

**EXTENSION OF AGREEMENT FOR THE OPERATION OF THE BAREFOOT ROAD  
SANITARY LANDFILL, AND REFUSE AND RECYCLABLES COLLECTION,  
SOUTHBRIDGE MASSACHUSETTS**

**BY AND BETWEEN**

**SOUTHBRIDGE RECYCLING AND DISPOSAL PARK, INC.,**

**AND**

**TOWN OF SOUTHBRIDGE, MASSACHUSETTS**

\_\_\_\_\_, 2007

## TABLE OF CONTENTS

1.	DEFINITIONS .....	2
2.	CONDITIONS PRECEDENT.....	7
2.1	Effectiveness of the Extension Agreement.....	7
2.2	Effect of Effective Date on Payment.....	7
2.3	Effectiveness of Additional Benefits under this Extension Agreement .....	7
2.4	Obligation to Cooperate.....	8
2.5	Continuation of Benefits under the Existing Agreement.....	8
3.	SRD’S RIGHTS AND OBLIGATIONS .....	8
3.1	Exclusive Use .....	8
3.2	Permits .....	9
3.3	Construction.....	9
3.4	Operation .....	9
3.5	Hours of Operation .....	11
3.6	Inspection.....	11
3.7	Limitations on Waste.....	12
3.8	ACOP Implementation .....	12
3.9	Limitation .....	13
3.10	Notice of Regulatory Meetings.....	13
3.11	Late of Inadequate Payments.....	13
3.12	Interest on Refunded Disputed Payments.....	13
4.	EXPANSION OF LANDFILL FACILITY .....	13
4.1	Expansion of the Landfill Facility Capacity .....	13
4.2	Lateral Expansion .....	13
4.3	Level of Truck Traffic .....	14

5.	ROYALTY PAYMENT .....	14
5.1	Continuation of Benefits.....	14
5.2	Initial Capacity Royalty Payment.....	14
5.3	Expanded Capacity Royalty Payment .....	14
5.4	Right of Offset .....	15
5.5	Change in Law or Event of Force Majeure and Reduction of Royalty Payment.....	15
5.6	Change in Law or Event of Force Majeure and Suspension of Royalty Payment.....	16
5.7	Curbside Collection and Alternative Disposal Site .....	16
6.	LANDFILL FACILITY CLOSURE AND POST-CLOSURE .....	16
6.1	Responsibility .....	16
6.2	Financial Assurance.....	16
6.3	Existing Closure Funds.....	16
7.	ADDITIONAL BENEFITS TO BE PROVIDED TO THE TOWN BY SRD.....	17
7.1	Landfill Monitor Reimbursement.....	17
7.2	Legal Fund Contribution .....	17
7.3	Contribution toward Water Line and Sewer Line Construction.....	17
7.4	Landfill Gas to Energy Project .....	18
7.5	Intentionally Omitted.....	18
7.6	Increased Legal Fund Distribution .....	18
7.7	Increased Water Line and Sewer Line Construction Contribution .....	19
7.8	Intentionally Omitted.....	19
7.9	Intentionally Omitted.....	19
7.10	RecycleBank.....	19
8.	PROJECTS TO BE DEVELOPED BY SRD WITH THE TOWN .....	19

8.1	Steam and Waste Heat Project .....	19
8.2	Gasification Project .....	19
8.3	New Technologies .....	19
9.	OBLIGATIONS OF THE TOWN .....	20
9.1	Cooperation .....	20
9.2	Disposal of Leachate .....	20
9.3	Access to Town Water.....	20
9.4	Acceptable Waste Activities.....	20
10.	USE AND COMPLIANCE WITH LAW .....	21
11.	GENERAL POWERS .....	21
12.	RECORDS/AUDITS .....	21
13.	NO JOINT VENTURE.....	22
14.	REPRESENTATIONS AND WARRANTIES OF THE TOWN .....	23
15.	REPRESENTATIONS AND WARRANTIES OF SRD .....	24
16.	SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS.....	24
17.	INDEMNIFICATION .....	25
17.1	General Agreement to Indemnify .....	25
17.2	SRD’s Obligation to Indemnify Town .....	25
17.3	General Procedures for Indemnification.....	26
17.4	Limitation .....	26
18.	DEFAULT; TERMINATION .....	26
18.1	Termination by the Parties.....	26
18.2	Right of Non-Defaulting Party to Cure Breach.....	28
18.3	Cure .....	28
18.4	Effect of Breach by SRD .....	29

18.5	Effect of Breach by the Town.....	29
18.6	Termination for Change in Law or Force Majeure.....	29
18.7	Effect of Termination on SRD.....	30
19.	STRICT PERFORMANCE.....	30
20.	EMINENT DOMAIN.....	30
21.	INSURANCE.....	31
21.1	Coverage Amounts.....	31
21.2	Environmental Impairment.....	31
21.3	Certificates of Insurance.....	31
21.4	Qualification of Insurance and Surety Company.....	32
22.	COVENANT OF QUIET ENJOYMENT.....	32
23.	ASSIGNMENT.....	32
24.	GUARANTY.....	32
25.	PERFORMANCE BOND FOR LIQUIDATED DAMAGES.....	33
25.1	[NO SUBTITLE].....	33
25.2	Limitation of Damages.....	33
26.	CUMULATIVE REMEDIES.....	33
27.	DISPUTE RESOLUTION.....	33
27.1	Settlement.....	33
27.2	Agreement to Non-Binding Arbitration.....	33
27.3	Selection of Panel.....	34
27.4	Choice of Law.....	34
27.5	Venue.....	34
27.6	Arbitration Award.....	34
27.7	Intentionally Omitted.....	34

27.8	Expenses of Arbitration .....	34
27.9	Litigation .....	34
27.10	Acknowledgement of Non-Binding Arbitration .....	35
28.	TERM .....	35
29.	CAPTIONS AND HEADINGS.....	35
30.	MODIFICATIONS.....	35
31.	NOTICES .....	36
32.	FORCE MAJEURE.....	37
32.1	Force Majeure Event .....	37
33.	SEVERABILITY.....	37
34.	CONSTRUCTION .....	37
35.	FURTHER ASSURANCES .....	37
36.	ENTIRE AGREEMENT .....	38
37.	COUNTERPARTS.....	38
38.	GOVERNING LAW .....	38
39.	BINDING EFFECT .....	38

- Exhibit A: Southbridge Town Council Authorization
- Exhibit B: Description of the Landfill Facility
- Exhibit C: Landfill Monitor Responsibilities
- Exhibit D: Description of the Industrial Park Road
- Exhibit E: Description of Solid Waste Management Areas
- Exhibit F: Landfill Facility Truck Routes
- Exhibit G: Existing Restricted Account Funds
- Exhibit H: Curbside Collection Program
- Exhibit I: RecycleBank Program
- Exhibit J: Landfill Facility Security Interests and Liens
- Exhibit K: Form of Guaranty
- Exhibit L: Initial Landfill Total Economic Benefit
- Exhibit M: Landfill Benefit Competitive Market Benefit Procedures
- Exhibit N: CDM Economic Analysis
- Exhibit O: SRD Good Road Guarantee

**EXTENSION OF AGREEMENT FOR THE OPERATION  
OF THE BAREFOOT ROAD SANITARY LANDFILL,  
AND REFUSE AND RECYCLABLES COLLECTION,  
SOUTHBRIDGE, MASSACHUSETTS**

This EXTENSION OF AGREEMENT FOR THE OPERATION OF THE BAREFOOT ROAD SANITARY LANDFILL AND REFUSE AND RECYCLABLES COLLECTION, SOUTHBRIDGE, MASSACHUSETTS (this "Extension Agreement"), dated as of the \_\_ day of May, 2007 (the "Execution Date"), is made by and between SOUTHBRIDGE RECYCLING AND DISPOSAL PARK, INC. a Massachusetts Corporation ("SRD"), and the TOWN OF SOUTHBRIDGE, Massachusetts ("Town"). All references herein to the "parties" or "Parties" shall mean the above-described Town and SRD.

**WHEREAS**, the Town presently owns a municipal sanitary landfill (the "Landfill Facility") located off Barefoot Road in the Town of Southbridge (the "Property");

**WHEREAS**, on December 9, 1996 the Town and Wood Recycling, Inc. ("WRI"), the corporate predecessor to SRD, entered into an Agreement for the Operation of the Barefoot Road Sanitary Landfill, and Refuse and Recyclables Collection in Southbridge, Massachusetts (the "Existing Agreement"), pursuant to which WRI agreed to operate the Town's Landfill Facility;

**WHEREAS**; Section 25 of the Existing Agreement allows WRI to assign the Existing Agreement to another entity, provided that WRI obtains the Town's prior written consent, which consent shall not be unreasonably withheld;

**WHEREAS**, Casella Waste Systems, Inc. ("Casella") has purchased all of the stock of SRD, and now operates SRD as a corporate subsidiary;

**WHEREAS**, WRI has requested that the Existing Agreement be assigned to SRD, and the Town hereby grants its permission for that assignment;

**WHEREAS**, Section 28 of the Existing Agreement provides for an initial term of twenty (20) years, with an option to renew the Existing Agreement for up to four (4) additional periods of five (5) years each;

**WHEREAS**, the Landfill Facility and SRD's adjacent processing facility (the "Processing Facility") are currently permitted to dispose of 499,200 tons of waste per year, with the Landfill Facility being permitted to dispose of 180,960 tons of waste per year, of which only 80 tons per day may be municipal solid waste ("MSW").

**WHEREAS**, SRD has requested the Town to allow SRD to, among other things, increase the amount of MSW disposed of at the Landfill Facility to 180,960 tons per year, and to reallocate the disposal capacity currently permitted at the Processing Facility to the Landfill Facility so as to permit the Landfill Facility to operate at the level of 405,600 tons per year for MSW;

**WHEREAS**, SRD has agreed that it will maintain the total capacity delivered to the Processing Facility and the Landfill Facility from outside sources at or below the current total permitted level of 499,200 tons per year;

**WHEREAS**, in consideration of the Town approving SRD's request, SRD has agreed to provide financial and other direct and indirect benefits to the Town and its residents, including the assumption of the financial responsibility for all aspects of Closure and Post-Closure Activities (as defined below) of the Landfill Facility;

**WHEREAS**, the parties have negotiated and entered into this Extension Agreement to replace the Existing Agreement;

**WHEREAS**, the Southbridge Town Council voted on \_\_\_\_\_, 2007 to authorize the Town Manager to execute this Extension Agreement, a certified copy of such vote is attached hereto as Exhibit A;

**WHEREAS**, the parties are authorized to enter into this Extension Agreement pursuant to Massachusetts General Laws c. 44, sec. 28C; and

**WHEREAS**, SRD, as WRI's assignee, agrees to assist the Town and the community as befitting a responsible corporate citizen, notwithstanding and in addition to SRD's obligations under this Extension Agreement.

**NOW, THEREFORE**, in consideration of the representations, warranties, promises, covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

## **1. DEFINITIONS**

For the purpose of this Extension Agreement, the following words and phrases shall have the following meanings:

**"Acceptable Waste"** shall mean "solid waste," as that term is now or hereafter defined in 310 C.M.R. 19.00, including but not limited to MSW, but shall not include Excluded Waste.

**"ACOP"** shall mean that certain Administrative Consent Order with Penalty ACO-CE-04-9001-246A, issued by the MADEP on January 1, 2004, as amended by that certain Administrative Consent Order with Penalty ACO-CE-04-9001-246A-AMEND1, issued by the MADEP on February 24, 2006.

**"Base Year"** shall have the meaning set forth in Section 2.2 herein.

**"BUD Material"** shall mean waste material that has been approved by MADEP pursuant to 310 C.M.R. 19.130(15) for beneficial use at the Landfill Facility for daily cover or other purposes.

“Change in Law” shall mean the adoption, revocation or change (including a change in interpretation or enforcement) of any law after the Execution Date that materially and adversely affects a party’s ability to fulfill its obligations hereunder, including, without limitation, such changes which have a material adverse effect on the cost of development, construction, operation or maintenance of the Landfill Facility; provided, however, that such term shall not include: (1) all matters related to securing the Required Approvals and the initial approvals necessary to achieve the Expanded Capacity, (2) Federal or state laws or regulations of general applicability (including but not limited to 310 CMR 16.000 and 19.000) that affect the management or disposal of solid waste, (3) any event related to the taxation of income by any Federal or state authority that affects a general class of taxpayers, or (4) Occupational, Safety and Health Administration (“OSHA”) standards.

“Closure” shall mean those acts and activities required by 310 CMR 19.000 which result in a permanent cessation of use of a municipal solid waste landfill, as those requirements and regulations may be amended or modified, and which result in a stabilized municipal solid waste landfill which is not in active use, and excluding Post-Closure Activities (defined below).

“CPI” means the United States Bureau of Labor Statistics (the “Bureau”) Consumer Price Index for Urban Wage Earners and Clerical Workers, Springfield/Hartford Metropolitan Area, All Items (1982-84=100). If the CPI is converted to a different standard reference base or otherwise revised, a determination of the CPI shall be made with the use of such conversion factor, formula or table as may be published by the Bureau or, if the Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by any nationally recognized publisher of statistical information, reasonably selected by the Town. If the CPI shall cease to be published, then there shall be substituted for the CPI any substitute or successor index published by the Bureau or other governmental agency, or if no such index is published, then such other index published by any nationally recognized publisher of statistical information as the parties shall reasonably select. The parties agree that when making any adjustment to a payment in this Extension Agreement to account for the CPI: (a) the adjustment will reflect only the increase, if any, between the CPI for the current year and the CPI for the immediately preceding year; (b) the maximum increase in any year to any payment herein as a result of the CPI shall be capped at two and one-half percent (2.5%); (c) the adjustment will take place on January 1<sup>st</sup> of the year; and (d) in no event shall the CPI adjustment in any payment due to the Town under this Extension Agreement result in a payment to the Town in any calendar year that is lower than the payment made to the Town for the preceding calendar year.

“Daily and Intermediate Cover” shall mean cover material applied to the Landfill Facility on an annual basis to cover waste in accordance with 310 C.M.R. 19.130(15). Daily and Intermediate Cover shall include compacted soil and alternative cover material approved by MADEP pursuant to 310 C.M.R. 19.130(15)(b)(4), and, if applicable, BUD Material. The amount of Daily and Intermediate Cover used at the Landfill Facility shall not count towards the total amount of MSW that may be disposed of at the Landfill Facility. Notwithstanding the above, SRD shall pay the Town the amount of \$5.53 for each ton of Daily and Intermediate Cover that is received in the Landfill Facility in excess of twenty-five percent (25%) of the annual tons of MSW permitted for disposal in the Landfill Facility.

“Effective Date” shall mean the date that all conditions precedent set forth in Section 2.1 herein have been achieved to the reasonable satisfaction of SRD and the Town, as applicable.

“Excluded Waste” shall mean, except to the extent any such wastes are included in ordinary household refuse, highly flammable substances, Hazardous Waste, liquid wastes, pathological and biological wastes, explosives, radioactive materials, oil, petroleum, municipal waste water sludge and industrial sludge material, asbestos containing materials, autoclaved infectious waste, lead-acid batteries, radioactive materials, hospital and laboratory wastes, loads containing dead animal carcasses, bulk quantities of recyclable glass and non-ferrous metals, sealed containers, drums, pressurized gas cylinders, infectious wastes, loads containing human wastes, motor vehicles, unprocessed “auto fluff”, motor vehicle parts including, but not limited to, transmissions, engines, rear ends, springs, fenders, radiators and tires, except shredded tires, explosives, including dynamite, blasting caps, shotgun shells, and fireworks, gasoline, kerosene, turpentine, liquid oil-based paints or any other waste excluded by an applicable environmental law or regulation, or excluded by any of the terms and conditions of any permits, licenses or approvals obtained with respect to the operation of the Landfill Facility. This term shall also include such other waste material that SRD finds, in its reasonable discretion, to pose an unreasonable risk or danger to the operation or safety of the Landfill Facility or the environment. Notwithstanding the above, the Parties agree that municipal waste water sludge and industrial sludge material shall not constitute Excluded Waste if the disposal of such wastes in the Landfill Facility is authorized by the MADEP and the Southbridge Board of Health.

“Expanded Capacity” shall have the meaning set forth in Section 4.1 herein.

“Financial Assurance Mechanism” or “FAM” shall mean the financial assurance required for Closure and Post-Closure Activities (defined below) by the MADEP pursuant to 310 C.M.R. 19.051.

“Force Majeure” shall mean any reasonably unforeseeable act, event or condition affecting the Landfill Facility, the Town or SRD that materially and adversely affects the ability of the Town or SRD to perform or comply with any obligation, duty or agreement required under this Extension Agreement, if such act, event, or condition is beyond the reasonable control of a party or its agents relying thereon, including, without limitation: (a) an act of God, epidemic, landslide, lightening, earthquake, fire, explosion, storm, flood or similar occurrence; (b) an act of public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence, interference by third parties with any solid waste disposal operations or any other duties of SRD or the Town; (c) a strike, work slowdown, or similar industrial or labor action; (d) an order or judgment (including, without limitation, a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order), or the viable threat thereof, or other act of any federal, state, county or local court, administrative agency or governmental office or body, including without limitation, such an order or judgment limiting the duration of this Extension Agreement to less than the Term; (e) the denial, loss, suspension, expiration, termination or failure of renewal of any Permit required to operate the Landfill Facility; or (f) the institution of a legal or administrative action or similar proceeding by any Governmental Authority, person, firm, corporation, other entity, including, without limitation, comments on or challenges to the consideration or issuance of any Permit, that delays or prevents

any aspect of the development or operation of the Landfill Facility. Notwithstanding the above, the Parties agree that the term “Force Majeure” shall not include: (1) any judicial or administrative action requiring SRD to remediate conditions at the Landfill Facility caused by SRD’s failure to manage and operate the Landfill Facility in accordance with all applicable laws and regulations; (2) any act, event or circumstance that would not have occurred if the affected Party had complied with its obligations under this Extension Agreement or complied with all applicable laws and regulations, and such failure to comply was not caused by an event of Force Majeure; (3) changes in interest rates, inflation rates, labor costs, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions; (4) changes in the financial condition of the Town, SRD, the Guarantor, or their affiliates or subcontractors affecting the ability to perform their respective obligations; (5) the consequences of error, neglect or omissions by SRD, the Guarantor, the Town, any subcontractor, any of their affiliates or any other person in the management and operation of the Landfill Facility; (6) union or labor work rules, requirements or demands that have the effect of increasing the number of employees required to operate the Landfill Facility or otherwise increasing the cost to SRD of managing and operating the Landfill Facility; and (7) reasonably anticipated weather conditions for the northeastern region of the United States.

“Governmental Authority” shall mean all agencies, authorities, boards, bodies, commissions, courts, instrumentalities, legislatures and offices of any municipal, local, state or federal governmental unit or subdivision.

“Hazardous Waste” shall mean any pollutant, contaminant, chemical, industrial, toxic or other waste that constitutes hazardous waste as defined pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 *et seq.*, or M.G.L. c. 21E, or any regulations adopted thereunder at 310 C.M.R. 30.00.

“Initial Capacity” shall mean reallocation of the existing permitted capacity for the Solid Waste Management Areas so as to allow SRD to dispose of not more than 180,960 tons per year of MSW at the Landfill Facility.

“Initial Landfill Total Economic Benefit” means the initial total economic benefits, measured annually on a total cash or cash-equivalent/in-kind basis, that are provided by SRD to the Town under this Extension Agreement, as calculated and set forth in Exhibit L attached hereto.

“Landfill Benefit Competitive Market Survey” shall mean the survey conducted pursuant to the provisions set forth in Exhibit M attached hereto.

“Landfill Facility” means the municipal sanitary landfill located off Barefoot Road in the Town of Southbridge, all as further shown on Exhibit B attached hereto.

“Landfill Monitor” shall mean an individual that is retained by the Town to monitor the Landfill Facility, and who issues reports to the Southbridge Board of Health, with a copy to the Town, Southbridge Town Manager, Southbridge Conservation Commission, and SRD, all as further specified in Exhibit C hereto.

“Life of Landfill” shall mean the length of time required to exhaust the Initial Capacity or the Expanded Capacity, as applicable at that time, and trigger an obligation to initiate Closure of the entire Landfill Facility under the Permits.

“MADEP” shall mean the Massachusetts Department of Environmental Protection.

“MSW” shall mean municipal solid waste, as that term is defined in the regulations of the MADEP.

“Permit” shall mean any and all permits, licenses, certificates, consents, registrations or other approvals required by any Governmental Authority to construct, operate, use, maintain, expand or close the entirety or any portion of the Landfill Facility, including without limitation all renewals and modifications thereof.

“Phase I Construction of the Industrial Park Road” shall mean that portion of the access road, sewer line, water line, and related power utilities proposed to service the Southbridge Industrial Development Park that is located starting at State Road 169 and continuing to a point of intersection adjacent to the Processing Facility, all as further set forth in Exhibit D hereto.

“Phase II Construction of the Industrial Park Road” shall mean that portion of the access road, sewer line, water line, and related power utilities proposed to service the Southbridge Industrial Development Park that is located starting at a point of intersection adjacent to the Processing Facility and continuing throughout the remainder of the said Industrial Development Park, all as further set forth in Exhibit D hereto.

“Post Closure Activities” shall mean those acts and activities which are required for post-closure care including monitoring, reporting and maintenance under the regulations of the MADEP at 310 C.M.R. 19.00, as amended from time to time.

“Property” shall mean the Town-owned parcel of land located on Barefoot Road in the Town of Southbridge, on which the Landfill Facility is located.

“Required Approvals” shall mean (1) all approvals necessary from any Governmental Authority to operate the Landfill Facility at the Initial Capacity, including, without limitation, a site assignment (or modifications thereto) from the Southbridge Board of Health, and the solid waste management facility permit from the MADEP, and (2) the approval by MADEP of the FAM required to be provided by SRD under Section 6.2 of this Extension Agreement.

“Required Submittals” shall mean the performance bond required under Section 3.4(e), the performance bond required under Section 25.1, the Certificates of Insurance required under Section 21.3, and the Guaranty required by Section 24.1.

“Royalty Payment” shall mean the payment due from SRD to the Town pursuant to Section 5.2 or 5.3 herein, as applicable.

“Solid Waste Management Areas” shall mean the Landfill Facility, the Processing Facility, and certain adjacent properties, all as shown on Exhibit E hereto.

“SRD” shall mean Southbridge Recycling and Disposal Park, Inc.

“Term” shall have the meaning set forth in Section 28.

“Total Landfill Economic Benefit” means the total economic benefits, measured annually on a total cash or cash-equivalent/in-kind basis and calculated in accordance with the provisions set forth in Exhibit M attached hereto, paid or provided by any private landfill operator to any municipality in connection with the long-term operation of a municipally-owned landfill located in the Commonwealth of Massachusetts.

“Ton(s)” shall mean 2000 pounds or the volume equivalent.

“Town” shall mean the Town of Southbridge, Massachusetts.

## **2. CONDITIONS PRECEDENT**

2.1 Effectiveness of the Extension Agreement. The parties agree that the provisions of this Extension Agreement shall become effective, and supersede and replace the Existing Agreement, when: (a) SRD has received all the Required Approvals in a form reasonably satisfactory to SRD, and (b) the Town has received the Required Submittals, in a form reasonably satisfactory to SRD and the Town.

2.2 Effect of Effective Date on Payments. SRD acknowledges and agrees that the payments due by SRD under this Extension Agreement are valued as of January 1, 2007 (the “Base Year”), and that any and all payments to be made by SRD under Sections 5.2, 5.3 and 7.1(b) shall increase by the increase in the CPI, if any, between the Base Year and the Effective Date. If, for example, the CPI increases by 2% between the Base Year and the Effective Year, the \$10,000 to be paid by SRD pursuant to Section 7.1(b) below shall increase to \$10,200 for the first year.

2.3 Effectiveness of Additional Benefits under this Extension Agreement. The parties agree that the obligations of SRD under Section 5.3 (Expanded Capacity Royalty Payment), Section 7.6 (Increased Legal Fund Contribution), Section 7.7 (Increased Water and Sewer Line Construction Contribution), and Section 7.10 (Recycle Bank) of this Extension Agreement shall be contingent on the receipt by SRD of all approvals and authorizations, each in a form reasonably satisfactory to SRD, that are necessary or appropriate to reallocate and/or expand the permitted disposal volume of the Landfill Facility to 405,600 tons per year of MSW. SRD acknowledges and agrees that the payments due by SRD under Sections 5.2, 5.3 and 7.1(b) of this Extension Agreement are valued as of the Base Year, and that these payments shall increase by the increase in the CPI, if any, between the Base Year and the calendar year in which SRD obtains all permits necessary to operate the Landfill Facility at the Expanded Capacity (the “Expanded Capacity Year”). For example, if the CPI increases by 2% between the Base Year and the Expanded Capacity Year, the royalty payment to be paid by SRD under Section 5.3 for the first year shall increase from \$6.00 per ton to \$6.12 per ton.

2.4 Obligation to Cooperate. The Town shall reasonably and in good faith cooperate with SRD in its efforts to fulfill the conditions precedent set forth in Sections 2.1 and 2.3 above. This obligation shall not be construed as requiring the Town or any of its officers or boards to

issue any necessary approval or permit, waive any fees or charges (other than the ones expressly set forth herein), or require the Town to incur any third party costs or expenses.

2.5 Continuation of Benefits under the Existing Agreement. Until the Effective Date, the parties shall continue to be bound by the terms of the Existing Agreement. Upon the Effective Date, the parties shall be bound solely by the terms of this Extension Agreement.

### **3. SRD'S RIGHTS AND OBLIGATIONS**

3.1 Exclusive Use. The Town hereby grants SRD the exclusive right to occupy, operate and use, as further set forth herein, the Landfill Facility and to take all actions related thereto, commencing on the Effective Date and continuing during the Term of this Extension Agreement, including without limitation, the following.

- a) The exclusive right to take possession of, occupy and have exclusive use of the Landfill Facility.
- b) The exclusive right, franchise, license and privilege to take possession of, occupy, and have exclusive use of the Landfill Facility, including with respect to physical and management control. Nothing herein shall limit the right of SRD to use its own personal property, which right shall be unrestricted. Without limiting the foregoing, the Town shall not, during the Term of this Extension Agreement or any extension thereof, unless sooner terminated in accordance with Section 18 hereof, grant any other person or entity any right, franchise, license or privilege to operate, occupy, manage or otherwise utilize the Landfill Facility.
- c) The exclusive franchise, license and privilege to manage and dispose of Acceptable Waste at the Landfill Facility, with the full right to accept such Acceptable Waste from any source, including but not limited to any person or entity other than the Town or the residents of the Town. In connection with the forgoing, the parties acknowledge that SRD shall have all right to and shall own all revenue generated from any disposal of Acceptable Waste at the Landfill Facility.
- d) The use of any Permits that have been issued in the Town's name and are required for SRD to operate the Landfill Facility and fulfill its obligations under this Extension Agreement.
- e) The exclusive right (but not the obligation) to utilize any and all landfill gas generated at or by the Landfill Facility, if any, including but not limited to the right to collect and utilize such gas in connection with a landfill gas-to-energy plant, regardless of whether such landfill gas is generated during or after the Life of Landfill.
- f) The exclusive right to utilize at or remove as necessary or appropriate from the Landfill Facility excess soil, gravel, or other material that is generated as part of the construction, operation or Closure of the Landfill Facility. SRD shall pay to the Town fifty percent (50%) of the net revenue received by SRD from the sale of any such materials to any entity, other than an affiliate of SRD. Notwithstanding the above, SRD agrees to notify the Town in advance of the potential for the removal of any such material from the Landfill Facility, and to cooperate with

the Town in the potential use of such materials in connection with the development of the Industrial Development Park.

3.2 Permits. SRD shall use commercially reasonable and diligent good faith efforts to obtain, at its sole cost and expense, in phases as determined by SRD, a site assignment (or modification thereto) and all Permits, including preparing all necessary permit applications, reports and/or studies. The Town shall, to the extent permitted by law and necessary, transfer operational authority and/or the Permits held by the Town to SRD. The Town shall cooperate with SRD in providing information to SRD and in executing such forms and applications as SRD may reasonably require to obtain and thereafter maintain compliance with all such site assignments and Permits during the term of this Extension Agreement; provided, however, that the Town shall not be required to incur any third party costs or expenses.

3.3 Construction. SRD shall at its sole cost and expense construct portions of the Landfill Facility to the extent of the Permits so received and to the extent deemed appropriate by SRD to implement the terms of this Extension Agreement, including preparing the subgrade and constructing landfill cells in accordance with such Permits. SRD agrees to finance and construct expansions of the Landfill Facility to the extent permissible. SRD covenants that the design and construction of the Landfill Facility expansions will meet or exceed any and all applicable requirements pertaining to municipal solid waste landfills in the Commonwealth of Massachusetts. As the owner of a portion of the Landfill Facility, the Town shall have the right to review and comment on all plans developed by SRD for the design of any expansions to the Landfill Facility, and to inspect and comment on the construction prior to the completion and acceptance by SRD. In connection with the foregoing, SRD shall have the right to construct at the Landfill Facility, in SRD's sole discretion, such buildings or fixed resources as it deems necessary for the operation of the Landfill Facility including, but not limited to, recycling facilities, garages and other buildings or structures. The Town shall have the right at the expiration of the Term of this Extension Agreement or the earlier termination thereof to require SRD to remove all such buildings or fixed resources on the Property and to restore any area on the Property disturbed in connection with such removal to its condition as of the Execution Date.

3.4 Operation. From and after the Effective Date:

a) SRD shall assume sole responsibility and control, and bear all costs, including all labor, equipment, and materials and all direct and indirect expenses, for the development, permitting, management and operation of the Landfill Facility for the Term of this Extension Agreement and for the Closure and Post-Closure Activities;

b) SRD shall at its sole cost and expense be responsible for the day-to-day operation of the Landfill Facility, including, without limitation, storm water management system, gas collection system, air quality monitoring devices, weighing waste, testing waste for nature and consistency, preparation of waste for disposal, cell construction, disposal of waste, preparing and applying daily interim and final cover, construction of temporary roads and other temporary access, installation and monitoring of ground water wells, maintenance and operation of a leachate collection and disposal system;

c) SRD shall at its expense be responsible for providing and maintaining all necessary facilities, including equipment, for the receiving and handling of waste to be disposed of at the Landfill Facility. Such responsibilities shall include without limitation (i) employing all necessary personnel to operate the Landfill Facility, and (ii) providing all services incidental to the business of operating the Landfill Facility (including security, accounting, legal, fire prevention and pollution control);

d) SRD shall perform or cause to be performed, at its sole cost and expense, a curbside collection program (which shall include both the collection and disposal of MSW) for the residents of the Town, as further set forth in Exhibit H hereto, for a period of twenty (20) years commencing on the Execution Date or for the Term of the Extension Agreement, whichever is longer; provided, however, that SRD shall have no obligation to provide the program to more than 7,000 residences (which includes multi-unit residential housing, in which each individual unit will count as an individual residence) in any calendar year during such period.

e) SRD shall furnish a performance bond to the Town in a form acceptable to the Town to cover the cost of services provided under Section 3.4(d) above. The bond shall be in the amount of six hundred twenty-five thousand dollars (\$625,000.00); provided, however, that said amount shall be increased by SRD every three (3) years, on the anniversary of the Effective Date, to take into account the increase in the cost of providing such services, to an amount reasonably acceptable to the Town. SRD shall deliver this bond to the Town prior to the Effective Date and shall renew this bond annually so long as SRD's obligations under Section 3.4(d) remain in effect. This bond shall become payable in the event that SRD is in material breach of its obligations under Section 3.4(d) above or as specified in Section 18.4 herein.

f) SRD shall at its sole cost and expense weigh all vehicles containing waste to be delivered to the Landfill Facility pursuant to this Extension Agreement. SRD shall utilize scales approved by the Commonwealth of Massachusetts to weigh all waste delivered to the Landfill Facility. SRD shall test and calibrate the scales every twelve (12) months. The Town or its authorized representative shall have the right to test the accuracy of scales located at the Landfill Facility at any time, provided that these tests are conducted at times when the Landfill Facility is not accepting Acceptable Waste and do not unreasonably interfere with the orderly operation of the Landfill Facility. For the avoidance of doubt, the parties agree that the Town, without prior notice to SRD, may test the accuracy of the scales by loading a truck to any legal weight desired, ascertaining the weight by obtaining a weight ticket at a certified scale maintained by an independent entity that has been calibrated within the last thirty (30) days, following a chain of custody protocol established by an independent consultant, and traveling directly to the scales at the Landfill Facility for weighing in accordance with the time of arrival at the Facility. In the event that the scales are determined to be accurate (as determined by reference to the manufacturer's recommended tolerances) as a result of an inspection by the Town, the Town shall bear the cost of such inspection. If the scales are determined to be inaccurate (as determined by reference to the manufacturer's recommended tolerances), SRD shall reimburse the Town for the cost of such test;

g) SRD will bear all costs, including all direct and indirect expenses, attributed to the operation of the Landfill Facility;

h) In conjunction with the Closure, SRD will be responsible for the collection and disposal of all landfill gases;

i) SRD will be responsible for the cost of all federal, state and local permits and fees associated with the operation of the Landfill Facility, including any fines, penalties, or other costs associated with compliance with MADEP notices, orders and/or regulations arising out of or related to SRD's operation of the Landfill Facility;

j) SRD shall use commercially reasonable efforts to ensure that truck routes contained in Exhibit F are utilized in the delivery of Acceptable Waste to the Landfill Facility and the Processing Facility. SRD shall post the truck routes contained in Exhibit F at the Landfill Facility and the Processing Facility sites. Such efforts shall include informing haulers of the routes required to be followed under this Extension Agreement. SRD agrees that it shall deny access to the Landfill Facility and the Processing Facility to any hauler that repeatedly fails to follow prescribed truck routes or other instructions required by this Section. Any changes in said truck routes shall be subject to approval by the Town Manager; and

k) SRD shall maintain the total capacity of Acceptable Waste delivered to the Processing Facility and the Landfill Facility from outside sources at or below the current total permitted level of 499,200 tons per year, and maintain the total capacity of MSW delivered to the Landfill Facility at the Initial Capacity or the Expanded Capacity, whichever is applicable.

3.5 Hours of Operation. SRD shall have the right to operate the Landfill Facility at hours of its choosing from 7:00 A.M. to 5:00 P.M. Monday through Friday, and from 7:00 A.M. to 5:00 P.M. Saturday, unless otherwise permitted by MADEP. The Landfill Facility shall be closed for operation on each of the following days: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, unless requested by the Town and agreed to by SRD.

### 3.6 Inspection.

a) Except for the Landfill Monitor, his or her supervisor, and any person or entity designated by the Town Manager to perform such duties, who may freely access the Landfill Facility at any time, SRD expressly agrees that Town officials, as designated by the Town Manager, may visit the Landfill Facility during regular operating hours and with advance notification to SRD, except in the case of an emergency. All visits or inspections shall be conducted in such a manner so as not to interfere with SRD's operations and in compliance with all reasonable safety rules adopted by SRD. This Section shall not be in derogation of the right of any public official to carry out any public duty in accordance with any applicable laws, including Board of Health officials and authorized agents acting under Chapter 111 of the Massachusetts General Laws, or otherwise.

b) During the Term of this Extension Agreement, the Town shall have the right at any time to install, at its sole cost and expense, any video electronic device, including cameras, to monitor the operation of the scale house at the Landfill Facility.

c) During the Term of this Extension Agreement, SRD shall (at the Town's request and at the Town's sole cost and expense) construct and maintain a duplicate weigh

station screen in the scale house that replicates in real time all weight transactions from the scales at the Landfill Facility. In connection with the above, SRD shall provide all access required to allow the Town to staff such duplicate observation station in a manner as determined by the Town.

### 3.7 Limitations on Waste.

a) Rejection of Excluded Waste. SRD shall accept only Acceptable Waste at the Landfill Facility. SRD shall be responsible for the rejection of Excluded Waste delivered to the Landfill Facility after the Effective Date, which provision shall not limit SRD's right of recourse against the transporter or generator of the Excluded Waste. SRD shall have the right to detain and inspect the contents of all vehicles that are delivering waste to the Landfill Facility to ensure that Excluded Waste is not being delivered to the Landfill Facility. SRD shall have the right to refuse or reject such Excluded Waste in its sole discretion or, if not detected prior to entering the Landfill Facility, SRD shall remove the Excluded Waste and ensure its proper disposal, all at the hauler's expense. SRD shall have the right to ban haulers from disposing at the Landfill Facility until such time as the expenses for reimbursement for the removal of the Excluded Waste are paid to SRD. In connection with the foregoing, SRD agrees that as the designated operator of the Landfill Facility it will not, at the Landfill Facility, accept or dispose of Hazardous Waste. SRD shall take steps to assure that all waste is delivered in appropriate vehicles and is covered or contained in such manner that it will not spill or blow onto Town streets, roads or any other property. SRD shall bear all costs incurred from its failure to comply with this paragraph without recourse to the Town.

b) Tonnage. The annual tonnage of Acceptable Waste disposed of in the Landfill Facility shall be limited by any final, nonappealable conditions imposed by the Southbridge Board of Health and/or any Permits issued by MADEP for the Solid Waste Management Areas.

3.8 ACOP Implementation. Each party shall in good faith use its best efforts to promptly and timely address to the satisfaction of the MADEP all issues and items for which such party is responsible under the ACOP. In the event that a party fails to comply with its obligations under this section, the other party, upon thirty (30) days prior notice to the first party, may, at its election, take measures to address such issues and items that have not been performed, and the non-complying party shall pay the reasonable costs therefore promptly upon the presentation of invoices specifying the same. In the event a party fails to complete the work as required by the ACOP or otherwise fails to comply with the requirements of the ACOP, such party shall be responsible for paying any penalties required to be paid under the ACOP, and shall indemnify and hold the party harmless for any other liability or cost of compliance as a result of such non-compliance.

3.9 Limitation. SRD agrees to assume liability for all costs associated with conducting a Comprehensive Site Assessment (CSA) and Corrective Action Alternative Analysis (CAAA) for the Phase I, II, IIIA and IIIB and as ordered by the MADEP. In the event MADEP or the Permits require that any work be performed in Cells I, II, IIIA and IIIB, and any Hazardous Waste is determined to be present, the Town will be responsible for remediation; provided, however, that if Hazardous Waste is found in any area in which SRD has disposed of any waste, SRD shall be responsible for any notices of noncompliance, and for the remediation of any Hazardous Waste or other conditions and/or fines which may be assessed. If SRD decides to voluntarily perform test borings or site evaluation, or to commence mining operations in Cell I, II, IIIA, and IIIB, SRD shall be responsible for remediation of any Hazardous Waste or other conditions in any area of the Landfill Facility.

3.10 Notice of Regulatory Meetings. SRD shall provide advanced notice to the Town of any meeting scheduled with a Governmental Authority that relates to the Landfill Facility. The Town shall have the right to attend such meetings.

3.11 Late or Inadequate Payments. In the event that any payment is not made as required by this Extension Agreement, interest shall accrue on such late payment at the annual rate of ten percent (10%) from the first day of the delinquency on the unpaid balance until payment has been made in full.

3.12 Interest on Refunded Disputed Payments. In the event that a party disputes any payment due under this Extension Agreement, it shall nevertheless remit the full amount of the payment due. In the event it is determined that the remitting party did not have to make to payment, in whole or in part, interest shall accrue on the amount of such payment that is required to be credited or refunded, if any, at the annual rate of three percent (3%) from the first day of the payment until credit or refund has been made in full.

#### **4. EXPANSION OF LANDFILL FACILITY**

4.1 Expansion of the Landfill Facility Capacity. SRD shall have the right to seek all approvals, authorizations, and site assignments (or modifications thereto) required to reallocate and/or expand the permitted disposal volume of the Landfill Facility to 405,600 tons per year of MSW (such capacity, the "Expanded Capacity"); provided that at no time shall SRD increase the total combined permitted capacity of the Landfill Facility and the Processing Facility above the capacity authorizations that exist as of the Effective Date of this Extension Agreement (which such site authorizations total the amount of 499,200 tons per year).

4.2 Lateral Expansion. SRD shall not be allowed to laterally expand the Solid Waste Management Areas without an amendment to this Extension Agreement and compliance with all necessary approvals, including, without limitation a Major Modification of the Site Assignment approved by the Southbridge Board of Health. For the avoidance of doubt, the parties acknowledge and agree that site assigned property currently owned by SRD or its affiliates and located adjacent to the Landfill Facility falls within the Solid Waste Management Areas, that SRD may utilize such property in connection with any and all of its activities under this Extension Agreement, and that such property to the extent so utilized shall be considered to be part of the Landfill Facility for the purposes of determining the scope of SRD's rights and

obligations under this Extension Agreement; provided, however, that title to such property shall at all times remain in SRD or its affiliates.

4.3 Level of Truck Traffic. SRD represents and warrants that the reallocation of the Landfill Facility capacity as contemplated in Section 4.1 shall not result in an increase in truck traffic accessing the Landfill Facility and the Processing Facility as permitted of the Execution Date. This representation is a material inducement for the Town's entering into this Extension Agreement.

## 5. ROYALTY PAYMENT

5.1 Continuation of Benefits. Upon the execution of this Extension Agreement and until the Effective Date, SRD shall continue to make all royalty and other payments to the Town required under the Existing Agreement; provided, however, that on and after the Effective Date, SRD shall make only those royalty and other payments to the Town that are set forth in this Extension Agreement.

5.2 Initial Capacity Royalty Payment. Commencing on the Effective Date and during the Term of this Extension Agreement, and thereafter for so long as SRD or any one acting by, through or under SRD remains in occupancy of the Property, SRD shall pay a royalty payment to the Town, on a monthly basis, for each ton of Acceptable Waste disposed in the Landfill Facility in any calendar year, not to exceed 180,969 tons of Acceptable Waste annually, in the amount that is the greater of (a) \$5.53 for each ton of Acceptable Waste that is disposed at the Landfill Facility or (b) the amount of \$83,333.33 per month; provided, however, that in no event shall the amount paid in any calendar year by SRD under this subsection exceed \$1 million. The parties agree that the payments set forth in this subsection shall be adjusted on an annual basis based on annual increases in the CPI. If (i) the Permits for the Landfill Facility authorize the disposal of more than 180,960 tons but fewer than 405,600 tons of Acceptable Waste per calendar year, or (ii) SRD disposes of more than 180,960 tons but fewer than 405,600 tons of waste at the Landfill Facility in any calendar year, then SRD shall pay the Town an additional \$5.53 for each ton of waste above 180,960 tons that is disposed of at the Landfill Facility during any calendar year. The payments in the initial and final calendar year of the Term shall be prorated if necessary. SRD shall make such payment to the Town on or before the 15<sup>th</sup> day of each calendar month.

5.3 Expanded Capacity Royalty Payment. In the event that SRD receives all approvals, authorizations, Permits and Site Assignments required to reallocate and/or expand the existing permitted capacity of the Landfill Facility to 405,600 tons per year of Acceptable Waste as set forth in Section 4.1 above, SRD shall pay to the Town, on a monthly basis, commencing on the date that the Landfill Facility may be operated at the Expanded Capacity and during the Term of this Extension Agreement, and thereafter for so long as SRD or any one acting by, through or under SRD remains in occupancy of the Property, a royalty payment for each ton of Acceptable Waste that is disposed at the Landfill Facility in any calendar year in the amount that is the greater of (a) \$6.00 for each ton of Acceptable Waste that is disposed at the Landfill Facility, or (b) the amount of \$83,333.33 per month. The parties agree that the payments set forth in this subsection shall be adjusted on an annual basis by the CPI, and that the payments in the calendar year in which the above Permits are obtained and the final calendar year of the Term

shall be prorated if necessary. SRD shall make such payment to the Town on or before the 15<sup>th</sup> day of each calendar month.

5.4 Right of Offset. It is understood between the parties that payment of the Royalty Payment is in lieu of (i) all taxes, fees, charges or other assessments with respect to the Landfill Facility, including but not limited to any statutory host fee, which may be otherwise chargeable by the Town to SRD pursuant to M.G.L. c. 150A or c. 16, § 24A, (ii) real estate taxes imposed solely upon the land on which the Landfill Facility (and any such expansion or LGE Project) is located, and (iii) betterment fees for the construction of the Industrial Development Park Road and related utilities, but excluding fees imposed routinely for permits, applications, water and sewer connection and usage fees, and the like. SRD shall be entitled to offset against any Royalty Payment due under this Extension Agreement the full amount of any such tax, fee, charge or assessment which is assessed against SRD, provided that SRD first submits to the Town any invoice, bill or other document evidencing the amount of such charge before paying the same, and the Town reasonably determines, in writing, no later than thirty (30) days from the receipt of all requested evidence, that SRD may offset that amount from the Royalty Payment. SRD may dispute the Town's conclusion by following the procedures set forth in Article 27, provided that SRD must continue to make its payments under this Extension Agreement until a final determination has been reached. If it is determined that SRD has the right to offset such amount, the funds so overpaid shall be credited (with interest as set forth in Section 3.12 above) to the next Royalty Payment(s) owed by SRD; provided, however, that if such credit would be insufficient to fully offset such charges, the Town shall promptly refund the remaining amount of such credit to SRD.

5.5 Change in Law or Event of Force Majeure and Reduction of Royalty Payment. SRD shall have the right to decrease the amount of any current and future Royalty Payment due under this Extension Agreement to reflect the additional costs imposed on SRD to the extent that a Change in Law or event of Force Majeure materially and adversely affects SRD's ability to fulfill its obligations hereunder, including, without limitation, such changes which have a material adverse effect on the cost of development, construction, operation or maintenance of the Landfill Facility, provided, however, that (a) SRD first submits to the Town a written notice specifying the nature of the Change in Law or event of Force Majeure, how such Change in Law or event of Force Majeure materially and adversely affects SRD's obligations hereunder, and by how much SRD proposes to decrease the amount of the Royalty Payment, and (b) the Town reasonably determines, in writing, no later than forty-five (45) days from the receipt of all requested evidence, that SRD may offset that amount from the Royalty Payment. SRD may dispute the Town's conclusion by following the procedures set forth in Article 27, provided that SRD must continue to pay the Royalty Payment due under this Extension Agreement until a final determination has been reached. If it is determined that SRD has the right to reduce the Royalty Payment, then any funds so overpaid to the Town shall be credited (with interest as set forth in Section 3.12 above) to the next Royalty Payment(s) owed by SRD; provided, however, that if such credit would be insufficient to fully offset such amount, the Town shall promptly refund the remaining amount of such credit to SRD. Notwithstanding the foregoing, SRD shall continue to perform all of its other obligations under this Extension Agreement, and to resume payment of the full Royalty Payment due under Sections 5.3 or 5.4, whichever is applicable, if SRD is able to successfully challenge the Change in Law, or after the period of Force Majeure has expired, whichever is applicable.

5.6 Change in Law or Event of Force Majeure and Suspension of Royalty Payment. SRD shall have the right to suspend the payment of the Royalty Payment if a Change in Law or event of Force Majeure causes SRD to suspend the operation of the Landfill Facility, provided, however, that SRD gives written notice to the Town specifying the nature of the Change in Law or event of Force Majeure. Notwithstanding the foregoing, SRD shall continue to perform all of its other obligations under this Extension Agreement, including, without limitation, its obligations under Sections 3.4(d), 3.4(e), 6.2, 7.3(d), 7.4(b), 7.7, and 25.1, and to resume payment of the full Royalty Payment due under Sections 5.3 or 5.4, whichever is applicable, if SRD is able to successfully challenge the Change in Law, or after the event of Force Majeure has expired, whichever is applicable, and resume the operation of the Landfill Facility.

5.7 Curbside Collection and Alternative Disposal Site. In the event that a Change in Law or event of Force Majeure renders the Landfill Facility temporarily unavailable for the disposal of Acceptable Waste, SRD shall immediately provide an alternative method for the disposal of Acceptable Waste that is generated by the Town and the residents of the Town and collected by SRD as part of the curbside collection program set forth in Section 3.4(d) herein, for the period of time that the Landfill Facility is temporarily unavailable to accept such Acceptable Waste for disposal.

## **6. LANDFILL FACILITY CLOSURE AND POST-CLOSURE**

6.1 Responsibility. From and after the Effective Date, SRD shall be responsible, at its sole cost and expense, for all Closure and Post-Closure Activities required by the Permits or the MADEP's regulations at the Landfill Facility.

6.2 Financial Assurance. Prior to the Effective Date, SRD shall propose to the MADEP the substitution of an alternative FAM to replace the current FAM that the Town maintains. SRD shall provide a draft of its proposal to the Town prior to submitting it to the MADEP, and the Town shall have the right to submit comments on the proposal to SRD and MADEP. The alternative FAM shall be satisfactory to the MADEP and shall, in all respects, comply with the requirements of 310 CMR 19.051. The alternative FAM shall cover the full obligation of SRD for Closure and Post-Closure Activities of the entire Landfill Facility, including the Closure costs for those portions of the Landfill Facility operated by the Town prior to the Existing Agreement. Upon approval of the MADEP and the occurrence of the Effective Date, the alternative FAM shall relieve the Town of its entire obligation to maintain the current FAM. For the avoidance of doubt, the parties agree that the alternative FAM shall not take effect until the Effective Date. The Town shall have the right, at any time during the Term of this Agreement, to request DEP to adjust the amount of the FAM if the Town reasonably determines that the FAM is insufficient to cover SRD's Closure and Post-Closure obligations hereunder.

6.3 Existing Closure Funds.

a) Release of Funds. Upon the Effective Date and after the posting by SRD of the FAM as set forth in Section 6.2 above, the Town will take all steps necessary to obtain the release to SRD of certain of the funds currently held by the Town in a restricted account, as further specified in Exhibit G attached hereto, for the Closure and Post-Closure Activities at the Landfill Facility.

b) Payment and Use of Funds. The parties agree that the Town shall retain all rights to any funds, other than those specified in subsection (a) above, currently held by the Town which relate to payments of whatever kind from WRI under the Existing Agreement.

## **7. ADDITIONAL BENEFITS TO BE PROVIDED TO THE TOWN BY SRD**

### **7.1 Landfill Monitor Reimbursement.**

a) Salary and Direct Benefits. From the Effective Date and continuing until the expiration or earlier termination of this Extension Agreement, SRD shall reimburse the Town each calendar year for the actual salary and direct benefits paid by the Town in retaining the Landfill Monitor for the Landfill Facility; provided, however, that such reimbursement shall not exceed the amount of \$75,000 in the first (1<sup>st</sup>) full year of this Extension Agreement. The Town agrees that the salary and direct benefits of such employee (i) shall be set in accordance with the Town's procedures of general applicability for determining the compensation and benefits of its non-collective bargaining unit employees, and (ii) shall increase annually only at a rate that is equal to the rate of increase that is applicable to the most similar class of non-collective bargaining unit employees in that given year; provided, however, that the rate of any such increase may not exceed four percent (4%) in any given year. The Parties further agree that in the event that the Town retains a non-municipal employee as the Landfill Monitor, the amount of the salary and benefits of such non-municipal employee shall not exceed (except as a result of the application of the four percent (4%) escalation factor referenced above) the amount that was paid to the last municipal employee that held the position of Landfill Monitor. SRD shall make such payment in twelve installments of equal amount, each of which shall be due on or before 15<sup>th</sup> of each month; provided, however, that the payment in the initial and final calendar year of the Term shall be prorated if necessary.

b) Third Party Consulting. From the Effective Date, SRD shall pay to the Town on an annual basis and on or before January 15<sup>th</sup> of each calendar year, \$10,000 for use by the Town in hiring third-party consultants to provide assistance to the Landfill Monitor. The payments due under this subsection shall be adjusted on an annual basis based on annual increases in the CPI.

7.2 Legal Fund Contribution. On the Effective Date, SRD shall pay to the Town the amount of \$100,000 as contribution toward the Town's legal fees in negotiating this Extension Agreement.

### **7.3 Contribution towards Water Line and Sewer Line Construction.**

a) Invitation for Bid. The Town agrees on a timely basis to issue an Invitation for Bid and award a contract for the design and construction of the Phase I Construction of the Industrial Park Road, and to arrange for the necessary financing of the project.

b) SRD Bid. The parties agree that Casella Construction, a related party to SRD, is eligible to and may submit a bid for the Phase I Construction of the Industrial Park Road. SRD acknowledges that the Town is required to award the contract to the lowest responsible and eligible bidder in accordance with applicable Massachusetts public construction laws.

c) Phase II Construction of the Industrial Park Road. The parties agree that Casella Construction, a related party to SRD, is eligible, but shall not be obligated, to submit a bid for the Phase II Construction of the Industrial Park Road.

d) Contribution Payment. Upon the award of the contract set forth in subsection (a) above, SRD shall make an annual payment to the Town in the amount of \$341,000 for a period of twenty (20) years, in addition to all other sums that SRD is obligated to pay under this Extension Agreement. SRD shall make such payment on or before January 15<sup>th</sup> of each such year. SRD's obligation to make these payments shall survive the expiration of this Extension Agreement if the twenty (20) year period set forth herein exceeds the Term of this Extension Agreement, but shall not survive the earlier termination of this Extension Agreement unless otherwise specified herein.

e) In the event that the Town awards, through competitive bidding procedures, the construction contract for either the Phase I or Phase II Construction of the Industrial Park Road to Casella Construction or any person or entity related to or affiliated with SRD or the Guarantor, then SRD agrees to provide the SRD Good Road Guarantee set forth in Exhibit O attached hereto in connection with such construction.

#### 7.4 Landfill Gas to Energy Project.

a) Construction and Operation. Upon the Effective Date, SRD shall have the right to design, permit, develop, own and operate a landfill gas to energy project (the "LGE Project") at or adjacent to the Landfill Facility, and utilize any and all landfill gas generated by or at the Landfill Facility, if any, both during and after the Life of Landfill, to fuel the LGE Project. SRD shall be entitled to all renewable energy credits, fuel production credits, greenhouse gas, carbon emission, or climate change-based similar credits or offsets, and any other international, federal or state credits, offsets or incentives associated with the sale, generation, or use of landfill gas from the Landfill Facility, or other revenue, credits or other incentives received under any state, federal, or international renewable energy portfolio program (collectively, the "Renewable Attributes").

b) LGE Project Payment. SRD shall pay to the Town, on a monthly basis, the amount of ten percent (10.0%) of all revenues received by SRD from the sale to third-parties of electricity generated by the LGE Project (the "Energy Payment"). The Energy Payment shall be due and payable by the twentieth (20<sup>th</sup>) day following the end of each calendar month. SRD shall provide the Town with all revenue statements from purchasers of electricity and other documentation as is reasonably necessary to confirm the actual amount of electric sales revenues received by SRD during the preceding calendar month. For the avoidance of doubt, the parties agree that the Energy Payment shall not include any revenue related or attributable to the Renewable Attributes. The parties agree that the provisions of Article 12 shall apply to the Energy Payment required to be paid hereunder.

#### 7.5 Intentionally Omitted.

7.6 Increased Legal Fund Contribution. Upon its receipt of the authorizations and approvals to operate the Landfill Facility at the Expanded Capacity, as set forth in Section 4.1

above, SRD shall pay the Town an additional \$100,000 as contribution toward the Town's legal fees.

7.7 Increased Water Line and Sewer Line Construction Contribution. Upon the award by the Town of the contract set forth in Section 7.3(a) above and the receipt by SRD of the authorizations and approvals set forth in Section 4.1 above, SRD shall increase the amount of the annual payment set forth in Section 7.3(d) above from \$341,000 to \$471,000 for the period of time remaining under Section 7.3(d) above (that is, the remainder of the period of twenty (20) years from the date of the award of the contract set forth in Section 7.3(d) above); provided, however, that in such event SRD shall decrease the Royalty Payment set forth in Section 5.3 above to \$5.42 per ton of Acceptable Waste for each ton of Acceptable Waste disposed in the Landfill Facility in any calendar year above the amount of 180,960 tons. SRD shall pay \$6.00 per ton (as such sum shall be adjusted by the CPI under Section 5.3) for the first 180,960 tons of Acceptable Waste that is disposed at the Landfill Facility in any calendar year.

7.8 Intentionally Omitted.

7.9 Intentionally Omitted.

7.10 RecycleBank. Contingent upon its receipt of the authorizations and approvals set forth in Section 4.1 above and the establishment by the Town of a single stream recycling requirement for the residents of the Town, and only as part of or in connection with the curbside collection program conducted pursuant to, and the limitations set forth herein, Section 3.4(d) above, SRD will (a) provide at no cost to the Town or the residents of the Town a single stream recycling program to the residents of the Town, and (b) offer to the residents of the Town, at a cost that represents the most competitive cost offered by SRD to other participants in the RecycleBank program, the opportunity to participate in SRD's RecycleBank program as it exists on such date and thereafter, all as further set forth in Exhibit I hereto

## **8. PROJECTS TO BE DEVELOPED BY SRD WITH THE TOWN**

8.1 Steam and Waste Heat Project. Upon or in connection with achieving commercial operation of the LGE Project, SRD shall develop on commercially reasonable terms and within three (3) years from the Effective Date, a hydroponics or other project to utilize steam and/or waste heat produced from the LGE Project (the "Waste Heat Project").

8.2 Gasification Project. Upon the Effective Date of this Extension Agreement, SRD agrees to cooperate with the Town in seeking the development on commercially reasonable terms of a gasification project that uses waste wood and other similar items recovered from the Processing Facility or that otherwise are available in the marketplace (the "Gasification Project").

8.3 New Technologies. Upon the Effective Date of this Extension Agreement, SRD agrees to cooperate with the Town in seeking the development on commercially reasonable terms of new solid waste conversion technologies in connection with the operation of the Landfill Facility.

## **9. OBLIGATIONS OF THE TOWN**

9.1 Cooperation. The Town shall execute at SRD's request all documents consistent with the purposes of this Extension Agreement and that are reasonably necessary to obtain the Required Approvals or any Permits required for the operation, Closure or performance of Post-Closure Activities by SRD at the Landfill Facility. In connection with the foregoing, the Town (including without limitation all agencies, boards, and commissions thereof) hereby appoints SRD as its agent or, alternatively, grants SRD a limited power of attorney (to the extent permissible by law) to (i) file documents; (ii) execute documents; (iii) submit permit applications (including without limitation applications for modifications and renewals); (iv) consult with the MADEP and the United States Environmental Protection Agency ("USEPA") or any other Governmental Authority with regard to the Landfill Facility; (v) represent the Town in front of the MADEP, USEPA or any other Governmental Authority with regard to the Landfill Facility unless the Town reasonably determines that its interests are materially adverse to the position being taken by SRD; and (vi) represent the Town at any public hearings or meetings relative to the obtaining, renewal or modification of the Permits. SRD agrees to provide the Town with copies of all documents signed by SRD under this Section 9.1 and to keep the Town apprised of all actions taken by SRD on behalf of the Town under this section.

9.2 Disposal of Leachate. In consideration of the obligations of SRD set forth herein, SRD shall have the right, at its sole cost and expense, to interconnect the Landfill Facility, the Processing Facility, the LGE Project, the Waste Heat Project, and the Gasification Project with the Town's sewer lines that are constructed as part of the Phase I Construction of the Industrial Park Road, and to subsequently discharge leachate and other wastewater to the Town's Waste Water Treatment Facility (the "WWTF") at no cost or expense to SRD; provided, however, that SRD (a) shall not discharge any leachate or wastewater to the WWTF that exceeds any influent limitations that are contained in the WWTF's discharge permits or applicable regulations, and (b) shall perform pretreatment of the leachate and/or wastewater if required by the MADEP. In consideration of the foregoing, SRD shall accept from the Town for disposal at the Landfill Facility during the Term of this Extension Agreement, at no cost to the Town, compost and grit and screenings from the WWTF, yard waste, and catch basin cleanings and street sweepings generated by the Town.

9.3 Access to Town Water. In consideration of the obligations of SRD set forth herein, SRD shall have the right, at its sole cost and expense, to connect the Landfill Facility, the Processing Facility, the LGE Project, the Waste Heat Project, and the Gasification Project with the Town's water lines constructed as part of the Phase I Construction of the Industrial Park Road, and to subsequently receive water service from the Town; provided, however, that SRD shall pay the Town the applicable, non-discriminatory industrial rate for such connection and water usage.

9.4 Acceptable Waste Activities. During the term of this Extension Agreement, the Town shall not make Town property available to any private party for the purpose of operating a for-profit transfer station or landfill for the processing or disposal of Acceptable Waste.

## **10. USE AND COMPLIANCE WITH LAW**

10.1 The Landfill Facility shall be kept by SRD in substantial order and repair outside and inside at its sole cost and expense. SRD shall, at its sole cost and expense, operate and maintain the Landfill Facility in compliance with the Permits and with all orders, regulations, rules and requirements of every kind and nature, now and hereinafter in effect, of all Governmental Authorities having the power to enact, adopt, impose or require the same whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise.

10.2 SRD shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity or legality of any law or Permit.

10.3 The performance by each party of its obligations under this Extension Agreement shall be conditioned on the receipt in a form reasonably satisfactory to the party of all permits, approvals, and authorizations required under applicable laws. Each party shall perform its obligations under this Extension Agreement in full conformance with all applicable laws.

10.4 Nothing herein shall be construed to limit the power and authority of the Town or any of its officers, boards, or commissions (including but not limited to the Board of Health and the Conservation Commission) to promulgate bylaws and regulations, or, in any way, to limit the authority of the Town to exercise its statutory or regulatory power and authority.

10.5 SRD shall be obligated to comply with the terms of this Extension Agreement in addition to the requirements of any applicable Permits. To the extent that this Extension Agreement imposes obligations on SRD that are more stringent than any other applicable Permit, or that are more favorable to the Town, SRD shall be obligated to comply with the terms of this Extension Agreement in addition to the approvals or conditions imposed by such other officers, boards, or commissions.

## **11. GENERAL POWERS**

11.1 In addition to the other powers granted to SRD, it is expressly acknowledged that in the exercise of the dominion and control of the Landfill Facility, SRD will be free, without restriction, to subcontract out those services that it deems appropriate in its sole discretion, including, but not limited to, Closure, Post-Closure Activities, or such other services that SRD deems necessary; provided, however, that SRD shall require that the subcontractors follow the provisions of this Extension Agreement. SRD acknowledges and agrees that it shall remain primarily liable for its obligations under this Extension Agreement.

## **12. RECORDS/AUDITS**

12.1 The acceptance by the Town of Royalty Payments under this Extension Agreement shall be without prejudice to the Town's rights to an examination of SRD's books and records from the operation of the Landfill Facility in order to verify the amount of Acceptable Waste received at the Landfill Facility.

12.2 SRD shall, with each Royalty Payment made hereunder by SRD to the Town, deliver to the Town a written statement prepared and certified by SRD, showing in detail the calculation of the respective payment. In addition, no later than thirty (30) days from the termination of each calendar year, SRD shall submit an annual report providing a detailed accounting of the amount of Acceptable Waste and other materials received at the Landfill Facility and the Processing Facility during that calendar year.

12.3 SRD shall keep accurate and true records, books and data of account with respect to all Acceptable Waste and other materials of whatever kind received at the Landfill Facility and the Processing Facility, including without limitation all original invoices and payment schedules relating to the operation of the Landfill Facility and Processing Facility, all trucking records, weight slips, and any and all other documents pertaining to the amount of Acceptable Waste and other materials received at both facilities per day. The written statement required under Section 12.2 shall include a description of all materials brought into the Landfill Facility each month. Accurate books and other records and data of account shall be kept of such business whether payment was made for cash or otherwise and whether or not monies were actually received.

12.4 The Town and its agents and auditors shall have the right at all reasonable times, but in no event more than twice each calendar year, and on five (5) days prior written notice to SRD, to inspect and examine the accounts, records, books, contracts and other data concerning the gross volume of business conducted under this Extension Agreement to the extent relevant to the calculation of payments due the Town hereunder. In the event that such inspection and examination shall disclose that there is a discrepancy of more than two percent (2%) in any sub-account between the statements rendered by SRD as aforesaid and the amount calculated as being due by the Town's auditors or if the audit discloses that SRD has failed to make any payment (or increase the same) as is due under this Extension Agreement, the cost of the Town's examination shall be promptly reimbursed by SRD. SRD shall also promptly pay to the Town any deficiency which is established by such audit. Any information obtained by the Town as a result of such examination shall be treated as confidential, except as may be required by law. For the avoidance of doubt, the parties agree that the provisions of this Section 12.4 shall not apply to or otherwise modify the duties of the Landfill Monitor as set forth in Exhibit C hereto.

12.5 SRD shall not be obligated to hold the books and records for more than six (6) years, provided there is no material variation as aforementioned, in which case SRD will hold such books and records relating thereto for six (6) years from the date such material violation was discovered by the Town.

12.6 The Town shall have the same inspection rights, and SRD shall have the same obligations, as set forth in this Article 12 with respect to the Energy Payment to be paid by SRD under Section 7.4 above.

### **13. NO JOINT VENTURE**

13.1 The Town is and will continue during the Term of this Extension Agreement to be the owner and permittee of record of the Landfill Facility. SRD will, in accordance with the terms of this Extension Agreement, be the Town's designated operator of the Landfill Facility. It

is further understood and agreed that neither this Extension Agreement nor the method set forth herein for computing payments to the Town by SRD, nor any other provision of this Extension Agreement, are intended nor shall ever be construed as to create a legal partnership by and between the Town and SRD, make SRD and the Town joint venturers, or make the Town in any way responsible for debts and/or losses of SRD.

#### **14. REPRESENTATIONS AND WARRANTIES OF THE TOWN**

14.1 The Town represents and warrants to SRD as follows.

a) The Town is a Town in the Commonwealth of Massachusetts with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Extension Agreement pursuant to the authority granted in Massachusetts General Laws, Chapter 44, Section 28C.

b) The Town, acting through its Town Council, is duly authorized to execute and deliver this Extension Agreement, and this Extension Agreement constitutes a legal, valid binding obligation of the Town and enforceable against the Town in accordance with its terms.

c) Neither the execution or the delivery by the Town of this Extension Agreement nor the performance by the Town of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which the Town is a party or by which the Town or by any of its properties or personal property are bound or constitutes a default.

d) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority or referendum of voters which has not been obtained is required for the valid execution and delivery by the Town of this Extension Agreement or the performance by the Town of its obligations hereunder.

e) There are no pending, or to the best of the Town's knowledge, threatened actions, suits or proceedings at law or in equity before or by any Governmental Authority against the Town in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the Town of its obligations hereunder or other transaction contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Extension Agreement.

f) There are no contracts or agreements, other than the Existing Agreement, whereby any person, firm, Governmental Authority or other entity has any right over the Landfill Facility.

g) The portions of the Landfill Facility that are owned by the Town, as shown on Exhibit E hereto, are not subject to a security interest, mortgage, deed of trust, lien, encumbrance or similar interest, except as set forth in Exhibit J hereto, and the Town owns fee simple good insurable title to such portions of the Landfill Facility.

## **15. REPRESENTATIONS AND WARRANTIES OF SRD**

15.1 SRD represents and warranties to the Town as follows.

a) SRD is a corporation duly incorporated, validly existing and authorized to do business under the laws of the Commonwealth of Massachusetts with full legal right, power and authority to enter into and fully and timely perform its obligations under this Extension Agreement.

b) SRD has duly authorized, executed and delivered this Extension Agreement and this Extension Agreement constitutes a legal, valid and binding obligation enforceable against SRD in accordance with its terms.

c) Neither the execution or delivery by SRD of this Extension Agreement nor the performance by SRD of its obligations in connection with the transactions contemplated hereby or the fulfillment of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which SRD is a party or which SRD or any of its properties or personal property are bound or constitutes a default thereunder.

d) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by SRD of this Extension Agreement.

e) There are no pending, or to the best of SRD's knowledge, threatened actions, suits, administrative actions or proceedings at law or in equity before or by any Governmental Authority against SRD in which an unfavorable decision, ruling or finding would materially and adversely affect the performance of SRD of its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Extension Agreement.

## **16. SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS**

16.1 All representations, warranties, promises, agreements, covenants and statements made herein or in any Exhibit annexed hereto or in any instruments or document delivered by or on behalf of any party pursuant to this Extension Agreement shall extend for the duration of this Extension Agreement, as it may be extended, regardless of what investigations the parties may have made before or after the closing, except those representations and warranties which are expressly waived in writing by the party benefiting therefrom. Nothing herein contained shall require that a party waive any representations and warranty.

16.2 Notwithstanding the above, and except as otherwise set forth in Section 18.4, 18.5, 18.6 and 18.7 hereof, the parties agree that the following provisions shall survive the expiration or earlier termination of this Extension Agreement: Section 3.1(e) (right to landfill gas), Section 3.3 (Construction, only with respect to the obligation to restore the Property following termination), Section 3.4(d) (curbside collection), Section 3.4(e) (curbside collection performance bond), Section 3.8 (ACOP Implementation), Section 3.9 (assumption of liability),

Section 6.2 (FAM), Section 7.3(d) (only to the extent such payment is still due under that section), Section 7.4(a) (LGE Project construction), Section 9.2 (disposal of leachate), Section 9.3 (access to Town water), Section 12.5 (retention of records), Section 16 (Survival), Section 17 (indemnification), Section 25 (SRD Liquidated Damages), Section 27 (Dispute Resolution), Section 31 (Notice), and Section 38 (Governing Law).

## **17. INDEMNIFICATION**

### **17.1 General Agreement to Indemnify.**

a) Each of the Town and SRD (each, an “Indemnifying Party”), to the fullest extent allowed by law, shall indemnify, defend and hold harmless the other Party and any director, officer or affiliate of the other Party (each, an “Indemnified Party”) from and against any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, fines, penalties, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorneys’ fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, “Losses”) incurred or suffered by any Indemnified Party to the extent that the Losses arise by reason of, or result from (i) the failure of any representation or warranty of the Indemnifying Party contained in this Extension Agreement to have been true in all material respects as of the date hereof, or (ii) the breach by the Indemnifying Party of any covenant or agreement of such Party contained in this Extension Agreement to the extent not waived by the other Party. For the avoidance of doubt, the Parties agree that Losses shall include direct costs, expenses, fines, obligations and penalties related to or arising from the required restoration of any damage caused to the Property or the Landfill Facility to a condition that enables the Town to benefit from the remaining Life of Landfill.

b) The indemnification obligations of each Party under this Section 17 shall inure to the benefit of the directors, officers and affiliates of the other Party on the same terms as are applicable to such other Party.

17.2 SRD’s Obligation to Indemnify Town. SRD agrees to defend, indemnify, hold harmless and discharge the Town from and against any and all Losses arising from SRD’s operation or use of the Landfill Facility, whether under the Existing Agreement or this Extension Agreement, including without limitation maintenance and use of the Property as solid waste management facilities, except as otherwise set forth in Section 3.9 herein. For the avoidance of any doubt, SRD’s indemnification obligation shall include, but not be limited to, any and all costs arising out of Closure, Post-Closure Activities, and the obligation of SRD to maintain a DEP-approved FAM for such period of time that may be required by law from time to time. SRD further agrees to indemnify and hold harmless the Town from and against any and all Losses to third parties which the Town may suffer, incur, be responsible for or pay out as a result of bodily or personal injuries (including death) to any person, damage (including loss of use) to any property, including environmental remediation, clean up and related costs to the extent caused by or arising out of breach of any of the terms hereof by SRD, or the willful misconduct or negligent act or omissions of SRD, its employees, subcontractors, assignees or transferees in the performance of the Existing Agreement or this Extension Agreement.

### 17.3 General Procedures for Indemnification.

a) The Indemnified Party seeking indemnification under this Extension Agreement shall promptly notify the Party against whom indemnification is sought of the assertion of any claim, or the commencement of any action, suit or proceeding by any third party, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim, action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "Third-Party Claim"), to assume the defense and control the settlement of such Third-Party Claim.

b) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim that the other is defending, as provided in this Extension Agreement.

c) The Indemnifying Party, if it has assumed the defense of any Third-Party Claim as provided in this Extension Agreement, shall not consent to a settlement of, or the entry of any judgment arising from, any such Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld) unless such settlement or judgment relates solely to monetary damages. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a complete release by such third party of the Indemnified Party.

17.4. Limitation. The obligation of each Party to indemnify the other under this Article 17 shall be limited to Losses arising from or related to the acts or omissions of that Party prior to the date of the expiration or earlier termination of this Extension Agreement.

## **18. DEFAULT; TERMINATION**

### 18.1 Termination by the Parties.

a) If any of the following occurs, SRD shall be in default under this Extension Agreement, and the Town may, upon thirty (30) days prior written notice to SRD and in compliance with the provisions of Section 18.3 below, terminate this Extension Agreement and require SRD to vacate and surrender possession of the Property:

- i. any of SRD's representations or warranties were not materially true and accurate when made, which materially and adversely affects the ability of the Town to perform any material obligation hereunder or to obtain the benefits set forth in this Extension Agreement;
- ii. SRD fails to pay any amount required to be paid hereunder within ten (10) days from its due date;

