI Design/Build Work, the Lessee shall notify the Lessor. If so directed by the Lessor, the Lessee shall perform the applicable ICI Design/Build Work in accordance with the revised professional and technical standard, code or specification as long as the Lessee is compensated, subject to Cost Substantiation, for any additional cost or expense attributable to any such revision.

(J) Liquidated Damages. This Lease Agreement provides for the payment of liquidated damages in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such nonperformance, breach or default of the Lessee) and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. Except as otherwise specifically provided herein, such liquidated damages shall constitute the only remedy in such circumstances by the nonperforming, breaching or defaulting party, regardless of legal theory.

(K) Causing Performance. A party shall itself perform, or shall cause to be performed, the obligations affirmatively undertaken by such party under this Lease Agreement, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise.

(L) Party Bearing the Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other party or through an adjustment to the Base Rent or Reference Price hereunder, as appropriate.

(M) Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performing their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(N) Prudent Industry Practice and Good Engineering and Construction Practice. Prudent Industry Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term of this Lease Agreement, Prudent Industry Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Lessee, the Lessee shall be relieved of its obligation to comply with such evolved Prudent Industry Practice and Good Engineering and Construction Practice (but not Prudent Industry Practice and

Good Engineering and Construction Practice as of the Contract Date) unless the Lessor agrees to adjust the Reference Price on a Cost-Substantiated basis to account for such additional costs. Except to the extent that the Lessee is relieved of its obligation to comply with such evolved Prudent Industry Practice or Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Prudent Industry Practice or Good Engineering and Construction Practice, or any Lessor election to pay or not pay any such additional costs, relieve the Lessee of its obligations hereunder.

(O) Applicability and Stringency of Contract Standards. The Lessee shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the Lessee hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

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

(Q) Severability. If any clause, provision, subsection, Section or Article of this Lease Agreement shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effectuate the intent of the parties in the invalid clause, provision, subsection, Section or Article; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Lease Agreement; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Lease Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Lease Agreement shall be construed and enforced as if such invalid portion did not exist.

(R) Drafting Responsibility. Neither party shall be held to a higher standard than the other party in the interpretation or enforcement of this Lease Agreement as a whole or any portion hereof based on drafting responsibility.

(S) No Third Party Rights. This Lease Agreement is exclusively for the benefit of the Lessor and the Lessee and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

(T) References to Incineration. The terms "incinerate", "incinerated", "incinerating" and any similar terms, when used with respect to Incinerator Sludge, shall mean and refer to the operation of the Incineration Facilities to receive and incinerate Incinerator Sludge and dispose of Incinerator Residuals, all in accordance with this Lease Agreement.

(U) References to Days. All references to days herein are references to calendar days.

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

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

(X) References to Best Of. All references to "best of" the knowledge of a person or party shall be interpreted as meaning "after reasonable due inquiry."

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE LESSOR. The

Lessor represents and warrants that:

(A) Existence and Powers. The Borough of Naugatuck is a political subdivision of the State, validly existing under the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Lease Agreement. The Borough's Water Pollution Control Authority is a water pollution control authority duly established by the Borough of Naugatuck, validly existing under the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Lease Agreement.

(B) Due Authorization and Binding Obligation. This Lease Agreement has been duly authorized, executed and delivered by all necessary action of the Lessor and constitutes a legal, valid and binding obligation of the Lessor, enforceable against the Lessor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Lessor of this Lease Agreement nor the performance by the Lessor of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Lessor of the terms or conditions hereof: (1) conflicts with, violates or results in a material breach of any constitution, law or governmental regulation applicable to the Lessor; or (2) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Lessor is a party or by which the Lessor or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. Except as described in Appendix 9, no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the Lessor of this Lease Agreement, and no referendum or other approval of voters is required for the performance by the Lessee of its obligations under this Lease Agreement.

(E) No Litigation. Except as described in Appendix 9, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body, or proceeding for referendum or other voter initiative, pending or, to the best of the Lessor's knowledge, overtly threatened or publicly announced against the Lessor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Lease Agreement by the Lessor or the validity, legality or enforceability of this Lease Agreement against the Lessor, or any other agreement or instrument entered into by the Lessor

in connection with the transactions contemplated hereby, or on the ability of the Lessor to perform its obligations hereunder or under any such other agreement or instrument.

(F) Claims and Demands. Except as described in Appendix 9, to the best of the knowledge of the Mayor and the Borough Attorney, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the Lessor with respect to the Incineration Facilities.

(G) Governmental Approvals. The Lessor has obtained or will obtain in the course of its performance hereunder all Governmental Approvals necessary to effectuate its responsibilities under this Lease Agreement or required of the Lessor as owner of the Incineration Facilities, and the Lessor has enacted all municipal laws, ordinances or regulations and has taken or will take all other governmental actions which are necessary for the performance by the Lessor of this Lease Agreement.

(H) Applicable Law Compliance. Except as to matters addressed in the Consent Order, to the best of its knowledge (1) the Lessor is not in material violation of any Applicable Law pertaining to the Incineration Facilities, and (2) the Lessor has not received notice of a violation or an alleged violation of any such Applicable Law.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE LESSEE. The Lessee represents and warrants that:

(A) Existence and Powers. The Lessee is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut, with the full legal right, power and authority to enter into and perform its obligations under this Lease Agreement.

(B) Due Authorization and Binding Obligation. This Lease Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Lessee and constitutes a legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Lessee of this Lease Agreement nor the performance by the Lessee of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Lessee of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Lessee; or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Lessee is a party or by which the Lessee or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Lease Agreement by the Lessee.

(E) No Litigation. Except as disclosed in writing to the Lessor, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or, to the best of the Lessee's knowledge, overtly threatened or publicly announced against the Lessee, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Lease Agreement by the Lessee, or the validity, legality or enforceability of this Lease Agreement against the Lessee or any other agreement or instrument entered into by the Lessee in connection with the transactions contemplated hereby, or on the ability of the Lessee to perform its obligations hereunder or under any such other agreement or instrument.

(F) Governmental Approvals. The Lessee has obtained or will obtain in the course of its performance hereunder, either directly or through qualified Subcontractors, the Governmental Approvals which the Lessee must obtain in its own or the Lessor's name or that of its Subcontractors to provide the Leasehold Obligations. The Governmental Approvals that are the Lessee's responsibility are listed in Appendix 9.

(G) Applicable Law Compliance. Except as disclosed in writing to the Lessor, to the best of its knowledge, the Lessee is not in material violation of any law, order, rule or regulation applicable to any plant providing sludge incineration service designed, constructed, operated, maintained or managed by the Lessee.

(H) Practicability of Performance. The ICI Design and Construction Requirements, the technology and the construction and management practices to be employed in the construction of the Initial Capital Improvements and operation of the Incineration Facilities as so improved are furnished exclusively by the Lessee pursuant to the terms of this Lease Agreement, and the Lessee assumes and shall have exclusive responsibility for their efficacy, notwithstanding the inclusion of design principles or other terms and conditions in the RFP or the negotiation of the terms of the ICI Design and Construction Requirements, ICI Acceptance Test Procedures and Standards, and Performance Guarantees between the Lessee and the Lessor. The Lessee assumes the risk of the practicability and possibility of performance of the Initial Capital Improvements on the scale, within the time for completion and in the manner required hereunder, and of incinerating Incinerator Sludge through the operation of the Incineration Facilities as so improved in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Lessee in entering into this Lease Agreement, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed ICI Design/Build Price and terms establishing the Lessee's rental payment obligations hereunder. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

(I) Patents and Licenses. The Lessee owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Initial Capital Improvements without any known material conflict with the rights of others.

(J) Information Supplied by the Lessee and the Guarantor. The information supplied and representations and warranties made by the Lessee and the Guarantor in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Lessee and the Guarantor (and, to the best of its knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

## ARTICLE III

### TERM

SECTION 3.1. EFFECTIVE DATE AND TERM. This Lease Agreement shall become effective on the Contract Date, and shall continue in effect for 20 years following the Commencement Date (the period from the Contract Date to the twentieth anniversary of the Commencement Date constituting the "Term"), unless earlier terminated pursuant to the termination provisions of Article XIV, in which event the Term shall be deemed to have ended as of the date of such termination. Except as otherwise specifically set forth herein, all rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The Lessor shall have no obligation to pay the ICI Design/Build Price hereunder, and the Lessee shall have no obligation to undertake the Lessee Responsibilities (other than those specific obligations set forth in Article IV) or the ICI Design/Build Work, or make the Rent payments hereunder until the Commencement Date. At the end of the Term of this Lease Agreement, all other obligations of the parties hereunder shall terminate, except as provided in Sections 14.7 and 14.8.

ARTICLE IV  
APPROVAL PERIOD

SECTION 4.1. LESSEE APPROVAL PERIOD RESPONSIBILITIES. (A) Obligation to Proceed. The Lessee shall satisfy the following Lessee responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Transition Plan. The Lessee shall carry out and complete the Transition Plan in accordance with Appendix 13 and shall provide all management, technical, administrative engineering, labor relations and other personnel necessary in connection therewith. The Lessee shall demonstrate and certify such compliance to the satisfaction of the Lessor.

(2) Governmental Approvals. The Lessee shall submit complete applications and take all other steps which are necessary under Applicable Law to obtain all Governmental Approvals required to be obtained by the Lessee before the Commencement Date for the performance of the Lessee Responsibilities, or certify to the Lessor that no such Governmental Approvals are required. The Lessee shall cooperate with the Lessor in the submittal of the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements which the Lessor is obligated to submit pursuant to Section 4.2(2).

(3) Letter of Credit. The Lessee shall obtain and deliver to the Lessor the Letter of Credit in accordance with Section 16.3. The Letter of Credit shall be substantially in the form set forth in the Transaction Forms.

(4) Contact Information. The Lessee shall submit to the Lessor the contact information specified in subsection 6.5(E).

(5) Required Leasehold Period Insurance. The Lessee shall submit to the Lessor certificates of insurance for all Required Leasehold Period Insurance specified in Appendix 10.

(6) Private Management Approval Assistance. The Lessee shall actively advise the Lessor with respect to, and shall cooperate with and assist the Lessor in obtaining, any required Private Management Approvals, and shall have full responsibility for any aspect thereof relating to staffing levels or requirements.

(7) Financing Assistance. The Lessee shall cooperate with and assist the Lessor in providing any information, certifications, or documents which may be reasonably required in connection with the Lessor's completing all financing transactions necessary to fund the ICI Design/Build Price.

(8) Lessee Law Compliance. The Lessee shall certify to the Lessor as of the Commencement Date that the Lessee is in substantial compliance with all laws, regulations, rules and orders applicable to its business, noncompliance with which would have a material and adverse effect upon its business or its ability to perform the Leasehold Obligations.

(9) Confirmation of Guaranty. The Guarantor shall execute and deliver a confirmation to the Lessor that the Guaranty remains in full force and effect.

(10) Financial Condition. The Lessee shall provide audited financial statements of the Guarantor for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Guarantor that would materially and adversely affect the ability of the Guarantor to perform its obligations under this the Guaranty.

(11) Documents Evidencing Required Activities. The Lessee shall have provided to the Lessor copies of all filings and reports conducted, prepared or obtained with respect to or evidencing the Lessee's activities pursuant to this Section.

(12) Representations. The representations of the Lessee set forth in Section 2.2 and of the Guarantor set forth in the Guaranty shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the Lessee shall deliver to the Lessor a certificate of an authorized officer of each to that effect.

(13) Supporting Certifications. The Lessee shall deliver to the Lessor appropriate certificates of incorporation, certified authorizing resolutions and incumbency certificates supporting the representations made in Section 2.2.

(B) Notice of Default. The Lessee shall provide to the Lessor, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approval or Subcontract pertaining to the Approval Period.

SECTION 4.2. LESSOR APPROVAL PERIOD RESPONSIBILITIES. The Lessor shall satisfy the following Lessor responsibilities as soon as practicable after the Contract Date, each of which shall be a condition precedent to the occurrence of the Commencement Date.

(1) Governmental Approvals. The Lessor shall cooperate with the Lessee in the submittal of all applications for the Governmental Approvals, if any, which the Lessee is obligated to submit pursuant to Section 4.1.

(2) State Air Permit. The Lessor shall submit a complete application and take all other steps which are necessary under Applicable Law to obtain the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements.

(3) Private Management Approvals. The Lessor shall make all submittals and take all other action which is reasonably necessary under Applicable Law in order to apply for any required Private Management Approval.

(4) Financing. The Lessor, in accordance with Section 10.5, shall undertake, implement and complete all financing transactions necessary to fund the ICI Design/Build Price.

(5) Survey. The Lessor shall deliver to the Lessee currently available survey information relating to the Incineration Facilities Site.

(6) Representations. The representations of the Lessor set forth in Section 2.1 shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the Lessor shall deliver to the Lessee a certificate of an authorized officer to that effect.

(7) Supporting Certifications. The Lessor shall deliver to the Lessee appropriate certified authorizing resolutions and incumbency certificates supporting the representations made in Section 2.1.

SECTION 4.3. COMMENCEMENT DATE CONDITIONS. (A) Commencement Date Conditions Defined. The obligations of the Lessee and the Lessor to proceed with their respective obligations hereunder during the Leasehold Period shall not commence until all of the following conditions (the "Commencement Date Conditions") are satisfied or waived by both parties:

(1) Lessee Approval Period Responsibilities. The Lessee shall have fulfilled all of its responsibilities with respect to the Approval Period under Section 4.1.

(2) Lessor Approval Period Responsibilities. The Lessor shall have fulfilled all of its responsibilities with respect to the Approval Period under Section 4.2.

(3) Governmental Approvals. All Governmental Approvals required for the commencement of the Lessee Responsibilities, including the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements, shall have been issued or obtained and shall be in full force and effect.

(4) Private Management Approvals. All required Private Management Approvals shall have been issued or obtained and shall be in full force and effect.

(5) Rent Schedules. The parties shall have agreed upon the final Base Rent Schedule and the Reference Price Adjustment Schedule for Appendices 24 and 25, respectively.

(6) Fixed ICI Design/Build Price Funds Available. The proceeds of the financing transaction to fund the Fixed ICI Design/Build Price are available for disbursement by the Lessor.

(7) No Default Under Interim Service Contract. Either party may refuse to proceed hereunder if the other party is in default of the terms and conditions of the Interim Service Contract.

(8) Plant Operations. The commencement date under the Service Contract shall occur concurrently with the Commencement Date hereunder.

(9) Shared Services Agreement. The Shared Services Agreement shall have been approved by the Lessor and executed by the Lessee and the Company on or before the Commencement Date hereunder.

(10) Inventory and Initial Evaluation. An inventory of all Transferred Property and the initial evaluation of the Incineration Facilities shall have been conducted as required by Section 8.2 and Appendix 15, and the parties shall have agreed on such inventory and initial evaluation for purposes of such Section.

(11) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Section shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable against each party thereto on the Commencement Date. It is understood that any such document, instrument or agreement the form of which is set forth in a Transaction Form, that is executed and delivered in substantially such form is and shall be deemed to be in form and substance satisfactory to the parties. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(12) Legal Proceedings. There shall be no Legal Proceeding before or by any Governmental Body, pending or threatened, which: (1) challenges, or might challenge, directly or indirectly, (a) the authorization, execution, delivery, validity or enforceability of this Lease Agreement or the Guaranty, or (b) the interest of the Lessor in the Incineration Facilities; (2) seeks to enjoin or restrict the use of the Incineration Facilities in the manner or for the purposes contemplated by this Lease Agreement; or (3) seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other matter pertaining to the Incineration Facilities, in any such case which can reasonably be expected to materially and adversely affect the Lessor's or the Lessee's ability to comply with its obligations hereunder.

(13) No Change in Law Affecting Lease Agreement. No Change in Law shall have occurred after the Contract Date and before the Commencement Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Lease Agreement a violation of Applicable Law.

(B) Commencement Date Conditions for which Both Parties Have Responsibility.  
The Lessor and the Lessee shall each use all reasonable efforts in taking such actions as may

reasonably be under their control in order to satisfy the Commencement Date Conditions set forth in items (3) through (13) of subsection (A) of this Section as soon as practicable.

(C) No Payment to Either Party for Approval Period Expenses of the Other. All costs and expenses incurred by each party in performing its obligations during the Approval Period shall be for the account of such party and shall not be reimbursable by the other party except upon the occurrence of an Event of Default and except as provided in Section 4.4 and 4.5.

SECTION 4.4. CLOSING THE APPROVAL PERIOD. (A) Establishment of Commencement Date. The parties shall give each other prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction or waiver of all of such Commencement Date Conditions, the parties shall hold a formal closing on a date and at a location determined by the Lessor acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Commencement Date has occurred. The date of such closing shall be deemed to be the Commencement Date hereunder, and thereupon the Leasehold Period and the ICI Design/Build Period each shall commence. Notwithstanding anything in the Interim Service Contract, the parties agree to terminate the Interim Service Contract concurrently with the Commencement Date hereunder. Written documents or instruments constituting or evidencing satisfaction of the Commencement Date Conditions shall be furnished to each party for review prior to the Commencement Date to the extent practicable.

(B) Failure of Conditions. If by the first anniversary of the Contract Date (as such date may be extended day-for-day by any third party Legal Proceeding which has a material bearing upon the ability of the parties to proceed with the transactions contemplated hereby, but not later than the second anniversary of the Contract Date), or such later date upon which the Lessor and the Lessee may agree, any of the Commencement Date Conditions are not satisfied, or have not been waived, either party may, by notice in writing to the other party, terminate this Lease Agreement, effective on the date stated in the notice. Neither party shall be liable to the other for the termination of this Lease Agreement pursuant to this Section except to the extent that such party breaches its obligations under Section 4.1 or 4.2, respectively, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the Commencement Date Conditions.

SECTION 4.5. LESSEE ADVANCEMENT OF ICI DESIGN/BUILD WORK. (A) Lessee Advancement of ICI Design/Build Work. During the Approval Period, following the issuance by the DEP of the draft State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements in a form which is satisfactory to the Lessee but prior to satisfaction of the Commencement Date Conditions (including the Lessor's obligation to obtain the financing for the Initial Capital Improvements as required in Section 4.2(4)), the Lessee may self-fund and undertake certain ICI Design/Build Work subject to the terms and conditions of this Section. The Lessee shall provide written notice to the Lessor of the determination that such draft State air permit is

in a form satisfactory to the Lessee and that the Lessee intends to commence the Advancement Work; the date of such written notice shall constitute the Advancement Work Commencement Date.

(B) Advancement Work. Prior to the Commencement Date, the work undertaken and committed to by the Lessee under the provisions of this Section shall be limited to those tasks and commitments identified in Appendix 6 (the “Advancement Work”). All work undertaken pursuant to this Section, and ultimately paid for by the Lessor, shall be credited toward the Fixed ICI Design/Build Price.

(C) Fixed ICI Design/Build Price Escalation. If the Lessee provides notice of its intent to initiate the Advancement Work as provided in subsection (A) of this Section, the Fixed ICI Design/Build Price shall escalate by one-half of the rate provided in Section 10.5(C) from August, 2001 through the Advancement Work Commencement Date and shall be suspended upon the Advancement Work Commencement Date; and if the Commencement Date Conditions are satisfied on or before six months following Advancement Work Commencement Date, the Fixed ICI Design/Build Price shall be established under Section 10.5(C) as of the Advancement Work Commencement Date, in place of the Financing Commitment Date. If the Commencement Date Conditions are not satisfied on or before six months following the Advancement Work Commencement Date for any reason (including, but not limited to, failure by the DEP to issue a final State air permit) other than Lessee Fault, (i) the portion of the Fixed ICI Design/Build Price that has been accrued as the result of performance of the Advancement Work shall not be subject to further escalation; and (ii) the portion of the Fixed ICI Design/Build Price that has not been accrued as the result of the performance of the Advancement Work shall escalate at one-half of the rate provided in Section 10.5(C) from August, 2001 through the Financing Commitment Date.

(D) Payment for Advancement Work. Any provisions of Section 10.5 notwithstanding, the following provisions shall govern payment by the Lessor for Advancement Work:

(1) the Lessee shall submit Requisitions to the Lessor for the milestone payments associated with the Advancement Work in accordance with the procedures set forth in subsections 10.5(F) through (I), (K), (M) and (N) and Appendix 6, which Requisitions shall be subject to review by the Lessor Engineer as provided in subsection 10.5(J) and resolution of disputes pursuant to subsection 10.5(L);

(2) the Lessor shall not be legally obligated to make payment for the Advancement Work unless and until the Commencement Date Conditions have been satisfied and the Lessor has secured financing for the ICI Design/Build Work as provided in Section 4.2(4), and the funds from such financing are available for disbursement;

(3) within 15 days following the Commencement Date, the Lessor shall make payment of the amounts of any milestone payments for Advancement Work for which Requisitions have been submitted in accordance with subsection 10.5(F) that have been

determined eligible for payment under subsection 10.5(J) and (L), less retainage and any other permitted withholdings as provided in subsections 10.5(G) and 10.5(K), respectively, plus interest as provided in subsection (D)(4) of this Section; and

(4) the amounts of any milestone payments for Advancement Work for which Requisitions have been duly submitted and approved in accordance with this Section shall bear interest beginning 30 days following the date of each such Requisition, at an annual interest rate of 6.9 percent through the date of actual payment.

(E) Applicability of Other Provisions. Except as otherwise provided in this Section, performance of the Advancement Work shall be subject to all applicable provisions of Article X.

SECTION 4.6. TRANSACTION COST REIMBURSEMENT AND OTHER PAYMENTS.

(A) Financed Payments. On the Commencement Date, the Lessor shall be paid from the proceeds of the financing for the ICI Design/Build Work:

(1) an amount equal to \$1,552,075 for its transaction costs incurred in the procurement and negotiation of this Lease Agreement; and

(2) an amount equal to \$310,415 for its costs to be incurred in reviewing and monitoring the ICI Design/Build Work.

(B) Lessee Payments. The Lessee shall reimburse the Lessor as follows:

(1) on the Commencement Date, an amount equal to \$100,000, subject to Cost Substantiation, for its costs incurred and to be incurred in obtaining the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements; and

(2) within 30 days following the Commencement Date, an amount equal to (i) all Cost Substantiated fees paid by the Lessor for the fiscal year ending June 30, 2002 that were required for the maintenance of Governmental Approvals for the Incineration Facilities and for which the Lessee will be responsible hereunder as of the Commencement Date, multiplied by (2) a fraction, the denominator of which is 365, and the numerator of which is the number of days from the Commencement Date through June 30, 2002.

SECTION 4.7. EXISTING CONTRACTS. Appendix 17 lists the Existing Contracts to which the Lessor or NTC is or was a party, as of the Contract Date, for the provision of goods and services with respect to the Incineration Facilities. Commencing on the Commencement Date, the Lessee shall administer and perform the Lessor's or NTC's obligations under the Existing Contracts on behalf of the Lessor and NTC, including all payment obligations except those which accrued with respect to goods and services provided prior to the Commencement Date. The Lessor or NTC, at the direction of the Lessee, shall enforce performance by the counterparty to all the Existing Contracts. Upon the expiration or termination of each such contract, the Lessee, either directly or by its own Subcontract with the previous provider or a new provider, shall be responsible for providing the goods or services which had been provided under the expired or terminated contract to the extent necessary to provide the Leasehold Obligations.



ARTICLE V

LEASE

SECTION 5.1. OWNERSHIP AND LEASE OF THE INCINERATION FACILITIES.

(A) Lessor Ownership. The Incineration Facilities are and shall be owned by the Lessor throughout the Term of this Lease Agreement, except that certain of the Initial Capital Improvements may be owned by a third party in connection with the financing arrangements therefor and leased to the Lessor subject to the payment of the lease payments securing the financing. The Lessee shall not have any legal, equitable, tax beneficial or other ownership interest in the Incineration Facilities.

(B) Lease of Incineration Facilities to the Lessor. In consideration of the Rent payable hereunder, and the covenants herein stipulated to be performed, and upon the terms and conditions hereinafter specified, the Lessor hereby demises and lets the Incineration Facilities to the Lessee, and the Lessee hereby leases the Incineration Facilities from the Lessor.

(C) Additional Easements. The Lessor shall, at the reasonable request of the Lessee, grant such additional rights-of-way or other easements over, across, or under the Incineration Facilities Site, or grant such permits or licenses with respect to the use thereof, including but not limited to leases, easements or rights-of-way for Utility, roadway or similar purposes in connection with the Incineration Facilities, to the extent reasonably necessary for the operation, maintenance, repair or replacement of the Incineration Facilities or the construction, installation, start-up or testing of the Initial Capital Improvements in accordance with this Lease Agreement. The Lessor agrees to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such rights. The parties acknowledge that each has a right of access to the Incineration Facilities and agree to use reasonable efforts to minimize interference with each other party's rights hereunder, the ability to meet the respective obligations hereunder, and the Lessor's responsibilities as a governmental entity.

(D) Lease Agreement Termination. Upon the expiration or any earlier termination of this Lease Agreement under any provision hereof, the Lessor shall have the right to immediately re-enter the Incineration Facilities without notice and without the commencement or prosecution of any action or proceeding. As part of the Lessor's consideration for entering into this Lease Agreement, the Lessee hereby knowingly, expressly and unconditionally waives and covenants not to assert (a) the benefit of any law or legal doctrine that is inconsistent with the preceding sentence, including the right to any notices not expressly provided for in this Lease Agreement, the right to have any action or proceeding brought in any landlord-tenant court, any right of redemption, any right of continuing possession afforded to a lessee pursuant to any federal or state bankruptcy, insolvency, moratorium, composition or similar law, or any other right or procedure afforded to lessees, or (b) any duty or obligation on the part of the Lessor imposed upon lessors, including any duty to relet the Incineration Facilities.

(E) Rent. As and for rent during the Term hereof, the Lessee covenants to pay to the Lessor on or before the Commencement Date, as absolutely triple net rent (i.e., utilities, maintenance and taxes, subject to Section 13.11), the Rent as provided in Article XIII hereof without any right of abatement, deduction, counterclaim, proration or set off by the Lessee.

(F) Liens and Encumbrances. At all times during the Term of this Lease Agreement, the Lessee shall keep the Incineration Facilities free from any and all Liens and Encumbrances arising out of or in connection with (1) the Leasehold Obligations or the Leasehold Rights, or (2) any acts, omissions or debts of the Lessee, the Guarantor, their Affiliates and their Subcontractors, other than Liens arising by operation of law, which shall be promptly bonded or discharged.

(G) Subleases. The Lessee shall not sublet any portion of the Incineration Facilities except with the consent of the Lessor, which may be withheld in the Lessor's sole discretion.

(H) Surrender of the Incineration Facilities. At the end of the Term hereof, the Lessee shall peaceably leave and surrender the Incineration Facilities to the Lessor in accordance with the requirements of Articles VIII and XIV.

(I) Recording. This Lease Agreement may be recorded by either party. The party making the recording shall pay the cost of recording and all applicable recording or transfer taxes and related charges, if appropriate. At the request of either party, a memorandum of the leasehold terms of this Lease Agreement, rather than the Lease Agreement itself, may be recorded. Each party agrees to execute an acknowledgment of this Lease Agreement, and to execute an acknowledgment of the memorandum of lease in a form satisfactory for recording of such memorandum.

(J) Right of Access. Notwithstanding any other provision of this Section, the Lessor shall have a right of access for itself, its consultants and other governmental entities to the Incineration Facilities at such times and for such purposes as are required by Section 6.13.

SECTION 5.2. LEASEHOLD RIGHTS. (A) Quiet Enjoyment. The Lessor covenants and agrees that during the Term hereof the Lessee shall peaceably and quietly have, hold and enjoy the Incineration Facilities without interference by any person claiming by, through or under the Lessor, except as expressly permitted by the terms and conditions of this Lease Agreement.

(B) Use Generally. During the Term hereof, the Lessee may enter upon, occupy and use the Incineration Facilities to (1) perform the Leasehold Obligations, (2) incinerate and dispose of Plant Sludge and Crompton Sludge, and (3) operate a Trucked-In Materials business, as authorized under this Section and in accordance with Section 6.17 and for no other purpose. The parties acknowledge that, concurrently with the execution of this Lease Agreement, the Lessee and the Company have entered into the Shared Services Agreement providing for the exchange of certain services, which include the use of the Incineration Facilities to receive, treat and incinerate the Plant Sludge.

(C) Trucked-In Materials Business. The parties acknowledge that, as of the Contract Date, the Incineration Facilities have the capacity to incinerate significant amounts of sludge in excess of the Plant Sludge and Crompton Sludge received at the Incineration Facilities, and that this excess capacity has been utilized historically by Crompton to operate a merchant sludge incineration and disposal business which generated substantial amounts of sludge importation revenues. The Lessee intends, and shall have the right, to use the Incineration Facilities to continue and to further develop this merchant sludge business, including the construction of the Initial Capital Improvements, which are expected to increase the sludge importation capacity of the Incineration Facilities to accommodate the incineration and disposal capacity of such facilities.

(D) Incineration Revenues. All revenues derived from the receipt of Merchant Sludge, Merchant Septage and Wastewater and Crompton Sludge shall be the property of the Lessee, and shall be used in the calculation of Rent as provided in Article XIII.

(E) Trucked-In Materials Contracts. The Lessee shall perform, administer and carry out all of the Lessor's obligations under its Existing Contracts for the disposal and incineration of Plant Sludge and Crompton Sludge. The Lessee shall also use commercially reasonable efforts to negotiate, execute and establish the terms and conditions of all contracts for the receipt, incineration and disposal of Trucked-In Materials, and of all spot-market Trucked-In Materials deliveries so that the maximum capacity of the Incineration Facilities is utilized. Subject to the provisions of subsection (F) of this Section, the Lessee shall submit all such contracts to the Lessor for its review and approval, which approval shall not be unreasonably withheld. Except as provided in subsection (I) of this Section, the Lessor shall review any proposed contract within three business days following submittal by the Lessee. If the Lessor fails to provide the Lessee with written notice of disapproval by the third business day following its submittal, such contract shall be deemed approved. Unless otherwise agreed to by the Lessor in the manner provided in the previous sentence, each such contract shall be in the name of the Lessee and shall provide that, upon the expiration or earlier termination of this Lease Agreement for any reason, the contract may, at the election of the Lessor, be assumed by the Lessor or its designee. The Lessee shall be responsible for performing and administering all such Trucked-In Materials contracts, including recordkeeping, billing and collection services. The Lessee shall also be responsible for reviewing and monitoring all contracts under this Section to assure their compliance with Applicable Law.

(F) Special Provisions Relating to Approval of Trucked-In Materials Contracts. The Lessee acknowledges that, pursuant to the NPDES Permit, the Lessor, as owner of the Managed Assets, is responsible for meeting certain zinc limits with respect to the Plant Effluent discharged from the Managed Assets. The Lessor further acknowledges that the Trucked-In Materials received at the Incineration Facilities may constitute a significant source of zinc at the

Managed Assets by virtue of the Incineration Process Filtrate. Therefore, as part of its submittal of any Trucked-In Materials contract under subsection (E) of this Section, the Lessee shall provide the Lessor with (1) a detailed summary of information regarding the zinc concentrations of the Trucked-In Materials to be delivered to the Incineration Facilities pursuant to such contract, which summary shall be based on available test data or other information from the supplier of such Trucked-In Materials, and (2) to the extent possible based on existing data and operating experience at the Incineration Facilities and Managed Assets, its assessment of the estimated impact of such Trucked-In Materials on the ability of the Managed Assets to comply with the applicable zinc limits under the NPDES Permit. It is understood that the Lessor may withhold its approval of Trucked-In Materials contracts under subsection (E) of this Section based on zinc concentrations or loadings only if (1) zinc concentrations or loadings in the Trucked-in Materials to be delivered under a proposed Trucked-In Materials contract are in excess of the normal range of zinc concentrations and loadings in typical water or wastewater treatment sludge from publicly owned treatment plants or from public water supply treatment plants, and (2) such zinc concentrations and loadings can reasonably be expected to materially and adversely affect the Lessor's costs, rights or obligations under this Lease Agreement or the Service Contract or to materially diminish the capacity or capabilities of the Incineration Facilities or the Managed Assets to be operated so as to meet Applicable Law. Prior to the Commencement Date, the Lessor and the Lessee, in conjunction with the Company, will compile the data from the zinc studies required under Section 9(A)(1) of the NPDES Permit and will develop and compile data regarding the range of zinc concentrations in wastewater treatment and water supply treatment sludges, in order to define and establish the "normal range of zinc concentrations in typical water or wastewater treatment sludge from publicly owned treatment plants or from public water supply treatment plants" for purposes of this subsection. If the Managed Assets are evidencing difficulty in meeting the zinc limits under the NPDES Permit, the Lessee shall use all commercially reasonable efforts, while maintaining and maximizing utilization of the Incineration Facilities, to reduce the zinc concentration of the Incineration Process Filtrate being received at the Managed Assets. The provisions of this subsection shall terminate once the DEP has established the revised zinc limits for the NPDES Permit following the completion of the studies required by Section 9(B) of the NPDES Permit and the Lessor and the Company, as operator of the Managed Assets, have implemented any agreed-upon actions necessary for the Managed Assets to achieve such revised zinc limits.

(G) Treatment and Priority for Plant Sludge and Crompton Sludge. Trucked-In Materials shall be treated to the standards for Incinerator Sludge, as appropriate, set forth in Section 7.2. Plant Sludge and Crompton Sludge (up to the amounts set forth in Section 6.19) shall have and receive absolute first priority for receipt, incineration and disposal by the Incineration Facilities, and no contract or other arrangement made by the Lessee may be made or executed in a manner which abrogates this provision.

(H) Self-Dealing Prohibited. All contracts or other arrangements made by the Lessee with respect to its Trucked-In Materials rights hereunder shall be fair, shall reflect reasonable commercial terms in light of then-prevailing market conditions in the New England region. The Lessee shall not, in marketing the capacity and services of the Incineration Facilities, materially disfavor or disadvantage the Lessor when compared to the Lessee's or any of its Affiliate's other contracts or arrangements for transportation or treatment of trucked-in material at other wastewater, incinerator or other sludge management facilities. The Lessee shall, at the Lessor's request, certify compliance with this covenant with respect to any or all such trucked-in materials contracts or arrangements. In the event the Lessor reasonably believes that the Lessee may be in breach of this covenant, the Lessee shall furnish proof of compliance by making available appropriate internal records under reasonable conditions of confidentiality.

(I) Merchant Sludge Pricing. No Merchant Sludge shall be received at the Incineration Facilities, whether pursuant to contract or the spot market, for a price of less than \$160 per dry ton (net of any hauler costs), adjusted by the Adjustment Factor applied from November, 1999, unless approved by the Lessor and shown by the Lessee through adequate documentation to be the maximum price then reasonably obtainable in the marketplace. The Lessor shall review any such proposed contract or tipping fee and supporting documentation within three business days following submittal by the Lessee. If the Lessor fails to provide written notice to the Lessee of its approval by the third day following its submittal, the contract or proposed fee shall be deemed rejected by the Lessor. If the Lessor determines that the Lessee's request for a Merchant Sludge disposal fee of less than \$160 per dry ton is unacceptable or such Merchant Sludge contract or fee is deemed rejected as provided herein, the Lessor shall promptly send written notice to the Lessee of the basis for its disagreement or rejection. In the event of a non-concurrence by the Lessor, either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 14.12.

(J) Provisions in Trucked-In Materials Contracts. Contracts for acceptance, treatment and incineration of Trucked-In Materials shall contain appropriate provisions: (1) establishing Acceptance Criteria for Trucked-In Materials for the specific Trucked-In Materials to be delivered to the Incineration Facilities; (2) requiring that customers warrant that Trucked-In Material delivered to the Incineration Facilities comply with the Acceptance Criteria for Trucked-In Materials; (3) requiring that customers advise the Lessee of any changes in the process generating the Trucked-In Materials that may affect the characteristics of such Trucked-In Materials; (4) providing for rejection of Trucked-In Materials that do not conform with the Acceptance Criteria for Trucked-In Materials, and imposing on customers responsibility for transportation, treatment and disposal of such rejected Trucked-In Materials; and (5) requiring customers to indemnify the Lessee and the Lessor from all Loss-and-Expense arising out of the delivery or attempted delivery of Trucked-In Material that does not comply with the Acceptance Criteria for Trucked-In Materials.

## ARTICLE VI

### OPERATION

SECTION 6.1. TRANSFERRED PROPERTY AND LESSEE PROPERTY. (A) Use of Transferred Property. The Lessee shall have the right to use and consume in the performance of the Leasehold Obligations the spare parts and Consumables constituting part of the Transferred Property. The Lessor hereby grants the Lessee a license to use in the performance of the Lessee Responsibilities the vehicles and rolling stock constituting part of the Transferred Property, and the Lessee shall be responsible for insuring such vehicles and rolling stock in accordance with Appendix 10.

(B) Lessee Property. The Lessee shall have the right to deliver to, station at, and remove from the Incineration Facilities personal property of the Lessee for use in connection with the performance of the Leasehold Obligations. The Lessee shall provide the Lessor with a copy of its initial inventory and periodic inventory updates of all Lessee-owned computer equipment and all other equipment having a value of \$1,000 located at the Incineration Facilities. The parties acknowledge that the purpose of this provision is to provide for the smooth and orderly removal of Lessee-owned personal property upon the expiration or termination of this Lease Agreement.

SECTION 6.2. LESSEE OBLIGATIONS GENERALLY. Commencing on the Commencement Date, the Lessee shall operate and manage the Incineration Facilities on a 24-hour per day, 7-day per week basis, and shall receive, treat and incinerate Incinerator Sludge, transport and dispose of Incinerator Residuals and Incineration Process Filtrate and operating wastes, control odor, provide all information necessary to secure Governmental Approvals, and otherwise manage and operate the Incineration Facilities so as to comply with the Contract Standards applicable to such activities, each of the plans pertaining thereto set forth in the Appendices, and the other terms and conditions of this Lease Agreement.

SECTION 6.3. LESSOR OBLIGATIONS GENERALLY. The Lessor, in addition to the obligations it has accepted elsewhere in this Lease Agreement, shall:

- (1) Cooperate with the Lessee in carrying out its Transition Plan responsibilities;
- (2) Make available to the Lessee upon request all information relating to the Incineration Facilities which is in the possession of the Lessor and material to the Lessee's performance hereunder;
- (3) Grant and assure the Lessee and any of its employees, agents, representatives or Subcontractors access to the Incineration Facilities at all times during the Term hereof for the performance of its obligations hereunder, subject to Section 6.20;
- (4) Make available for the Lessee's use hereunder all Consumables and spare parts in inventory at the Incineration Facilities as of the Commencement Date;
- (5) Maintain the Required Lessor Insurance;

(6) Maintain and repair in good working order all Wastewater Treatment Complex assets which are not included in the Incineration Facilities;

(7) Maintain and repair in good working order the Access Road including all snow and ice removal therefrom;

(8) Support the Lessee in obtaining and maintaining all Governmental Approvals including without limitation the Governmental Approvals listed in Appendix 9;

(9) Comply with Applicable Law pertaining to the Lessor as owner of the Incineration Facilities;

(10) Keep in effect, and amend as necessary from time to time, the ordinances, rules and regulations pertaining to the use of sewers, which are required in order for the Lessor to comply with Applicable Law; and

(11) Retain responsibility for, and perform and comply with all obligations with respect to the Excluded Conditions as set forth in Appendix 9, including the obligation to purchase nitrogen oxide emission reduction credits under the Consent Order for any failure (other than a failure resulting from the Lessee's failure to comply with Prudent Industry Practice) of the Incineration Facilities to comply with the nitrogen oxide emissions requirements thereunder.

#### SECTION 6.4. INCINERATION FACILITIES CONDITION CONFIRMATION.

(A) Familiarity with Incineration Facilities. The Lessee acknowledges that: (1) the Lessee's agents and representatives have visited, inspected, observed and are familiar with the Incineration Facilities, their design, and their physical condition relevant to the obligations of the Lessee pursuant to this Lease Agreement, including structural and operating conditions, roads, Utilities, topographical conditions and historical Incinerator Sludge and Incinerator Residuals quality conditions; (2) the Lessee is familiar with all current local conditions which may be material to the Lessee's performance of its obligations under this Lease Agreement (including, but not limited to, transportation; seasons, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies and equipment; and availability and quality of labor and Utilities); and (3) the Lessee has received and reviewed the Reference Documents, the background documents provided in the RFP and in the document room at the Plant prior to proposal submittal, and conducted all reviews, studies, inspections and field work it determined to be necessary to verify information or gather new information necessary to prepare its proposal.

(B) "As-Is" Condition of Incineration Facilities. Based on its review of the design drawings, plans and specifications pertaining to the Incineration Facilities, its inspections of the Incineration Facilities, and other inquiries and investigations made by the Lessee prior to the Contract Date, which the Lessee acknowledges to be sufficient for this purpose, the Lessee assumes the risk of the adequacy and sufficiency of the design of the Incineration Facilities and the existing, "as-is" condition of the Incineration Facilities as such design or condition may affect the ability of the Lessee to comply with Applicable Law, meet the Performance Guarantees, permit

(except for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements), design, construct, start up, test and achieve Acceptance of the Initial Capital Improvements by the Scheduled ICI Acceptance Date, meet its maintenance, repair and replacement obligations or perform any of its other obligations hereunder on the schedule and for the compensation provided for herein. The Lessee agrees that any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the Incineration Facilities which exists as of the Contract Date or which may be revealed during the performance hereof shall not be an Uncontrollable Circumstance. The Lessee's assumption of risk under this subsection is subject to the limitations provided herein as to the Excluded Conditions and in subsection (C) of this Section.

(C) Limitations on Risk. It is specifically understood that the Lessee does not assume any risk, and the Lessor retains all risk to the following: (1) Pre-Existing Environmental Conditions, and (2) Specified Site Conditions. Without limiting the foregoing, the Lessor shall retain all obligations arising out of any third party Legal Proceedings resulting from Pre-Existing Environmental Conditions or Specified Site Conditions at the Incineration Facilities, except to the extent such Legal Proceeding is based in whole or in part on the Lessee's breach of its obligations pursuant to Section 7.8.

SECTION 6.5. FACILITIES COORDINATION. (A) Lessee's Facilities Manager. The Lessee shall appoint a full-time manager of the Incineration Facilities (the "Facilities Manager") who shall be licensed, trained, experienced and proficient in the management and operation of Incineration Facilities comparable to the Incineration Facilities be appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Lessee's performance of the Lessee Responsibilities. The Lessee acknowledges that the performance of the individual serving from time to time as the Facilities Manager will have a material bearing on the performance of the Leasehold Obligations, and that effective cooperation between the Lessor and the Facilities Manager will be essential to effectuating the intent and purposes of this Lease Agreement. Accordingly, not fewer than 30 days prior to the date on which any candidate for Facilities Manager from time to time during the Term of this Lease Agreement is proposed by the Lessee to assume managerial responsibility for the Incineration Facilities, the Lessee shall: (1) provide the Lessor with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the Lessor an opportunity to interview the candidate with respect to such matters. The Lessor shall have the right within seven days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably.

(B) Lessee's Senior Supervisors. The Lessee shall appoint and inform the Lessor of the identity of the corporate officials of the Lessee with senior supervisory responsibility from time to time for the Incineration Facilities and the performance of this Lease Agreement (the "Senior Supervisors"). The Lessee shall promptly notify in writing to the Lessor of the appointment

of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the Lessor in any reviews of the performance of the Facilities Manager which the Lessor may undertake from time to time, and shall give full consideration to any issues raised by the Lessor in conducting such performance reviews, including any determination of the Lessor that an unworkable relationship has developed between the Service Manager and the Lessor.

(C) Lessor's Contract Administrator. The Lessor shall designate an individual or firm to assist it in administering this Lease Agreement and act as the Lessor's liaison with the Lessee in connection with the Leasehold Obligations (the "Contract Administrator"). The Lessee understands and agrees that the Contract Administrator has only limited authority with respect to the implementation of this Lease Agreement, and cannot bind the Lessor with respect to any matter pertaining to this Lease Agreement including any Lease Agreement amendment or to incurring costs in excess of the amounts appropriated therefor. The Lessee shall only be entitled to rely on the written directions of the Board of Mayor and Burgesses. The Contract Administrator shall have the right at any time, on behalf of the Lessor, to issue to the Lessee a written request for information relating to this Lease Agreement. Any written request for information designated as a "priority request" shall be responded to by the Lessee within three business days.

(D) Lessor Approvals and Consents. When this Lease Agreement shall require any approval or consent by the Lessor to a Lessee submission, request or report, the approval or consent shall be given by the Board of Mayor and Burgesses in writing and such writing shall be conclusive evidence of such approval or consent. Unless expressly stated otherwise in this Lease Agreement, and except for requests, reports and submittals made by the Lessee that do not, by their terms or the terms of this Lease Agreement, require a response or action, if the Lessor does not find a request, report or submittal acceptable, it shall provide written response to the Lessee describing its objections and the reasons therefor within 30 days of the Lessor's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected and the Lessee may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the Lessor pursuant to some specific term of this Lease Agreement shall be deemed acceptable to the Lessor if the Lessor shall not have objected thereto within 30 days of the receipt thereof. The procedures for Lessor reviews, consents and approvals pertaining to ICI Design/Build Work are set forth in Articles X and XI and Appendix 5.

(E) Communications and Meetings. On or before the Commencement Date, the Lessee shall inform the Lessor of the telephone, fax and beeper numbers, e-mail address and other means by which the Facilities Manager and Senior Supervisors may be contacted. The Lessor shall furnish to the Lessee comparable communications information with respect to the Contract Administrator. The Lessee shall meet with the Lessor each month to review the contents of the operations reports required to be prepared pursuant to Section 6.15. The Facilities Manager and, if requested by the Lessor upon at least five days' prior notice, at least one Senior Supervisor each shall personally attend the monthly operations meetings with the Lessor, and all public Lessor

meetings which the Lessor may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Incineration Facilities and this Lease Agreement. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation, and the resolution of any issue resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum.

(F) Complaints and Communications. The Lessee shall respond in a timely and effective manner to all complaints and communications received by the Lessee or the Lessor regarding the receipt, treatment and incineration of Incinerator Sludge, odor and air emissions, noise, construction or any other matter related to the Leasehold Obligations. The Lessee shall investigate each such complaint and communication and, if it has a valid basis, the Lessee shall promptly develop a response plan or a corrective action plan and proceed to rectify the matter. Complaints and communications concerning spillages and emergencies shall be responded to within one hour, and other communications within 24 hours. Complaints concerning odor shall be responded to by the Lessee as required under the Odor Control Plan set forth in Appendix 16. All communications shall be promptly logged and promptly responded to in writing, faxed to the Lessor on a daily basis, and reported to the Lessor as part of the operations reports delivered pursuant to Section 6.15. The Lessee shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which complaints and communications may be directed.

SECTION 6.6. CONTRACT ADMINISTRATION. (A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Lease Agreement. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Lease Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Lease Agreement between the parties shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the Lessor and the Lessee as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) claims for an increase or decrease of the Rent or Reference Price, as appropriate, or other demands for compensation or performance based on any provision of this Lease Agreement; (2) issues as to the meaning, interpretation, application or calculation to be made under any

provision hereof; (3) the specific details and terms of any Change Order; (4) notices, waivers, releases, satisfactions, confirmations, further assurances and approvals given hereunder; and (5) other similar contract administration matters.

(C) Procedures. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the Lessor reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by a Senior Supervisor for the Lessee and by the Mayor for the Lessor. The Lessor and the Lessee each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Lease Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Lease Agreement. Any material change, alteration, revision or modification of this Lease Agreement, however, shall be effectuated only through a formal Lease Agreement amendment authorized, approved or ratified by resolution of the Board of Mayor and Burgesses and properly authorized by the Lessee.

SECTION 6.7. OPERATION AND MAINTENANCE MANUAL. (A) Existing Operation and Maintenance Manual. The Lessee shall operate and maintain the Incineration Facilities in substantial compliance with the existing Operation and Maintenance Manual. The existing Operation and Maintenance Manual shall be updated by the Lessee to incorporate its operating and maintenance standards and policies and, as necessary, to meet Prudent Industry Practice. The Operation and Maintenance Manual shall also be modified, revised and supplemented as necessary from time to time due to the design, construction and installation of any Initial Capital Improvement, any DEP requirement or to comply with this Section. The Lessee shall submit all updates, modifications, revisions and supplements to the Operation and Maintenance Manual to the DEP for its review and approval to the extent required by Applicable Law or as requested by the DEP. The content of the Operation and Maintenance Manual shall be consistent with Appendix 14 and the other Contract Standards, shall contain a detailed description of the means and methods of properly operating the Incineration Facilities and all sampling, testing and measurement procedures, shall document predictive, preventive and corrective maintenance procedures, practices and schedules, and shall otherwise be sufficiently detailed to permit the Incineration Facilities to be operated and maintained by a third party reasonably experienced in wastewater treatment and shall be reviewed and approved by the DEP in accordance with Applicable Law. The Operation and Maintenance Manual shall be developed and maintained in a manner which is fully consistent with the computerized maintenance management system installed and utilized by the Lessee pursuant to Section 8.4. The Leasehold Obligations shall be performed substantially in compliance with the Operation and Maintenance Manual and the Lessee's computerized maintenance management system.

(B) Revisions and Modifications. To the extent the Operation and Maintenance Manual is required to be modified, revised or supplemented as provided in subsection (A) of this Section, the Lessee shall provide to the Lessor and the Lessor Engineer five copies of a draft Operation and Maintenance Manual for their review and comment. The Lessee shall review and discuss in good faith with the Lessor any aspect of the draft Operation and Maintenance Manual, and shall deliver the final Operation and Maintenance Manual to the Lessor within 60 days following completion of review and discussion with the Lessor. Notwithstanding any such review and comment by and discussion with the Lessor, the Operation and Maintenance Manual shall remain at all times the responsibility of the Lessee. Neither the review of or comment upon, nor the failure of the Lessor to comment upon, the Operation and Maintenance Manual shall: (1) relieve the Lessee of any of its responsibilities under this Lease Agreement; (2) be deemed to constitute a representation by the Lessor that operating the Incineration Facilities pursuant to the Operation and Maintenance Manual will cause the Incineration Facilities to be in compliance with this Lease Agreement or Applicable Law; or (3) impose any liability upon the Lessor.

(C) Supplements for Capital Modifications. The Lessee shall prepare supplements and revisions to the Operation and Maintenance Manual which are required due to all Capital Modifications. Such supplements and revisions shall be provided, reviewed and approved in the same manner as provided in this Section. The cost and expense of all such supplements and revisions shall be borne by the Lessee, except with respect to supplements and revisions necessitated by Capital Modifications directed by the Lessor or required by a Change in Law or other Uncontrollable Circumstance.

SECTION 6.8. STAFFING AND PERSONNEL TRAINING. (A) Staffing. The Lessee shall staff the Incineration Facilities during the Term of this Lease Agreement with qualified personnel who meet the licensing, certification and other requirements of the State, under a Staffing Plan which is consistent with the Contract Standards. The parties acknowledge that certain staff working at the Incineration Facilities have been leased by the Lessee under the Shared Services Agreement. The Lessee shall discipline or replace, as appropriate, any employee of the Lessee or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Lessee shall notify the Lessor of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level or staffing positions would adversely affect the ability of the Lessee to provide the Leasehold Obligations.

(B) Changes in Staffing Plan. Changes in the Staffing Plan or refusal by the DEP to approve proposed changes in the Staffing Plan, as a result of the Initial Capital Improvements or otherwise, shall not constitute a Change in Law unless such changes are required in order for the Lessee to provide the Leasehold Obligations as a result of a separate and identified Change in Law event. In the case of such a separate and identified Change in Law event, the Staffing Plan as approved and in effect as of the date of such event shall be the baseline for measuring the effect of any such Change in Law event that affects required staff levels.

(C) Training. The Lessee shall be responsible for training the Facilities Manager, operations supervisors and all other Lessee personnel. Within 180 days following the Commencement Date, the Lessee shall submit to the Lessor for its review and comment a personnel training program which the Lessee proposes to institute in order to ensure that the Incineration Facilities are managed and operated in accordance with this Lease Agreement and Appendix 12. Such personnel training program shall include the personnel training guidelines, policies and procedures established: (1) by the DEP and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

SECTION 6.9. ELECTRICITY SUPPLY AND CONSUMPTION. The Lessee shall be responsible for arranging and negotiating all contracts for the supply of electricity to the Incineration Facilities, and shall pay all costs in relation thereto.

SECTION 6.10. SAFETY AND SECURITY. (A) Safety. The Lessee shall maintain the safety of the Incineration Facilities at a level consistent with the Contract Standards. Without limiting the foregoing, the Lessee shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation, maintenance, repair and replacement of the Incineration Facilities and construction of the Initial Capital Improvements or any Capital Modification to, (a) all employees working at the Incineration Facilities and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the Incineration Facilities, (b) all visitors to the Incineration Facilities, (c) all materials and equipment under the care, custody or control of the Lessee on the Incineration Facilities Site, (d) other property constituting part of the Incineration Facilities, and (e) Lessor Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Incineration Facilities whose duty shall be the supervision of Incineration Facilities safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and Borough officials; (5) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movement; and (7) develop and carry out a Incineration Facilities Site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section.

(B) ADA/OSHA. The Lessee shall make all Capital Modifications to the Incineration Facilities and take all other actions which may be required in order to bring the Incineration Facilities into compliance with the Americans with Disabilities Act and the Occupational Safety and Health Act as in effect on the Contract Date.

(C) Security. The Lessee, in cooperation with the Company, shall be responsible for the security of the Incineration Facilities, and shall maintain suitable fences, gates and locks at the Incineration Facilities.

SECTION 6.11. COMPLIANCE WITH APPLICABLE LAW. (A) Compliance Obligation. The Lessee shall perform the Leasehold Obligations in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law (other than the Excluded Conditions). The Lessee shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Incineration Facilities, Incinerator Sludge, air emissions and odor, and Incinerator Residuals notwithstanding the fact that the Lessee may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals. The Lessee's obligations under this Section shall apply regardless of the extent to which the Lessor, NTC or the Company (under the Interim Service Contract) complied with Applicable Law with respect to the Incineration Facilities prior to the Commencement Date.

(B) Sampling, Testing and Laboratory Work. The Lessee shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be DEP or EPA certified, as applicable, for the applicable test, shall be operated in accordance with Prudent Industry Practice, and shall be audited and monitored by the Lessee for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the Lessor in accordance with Section 6.15 and Appendix 14. The Lessee explicitly assumes the risk of incorrect sampling, testing and laboratory work, whether such work is performed by itself or its Subcontractors, both as to failures to detect and as to false detections. The Lessee shall permit the Lessor, at the Lessor's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Incineration Facilities or otherwise.

(C) Investigations of Non-Compliance. In connection with any actual or alleged event of noncompliance with Applicable Law, the Lessee shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body; (4) in conjunction with the Lessor, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; and (5) expeditiously upon receipt thereof, provide the Lessor with a true, correct and complete copy of any written notice of violation or noncompliance with Applicable Law, and true and accurate transcripts of any oral notice of noncompliance with Applicable Law, issued or given by any Governmental Body. The Lessee shall furnish the Lessor with a prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may

result in any such notice of violation or noncompliance to the extent the Lessee has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such noncompliance.

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, the Excluded Conditions or the conditions set forth in subsection 6.4(C), in the event that the Lessee or any Subcontractor fails at any time to comply with Applicable Law with respect to the Incineration Facilities, Incinerator Sludge, air emissions, odor or Incinerator Residuals, the Lessee shall, without limiting any other remedy available to the Lessor upon such an occurrence and notwithstanding any other provision of this Lease Agreement: (1) expeditiously take actions to correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Lessee and the Lessor resulting therefrom; (3) pay or reimburse the Lessor for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all Capital Modifications and changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Lessee to comply with Applicable Law. The Lessee shall have the right to contest any fine or penalty imposed under this subsection so long as: (1) the Lessee is contesting any such action in good faith by appropriate proceedings conducted with due diligence; and (2) the Lessor shall have no liability as a result of the failure of the Lessee to pay any such fine or penalty during the period of contest.

(E) No Nuisance Covenant. The Lessee shall keep the Incineration Facilities neat, clean and litter-free at all times, ensure that the operation of the Incineration Facilities does not create any odor, litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances, the Lessee shall promptly remedy the condition, pay any fines or penalties relating thereto, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold the Lessor harmless from any Loss-and-Expense imposed as a result of any Legal Proceeding originated by a third party and arising from such nuisance condition in the manner provided in Section 15.7.

SECTION 6.12. OPERATING AND CONSTRUCTION GOVERNMENTAL APPROVALS. (A) Applications and Submittals. The Lessee shall make all filings, applications and reports necessary to obtain and maintain the NPDES Permit, the 503 Permit, the Title V Permit, the Incinerator Air Permits and all other Governmental Approvals required to be made, obtained or maintained by or in the name of the Lessee or the Lessor under Applicable Law in order to operate the Incineration Facilities and construct the Initial Capital Improvements (except for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements), including those set forth in Appendices 8 and 9. With respect to Governmental Approvals which are required to be obtained in the name of the Lessor, the Lessee shall: (1) prepare

the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary or otherwise reasonably requested by the Lessor in order to assist and support the Lessor in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. The Lessee shall not file any Governmental Approval without first providing the Lessor an opportunity to review and comment thereon. The Lessee shall submit draft copies of all Governmental Approvals to the Lessor sufficiently in advance of their filing with the Governmental Body to allow for full and meaningful review and comment by the Lessor. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Leasehold Obligations shall be paid by the Lessee, regardless of the identity of the applicant, except Governmental Approvals required in connection with an Uncontrollable Circumstance. The Lessee shall agree to be named as a permittee or co-permittee on any Governmental Approval if so required by the issuing Governmental Body. The Lessee shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals that would be unfairly detrimental to the position of the Lessor in relationship to the Lessee; provided that nothing shall restrict the Lessee from submitting to any Governmental Body any application, data or other information that the Lessee reasonably believes is true and accurate. The Lessor shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body that would be unfairly detrimental to the position of the Lessee in relationship to the Lessor; provided that nothing shall restrict the Lessor from submitting to any Governmental Body any application, data or other information that the Lessor reasonably believes is true and accurate. With respect to the Initial Capital Improvements, the Lessee shall obtain, maintain, renew and extend Governmental Approvals required for their operation hereunder including obtaining the necessary operating approvals for the fluidized bed incinerator portion of the Initial Capital Improvements under the State air permit.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Leasehold Obligations shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the Lessor as the legal and beneficial owner of the Incineration Facilities and primary permittee. The data and information supplied by the Lessee to the Lessor and all regulatory agencies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the Lessor sufficiently in advance to allow full and meaningful review and comment by the Lessor. The Lessee shall be responsible for any schedule and cost consequences which may result from the submittal by the Lessee of materially incorrect or incomplete information. The Lessor reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by the Lessee pursuant to this Section.

(C) Non-Compliance and Enforcement. The Lessee shall report to the Lessor, expeditiously upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Incineration Facilities. The Lessor shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. Unless excused by Uncontrollable Circumstances, the failure of the Lessee to comply with any Governmental Approval shall constitute a breach of this Lease Agreement as well as an event of noncompliance with the Governmental Approval.

(D) Reports to Governmental Bodies. The Lessee shall prepare all periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Incineration Facilities, including sampling and testing results and monthly discharge monitoring reports. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the Lessor, if such are acceptable to the Governmental Body. The Lessee first shall provide the Lessor with copies of such regulatory reports for review, comment and signature, as applicable, at least seven days before their filing with the Governmental Body.

(E) Potential Regulatory Change. The Lessee shall (1) review and keep the Lessor regularly advised as to potential changes in regulatory requirements affecting the wastewater treatment industry and the Incineration Facilities, (2) provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the Lessor should a Change in Law actually occur and (3) attend and participate in meetings and hearings in relation thereto. The Lessee, at the request of the Lessor, shall participate in performance evaluation surveys conducted by the DEP and the EPA.

SECTION 6.13. LESSOR ACCESS TO INCINERATION FACILITIES. The Lessor shall have the right at any time, on a 24-hour per day, 365 days per year basis, to visit and inspect the Incineration Facilities and observe the Lessee's performance of the Leasehold Obligations. The Lessee shall permit and facilitate access to the Incineration Facilities for such purposes by Lessor personnel and by agents and contractors designated by the Lessor. Keys or passwords, as applicable, for the facilities or structures comprising the Incineration Facilities shall be provided to the Lessor's Contract Administrator by the Lessee in accordance with the Lessee's physical security plan and key control program. All visitors shall comply with the Lessee's reasonable operating and safety procedures and rules, and shall not interfere with the Lessee's operations of the Incineration Facilities. When visiting any portion of the Incineration Facilities that is staffed by the Lessee at the time of the visit, all Lessor employees, agents and contractors shall announce themselves to the staff and Lessee employees may elect to accompany any Lessor employees, agents and contractors during the visit. The parties agree that the Lessor and its agents and contractors shall have immediate access to the Incineration Facilities, and no Lessee rule or

procedure shall impede, impair or delay such access (provided that the Lessor and its agents and contractors shall at all times comply with the Lessee's applicable safety procedures and rules).

SECTION 6.14. ASSET AND FINANCIAL RECORDS. (A) Incineration Facilities Records. The Lessee, on and after the Commencement Date, shall establish and maintain computerized information systems with respect to the Incineration Facilities for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Lease Agreement and demonstrate compliance with the Contract Standards. The Lessee shall promptly provide the Lessor, upon reasonable request, with e-mail versions or hard copies or both of all operations and maintenance data kept by the Lessee in its performance of the Leasehold Obligations.

(B) Availability of Incineration Facilities Records to Lessor. The Lessee shall make available to the Lessor all operations, maintenance, performance, odor complaint tracking, Incinerator Residuals management, process control and similar records and data as are available to the Lessee's Facilities Manager. The Lessor shall have real time, continuous computer access to the SCADA system and the continuous emissions monitoring system at the Incineration Facilities, and hard copy reproduction capability, through information systems installed and maintained by the Lessee at a location in the Borough of Naugatuck outside the Incineration Facilities designated by the Lessor.

(C) Record Documents and Mapping. The Lessee shall maintain at the Incineration Facilities and make available to the Lessor upon request for review and copying: (1) all designs, drawings, blueprints, plans, specifications and "as-built" or record drawings and documents pertaining to the Incineration Facilities which are delivered to the Lessor by the Lessee pursuant to Appendix 5; and (2) similar documents relating to the Initial Capital Improvements and any Capital Modifications. The Lessee shall keep current all such Incineration Facilities records to show any changes to the Incineration Facilities (including valves, pipes, pumps, meters and other assets) made by the Lessee in the performance of the Leasehold Obligations.

(D) Financial Records. The Lessee shall prepare and maintain financial books, records and accounts with respect to the Incineration Facilities and the Leasehold Obligations sufficient to support all financial reporting, including statements of Revenues and Cost Substantiation, required hereunder. In the event the Lessee fails to prepare or maintain any books, records or accounts as required under this Section, the Lessee shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Lessee shall keep the relevant portions of such books, records and accounts maintained with respect to each Contract Year for any disputed amounts until at least the seventh anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). For those circumstances that require Cost Substantiation under Section 17.4, the Lessee shall make such books and records available to the Lessor for inspection, audit and copying upon reasonable notice

during business hours to the extent necessary to allow the Lessor to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Lessee shall not be required to provide to the Lessor any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the Lessor through the Cost Substantiation process, in which event the Lessor and its representatives, and their respective employees and agents, shall treat and maintain such information as confidential. The provisions of this Section shall survive the termination of this Lease Agreement.

(E) Inspection, Audit and Adjustment. The Lessor shall have the right to perform or commission an inspection or an independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the Lessee has underpaid the Rent, then the Lessee shall either promptly pay to the Lessor or, if agreed to by the Lessor at the Lessor's discretion, increase future Rent payments as a Rent adjustment to account for the underpaid amount, together with interest at the Overdue Rate from the time such amount was initially underpaid until reimbursed or credited to the Lessor.

SECTION 6.15. PERIODIC REPORTS. (A) Operations Reports. The Lessee shall provide the Lessor with operations reports no later than 20 days after the end of each Billing Period. The operations reports shall include the operating data specified in Appendix 14.

(B) Annual Operations and Maintenance Reports. The Lessee shall furnish the Lessor, within 60 days after the end of each Contract Year, an annual summary of the information contained in the operations reports. In addition to the requirements set forth in Appendix 14, the Lessee shall also perform and report to the Lessor, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the Incineration Facilities.

(C) Default Reports. The Lessee shall provide to the Lessor, expeditiously upon receipt thereof, copies of any written notice of a material default, breach or noncompliance received or sent under or in connection with any material contract entered into by the Lessee in connection with the Leasehold Obligations.

(D) Permit Communications and Reports. The Lessee shall provide to the Lessor copies of all communications and reports furnished to any Governmental Body pursuant to Section 6.11 simultaneously with their submittal to the Governmental Body.

SECTION 6.16. EMERGENCIES. (A) Emergency Plan. Within 60 days following the Commencement Date, the Lessee shall provide the Lessor with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions at the Incineration Facilities. The plan shall: (1) provide for appropriate notifications to the Lessor and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the Lessor and all

such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency (no later than two hours during nights, weekends or holidays); and (4) otherwise comply with the requirements in Appendix 14. The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

(B) Emergency Action. Notwithstanding any requirement of this Lease Agreement requiring Lessor approval or consent to reports or submittals, if at any time the Lessee determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Incineration Facilities, or to mitigate the immediate consequences of an emergency event, then the Lessee shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Lessee shall notify the Lessor of the event at an emergency phone number from a list supplied by the Lessor, and the Lessee's response thereto. The cost of the Lessee's response measures shall be borne by the Lessee except to the extent the emergency event was caused by an Uncontrollable Circumstance, in which case the Lessor shall bear the cost.

SECTION 6.17. TRUCKED-IN MATERIALS. (A) Trucked-In Materials Protocol. The Lessee shall be responsible for the orderly and timely scheduling of all deliveries of Trucked-In Materials in accordance with the Trucked-In Materials Protocol set forth in Appendix 20 and the Discharge and Access Agreement. The weekday operating hours for the receipt of Trucked-In Materials at the Incineration Facilities shall be established pursuant to the Trucked-In Materials Protocol. The Lessee and its Subcontractors shall comply with Section 6.20 in connection with the hauling of Trucked-In Materials to the Incineration Facilities.

(B) Alternative Disposal of Trucked-In Materials. In the event the Lessee rejects any deliveries of Trucked-In Materials that the Lessee has received at the Incineration Facilities and is obligated to accept under the terms of any applicable agreement, or in the event there is a temporary shutdown of the capacity of the Incinerator Facilities to accept and treat Trucked-In Materials due to a mechanical problem, damage at the Incineration Facilities, or maintenance work (not due to an Uncontrollable Circumstance), the Lessee shall arrange for the handling, transfer, transportation and disposal or processing of Trucked-In Materials at the Designated Disposal Sites in accordance with Article IX; and promptly and continuously take all actions (including, without limitation, making all repairs and replacements and all changes in operating maintenance and management practices) necessary in order to continue or resume performance and to eliminate the cause of, and avoid or prevent a recurrence of the rejection or shutdown.

SECTION 6.18. NITROGEN OXIDE REDUCTION CREDITS. If the parties mutually agree at any time during the Term of this Lease Agreement that it is desirable to generate or otherwise make available nitrogen oxide emission reduction credits or emission allowances through a reduction of nitrogen oxide emissions at the Incineration Facilities, the Lessee, acting

as agent for the Lessor, shall make available, market and sell any such nitrogen oxide credits or allowances. The Lessor and the Lessee shall share on the basis of 50% to the Lessor and 50% to the Lessee the proceeds from the sale of any nitrogen oxide emission reduction removal credits or emission allowances, net of all Lessor and Lessee costs in the making available, marketing and selling of such credits, which costs shall be subject to Cost Substantiation.

SECTION 6.19. CROMPTON SLUDGE. (A) Volume of Crompton Sludge.

For the duration of the Discharge and Access Agreement, the Lessee shall be obligated to accept and treat at the Incineration Facilities, without charge, Crompton Sludge in an amount up to the following volumes:

- (1) during the first five Annual Periods, an average of two (2) dry tons of Crompton Sludge per day, measured annually at the end of each calendar year; and
- (2) during the remaining term of this Lease Agreement, an average of one-half (0.5) dry tons of Crompton Sludge per day, measured annually at the end of each calendar year.

(B) Charge for Additional Volumes of Crompton Sludge. The Lessee shall be under no obligation to accept and treat at the Incineration Facilities any volume of Crompton Sludge in excess of those volumes set forth in subsection (A) of this Section, unless CMCI enters into an agreement with the Lessee providing for the acceptance and treatment of such additional volumes at a fair market value rate negotiated and agreed to by CMCI and the Lessee. If Crompton or any successor owner of the CMCI property discharges any Crompton Sludge to the Incineration Facilities in excess of the volumes set forth in subsection (A) of this Section, and in the absence of any agreement with Lessee providing for such additional volumes, such discharge shall be deemed an Uncontrollable Circumstance; provided that any discharge in excess of such volumes which was authorized by the Lessee pursuant to subsection (A) of this Section shall not constitute an Uncontrollable Circumstance.

(C) Monitoring of Crompton Sludge. The Lessor and the Lessee acknowledge that, as of the Contract Date, the discharge of Crompton Sludge through the dedicated sludge pipe running from Crompton to the Incineration Facilities is governed by the NPDES Permit and the Pretreatment Permit. The parties further acknowledge that, prior to discharging any Crompton Sludge to the Incineration Facilities, CMCI is required under the NPDES Permit and the Pretreatment Permit to conduct detailed tests and analysis on the Crompton Sludge, to furnish the test results and other monitoring reports to the Lessor, and to receive written confirmation from the Lessor authorizing the discharge of any batch of Crompton Sludge to the Incineration Facilities. The Lessee shall, on behalf of the Lessor, receive and review all reports submitted by CMCI to the Lessor pursuant to the NPDES Permit and the Pretreatment Permit, and provide the necessary written confirmation to CMCI for discharges of Crompton Sludge to the Incineration Facilities. In addition to its responsibilities under this Section, the Lessee shall conduct all tests and analyses

of Crompton Sludge (independent from the CMCI reports) in accordance with Section 7.6 for purposes of determining the characteristics of each batch of Crompton Sludge received at the Incineration Facilities. The Lessee shall be relieved of its obligation to comply with the Performance Guarantees to the extent and for any period during which the operation of the Incineration Facilities is affected by the receipt of any Crompton Sludge containing substances not identified in the test report furnished by Crompton as provided and in accordance with Section 7.5.

(D) Crompton Application for New or Amended Pretreatment Permit. The Lessor and the Lessee each agree to promptly notify the other in the event that Crompton or any successor owner of the CMCI property applies to the DEP for a new pretreatment permit or for an amendment to the current Pretreatment Permit authorizing discharge of Crompton Sludge from the CMCI property. The Lessee shall advise the Lessor as to the impact of any such proposal upon the operation of the Incineration Facilities, and the Lessor and the Lessee shall coordinate their respective responses to any such application. In no event shall the Lessor or the Lessee support or agree to such pretreatment permit or Pretreatment Permit amendment without the approval of the other party.

(E) Certain Relief for New or Amended Pretreatment Permit. In the event that the DEP approves any new pretreatment permit or Pretreatment Permit amendment authorizing the delivery to the Incineration Facilities of Crompton Sludge from the CMCI property involving an increased volume, pollutant loading, or discharge of different pollutants from those authorized under the Pretreatment Permit issued to Crompton as of the Contract Date (the "New or Increased Crompton Sludge Discharge") and such New or Increased Crompton Sludge Discharge would alone, or in combination with other materials that the Incineration Facilities are obligated to accept under binding contractual commitments, exceed the design capacity or capability of the Incineration Facilities, such circumstances shall constitute an Uncontrollable Circumstance and the Lessor shall be solely responsible for any Capital Modifications to the Incineration Facilities required to accommodate such New or Increased Crompton Sludge Discharge, subject to the provisions of Article XII.

SECTION 6.20. ACCESS TO WASTEWATER TREATMENT COMPLEX.

(A) Cherry Street Access. Except as otherwise provided in this Section, the Lessee and its employees, contractors, vendors, customers and agents shall access the Wastewater Treatment Complex via the Cherry Street entrance.

(B) Access via the Access Road. The Access Road shall be the primary means for providing access to the Wastewater Treatment Complex for the transport of Trucked-In Materials, Incineration Residuals and bulk supplies. The Lessee shall provide appropriate instructions and take all reasonable actions to direct the operators of all vehicles entering and leaving the Wastewater Treatment Complex for purposes of hauling Trucked-In Materials, Incinerator Residuals and bulk supplies to use the Access Road, except as provided in subsection (C) of this Section. Each of the Lessor and the Lessee shall use reasonable efforts to comply with

and to enforce the terms and conditions of the Discharge and Access Agreement under which CMCI permits the use of the Access Road in connection with the Wastewater Treatment Complex. The Lessor shall take all necessary actions to enforce CMCI's obligations to provide access through the CMCI property in accordance with the Discharge and Access Agreement.

(C) Alternative Access. In the event that CMCI, acting or purporting to act under the Discharge and Access Agreement, denies or materially restricts access to or egress from the Wastewater Treatment Complex via the Access Road by any particular vehicle and the Lessee believes the denial or material restriction to be unjustified under the terms of the Discharge and Access Agreement or otherwise to be unreasonable, the Lessee shall promptly notify the Lessor and upon provision of such notice, the Lessee may allow the affected vehicle access to or egress from the Wastewater Treatment Complex by the Cherry Street entrance via the Elm Street/Spencer Street/Cherry Street Extension route as delineated in Appendix 1 or an other alternative route approved by the Lessor. Promptly following the Lessee's provision of such notice, the Lessee shall investigate the cause of CMCI's denial or restriction of access for the affected vehicle and shall prepare a report summarizing the findings of such investigation and recommending actions that should be reasonably pursued by the Lessor, the Lessee or both in connection therewith. The Lessor shall use all reasonable efforts to assure that any such alternative route provides reasonable vehicular access to and egress from the Wastewater Treatment Complex. To the extent that denial of use of the Access Road arises from the violation by a vehicle owner or operator of the Rules for Vehicle Owners or Operators established under the Discharge and Access Agreement. The Lessee shall use all reasonable efforts to prevent the occurrence or recurrence of such violation by the involved vehicle owner or operator.

ARTICLE VII  
PERFORMANCE

SECTION 7.1. INCINERATION FACILITIES PERFORMANCE GENERALLY.

(A) Reliance. The Lessee acknowledges that in operating its Merchant Sludge and Merchant Septage and Wastewater business, it is also providing an essential public service for the Lessor, and, in complying with its obligations under Applicable Law, the Lessor is relying on the performance by the Lessee of its obligations hereunder.

(B) No Intentional Reduction of Operations. The Lessee shall not intentionally reduce the level of sludge incineration or odor control capable of being achieved by the Incineration Facilities in an effort to reduce its operating and maintenance expenses.

(C) Curtailments and Shutdowns. If the operation of the Incineration Facilities for any reason is temporarily reduced, curtailed or shut down so that the Lessee is unable to receive, treat and incinerate any quantity of Incinerator Sludge or dispose of Incinerator Residuals in accordance herewith, the Lessee shall promptly advise the Lessor as to the nature and probable duration thereof and the expected effect on the operation of the Incineration Facilities, and take all steps necessary to remedy the curtailment or shutdown and to resume full performance hereunder as soon as possible.

SECTION 7.2. INCINERATION GUARANTEE. (A) Applicable Law Limits. Except to the extent relieved as provided in Section 7.5 and, prior to the completion of the fluidized bed incinerator portion of the Initial Capital Improvements, the Excluded Conditions, the Lessee shall operate the Incineration Facilities to receive and incinerate Incinerator Sludge in accordance with Applicable Law.

(B) Preventing Recurrence of Violations. In the event the Lessee fails without excuse to comply with the Incineration Guarantee set forth or referred to in this Section, the Lessee shall be obligated to implement such Capital Modifications and changes in operating, maintenance, repair, replacement and management practices, at its sole cost and expense and in a timely manner, as shall be reasonably necessary, in light of the nature, extent and repetitiveness of such violation, to provide complete assurance that such violation will not recur under reasonably foreseeable circumstances.

SECTION 7.3. ODOR GUARANTEE. (A) Pre-ICI Acceptance Guarantee. Except to the extent relieved as provided in Section 7.5 or other Uncontrollable Circumstances, in operating the Incineration Facilities prior to ICI Acceptance of the Initial Capital Improvements, the Lessee shall implement the Odor Control Plan set forth in Appendix 16, as it pertains to the Lessee's pre-ICI Acceptance responsibilities, and shall operate the Incineration Facilities (recognizing the limitations of their existing design) in accordance with Prudent Industry Practice to control odors, with the objective of achieving and maintaining compliance with all Applicable

Law. The Lessee shall promptly respond to odor complaints and correct any odor problems emanating from the Incineration Facilities in accordance with the Odor Control Plan.

(B) Post-ICI Acceptance Guarantee. Except to the extent relieved as provided in Section 7.5, in operating the Incineration Facilities subsequent to ICI Acceptance of the Initial Capital Improvements, the Lessee shall comply with all limits and requirements established by Applicable Law with respect to odor control. In addition, the Lessee shall operate and maintain the Incineration Facilities in compliance with the Odor Control Plan set forth in Appendix 16 as it pertains to the Lessee's post-ICI Acceptance responsibilities.

(C) Odor Control Practices Report. The Lessee shall submit, together with the operations report required by Section 6.15, a monthly odor control practices report to the Lessor which shall include: (1) a listing of all odor complaints received during the month, with name, address, and nature of complaint; (2) all investigations conducted and actions taken or planned in response to such complaints; (3) evidence showing compliance with the odor control operating practices required by this Lease Agreement; (4) the quantity of odor control chemicals used during the month; (5) all other information contained in the Odor Scorecard as set forth in Appendix 16; and (6) such other matters pertaining to odor control as the Lessor may require from time to time.

(D) Preventing Recurrence of Violations. The general remedies for exceeding odor limits are set forth in Section 6.11, this Section and Appendix 16. The Lessee acknowledges that, in the proposal process leading to the execution of this Lease Agreement, the Lessee had a full opportunity to propose additional capital improvements for odor control to be made at the Lessor's expense, and by making its proposal and by executing this Lease Agreement, the Lessee assumed the risk that the Incineration Facilities, as improved by the Initial Capital Improvements, will be capable of controlling odor to a level required by the Contract Standards absent the occurrence of other Uncontrollable Circumstances. Accordingly, in the event the Lessee fails to comply with its odor control obligations set forth or referred to in this Section, and is not excused by Uncontrollable Circumstances, the Lessee shall, in addition to its obligations to pay liquidated damages as required by Appendix 16, be obligated to implement such Capital Modifications and changes in operating, maintenance, repair, replacement and management practices as shall be necessary, in light of the nature, extent and repetitiveness of such non-compliance, to assure that the odor violation will not recur.

SECTION 7.4. LESSOR REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES. (A) Remedies. If the Lessee fails to comply with any Performance Guarantee and is not excused from performance as provided in Sections 7.5 and 15.2, the Lessee shall, without relief under any other Performance Guarantee, and in addition to any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body: (1) promptly notify the Lessor within 24 hours of the Lessee's having knowledge of any such non-compliance; (2) promptly provide the Lessor within 24 hours with copies of any notices sent to or received from the EPA, the DEP or any other Governmental Body having regulatory jurisdiction with respect to any violations

of Applicable Law; (3) pay any liquidated damages required hereunder; (4) pay any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; (5) take any action (including, without limitation, making all Capital Modifications or repairs and replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent the recurrence of non-compliance with such Performance Guarantee; (6) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (7) assist the Lessor with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

(B) Performance Testing. The Lessor, at any time, may require a performance test to be conducted by the Lessee, at the Lessor's cost and expense, to demonstrate that the Incineration Facilities are operating in compliance with Applicable Law and the Performance Guarantees. The performance tests shall be conducted in the same manner as provided for the ICI Acceptance Tests in Appendix 7. If the test is not successfully passed, the Lessee shall reimburse the Lessor and, at its own cost and expense, make all necessary repairs and replacements, including major repairs and replacements, or Capital Modifications and the test shall be re-performed at the Lessee's sole cost. The Lessor Engineer will conduct or verify each test and inspection.

SECTION 7.5. HAZARDOUS MATERIALS AND HAZARDOUS INCINERATION RESIDUALS AFFECTING LESSEE COMPLIANCE WITH PERFORMANCE GUARANTEES. (A) Relief Generally. The Lessee shall be relieved of its obligation to comply with a Performance Guarantee to the extent and for any period during which the operation of the Incineration Facilities is affected by the receipt of Hazardous Materials, the existence of Hazardous Incinerator Residuals or any other Uncontrollable Circumstance.

(B) Hazardous Materials or Hazardous Incineration Residuals. The receipt of Hazardous Materials or the existence of Hazardous Incinerator Residuals shall be considered an Uncontrollable Circumstance, and the Lessee shall be entitled to relief from a Performance Guarantee due to the receipt of Hazardous Materials or the existence of Hazardous Incineration Residuals, if the Lessee affirmatively demonstrates through contemporaneous operating logs, sampling logs or other relevant evidence that:

- (1) the Hazardous Materials were actually received or the Hazardous Incinerator Residuals exist;
- (2) during the relevant period, the Lessee was properly implementing the Trucked-In Materials Protocol;

(3) during the relevant period, the Lessee was following Prudent Industry Practice and the other Contract Standards with respect to monitoring of Incinerator Sludge and Incinerator Residuals and the operation of the Incineration Facilities; and

(4) the Hazardous Materials or Hazardous Incinerator Residuals resulted in a violation of the NPDES Permit, the 503 Permit, the Title V Permit, the Incinerator Air Permits or any other Applicable Law or any other non-compliance with any Performance Guarantee.

(C) Failure to Comply with Trucked-In Materials Protocol. If the Lessee has failed to comply with the Trucked-In Materials Protocol set forth in Appendix 20 pertaining to the receipt and monitoring of Trucked-In Materials at the Incineration Facilities, and during the period of such failure there occurs a receipt of Hazardous Materials or Hazardous Incinerator Residuals that could reasonably have been caused by Trucked-In Materials, there shall be a rebuttable presumption that such receipt was caused by Trucked-In Materials and such receipt shall not constitute an Uncontrollable Circumstance, unless the Lessee can prove by a preponderance of the evidence that such receipt resulted from Plant Sludge or Crompton Sludge received at the Incineration Facilities.

(D) Response Measures to Hazardous Materials and Hazardous Incineration Residuals. If Hazardous Materials are received or Hazardous Incinerator Residuals exist at the Incineration Facilities, the Lessee shall, without limiting its obligations under the Contract Standards: (1) use all reasonable efforts consistent with Prudent Industry Practice to maintain Incineration Facilities performance; (2) advise the Lessor of the situation and the Lessee's planned course of action within 8 hours of the Lessee's first knowing of the receipt of the Hazardous Materials or the existence of the Hazardous Incineration Residuals; (3) submit any notice thereof required by Applicable Law; and (4) use all reasonable efforts consistent with Prudent Industry Practice to dispose of the Hazardous Materials or Hazardous Incineration Residuals at an Acceptable Disposal Site and to resume operation of the Incineration Facilities in accordance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible. The Lessor and the Lessee shall cooperate with each other in the investigation of the cause of any Hazardous Materials or Hazardous Incinerator Sludge, and in any efforts to seek reimbursement, compensation or indemnification from the responsible parties. The Lessee acknowledges that its assistance in such matters may include the provision of all necessary technical support, including testing and monitoring, to enable the parties to pursue the responsible parties, the costs of which shall be subject to Cost Substantiation and reimbursement by the Lessor.

(E) Cost Impact. To the extent the receipt of Hazardous Materials or the existence of Hazardous Incinerator Residuals has been proven by the Lessee to have resulted from Plant Sludge or Crompton Sludge received at the Incineration Facilities, the Lessor shall either reimburse the Lessee or adjust the Base Rent in an amount equal to the reasonable costs incurred

by the Lessee with respect to such Uncontrollable Circumstances, including without limitation the reasonable costs incurred by the Lessee in responding to the effect of the Uncontrollable Circumstance on the Incineration Facilities and on the incineration of Incinerator Sludge and the disposal Incinerator Residuals but excluding any such increased costs which would have been avoided had the Lessee complied with any remedial measures required under Applicable Law and appropriate mitigating measures required by Section 15.2. Any reimbursement, compensation or indemnification received by the Lessor from a responsible party shall be applied to offset any costs hereunder.

SECTION 7.6. TESTING, METERING AND WEIGHING. (A) Testing. The Lessee shall conduct all tests of Incinerator Sludge, air emissions and odor, and Incinerator Residuals in accordance with Appendix 14 and the other Contract Standards. The tests shall be made at State certified laboratories to the extent required by the Contract Standards and shall be conducted at the Lessee's sole cost and expense, except to the extent such tests are required by a Change in Law or any other Uncontrollable Circumstance and are not required under the terms hereof as of the Contract Date; provided, however, that reasonable minor changes to testing and analysis protocols required by the DEP from time to time shall not constitute a Change in Law or other Uncontrollable Circumstance within the meaning of this Section.

(B) Metering and Weighing. The Lessee shall maintain in good working order, and repair and replace when necessary, devices at the Incineration Facilities capable of (1) metering the continuous and daily total volume of Plant Sludge and Crompton Sludge, (2) metering or weighing Trucked-In Materials, (3) metering or weighing the daily amount of Ash Residue delivered to the Ash Lagoons and Incinerator Residuals leaving the Incineration Facilities for disposal, (4) metering the continuous and daily total amount of Incineration Process Filtrate, and (5) any other metering or weighing requirement imposed by Applicable Law. With the exception of third-party scales that are state-certified, the Lessor shall have full access to such meters, instruments, controls, recorders, scales and other metering and weighing devices. All operating data produced by such metering and weighing devices shall be subject to audit, and shall be summarized in the operations reports delivered to the Lessor pursuant to Section 6.15. All such metering and weighing devices maintained by the Lessee shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of, the Contract Standards. All third-party scales shall be state-certified. To the extent any metering or weighing device is incapacitated or is being tested, the Lessee shall estimate as accurately as practicable the data required by the Lessee to perform the Leasehold Obligations. This estimate and methodology shall, with the Lessor's approval, be used as the basis for determining the operating data required hereunder during the outage. The Lessor shall have the right to monitor, inspect and test such metering and weighing devices which are part of the Incineration Facilities at any time and for any purpose and to take measurements regarding Incinerator Sludge,

Incinerator Residuals and Incineration Process Filtrate without unreasonably interfering with the Lessee's ordinary operations.

SECTION 7.7. RELEASES, LEAKS AND SPILLS. (A) Unauthorized Releases Prohibited. The Lessee shall operate the Incineration Facilities in such a manner that Incinerator Sludge, Incinerator Residuals or Incineration Process Filtrate will not contaminate, or be released, leaked or spilled on or into, the environment, other than as permitted by Applicable Law and the other Contract Standards.

(B) Notification and Reporting. The Lessee, while contemporaneously notifying the Lessor, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized release of Incinerator Sludge, Incinerator Residuals or Incineration Process Filtrate into the environment from or in connection with its operation and management of the Incineration Facilities. The Lessee shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the Lessor, along with any documents provided to the relevant Governmental Body regarding the release.

(C) Cleanup and Costs. The Lessee shall coordinate with the Lessor and all appropriate Governmental Bodies in effectuating the prompt remediation of any unauthorized release. The Lessee shall, in the most expeditious manner possible under the circumstances, cause any Incinerator Sludge, Incinerator Residuals or Incineration Process Filtrate released without authorization to be cleaned up and remediated in accordance with Applicable Law. All costs associated with performing any such cleanup and remediation measures shall be borne by the Lessee, except to the extent the unauthorized release of Incinerator Sludge, Incinerator Residuals or Incineration Process Filtrate resulted from an Uncontrollable Circumstance, in which case the appropriate portion of such costs shall be borne by the Lessor on a reimbursement basis.

SECTION 7.8. PRE-EXISTING ENVIRONMENTAL CONDITIONS AND SPECIFIED SUBSURFACE CONDITIONS. (A) Lessee Obligation. In the operation and management of the Incineration Facilities and the performance of the ICI Design/Build Work, the Lessee shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating the nature or areal extent of any Pre-Existing Environmental Condition after the location and existence of such Pre-Existing Environmental Condition has been disclosed to or through physical observation (including any such observation made during excavations) becomes actually known to the Lessee. Prior to undertaking any excavation or construction work, the Lessee shall review available records, drawings and plans, and, as appropriate, interview the Lessee's employees that previously worked for NTC, regarding the Incineration Facilities and Incineration Facilities Site with respect to the identification of any known Pre-Existing Environmental Conditions. Except for the Lessee's failure to exercise due care with respect to such disclosed or known Pre-Existing Environmental Condition, the Lessee shall not be responsible for any Pre-Existing Environmental Condition including any Loss-and-Expense relating to any Pre-Existing Environmental Condition.

(B) Lessor Obligations. If at any time a Pre-Existing Environmental Condition or Specified Site Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Leasehold Obligations, or (3) increases the cost to the Lessee of performing the Leasehold Obligations, then the Lessor shall promptly after written notice from any Governmental Body or the Lessee of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary to dispose of, remediate or otherwise correct the Pre-Existing Environmental Condition or Specified Site Condition or otherwise make the Pre-Existing Environmental Condition or Specified Site Condition comply with Applicable Law. The Lessor shall have the right to contest any determination of a Pre-Existing Environmental Condition or Specified Site Condition and shall not be required to take any action under this subsection so long as: (1) the Lessor is contesting any determination of a Pre-Existing Environmental Condition or Specified Site Condition in good faith by appropriate proceedings conducted with due diligence; and (2) Applicable Law permits continued operation of the Incineration Facilities pending resolution of the contest, so that the Lessee shall have no liability as a result of the failure of the Lessor to dispose of, remediate or otherwise correct such Pre-Existing Environmental Condition or Specified Site Condition during the period of contest.

## ARTICLE VIII

### MAINTENANCE, REPAIR AND REPLACEMENT

#### SECTION 8.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance. The Lessee shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property constituting the Incineration Facilities, shall keep the Incineration Facilities in good working order, condition and repair, in a neat and orderly condition and in accordance with Appendix 14 and the other Contract Standards. The Lessee shall not undertake any normal and ordinary maintenance activity which will permanently impair the exterior physical appearance of the Facilities Structures (such as changes to the exterior surface materials, colors, roof materials, or exterior structural dimensions (e.g., stack height)) that may be viewed from the exterior of the Wastewater Treatment Complex without the prior approval of the Lessor. The Lessee shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services which are necessary for the normal and ordinary maintenance of the Incineration Facilities and shall conduct predictive, preventive and corrective maintenance of the Incineration Facilities as required by the Contract Standards. The Lessee shall keep maintenance logs in accordance with the maintenance, repair and replacement plan set forth in Appendix 14 and developed as part of the Operation and Maintenance Manual.

(B) Repair and Maintenance of Grounds. The Lessee, in accordance with the Contract Standards, shall keep the grounds of the Incineration Facilities Site in a neat and orderly condition. The Lessee shall also maintain and repair all Incineration Facilities fencing and signage. In addition, the Lessee shall provide lawn mowing, leaf raking, and brush cutting services for the Incineration Facilities Site, and provide winter maintenance (snow and ice removal) for all parking lots, roadways, walk-ways, and building entrances and exits at the Incineration Facilities Site; provided that the Lessor shall be responsible for maintenance (including snow and ice removal) with respect to the Access Road.

(C) Major Maintenance, Repair and Replacements. The Lessee shall perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Incineration Facilities during the Term of this Lease Agreement required under the Contract Standards, including without limitation all maintenance, repair and replacement which may be characterized as "structural" or "capital" in nature. The Lessor's approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification other than a Small Scale Capital Modification, in which event the Lessor shall have the approval rights set forth in Article XII. The obligations of the Lessee under this Article are intended to assure that the Incineration Facilities are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term

reliability, durability and efficiency, and that in any event the Incineration Facilities are returned to the Lessor at the end of the Term in a condition which does not require the Lessor to undertake a significant overhaul or make immediate replacements in order to continue to provide reasonably priced and efficient sludge incineration services.

(D) Replacements Constituting Capital Modifications. The Lessee shall bear the cost and expense of all maintenance, repairs and replacements required under this Article, including the cost and expense of any maintenance, repair or replacement that may constitute a Capital Modification, unless otherwise provided in Article XII.

SECTION 8.2. INCINERATION FACILITIES EVALUATIONS. (A) Initial and Final Inventories of Vehicles, Rolling Stock, Spare Parts and Consumables. As required by Section 4.3(A)(10), prior to the Commencement Date the Lessee shall prepare an itemized inventory of all vehicles, rolling stock, spare parts and Consumables in stock and having operational utility at the Incineration Facilities which are to be licensed or transferred to the Lessee as of the Commencement Date. The Lessee shall correct any deficiencies it identifies in the initial inventory by restoring spare parts and Consumables to the appropriate levels required by the Contract Standards. In like manner, prior to the Termination Date, the Lessee shall prepare an itemized inventory of all vehicles, rolling stock, spare parts and Consumables in stock and having operational utility at the Incineration Facilities which are to be transferred to the Lessor on the Termination Date. The final inventory shall be compared to the initial inventory and the Lessee shall be responsible for restoring any deficiencies identified and having operational utility on or before the Termination Date. Each such Lessee inventory shall be subject to review and concurrence by the Lessor.

(B) Initial Evaluation of the Incineration Facilities. Prior to the Commencement Date the Lessee shall prepare and submit to the Lessor for its review and approval the Facilities Registry and the Projected Rebuild/Replacement Schedule in accordance with Appendix 15. The information contained in the Facilities Registry and the Projected Rebuild/Replacement Scheduled will be used by the Lessor to establish a baseline for determining compliance by the Lessee generally with its maintenance, repair and replacement obligations under this Article. The evaluation of the Facilities Structures shall determine and establish the existing condition and state of repair of the Facilities Structures. The Lessor shall use the information in the Facilities Registry and the Projected Rebuild/Replacement Schedule to calculate the weighted average rebuild/replacement useful life of the Facilities Equipment, on a system or sub-system basis, projected to exist at the end of the Term hereof (the "Projected Weighted Average Rebuild/Replacement Useful Life") as set forth in Appendix 15.

(C) Final Evaluation of Incineration Facilities. Commencing in Contract Year 18 or concurrently with the Termination Date upon an early termination of this Service Contract (the "Evaluation Date"), the Lessor shall calculate the Actual Weighted Average Rebuild/Replacement

Useful Life of the Incineration Facilities based on the Lessee's documented and scheduled remaining maintenance, repair and replacement activities for the Incineration Facilities. The Lessor shall have the right to independently verify the Lessee's maintenance, repair and replacement records for purposes of determining the Actual Weighted Average Rebuild/Replacement Useful Life.

(D) Required Condition of Incineration Facilities Upon Return to the Lessor. The Facilities Structures, the fluidized bed incinerator and any other equipment specifically exempted from the provisions of Appendix 15, as set forth therein, shall be returned to the Lessor in good condition, working order and repair, taking into account their condition and state of repair on the Commencement Date (as improved by the Initial Capital Improvements) and with ordinary wear and tear excepted. The Facilities Equipment shall be returned to the Lessor in such a condition and state of repair such that, on a system and sub-system basis as of the Evaluation Date, the Actual Weighted Average Rebuild/Replacement Useful Life of the Facilities Equipment at the end of the Term is equal to or greater than 92.5% of the Projected Weighted Average Rebuild/Replacement Useful Life. In the event the final audit establishes a maintenance, repair or replacement deficiency for the Facilities Structures or Facilities Equipment under this Section, the Lessee shall, at the election of the Lessor, either remedy the deficiency or make a cash payment to the Lessor in accordance with the terms of Appendix 15.

(E) Initial Capital Improvements and Capital Modifications. Upon completion of their construction, the mechanical equipment portion of each Initial Capital Improvement and each Capital Modification having a value equal to or greater than \$5,000 shall be added to the Facilities Registry and a separate Projected Rebuild/Replacement Schedule shall be developed for such equipment as provided in Appendix 15. The final evaluation of the mechanical equipment portion of each Initial Capital Improvement and Capital Modification shall be performed independently of the final evaluation of the Facilities Equipment, and such equipment shall be returned to the Lessor in accordance with the same requirements for the Facilities Equipment as set forth in this Article and Appendix 15. In the same manner as Facilities Structures, the structural portion of any Initial Capital Improvement and Capital Modification shall be returned to the Lessor on the Termination Date in good condition, working order and repair, with ordinary wear and tear excepted.

(F) Disputes. Any matter arising under this Section which is in dispute between the Lessor and the Lessee shall be determined as provided in Sections 14.11 and 14.12.

SECTION 8.3. PERIODIC MAINTENANCE INSPECTIONS. (A) Annual Maintenance Inspection. The Lessor shall, upon reasonable written notice, perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Incineration Facilities and relevant records of the Lessee each Contract Year to determine the extent to which the Incineration Facilities are being properly maintained, repaired and replaced in accordance with

the Contract Standards generally. The inspection and review shall be performed by or on behalf of the Lessor by a Lessor Engineer at the Lessor's expense. The Lessee shall cooperate fully with the inspections, which shall not interfere unreasonably with the Lessee's performance of the Leasehold Obligations.

(B) Remediation. Based on the annual operations and maintenance reports submitted by the Lessee pursuant to subsection 6.15(B) or the annual inspections and reviews conducted pursuant to this Section, the Lessor may submit a statement to the Lessee detailing any deficiencies found and requiring the Lessee to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Incineration Facilities will be promptly brought into compliance with the requirements of this Article. If the Lessor accepts the remediation plan, the Lessee shall thereupon correct all deficiencies noted in accordance therewith. If the Lessee fails to implement such corrective action and the Lessor elects to undertake action, the Lessor's costs of remediation, subject to Cost Substantiation, may be obtained through an increase in the Base Rent. Any disputes with respect to the cause or amounts specified in the Lessor's statement, not resolved to the mutual satisfaction of the parties, shall be determined as provided in Sections 14.11 or 14.12.

(C) Unscheduled Inspections. Nothing in this Section shall limit the Lessor's right, on an unscheduled basis, at any time to inspect the Incineration Facilities and relevant records of the Lessee to determine compliance with this Article.

SECTION 8.4. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. The Lessee shall install, maintain, upgrade, repair and replace, as appropriate throughout the Term, a computerized maintenance management system capable of providing a record of repair and replacement of the Incineration Facilities on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; monitoring routine operations within the Incineration Facilities; issuing work orders and purchase orders; maintaining a spare parts inventory; and issuing exception, equipment status and repair priority reports. The computerized maintenance management system shall be installed and operational within 180 days following the Commencement Date, shall be developed consistently with the Incineration Facilities Registry, and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Incineration Facilities. The Lessee shall utilize the computerized maintenance management system to provide the Lessor with documentation which allows it to efficiently monitor compliance by the Lessee with its maintenance obligations hereunder. The Lessee shall permit all electronic data to be replicated and provided to the Lessor for review by the Lessor Engineer.

SECTION 8.5. MAINTENANCE, REPAIR AND REPLACEMENT PLAN. Appendix 14 contains the Lessee's plan for the maintenance, repair and replacement of the Incineration Facilities. This plan is intended to establish minimum standards by which to measure the Lessee's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to

assure that no material deferred or substandard maintenance, repair and replacement occurs. The Operation and Maintenance Manual shall incorporate a maintenance, repair and replacement plan that is in substantial conformance with Appendix 14. The Lessee shall adhere to the plan as incorporated in the Operation and Maintenance Manual, except where it can demonstrate to the Lessor that changes are reasonable under Prudent Industry Practice. The timing and extent of maintenance, repair and replacement activities performed by the Lessee hereunder with respect to the Incineration Facilities, taken as a whole, shall be in accordance with Appendix 14. The Lessee shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

SECTION 8.6. DISPOSAL OF SURPLUS EQUIPMENT. The Lessee may, with the approval of the Lessor, remove from the Incineration Facilities and dispose of or sell, in accordance with Applicable Law, equipment constituting part of the Incineration Facilities that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Lessee's expenses in arranging the sale (to the extent such expenses are not included in the Fixed Design/Build Price), subject to Cost Substantiation, shall be shared by the Lessor and the Lessee on an equal basis. The Lessee shall not store or stockpile any such removed equipment at the Incineration Facilities.

SECTION 8.7. WARRANTIES. During the Term of this Lease Agreement, the Lessee shall be responsible for meeting the Lessor's maintenance obligations under all manufacturer's warranties on new equipment purchased and installed in the Incineration Facilities by the Lessor or by the Lessee, and shall be the agent of the Lessor in enforcing existing equipment warranties and guarantees. The Lessee shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Lessee shall cooperate with and assist the Lessor if the Lessor seeks to enforce warranties and guarantees through litigation.

SECTION 8.8. LOSS, DAMAGE OR DESTRUCTION TO THE INCINERATION FACILITIES. (A) Prevention and Repair. The Lessee shall use care and diligence, and shall take all appropriate precautions, to protect the Incineration Facilities from loss, damage or destruction. The Lessee shall report to the Lessor and the insurers, promptly upon obtaining knowledge thereof, any loss, damage or destruction to the Incineration Facilities and as soon as practicable thereafter shall submit a full report to the Lessor. The Lessee shall also submit to the Lessor within 24 hours of receipt copies of all accident and other reports filed with, or given to the Lessee by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Incineration Facilities to at least the character and condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article XII and Article XV, as applicable. The Lessor shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Lessee as if such work constituted ICI Design/Build Work hereunder.

(B) Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist the other in exercising such rights as it may have to effect such recovery. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims. The proceeds of any insurance recovery shall be payable to the party that has paid for the costs of any repair, replacement or restoration of the Incineration Facilities following an event of loss, damage or destruction thereto.

(C) Waiver of Subrogation Rights. The Lessor and the Lessee intend that all policies of insurance required under this Lease Agreement to be held by the Lessor or the Lessee shall protect the Lessor and the Lessee, and provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer shall have no rights of subrogation or other recovery against any of the parties named as insured or additional insured, or any Affiliates of the Lessee.

(D) Uninsured Costs. The Lessor shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Incineration Facilities after an event of loss, damage or destruction thereto caused by an Uncontrollable Circumstance or a peril of the type required to be covered by the Required Lessor Insurance and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Incineration Facilities shall be for the account of the Lessor and the Lessee as their interests may appear. To the extent that any loss, damage or destruction of the Incineration Facilities is caused by a peril of the type required to be covered by the Required Lessor Insurance, the Lessor shall be responsible for payment of any deductible amounts, any amounts that are or should have been covered under the Required Lessor Insurance, and any amounts in excess of the coverage limitations of the Required Lessor Insurance. Any costs for loss, damage or destruction of the Incineration Facilities not covered by insurance proceeds or third party payments shall be borne by the Lessee to the extent the loss, damage or destruction was not caused by Uncontrollable Circumstances or by a peril of the type required to be covered by the Required Lessor Insurance.

(E) Repair of Lessor and Private Property. The Lessee shall promptly repair or replace all Lessor Property and all private property damaged by the Lessee or any officer, director, employee, representative or agent of the Lessee in connection with the performance of, or the failure to perform, the Leasehold Obligations. The repair and replacements, to the maximum extent reasonably practicable, shall restore the damaged property to its character and condition existing immediately prior to the damage.

ARTICLE IX

INCINERATOR RESIDUALS DISPOSAL

SECTION 9.1. INCINERATOR RESIDUALS DISPOSAL GENERALLY. (A) General Plan of Management of Incinerator Residuals. The parties acknowledge that the general plan of management of Incinerator Residuals is for the Lessee to treat, manage, transport and dispose of Incinerator Residuals at a Designated Disposal Site. Such management obligations shall be performed in a safe and environmentally sound manner and in accordance with Applicable Law and the other Contract Standards, as more specifically set forth in this Article.

(B) General Risk Allocation in the Transportation and Disposal of Incinerator Residuals. It is the intention of the parties, in general, that with respect to the Incinerator Residuals Management Services:

(1) Lessee. Except as affected by Uncontrollable Circumstances, the Lessee bear the following transportation and disposal risks : (a) the availability and cost to the Lessee from time to time of any Acceptable Disposal Site for Incinerator Residuals; (b) the availability and cost to the Lessee from time to time of transportation services for Incinerator Residuals; (c) the transportation distance from the Incineration Facilities to any site which may be designated as an Acceptable Disposal Site approved hereunder; (d) the business terms, conditions and practices which may prevail at any Acceptable Disposal Site and in the residuals transportation and disposal market generally from time to time; and (e) the performance or non-performance by any Subcontractor of the Lessee for Incinerator Residuals handling, transportation or disposal services;

(2) Lessor. The Lessor bear the risk of Uncontrollable Circumstances and Changes in Law with respect to the Incinerator Residuals Responsibilities as set forth in Section 9.4, and the risk of Uncontrollable Circumstances with respect to Designated Disposal Site as set forth in Section 9.5; and

(3) Response Actions. Except as set forth in subsection (D) of this Section and Section 9.3(D), the Lessee shall be responsible for any liabilities (including liabilities with respect to Response Actions or natural resource damages) arising at any Acceptable Disposal Site where System Residuals have been delivered for storage, treatment or disposal.

(C) Avoiding Hazardous Incinerator Residuals Classification. Except as excused by Uncontrollable Circumstances, the Lessee shall operate the Incineration Facilities, subject to the terms and conditions of this Lease Agreement, and shall use all reasonable efforts so as to avoid the classification of Hazardous Incinerator Residuals under any Applicable Law.

(D) Lessor Responsibility for Certain Hazardous Incinerator Residuals. The Lessor shall be responsible for, and shall indemnify and hold harmless the Lessee from, all Loss-

and-Expense relating to the transport, storage, treatment or disposal of any Hazardous Incinerator Residuals that result from caused by the delivery to the Incineration Facilities of Plant Sludge containing Hazardous Materials resulting from an upset, interference or pass-through or receipt of excessive influent at the Plant, including all Loss-and-Expense relating to Off-Site Response Actions relating to any Off-Site transport, storage, treatment or disposal of such Hazardous Incinerator Residuals. The obligations of this subsection shall survive termination of this Lease Agreement.

(E) Storage and Loading. Except for Ash Residue temporarily stored in the Ash Lagoons, the Lessee shall not store solid Incinerator Residuals on the Incineration Facilities Site unless such residuals are stored in an enclosed building or vessels that have an odor control system in accordance with the Contract Standards. The Lessee shall remove Incinerator Residuals from the Incineration Facilities Site in a timely manner. The Lessee acknowledges that the principal purpose of this provision is to minimize odor originating from the Incineration Facilities.

(F) Transportation Operations. All transportation operations shall be conducted in accordance with Applicable Law and Section 6.20. In the event of a release, spill, leak or loss of Incinerator Residuals during transfer or transit, the Lessee shall promptly arrange or cause to be arranged through the responsible hauler for the clean-up of the material and transportation to an Acceptable Disposal Site, and for the payment by the Lessee or the responsible hauler of any resulting fines, assessments, penalties or damages resulting therefrom, all as further provided in Section 7.7.

(G) Incinerator Residuals Disposal Information. The Lessee shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to Incinerator Residuals as the Lessor may deem to be necessary or appropriate to comply with Applicable Law and to monitor and confirm compliance by the Lessee with the requirements of this Article, and shall collect and promptly provide the Lessor with a copy of all weights and measures data and information relating to quantities of Incinerator Residuals generated, transported and disposed of hereunder.

(H) Documentation. The Lessor, to the extent required by Applicable Law, shall sign all permits, manifests or similar documents required for the treatment, management, transportation or disposal of Incinerator Residuals.

(I) Indemnity. Except as provided in subsection (D) of this Section and Section 9.3(D), the Lessee shall indemnify and hold harmless the Lessor in accordance with Section 15.7 from all Loss-and-Expense arising out of the performance or non-performance by the Lessee of the Incinerator Residuals Responsibilities.

SECTION 9.2. DISPOSAL OF INCINERATOR RESIDUALS. (A) Acceptable Disposal Site. All Incinerator Residuals shall be disposed of at an Acceptable Disposal Site. An Acceptable Disposal Site, as used herein, means either a sanitary landfill or other waste disposal or management facility (other than land application of sludge), which: (1) is operated in accordance

with good engineering practice and Applicable Law (as applicable to waste disposal facilities disposing of such waste materials); (2) is located in the United States; (3) is not listed on or proposed for listing on any federal or State list of sites, such as but not limited to the National Priority List under CERCLA, maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Materials; (4) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any unresolved regulatory sanctions or any significant enforcement actions with respect to material environmental matters; (5) has committed by written agreement of the owner or operator to receive Incinerator Residuals originating at the Incineration Facilities; and (6) is not under any executive or judicial order barring receipt of Incinerator Residuals from any region which includes the Lessor.

(B) Designated Disposal Site. The Acceptable Disposal Sites at which all Incinerator Residuals are actually treated and disposed of from time to time hereunder are referred to as the "Designated Disposal Sites". The Designated Disposal Sites identified as of the Contract Date are set forth in the following table:

| <u>Facility Name</u>                                   | <u>Facility Operator</u>                                 | <u>Location</u>  |
|--|--|------------------|
| City of Albany Landfill                                | City of Albany, NY,<br>Department of General<br>Services | Albany, NY       |
| Connecticut Valley Sanitary<br>Waste Disposal Landfill | Waste Management, Inc.                                   | South Hadley, MA |

(C) Change in Designated Disposal Site and Disposal Subcontracts. Subject to the prior approval of the Lessor, the Lessee shall have the right to change a Designated Disposal Site during the Term hereof, so long as the replacement Designated Disposal Site is an Acceptable Disposal Site, and to execute a Subcontract for the performance of its Off-Site Residuals Disposal Obligations. Any such disposal Subcontract shall be priced based on disposal at a specific Designated Disposal Site and shall provide for deliveries of Incinerator Residuals thereto. Any such disposal Subcontract which is not so structured shall be deemed to be insufficient to permit a reasonable determination of the effect of any Change in Law affecting a Designated Disposal Site hereunder. Not later than 10 days prior to commencing deliveries of Incinerator Residuals to the initial or any new Designated Disposal Site, the Lessee shall furnish the Lessor with notice thereof, together with: (1) the name, address and permit number of the Designated Disposal Site; (2) the name of the owner and operator, together with phone, fax and e-mail contact information for the facility manager and for the chief operating officers of the owner and operator; (3) information relevant to the criteria for confirming the proposed site as an Acceptable Disposal Site under subsection (A) of this Section; and (4) a summary of the principal business terms and conditions of the applicable transportation and disposal contracts (other than price), such as term,

termination rights, delivery rights and requirements, residuals quality requirements, and the definition and effect of force majeure, law changes and other uncontrollable events. The Lessee shall not be required to furnish the Lessor with a copy of any such contract except upon a claim for relief based on a Designated Disposal Site Change in Law.

(D) Emergencies. In the event an emergency causes the Lessee to temporarily change a Designated Disposal Site, the Lessee shall not be obligated to furnish the information required under this Section in advance, but shall do so as soon as practicable, and shall notify the Lessor upon reinstating use of the previous Designated Disposal Site.

SECTION 9.3. HAZARDOUS INCINERATOR RESIDUALS. (A) Protocol. The parties acknowledge that Incinerator Sludge may from time to time contain materials which cause Incinerator Residuals to constitute Hazardous Incinerator Residuals. In order to identify and provide for the proper management of Hazardous Incinerator Residuals, the Lessee shall comply with the screening and monitoring protocol set forth in Appendix 20 and any other screening and monitoring requirements imposed under the Contract Standards or Governmental Approvals.

(B) Notification and Reporting. In the event Hazardous Incinerator Residuals are identified, whether On-Site or Off-Site, the Lessee shall notify the Lessor, shall fulfill all notification and reporting requirements established by Applicable Law, and shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the Lessor, along with any documents provided to the relevant Governmental Body regarding such Hazardous Incinerator Residuals. The Lessor shall have the right to witness and to document any action taken by the Lessee with respect to Hazardous Incinerator Residuals.

(C) Investigation, Management and Disposition of Hazardous Incinerator Residuals. The Lessee shall cooperate with the Lessor in investigating and attempting to identify the source of any material that caused Incinerator Residuals to become Hazardous Incinerator Residuals, and cooperate with the Lessor and all appropriate Governmental Bodies in effectuating the proper management, treatment and disposal of such Hazardous System Residuals. The Lessee in the most expeditious manner possible, shall cause any Hazardous Incinerator Residuals to be removed from the Incineration Facilities and transported to, treated and disposed of at an Off-Site disposal facility authorized to receive and dispose of such Hazardous Incinerator Residuals under Applicable Law, and shall take all necessary On-Site remediation steps. Except as provided in Sections 9.1(D) and the subsection (D) of this Section, the cost of performing any identification, testing, removal, temporary storage, On-Site remediation, and Off-Site transportation and disposal measures with respect to such Hazardous Incinerator Residuals shall be borne by the Lessee or the generator of the materials causing the Hazardous Incinerator Residuals.

(D) Special Provisions Regarding Crompton Sludge. The Lessee shall monitor Crompton Sludge as provided in Section 6.19(C). In the event that Crompton delivers Crompton Sludge that exceeds the applicable criteria for acceptance and treatment at the Incineration Facilities or the receipt and treatment of Crompton Sludge results in Hazardous Incinerator

Residuals, the Lessor agrees to cooperate with the Lessee to seek recovery from Crompton of all Loss-and-Expense resulting therefrom, including through enforcement by Lessor to the fullest extent of Lessor's contractual and other rights. Provided that the Lessee has fulfilled its obligations to monitor the Crompton Sludge as provided in Section 6.19(C), the Lessor shall be responsible for, and shall indemnify and hold harmless the Lessee from any Loss-and-Expense related to the acceptance and treatment of Crompton Sludge that exceeds the applicable criteria for acceptance at the Incineration Facilities, or disposal of Hazardous Incinerator Residuals therefrom. Any costs which would have been avoided had the Lessee complied with its screening and monitoring obligations under Section 6.19(C) shall be borne by the Lessee. The obligations of this subsection shall survive termination of this Lease Agreement.

(E) Off-Site Remediation. Except as provided in Section 9.1(D) and subsection (D) of this Section, in the event that Hazardous Incinerator Residuals are transported and disposed of Off-Site, the costs associated with any necessary Off-Site remediation measures shall be borne by the Lessee.

SECTION 9.4. UNCONTROLLABLE CIRCUMSTANCES AFFECTING ON-SITE RESIDUALS HANDLING OBLIGATIONS AT THE INCINERATION FACILITIES. In the event of an Uncontrollable Circumstance that affects the Lessee's performance of its On-Site Residuals Handling Obligations or the cost of performing its On-Site Residuals Handling Obligations, the Lessee shall be entitled to performance, schedule and price relief as provided in Sections 15.2 and 15.5.

SECTION 9.5. UNCONTROLLABLE CIRCUMSTANCES AND CHANGES IN LAW AFFECTING OFF-SITE RESIDUALS DISPOSAL OBLIGATIONS. (A)Scope. This Section shall generally govern relief for Uncontrollable Circumstances (including Changes in Law) affecting the Lessee's performance of its Off-Site Residuals Disposal Obligations, including the utilization of Designated Disposal Sites.

(B) Uncontrollable Circumstances (Other Than Changes in Law) Affecting Off-Site Residuals Disposal Obligations. In the event an Uncontrollable Circumstance, other than a Change in Law, affects the Lessee's performance of its Off-Site Residuals Disposal Obligations, the Lessee shall be entitled to performance, schedule and price relief as provided in Sections 15.2 and 15.5, and subject to the duty to mitigate as provided in subsection (F) of this Section; provided that the Lessee shall not be entitled to price relief hereunder if an Uncontrollable Circumstance, other than a Change in Law, prevents or otherwise materially hinders transportation of Incinerator Residuals to, or acceptance of Incinerator Residuals at, a Designated Disposal Site but where an alternative Designated Disposal Site within the State which was designated prior to the occurrence of such Uncontrollable Circumstance is available to accept the Incinerator Residuals.

(C) Change in Law Affecting Transportation to Designated Disposal Sites. In the event of a Change in Law that materially and directly (1) affects the method and manner in which Incinerator Residuals may be transported to a Designated Disposal Site; (2) affects access to pickup

Incinerator Residuals at the Incineration Facilities; (3) affects access to deliver the Incinerator Residuals at a Designated Disposal Site; or (4) imposes a Tax upon the transportation, treatment or disposal of Incinerator Residuals at a Designated Disposal Site, the Lessee shall be entitled to performance, schedule and price relief as provided in Sections 15.2 and 15.5, subject to the duty to mitigate as provided in subsection (F) of this Section.

(D) Designated Disposal Site Change in Law Defined. It shall be a "Designated Disposal Site Change in Law", which shall constitute a "Change in Law" hereunder, if any of the following acts, events or circumstances occur, to the extent that compliance therewith materially affect the performance of the Lessor or a Subcontractor or materially increases the costs incurred by the Lessee or a Subcontractor in performing Off-Site Residuals Disposal Obligations at the Designated Disposal Site where Incinerator Residuals are being disposed of:

(1) the adoption, amendment, promulgation, issuance, repeal or written change in administrative or judicial interpretation of any law which is applicable to such Designated Disposal Site or to the transportation of Incinerator Residuals to such Designated Disposal Site, that is made and effective on or subsequent to the date on which the Lessee entered into a contract with the Designated Disposal Site operator for treatment or delivery of Incinerator Residuals to the Designated Disposal Site; or

(2) an order or judgment of a Governmental Body issued and effective on or subsequent to the date on which the Company entered into a contract with the Designated Disposal Site operator for the treatment or delivery of Incinerator Residuals to the Designated Disposal Site (unless such order or judgment is issued to enforce compliance with law applicable to the Designated Disposal Site which was effective prior to such date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Lessee or the Designated Disposal Site operator; provided that the contesting in good faith or the failure in good faith to contest such order or judgment shall not constitute or be constructed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the imposition of a term, condition or requirement in connection with the re-issuance or renewal of any license, permit or approval which is more stringent than the terms, conditions or requirements which were in effect on the date on which the Lessee entered into a contract with the Designated Disposal Site operator for treatment or delivery of Incinerator Residuals to the Designated Disposal Site, to the extent that such Governmental Approval is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Lessee or the Designated Disposal Site operator.

(E) Designated Disposal Site Change in Law Relief. Upon the occurrence of a Designated Disposal Site Change in Law, the Lessee shall be entitled to schedule, performance and price relief as provided in Sections 15.2 and 15.5, subject to the requirements of this subsection and the duty to mitigate as provided in subsection (F) of this Section. Cost Substantiation shall be

furnished by the Lessee to support any requested increase in the Reference Price as a result of a Designated Disposal Site Change in Law. As part of such Cost Substantiation, the Lessee shall (1) provide the Lessor with a copy of the entire contract between the Lessee and the Designated Disposal Site operator, together with such additional supporting cost information as is available from the Designated Disposal Site operator. To the reasonable extent practicable, the Lessee shall seek to assure that costs charged by a Subcontractor as a result of a Designated Disposal Site Change in Law do not exceed an amount reasonably allocable to the Incinerator Residuals compared to the nature and volume of other materials received at the Designated Disposal Sites.

(F) Mitigation. The Lessee, in cooperation, shall use all commercially reasonable efforts to minimize any net incremental costs to the Lessor resulting from Uncontrollable Circumstances or Change in Law under this Section. Such effort may include (1) causing the Subcontractor to mitigate its costs; (2) changing practices related to the On-Site Residuals Handling Obligations; (3) proposing a Capital Modification; or (4) proposing an alternative Designated Disposal Site; provided, however, that the Lessee's duty to mitigate shall not impose upon the Lessee an obligation to change the Designated Disposal Site to another site.

(G) Adjustment of Base Rent and Reference Price. Any payment or reimbursement of costs by, or reduction of costs to, the Lessor under this Section involving an Uncontrollable Circumstance or Changes in Law shall be reflected as either an adjustment to the Base Rent or the Reference Price as provided by Section 15.5.

(H) Changes in Law Affecting Other Leasehold Obligations. Nothing in this Section shall limit the Lessee's entitlement to relief upon the occurrence of a Change in Law affecting any of the Leasehold Obligations other than the Incinerator Residuals Responsibilities, such as Change in Law affecting odor or air emissions from the Incineration Facilities.

ARTICLE X

DESIGN/BUILD OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 10.1. DESIGN/BUILD GENERALLY. (A) Commencement of Design/Build Work. On the Commencement Date, the ICI Design/Build Period shall commence and the Lessee shall promptly proceed to undertake, perform and complete the ICI Design/Build Work in accordance with Appendices 2, 3, 4, 5, 6, 7 and 8 and the other Contract Standards. The time for completion of the Lessee's performance of the ICI Design/Build Work shall be computed from the Commencement Date. The Lessee's failure to achieve ICI Acceptance on or before the Scheduled ICI Acceptance Date shall result in the assessment of delay liquidated damages as provided in Section 11.9(E).

(B) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Initial Capital Improvements shall pass to the Lessor upon payment therefor by the Lessor, except that certain of the Initial Capital Improvements may be owned by a third party in connection with the financing arrangements therefor and leased to the Lessor subject to the payment of the lease payments securing the financing. The Lessee shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until ICI Acceptance has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(C) Elements of the ICI Design/Build Work. In performing the ICI Design/Build Work generally, the Lessee shall, in accordance with the Contract Standards as and to the extent applicable hereunder: (1) prepare and excavate the Incineration Facilities Site grounds; (2) demolish and remove existing improvements; (3) re-route or replace any underground Utilities; (4) remove from the Incineration Facilities Site and dispose of any demolition or construction debris resulting from the ICI Design/Build Work and any soil excavated therefrom; (5) design and construct the Initial Capital Improvements; (6) conduct start up operations; and (7) conduct the ICI Acceptance Tests, all so that the Initial Capital Improvements are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Incineration Facilities Site, or at other locations approved by the Lessor and arranged and paid for by the Lessee.

(D) Subcontracts. Section 17.5 shall be applicable to the Lessee's use of Subcontracts and Subcontractors in connection with ICI Design/Build Work. No Subcontract shall contain any provision which is materially inconsistent with this Lease Agreement.

(E) Changes to ICI Design/Build Work. Any deletions from or additions or changes to the ICI Design/Build Work, whether proposed by the Lessee, necessitated by a Change in Law or other Uncontrollable Circumstance, or directed by the Lessor, shall be considered to be

Capital Modifications and handled in the manner provided in Article XII and Section 15.2, as applicable.

(F) Damage or Destruction to the ICI Design/Build Work. The procedures set forth in subsection 8.8(A) shall be applicable in the event of any damage to or the destruction of the ICI Design/Build Work.

(G) Surplus Equipment. Section 8.6 shall be applicable to any salvage or disposal of structures, improvements, fixtures, machinery and equipment having a resale or salvage value and which are rendered obsolete or surplus by the construction of the Initial Capital Improvements.

(H) Encumbrances. The Lessee shall promptly discharge or bond any Encumbrance arising on the Initial Capital Improvements, Incineration Facilities or ICI Design/Build Work arising out of the Lessee's construction of the Initial Capital Improvements.

(I) Warranties from Subcontractors. The Lessee shall, for the protection of the Lessor, obtain from all Subcontractors, vendors, suppliers and other persons from which the Lessee procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto, each of which shall be assigned to the Lessor to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Lessee of any obligation hereunder, and no failure of any warranted structures, improvements, fixtures, machinery, equipment or material shall be the cause for any non-performance of the Leasehold Obligations unless such failure is itself attributable to an Uncontrollable Circumstance.

(J) Payment of Costs. The Lessee shall pay directly all costs and expenses of the ICI Design/Build Work of any kind or nature whatsoever, including without limitation all costs of permitting (regardless of permittee), except as otherwise provided herein; regulatory compliance and Legal Proceedings brought against the Lessee; obtaining and maintaining the Security Instruments; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Lessee; sales, use and similar taxes on building supplies, materials and equipment (subject to Section 13.11); general supervision by the Lessee of all ICI Design/Build Work; Lessee preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve ICI Acceptance. Costs related to Capital Modifications shall be paid as provided in Article XII.

(K) Performance of Lessee Responsibilities During ICI Design/Build Work. The Lessee shall undertake, design, construct and execute the ICI Design/Build Work in a manner which does not interfere with or impair the performance of the Lessee Responsibilities or adversely affect compliance with the Performance Guarantees, and the Lessee assumes the risk that the ICI Design/Build Work can be accomplished in such a manner.

SECTION 10.2. LESSEE DESIGN. (A) Sole Responsibility and Liability. The Lessee shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Initial Capital Improvements hereunder, notwithstanding the Contract Standards or the fact that the RFP included certain minimum conceptual design criteria for the ICI Design/Build Work and certain performance standards that the Initial Capital Improvements would be required to meet. The Lessee acknowledges that, in the proposal and negotiating process leading to the execution of this Lease Agreement, the Lessee had the unrestricted right and opportunity not to submit a proposal, and not to execute this Lease Agreement if the Lessee had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Lessee's ability to perform the ICI Design/Build Work and the Lessee Responsibilities in compliance herewith.

(B) Conformity of Lessee Design Documents with ICI Design and Construction Requirements. The Lessee shall prepare all plans, technical specifications, drawings, blueprints and other design documents necessary or appropriate to carry out and complete the ICI Design/Build Work. All Lessee working and final design documents shall comply strictly with the ICI Design and Construction Requirements and shall ensure that the Initial Capital Improvements are constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the ICI Design and Construction Requirements. The Lessor shall have the right to review such design documents as provided in Appendix 5, but shall have no right of approval with respect thereto except in order to confirm the compliance and consistency of the design documents with the ICI Design and Construction Requirements. Neither compliance by the Lessee with the ICI Design and Construction Requirements, nor review and approval by the Lessor of the Lessee's design documents, shall in any way relieve the Lessee of full responsibility for the design, construction, operation and performance of the Initial Capital Improvements in accordance with the Contract Standards. Architects and engineers engaged by the Lessee for the Initial Capital Improvements design services shall be experienced and qualified to perform such services and shall be licensed in the State.

(C) Lessor Interest in ICI Design and Construction Requirements. The Lessee acknowledges the Lessor's material interest in each provision of the ICI Design and Construction Requirements and, notwithstanding the ICI Acceptance Test Procedures and Standards and Performance Guarantees of the Lessee and the associated non-performance remedies of the Lessor, agrees that no change to the ICI Design and Construction Requirements shall be made except upon the terms and conditions set forth in this Section and pursuant to a Change Order.

(D) Lessee Requested Changes. The Lessee shall have the right to request changes to the ICI Design and Construction Requirements, which shall be handled in the same manner as provided in Article XII with respect to Capital Modifications. The parties shall agree on a form for describing any change to or clarification of the ICI Design and Construction Requirements so approved by the Lessor. The completed form pertaining to each such change

shall be appended to the Contract Administration Memorandum containing the Lessor's Change Order authorizing the change.

(E) Procedure for Lessor Review of Design Submittals. The Lessor shall review each preliminary design submittal in accordance with the procedures set forth in Appendix 5. Prior to the commencement of construction of any Initial Capital Improvements, the final plans and specifications and the permit approvals therefor shall also be submitted to the Lessor in accordance with Appendix 5.

(F) Documents at the Incineration Facilities Site. The Lessee shall maintain at the Incineration Facilities Site in a safe place one record copy of all drawings, specifications, addenda, Change Orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the ICI Design/Build Work, in good order and marked currently to record all changes made during construction, together with blueprints, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all building, electrical, plumbing and public safety codes applicable to the ICI Design/Build Work. These documents shall be available to the Lessor for reference, copying and use, and a complete set thereof shall be delivered to the Lessor upon completion of the ICI Design/Build Work.

SECTION 10.3. LESSEE PERMITTING. (A) Applications for Governmental Approvals. Except for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements, the Lessee shall make all applications and take all other action necessary to obtain and maintain all Governmental Approvals necessary under Applicable Law to construct the Initial Capital Improvements and to commence and complete the ICI Design/Build Work. Such applications shall be made and Governmental Approvals issued in the name of the Lessor, where required by Applicable Law, in all cases subject to prior acceptance by the Lessor. The Lessee shall manage the process of obtaining the Governmental Approvals on behalf of the Lessor for which it is responsible hereunder in a manner which affords the Lessor a reasonable opportunity to review and comment upon material documentation submitted to and issued by any Governmental Body in connection therewith, all as provided in Appendix 5.

(B) Lessor Cooperation. The Lessor shall provide in a timely manner data and information within the Lessor's possession and shall timely review and execute all required application documents upon request by the Lessee. In addition, the Lessor's intention is to provide reasonable assistance to the Lessee in carrying out its obligations under this Section, provided that the Lessor's commitment to provide such additional assistance shall not relieve the Lessee of the Lessee's responsibility for the quality and timely preparation of any such Governmental Approval applications.

(C) Lessee Assumption of Permitting Responsibility. The Lessee shall use its best efforts in applying, on behalf of the Lessor, for any Governmental Approvals required for the Initial Capital Improvements (except for the fluidized bed incinerator portion of the Initial Capital Improvements). The Lessee shall be responsible for (i) assuring that all applications for such

Governmental Approvals are complete in accordance with Applicable Law governing such applications; (ii) assuring that the design of any such Initial Capital Improvements comply with Applicable Law governing such Initial Capital Improvements; and (iii) providing sufficient data and other information to demonstrate that the proposed Initial Capital Improvements comply with all existing Applicable Law. The Lessee shall be responsible for the cost of any additions or changes to the ICI Design/Build Work arising from a determination during the process of obtaining Governmental Approvals for the construction of the Initial Capital Improvements that the design for the Initial Capital Improvements does not conform with or is not sufficient to comply with existing Applicable Law. However, the Lessee shall not be responsible for any Change in Law with respect to such Initial Capital Improvements, including any delay in the review or issuance of any Governmental Approval for which a timely and complete application has been submitted, or the imposition of any term, condition or requirement in any Governmental Approval which is more stringent or burdensome than the Applicable Law in effect as of the Contract Date. Any such Change in Law with respect to Initial Capital Improvements shall be addressed as follows:

(1) If any Governmental Body denies or refuses to issue a Governmental Approval for an Initial Capital Improvement for any reason other than (i) failure of the design and plans for the Initial Capital Improvement to comply with Applicable Law in effect as of the Contract Date, (ii) the compliance history of the Lessee, or (iii) failure by the Lessee to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application therefor, then the Lessee shall be entitled to relief pursuant to Section 15.2. (By way of example, but without limitation, such relief under Section 15.2 may be provided if a Governmental Approval is denied based upon (i) the existence of Site Specific Conditions; (ii) claims of environmental justice concerns related to the location of the Incineration Facilities in relation to minority or disadvantaged communities; (iii) claims that project benefits do not exceed environmental or other impacts; or (iv) the Lessor's compliance history).

(2) The Lessee shall be entitled to schedule and price relief with respect to delay in issuance of Governmental Approvals for any Initial Capital Improvements to the extent provided in Section 11.9.

(3) If a Governmental Body proposes terms, conditions or requirements in any proposed or final Governmental Approval that are more stringent or burdensome than the Applicable Law in effect as of the Contract Date, within 10 days of the receipt of such information the Lessee shall provide the Lessor with written notice of its determination and reasoning as to whether and why the terms and conditions of any such draft or final Governmental Approval are more burdensome or stringent than those of the Applicable Law. In the event that the Lessee claims that such Governmental Approval contains conditions or requirements which are more burdensome or stringent than those of the Applicable Law, and therefore constitutes a Change in Law, the Lessee shall, at the same time of providing notice

to the Lessor under this subsection, provide the Lessor with notice and information required pursuant to Section 15.2.

(D) Failure to Obtain Governmental Approvals. The parties acknowledge that if the parties have otherwise complied with their obligations hereunder and the Governmental Approvals for the construction of the Initial Capital Improvements have not been issued within the time period set forth in subsection 4.4(B), then either party may, by notice in writing to the other party, terminate this Lease Agreement and each party shall bear its respective costs and expenses incurred through the Termination Date as provided in such subsection 4.4(B).

(E) Change in Law Not Related to Governmental Approvals. Any Change in Law which requires a Capital Modification to the Initial Capital Improvements shall be handled as a Change in Law in accordance with Article XII and Section 15.2.

SECTION 10.4. LESSEE CONSTRUCTION. (A) Construction Practice. The Lessee shall perform the ICI Design/Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the ICI Design/Build Work as required by this Lease Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Lessee to provide the following construction requirements: temporary offices and construction trailers; temporary construction related odor control measures; required design certifications; quality control and testing; required approvals; weather protection; Incineration Facilities Site clean-up and housekeeping; construction trade management; temporary parking, vehicle traffic, safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses, temporary fire protection; Incineration Facilities Site security; temporary Utilities, potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Conditions to Commencement of Construction. The Lessee shall not commence or proceed with construction of any Initial Capital Improvement until the Lessee has satisfied the following conditions with respect to such Initial Capital Improvement:

(1) Incineration Facilities Condition. The Lessee has made all further tests, inspections and analyses of the condition of the Incineration Facilities necessary under Good Engineering and Construction Practice as preparation for construction of the Initial Capital Improvement hereunder in accordance with Applicable Law and to obtain all required Governmental Approvals;

(2) Governmental Approvals. The Lessee has obtained, on its own behalf or behalf of the Lessor as applicant, all Governmental Approvals necessary to commence or proceed with construction of the Initial Capital Improvement or any stage thereof (except

for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements), in form and substance satisfactory to the Lessor;

(3) Environmental Notification Forms and Impact Reports. The Lessee has prepared and properly submitted any environmental notification forms and impact reports with respect to the Initial Capital Improvement which are required under Applicable Law;

(4) Construction Submittal Protocol. The Lessee has submitted to the Lessor the Construction Submittal Protocol as required by Appendix 5;

(5) Utilities. The Lessee has made all arrangements necessary to secure the availability of all Utilities required to construct and operate the Incineration Facilities, as improved by the Initial Capital Improvements, in the capacities required hereunder, and has evidenced such availability by letters from the providers of such Utilities;

(6) Design Drawings. The Lessee has provided to the Lessor copies of all plans, technical specifications, blueprints, drawings and other design documents relating to the Initial Capital Improvement sufficient to commence or proceed with construction of the Initial Capital Improvement or any stage thereof, prepared by or on behalf of the Lessee for permitting, regulatory, financing, bonding, credit enhancement and insurance purposes; and

(7) Required ICI Design/Build Period Insurance. The Lessee has obtained and submitted to the Lessor certificates of insurance for all Required ICI Design/Build Period Insurance for the ICI Design/Build Period specified in Appendix 10.

SECTION 10.5. PAYMENT OF THE ICI DESIGN/BUILD PRICE. (A) Lessor Financing. The Lessor shall secure the availability of all funds necessary to pay the ICI Design/Build Price in a timely manner, whether through the authorization or issuance of revenue or debt obligations of the Lessor to the SRF or to other financial markets, or otherwise as determined by the Lessor. Milestone payments of the ICI Design/Build Price shall be made by the Lessor to the Lessee as provided in this Section and in Appendix 6. In the event the Lessor elects to refinance any Lessor obligations through SRF obligations, the Lessee will cooperate with and assist the Lessor in complying with any SRF regulations therewith.

(B) ICI Design/Build Price Generally. The Lessor shall pay the Lessee the ICI Design/Build Price for the ICI Design/Build Work on a milestone progress basis in accordance with the terms of this Section and in Appendix 6. The ICI Design/Build Price shall be the sum of the Fixed ICI Design/Build Price and the Fixed ICI Design/Build Price Adjustments.

(C) Fixed ICI Design/Build Price. Subject to Section 4.5, the Fixed ICI Design/Build Price is an amount equal to (1) \$16,979,165 multiplied by (2) a fraction, the denominator of which is the Consumer Price Index for the month of August, 2001 and the numerator of which is the Consumer Price Index for the month in which the Financing Commitment Date occurs; provided, however, that the Consumer Price Index for the month in

which the Financing Commitment Date occurs shall be prorated such that the Fixed ICI Design/Build Price escalates only through such date and not through such entire month.

(D) Fixed ICI Design/Build Price Adjustments. The following items shall constitute the Fixed ICI Design/Build Price Adjustments:

- (1) An adjustment for the cost of any Change Orders issued by the Lessor with respect to the Initial Capital Improvements pursuant to Section 10.2;
- (2) An adjustment for any Government Body's delay in issuing the required Governmental Approvals for any Initial Capital Improvement pursuant to Section 11.9; and
- (3) An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 15.2.

(E) Limitation on Payments for Initial Capital Improvement Costs. The Lessee agrees that the ICI Design/Build Price shall be the Lessee's entire compensation and reimbursement for the performance of the ICI Design/Build Work, including obtaining all Utilities that the Lessee will require to perform the ICI Design/Build Work, starting up Initial Capital Improvements, operating the Initial Capital Improvements during the ICI Acceptance Test and achieving ICI Acceptance. Except as provided in subsection (D) of this Section, the Lessee shall not be entitled to any payment for Initial Capital Improvement costs in excess of the ICI Design/Build Price, notwithstanding any cost overruns the Lessee may incur. The Lessee shall finance and pay for any such excess costs in any manner it chooses without reimbursement from or other claim upon the Lessor.

(F) Construction Disbursement Requisition Procedure. Appendix 6 sets forth milestone payments to be made with respect to each separate Initial Capital Improvement, and the sum of all such milestone payments equals the Fixed ICI Design/Build Price. Following the Commencement Date, the Lessee shall be entitled to submit Requisitions on a monthly basis and receive from the Lessor the milestone payments of the Fixed ICI Design/Build Price, which: (1) shall be made only upon completion of the milestone required to be completed as the basis for such payment as set forth in Appendix 6; (2) shall be subject to the maximum payment limitations specified in the maximum drawdown schedule set forth in Appendix 6; and (3) shall be subject to the conditions of payment set forth in this Section. On the date that the ICI Acceptance Date is permanently established under Section 11.7 the Lessee shall be entitled to receive all payments due for completed work which remain unpaid as of such date with respect to the applicable Initial Capital Improvement, except for the payment conditioned on Final Completion in the event Final Completion has not occurred prior to the ICI Acceptance Date. The Fixed ICI Design/Build Price Adjustments shall be payable monthly when and as the cost or expense constituting the Fixed ICI Design/Build Price Adjustment is paid or incurred.

(G) Retainage. Each milestone payment will be subject to a 10% retainage holdback. Interest earned on the retainage holdback shall be for the Lessor's benefit only. The Lessor shall release to the Lessee the accumulated funds (without interest) so retained with respect

to the Initial Capital Improvements upon receipt of certification from the Lessee and confirmation by the Lessor Engineer that: (1) ICI Acceptance for the Initial Capital Improvements has been achieved; and (2) Final Completion of the Initial Capital Improvements has occurred. Upon certification by the Lessor Engineer that ICI Acceptance has been achieved, the Lessor shall release to the Lessee an amount equal to one-half of the retainage holdback. Upon certification by the Lessor Engineer that Final Completion has occurred, the Lessor shall release to the Lessee an amount equal to the balance of the retainage holdback.

(H) Certification of Requisitions. Each Requisition shall be accompanied by a certificate of an authorized officer of the Lessee certifying: (1) the portion of the Fixed ICI Design/Build Price which is payable to the Lessee, (2) the amount of any Fixed ICI Design/Build Price Adjustments which are payable to the Lessee, together with Cost Substantiation for such amounts, (3) that the Lessee is neither in default under this Lease Agreement nor in breach of any material provision of this Lease Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (4) that all items applicable to the milestone entitling the Lessee to request payment under the milestone payment schedule set forth in Appendix 6 have been completed in accordance therewith and with the ICI Design and Construction Requirements.

(I) Information Supporting Requisition. The Lessee shall submit to the Lessor, with a copy to the Lessor Engineer, with each Requisition or as part of the monthly progress report to be delivered pursuant to Section 10.7:

(1) a verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages;

(2) a reasonably detailed description of all ICI Design/Build Work actually completed to date;

(3) revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Lessee's construction schedule since the date of the last Requisition;

(4) notice of any Liens or Encumbrances which have been filed, together with evidence that the Lessee has bonded or discharged such Liens or Encumbrances;

(5) any other documents or information relating to the ICI Design/Build Work or this Lease Agreement requested by the Lessor or the Lessor Engineer as may be required by Applicable Law, this Lease Agreement or generally accepted accounting principles (but, with respect to the Fixed ICI Design/Build Price, shall not include Cost Substantiation documents or information); and

(6) construction progress photographs.

(J) Review and Payment of Requisitioned Amounts. The Lessor Engineer shall review the Lessee's certified Requisitions to the Lessor for each Fixed ICI Design/Build Price payment and for Fixed ICI Design/Build Price Adjustment payments and, within 15 days of receipt

of the Lessee's written submittal delivered pursuant to subsection (I) of this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Lessee's certification that the Lessee has achieved the level of progress indicated and is entitled to payment. If (1) the Lessor Engineer determines that the work has progressed to the milestone indicated in the Lessee's certified Requisition or that the costs constituting Fixed ICI Design/Build Price Adjustments have been paid or incurred and the Lessor Engineer provides written notice thereof to the Lessee and the Lessor, or (2) the Lessor Engineer fails to verify or dispute the certified Requisition within 15 days of receipt, thereupon the Lessee shall be entitled to payment within 30 days of such determination or expiration of such 15 day period. Disputes regarding payments of the Fixed ICI Design/Build Price and Fixed ICI Design/Build Price Adjustments shall be resolved in accordance with subsection (L) of this Section.

(K) Permissible Withholdings. The Lessor may disapprove and withhold and retain all or any portion of any payment requested in any Requisition in an amount equal to the sum of:

- (1) any amounts which are permitted under this Section to be withheld from any payment requested in any Requisition;
- (2) any delay liquidated damages which are payable under Section 11.9;
- (3) any indemnification or other amounts which are due and owing to the Lessor under any provision of this Lease Agreement;
- (4) any deductions which are required by Applicable Law;
- (5) any payments with respect to which the documents required to be delivered in connection therewith are not correct and complete;
- (6) an amount equal to the cost to the Lessor of performing any work in the event of a failure by any Subcontractor to timely perform its obligations under the warranties given pursuant to subsection 10.1(I);
- (7) any payments with respect to which the ICI Design/Build Work covered by such Requisition (or any previous Requisition) does not comply with this Lease Agreement;
- (8) any payments with respect to which any person has filed a Lien or Encumbrance resulting from the acts or omissions of the Lessee in performing the ICI Design/Build Work, where such Lien or Encumbrance remains unreleased, unbonded or undischarged; and
- (9) all requisitioned payments, if an Event of Default of the Lessee has occurred and remains outstanding under Section 14.2.

(L) Disbursement Dispute Procedures. If the Lessor Engineer determines pursuant to subsection (J) of this Section that the work required for any payment has not progressed to the milestone indicated, or disputes any requisition for Fixed ICI Design/Build Price Adjustments, the Lessor Engineer shall provide prompt written notice to the Lessee and the Lessor as to the Lessor Engineer's reasons, in reasonable detail, for such determination or the basis for

such dispute. After receiving such determination notice, the Lessee may make the necessary corrections and resubmit a certified Requisition to the Lessor Engineer, or the Lessor Engineer may agree on a revised amount, Requisition or estimate, as applicable, in which case the Lessee shall promptly notify the Lessor of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the Lessee demonstrates to the Lessor Engineer that the work has proceeded to the milestone indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct; and (2) the Lessor Engineer concurs with such demonstration. The Lessee shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Lessee shall be entitled to all requisitioned amounts which are not in dispute. In the event that upon resolution of any such dispute it is determined that the Lessee was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Lessee shall be entitled promptly to receive such disputed amount, together with interest thereon for the period of dispute calculated at the Overdue Rate. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article XIV hereof, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

(M) Required Lessee Oversight Engineer Certification. Any notice, certification, report or requisition delivered by the Lessee to the Lessor in connection with the ICI Design/Build Work or payment therefor under this Article, Article XI, or any Appendix shall be accompanied by a certificate of the Lessee's design-build principal in charge affirming the accuracy thereof to the best of his or her knowledge.

(N) Certification of Amounts Due. Whenever requested by the Lessor, the Lessee shall submit a sworn statement certifying all amounts then due (or yet to become due) the Lessee for the ICI Design/Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Lessee and any Subcontractor.

SECTION 10.6. ENGAGEMENT OF LESSOR ENGINEER. (A) Duties. The Lessee shall fully cooperate with any Lessor Engineer designated by the Lessor to assist it in connection with the administration of this Lease Agreement and the performance of its duties for the Lessor. In the performance of such services, the Lessee agrees that the Lessor Engineer may, without limiting other possible services to the Lessor: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the ICI Design/Build Work; review proposed changes to the ICI Design and Construction Requirements pursuant to Section 10.2; review Initial Capital Improvement plans, drawings and specifications for compliance with the ICI Design and Construction Requirements; monitor the ICI Acceptance Tests undertaken by the Lessee to determine whether any ICI Acceptance Test Procedure and Standard has been satisfied pursuant to Article XI hereof and Appendix 7; review the validity of any Lessee written

notice that an Uncontrollable Circumstance has occurred; review the Lessee's submissions with respect to any Capital Modifications pursuant to Article XII; and provide certificates and perform such other duties as may be specifically conferred on the Lessor Engineer hereunder. It is understood that the services intended to be provided by the Lessor Engineer shall be of an observational and review nature only, and that the Lessor Engineer shall not have authority to interfere with, halt or delay in any way the construction of the Initial Capital Improvements or to require or approve changes to the ICI Design and Construction Requirements or the Lessee's plans and specifications made in accordance therewith.

(B) Fees. Any fees of the Lessor Engineer prior to the ICI Acceptance Date shall initially be paid by the Lessor, but shall be reimbursed by the Lessee to the Lessor (together with allocable costs of Lessor personnel) to the extent any such fees and costs are attributable to the failure of the Lessee to cause ICI Acceptance to occur on or before the Scheduled ICI Acceptance Date. The Lessee also shall reimburse the Lessor for the reasonable fees and expenses of the Lessor Engineer and costs of Lessor personnel for services in connection with repetition of any ICI Acceptance Tests unless such additional or repeated ICI Acceptance Tests are required as a result of Uncontrollable Circumstances. Any fees of the Lessor Engineer and Lessor personnel after the ICI Acceptance Date shall be paid by the Lessor without reimbursement by the Lessee except as otherwise specifically provided by this Lease Agreement.

SECTION 10.7. PROGRESS SCHEDULE AND REPORTS. The Lessee shall submit to the Lessor a monthly progress report detailing work accomplished and an updated progress schedule which reflects any change in the Lessee's estimated construction progress schedule as of the Commencement Date. The Lessee shall provide to the Lessor, for its planning, budgeting and financing purposes, monthly estimates of the date for start-up of operations, the date upon which the ICI Acceptance Tests shall commence, and the ICI Acceptance Date. The Lessee agrees that the Lessee's submission of the monthly progress schedule (or any revised progress schedule) is for the Lessor's information only, and the Lessor's acceptance of the monthly progress schedule (or any revised progress schedule) shall not bind the Lessor in any manner. Thus, the Lessor's acceptance of the monthly progress report and schedule (or any revised monthly progress report and schedule) shall not imply Lessor approval or consent to any of the matters set forth therein.

SECTION 10.8. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF ICI DESIGN/BUILD WORK. (A) Observation and Construction Review Program. During the progress of the ICI Design/Build Work through ICI Acceptance, the Lessee shall at all times during normal working hours afford the Lessor, the Lessor Engineer and the DEP every reasonable opportunity for observing all ICI Design/Build Work, and shall comply with the ICI Design/Build Review Procedures set forth in Appendix 5. During any such observation, all representatives of the Lessor, the Lessor Engineer and the DEP shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the Incineration Facilities

Site or the Initial Capital Improvements, including those adopted by the Lessee, and shall in no material way interfere with the Lessee's performance of any ICI Design/Build Work.

(B) Lessee Tests. The Lessee shall conduct all tests of the ICI Design/Build Work (including shop tests) or inspections required by the Contract Standards. The Lessee shall give the Lessor and the Lessor Engineer reasonable advance notice (at least five business days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the Lessor or the Lessor Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the ICI Design/Build Work. If required by the Contract Standards, the Lessee shall engage a registered engineer or architect at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the Lessor, which consent shall not be unreasonably withheld. In addition to the foregoing, ICI Acceptance Testing of the performance of the completed Initial Capital Improvements shall be conducted in accordance with Article XI and Appendix 7.

(C) Lessor Tests, Observations and Inspections. The Lessor, its employees, agents, representatives and contractors (which may be selected in the Lessor's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the Lessor deems necessary or desirable to ascertain whether the ICI Design/Build Work complies with this Lease Agreement. The costs of such test, observation or inspection shall be borne by the Lessor unless such test, observation or inspection reveals a material failure of the ICI Design/Build Work to comply with this Lease Agreement or Applicable Law, in which event the Lessee shall bear all reasonable costs and expenses of such test, observation or inspection. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled ICI Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or noncompliance as set forth herein.

(D) Certificates and Reports. The Lessee shall secure and deliver to the Lessor promptly, at the Lessee's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the ICI Design/Build Work as and when required by the Contract Standards. The Lessee shall provide to the Lessor, promptly after the receipt thereof, copies of any notice of default, breach or noncompliance received by the Lessee under or in connection with any Governmental Approval, Subcontract or Required ICI Design/Build Period Insurance pertaining to the ICI Design/Build Period.

(E) Notice of Covering ICI Design/Build Work. The Lessee shall give the Lessor notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any ICI Design/Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five business days) before such covering and completion. The Lessor shall give the Lessee reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such ICI Design/Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the Lessor a reasonable opportunity to conduct a full inspection of such ICI Design/Build Work. At the Lessor's written request (at least five business days), the Lessee shall take apart or uncover for inspection or testing any previously-covered or completed ICI Design/Build Work; provided, however, that the Lessor's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the Lessor as to whether the disputed ICI Design/Build Work conforms with the requirements of this Lease Agreement. The cost of uncovering, taking apart, or replacing such ICI Design/Build Work along with the costs related to any delay in performing ICI Design/Build Work caused by such actions, shall be borne as follows:

(1) by the Lessee, if such ICI Design/Build Work has been covered prior to any observation or test required by the Contract Standards or if such ICI Design/Build Work has been covered prior to any observation or test as to which the Lessor has provided reasonable advance notice hereunder of its intention to conduct; and

(2) in all other cases, as follows:

(a) by the Lessee, if such observation or test reveals that the ICI Design/Build Work does not comply with this Lease Agreement; or

(b) by the Lessor, if such observation or test reveals that the ICI Design/Build Work complies with this Lease Agreement.

In the event such ICI Design/Build Work does comply with this Lease Agreement, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the Lessor (through and only through a Fixed ICI Design/Build Price Adjustment).

(F) Meetings and Design/Build Review. During the ICI Design/Build Period, the Lessee and the Lessor shall conduct meetings on a monthly basis at a minimum. At such meetings, discussions shall be held concerning all aspects of the ICI Design/Build Work including construction schedules, progress payments, Capital Modifications, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly reports containing all relevant information shall be prepared by the Lessee and provided to the Lessor at least 10 days prior to each monthly meeting, together with an agenda for the meeting. The Lessee shall also attend any on-call meeting which may be required by the Lessor from time to time in connection with the ICI Design/Build Work, provided that the Lessee has at least 24 hours notice of such meeting.

SECTION 10.9. CORRECTION OF ICI DESIGN/BUILD WORK. (A) Correction of Non-Conforming ICI Design/Build Work. Throughout the Term of this Lease Agreement, the Lessee shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any ICI Design/Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming ICI Design/Build Work. The Lessor may elect by Change Order, at the Lessee's request, to accept non-conforming ICI Design/Build Work and charge the Lessee (by a reduction in the Fixed ICI Design/Build Price) for the amount agreed upon by the parties by which the value of the Lessee's services or ICI Design/Build Work has been reduced.

SECTION 10.10. DELIVERABLE MATERIAL. As the ICI Design/Build Work progresses (or upon the termination of the Lessee's right to perform the ICI Design/Build Work), the Lessee shall deliver to the Lessor all documents, reports, submittals and other materials ("Deliverable Material") required to be delivered under Appendices 4 and 5. The provisions of Section 17.2 shall apply to any Deliverable Material used by the Lessee in the ICI Design/Build Work. The Lessor shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the Lessor in connection with the ICI Design/Build Work, and all ideas or methods represented by such Deliverable Material without additional compensation for any other public purpose in connection with wastewater collection and treatment, and sludge incineration by the Lessor; provided that the Lessor acknowledges and agrees that (i) such Deliverable Material was prepared solely with respect to the ICI Design/Build Work, (ii) the Lessee makes no representations or warranties regarding the suitability of such Deliverable Material for any other purpose; (iii) the use of such Deliverable Material for any other purpose shall be solely at the risk of the Lessor, and the Lessor waives all claims against the Lessee, its employees and subcontractors of any kind or nature (including claims under contract, tort or any other law) with respect to use of such Deliverable Material for any other purpose.

SECTION 10.11. PERSONNEL. (A) Personnel Performance. The Lessee shall enforce discipline and good order at all times among the Lessee's employees and all Subcontractors. All persons engaged by the Lessee for ICI Design/Build Work shall have requisite skills for the tasks assigned. The Lessee shall employ or engage and compensate engineers, licensed surveyors and other consultants to perform all engineering and other services required for the ICI Design/Build Work. Each such engineer and consultant shall have a current professional registration or certification to practice in the State if required by Applicable Law.

(B) Prevailing Wages. The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the ICI Design/Build Work (or any Capital Modifications) and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of Section 31-53 of the Connecticut General Statutes, as amended, shall be at a rate equal to the rate customary for the same work in the same trade or occupation in the Lesser. If the Lessee or any of its Subcontractors are not obligated by

agreement to make a payment or contribution on behalf of such employees to any such employee welfare fund, then the Lessee shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each payday. The Lessee shall take all action necessary directly and through its Subcontractors to assure that all laborers performing services in connection with the ICI Design/Build Work are paid in accordance with this subsection and other Applicable Law. Certified payrolls and other relevant information shall be furnished to the Lessor in order to permit the Lessor to monitor compliance by the Lessee with this requirement.

(C) Lessee Construction Superintendent. The Lessee shall designate an employee of the Lessee, any Affiliate of the Lessee, or the Lessee's General Contractor or construction manager (the "Lessee Construction Superintendent"), who, unless unavailable for good cause shown as defined in subsection (D) of this Section, shall be employed at the Incineration Facilities Site with any necessary assistants on a full time basis during any period when the Lessee or any Subcontractor is performing ICI Design/Build Work. The Company Construction Superintendent, or an assistant superintendent, shall be available at the Plant Site on any day when ICI Design/Build Work is being performed. If at any time the Lessee Construction Superintendent is so unavailable, the Lessee shall provide a temporary replacement superintendent who has the equivalent skill, experience and reputation as the Lessee Construction Superintendent. The Lessee Construction Superintendent shall, among other things:

- (1) be familiar with the ICI Design/Build Work and all requirements of this Lease Agreement;
- (2) coordinate the ICI Design/Build Work and give the ICI Design/Build Work regular and careful attention and supervision;
- (3) maintain a daily status log of the ICI Design/Build Work; and
- (4) attend monthly construction progress meetings with the Lessor and the Lessor Engineer.

The Lessee may change the person assigned as Lessee Construction Superintendent, subject to the provisions of subsection (D) of this Section.

(D) Lessor Rights With Respect to Key Personnel. The Lessee acknowledges that the identity of the key management and supervisory personnel proposed by the Lessee and its Subcontractors in its proposal submitted in response to the RFP was a material factor in the selection of the Lessee to perform this Lease Agreement. Such personnel and their affiliations are set forth in Appendix 12. The Lessee shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects but shall include termination for cause, employee resignation, illness and death. In the event of any such permissible unavailability, the Lessee on a timely basis shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-Site key personnel change shall be proposed to the Lessor

for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(E) Labor Disputes. The Lessee shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the ICI Design/Build Work. The Lessee shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Lessee or its Subcontractors, whether pertaining to organization of the ICI Design/Build Work, arrangement or subdivision of the ICI Design and Construction Requirements, employee hiring, or any other matters. The Lessor shall have no responsibility whatsoever for any such disputes or issues.

SECTION 10.12. CONSTRUCTION BOOKS AND RECORDS. The Lessee shall prepare and maintain proper, accurate and complete books and records regarding the ICI Design/Build Work and all other transactions related to the permitting, design, construction, startup and testing of the Initial Capital Improvements, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the ICI Design/Build Work, this Lease Agreement, any Subcontract or any operations or transactions in which the Lessor has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the ICI Design/Build Price. The Lessee shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of Capital Modifications, Uncontrollable Circumstance costs, or other changes in or additions to the Fixed ICI Design/Build Price for which the Lessor may be responsible with respect to work performed prior to the ICI Acceptance Date. To the extent any such information is delivered or made available to the Lessor, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The Lessee shall keep and maintain all such construction books and records for at least seven years after the ICI Acceptance Date, or such longer period during which any Legal Proceeding with respect to the Initial Capital Improvements commenced within seven years of the ICI Acceptance Date may be pending.

## ARTICLE XI

### ACCEPTANCE OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 11.1. ICI SUBSTANTIAL COMPLETION. (A) Conditions for ICI Substantial Completion. With respect to each individual Initial Capital Improvement, the Lessee shall not commence ICI Start-Up operations in preparation for conducting the ICI Acceptance Test until ICI Substantial Completion has occurred. ICI Substantial Completion shall occur only when all of the following conditions have been satisfied:

- (1) a preliminary or temporary certificate of occupancy has been issued for the Initial Capital Improvements, if required by Applicable Law;
- (2) the Lessee is authorized to conduct any applicable ICI Acceptance Test and to operate the Initial Capital Improvements under Applicable Law, and such authorization has not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;
- (3) all Utilities specified or required under this Lease Agreement to be arranged for by the Lessee are connected and functioning properly;
- (4) the Lessee and the Lessor have agreed in writing upon the Final Punch List as provided in subsection 11.1(B) (or, if they are unable to agree, the Lessor shall have prepared and issued the Final Punch List to the Lessee within 15 business days of the Lessee having submitted its Final Punch List to the Lessor);
- (5) the Lessor has approved in writing, such approval not to be unreasonably withheld, the certification by the Lessee that all ICI Design/Build Work pertaining to the Initial Capital Improvements, excepting the items on the Final Punch List, is complete and in all respects is in compliance with this Lease Agreement;
- (6) the Lessee has delivered to the Lessor written certification from the equipment manufacturers that all major items of machinery and equipment included in the Initial Capital Improvements have been properly installed in accordance with the manufacturers' recommendations and requirements, and that those tests that are required to be conducted prior to ICI Start-Up operations have been conducted in accordance with the manufacturers' recommendations and requirements;
- (7) the Lessee has delivered to the Lessor a claims statement setting forth in detail all claims of every kind whatsoever against the Lessee connected with, or arising out of, the ICI Design/Build Work pertaining to the Initial Capital Improvements and arising out of or based on events prior to the date when the Lessee gives such statement to the Lessor;

(8) the Lessee has delivered an update to the Operation and Maintenance Manual for the Initial Capital Improvements in the same manner as prescribed under Section 6.7;

(9) the Lessee has submitted to the Lessor and the Lessor has reviewed and approved the plan for ICI Acceptance Testing in accordance with Appendix 7;

(10) if required by Applicable Law, the Governmental Body has approved the plan for any required ICI Acceptance Testing and has issued, if applicable, a notice of permission to conduct the ICI Acceptance Tests; and

(11) the Lessee has submitted written certification that all of the foregoing conditions have been satisfied and the Lessor has approved the Lessee's certification, which approval shall be effective as of the date of the Lessee's certification.

Alternatively, ICI Substantial Completion shall occur on any date certified by the Lessor, which shall have discretion to waive any of the foregoing conditions.

(B) Final Punch List. The Lessee shall submit a proposed Final Punch List to the Lessor and the Lessor Engineer when the Lessee believes that the ICI Design/Build Work has been substantially completed in compliance with this Lease Agreement. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the ICI Design/Build Work, and incomplete aspects of the applicable ICI Design/Build Work, which in the Lessee's opinion:

(1) the Lessee can complete before the Lessee's agreed date for Final Completion and with minimal interference to the occupancy, use and lawful operation of the Initial Capital Improvements; and

(2) would represent, to perform or complete, a total cost of not more than 2.5% of the portion of the Fixed ICI Design/Build Price applicable to the Initial Capital Improvements (unless the Lessor determines that a higher percentage is acceptable).

The Final Punch List shall be approved by the Lessor, and completion of the Final Punch List work shall be verified by a final walk-through of the Initial Capital Improvements conducted by the Lessor and the Lessor Engineer with the Lessee and the Lessee Construction Superintendent.

SECTION 11.2. NOTICE OF ICI START-UP OPERATIONS. (A) Submittal of ICI Start-Up Plan. At least 60 days before the date upon which the Lessee plans to begin ICI Start-Up operations, the Lessee shall prepare and submit to the Lessor for its approval a detailed ICI Start-Up plan. The ICI Start-Up plan shall define a test program for each requirement specified in Section 3 of Appendix 7 and shall detail all procedures to be used, start-up materials to be used (including electrical power and water), the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the Incineration Facilities during testing. The ICI Start-Up plan shall conform to the requirements of Appendix 7 in all respects. If the Lessee and Lessor are unable to agree upon an ICI Start-Up plan within 60 days of such submission, their inability to agree may be mediated as provided in Section 14.12, and the Scheduled ICI Acceptance Date for any affected ICI Design/Build Work shall be extended on a day-

for-day basis equal to the number of days in duration of any applicable dispute resolution process.

(B) Notice of ICI Start-Up. The Lessee shall give the Lessor's Contract Representative at least 10 days prior written notice of the expected date of ICI Substantial Completion and of commencement of ICI Start-Up operations of the Initial Capital Improvements in accordance with the ICI Start-Up plan.

(C) ICI Start-Up Test Report. Within 30 days following conclusion of each ICI Start-Up test, the Lessee shall furnish the Lessor and the Lessor Engineer with ten copies of a certified written report describing and certifying (1) the ICI Start-Up test conducted, (2) the results of the ICI Start-Up test, and (3) the operation of facilities and systems relating to the Initial Capital Improvement has been performed in accordance with the requirements specified in Appendix 7. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the applicable ICI Start-Up test, and copies of laboratory reports conducted in conjunction with the applicable ICI Start-Up test, including all laboratory sampling and test results. The Lessee shall be responsible for making any changes required to the Initial Capital Improvement in order for it to meet the applicable design performance requirements.

(D) Lessor Review of ICI Start-Up Report. If the Lessee certifies in its written report delivered pursuant to subsection (C) of this Section that the full ICI Start-Up test has been passed, the Lessor shall determine, within 30 days of its receipt of the report, whether it concurs in such certification. The Lessor's approval of the ICI Start-Up test report shall not be construed as Lessor acceptance of the Initial Capital Improvement or any component thereof. If the Lessor determines at any time during such 30-day review period that it does not concur with such certification, the Lessor shall promptly send written notice to the Lessee of the basis for its disagreement. In the event of any such non-concurrence by the Lessor, either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 14.12, and the Scheduled ICI Acceptance Date for any affected ICI Design/Build Work shall be extended on a day-for-day basis equal to the number of days in the duration of any applicable dispute resolution process.

SECTION 11.3. NOTICE OF ACCEPTANCE TESTING. (A) Submittal of ICI Acceptance Test Plan. At least 90 days before the earlier of the Scheduled ICI Acceptance Date or the date upon which the Lessee plans to begin ICI Acceptance Testing, the Lessee shall prepare and submit to the Lessor for its approval a detailed ICI Acceptance Test plan. The ICI Acceptance Test plan shall define a test program for each requirement specified in Section 5 of Appendix 7 and shall detail all procedures to be used, specific measurements to be made, the use of permanent and temporary instrumentation, the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the Incineration Facilities during testing. The ICI Acceptance Test plan shall conform to the requirements of Appendix 7 in all

respects. If the Lessee and Lessor are unable to agree upon an ICI Acceptance Test plan within 90 days of such submission, their inability to agree may be mediated as provided in Section 14.12.

(B) Notice of ICI Substantial Completion. The Lessee shall give the Lessor's Contract Representative at least 30 days prior written notice of the expected date of ICI Substantial Completion and of commencement of ICI Start-Up operations of the Initial Capital Improvements in preparation for conducting the applicable ICI Acceptance Test.

(C) Notice of Commencement of ICI Acceptance Test. The Lessee shall also provide the Lessor with at least 30 days prior written notice of the expected initiation of the ICI Acceptance Test in accordance with the requirements of Appendix 7. At least 10 days prior to the actual commencement of ICI Acceptance Testing, the Lessee shall certify in writing that it is ready to begin ICI Acceptance Testing in accordance with the ICI Acceptance Test plan and Appendix 7.

SECTION 11.4. CONDUCT OF ICI ACCEPTANCE TEST. The Lessee shall conduct the ICI Acceptance Test in accordance with Appendix 7 and the ICI Acceptance Test plan, and shall notify the Lessor when the test shall occur. The Lessee shall permit the designated representatives of the Lessor and any Governmental Body, if required, to inspect the preparations for the ICI Acceptance Test and to be present for the conduct of ICI Acceptance Test for purposes of ensuring compliance with the test plan and the integrity of the ICI Acceptance Test results.

SECTION 11.5. ICI ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the "ICI Acceptance Date Conditions," each of which must be satisfied in all material respects by the Lessee in order for the ICI Acceptance Date to occur with respect to the Initial Capital Improvements, and each of which must be and remain satisfied as of the ICI Acceptance Date:

(1) Achievement of ICI Acceptance Test Procedures and Standards. The Lessee shall have completed the ICI Acceptance Test and such test shall have demonstrated that the Initial Capital Improvements have met the ICI Acceptance Test Procedures and Standards;

(2) ICI Substantial Completion. The Lessee shall demonstrate that ICI Substantial Completion has occurred;

(3) Operating Governmental Approvals. The DEP shall have issued its determination, if such determination is required by the DEP, that the ICI Design/Build Work conforms to the applicable order of approval, including the State air permit to construct, and all other applicable Governmental Approvals required under Applicable Law which are necessary for the routine operation of the Initial Capital Improvements shall have been duly obtained by the Lessee and shall be in full force and effect. Copies of all such Governmental Approvals, to the extent not in the Lessor's possession, certified by the Lessee shall have been delivered to the Lessor;

(4) Fluidized Bed Incinerator. The DEP shall have completed its review and approval of the compliance test (stack test) report for the fluidized bed incinerator

improvements, and no further action is required on the part of the Company or the DEP with respect to the final approval of such improvements;

(5) Record Drawings. The Lessee shall have delivered to the Lessor a final and complete reproducible set of record drawings, together with six copies thereof, in a size and form required by the Lessor and as required by the ICI Design and Construction Requirements, and shall have certified that the Initial Capital Improvements were constructed in accordance with the ICI Design and Construction Requirements, including any Change Orders. Such record drawings shall include one mylar copy. The Lessee shall also provide an electronic file in AutoCad/DXF format to the extent drawings are prepared in such format or any other format mutually agreed to between the parties;

(6) Equipment Warranties and Manuals. The Lessee shall be in possession of, and shall have delivered to the Lessor, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Initial Capital Improvements required to be obtained under subsection 10.1(I), together with copies of all related operating manuals supplied by the equipment supplier; and

(7) No Default. There shall be no Event of Default by the Lessee under this Lease Agreement or by the Guarantor under the Guaranty Agreement, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Lessee hereunder or an Event of Default by the Guarantor under the Guaranty Agreement.

The parties acknowledge that condition (4) above may not be satisfied by the Lessee until after the Scheduled ICI Acceptance Date because of the uncertainty with respect to the DEP's time to review the compliance test report. To the extent that the Lessee has satisfied all other conditions of this Section 11.5 prior to the Scheduled ICI Acceptance Date and the Lessee has submitted the compliance test report within the timeframe required by subsection 11.6(B), the Lessee shall not be responsible for paying liquidated damages that would otherwise be applicable under subsection 11.9(E) for failure to achieve ICI Acceptance prior to the Scheduled ICI Acceptance Date; provided that, notwithstanding the Lessee's timely submittal of the compliance test report pursuant to subsection 11.6(B), if the DEP validly determines the existence of a deficiency with respect to the compliance test report and the Lessee is required to take further action with respect to correction, modification or retesting of the fluidized bed incinerator improvements, the Lessee shall be liable for paying daily delay liquidated damages as required by subsection 11.9(E) from the agreed-upon date of certification by the Lessee as to the satisfaction of the other ICI Acceptance Date Conditions or the Scheduled ICI Acceptance Date (whichever is later) through the date on which the DEP issues its final determination of approval with respect to the compliance test report and the fluidized bed incinerator improvements. If the Lessee fails to comply with the foregoing requirements, it will be responsible for paying all delay liquidated damages in accordance with subsection 11.9(E).

SECTION 11.6. ACCEPTANCE TEST REPORT. (A) Submittal to Lessor.

Within 30 days following conclusion of ICI Acceptance Test, the Lessee shall furnish the Lessor and the Lessor Engineer with ten copies of a certified written report describing and certifying: (1) the ICI Acceptance Test conducted; (2) the results of the ICI Acceptance Test; (3) the level of satisfaction of the ICI Acceptance Test Procedures and Standards relating thereto and all other requirements specified in Appendix 7; and (4) the satisfaction of the ICI Acceptance Date Conditions (except for condition (4) identified in Section 11.5). The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the ICI Acceptance Test, and copies of laboratory reports conducted in conjunction with the ICI Acceptance Test, including all laboratory sampling and test results. In the event the Lessor disagrees with the Lessee's certification in the ICI Acceptance Test report pursuant to subsection 11.7(B), the Lessee shall submit a revised, certified written report within 30 days following receipt of the Lessor's written notice of such disagreement unless the Lessee elects to refer such dispute to Non-Binding Mediation as provided in subsection 11.7(B).

(B) Submittal to DEP. Within 30 days following completion of the stack tests, the Lessee shall submit to the DEP for its review and approval the compliance test (stack test) report for the fluidized bed incinerator improvements. As evidence of its compliance with this subsection and for purposes of Section 11.5, the Lessee shall obtain from the DEP a written statement to the effect that the compliance test report has been duly submitted and has been accepted by the DEP as complete, a copy of which shall be filed by the Lessee with the Lessor promptly following its receipt.

SECTION 11.7. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) ICI Acceptance Date Concurrence. The "ICI Acceptance Date" shall be the day on which the ICI Acceptance Date Conditions have been satisfied. If the Lessee certifies in its written report delivered pursuant to subsection 11.6(A) that the full ICI Acceptance Test Procedures and Standards have been achieved and all other ICI Acceptance Date Conditions (except for condition (4) identified in Section 11.5) have been satisfied, the Lessor shall determine, within 30 days of its receipt of the report, whether it concurs in such certification. If the Lessor states in writing that it concurs with the Lessee's certification, the Initial Capital Improvements shall be deemed to have satisfied all ICI Acceptance Date Conditions, except for condition (4) of Section 11.5, as of the date of the Lessee's original certification in the report. In order to demonstrate satisfaction of condition (4) of Section 11.5, the Lessee shall provide the Lessor with a copy of the DEP's final approval of the compliance test report and the fluidized bed incinerator improvements. Upon certification by the Lessor Engineer as to the Lessee's satisfaction of all of the ICI Acceptance Date Conditions, the Lessee shall be entitled to payment of one-half of the retainage holdback as provided in subsection 10.5(G).

(B) ICI Acceptance Date Disagreement. If the Lessor determines at any time during such 30-day review period that it does not concur with such certification, the Lessor shall

promptly send written notice to the Lessee of the basis for its disagreement. In the event of any such non-concurrence by the Lessor, (1) the Lessee shall resubmit a revised, certified Acceptance Test report in accordance with subsection 11.6(A), or (2) either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 14.12. The mediator shall issue a decision within 60 days of the dispute referral unless both parties agree that more time is appropriate. In the event that the mediator fails to issue a decision within 60 days, then either party may initiate judicial proceedings. The parties acknowledge and agree that any decision rendered by the mediator as to whether ICI Acceptance has occurred shall be non-binding. ICI Acceptance shall not be deemed to have been achieved unless the ICI Acceptance Test, conducted in a unified and continuous manner as provided in the ICI Acceptance Test plan and Appendix 7, demonstrates that all of the ICI Acceptance Test Procedures and Standards have been met, and all other ICI Acceptance Date Conditions have been satisfied. In the event the Lessee, in conducting the ICI Acceptance Test, does not successfully meet the applicable ICI Acceptance Test Procedures and Standards, the Lessor shall have the right, in its sole discretion, to permit the Lessee to re-test the Initial Capital Improvements for compliance only with the ICI Acceptance Test Procedures and Standards not previously achieved through an earlier ICI Acceptance Test. Nothing in this Section shall prevent the Lessee from bringing an action or from repeating the ICI Acceptance Test in order to establish the achievement of ICI Acceptance.

SECTION 11.8. EXTENSION PERIOD. It is agreed that time is of the essence in the performance of the ICI Design/Build Work. If ICI Acceptance shall not have occurred on or before the Scheduled ICI Acceptance Date as set forth in and as adjusted pursuant to subsection 11.9(B), the Lessee shall be entitled to conduct or repeat the ICI Acceptance Test as often as it desires in order to secure ICI Acceptance of the Initial Capital Improvements during the Extension Period. The "Extension Period" shall mean an additional period of 365 days beyond the Scheduled ICI Acceptance Date. During the Extension Period and notwithstanding the provisions of Section 11.5 with respect to the payment of liquidated damages, the Lessee shall be responsible for and shall pay any fines and penalties assessed by a Governmental Body against the Lessor or the Lessee due to the failure to achieve ICI Acceptance by the Scheduled ICI Acceptance Date (including the cost of any additional nitrogen oxide removal credits required under the Consent Order beyond the Scheduled ICI Acceptance Date), together with any liquidated damages as set forth in subsection 11.9(E).

SECTION 11.9. SCHEDULED ICI ACCEPTANCE DATE (A) Schedule for Completing the Initial Capital Improvements. The Lessee shall submit completed applications for all required Governmental Approvals by the "Governmental Approval Application Date," and shall achieve ICI Acceptance by the "Scheduled ICI Acceptance Date" by the date determined on the basis of the following table. The "Assumed Approval Issuance Date" is the date by which all such required Governmental Approvals are expected to be obtained, determined in a similar manner, and assuming the appropriate Governmental Bodies have deemed the application submittals

complete by the required date. The "Outside Approval Issuance Date" is the last date by which all such required Governmental Approvals are expected to be obtained without the Lessee's being entitled to an adjustment in the Fixed ICI Design/Build Price as provided in subsection (C) below. Each such date shall be the date which is the number of days following the Commencement Date indicated in the table.

| <u>Initial Capital Improvement</u> | <u>Governmental Approval Application Date</u> | <u>Assumed Approval Issuance Date</u> | <u>Outside Approval Issuance Date</u> | <u>Scheduled ICI Acceptance Date</u> |
|------------------------------------|---|---------------------------------------|---------------------------------------|--------------------------------------|
| Sludge Cake Handling Facilities    | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |
| Fluidized Bed Incinerator          | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |
| Centrifuges/ Belt Filters          | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |
| Sludge Dryer System                | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |
| Odor Control                       | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |
| SCADA System                       | 90 days                                       | 180 days                              | 240 days                              | 910 days                             |

(B) Adjustment of Scheduled ICI Acceptance Date. The Scheduled ICI Acceptance Date set forth in subsection (A) of this Section shall be adjusted to account for (1) delay caused by Uncontrollable Circumstances or Lessor-requested Change Orders not due to Lessee Fault, (2) delay caused by the Lessor's delay in submitting a complete application for the State air permit to construct the fluidized bed incinerator portion of the Initial Capital Improvements by the Governmental Approval Application Date set forth in subsection (A) of this Section, and (3) the number of days of delay by any Governmental Body in issuing any required Governmental Approvals beyond the applicable Assumed Approval Issuance Date set forth in subsection (A) of this Section, reduced by (i) the number of days of Lessee delay in submitting a complete application beyond the Governmental Approval Application Date set forth in subsection (A) of this Section, and (ii) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Lessee to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually caused delay in the overall progress of the ICI Design/Build Work after the exercise of all commercially reasonable mitigation efforts by the Lessee.

(C) Adjustment of Fixed ICI Design/Build Price. The Fixed ICI Design/Build Price for each Initial Capital Improvement as set forth in Appendix 6 shall be adjusted to account for any delay by any Governmental Body in issuing any required Governmental Approvals for such Initial Capital Improvement beyond the Outside Approval Issuance Date set forth in subsection 11.9(A); provided that the Lessee must affirmatively demonstrate that a Governmental Body's delay in issuing the required Governmental Approval was not due to the failure of the Lessee to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application. To the extent the Lessee failed to submit a completed application for an Initial Capital Improvement by the Governmental Approval Application Date, the Outside Approval Issuance Date for such Initial Capital Improvement shall be extended for each day of delay by the Lessee. Assuming the Lessee has affirmatively demonstrated that it is entitled to an adjustment of any portion of the Fixed ICI Design/Build Price hereunder, such amount of the Fixed ICI Design/Build Price relating to the affected Initial Capital Improvement shall be adjusted based on the CPI from the Outside Approval Issuance Date to the date on which all required Governmental Approvals to commence construction of the affected the Initial Capital Improvement are actually obtained.

(D) No Other Relief. Any such Governmental Body delay in issuing required Governmental Approvals shall entitle the Lessee only to an extension of time and a price adjustment as provided in this Section, and shall not entitle the Lessee to any other relief from its other performance obligations hereunder.

(E) Delay Liquidated Damages. Subject to Section 11.5, if the ICI Acceptance Date with respect to the Initial Capital Improvements occurs subsequent to the Scheduled ICI Acceptance Date, then, in addition to the amounts payable under Section 11.8, the Lessee shall pay to the Lessor daily delay liquidated damages for each day that the ICI Acceptance Date falls after the Scheduled ICI Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Lease Agreement for an Event of Default. The delay liquidated damages for such delays shall be \$1,500 per day. The Lessee shall also indemnify the Lessor in accordance with Section 15.7 against all Loss-and-Expense resulting from any Legal Proceeding originated by any third party arising from such failure to achieve ICI Acceptance by the Scheduled ICI Acceptance Date except to the extent such failure is caused by an Uncontrollable Circumstance.

SECTION 11.10. FAILURE TO MEET ICI ACCEPTANCE STANDARD.

(A) Acceptance at Reduced ICI Acceptance Test Procedures and Standards. If, as of the last day of the Extension Period, the ICI Acceptance Tests have not been conducted or have failed to demonstrate that all of the Initial Capital Improvements operate at a standard equal to or greater than the full ICI Acceptance Test Procedures and Standards, the Lessor shall have the option to establish the ICI Acceptance Date at a reduced standard; provided, however, such reduced standard shall have been demonstrated to be consistently achievable by the ICI Acceptance Test and does not violate Applicable Law. If ICI Acceptance occurs at a reduced standard, the Lessor

shall be entitled to reduce the ICI Design/Build Price or increase the Base Rent, as appropriate, as damages for the Lessee's failing to meet the full ICI Acceptance Test Procedures and Standards.

(B) Termination. If, as of the last day of the Extension Period, the ICI Acceptance Tests have not been conducted or have failed to demonstrate that all of the Initial Capital Improvements operate at a standard equal to or greater than the full ICI Acceptance Test Procedures and Standards and the Lessor has not exercised its option under subsection (A) of this Section, an Event of Default by the Lessee will be deemed to have occurred under Section 14.2 notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Lessee thereunder, and the Lessor shall thereupon have the right to terminate this Lease Agreement upon written notice to the Lessee. Upon any such termination, the Lessor shall have all of the rights provided in Article XIV hereof upon a termination of the Lessee for cause.

SECTION 11.11. FINAL COMPLETION. (A) Requirements. The Lessee shall achieve Final Completion of the Initial Capital Improvements within 30 days after the Scheduled ICI Acceptance Date. "Final Completion" of the Initial Capital Improvements shall occur when all of the following conditions have been satisfied:

- (1) ICI Acceptance Achieved. The Lessee has achieved ICI Acceptance;
- (2) ICI Design/Build Work Completed. All applicable ICI Design/Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Lease Agreement;
- (3) Spare Parts In Storage. All spare parts required by the applicable ICI Design and Construction Requirements have been delivered and are in storage at the Incineration Facilities;
- (4) Deliverable Material Furnished. The Lessee has furnished to the Lessor all Deliverable Material required to be delivered prior to ICI Acceptance;
- (5) Record Drawings. The Lessee shall have delivered to the Lessor a final and complete reproducible set of record drawings, together with six copies thereof, in a size and form required by the Lessor and as required by the ICI Design and Construction Requirements and shall certify that the Initial Capital Improvements were constructed in accordance with the ICI Design and Construction Requirements, including any Change Orders. Such record drawings shall include one mylar copy. The Lessee shall also provide an electronic file in AutoCad/DXF format to the extent drawings are prepared in such format; and
- (6) Equipment Warranties and Manuals. The Lessee shall be in possession of, and shall have delivered to the Lessor, copies of the warranties of machinery, equipment, fixtures and rolling stock constituting a part of the Initial Capital Improvement, together with copies of all related operating manuals supplied by the equipment supplier.

(B) Final Voucher and Claims Statement. The Lessee shall also prepare and submit to the Lessor as soon as practicable following the ICI Acceptance Test, for purposes of demonstrating Final Completion: (1) a certificate of the Lessee Contract Representative certifying (a) that all applicable ICI Design/Build Work has been completed in accordance herewith and with the ICI Design and Construction Requirements, and (b) that ICI Acceptance of the Initial Capital Improvements has occurred; and (2) a claims statement setting forth a detailed, itemized description, related dollar amount and grounds for all claims of every kind whatsoever against the Lessor in connection with or arising out of the applicable ICI Design/Build Work the Lessee may have. The Lessor shall review the certificate and the claims statement and shall verify or dispute them in writing within 30 days of receipt.

SECTION 11.12. NO ICI ACCEPTANCE, WAIVER OR RELEASE. Unless other provisions of this Lease Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as the Lessor's acceptance of any ICI Design/Build Work which is defective, incomplete, or otherwise not in compliance with this Lease Agreement, as the Lessor's release of the Lessee from any obligation under this Lease Agreement, as the Lessor's extension of the Lessee's time for performance, as an estoppel against the Lessor, or as the Lessor's acceptance of any claim by the Lessee:

- (1) any payment by the Lessor to the Lessee or any other person with respect to the Initial Capital Improvements;
- (2) the Lessor's approval or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or ICI Acceptance of the Initial Capital Improvements), or ICI Design/Build Work of the Lessee or any Subcontractor;
- (3) the Lessor's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the ICI Design/Build Work;
- (4) the Lessor's entry at any time on the Incineration Facilities Site (including any area in which the ICI Design/Build Work is being performed);
- (5) any inspection, testing, or approval of any ICI Design/Build Work (whether finished or in progress) by the Lessor or any other person;
- (6) the failure of the Lessor or any Lessor consultant to respond in writing to any notice or other communication of the Lessee; or
- (7) any other exercise of rights or failure to exercise rights by the Lessor hereunder.

SECTION 11.13. COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED. No delay or failure by the Lessee in achieving ICI Substantial Completion, Final Completion or ICI Acceptance with respect to the Initial Capital Improvements shall excuse the Lessee from its obligation to comply with the Contract Standards.

## ARTICLE XII

### CAPITAL MODIFICATIONS

SECTION 12.1. CAPITAL MODIFICATIONS GENERALLY. (A) Purpose. The parties acknowledge that it may be necessary or desirable from time to time during the Term of this Lease Agreement to make Capital Modifications, either at the request of the Lessee or at the direction of the Lessor or to respond to an Uncontrollable Circumstance. Capital Modifications may be appropriate or desirable, for example, to improve the performance or increase the capacity of the Incineration Facilities, to increase the efficiency of the Incineration Facilities, to address or anticipate the obsolescence of portions of the Incineration Facilities or to reduce the cost to the Lessee of performing this Lease Agreement. The parties further acknowledge that the provisions of this Article are intended: (1) to provide for such Capital Modifications should the need arise and to provide a mechanism under which they may negotiate to accomplish efficiently such Capital Modifications; and (2) to provide an acceptable mechanism for modifying the Incineration Facilities if they are unable to agree to a Capital Modification under this Lease Agreement. All such Capital Modifications shall be made and implemented in accordance with this Article.

(B) Cooperation of Parties. Each party shall advise the other in a timely manner of the need for a Capital Modification and the circumstances necessitating such Capital Modification. Upon receipt of such notice, the parties shall promptly arrange to meet and negotiate in good faith to reach mutual agreement regarding the scope, cost, benefit sharing and other particulars relating to the proposed Capital Modification. To the extent then known and identified, the Lessee shall propose in its annual operations report any Capital Modifications that may be necessary or desirable for the parties to consider in the forthcoming Contract Year.

(C) Lessor Approval and Change Orders. With respect to any item requiring Lessor approval under this Article, such Lessor approval shall be given by means of a "Change Order", which shall contain all material information required by this Article.

(D) Exterior Appearance. Any Capital Modification, including Small Scale Capital Modifications, that will affect the exterior physical appearance of structures comprising the Incineration Facilities (such as changes to exterior surface materials, colors, roof materials, or exterior structural dimensions (e.g., stack height)) that may be viewed from the exterior of the Wastewater Treatment Complex, shall be subject to approval by the Lessor irrespective of the value of such Capital Modification.

(E) Small Scale Capital Modifications. Except as provided in subsections (C) and (D) of this Section, Lessor approval will not be required for Small Scale Capital Modifications provided that such Small Scale Capital Modification (1) does not diminish the capacity of the Incineration Facilities to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Incineration Facilities, and (3) is feasible.

(F) Cost Savings. In the event any Capital Modification other than a Small Scale Capital Modification is reasonably expected to result in a net savings with respect to the Lessee's costs of performing the Leasehold Obligations, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared and any related adjustment in the Reference Price, in accordance with the principles set forth in Section 12.9.

(G) Lessor Right to Finance Capital Modifications. The parties acknowledge that the Lessor shall have the right, notwithstanding any other provision hereof, to elect to finance any Capital Modification proposed to be undertaken pursuant to this Article.

SECTION 12.2. CAPITAL MODIFICATIONS AT LESSEE REQUEST. The Lessee shall give the Lessor written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Lessee's request, whether before or after ICI Acceptance. The notice shall contain sufficient information for the Lessor to determine that the Capital Modification (1) does not diminish the capacity of the Incineration Facilities to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Incineration Facilities, and (3) is feasible. Any Capital Modification proposed by the Lessee shall be subject to the Lessor's prior written approval, which approval shall not be unreasonably withheld. It is understood that the Lessor may reasonably withhold its approval if a proposed Capital Modification will materially and adversely affect the Lessor's costs, rights, or obligations under this Lease Agreement, will diminish the capacity of the Incineration Facilities to be operated so as to meet the Contract Standards, or will impair the quality, integrity, durability or reliability of the Incineration Facilities. Any approved Capital Modification shall be made at the Lessee's sole cost and expense, and the Lessee shall not be entitled to any adjustment in the Reference Price or other compensation or schedule or risk adjustment as a result thereof, unless agreed to in writing by the Lessor.

SECTION 12.3. CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, whether before or after ICI Acceptance, the Lessor shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article and Section 15.2, to make or cause to be made all Capital Modifications reasonably necessary to address the Uncontrollable Circumstance. The Lessee shall consult with the Lessor concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Lessee and the Lessor shall cooperate in order to minimize any delay, lessen any additional cost and modify the Incineration Facilities so as to permit compliance with the requirements resulting from the Uncontrollable Circumstance. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Lessor. The Lessor shall pay the Capital Modification costs and any such related costs for which it is responsible in the manner established in accordance with the procedures set forth in Sections 12.5, 12.6 and 12.7.

SECTION 12.4. CAPITAL MODIFICATIONS AT LESSOR DIRECTION. If the Lessor proposes to implement a Capital Modification at the Lessor's expense, the Lessor shall give the Lessee written notice, and reasonable opportunity to review and comment on, any such proposed Capital Modification. The Lessor shall have the right to make Capital Modifications at any time and for any reason whatsoever, upon approval by the Lessee, which approval shall not be unreasonably withheld. It is understood that the Lessee will not withhold its approval of a proposed Capital Modification if the proposed Capital Modification will not materially affect the Lessee's costs, rights or obligations under this Lease Agreement and will not adversely affect the durability and performance of the Incineration Facilities. With respect to any Capital Modification proposed by the Lessor, if the proposed Capital Modification will materially and adversely affect the Lessee's costs, rights or obligations under this Lease Agreement (including operating, maintenance, repair and replacement costs with respect to the Incineration Facilities), then the Lessee shall be entitled to an equitable adjustment with respect to its price, schedule, performance and other obligations under this Lease Agreement as provided in Section 12.8. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 14.11 or 14.12. The design and construction costs of any such Capital Modification made at the Lessor's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be at the Lessor's sole cost and expense. Any cost-savings accruing as the result of any such Capital Modification undertaken at the Lessor's direction shall be shared as provided in Section 12.1(F). The Lessor shall have no obligation to direct the Lessee to make any Capital Modification.

SECTION 12.5. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS. (A) Primary Implementation Procedure. Unless the Lessor determines pursuant to Section 12.6 that an alternative implementation procedure be employed, the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications except Small Scale Capital Modifications, which the Lessee may implement by means of its own choosing.

(B) Preliminary Lessee Plan and Lessor Review. At the request of the Lessor and the cost and expense of the Lessee, the Lessee shall prepare and deliver to the Lessor a preliminary plan for the implementation of the Capital Modification. The preliminary plan shall include recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Lessee or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The preliminary plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Lessee is recommending. The Lessor shall review the Lessee's preliminary plan and recommendations, and undertake discussions with the Lessee in order to reach agreement on a basic approach to the Capital Modification.

(C) Lessee Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the Lessor the Lessee shall submit a formal implementation proposal to the Lessor for its consideration. With respect to any Capital Modification to be undertaken at the Lessor's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Lessee services element, to be implemented through an amendment to this Lease Agreement, and (2) a third-party construction services element, to be implemented through third party contracting as follows:

(1) Lessee Services Element. The Lessee services element shall contain (a) the Lessee's offer to perform design, construction management and acceptance testing services with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through an acceptance test and either a good faith estimate of total construction costs or a guaranteed maximum construction price, if so requested by the Lessor and agreed to by the Lessee, and (b) the Lessee's offer to operate, maintain, repair, replace and manage the Capital Modification following construction and acceptance for a fixed fee or a fixed and variable fee, and shall include long term performance guarantees with respect to the Capital Modification.

(2) Third-Party Construction Services Element. The third-party construction services element shall be a proposal by the Lessee to conduct, as allowed by Applicable Law, a bidding process or a competitive proposal process for the construction work or the design/build work involved in completing the Capital Modification. The bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the Lessor. A competitive proposal process shall include a request for proposals and a design/build contract award to the most advantageous proposer.

With respect to any Capital Modification to be undertaken at the Lessor's expense and as otherwise required by Applicable Law, the Lessor shall be a party to all such construction contracts or design/build contracts unless the Lessor determines otherwise as permitted by Applicable Law.

(D) Negotiation and Finalization of Lessee Implementation Proposal. The parties shall proceed, promptly following the Lessor's review of the Lessee's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Lease Agreement required under Section 12.8. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable, (1) design requirements, (2) construction management services, (3) acceptance tests and procedures, (4) a guarantee of completion and acceptance, (5) performance guarantees, (6) any changes to the Performance Guarantees or other Contract Standards to take effect as a consequence of the Capital Modification, (7) a payment schedule for the design and construction management-related services, (8) provisions for Lessor Engineer review, (9) any adjustments to the Reference Price resulting from

the Capital Modification, including any related operation, maintenance, repair and replacement costs, (10) a financing plan, and (11) any other appropriate amendments to this Lease Agreement. The Lessee shall not be obligated to undertake any Capital Modification under Section 12.3 or 12.4 except following agreement as to such negotiated adjustments, unless otherwise required on an emergency basis. The Lessor shall have no obligation to reimburse the Lessee for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Lease Agreement.

(E) Implementation Procedures. With respect to each Capital Modification to be made by the Lessee, other than Small Scale Capital Modifications, the Lessor shall have the same substantive and procedural rights that it has with respect to the design, construction and acceptance of the Initial Capital Improvements, as set forth in Articles X and XI and in Appendices 4, 5, 6, 7 and 8.

SECTION 12.6. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS. With respect to any Capital Modification to be undertaken at the Lessor's expense and as otherwise required by Applicable Law, the Lessor shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 12.5, and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under the Applicable Law. Alternative implementation procedures may include, without limitation and to the extent permissible under Applicable Law, (1) contracting with the Lessee on a sole source basis to implement the Capital Modification on a design/build basis; (2) contracting with the Lessee to manage a competition for design/build services to implement the Capital Modification; and (3) contracting with third parties for the implementation of the Capital Modification on a traditional design/bid/build basis, with the Lessor rather than the Lessee responsible for the design and construction of the Capital Modification, or with the Lessee acting as the Lessor's agent in the design/bid/build process. While it is the intention of the Lessor to have the Lessee operate, maintain, repair, replace and manage Capital Modifications on an integrated basis with the Incineration Facilities, the Lessor is not obligated to do so and may contract for such services with a third party, so long as any such third party contract does not impair the Lessee's rights under Section 12.8. The Lessor may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Lessee under the primary implementation procedure specified under Section 12.5. No alternative implementation procedure for Capital Modifications shall impair the Lessee's rights under Section 12.8.

SECTION 12.7. FINANCING CAPITAL MODIFICATIONS. (A) Lessor Financing. The Lessor shall provide financing for any Capital Modification for which it is financially responsible under this Article, and shall make the proceeds of the financing available to the Lessee to pay the negotiated price on the milestone schedule and subject to any retainage or other conditions negotiated by the parties pursuant to this Section. The Lessor in its sole discretion may

voluntarily, if requested by the Lessee, provide financing for the Capital Modifications for which the Lessee is financially responsible hereunder, on terms and conditions established by the Lessor in its sole discretion.

(B) SRF Financing. The parties acknowledge that it may be desirable from time to time to obtain financing for eligible Capital Modifications through the SRF. In such event, the Lessor shall be responsible for obtaining any SRF financing, including any DEP certificate of approval, and the Lessee shall cooperate with and assist the Lessor in such efforts. Notwithstanding any provision of this Lease Agreement to the contrary, if the Lessor has borrowed to finance any Capital Modification by the issuance of debt to the SRF, the Lessee understands and agrees that each Requisition shall be payable in accordance with this Section only upon receipt of a disbursement from the SRF therefor. The Lessee further agrees that, to the extent necessary in connection with any SRF financing of the Capital Modifications, the Lessee will comply with any SRF requirements pertaining to businesses owned by specially-designated groups.

(C) Lessor Request for Lessee Financing. Notwithstanding the provisions of subsections (A) and (B) of this Section, at the request for the Lessor, the Lessee shall utilize its best efforts (utilizing the Lessee's contacts with and knowledge of available financial mechanisms and institutions) to develop and present to the Lessor a Private Financing Plan for any such Capital Modification. An example of such a Private Financing Plan is provided in Appendix 23; provided that the parties acknowledge that the availability of private financing for particular Capital Modification projects at any point during the term of this Lease Agreement depends on a variety of factors, and that except for the Lessee's commitment to use best efforts to develop and present such a Private Financing Plan for a Capital Modification, neither party shall be bound to provide or accept such private financing arrangement.

(D) Terms and Conditions of Private Financing Plan. The terms and conditions of any Private Financing Plan made pursuant to subsection (C) of this Section shall include, in addition to the requirements of Appendix 23, a Lessor right to refinance any such Lessee financing and any reimbursement due the Lessee with respect to the unamortized principal amount of such financing if this Lease Agreement is terminated prior to the end of its scheduled Term. If the Lessee provides financing for any Capital Modifications and assigns this Lease Agreement as security therefor, the loan documents related to such financing may require that all or a portion of Revenue (as defined in Subsection 13.3(F)) be paid to a trustee or paying agent, either on a regular basis or upon the occurrence of certain stated events. In such a case, upon being notified in writing of such requirement by the Lessee, the Lessor shall make payment as required therein and the Lessee shall, as between it and the Lessor, accept any payment made to such trustee or paying agent as required therein as payment to the Lessee.

SECTION 12.8. LESSEE NON-IMPAIRMENT RIGHTS. (A) Lessee Non-Impairment. No Capital Modification, other than a Lessee-requested Capital Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any

material additional obligation or liability, or materially increases the costs of the Lessee hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. With respect to any Capital Modification proposed by the Lessor, if the proposed Capital Modification will materially and adversely affect the Lessee's costs, rights or obligations under this Lease Agreement (including operating, maintenance, repair and replacement costs with respect to the Incineration Facilities), then the Lessee shall be entitled to an equitable adjustment with respect to its price, schedule, performance and other obligations under this Lease Agreement. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 14.11 or 14.12.

(B) Lessor Operating Rights. The Lessor shall have the right, notwithstanding any other provision hereof, at its own cost and expense to operate, maintain, repair, replace and manage any Capital Modification made to the Incineration Facilities as a result of an Uncontrollable Circumstance or Lessor direction. Any such operation, maintenance, repair, replacement and management work performed by the Lessor shall not materially impair any right, materially impair the ability to perform, impose any material additional obligation or liability, or materially increase the costs of the Lessee hereunder. If any such operation, maintenance, repair, replacement or management work performed by the Lessor would have such effect, the parties shall negotiate in good faith an equitable adjustment with respect to the Lessee's price, schedule, performance and other obligations under this Lease Agreement. If the parties are unable to agree upon such an equitable adjustment, such dispute shall be determined as provided in Sections 14.11 or 14.12.

SECTION 12.9. BENEFIT SHARING FROM CAPITAL MODIFICATIONS.

(A) Generally. If a Capital Modification undertaken pursuant to this Article involves a reduction in the Lessee's costs of performing the Leasehold Obligations over the remaining Term of this Lease Agreement, the benefits of such reduction in Lessee costs shall be calculated and shared as agreed by the parties. In the event the parties are unable to reach an agreement, such reduction shall be calculated and shared as provided in this Section.

(B) Principles in Cost Sharing. The savings in annual Lessee costs of performing the Leasehold Obligations resulting from the Capital Modification (the "O&M Cost Savings") shall be calculated annually based on actual or estimated costs incurred in each year after implementation of the Capital Modification ("Post-Modification Year"), considering, among other factors, any reductions in staffing, chemical use, utility utilization, maintenance, repair and replacement requirements directly related to the Capital Modification, compared to the actual or estimated costs of such items in the year prior to implementation of the Capital Modification (the "Benchmark Year"). The following principles shall apply with respect to savings in certain Lessee costs:

(1) Calculation of Savings in Expenses. The calculation of all savings directly resulting from a Capital Modification shall be based only on the amount of direct savings

in expenses that would otherwise have been incurred by the Lessee or by the Lessor, as chemical, fuel or electric expenses and such savings calculation shall not include any overhead or margin.

(2) Chemical Use Savings. The annual amount of savings related to chemical use shall be based on the number of gallons of Incinerator Sludge and shall be calculated based on the difference between the rate of chemical use associated with the affected Incineration Facilities equipment or processes per gallon of Incinerator Sludge received in the Benchmark Year and the rate of chemical use associated with the affected Incineration Facilities equipment or processes per gallon of Incinerator Sludge received in such Post-Modification Year, times the Lessee's unit cost of chemicals in such Post-Modification Year.

(3) Electricity Use Savings. The annual amount of savings related to electricity use shall be based on the number of gallons of Incinerator Sludge, and shall be calculated based on a good faith engineering estimate of the difference between the rate of electric energy consumed by the Incineration Facilities (measured in KWH per gallon of Incinerator Sludge) in the Benchmark Year and the rate of electric energy consumed per gallon of Incinerator Sludge treated in such Post-Modification Year.

(4) Maintenance, Repair and Replacement Savings. The savings related to reduced maintenance, repair, and replacement requirements shall be based on a good faith engineering projection of the reduced maintenance costs (such as adjustments and Consumables), and the revised replacement schedule for the Incineration Facilities components involved in the Capital Modification, compared to the maintenance costs and replacement schedule of the corresponding Incineration Facilities components in place in the Benchmark Year prior to the Capital Modification.

(5) Staffing Savings. The savings related to reduced staffing shall be based on the direct wage, salary, and benefits costs of the employee positions which are no longer required as the result of the Capital Modification, calculated at the actual rates prevailing in the Benchmark Year. It is understood that the savings related to a change in a position from full-time to part-time due to a Capital Modification shall be included in the savings calculation under this subsection.

In each Post-Modification Year, the Lessee shall provide to the Lessor a calculation of the O&M Cost Savings, along with Cost Substantiation therefor, for the approval of the Lessor, which approval shall not be unreasonably withheld. Any dispute regarding the amount of the O&M Cost Savings shall be subject to dispute resolution as provided as provided in Sections 14.11 or 14.12.

(C) Capital Cost Recovery. The total capital cost of the Capital Modification shall be based on the price for the Capital Modification, determined pursuant to Section 12.6 or 12.7 (the "Capital Modification Cost"). Until fully recovered through the O&M Cost Savings as provided

in subsections (D)(1) and (E)(1) of this Section, the unrecovered balance of such Capital Modification Cost shall bear interest at an annual, non-compounded, interest rate equal to the Prime Rate in effect as of the date that implementation of the Capital Modification is commenced. With respect to any Capital Modification paid for by the Lessee, the unrecovered balance of the Capital Modification Cost and the monthly accrued interest shall be stated on each monthly Billing Statement provided to the Lessor by the Lessee. At the Lessor's election, the Lessor may payoff such unrecovered balance and all accrued interest thereon to the date of payoff. Upon payoff, the parties shall share the O&M Cost Savings as provided in subsections (D) and (E) of this Section, unless otherwise agreed to by the parties.

(D) Lessee-Financed Capital Modification. If the Capital Modification Cost is financed and paid for by the Lessee as provided herein, the annual O&M Cost Savings shall be applied as follows:

(1) Credit to Capital Modification Cost. Initially, the annual O&M Cost Savings shall be retained by or paid to the Lessee and credited against the balance of the Capital Modification Cost plus accrued interest thereon, as provided in subsection (C) of this Section.

(2) Sharing by Parties. After the Capital Modification Cost, plus accrued interest thereon, has been paid off as provided in subsection (C) of this Section or recovered as provided in subsection (D)(1) of this Section, the annual O&M Cost Savings shall be allocated 75% to the Lessee and 25% to the Lessor. The Lessor's share of such annual O&M Cost Savings shall be credited to the Lessor as part of the Annual Settlement.

(E) Lessor-Financed Capital Modification. If the Capital Modification Cost is financed and paid for by the Lessor as provided herein, the O&M Cost Savings shall be applied as follows:

(1) Credit to Capital Modification Cost. Initially, the annual O&M Cost Savings shall be credited to the Lessor as part of the Annual Settlement Statement, until the amount so credited equals the Capital Modification Cost plus accrued interest thereon as provided in subsection (C) of this Section.

(2) Sharing by Parties. After the Capital Modification Cost, plus accrued interest thereon, has been recovered as provided in subsection (E)(1) of this Section, the annual O&M Cost Savings shall be allocated 75% to the Lessor and 25% to the Lessee. The Lessor's share of such annual O&M Cost Savings shall be credited to the Lessor as part of the Annual Settlement.

## ARTICLE XIII

### RENT

SECTION 13.1. RENT GENERALLY. From and after the Commencement Date, the Lessee shall pay to the Lessor, over and above any additional amounts provided for in this Lease Agreement, Rent equal to the sum of the Base Rent and the Percentage Rent. The Rent shall be calculated according to this Article. The Lessee's obligation to pay Rent hereunder shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, the Rent payable hereunder shall not be abated, diminished or reduced under any circumstance of any character, including without limitation, (1) any set-off, counterclaim, recoupment, defense or other right whatsoever that the Lessee may have, (2) any loss or destruction of, or damage to, the Incineration Facilities or interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever and of whatever duration, (3) the making of any Capital Modification, (4) any restriction, prevention or curtailment of or interference with any use of the Incineration Facilities or any part thereof, or (5) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee. Examples of the calculation of the Rent and the application of the Adjustment Factor are included in Appendix 21.

SECTION 13.2. BASE RENT. (A) Base Rent Payments. The Lessee shall pay to the Lessor, as "Base Rent" for each Annual Period from the Commencement Date through the end of the 20-year Term of this Lease Agreement, the sum of the amounts for each such Annual Period as set forth in Appendix 24.

(B) Partial Contract Years. The Base Rent shall be apportioned appropriately to account for the fact that the Adjustment Factor is determined on a Contract Year basis, and that the first five Annual Periods described in subsection (A) of this Section contain partial Contract Years at the beginning and end of the period as well as four full Contract Years, and the last fifteen Annual Periods described in subsection (B) of this Section contains partial Contract Years at the beginning and end of the period as well as 14 full Contract Years.

(C) Certain Reductions in Base Rent. For Annual Periods 13 through 20, the Base Rent shall be reduced as and to the extent provided in Section 13.4 upon the occurrence of a Dramatic Market Change.

(D) Effect of Certain Changes in Law on Base Rent. For all Annual Periods, the Base Rent shall be reduced as and to the extent provided in Section 15.5 upon the occurrence of certain Changes in Law. Examples of the application of this section are provided in Appendix 21.

SECTION 13.3. PERCENTAGE RENT. (A) First Five Annual Periods. There shall be no Percentage Rent payable in any of the Annual Periods from the Commencement Date through the fifth anniversary of the Commencement Date.

(B) Last Fifteen Annual Periods. In addition to the Base Rent and all other amounts payable hereunder, if in any Annual Period there is an Annual Distributable Net Revenue

Surplus, the Lessee shall pay the Lessor as "Percentage Rent" the amounts set forth below for each of the Annual Periods from the fifth anniversary of the Commencement Date through the end of the 20-year Term of this Lease Agreement:

- (1) From Annual Distributable Net Revenue Surplus in amounts up to \$1,300,000, 30% of such amount;
- (2) From the Annual Distributable Net Revenue Surplus in amounts greater than \$1,300,000 up to \$3,000,000, 40% of such amount; and
- (3) From the Annual Distributable Net Revenue Surplus in amounts in excess of \$3,000,000, 50% of such amount.

(C) Annual Distributable Net Revenue Deficits Occur. If in any of the 20 Annual Periods there is an Annual Distributable Net Revenue Deficit, no Percentage Rent shall be payable with respect to such Annual Period. If in any of the last 15 Annual Periods there is an Annual Distributable Net Revenue Deficit, the amount thereof shall be carried forward as and to the extent provided in subsections 13.3(D) and 13.3(E). If at the end of the Term a Cumulative Carryforward Deficit remains, the Cumulative Carryforward Deficit shall be borne by the Lessee and the Lessor shall have no responsibility with respect thereto.

(D) Annual Distributable Net Revenue Surplus Defined. An "Annual Distributable Net Revenue Surplus" will be deemed to have occurred if in any Annual Period the amount of Revenues received in such period exceeds the sum of (1) the Incineration Facilities Cost, plus (2) with respect to Annual Periods six through twenty, any Cumulative Carryforward Deficit.

(E) Annual Distributable Net Revenue Deficit Defined. An "Annual Distributable Net Revenue Deficit" shall be deemed to have occurred if in any Annual Period the amount of Revenue received in such period is less than the sum of (1) the Incineration Facilities Cost, plus (2) with respect to Annual Periods six through twenty, any Cumulative Carryforward Deficit. In Annual Periods thirteen through twenty, by virtue of the reductions in Base Rent effectuated by operation of the Dramatic Market Change provisions of Section 13.4, and the resulting adjustment in the calculating of Incineration Facilities Cost for any such Annual Period, the Annual Distributable Net Revenue Deficit in such Annual Period will be effectively reduced to account for the Dramatic Market Change.

(F) Revenue Defined. "Revenue" as used herein shall mean for any Annual Period the sum of amounts received (as determined on a cash basis) in the Annual Period by the Lessee from (1) the operation of its Trucked-In Materials business at the Incineration Facilities, and (2) any payments made by Crompton pursuant to subsection 6.19(B).

(G) Incineration Facilities Cost. "Incineration Facilities Cost" as used herein shall mean for any Annual Period the sum of (1) the Base Rent (as may be adjusted from time to time pursuant to Section 13.2 or Section 13.4), plus (2) the Reference Price.

(H) Reference Price. "Reference Price" as used herein shall mean:

(1) for any Annual Period during which the Lessee is leasing its employees under the Shared Services Agreement, the difference between (1) \$2,265,000 (as such amount shall be adjusted annually by the Adjustment Factor and as otherwise provided in this Lease Agreement) and (2) the amounts set forth in Appendix 25; or

(2) for any Annual Period during which the Lessee is not leasing its employees under the Shared Services Agreement, the difference between (1) \$2,972,000 (as such amount shall be adjusted annually by the Adjustment Factor and as otherwise provided in this Lease Agreement) and (2) the amounts set forth in Appendix 25.

(I) Cumulative Carryforward Deficit Defined. "Cumulative Carryforward Deficit" as used herein shall mean the sum of all Annual Distributable Net Revenue Deficits which have occurred in Annual Periods (none of which shall be escalated or adjusted) preceding the Annual Period for which a determination of the existence of an Annual Distributable Net Revenue Surplus or an Annual Distributable Net Revenue Deficit is to be made which have not previously been applied in such previous Annual Period determinations.

SECTION 13.4. DRAMATIC MARKET CHANGE. If in the thirteenth or in any subsequent Annual Period, an Annual Distributable Net Revenue Deficit occurs that is in excess of \$300,000 (as adjusted annually by the Adjustment Factor), a "Dramatic Market Change" shall be deemed to have occurred. In such event, the Base Rent for such Annual Period may be reduced by an amount to the smallest amount which would eliminate the Annual Distributable Net Revenue Deficit. The maximum amount by which the Base Rent may be reduced upon the occurrence of any Dramatic Market Change shall be limited to the following amounts:

- (1) For Annual Periods 13 through 15, \$1,000,000 per Annual Period;
- (2) For Annual Periods 16 and 17, \$1,200,000 per Annual Period; and
- (3) For Annual Periods 18 through 20, \$1,400,000 per Annual Period.

In determining the amount by which Base Rent is to be reduced, such amount shall be based on the Lessee's documented costs plus 10% for general overhead allocated to the Incineration Facilities. If the Lessee elects to invoke the Dramatic Market Change provisions herein, it shall provide the Lessor with a project revenue sheet and such other documentation as reasonably determined to be necessary by the Lessor to substantiate the claim for relief due to a Dramatic Market Change.

SECTION 13.5. ADJUSTMENT FACTOR. The "Adjustment Factor" for purposes of this Lease Agreement, when used with respect to any particular Contract Year, shall be based on the percent change in the CPI over the immediately preceding 12-month period.

SECTION 13.6. RENT PAYMENT. The Lessee shall pay the Rent in monthly installments. The Rent for each month shall be on account of the Lessee Responsibilities rendered during the prior month.

SECTION 13.7. LESSEE REIMBURSABLE COSTS. The Lessor shall reimburse the Lessee an amount equal to the actual and direct expenses (without markup for

profit, administration or otherwise) paid by the Lessee to unrelated third party parties for the premium paid by the Lessee during each Contract Year for the Lessor-requested additional pollution liability insurance coverage as set forth in Appendix 10 (estimated to be \$45,000 for the first full Contract Year); provided that the Lessee shall not be entitled to reimbursement by the Lessor for increases in such premiums to the extent such increases are caused by extraordinary claims under policies issued to the Lessee, the Guarantor or any of their Affiliates other than claims arising from Uncontrollable Circumstances. The amount of any such extraordinary increases shall be for the account of the Lessee.

SECTION 13.8. ESTIMATES AND ADJUSTMENTS. (A) Pro Rata Adjustments.

Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this subsection, a month shall be taken as a month containing 30 days and a year shall be taken as a year containing 360 days.

(B) Budgeting. For Lessor budgeting purposes, no later than 120 days preceding each Contract Year, the Lessee shall provide to the Lessor a written statement setting forth for such Contract Year its reasonable estimate of the Rent, each component thereof, and the Adjustment Factor. The estimate shall not be binding on the Lessee but shall establish the basis for monthly payments for such Contract Year.

(C) Adjustment to Rent. If any adjustment to the Rent is required pursuant to any express provision of this Lease Agreement, the party requesting the adjustment shall submit to the other party a written statement setting forth the cause of the adjustment, the anticipated duration of the adjustment, and the amount of the adjustment, as appropriate. Except to the extent that a longer period is otherwise specifically provided for in this Lease Agreement, any request for adjustment of the Rent hereunder shall be accepted or rejected by the party receiving the request within 45 days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefor within such 45 day period, the request shall be deemed rejected. A rejected request may be resubmitted, with or without change, and this paragraph shall apply to such resubmitted request as it applies to an original request. Any disputes with respect to a rejected request not resolved to the mutual satisfaction of the parties, shall be determined as provided in Sections 14.11 or 14.12. Any Rent adjustment request which is not rejected or deemed rejected shall take effect as of the next monthly payment period thereafter, or as otherwise agreed to by the parties.

SECTION 13.9. ANNUAL SETTLEMENT. Within 45 days after the end of each

Contract Year, the Lessee shall provide to the Lessor an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Rent payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Lessee with respect to such Contract Year. The Lessor or the Lessee, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement

Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Lessee of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Lessee shall file with the Lessor an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 13.10. BILLING STATEMENT DISPUTES. If the Lessor disputes any amounts to be paid by the Lessee, the Lessee may either (1) pay the disputed amount when otherwise due, and provide the Lessor with a written objection indicating the amount that is being disputed and providing all reasons then known to the Lessor for its objection to or disagreement with such amount, or (2) withhold payment of the disputed amount and provide the Lessor with written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the Lessee to the Lessor of amounts withheld or reimbursement to the Lessee by the Lessor of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days of the date of resolution, with interest at the Overdue Rate.

SECTION 13.11. PROPERTY, SALES AND SERVICE TAX EXEMPTION. Except as otherwise provided in this Service Contract, it is the expectation of the parties that (1) the Incineration Facilities shall continue to be municipally-owned property and not subject to property taxation by any Governmental Body, (2) the equipment, chemicals, consumables and other supplies and services provided or used in the performance of this Lease Agreement, including any equipment, construction materials and supplies initially acquired by the Lessee or any Subcontractor in connection with the Initial Capital Improvements or any Capital Modifications shall continue to be exempt from sales taxes imposed by any Governmental Body, (3) the Leasehold Obligations shall continue to be exempt from Tax directly imposed or applied to such Leasehold Obligations, or any part thereof, by any Governmental Body; and (4) the receipt of Plant Sludge, Merchant Sludge and Merchant Septage and Wastewater at the Incineration Facilities, the emission of air contaminants from the Incineration Facilities, and the storage, transportation, treatment, disposal or other management of Incineration Residuals generated by the Incineration Facilities shall continue to be not subject to a Tax (including any fee or other imposition) imposed by any Governmental Body other than such Taxes as in effect as of the Contract Date. If a Change in Law imposes any such Tax or repeals any such exemption from the imposition of a Tax, and the Lessee has exercised due diligence and taken all steps necessary to obtain any available exemptions on a timely basis, and is nonetheless required to pay any such Tax, the Lessee shall be entitled to recover therefor either through reimbursement by the Lessor or an adjustment in the Base Rent to the extent that it is not practicable to collect and recover the amount of such Tax from other customers of the Incineration Facilities. The Lessor shall provide to the Lessee a sales tax exemption certificate or certificate number for use in securing the sales tax exemption.



## ARTICLE XIV

### BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 14.1. REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Sections 14.2, 14.3, 14.4, 14.5 and 14.6 with respect to termination rights, in the event that either party breaches this Lease Agreement, the other party may exercise any legal rights it has under this Lease Agreement, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Lease Agreement for cause except upon the occurrence of an Event of Default.

SECTION 14.2. EVENTS OF DEFAULT BY THE LESSEE. (A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Lessee upon which the Lessor, by notice to the Lessee, may terminate this Lease Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Lessee to obtain or maintain in full force and effect any Security Instrument required by Article XVI as security for the performance of this Lease Agreement (unless the Lessor has released the Lessee from its obligation to provide a Security Instrument pursuant to Section 16.4), without excuse for Uncontrollable Circumstances;

(2) Failure to Achieve ICI Acceptance. The failure of the Lessee to achieve ICI Acceptance of the Initial Capital Improvements prior to the end of the Extension Period;

(3) Abandonment. The abandonment or failure to operate all or a substantial portion of Incineration Facilities for two or more consecutive days in any Contract Year, unless caused by Uncontrollable Circumstances;

(4) Insolvency. The insolvency of the Lessee or the Guarantor as determined under the Bankruptcy Code;

(5) Voluntary Bankruptcy. The filing by the Lessee or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Lessee or the Guarantor to the filing of any bankruptcy or reorganization petition against the Lessee or the Guarantor under the Bankruptcy Code; or the filing by the Lessee or the Guarantor of a petition to reorganize the Lessee or the Guarantor pursuant to the Bankruptcy Code;

(6) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Lessee or the Guarantor or of a major part of the Lessee's or the Guarantor's property, respectively, or

the filing against the Lessee or the Guarantor of a petition to reorganize the Lessee or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively;

(7) Default of Guarantor. The failure of the Guarantor to perform any obligation under the Guaranty in a timely manner; and

(8) Guarantor Credit Standing. The failure of the Lessee to provide credit enhancement when and as required by subsection 16.1(C).

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Lessee upon which the Lessor may terminate this Lease Agreement, by notice to the Lessee, if: (1) any representation or warranty of the Lessee hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Lease Agreement or the Guaranty Agreement or the ability of the Lessee to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations thereunder is thereby materially and adversely affected; or (2) the Lessee fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the Lessor under this Lease Agreement within 60 days following the due date for such payment, or (b) to perform any material obligation under this Lease Agreement (unless such default is excused by an Uncontrollable Circumstance or Lessor Fault as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the Lessor the right to terminate this Lease Agreement for cause under this subsection unless:

(1) The Lessor has given prior written notice to the Lessee stating that in its opinion a specified default in its duty to pay or perform exists which gives the Lessor a right to terminate this Lease Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and describing the default in reasonable detail; and

(2) The Lessee has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the Lessee shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 120 days from the initial default notice) as the Lessee shall continue with due diligence to carry out to completion all such actions).

(C) Other Remedies Upon Lessee Event of Default. The right of termination provided under this Section upon an Event of Default by the Lessee is not exclusive. If this Lease Agreement is terminated by the Lessor for an Event of Default by the Lessee, the Lessor shall have

the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Lease Agreement, under the Security Instruments and under Applicable Law. The Lessee shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

SECTION 14.3. EVENTS OF DEFAULT BY THE LESSOR. (A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the Lessor upon which the Lessee, by notice to the Lessor, may terminate this Lease Agreement:

(1) Representations and Warranties. Any representation or warranty of the Lessor hereunder was false or inaccurate in any material respect when made, and the legality of this Lease Agreement or the ability of the Lessor to carry out its obligations hereunder is thereby adversely affected;

(2) Failure to Pay or Perform. The failure, refusal or other default by the Lessor in its duty: (1) to pay the amount required to be paid to the Lessee under this Lease Agreement within 90 days following the due date for such payment; or (2) to perform any other material obligation under this Lease Agreement (unless such default is excused by an Uncontrollable Circumstance or Lessee Fault); or

(3) Bankruptcy. The authorized filing by the Lessor of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the Lessor shall not in and of itself constitute an Event of Default hereunder.

(B) Notice and Cure Opportunity. No such default described in subsections (A)(1) or (A)(2) of this Section shall constitute an Event of Default giving the Lessee the right to terminate this Lease Agreement for cause under this subsection unless:

(1) The Lessee has given prior written notice to the Lessor stating that a specified default exists which gives the Lessee a right to terminate this Lease Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The Lessor has not initiated within a reasonable amount of time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence; except that if the Lessor shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 120 days from the initial default notice) as the Lessor shall continue with due diligence to carry out to completion all such actions.

(C) Termination Liquidated Damages During the Term. If this Lease Agreement is terminated by the Lessee for cause as a result of an Event of Default by the Lessor, the Lessor shall pay the Lessee, as liquidated damages upon any such termination, the same amount which

would be payable under subsection 14.5(A) if this Lease Agreement were terminated during the Term, according to the month of termination, at the election of the Lessor for convenience and without cause.

SECTION 14.4. LESSOR CONVENIENCE TERMINATION DURING THE APPROVAL PERIOD. (A) Lessor Convenience Termination Option During the Approval Period. The Lessor shall have the right at any time after the Contract Date during the Approval Period, exercisable in its sole discretion, for its convenience and without cause by written notice to the Lessee, to terminate this Lease Agreement upon 30 days written notice to the Lessee. Upon any such termination the Lessor, subject to Cost Substantiation, shall reimburse the Lessee for 100% of the reasonable costs incurred directly by the Lessee and any expenses paid or incurred to third parties from the Contract Date to the Termination Date hereunder, which are directly related to the performance of its obligations hereunder and which are necessary to be performed prior to the Commencement Date (but not engineering or other costs in connection with the Initial Capital Improvements) ("Reimbursable Expenses"), subject to a maximum amount of \$100,000. The Lessor shall also have the right to direct the Lessee to suspend its work during the Approval Period, and to direct the resumption of work.

(B) Cost Records and Reporting. During the Approval Period, the Lessee shall prepare and maintain proper, accurate and complete books and records of the cost and description of the work which the Lessee has performed since the Contract Date which is directly and solely related to the Lessee's obligations during the Approval Period under this Lease Agreement, the cost of which would be the responsibility of the Lessor if the Lessor were to elect to terminate this Lease Agreement pursuant to this Section. All financial records of the Lessee and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Lessee shall submit all books and records or a reasonably detailed summary thereof acceptable to the Lessor, together with a summary statement of monthly and aggregate Reimbursable Expenses incurred, to the Lessor at any time after the Contract Date at its request.

(C) Delivery of Approval Period Work Product to the Lessor. Concurrently with payment by the Lessor to the Lessee of the amount due upon any termination of this Lease Agreement under this Section, the Lessee shall deliver to the Lessor all of its work product produced during the period commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the Lessor.

SECTION 14.5. LESSOR CONVENIENCE TERMINATION DURING THE LEASEHOLD PERIOD. (A) Termination Right and Fee. The Lessor shall have the right at any time during the Leasehold Period, exercisable in its sole discretion, for its convenience and without cause, to terminate this Lease Agreement upon 60 days' written notice to the Lessee. If the Lessor exercises its right to terminate the Lease Agreement pursuant to this Section, the Lessor shall pay the Lessee a convenience termination fee equal to the sum of: (1) \$3,000,000 reduced by 1/240 of such amount for each month which has elapsed following the Commencement Date to and

including the month in which the Termination Date occurs; provided, however, that in the event of a Dramatic Market Change the applicable amount shall be the lesser of \$250,000 or the amount computed hereunder; plus (2) if the Lessee has provided financing for any Capital Modifications pursuant to subsection 12.7(C), the unamortized value thereof based on the financing methodology approved by the Lessor at the time the financing was effectuated. Examples of the convenience termination fee calculation are provided in Appendix 22.

(B) Uncontrollable Circumstances. In the event an Uncontrollable Circumstance causes a total constructive loss of the Incineration Facilities, or in the event an Uncontrollable Circumstance causes an extraordinary decrease in Lessor revenues, and thereupon the Lessor elects to exercise its right of convenience termination under this Section, the amount specified in item (1) of subsection (A) of this Section shall be excluded from the termination fee payable by the Lessor; provided that the Borough shall pay the Company, subject to Cost Substantiation, for its reasonable costs of terminating any Lessee employees not hired pursuant to subsection 14.7(B). A "total constructive loss" for this purpose shall be deemed to have occurred: (1) if so determined by the casualty insurance carrier; (2) if a Change in Law bans or has the effect in practice of substantially banning the incineration of Merchant Sludge; or (3) if the Incineration Facilities are substantially inoperable for a period of at least six months following the occurrence of the Uncontrollable Circumstance. An "extraordinary decrease" in Lessor revenues shall be deemed to have occurred for this purpose if either (1) Base Rent payable to the Lessor by the Lessee decreases by more than 10% from the prior contract year; or (2) the Base Rent decreases described in (1) above exceed 40% in the aggregate the total Base Rent payable under this Lease Agreement, in each case when compared to such amounts that would have been payable during the comparable periods had no Uncontrollable Circumstances occurred.

(C) Payment of Amounts Owning Through the Termination Date. Upon any termination pursuant to this Section, the Lessee shall also be paid: (1) all Cost Substantiated amounts incurred for the Lessee Responsibilities as of the date of termination; (2) all amounts for the ICI Design/Build Work to be paid as part of the ICI Design/Build Price, but not yet paid or billed (subject to Cost Substantiation), including accumulated Retainage as of the date of termination; and (3) the costs of terminating any Subcontracts related to such ICI Design/Build Work and the costs of demobilization related to such ICI Design/Build Work (subject to Cost Substantiation).

(D) Termination Fee Payment Contingent Upon Surrender of Possession. The Lessor shall have no obligation to pay the applicable termination fee provided for under this Section except concurrently with the surrender of possession and control by the Lessee of the Incineration Facilities to the Lessor.

(E) Adequacy of Termination Payment. The Lessee agrees that the applicable termination fee provided in this Article shall fully and adequately compensate the Lessee and all Subcontractors for all foregone potential profits, Loss-and-Expense, and charges of any kind

whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Lessee's right to perform this Lease Agreement.

(F) Consideration for Convenience Termination Payment. The right of the Lessor to terminate this Lease Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Lease Agreement, and the Lessee hereby waives any right it may have under Applicable Law to assert that the Lessor owes the Lessee a duty of good faith dealing in the exercise of such right.

(G) Completion or Continuance by Lessor. After the date of any termination under this Section, the Lessor may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Leasehold Obligations so terminated, including, without limitation, entering into contracts with other operators and contractors.

SECTION 14.6. SPECIAL LESSOR TERMINATION RIGHTS. (A) Termination Right. The Lessor shall have the right at any time during the Term hereof, but not the obligation, to terminate this Lease Agreement upon 30 days' written notice to the Lessee if the Lessee fails to increase its Damage Limitation Amount set forth in Section 14.13(A) by a stated dollar amount as provided in subsection 14.13(C). Upon any termination under this Section, neither party shall have any payment obligation to the other party except as provided in subsection (B) of this Section and in Section 14.7.

(B) Payment of Amounts Owning Through the Termination Date. Upon any termination pursuant to this Section, the Lessee shall be paid (1) all Cost Substantiated amounts incurred for the Leasehold Obligations as of the date of termination; and (2) if the Lessee has provided financing for any Capital Modifications pursuant to subsection 12.7(C), the unamortized value thereof based on the financing methodology approved by the Lessor at the time the financing was effectuated.

(C) Termination Fee Payment Contingent Upon Surrender of Possession. The Lessor shall have no obligation to pay the applicable termination payment provided for under this Section except concurrently with the surrender of possession and control by the Lessee of the Incineration Facilities to the Lessor.

(D) Completion or Continuance by Lessor. After the date of any termination under this Section, the Lessor may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Leasehold Obligations so terminated, including, without limitation, entering into contracts with other operators and contractors.

SECTION 14.7. OBLIGATIONS OF THE LESSEE UPON TERMINATION OR EXPIRATION. (A) Lessee Obligations. Upon a termination of the Lessee's right to perform this

Lease Agreement under Sections 14.2, 14.3, 14.4, 14.5 or 14.6 or upon the expiration of this Lease Agreement under Section 3.1, the Lessee shall, as applicable:

- (1) stop the Leasehold Obligations on the date and to the extent specified by the Lessor;
- (2) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (3) promptly remove from the Incineration Facilities all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Lessee (including, but not limited to sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
- (4) remove all Ash Residue from the Ash Lagoons or make a cash payment to the Lessor sufficient to enable the Lessor to remove such Ash Residue from the Ash Lagoons;
- (5) leave the Incineration Facilities in a neat and orderly condition;
- (6) subject to subsection (B) of this Section, promptly remove all employees of the Lessee and any Subcontractors and vacate the Incineration Facilities;
- (7) with respect to the ICI Design/Build Work and any Capital Modification, promptly deliver to the Lessor a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Lessee or any Subcontractor but not yet incorporated in the Incineration Facilities;
- (8) deliver to the Lessor the Operation and Maintenance Manual and all computer programs used at the Incineration Facilities in the performance of Leasehold Obligations, including all revisions and updates thereto; provided that the Lessor assumes the Lessee's existing obligations to pay all applicable licensing fees associated with any such computer programs;
- (9) deliver to the Lessor a copy of all books and records in its possession relating to the performance of the Leasehold Obligations;
- (10) provide the Lessor with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;
- (11) advise the Lessor promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;
- (12) promptly deliver to the Lessor copies of all Subcontracts, together with a statement of:
  - (a) the items ordered and not yet delivered pursuant to each agreement;
  - (b) the expected delivery date of all such items;
  - (c) the total cost of each agreement and the terms of payment; and
  - (d) the estimated cost of canceling each agreement;

(13) assign to the Lessor any Subcontract that the Lessor elects in writing, at its sole election and without obligation, to have assigned to it. The Lessor shall assume, and the Lessee shall be relieved of its obligations under, any Subcontract so assigned;

(14) terminate all Subcontracts which the Lessor has not directed the Lessee to assign, and make no additional agreements with Subcontractors;

(15) as directed by the Lessor, transfer to the Lessor by appropriate instruments of title, and deliver to the Incineration Facilities (or such other place as the Lessor may specify), all special order items pursuant to this Lease Agreement for which the Lessor has made or is obligated to make payment;

(16) promptly transfer to the Lessor all warranties given by any manufacturer or Subcontractor with respect to particular components of the Lessee Responsibilities or the ICI Design/Build Work;

(17) notify the Lessor promptly in writing of any Legal Proceedings against the Lessee by any Subcontractor or other third parties relating to the termination of the Lessee Responsibilities or the ICI Design/Build Work (or any Subcontracts);

(18) give written notice of termination, effective as of date of termination of this Lease Agreement, promptly under each project specific policy of Required Insurance (with a copy of each such notice to the Lessor), but permit the Lessor to elect to continue such policies in force thereafter at its own expense, if possible;

(19) arrange its dealings with employees such that no accrued benefit liability will bind the Lessor in the event the Lessor determines to offer employment to the Lessee's employees at the Incineration Facilities following the Termination Date; and

(20) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the Lessor's costs, and take no action which shall increase any amount payable to the Lessor under this Lease Agreement.

(B) Hiring of Lessee Personnel. Upon the termination or expiration of this Lease Agreement under any provision hereof, the Lessor or any successor operator of the Incineration Facilities designated by the Lessor shall have the right to offer employment on any terms it may choose to any Lessee employee employed full time at the Incineration Facilities. No Lessee employment agreement, job offer, letter or similar document may contravene this right. The Lessor or its designated successor operator shall extend any such job offer within 15 days of the expiration or termination of this Lease Agreement. The Lessee shall assist and cooperate with any such employee transition.

(C) Continuity of Service and Technical Support. Upon the termination of the Lessee's right to perform this Lease Agreement under Sections 14.2, 14.3, 14.4, 14.5 or 14.6 or upon the expiration of this Lease Agreement under Section 3.1, the Lessee, at the request and direction of the Lessor, shall provide for an effective continuity of service and the smooth and

orderly transition of management back to the Lessor or any replacement operator designated by the Lessor. Such service shall be (1) in the event of a termination pursuant to Section 14.2 for a period of up to 365 days, (2) in the event of a termination pursuant to Sections 14.4, 14.5 or 14.6 or expiration pursuant to Section 3.1 for a period of up to 180 days, or (3) in the event of a termination pursuant to 14.3 for a period of up to 90 days, provided that the Lessor makes its prepayment obligations set forth in subsection (E) of this Section. In each case, such service shall include providing technological and design advice and support and delivering any plans, drawings, renderings, blueprints, operating manuals, computer programs, spare parts or other information useful or necessary for the Lessor or any replacement operator designated by the Lessor to carry out and complete the ICI Design/Build Work and to perform the Lessee Responsibilities.

(D) Lessee Payment of Certain Costs. If termination is pursuant to Section 14.2, the Lessee shall be obligated to pay the costs and expenses of undertaking its obligations under subsections (A) through (C) of this Section. If the Lessee fails to comply with any obligation under this Section, the Lessor may perform such obligation and the Lessee shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(E) Lessor Payment of Certain Costs. If termination is pursuant to Sections 14.3, 14.4, 14.5(B) or 14.6, or upon the expiration of this Lease Agreement under Section 3.1, the Lessor shall pay to the Lessee within 60 days of the date of the Lessee's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Lessee in satisfying its obligations under subsections (A) through (C) of this Section. If termination is pursuant to Section 14.5(A), the Lessor shall pay to the Lessee within 60 days of the date of the Lessee's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by the Lessee in satisfying its obligations under subsection (C) of this Section. However, if termination is due to a Lessor Event of Default pursuant to Section 14.3, the Lessor shall prepay the Lessee on a monthly basis its reasonable estimate of the aggregate costs and expenses expected to be incurred by the Lessee in satisfying its obligations under subsection (C) of this Section. Within 15 days after the end of each month of continued service, the Lessee shall provide the Lessor with a settlement statement supported by Cost Substantiation setting forth the actual aggregate costs and expenses payable with respect to such month and a reconciliation of such amount with the amounts actually paid by the Lessor with respect to such month. The Lessor or the Lessee, as appropriate, shall pay any known and undisputed amounts within 60 days after receipt of the Lessee's settlement statement. If any amount in dispute is unable to be resolved by the parties, such dispute shall be determined as provided in Sections 14.11 or 14.12.

(F) Exit Transition Plan. The Lessee shall comply with the Exit Transition Plan set forth in Appendix 19 in transferring management of the Incineration Facilities to the Lessor upon the expiration or termination of this Lease Agreement.

SECTION 14.8. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.  
All representations and warranties of the parties hereto contained in Article II, each of the party's

indemnity obligations in this Lease Agreement with respect to events that occurred prior to the Termination Date, and the rights and obligations of the parties hereto pursuant to Sections 1.2(J), 4.4(B), 5.1(D), 6.6(D), 6.11(D), 7.7(C), 7.8(B), 8.8(C), 10.1(I), 10.12, and 17.3 and Article XIV (except this Section 14.8) and Article XV (except Section 15.1), and all other provisions of this Lease Agreement that so provide shall survive the termination of this Lease Agreement. No termination of this Lease Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination, or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term of this Lease Agreement.

SECTION 14.9. NO WAIVERS. No action of the Lessor or the Lessee pursuant to this Lease Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Lease Agreement. No course of dealing or delay by the Lessor or the Lessee in exercising any right, power or remedy under this Lease Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Lessor or the Lessee under this Lease Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 14.10. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification of Loss-and-Expense imposed as a result of a Legal Proceeding brought by a third party for which the Lessor is obligated to indemnify the Lessor pursuant to the provisions of this Lease Agreement, any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Lease Agreement, or the material falseness or inaccuracy of any representation made in this Lease Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 14.11. FORUM FOR DISPUTE RESOLUTION. (A) Generally. It is the express intention of the parties that all Legal Proceedings related to this Lease Agreement or to the Incineration Facilities or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the State or Federal District Court of the State. The Lessee and the Lessor each irrevocably consents to the jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding, and waives its right to a trial by jury.

(B) Costs of Legal Proceedings. Except as otherwise required by the Lessee's indemnity obligations under Section 15.7 or the Lessee's reimbursement obligations under Section 15.8, each party shall bear its own costs and expenses in any Legal Proceeding where it is the named defendant in such lawsuit. Notwithstanding the foregoing, each party retains its rights to bring any Legal Proceeding or to implead the other party as to any matter arising hereunder.

SECTION 14.12. NON-BINDING MEDIATION. (A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Lease Agreement, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs associated with Non-Binding Mediation shall be shared equally by the Lessor and the Lessee.

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

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

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

SECTION 14.13. LIMITATION OF LIABILITY. (A) General Limitation. Notwithstanding anything herein to the contrary, the total liability of the Lessee with respect to money damages paid to, or on behalf of, the Lessor by the Lessee on account of any breach of this Lease Agreement shall be subject to a cumulative maximum amount of: (1) \$20,000,000 prior to ICI Acceptance and (2) \$14,000,000 after ICI Acceptance (adjusted annually by the Adjustment Factor) (the "Damage Limitation Amount"). For purposes of this Section, the term "money damages paid to the Lessor by the Lessee" does not include losses or liabilities incurred by the Lessee as the result of Legal Proceedings brought by third parties directly against the Lessee, but does include any amounts paid by the Lessee to the Lessor or any third party on behalf of the Lessor pursuant to any indemnification provision under this Lease Agreement.

(B) Exclusions From Limitation. No amounts other than monetary damages paid to, or on behalf of, the Lessor on account of any breach of this Lease Agreement shall be subject to Damage Limitation Amount, including without limitation the following: (1) any economic or operating losses sustained by the Lessee in performing the Leasehold Obligations, including any

payments made by the Guarantor on behalf of the Lessee; (2) any fines, penalties, losses or liabilities paid or sustained by the Lessee to Governmental Bodies other than the Lessor due to a failure to comply with Applicable Law (other than as a result of Lessor Fault); (3) any amounts to the extent covered by, or which should have been covered by, and paid from the proceeds of the Required Insurance; (4) any losses or liabilities sustained by the Lessee to third parties from any cause other than Lessor Fault, including losses or liabilities based on tort, property and environmental claims brought by third parties; and (5) any claims caused by the gross negligence or willful misconduct of the Lessee.

(C) Termination Event. If the Lessee has at any time paid money damages to the Lessor or on behalf of the Lessor at the Lessor's direction, equal to or greater than 90% of the Damage Limitation Amount, the Lessor shall so notify the Lessee, whereupon the Lessee may, within five business days of receipt of such notice, certify to the Lessor in writing that it will increase the applicable Damage Limitation Amount by a stated dollar amount. Upon such certification, the Lessee's Damage Limitation Amount shall be permanently increased for all purposes under this Lease Agreement. The Lessor shall have the right to terminate this Lease Agreement pursuant to Section 14.6 for any failure of the Lessee to so certify.

## ARTICLE XV

### INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 15.1. INSURANCE. (A) Lessee Insurance. Unless otherwise provided by the Lessor pursuant to Appendix 10, the Lessee shall, at all times during the Term of this Lease Agreement, obtain and maintain or cause to be obtained and maintained the Required Insurance in accordance with the requirements of Appendix 10 and shall pay all premiums with respect thereto as the same become due and payable.

(B) Insurers, Deductibles and Lessor Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Appendix 10. The insurers shall be selected by the Lessee with the consent of the Lessor, which consent shall not be unreasonably withheld, and shall be authorized to write such insurance in the State. The insurance coverage may be written with deductible amounts within the limits allowed in Appendix 10, and the Lessee shall be responsible for paying all deductible amounts. The Lessee shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Lessee hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the Lessor and to the Lessee as their respective interests may appear; and (2) at least 30 days prior written notice of the cancellation thereof to the Lessee and the Lessor. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the Lessor. The Lessor shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice. The delivery by the Lessee to the Lessor of certificates of insurance is required by this Lease Agreement as a condition to the occurrence of the Commencement Date. Not later than 60 days prior to the beginning of each Contract Year throughout the Term, the Lessee shall furnish certificates of insurance to the Lessor to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, the Lessee shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 10.

(D) Maintenance of Insurance Coverage. If the Lessee fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Lessee fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the Lessor's election (but without any obligation to do so), the Lessor, following notice to the Lessee, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the Lessor the amount thereof shall be

immediately reimbursable to the Lessor by the Lessee or the Lessor may increase the Base Rent payable by the Lessee. The Lessee shall not perform ICI Design/Build Work during any period when any policy of Required Insurance pertaining to the ICI Design/Build Work is not in effect. The Lessee shall comply with all applicable Required Insurance and take all steps necessary to assure the Initial Capital Improvements remain continuously insured in accordance with the requirements of this Lease Agreement during the Term hereof. The failure of the Lessee to obtain and maintain any Required Insurance shall not relieve the Lessee of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Lessee shall defend, indemnify and hold harmless the Lessor against any Loss-and-Expense arising out of such failure. The purchase of insurance to satisfy the Lessee's obligations under this Section shall not be a satisfaction of any Lessee liability under this Lease Agreement or in any way limit, modify or satisfy the Lessee's indemnity obligations hereunder.

SECTION 15.2. UNCONTROLLABLE CIRCUMSTANCES — EFFECT ON PERFORMANCE OBLIGATIONS. (A) Relief from Obligations. Except as expressly provided under the terms of this Lease Agreement, neither party to this Lease Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Lease Agreement, except to the extent specifically excluded by a particular provision hereunder, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Lease Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Lease Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstances.

(B) Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone or facsimile, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within 15 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to the other party, and resume full performance under this Lease Agreement. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an

Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

(C) Conditions to Performance and Schedule Relief. If and to the extent that Uncontrollable Circumstances interfere with or delay the Lessee's performing the Leasehold Obligations in accordance herewith, the Lessee shall be entitled to relief from its performance obligations or an extension of schedule which properly reflects the interference with performance or the time lost as a result thereof, in each case only to the minimum extent reasonably incurred by the Lessee as a result of the event, and the Lessee shall perform all other Leasehold Obligations. In the event that the Lessee believes it is entitled to any performance or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the Lessor written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed, within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Lessee the Lessor shall issue a written determination as to the extent, if any, it concurs with the Lessee claim for performance or schedule relief, and the reasons therefor. The Lessee acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section may adversely affect the Lessor, and the additional cost borne by the Lessor shall be reduced to account for such adverse effect to the extent the Lessor demonstrates that such additional cost was caused or contributed by the Lessee's failure to give timely notice.

SECTION 15.3. UNCONTROLLABLE CIRCUMSTANCES — EFFECT ON RENT.

The occurrence of an Uncontrollable Circumstance shall have no effect on the Rent payable by the Lessee hereunder except as provided in Sections 15.4 with respect to certain Changes in Law and in Section 15.5 with respect to certain other Uncontrollable Circumstances. Under no circumstances shall the Lessor have an affirmative obligation to pay the Lessee any amount based on the occurrence of an Uncontrollable Circumstance other than Lessor Fault.

SECTION 15.4. CHANGES IN LAW IMPOSING DIRECT QUANTITY

RESTRICTIONS. (A) Direct Quantity Restrictions Defined. A Change in Law which imposes a "Direct Quantity Restriction" is a Federal, State or local Change in Law which is applicable to the Incineration Facilities or to sludge incineration facilities operating in the State, and which directly restricts the quantity of Merchant Sludge that may be lawfully transported to or received and incinerated at the Incineration Facilities.

(B) Examples of Direct Quantity Restrictions. Examples of Changes in Law which impose Direct Quantity Restrictions include the following: (1) a permit or other restriction imposed by the DEP or another Governmental Body through any Governmental Approval applicable to the Incineration Facilities reducing the quantity of sludge which may be incinerated at the

Incineration Facilities; (2) a Federal, State or local ban on sludge incineration; (3) a lawful State ban or quantitative limit on the importation of sludge into Connecticut; (4) a DEP regulatory restriction on the quantity of sludge that can be transported by truck in Connecticut; (5) a Federal, State or local regulation or condition imposed in a Governmental Approval that restricts the type or quality of sludge that may be managed at the Incineration Facilities and that is more stringent in effect than the criteria for acceptance of sludge at the Incineration Facilities in effect as of the Contract Date (such as a limitation on allowable metals in an air permit); and (6) a Federal, State or local quantitative limit on sludge incineration generally which has the effect of reducing the quantity of sludge that may be legally incinerated at the Incineration Facilities.

(C) Examples Which Are Not Direct Quantity Restrictions. Examples of Changes in Law which do not impose Direct Quantity Restrictions include the following: (1) the permitting of additional incineration or other sludge disposal facilities by any regulatory body, within or outside Connecticut; (2) an increase in vehicle fuel taxes; (3) any regulatory action in states other than Connecticut; and (4) regulatory actions by any Governmental Body which mandate or encourage the production of less sludge by sludge generators or encourage (but not mandate) the use of sludge disposal processes other than incineration.

(D) Rent Reduction and Claims for Relief. The Lessee shall be entitled to a reduction in Base Rent in any Contract Year in an amount equal to the amount by which the Revenues in the Contract Year were reduced due to the occurrence of a Change in Law imposing Direct Quantity Restrictions. The Lessee, in order to claim relief hereunder based on a Change in Law imposing a Direct Quantity Restriction shall bear the burden of proof in establishing that: (1) the occurrence and the continued effect of the Change in Law imposing a Direct Quantity Restriction; (2) the extent to which as a result of the Change in Law imposing a Direct Quantity Restriction (in contrast to market factors not related to such Change in Law), Revenues that would reasonably be expected to have been received in the absence thereof were not received; and (3) the Lessee took and continued to take all commercially reasonable steps to mitigate the resulting loss of Revenue.

(E) Notification and Adjustment Procedures. If the Lessee believes that a Change in Law imposing a Direct Quantity Restriction has occurred, the Lessee shall promptly notify the Lessor, and include in its monthly operating reports any material current information bearing upon the occurrence and its effect on Revenues. The Lessee shall make a formal claim for relief under this Section within 15 days of the end of the Contract Year in which a Revenue loss has been sustained. Any adjustment in Base Rent under this Section shall be effectuated through a process to be determined by the parties at the time of such adjustment.

SECTION 15.5. UNCONTROLLABLE CIRCUMSTANCES OTHER THAN A CHANGE IN LAW — DIRECT REVENUE LOSS AND INCREASED COSTS. (A) Revenue Loss. In the event an Uncontrollable Circumstance other than a Change in Law occurs which directly affects the Incineration Facilities and which materially restricts the receipt, processing or

incineration of Merchant Sludge at the Incineration Facilities which otherwise would reasonably be expected to have been received, processed or incinerated after the exercise of all reasonable mitigation measures, the Base Rent shall be reduced by an amount equal to the Revenues lost as a result of such occurrence. The occurrence of an explosion or a natural disaster which destroys assets comprising the Incineration Facilities are examples of such Uncontrollable Circumstances.

(B) Increased Costs — On-Site. In the event an Uncontrollable Circumstance other than a Change in Law occurs which increases the Lessee's On-Site costs of operating its Merchant Sludge business at the Incinerator Facilities, the amount of such increased costs after the exercise of all reasonable mitigation measures shall be applied to increase the amount of the Reference Price for use in calculating Percentage Rent.

(C) Increased Costs — Off-Site. The Reference Price shall also be increased to account for certain Off-Site costs relating to the disposal of Incinerator Residuals, as and to the extent provided in Article IX.

(D) Insurance Proceeds. All available insurance proceeds shall be applied to cover any increased costs or reduced Revenues prior to any determinations with respect to Rent made based upon occurrences described in this Section.

SECTION 15.6. ACCEPTANCE OF RELIEF CONSTITUTES RELEASE. In the event of an Uncontrollable Circumstance, the Lessor may provide the Lessee with a written offer of a combination of performance, price or schedule relief as provided in Sections 15.2, 15.3, 15.4 and 15.5, as appropriate. Within five days of receiving such offer, the Lessee shall provide the Lessor with written notice accepting or rejecting such offer. The Lessee's acceptance of the Lessor's offer of performance, price or schedule relief under Sections 15.2, 15.3, 15.4 and 15.5 shall be construed as a release of the Lessor by the Lessee (and all persons claiming by, through, or under the Lessee) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed. If the Lessee rejects the Lessor's offer, any dispute regarding the nature of relief to be granted for such event shall be resolved as provided in Sections 14.11 and 14.12; provided that the parties may agree to certain partial relief in response to such an Uncontrollable Circumstance, while retaining their respective positions with respect to the provision of other appropriate relief. During the pendency of any such dispute, any action by the Lessee in proceeding with performance of the Lessee Responsibilities or ICI Design/Build Work shall not be deemed "acceptance" of the Lessor's offer or a release of the Lessor for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event.

SECTION 15.7. INDEMNIFICATION BY THE LESSEE. The Lessee shall indemnify, defend and hold harmless the Lessor, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, a "Lessor Indemnitee"), from and against (and pay the full amount of) any and all Loss-and-Expense imposed as a result of any Legal Proceeding brought by a third party arising from (1) any unexcused failure by the Lessee to perform

its obligations under this Lease Agreement; or (2) the negligence or willful misconduct of the Lessee or any of its officers, directors, employees, representatives, agents or Subcontractors in connection with this Lease Agreement. The Lessee shall also indemnify the Lessor as and to the extent provided elsewhere in this Lease Agreement. The Lessee's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Lessee which is intended to respond to such events. The Lessee shall not, however, be required to reimburse or indemnify any Lessor Indemnitee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any Lessor Indemnitee or to the extent attributable to any Uncontrollable Circumstance. A Lessor Indemnitee shall promptly notify the Lessee of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Lessee shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the Lessor Indemnitees only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Lease Agreement.

SECTION 15.8. REIMBURSEMENT FOR ODOR LITIGATION. (A) Pre-ICI Acceptance. So long as the Lessee has complied and continues to comply with its obligations under Section 7.3(A) and prior to ICI Acceptance of the Initial Capital Improvements for odor control, if (1) any claim is asserted seeking to join the Lessee in the pending Odor Litigation, or (2) any other Legal Proceeding is initiated by any third party relating to odor conditions at the Incineration Facilities, the Lessor shall reimburse the Lessee, as a pass-through cost, for all Loss-and-Expense incurred by the Lessee as a result of such Odor Litigation or other Legal Proceedings.

(B) Post-ICI Acceptance. Subsequent to ICI Acceptance of the Initial Capital Improvements for odor control, if any claim is asserted seeking to join the Lessee in the pending Odor Litigation, the Lessor shall reimburse the Lessee, as a pass-through cost, for all Loss-and-Expense incurred by the Lessee as a result of such Odor Litigation.

## ARTICLE XVI

### SECURITY FOR PERFORMANCE

SECTION 16.1. GUARANTOR. (A) Guaranty Agreement. The Lessee shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term hereof substantially in the form attached hereto as a Transaction Form.

(B) Material Decline in Guarantor's Credit Standing. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if: (1) in the event that the Guarantor has long-term senior debt outstanding which has a credit rating by either Rating Service, such rating by either Rating Service is established at or is reduced below investment grade level; or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, the credit standing of the Guarantor declines to a level which is insufficient to support an investment grade credit rating by either Rating Service on long-term senior debt of the Guarantor, whether or not any such debt is outstanding. Each party shall promptly notify the other upon actual knowledge of any Material Decline in the Guarantor's Credit Standing, which notice may be given orally or in writing.

(C) Credit Enhancement. Upon receipt of notice from the Lessor as provided in subsection (B) of this Section or upon actual knowledge of the Lessee, whichever occurs first, as to the occurrence of a Material Decline in Guarantor's Credit Standing, the Lessee shall, within 30 days, provide credit enhancement of its obligations hereunder by any of the following: (1) providing and maintaining an Operations Surety Bond in accordance with Section 16.2(B) in an amount equal to the then current one-year annual Reference Price; (2) providing an Operations Collateral Bond in accordance with Section 16.2(C) in an amount equal to the then current one-year annual Reference Price; or (3) increasing the amount of the Letter of Credit required by Section 16.3 by an amount equal to the then-current one-year annual Reference Price. The Lessee shall maintain such credit enhancement until the Guarantor's credit standing has been restored to investment grade or an additional guarantee is provided by another firm or company acceptable to the Lessor whose credit rating would have avoided the occurrence of a Material Decline in the Guarantor's Credit Standing or whose credit rating by either Rating Service is investment grade level.

(D) Guarantor Annual Reports. The Lessee shall furnish the Lessor, within 120 days after the end of each Guarantor's fiscal year, consolidated balance sheets and income statement for the Guarantor attached to the audited year end financial statements reported upon by the Guarantor's independent public accountant. If applicable, the Lessee shall also furnish the Lessor with copies of the quarterly and annual reports and other public filings of the Guarantor filed with the Securities and Exchange Commission.

SECTION 16.2. OPERATIONS SURETY BOND AND OPERATIONS COLLATERAL BOND. (A) General. Upon and during the pendency of a Material Decline in

Guarantor's Credit Rating, if the Lessee chooses to provide an operations bond as the means of credit enhancement required under Section 16.1(C), such operations bond shall be in the form of an Operations Surety Bond meeting the requirements of subsection (B) of this Section or an Operations Collateral Bond meeting the requirements of subsection (C) of this Section.

(B) Operations Surety Bond. An Operations Surety Bond shall issued by a surety company: (1) approved by the Lessor having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) properly registered and licensed to conduct business in the State. Such Operations Surety Bond shall be issued in the name of the Lessor, shall be in the amount of the then-current one-year annual Reference Price, shall be continuously renewed, extended or replaced so long as credit enhancement is required under Section 16.1(C), and shall be issued in the form set forth in the Transaction Forms.

(1) Monitoring of Sureties. If the Lessee provides an Operations Surety Bond under the terms of this subsection (B), the Lessee shall be responsible for monitoring the financial condition of any surety company issuing bonds under this Lease Agreement and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section.

(2) Replacement Surety. In the event the rating of any issuing surety company falls below such minimum level, the Lessee shall promptly notify the Lessor of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all of above requirements, or an alternative form of credit enhancement as specified in Section 16.1(C).

(C) Operations Collateral Bond. An Operations Collateral Bond shall be secured by one or more of the following types of collateral acceptable to the Lessor: (1) cash; (2) certified checks, cashier's checks, or treasurer's checks issued, drawn or certified by a State-chartered or national financial institution chartered or authorized to conduct the business of banking in the United States and examined by a Federal agency; (3) automatically renewable and assignable certificates of deposit from a State-chartered or national financial institution chartered or authorized to conduct the business of banking in the United States and examined by a Federal agency; (4) negotiable bonds of the United States Government, the State, or a municipality of the State. Such Operations Collateral Bond shall be issued in the name of the Lessor, shall be in the amount of the then current one-year annual Reference Price, shall be continuously renewed, extended or replaced so long as credit enhancement is required under the provisions of Section 16.1(C), and shall be issued in the form set forth in the Transaction Forms. The collateral pledged or assigned under such bond shall be in the name of the Lessee, and shall be pledged and assigned to the Lessor clear of claims or rights. Such pledge or assignment will vest in the Lessor

a property interest in the collateral which will remain until release under the terms of the bond, and will not be affected by the bankruptcy, insolvency or other financial incapacity of the Lessee.

SECTION 16.3. LETTER OF CREDIT. (A) Terms and Purpose. On or before the Commencement Date, the Lessee shall cause the Guarantor to provide further security for the performance of its obligations hereunder during the Leasehold Period through an irrevocable direct pay letter of credit issued by a United States bank whose long-term debt is rated "A" or better by either Rating Service and which maintains a banking office in the State (the "Letter of Credit"). The Letter of Credit shall be in the stated amount of \$1,000,000 (adjusted each Contract Year based on the Adjustment Factor), shall be for a term of one year, shall be continuously renewed, extended or replaced to the then-applicable full stated amount so that it remains in effect until 180 days after the Termination Date, and shall be issued substantially in the form set forth in the Transaction Forms. The Letter of Credit shall serve as security for the performance of the Lessee's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the Lessor may be entitled for any Lessee Event of Default hereunder.

(B) Drawings for Non-Renewal or Bankruptcy. The Letter of Credit shall authorize the Lessor to draw the full stated amount thereof (1) in the event that any required renewal, extension or replacement thereof is not made earlier than the date which is 30 days prior to its expiration date, or (2) upon certain events of bankruptcy or insolvency of the Lessee or the Guarantor described in the drawing certificate attached thereto. The proceeds of any such drawings shall be held by the Lessor as cash collateral to secure the performance of the Leasehold Obligations and, in the event of a material breach of this Lease Agreement following any such drawing, may be retained by the Lessor in payment of damages resulting therefrom.

(C) Drawings for Material Breach. The Letter of Credit also shall authorize the Lessor to draw an amount representing the estimated damages suffered by the Lessor in the event of a material breach of this Lease Agreement by the Lessee. It shall be a condition to the right of the Lessor to draw on the Letter of Credit for a material breach that: (1) the Mayor has given the Guarantor written notice of a material breach of this Lease Agreement, whether or not such breach constitutes an Event of Default, and attached a copy of his or her good faith assessment of the damages the Lessor has suffered as a result of such breach, and (2) the Lessee has had an opportunity at a meeting scheduled by the Mayor to be held not earlier than 15 days nor later than 30 days following delivery of such notice, to present to the Mayor evidence disputing the Lessor's assertion of material breach or assessment of damages. Notice to the Lessee of a material breach hereof shall be given concurrently with the notice to the Guarantor, except that following any event of voluntary bankruptcy or involuntary bankruptcy by the Lessee as described in Section 14.2, no such notice shall be required to be given to the Lessee, nor shall the giving of such notice be a condition to the Lessor's drawing rights under the Letter of Credit pursuant to this subsection.

(D) Effect of Final Determination of Damages. In the event that subsequent to any drawing on the Letter of Credit it is determined by any court of competent jurisdiction in a

final non-appealable decision that such drawing to any extent was not permitted hereunder, the Lessor shall pay the amount wrongfully drawn to the Lessee together with interest thereon at the Overdue Rate calculated from the date of the drawing to the date of payment to the Lessee.

SECTION 16.4. COST OF PROVIDING SECURITY FOR PERFORMANCE.

(A) Lessee Responsibility. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Lessee's obligations hereunder shall be borne by the Lessee without reimbursement from the Lessor.

(B) Release of Security. The Lessor shall have the right at any time to release the Lessee from its obligation to provide the Letter of Credit required under this Article. Upon any such release and for such time as the Lessor does not reinstate the Letter of Credit requirement hereunder, the Lessee shall increase the Base Rent in an amount equal to \$3,250 (as adjusted annually by the Adjustment Factor) for each Contract Year the Letter of Credit has been released. Notwithstanding the Lessor's having elected to release the Letter of Credit hereunder, the Lessor may direct the Lessee at any time thereafter to reinstate such Letter of Credit. In such event, the Lessee shall within 15 days following such notice of reinstatement furnish the Lessor with the reinstated Letter of Credit.

## ARTICLE XVII

### MISCELLANEOUS PROVISIONS

SECTION 17.1. RELATIONSHIP OF THE PARTIES. The Lessee is an independent contractor of the Lessor and the relationship between the parties shall be limited to performance of this Lease Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Lease Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party, except as explicitly provided hereunder. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Lease Agreement or the performance thereof.

SECTION 17.2. PROPERTY RIGHTS. (A) Protection from Infringement. The Lessee shall pay all royalties and license fees payable in connection with the performance of the ICI Design/Build Work and the Lessee Responsibilities. The Lessee shall protect, indemnify and hold harmless the Lessor, and any of the Lessor Indemnitees, from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of the ICI Design/Build Work and the Lessee Responsibilities, or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The Lessee shall not, however, be required to reimburse or indemnify any person for any Loss-and-Expense to the extent due to the negligence or willful conduct of such person. The provisions of this Section shall survive termination of this Lease Agreement.

(B) Intellectual Property Developed by the Lessee. All intellectual property developed by the Lessee at or through the use of the Incineration Facilities or otherwise in connection with the performance of the Leasehold Obligations shall be owned by the Lessee subject to the terms and conditions of this Section, and is hereby licensed to the Lessor on a nonexclusive cost free, perpetual basis for use by the Lessor and any successor operator of the Incineration Facilities (but, with respect to the Lessor or any successor operator, only in connection with the Incineration Facilities). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents.

SECTION 17.3. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue, charges or

reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 17.4. COST SUBSTANTIATION. (A) Substantiating Non-Fixed Costs. The Rent and the Fixed ICI Design/Build Price have been negotiated by the parties and fixed by the terms of this Lease Agreement and are not subject to Cost Substantiation as provided in subsection (B) of this Section except to the extent otherwise specifically set forth in this Lease Agreement. Any other cost proposed or incurred by the Lessee which is directly or indirectly chargeable to the Lessor in whole or in part hereunder (including without limitation costs related to emergency actions, cost-plus work Capital Modifications, Lessee costs of Incineration Facilities operation with respect to a Dramatic Market Event, additional Lessee Responsibilities, and other additional work necessitated or additional costs to be borne on account of Uncontrollable Circumstances, Lessor Fault or Lessor direction) shall be the fair market price for the good or service provided, or, if there is no market, shall be a commercially reasonable price. The Lessee shall provide certified Cost Substantiation for all such other costs invoiced to the Lessor hereunder except lump sum payments agreed to by the parties in advance of undertaking the work.

(B) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall be signed by a senior management officer of the Lessee, shall state the amount of such cost and the provisions of this Lease Agreement under which such cost is properly chargeable to the Lessor, shall describe the competitive or other process utilized by the Lessee to obtain a fair market price, and shall state that such cost is a fair market price for the service or materials to be supplied (or, if there is no market, that such cost is commercially reasonable) and that such services and materials are reasonably required pursuant to this Lease Agreement. The certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the Lessor and shall include reasonably detailed information concerning: (1) all Subcontracts; (2) the amount and character of materials and services furnished, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes; (3) a statement of the equipment used and any rental payable therefor; (4) Lessee and Subcontractor employee hours, duties, wages, salaries, benefits and assessments; and (5) Lessee and Subcontractor profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Lessee's entitlement to reimbursement of Cost Substantiated costs of the Lessee shall be subject to the limitations set forth in this Section.

(C) Technical Services. For costs proposed or incurred by the Lessee that are subject to Cost Substantiation, Lessee personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on

projects of similar size and scope to the ICI Design/Build Work or Lessee Responsibilities. The Lessee shall use commercially reasonable efforts to use available Lessee personnel for additional work hereunder before using Subcontractors.

(D) Mark-Up. The Lessee will be entitled to a mark-up of 10% for a combination of overhead, risk, profit and contingency on any goods or services the costs of which are subject to Cost Substantiation hereunder. No mark-up will be added to the Lessee's costs for lodging and meals or travel. Construction and operation Subcontractors similarly will be entitled to such mark ups with respect to its personnel costs but no mark ups for costs for their lodging and meals or travel.

(E) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the Lessor with the request for reimbursement of such costs.

SECTION 17.5. SUBCONTRACTORS. (A) Use Restricted. The Lessee shall operate the Incineration Facilities with its own employees. Subcontractors may be used to perform other Leasehold Obligations, subject to the Lessor's right of approval set forth in subsection (B) of this Section. The Lessee shall as part of its annual operations report provide a summary of all Subcontractors used and located in the Borough of Naugatuck and the approximate value paid to such Subcontractors.

(B) Limited Lessor Review and Approval of Permitted Subcontractors. The Lessor shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Lessee is permitted to engage under subsection (A) of this Section for Leasehold Obligations relating to hauling of Trucked-In Materials, except: (1) Affiliates of the Lessee; (2) Governmental Bodies; and (3) approved Subcontractors listed on Appendix 18. The Lessee shall furnish the Lessor written notice of its intention to engage such Subcontractors, together with all information reasonably requested by the Lessor pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, State, Borough or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the Borough or the State. In the event the Lessor fails to respond to any such notice of intention within 15 days of receipt thereof, the Lessor shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the Lessor of any proposed Subcontractor shall not create any liability of the Lessor to the Lessee, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or Borough contracting for any services similar in scope to the Lessee Responsibilities or ICI Design/Build Work.

(C) Subcontract Terms and Subcontractor Actions. The Lessee shall retain full responsibility to the Lessor under this Lease Agreement for all matters related to the Leasehold Obligations notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the Lessee in connection with the provision of the Leasehold Obligations shall relieve the Lessee from its obligations hereunder to perform the Leasehold Obligations. The Lessee shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Lessee or inflicted on the Lessee or a Subcontractor by the actions of another Subcontractor.

(D) Subcontractor Claims. The Lessee shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the Lessor for labor, services, materials or equipment furnished for the Leasehold Obligations. The Lessee acknowledges that its indemnity obligations under Section 15.7 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Leasehold Obligations.

(E) ICI Design Contract. In the event the Lessee elects to hire a third party to design the Initial Capital Improvements, any ICI Design Contract shall be subject to review and comment by the Lessor for consistency with the applicable requirements of this Lease Agreement, and shall not contain any provision which is material and adverse to the Lessor. No such review or comment shall amend, alter or affect this Lease Agreement or the Lessee's obligations hereunder in any manner, nor shall the Lessor incur any liability or expense as a result thereof.

(F) Construction Subcontractor. Not later than 30 days prior to the Commencement Date the Lessee shall enter into a construction contract with Carlin Contracting Company, Inc. for the Initial Capital Improvements, or, subject to the approval of the Lessor not to be unreasonably withheld, another general construction contractor reasonably experienced in constructing industrial and utility projects similar to the Initial Capital Improvements.

(G) Notice to Lessor of Amendments, Breaches and Defaults. The Lessee shall give prior written notice to the Lessor of any proposed and final amendments to ICI Design Subcontract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the Lessor hereunder without the Lessor's prior written consent. The Lessee shall notify the Lessor promptly of any material breach or event of default occurring under the ICI Design Subcontract and the probable effect on the ICI Design/Build Work or the Lessee Responsibilities. The Lessee shall keep the Lessor apprised of the course of the dispute and shall advise the Lessor of its ultimate resolution.

(H) Assignability. All Subcontracts entered into by the Lessee with respect to the Incineration Facilities shall be assignable to the Lessor, solely at the Lessor's election and without cost or penalty, upon the expiration or termination of this Lease Agreement.

SECTION 17.6. ACTIONS OF THE LESSOR IN ITS GOVERNMENTAL CAPACITY. (A) Rights as Government Not Limited. Nothing in this Lease Agreement shall be interpreted as limiting the rights and obligations of the Lessor under Applicable Law in its governmental or regulatory capacity, (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Lessee to bring any action against the Lessor, not based on this Lease Agreement, arising out of any act or omission of the Lessor in its governmental or regulatory capacity.

(B) No Lessor Obligation to Issue Governmental Approvals. The Lessor retains all issuance and approval rights it has under Applicable Law with respect to any Governmental Approval required with respect to the Incineration Facilities, the ICI Design/Build Work or the Lessee Responsibilities, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Lease Agreement. The Lessor shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval; provided, however, the Lessee shall be afforded schedule and price relief for delays in the Lessor's issuance of any Governmental Approval necessary for the ICI Design/Build Work as provided in Section 11.9.

SECTION 17.7. ASSIGNMENT. (A) By the Lessee. The Lessee shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Lease Agreement, its right to execute the same, or its right, title or interest in all or any part of this Lease Agreement or any monies due hereunder whatsoever prior to their payment to the Lessee, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the Lessor. Any such approval given in one instance shall not relieve the Lessee of its obligation to obtain the prior written approval of the Lessor to any further assignment. Any assignment of this Lease Agreement which is approved by the Lessor shall require the assignee of the Lessee to assume the performance of and observe all obligations, representations and warranties of the Lessee under this Lease Agreement, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the Lessee in any way from any of its obligations under Lease Agreement unless such approval specifically provides otherwise.

(B) By the Lessor. The Lessor may not assign its rights or obligations under this Lease Agreement without the prior written consent of the Lessee.

SECTION 17.8. COMPLIANCE WITH MATERIAL AGREEMENTS. The Lessee shall comply with its obligations under agreements of the Lessee which are material to the performance of its obligations under this Lease Agreement. The Lessor shall comply with its obligations under agreements of the Lessor which are material to the performance of its obligations hereunder.

SECTION 17.9. BINDING EFFECT. This Lease Agreement shall bind and inure to the benefit of and shall be binding upon the Lessor and the Lessee and any assignee acquiring an interest hereunder consistent with Section 17.7.

SECTION 17.10. AMENDMENT AND WAIVER. This Lease Agreement may not be amended except by a written amendment signed by the parties. Any of the terms, covenants, and conditions of this Lease Agreement may be waived at any time by the party entitled to the benefit of such term, covenant, or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 17.11. NO DISCRIMINATION. The Lessee shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals, handicap. The Lessee will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, without limitation: (1) recruitment and recruitment advertising; (2) layoff or termination; (3) upgrading, demotion, transfer, rates of pay or other form of compensation; and (4) selection for training, including apprenticeship. The Lessee shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired to perform work related to the Incineration Facilities and shall take all reasonable actions necessary to enforce such provisions. The Lessee will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SECTION 17.12. NOTICES. (A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Lease Agreement shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Lessee Notice Address. Notices required to be given to the Lessee shall be addressed as follows:

Naugatuck Environmental Technologies, LLC  
500 Cherry Street  
Naugatuck, Connecticut 06770  
Attn: Donald R. Rodgers, Jr., President

With a copy to:

U.S. Filter Operating Services, Inc.  
14950 Heathrow Forest Parkway  
Suite 200  
Houston, Texas 77032  
Attn: General Counsel

(C) Lessor Notice Address. Notices required to be given to the Lessor shall be addressed as follows:

Borough of Naugatuck  
Town Hall  
29 Church Street  
Naugatuck, Connecticut 06770  
Attn: Mayor

With copies to:

Kevin H. McSherry  
Borough Attorney  
38 Fairview Avenue  
Naugatuck, Connecticut 06770

Alternative Resources, Inc.  
9 Pond Lane  
Concord, Massachusetts 01742  
Attn: President

With a courtesy copy to:

N. Warren Hess, III  
Attorney at Law  
42 Terrace Avenue  
P.O. Box 47  
Naugatuck, Connecticut 06770

SECTION 17.13. NOTICE OF LITIGATION. In the event the Lessee or Lessor receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Incineration Facilities, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings.

SECTION 17.14. FURTHER ASSURANCES. The Lessor and Lessee each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Lease Agreement. The Lessor and the Lessee, in order to carry out this Lease Agreement, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Lease Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives as of the day and year first above written.

[Borough Seal]

BOROUGH OF NAUGATUCK, CONNECTICUT,  
as Lessor

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Joan B. Taf  
Mayor

THE WATER POLLUTION CONTROL AUTHORITY  
OF THE BOROUGH OF NAUGATUCK, as Lessor

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Joan B. Taf  
Mayor

Approved as to form:

\_\_\_\_\_  
Kevin H. McSherry  
Borough Attorney

[Lessee Seal]

NAUGATUCK ENVIRONMENTAL TECHNOLOGIES,  
LLC, as Lessee

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Donald R. Rodgers, Jr.  
President

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3. Design Capacity and Capabilities
4. ICI Design and Construction Requirements
5. ICI Design/Build Review Procedures
6. ICI Milestone Payments and Maximum Drawdown Schedules
7. ICI Start-Up and ICI Acceptance Test Procedures and Standards
8. Construction Governmental Approvals
9. Operating Governmental Approvals (including Excluded Conditions, Pending Legal and Proceedings, and Required Approvals)
10. Insurance Requirements
11. [Intentionally Omitted]
12. General Staffing Requirements
13. Transition Plan
14. Operation and Maintenance Requirements
15. Asset Evaluation Protocol
16. Odor Control Plan
17. Existing Contracts
18. Approved Subcontractors
19. Exit Transition Plan
20. Trucked-In Materials Protocol
21. Example Base Rent and Percentage Rent Calculations
22. Example Convenience Termination Fee Calculations
23. Example Private Financing Plan
24. Base Rent Schedule
25. Reference Price Adjustment Schedule

## TRANSACTION FORMS

- A. Form of Guaranty Agreement
- B. Form of Letter of Credit
- C. Form of Operations Surety Bond
- D. Form of Operations Collateral Bond

## REFERENCE DOCUMENTS

- A. National Pollutant Discharge Elimination System (NPDES) Permit No. CT0100641, effective as of August 7, 2001.
- B. National Pollutant Discharge Elimination System (NPDES) Sewage Sludge Incinerator Permit No. CTL000002, effective as of November 14, 1994.
- C. Consent Order No. 1626, dated February 5, 2001, between the Borough of Naugatuck and the State of Connecticut Department of Environment Protection.
- D. Title V Permit No. 109-0059-TV issued on November 27, 2000.
- E. DEP Permit to Operate No. 109-0001 issued on August 1, 1985.
- F. DEP Permit to Operate No. 109-0002 issued on August 1, 1985.
- G. Pretreatment Permit No. SP0000065, dated January 30, 2001.
- H. Wastewater Facilities Report (Draft Report), dated September 1991, prepared by Stearns & Wheler for the Borough of Naugatuck.
- I. Discharge and Access Agreement, dated April 12, 2001, between the Borough of Naugatuck and Crompton Manufacturing Company, Inc.
- J. Shared Services Agreement, dated October 25, 2001, between the U.S. Filter Operating Services, Inc. and Naugatuck Environmental Technologies LLC.