



Veazie Town Council

Special Meeting

**March 22nd, 2016
6:00pm**

AGENDA

- ITEM 1:** Call to Order
- ITEM 2:** Secretary to do the Roll Call
- ITEM 3:** Pledge of Allegiance
- ITEM 4:** Comments from the Public

New Business:

- ITEM 5:** PERC Presentation
- ITEM 6:** Comments from the Public
- ITEM 7:** Adjournment

Tammy Perry
5 Prouty Dr
947-9624

Chris Bagley
16 Silver Ridge
cbagley@veazie.net

Robert Rice
1116 Buck Hill Dr
942-3064

Karen Walker
1002 Mutton Ln
947-0458

David King
1081 Main St
942-2376

Town of Veazie

To: Town Council Members

From: Mark Leonard

Date: 03-17-2016

Ref: PERC Presentation

Attached you will find documentation from Tamara Haley, Executive Assistant of the USA Energy Group in preparation for the PERC presentation that will occur during the special meeting on March 22, 2018 at 6:00pm. The Town's current contract with PERC ends in 2018. This presentation will assist the Council in making the decision of who the Town will use for receiving solid waste.

The attached documentation is for your review:

1. Waste Agreement Memo dated March 2016: This memo outlines the changes to the contract
2. PERC Waste Disposal Agreement dated March 2016
3. Schedule A March 2016 (this is the pricing document for the Waste Disposal Agreement)
4. Perkins Thompson Comments (the review of the MRC contract and the PERC contract)

Please review this material and forward any questions you may have to me via email before the meeting. I will gather the information needed to answer such questions and will provide that information at the meeting.

I do have a considerable amount of material covering this subject and I am willing to meet prior to the meeting to discuss this information. Additionally, a large amount of information can be found online with a simple search for PERC, Municipal Review Committee (MRC) or Fiberight.

Future meeting(s) will be held so competing entities can provide information on their product/services, but at the time of this writing the meeting with them has not been scheduled.



Message

Fri, Mar 11, 2016 4:12 PM

From: Tamara Haley <thaley@usaegroup.com>

Bcc: **Mark Leonard**

Subject: PERC Contract

Attachments:

Attach0.html / Uploaded File	8K
Waste Agreement Memo March 2016.pdf / Uploaded File	50K
PERC Waste Disposal Agreement March 2016.pdf / Uploaded File	69K
Schedule A March 2014.pdf / Uploaded File	42K
Perkins Thompson Comments.pdf / Uploaded File	261K

PERC Communities,

I've been on the road in Maine meeting with many of you and hope that those meetings have been as informative for you as they have been for me. You are wrestling with a very complex issue for your community that has long term implications and I hope that we have been helpful in providing you with sufficient information to make that decision. At our meetings we have talked about having our waste disposal agreement under review due to comments and questions raised by our communities. We took your comments to heart and re-drafted our contract to address and clarify the issues that were raised.

Attached for your review is the following:

1. Waste Agreement Memo March 2016 – this memo outlines the changes to the contract, it also says that there are sample warrants included. The warrants are included in the hardcopy mailing not the electronic version.
2. PERC Waste Disposal Agreement March 2016
3. Schedule A March 2016 (this is the pricing document for the Waste Disposal Agreement)
4. Perkins Thompson Comments (the review of the MRC contract and the PERC contract)

Thank you again with your valuable input.

If you need additional information or you have not yet had a chance to have us meet with your community please send me an email or give me a call and we can get that scheduled.

Kind Regards,
Tamara Haley

Tamara Haley
Executive Assistant
USA Energy Group, LLC
100 N. 6th St, 300A
Minneapolis, MN 55403

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612-770-6864 (cell)

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TERESA M. CLOUTIER
of counsel

MEMORANDUM

TO: Leadership of All Municipal Customers of Penobscot Energy
Recovery Company (PERC)

FROM: Craig H. Nelson, Esq.

RE: Revised Waste Disposal Agreement

DATE: March 11, 2016

On behalf of the owners and management of PERC, I am pleased to enclose with this memo a copy of a revised Waste Disposal Agreement. These revisions are the result of numerous meetings which PERC has conducted over the last several months with many different communities, as well as from a legal review that was performed by the attorney for the Town of Hermon.

These changes reflect various comments, requests for clarifications, and requests for revisions to the original agreement that was sent out to all of the communities by PERC last summer. The enclosed agreement is intended as a complete replacement for that agreement.

Also enclosed with this memo is a copy of the most recent summary and comments by Attorney Jim Katsiaficas of the firm Perkins Thompson who reviewed the enclosed Waste Disposal Agreement as counsel for the Town of Hermon and a group of other PERC communities that are working with that town. Hermon's Town Manager, Roger Raymond, has given PERC permission to share this legal review with all other customer communities.

PERC and its advisors appreciate the comments, concerns and suggestions that have been made, and we believe that these changes and clarifications have made this a better agreement. The following is a summary of the revisions that have been made to the original Waste Disposal Agreement:

- The revised agreement makes it clear in several places that your community will only be expected to delivery acceptable solid waste which is under the control of your community with the word "control" being defined.

- A so-called drop dead date and minimum amount of tonnage has been added to the agreement which indicates that PERC is prepared to go forward with the continued operation of the facility under this Agreement if it obtains commitments for delivery and receipt of acceptable solid waste from commercial and municipal sources when those commitments equal a minimum of 180,000 tons per year by that date.
- In the indemnification provision of the agreement, since all of the parties to the agreement with PERC are municipal governments, a provision has been added to indicate that a municipality signing this agreement will not be waiving its statutory immunities from liability under Maine law.
- Schedule A to the agreement has been amended to make it clear that PERC supports and agrees with any efforts which a municipality may undertake to reduce the amount of municipal solid waste through such means as recycling, composting, and other similar processes. This provision also indicates that any such efforts on the part of a municipality will not constitute a violation of the agreement and will not result in any penalty being assessed against that municipality.
- Schedule A, under the section dealing with future changes and adjustments to the tipping fee, has been rewritten to make it clear exactly how adjustments to the tipping fee will occur with the use of an actual example of how that adjustment will work in future years based upon the CPI Index. This rewritten section of Schedule A makes it clear that adjustments will only be made once in every twelve month period during the term of the new agreement.
- The last section of Schedule A deals with the disposition of bypass waste. Language has been added to make it clear that, in the event of a temporary shutdown of PERC or a permanent closure of PERC, PERC has contracted with Casella Waste Management to provide for the redirection of waste to the Juniper Ridge Landfill or, in the event of a permanent closure or the inability of Juniper Ridge to receive that waste, Casella has committed to receive the bypass municipal waste at one or more other landfills operated by Casella. This provision indicates that in the event of a temporary bypass because of a temporary closure of PERC, the tipping fee for the bypass will be identical to the then existing tipping fee under this agreement with PERC and, in the event of a permanent bypass because of the permanent closure of PERC, the tipping fee is set at \$60.00 per ton. That fee is specified in a contract between PERC and Casella Waste Management dated December 15, 2016 subject to annual adjustments based upon the CPI. A copy of that standby agreement will also be provided to each PERC customer municipality.

Finally, in response to a number of recent inquiries and requests, we have drafted several suggested town meeting warrant articles and town council authorizing resolutions which would serve to approve your community entering into the enclosed Waste Disposal Agreement and would authorize your municipal officials to sign that agreement on behalf of your community.

MARCH 11, 2016

As always, PERC and its advisors stand ready to respond to any and all questions, comments, and requests that you may have concerning the enclosed agreement and the legal review comments concerning that agreement. In the event that you would like to more easily identify the above-summarized revisions to the earlier agreement that was sent to you last summer, we would be happy to provide you with a redlined copy of the enclosed agreement. Please contact me directly if you would like to see the redlined version.

CHN/als
Enclosure

WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and entered into as of the ____ day of _____, 2016, by and between PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP, a Maine limited partnership, and _____, a _____.

RECITALS:

WHEREAS, the Municipality needs a comprehensive, environmentally sound, reliable, long-term management strategy for handling the present and projected volumes of non-hazardous Solid Waste generated within the Municipality;

WHEREAS, it is the policy of the State of Maine, as directed through the State of Maine's adoption of the Solid Waste Hierarchy, to reduce the volume of Solid Waste going into landfills, to recycle Solid Waste whenever possible, and to maximize resource recovery;

WHEREAS, improved waste management within the region of which the Municipality is a part will serve the goals of (1) recovering energy from waste; (2) reducing the indiscriminate disposal of waste; (3) coordinating Solid Waste management among political subdivisions; and (4) developing and maintaining financially secure waste facilities;

WHEREAS, the State of Maine requires that each municipality provide for the disposal of domestic and commercial non-hazardous Solid Waste generated within such municipality;

WHEREAS, Solid Waste issues present communities with serious long-term financial, management, governmental and technical problems in the disposal of Solid Waste;

WHEREAS, the effective management of Solid Waste is crucial to the continued financial well-being of the Municipality and the region of which it is a part;

WHEREAS, PERC owns and operates the PERC Facility that recovers certain recyclable materials and otherwise converts Solid Waste into energy in the Town of Orrington, Penobscot County, Maine;

WHEREAS, the Municipality is willing to commit to delivering to PERC and the PERC Facility the post-recycled Solid Waste generated within the Municipality under its direct control so as to assure the ongoing supply of Solid Waste to the PERC Facility for a fixed period of time as defined below; and

WHEREAS, this Agreement will only become effective upon the satisfaction of certain requirements as provided in Section 5 below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises of the parties hereto, and the mutual benefits to be gained by the performance hereof, the parties hereto agree as follows:

1.) Definitions. The terms defined in this Section 1 (except as may be otherwise expressly provided in this Agreement or unless the context otherwise requires) shall, for all purposes of this Agreement, have the following respective meanings:

(a) Acceptable Waste. The term "Acceptable Waste" shall mean all combustible Solid Waste that the Municipality shall deliver, or cause to be delivered, to the PERC Facility for disposal as may be limited by federal, state, and local laws, ordinances, permits, regulations, approvals and restrictions as they may apply to the receiving facility except for the following:

- (1) demolition or construction debris from building and roadway projects or locations;
- (2) liquid wastes or sludges;
- (3) abandoned or junk vehicles;
- (4) Unacceptable Waste;
- (5) dead animals or portions thereof or other pathological wastes;
- (6) water treatment facility residues;
- (7) tree stumps;
- (8) tannery sludge;
- (9) waste oil;
- (10) discarded white goods such as freezers, refrigerators, washing machines, etc.;
- (11) electronic waste including, without limitation, television sets, computers, computer monitors, and computer accessories) all as determined by PERC from time-to-time;
- (12) Acceptable Waste that, in the reasonable judgment of PERC and based solely upon a visual inspection of the Acceptable Waste, has a BTU content of not less than four thousand (4,000) BTUs per pound unless the Acceptable Waste fails to meet the aforementioned BTU minimum requirement solely because of the moisture content of such Acceptable Waste and such moisture content is due primarily to abnormally wet weather conditions; or

- (13) Solid Waste which, in the reasonable judgment of PERC and based upon a visual inspection at the time of deliver, could, if processed, result in (a) damage to the PERC Facility, (b) the interruption of normal operations of the PERC Facility, or (c) PERC incurring extraordinary processing or maintenance costs.
- (b) Agreement. The term “Agreement” shall mean this Waste Disposal Agreement as amended from time to time and any successors hereto.
- (c) Control. The term “Control” shall mean, for the purposes of the delivery of Acceptable Solid Waste by the Municipality to the PERC Facility, Acceptable Waste that is collected and delivered directly by the Municipality, its employees or agents, or by a hauler under contract with, and at the direction of, the Municipality.
- (d) Municipality. The term “Municipality” shall mean _____.
- (e) PERC. The term “PERC” shall mean Penobscot Energy Recovery Company, Limited Partnership, a Maine limited partnership.
- (f) PERC Facility. The term “PERC Facility” shall mean that certain waste-to-energy facility owned by PERC and located on Industrial Way in Orrington, Maine.
- (g) Solid Waste. The term “Solid Waste” shall mean non-hazardous solid materials with insufficient liquid content to be free-flowing which are of no value to the immediate source from which they emanate as evidenced by their disposal, discard, or abandonment without consideration in return including, but not limited to, ordinary household, municipal, institutional, and commercial wastes, all as may be defined or limited by applicable federal, state and local laws, ordinances, permits, regulations, licenses, approvals, and restrictions.
- (h) Solid Waste Hierarchy. The term “Solid Waste Hierarchy” shall mean the enunciated state government priorities with respect to the generation and disposal of solid waste within the State of Maine as set forth in 38 M.R.S. §1302 or any successor thereto.
- (i) Term. The term “Term” shall have the meaning specified in Section 6.
- (j) Tipping Fee. The term “Tipping Fee” shall have the meaning specified in Section 3(c) below.
- (k) Transportation Vehicles. The term “Transportation Vehicles” shall mean motorized vehicles necessary for the Municipality to transport (or cause to be transported) the Acceptable Waste to the PERC Facility including, without limitation, tractors, trailers, and “packer” trucks (front load and rear load), all of which must be self-unloading.
- (l) Unacceptable Waste. The term “Unacceptable Waste” shall mean all Solid Waste that is not Acceptable Waste including, without limitation, (a) any material that by reason of its composition, characteristics or quantity is ineligible for disposal at the facility in question pursuant to any applicable federal, state or local laws, rules, regulations, or

permits; (b) hazardous, toxic, radioactive, hospital or laboratory wastes or substances; or (c) any other material that the receiving party reasonably concludes would require special handling outside the normal course or presents an endangerment to its facility, the public health or safety, or the environment.

2.) Representations and Warranties. Each party hereto represents and warrants to the others that:

(a) it is duly organized, validly existing, and qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party;

(d) the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws (or other constituent documents) of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which such party is bound;

(e) it and any subcontractors have all necessary permits, licenses and other forms of documentation, and its personnel have received all necessary training including, but not limited to, health and safety training, required to perform its respective obligations hereunder; and

(f) These warranties shall survive the expiration or earlier termination of this Agreement.

3.) Municipality Delivery Obligations. During the Term, the Municipality agrees to the following:

(a) The Municipality shall deliver all Acceptable Waste under its Control that is generated within the Municipality to the PERC Facility. The Municipality further agrees that it will not deliver Acceptable Waste collected by the Municipality to any landfill, or other solid waste disposal facility, except in instances where it first obtains prior written consent from PERC to do so. Furthermore, in the event that the Municipality uses a transfer station (or any other type of unloading, loading or transloading facility), Municipality acknowledges that Municipality is obligated to ensure that any Solid Waste under its Control delivered to such transfer station shall be delivered to the PERC Facility. The Municipality agrees to use its best efforts to avoid delivering any Unacceptable Waste to the PERC Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste.

(b) The Municipality acknowledges and agrees that the Municipality (or a hauler or other designated representative hired by the Municipality) may be denied entrance to the

PERC Facility (or to a transfer station serving the PERC Facility) by PERC if Solid Waste is delivered at any time other than the PERC Facility's (or transfer station's) standard receiving hours or if the Municipality has not paid the Tipping Fee, or if PERC has a reasonable basis to believe that a vehicle contains Unacceptable Waste.

(c) The Municipality shall pay to PERC the tipping fee (the "Tipping Fee") for each ton of Solid Waste delivered by the Municipality to the PERC Facility as described on Schedule A which is attached hereto and incorporated herein by reference.

4.) PERC's Obligations. During the Term, PERC agrees to the following:

(a) PERC will accept all of the Acceptable Waste delivered by the Municipality (or by a hauler under contract with, and at the direction of, the Municipality) to the PERC Facility.

(b) That PERC currently has, and shall have throughout the Term, the ability and capacity to accept the Acceptable Waste.

(c) Deliveries by the Municipality to the PERC Facility of the Acceptable Waste shall be recorded separately. Unless otherwise agreed to by the parties hereto, each incoming Transportation Vehicle shall be labeled with a unique vehicle number and hauler code. Each incoming Transportation Vehicle shall be individually weighed at the time of arrival at the PERC Facility to determine the incoming Transportation Vehicle's gross truck weight. After being unloaded, but prior to departing from the PERC Facility, the incoming Transportation Vehicle shall be weighed empty at the PERC Facility to determine its tare weight (to the nearest hundredth of a ton).

(d) A multi-part weigh ticket shall be produced for each such incoming Transportation Vehicle which weigh ticket shall show (1) the incoming Transportation Vehicle's tare and gross truck weights, (2) the number of tons of Acceptable Waste being delivered to the PERC Facility by the incoming Transportation Vehicle (to the nearest hundredth of a ton), (3) the time of the delivery, and (4) the incoming Transportation Vehicle's vehicle identification number. The weigh ticket shall be signed by PERC's scale house operator and the driver of the incoming Transportation Vehicle. PERC and the driver shall each receive a copy of the weigh ticket.

(e) PERC shall retain all weigh tickets for a period of not less than three (3) years. The weight record shall be used by PERC as the basis for invoicing the Municipality. The Municipality (or any other person acting as the agent for, and at the direction of the Municipality) shall have the right to inspect PERC's weight records of Acceptable Waste deliveries upon reasonable written request. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with PERC's business operations.

(f) PERC shall submit a weekly invoice to the Municipality indicating (i) the number of tons of Acceptable Waste disposed of at the PERC Facility during the prior week; and (ii) the fees due therefor pursuant to Section 3. All such invoices shall be due and payable by the Municipality within thirty (30) days from the date of the invoice.

5.) Necessity of Delivery Obligations. Both the Municipality and PERC acknowledge and agree that this Agreement is being signed so that (a) the Municipality can be assured of continuing the Municipality's comprehensive and environmentally sound disposal of its non-hazardous Solid Waste generated within the Municipality and that is under its direct Control; and (b) PERC can be assured of a steady supply of post-recycled Solid Waste from the Municipality to the PERC Facility for a fixed period. After signing this Agreement, both the Municipality and PERC acknowledge and agree that PERC needs to receive commitments for the delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses so as to assure the continued operation of the PERC Facility. PERC and the Municipality acknowledge and agree that the above-described necessary commitments for delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses to assure the continued operation of the PERC Facility must occur on or before February 18, 2017 and must equal, in the aggregate, one hundred eighty thousand (180,000) tons per year.

6.) Term. The Term of this Agreement shall begin on April 1, 2018 and shall expire on the date specified in Schedule A (including any renewals thereof as provided in Schedule A) unless earlier terminated as provided herein (the "Term").

7.) Termination. The parties hereto acknowledge and agree that this Agreement shall terminate as follows:

(a) Except as provide in Schedule A (relating to the automatic renewal of the Agreement), upon the expiration of the Term; or

(b) Upon mutual written agreement of the Municipality and PERC; or

(c) By either party by providing written notice to the other party if the other party commits a material breach of this Agreement, and the breach is not cured within sixty (60) days after receipt of written notice from the party not in breach, stating the nature of the breach; or

(d) In the event of a "Deemed Termination" by the Municipality as that term is defined in Schedule A; or

(e) By either party, in the event that PERC does not receive written commitments for the delivery of Acceptable Solid Waste as provided in Section 5 above;

(f) By either party, in the event that there is a delay in either party's performance of its obligation hereunder as provided in Section 10(f) hereunder; or

(g) By either party by providing written notice to the other party in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the other party, or the appointment with or without such other party's consent of an assignee for the benefit of creditors or of a receiver for such other party, or the going into liquidation voluntarily or otherwise for the making of a composition with creditors of such other party.

8.) Indemnification. PERC agrees to indemnify, defend and hold harmless the Municipality and its managers, employees and agents, and the Municipality agrees to indemnify,

defend and hold harmless PERC and its directors, officers, owners, managers, employees and agents, from and against all loss, liability, damage and expense (including attorneys' fees and expenses incurred in enforcing this indemnification), arising out of or relating to (i) any breach by an indemnifying party of this Agreement, (ii) any negligent or willful act or omission of an indemnifying party, or (iii) any violation by an indemnifying party of applicable laws, regulations, permits or licenses. The indemnifying party shall be entitled to control (at its sole expense) the defense of any claim, action, suit or proceeding giving rise to an obligation of such indemnifying party to provide indemnification under this Section 8; provided, however, that no settlement thereof may be entered into without the written consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned. Nothing in this Agreement shall constitute a waiver or diminution by the Municipality of any immunities or statutory limitations on liability under Maine law, nor shall anything in this Agreement be construed to constitute a waiver of any defense, immunity or limitation of liability that may be available to a governmental entity or any of its officers, officials, agents or employees pursuant to any applicable State or Federal statutory law, common law or any privileges or immunities as may be provided by law.

9.) Municipal Outreach Meetings. Effective as of April 1, 2018, PERC shall schedule and conduct, at least once in any 12-month period and more often on an as-needed basis, meetings between the PERC management and all non-owner municipal customers for the specific purpose of allowing the exchange of information concerning the operation of PERC and to provide a means for the municipal customers to provide input to the PERC management relative to those operational issues. Written notice of the scheduling of all such meetings shall be issued at least 15 calendar days before any such meeting through notices mailed to the municipal customer at its last designated contact address as provided herein.

10.) Miscellaneous.

(a) Notices. All notices to be given under this Agreement shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or an overnight service with receipt as follows:

PERC	Penobscot Energy Recovery Company, Limited Partnership 29 Industrial Way Orrington, Maine 04474 Attn: John Noer
------	--

The Municipality	_____

(b) Governing Law. This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the State of Maine except for conflicts of laws provisions that would apply the substantive law of another state.

(c) Venue. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts having jurisdiction over the parties hereto.

(d) Limitation of Liability. Except for damages resulting from fraud, neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages including without limitation loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

(e) Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

(f) Force Majeure.

- (1) "Force Majeure" shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon, and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation:
(i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party's obligations as contemplated by this Agreement; or (v) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Execution Date of this Agreement, preventing performance of or compliance with the obligations hereunder.
- (2) Neither party shall be liable to the other for damages without limitation (including liquidated damages) if and to the extent such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force

Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

- (3) In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter during the continuation of delayed performance, terminate this Agreement.

(g) Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had among the parties hereto related to the subject matter of this Agreement are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon among the parties hereto with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, no party relying upon any statement or representation, not embodied in this Agreement, made by any other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

(h) Amendment. This Agreement cannot be amended, modified or supplemented, nor can any term or condition be waived in whole or in part, except in writing and signed by all of the parties hereto.

(i) Non-Waiver. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by any party hereto of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by such party giving such waiver. No waiver by any party hereto with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(j) Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

(k) Headings. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(l) Successors and Assigns. This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(m) Assignment. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, such consent to not be unreasonably withheld, conditioned or delayed, except (a) to its parents, subsidiaries and affiliates provided that the assigning party shall remain liable for all of the obligations hereunder, (b) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (c) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the facilities of the assigning party or its parents, subsidiaries or affiliates.

(n) Construction. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

(o) No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(p) No Brokers. The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the sale of the assets described herein.

(q) Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

(r) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

PERC:
THE PENOBSCOT ENERGY RECOVERY
COMPANY, LIMITED PARTNERSHIP

By: USA Energy Group, LLC
Its: General Partner

By: _____
Its: President

MUNICIPALITY:

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

Municipality: _____

SCHEDULE A
TO THAT CERTAIN WASTE DISPOSAL AGREEMENT
DATED AS OF THE
____ DAY OF _____, 2016

1.) Statement of Intent. The parties hereto acknowledge and agree that it is the policy of the State of Maine, as directed through the State of Maine's adoption of the Solid Waste Hierarchy, to reduce the volume of Solid Waste going into landfills, to recycle Solid Waste whenever possible, and to maximize resource recovery from the Solid Waste. The parties hereto also understand that the effective management of Solid Waste is crucial to the continued financial well-being of the Municipality. Because of this, the Municipality is seeking a comprehensive, environmentally sound, reliable, long-term strategy for managing the present and projected volumes of non-hazardous Solid Waste generated within the Municipality. PERC owns and operates the PERC Facility that has effectively and efficiently, for many decades, accepted Solid Waste, recovered certain recyclable materials, and otherwise converted Solid Waste into energy. Both the Municipality and PERC seek to have the PERC Facility to continue operating and the delivery of a predictable stream of Acceptable Waste to the PERC Facility is essential for the continued operation of the PERC Facility. Based on the foregoing, the purpose of the parties entering into this Agreement is to allow (a) the Municipality to effectively manage its Solid Waste within the Solid Waste Hierarchy; and (b) PERC to continue to serve the communities in reducing and reusing its Solid Waste. Therefore, in accordance with the terms of the Solid Waste Hierarchy, the Municipality is willing to commit to delivering to PERC and the PERC Facility all Acceptable Waste generated within the Municipality and under its Control so as to assure the ongoing supply of Acceptable Waste to the PERC Facility for a fixed-period of time as defined below.

2.) Term of Agreement and Tipping Fee.

Authorization Signature	Term of Delivery Commitment	Tipping Fee (per ton)
_____	_____, 2018 through _____, 2033	\$84.36
_____	_____, 2018 through _____, 2028	\$89.57

The parties hereto agree that any Agreement signed for either a fifteen (15) year or ten (10) year term shall automatically renew on the same basis unless otherwise terminated, in writing, by either the Municipality or PERC with at least twelve (12) months prior written notice. Also, any contract term that is less than ten (10) years shall be priced on a case-by-case basis and will be based on the then current market pricing. The pricing listed above is guaranteed through June 30, 2016.

3.) Estimated Delivery Amount.

(a) Based on the amount of Acceptable Waste generated by the Municipality in prior years, the estimated annual tonnage to be delivered by the Municipality shall be approximately _____ tons (the "Estimated Tonnage"). Both PERC and the Municipality acknowledge and agree that the Estimated Tonnage described above does not guarantee that the Municipality will deliver a minimum amount of tonnage to the PERC Facility on an annual basis. Rather, the Estimated Tonnage described above is a good faith estimate of the annual tonnage that the Municipality believes will be generated within the Municipality and is under the Municipality's Control and that such Estimated Tonnage is subject to change which is a direct result of the Municipality engaging in increased recycling, repurposing or composting (or other materials management process adopted into, and ranked higher by, the Solid Waste Hierarchy) in accordance with the Solid Waste Hierarchy. Notwithstanding the fact that the Estimated Tonnage described above is not a commitment by the Municipality to deliver a minimum amount of Solid Waste to the PERC Facility, the Municipality acknowledges and agrees that the Waste Disposal Agreement (including this Schedule A) is being signed in good faith by both PERC and the Municipality and that PERC is relying upon the Municipality's commitment to deliver to the PERC Facility the Acceptable Waste generated within the Municipality and that is under the Municipality's Control. It is understood and agreed that PERC supports and agrees with any efforts which the Municipality may undertake to reduce the amount of municipal solid waste which is processed at PERC through such means as recycling, composting and other similar processes. PERC further acknowledges that any such efforts on the part of a Municipality shall not constitute a violation of this Agreement and will not result in a penalty being assessed against the Municipality.

(b) Both the Municipality and PERC believe that the amount of Estimated Tonnage as described above is unlikely to change materially over time. However, if there is a material change in the amount of the Estimated Tonnage, the Municipality will provide written notice to PERC that there has been a material change in the amount of the Estimated Tonnage that will be delivered to the PERC Facility and that such material change is the direct result of a change in the market conditions as to the amount of Acceptable Solid Waste generated within the Municipality that is under its Control.

(c) In the event that PERC becomes aware that the Municipality is not delivering all of the Acceptable Waste generated within the Municipality and under its Control to the PERC Facility as agreed to by the Municipality pursuant to the terms of this Agreement, PERC may give written notice to the Municipality of such delivery failure and both the Municipality and PERC shall meet at the PERC Facility so as to resolve the issue. Such meeting shall occur at such time reasonably agreeable to both PERC and the Municipality but, in no event, more than thirty (30) after delivery of the written notice to the Municipality by PERC. In the event that the Municipality and PERC are unable to resolve such dispute during this meeting, then PERC shall have the right (but no obligation) to declare that this Agreement has been deemed terminated by the Municipality due to the Municipality taking actions that are inconsistent with the terms of this agreement and that have the purpose or effect of interfering with the Municipality's performance of this Agreement (a "Deemed Termination").

4.) Changes to the Tipping Fee – Adjustment for CPI. On April 1, 2019, and on each April 1st thereafter throughout the Term of this Agreement, the Tipping Fee shall be adjusted, either up or down, by a percentage equal to the percentage of change in the CPI for the most recently released 12-month period immediately preceding the date of each such adjustment. The term “CPI” shall mean the Consumer Price Index – All Urban Consumers (U.S. Cities average, all items) as published by the U.S. Bureau of Labor Statistics. If this index ceases to be published, a comparable index shall be designated in writing by the parties hereto. The following is an example of how the above-described adjustment to the Tipping Fee will be made:

Example: If the starting Tipping Fee is \$89.57 for a 10-year term contract and the CPI went up or down (as the case may be) by two percent (2%) during the first year of that term, the Tipping Fee would be increased or decreased (as the case may be) for the second year of the 10-year term by \$1.79 to \$91.36 or \$87.78 (as the case may be).

5.) Disposition of Bypass Waste. In the event that there is Acceptable Waste that is under the Municipality’s Control that is delivered to, or is intended to be delivered to, the PERC Facility as provided pursuant to the terms of this Agreement and the PERC Facility is unable to accept such Acceptable Waste (the “Bypass Waste”) then the following conditions and terms shall apply:

(a) All such Bypass Waste shall be transported to the Juniper Ridge Landfill located in Old Town, Maine (the “Juniper Ridge Landfill”).

(b) In the event that the Juniper Ridge Landfill cannot, or will not, accept the Bypass Waste, then, at the option of the Municipality, such Bypass Waste may be transported to the North Country Landfill operated by Casella Waste System and located in Bethlehem, New Hampshire (the “Backup Facility”). Both PERC and the Municipality agree that, in the event the Municipality elects to have the Bypass Waste transported to the Backup Facility, then the Municipality shall pay for any and all costs associated with transporting the Bypass Waste to the Backup Facility.

(c) In the event that PERC sends the Bypass Waste to the Juniper Ridge Landfill on a temporary basis for whatever reason, including, but not limited to, the PERC Facility being out of service for maintenance or repairs or as the result of a Force Majeure, the Tipping Fee for the Bypass Waste shall be the then existing Tipping Fee under this Agreement as determined pursuant to Section 4 of this Schedule A.

(d) In the event that PERC sends the Bypass Waste to the Juniper Ridge Landfill or the Backup Facility because of the permanent closing of the PERC Facility, the Tipping Fee payable to PERC shall be Sixty Dollars (\$60.00) per ton, which is the Tipping Fee specified in a contract between PERC and Casella Waste Management dated December 15, 2016 (the “Bypass Tipping Fee”).

(e) On April 1, 2019, and on each April 1st thereafter throughout the Term of this Agreement, , the Bypass Tipping Fee shall be adjusted, either up or down (as the case may be), by a percentage equal to the percentage of change in the CPI for the most

recently released 12-month period preceding the date of each such adjustment. The term "CPI" shall mean the Consumer Price Index – All Urban Consumers (U.S. Cities average, all items) as published by the U.S. Bureau of Labor Statistics. If this index ceases to be published, a comparable index shall be designated in writing by the parties hereto.

6.) Early Termination. Notwithstanding the provisions of Section 7 of the Agreement, both PERC and the Municipality acknowledge and agree that this Agreement may be terminated as follows:

(a) Upon ninety (90) days prior written notice by the Municipality to PERC (the "Municipality Termination"); or

(b) Upon PERC's determination that a Deemed Termination has occurred.

Within thirty (30) days after a Municipality Termination or a Deemed Termination, the Municipality shall pay to PERC an amount equal to the product of (i) the average annual amount paid (or required to be paid) by the Municipality to PERC for the immediately preceding two (2) years (and taking into account any amounts paid to PERC prior to the beginning of the Term of this Agreement); multiplied by (ii) three (3). In addition to this amount, the Municipality shall pay to PERC all reasonable legal fees and costs incurred by PERC in obtaining this payment.

Perkins Thompson PERC Waste Disposal Agreement/Schedule Summary and Comments
(February 5, 2016 and March 2, 2016 Drafts)

(3-3-2016)

<i>Section</i>	<i>Description</i>	<i>PT Comments</i>
Agreement		The word "Agreement" should appear in parenthesis after "THIS WASTE DISPOSAL AGREEMENT" in the first line, since this word is used throughout.
Parties	PERC, Limited Partnership and the Municipality	Under the (Fifth Amended and Restated) Agreement of Limited Partnership, the PERC Limited Partnership terminates on Dec. 31, 2018 unless sooner terminated. PERC is proposing a Sixth Amended and Restated Agreement of Limited Partnership for a period of 25 years – the remaining useful life of the PERC Facility as estimated by its engineers.
Section 2.) Representations and Warranties	Each party represents and warrants that it is a validly existing entity, able to execute the Agreement; that execution and delivery of the Agreement is authorized and its performance is lawful, that the parties have necessary permits, licenses and training.	
Section 3.) Municipal Delivery Obligations		
3.(a)	"The Municipality shall deliver all Acceptable Waste under its control that is generated within the Municipality to the PERC Facility," even if a transfer station is used in delivery. PERC will be exclusive disposal facility; Municipality will not deliver Acceptable Waste to any other solid waste disposal facility without PERC's prior written consent.	PERC has amended this provision to limit the Municipality's obligation to deliver Acceptable Waste to that which is "under its control" and to add to Section 1.(a) that "under its control" means collected and delivered by the Municipality or under its direction. (The latter should be moved from Section 1.(a) to Section 3.(a) to be more clear. This would make the delivery of Acceptable Waste obligation similar to that under the MRC Joinder

	Municipality to use best efforts to avoid delivering Unacceptable Waste to PERC Facility and will not knowingly mix any Unacceptable Waste with Acceptable Waste.	Agreement.) No specific indemnification is required for Unacceptable Waste that might be delivered. (Also, see discussion below of waste delivery estimate – “Estimated Tonnage” - in Schedule A 3.)
3.(b)	PERC Facility may deny access if MSW delivered after hours, Municipality has not paid tipping fee or Unacceptable Waste is suspected.	
3.(c)	Municipality shall deliver to PERC Facility “the available estimated tonnage of Solid Waste under its direct control” and pay the Schedule A tipping fee to PERC for each ton of MSW delivered to the PERC Facility.	Restates the Section 3.(a) obligation.
Section 4.) PERC Obligations		
4.(a)	PERC agrees to accept all Acceptable Waste delivered by Municipality to PERC Facility.	Change to “by the Municipality or by a hauler under contract and at the direction of the Municipality”
4.(b)	PERC agrees it has and will have throughout the term of the Agreement, the ability and capacity to accept the Acceptable Waste.	
4.(c)	PERC will record deliveries of Acceptable Waste by the Municipality by labeling each vehicle with a unique number and hauler code, and will weigh each truck loaded and unloaded.	
4.(d) and (e)	PERC to produce multi-part weigh tickets for each vehicle; PERC and driver each receives copy; PERC retains its copy for at least three years; and PERC uses these as basis for billing. Municipality has right to inspect PERC weight records on reasonable request during normal business hours so as not to unreasonably interfere with business operations.	Municipality may wish to also allow MRC to inspect weight records on its behalf.

4.)(f)	PERC to invoice Municipality weekly showing amounts of Acceptable Waste delivered in prior week, payable within 30 days.	
Section 5.) Necessity of Delivery Obligations	Parties acknowledge and agree Agreement exists so that Municipality can be sure of ability to continue environmentally sound disposal of MSW that is under its direct control, and so that PERC can be assured of steady stream of post-recycled MSW for a fixed period. Both parties acknowledge PERC needs to receive similar commitments from other municipalities and private businesses for 180,000 tons per year in the aggregate by February 18, 2017 to assure PERC Facility will continue to operate.	As suggested, PERC has added a date, February 18, 2017, by which PERC must acquire commitments from other municipalities and private businesses to deliver 180,000 tons per year in the aggregate of Acceptable Waste.
Section 6.) Term	Schedule A provides the term, to begin April 1, 2018.	
Section 7.) Termination	Agreement terminates:	
7.)(a)	When stated in Schedule A unless automatically renewed upon expiration of term;	
7.)(b)	Upon parties' mutual agreement;	
7.)(c)	Upon a party's material breach not cured within 60 days after receipt of notice of breach;	
7.)(d)	Upon "Deemed Termination" by the Municipality (for failure to deliver all solid waste to PERC Facility);	

7)(c)	By either Party of PERC receives insufficient written commitments to deliver 180,000 TPY of Acceptable Solid Waste by February 18, 2017; or	The Agreement now contains a specific date by which PERC must receive sufficient written commitments, and sets out how much Acceptable Waste must be committed by that date. However, it should be that the Agreement simply terminates if PERC receives insufficient written commitments to deliver 180,000 TPY of Acceptable Solid Waste by February 18, 2017 – no action should be needed “By either party.” Also, term “Acceptable Solid Waste” is not consistent with Agreement terminology.
7)(f)	By either party in event of bankruptcy or insolvency proceedings.	
Section 8.) Indemnification	PERC and Municipality each mutually agrees to indemnify, defend and hold harmless the other from all loss, liability, damage and expense caused by breach of Agreement, negligent or willful act or omission, or violation of applicable laws, regulations, permits or licenses. Indemnifying party controls conduct of litigation, but no settlement can be entered into without written consent of both parties.	This is a broad reciprocal indemnity. As requested, PERC has added language to preserve municipal defenses, immunities and limitations on liability that is similar to that added at our request by MRC to the Joinder Agreement; however, the last clause should be revised to read “or any privileges or immunities as may be provided by law.”
Section 9.) Municipal Outreach Meetings	Requires PERC to schedule and conduct meetings of PERC management and all non-owner Municipal customers (those not limited partners) at least once every 12 months to provide for exchange of information.	Agreement does away with MRC management and oversight on behalf of Municipalities and substitutes for at least annual meetings between PERC management and non-owner Municipalities.
10)(b)	Agreement governed by laws of Maine.	
10)(d)	Liability is limited to exclude liability for special, incidental, exemplary, punitive or consequential damages.	May want to remove limit for fraud.

10.)(f)	In event of Force Majeure, neither party is liable to other, the nonperforming party is under a duty to mitigate or limit damages, try to overcome event, continue to perform obligations, and limit duration of any suspension, but if delay lasts 60 days or more, other party may terminate agreement.	Should include Force Majeure delay that lasts 60 days or more under the Section 7) Termination list of events of termination.
10.)(o)	No third party beneficiaries.	As this Agreement is directly between PERC and the Municipality, PERC does not need to be a third-party beneficiary (as Fiberight is under the MRC Joinder Agreement).

Schedule A		
1.) Statement of Intent	Municipality states its willingness to commit to deliver the post-recycled Solid Waste generated within the Municipality under its direct control for a fixed period of time.	The Schedule does express a "commitment" on the part of the Municipality, but does so in different language from the Agreement in Section 3(a) and (c). Instead of obligating the Municipality to deliver all "Acceptable Waste" under its control as in Sections 3)(a) and (c) of the Agreement, Section 1) of Schedule A has the Municipality committing to deliver all "post-recycled Solid Waste" under its direct control. Presumably, this is meant to recognize the Municipality's ability to continue and to expand solid waste reduction, reuse and recycling, as stated in 3)(a) of Schedule A, but it would be better to consistently use "Acceptable Waste" throughout instead of alternating with "Solid Waste," and if "post-recycled" is to appear throughout, it should modify "Acceptable Waste."
2.) Term of Agreement and	Municipality may select 10 or 15-year term with	

Tipping Fee	automatic renewal for same duration on same basis unless terminated in writing by either party with at least 12 months' notice. Tipping Fee for 10-year term - \$89.57 Tipping Fee for 15-year term - \$84.36	
3.) Estimated Delivery Amount		
3.)(a)	Requires Municipality to state an "Estimated Tonnage" – annual tonnage of post-recycled Solid Waste to be delivered by the Municipality. However, Parties acknowledge and agree this is not a guarantee Municipality will deliver a minimum tonnage annually. "Estimated tonnage" is a "good faith estimate of annual tonnage that the Municipality believes will be generated within the Municipality" and is under Municipality's direct control, and is subject to change due to "increased recycling, repurposing and composting." The parties also agree that Municipal efforts to reduce Estimated Tonnage through recycling, reduction and reuse of MSW does not violate the Agreement or result in a penalty.	While language indicates this is not a guarantee but is a "good faith estimate," it also states that "Notwithstanding the fact the Estimated Tonnage is not a commitment" to deliver a minimum amount of MSW to PERC Facility, "the Municipality acknowledges and agrees" it is signing the Agreement in good faith "and that PERC is relying upon the Municipality's commitment to deliver to the PERC Facility the Solid Waste generated within the Municipality and under its direct control." Now recognizes that Municipality may engage in "increased recycling, repurposing and composting" in accordance with the State's solid waste hierarchy, recognizes that reduction in Solid Waste Estimated Tonnage may result, and states that the reduction is not a violation of the Agreement and does not result in a penalty
3.)(c)	Upon becoming aware that Municipality is not delivering all MSW within its direct control to the PERC Facility, PERC to give notice and meet with Municipality within 30 days of notice. If unable to resolve dispute, PERC has right but not obligation to declare Agreement terminated ("Deemed Termination").	
4.) Changes to Tipping Fee	At end of first 12-months and each year thereafter, the Tipping Fee is adjusted by percentage equal to percentage change in CPI.	This is odd, since Agreement begins April 1, 2018 – does Tipping Fee adjust twice in 2019?

5.) Bypass Waste	Bypass waste will be disposed of at Juniper Ridge Landfill (JRL). If bypass occurs temporarily for service, maintenance, repair or Force Majeure, Tipping Fee remains the same; if bypass occurs because of permanent closure of PERC Facility, Tipping Fee shall be \$60 per ton as in contract between PERC and Casella. Bypass Tipping Fee adjusted for CPI at same intervals as regular Tipping Fees.	"Bypass Tipping Fee" is undefined, but appears to be the tipping fee in event of permanent closure of PERC Facility. However, if there is a permanent closure of the PERC Facility, the Acceptable Waste no longer will be bypass; instead, it will be considered municipal solid waste (MSW) as happened when the Maine Energy Recovery Incinerator permanently closed. Casella's license to operate JRL allows only 81,800 TPY of MSW to be deposited until March 31, 2018. We are informed by PERC that although there is as yet no written agreement to this effect, PERC and Casella are working to develop language to add to their agreement for Casella to provide an alternative location for MSW disposal in the event that it is not legally possible for JRL to accept the MSW; the Tipping Fee would be the same \$60 per ton base amount, but there is no discussion of who would bear any increase in transportation costs.
6.) Early Termination	Municipality may terminate Agreement early upon 90 days' prior written notice to PERC and upon payment within 30 days of amount equal to three times the average annual amount of Tipping Fees paid in the two years immediately preceding termination; same payment is required if there is a Deemed Termination by a Municipality.	