

# Exhibit A

SUBDIVISION USER CONTRACT -  
dated as of November 3, 1982

between

Baltimore County, Maryland

and

Northeast Maryland Waste Disposal Authority

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## SUBDIVISION USER CONTRACT

THIS SUBDIVISION USER CONTRACT is made and entered into as of the third day of November, 1982, by and between Baltimore County (the "Subdivision"), a body politic and corporate and a political subdivision of the State of Maryland, and Northeast Maryland Waste Disposal Authority (the "Authority"), a body politic and corporate organized and existing under the laws of the State of Maryland.

### RECITALS

A. Baltimore County, Maryland, and the Mayor and City Council of Baltimore, Maryland (collectively, the "Participating Subdivisions") wish to have a collective system of solid waste disposal that will reasonably accommodate their individual practices of collection and disposal, including such source separation as may be developed in the future cooperatively with the Authority.

B. The Participating Subdivisions have determined that it is in the public interest of each of them to provide for the economies of scale and opportunities for resource recovery which can be achieved through a regional solid waste disposal facility.

C. The Authority is empowered to assist the Participating Subdivisions to effect waste disposal programs on a regional basis. In the Northeast Maryland Regional Solid Waste Management Agreement among the Authority, the Participating Subdivisions, Anne Arundel County, Maryland, Harford County, Maryland and the Maryland Environmental Service (as defined in Section 1.1, the "Regional Agreement"), the Authority agreed to proceed with the planning, design and construction of a new resource recovery facility in Baltimore City, as well as certain other resource recovery facilities in the region. The Participating Subdivisions have determined that it is in the public interest of each of them to make firm, long-term commitments for the disposal of solid waste through such regional solid waste disposal facility.

D. The other Participating Subdivision is entering into an agreement with the Authority substantially identi-

cal in form and substance to this Subdivision User Contract. Such agreement, together with this Subdivision User Contract, are collectively referred to herein as the "Subdivision User Contracts."

E. In connection with the Subdivision User Contracts, the Authority is entering into an agreement (as defined in Section 1.1, the "Facility Agreement") with Baltimore Refuse Energy Systems Company, Limited Partnership (as defined in Section 1.1, the "Company") for the provision of a solid waste disposal facility with a nameplate capacity of 2010 tons of waste per day, including steam-generating equipment feeding a 46.7 megawatt turbine generator, air-pollution control equipment and facilities for recovery of ferrous metals from the incinerator residues, to be located in the City of Baltimore (the "Company's Facility"). Pursuant to the Facility Agreement, the Company is agreeing to design, construct, own and operate the Company's Facility. The Company's Facility is to be designed to have sufficient capacity to provide for the disposal of all waste for which the Participating Subdivisions have made firm, long-term commitments under the Subdivision User Contracts.

F. The Authority will receive from each Participating Subdivision a share of the total costs incurred by the Authority in disposing of the Participating Subdivisions' waste under the Subdivision User Contracts. Such total costs of waste disposal will be apportioned among the Participating Subdivisions based upon their respective tonnage commitments under the Subdivision User Contracts and certain other factors specified in such Contracts.

G. The Authority is entering into an agreement with the Company (as defined in Section 1.1, the "Disposal Agreement") pursuant to which the Company agrees, among other things, to dispose, on the terms and conditions set forth therein, of an amount of waste to be delivered on behalf of the Authority which is equal to the aggregate Guaranteed Annual Tonnages committed by the Participating Subdivisions under their respective Subdivision User Contracts. The Disposal Agreement establishes a per ton tipping fee in respect of waste to be delivered thereunder and certain contractual adjustments to such tipping fee. The Authority and the Participating Subdivisions have determined that this method of compensating the Company for the performance of its obligations under the Disposal Agreement also provides a reasonable basis upon which to provide for pay-

ments to the Authority in respect of its waste disposal obligations under the Subdivision User Contracts.

H. The Authority is entering into an agreement or agreements with Baltimore County, Maryland and/or the Mayor and City Council of Baltimore, Maryland (as defined in Section 1.1, the "Residue Disposal Contracts"), pursuant to which Baltimore County and/or the Mayor and City Council of Baltimore, Maryland is agreeing to make available one or more sites for the disposal of residue and certain other materials delivered to the Company's Facility throughout the term of this Agreement. The Authority's rights under such Contract or Contracts are, with certain exceptions, being assigned or otherwise made available to the Company. The Residue Disposal Contract or Contracts also provide the Authority with reserve landfill capacity which would facilitate the performance of its obligations under the Subdivision User Contracts in the event that the Disposal Agreement Termination Date (as defined in Section 1.1) shall have occurred and the Company's Facility should be unable to process waste for extended periods of time.

I. The Authority is entering into a lease (as defined in Section 1.1, the "Site Lease") with the Mayor and City Council of Baltimore with respect to the site on which the Company's Facility is to be constructed, which lease is to be assigned or subleased by the Authority to the Company. In addition, the Authority is entering into certain deeds and instruments with the Mayor and City Council of Baltimore and certain other deeds and instruments with the Company (as defined in Section 1.1, the "Salvage Contract"), pursuant to which certain existing improvements located on the site of the Company's Facility are to be transferred to the Company, which improvements are expected to be demolished.

J. In order to provide for revenues to offset, in part, the cost of constructing, operating and maintaining the Company's Facility, the Authority and WESI Baltimore Inc. ("WESI Baltimore") have entered into a contract with Baltimore Gas and Electric Company (as defined in Section 1.1, the "Electric Power Purchase Contract"), providing for the sale of electricity generated by the Company's Facility. It is contemplated that WESI Baltimore is assigning its rights under such contract to the Company.

K. It is anticipated that the Authority will issue Indebtedness (as defined in Section 1.1) in order to finance, in part, the acquisition, design, construction,

equipping and financing of the Facility and will lend the proceeds thereof to the Company pursuant to a loan agreement or agreements. The security for the Company's obligation to repay such loan or loans will include a security interest in all receipts and revenues of the Company and a mortgage of the Company's Facility and the Company's leasehold interest in the Facility Site granted by the Company to the Authority. The security for the Authority's obligation to repay Indebtedness so issued will include a security interest in favor of the trustee for the Indebtedness in the receipts of the Authority under such loan agreement or agreements and mortgage, as well as certain contractual undertakings by Wheelabrator-Frye Inc. ("WFI") and the managing partner of the Company, pursuant to an Additional Contributions Agreement, and/or other security provided or arranged for by the Company.

L. The Participating Subdivisions desire to enter into the arrangements provided for herein for the disposal by the Authority of waste delivered hereunder and have determined that they are willing to bear all of the costs incurred by the Authority in disposing of waste so delivered and that, in the event that the Authority should foreclose or otherwise take possession of the Company's Facility as a result of a default by the Company under the loan agreement or agreements referred to in Recital Clause K, such costs would reasonably include the debt service on the Project Secured Indebtedness (as defined in Section 1.1) and all other costs incurred by the Authority in disposing of such waste at the Company's Facility and/or, to the extent necessary, any alternate disposal facility utilized by the Authority.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.1. Definitions.

The following are definitions of certain terms used in this Agreement.

"Acceptable Waste" means:

(a) household garbage, trash, rubbish, refuse and offal of the kinds now normally collected or disposed of, or caused to be collected or disposed of by the Subdivision, including, without limitation,

(i) oversized household items such as beds, mattresses, sofas, refrigerators and washing machines (which items may be delivered separately),

(ii) leaves, twigs, grass and plant cuttings,

(iii) branches (provided they are tied in bundles and such bundles are not more than eighteen (18) inches in diameter and any individual branch is no longer than six (6) feet in length),

(iv) tree logs and wood (provided that they are not more than six (6) feet in length and six (6) inches in diameter), and

(v) items of discarded tangible personal property such as bicycles, baby carriages or occasional tires; and

(b) such types of commercial and light industrial waste as are now normally collected or disposed of, or caused to be collected or disposed of, by the Subdivision,

in each case, in the forms thereof normally collected or disposed of and without any additions thereto or deletions therefrom.

In no event shall Acceptable Waste include any materials defined herein as Unacceptable Waste. If any governmental agency or unit having appropriate jurisdiction shall determine that any chemicals or other substances which are not, as of the date of this Agreement, included within this definition of Acceptable Waste because they are considered harmful or of a toxic nature or dangerous, are not harmful, toxic or dangerous, the Authority and the Subdivision may mutually agree that such chemicals or other substances shall be Acceptable Waste for the purposes of this Agreement.

"Affiliate" means, with respect to any Person, any other Person who controls, is controlled by, or is under common control with such Person.

"Agreement" means this Subdivision User Contract between the Authority and the Subdivision, as the same may from time to time be amended, modified or supplemented in accordance with the respective terms hereof and of the Disposal Agreement.

"Alternate Disposal Facility" means any facility which has been designated by the Authority for the disposal of Acceptable Waste hereunder in the event that the Disposal Agreement Termination Date shall have occurred prior to the termination of this Agreement.

"Alternate Disposal Facility Agreement" means any contract or agreement relating to the design, construction, financing, operation or use of any Alternate Disposal Facility to which the Authority is a party.

"Business Day" means any day other than a Saturday, a Sunday or a day on which either state or national banks in Maryland are not open for the conduct of normal banking business.

"Commercial Operations Date" means the date fourteen (14) days subsequent to the first date on which the Company's Facility is capable of processing Acceptable Waste as contemplated by Section 4.1 of the Facility Agreement, but in no event later than the last day of the Extension Period referred to in Section 3.3 of the Facility Agreement.

"Company" means Baltimore Refuse Energy Systems Company, Limited Partnership or any permitted assignee thereof under the Disposal Agreement.

"Company's Facility" has the meaning specified in Recital Clause E.

"Disposal Agreement" means the Disposal Agreement between the Authority and the Company, referred to in Recital Clause G, as such agreement may be from time to time amended, modified or supplemented in accordance with the respective terms thereof.

"Disposal Agreement Termination Date" has the meaning given in Section 13.1.

"Diverted Waste" has the meaning given in Section 5.1(d).

"Electric Power Purchase Contract" means the agreement, referred to in Recital Clause J, entered into by the Authority, WESI Baltimore Inc. and the Baltimore Gas and Electric Company,

as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"Event of Default" has the respective meanings specified in Sections 10.2 and 10.3.

"Facility" means the Company's Facility and/or, in the event that the Disposal Agreement Termination Date shall have occurred, any Alternate Disposal Facility.

"Facility Agreement" means the agreement between the Authority and the Company, referred to in Recital Clause E, as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"Facility Site" means the real property located in the City of Baltimore, Maryland, upon which the Company's Facility is to be located, as described in Schedule 2 to the Facility Agreement.

"Financing Agreements" shall have the meaning given in the Facility Agreement.

"Guaranteed Annual Tonnage" means the minimum annual tonnage of Acceptable Waste which the Subdivision agrees to deliver or cause to be delivered in accordance with this Agreement, as established from time to time under Section 6.1.

"Guaranteed Monthly Tonnage" means the minimum monthly tonnage of Acceptable Waste which the Subdivision agrees to deliver or cause to be delivered in accordance with this Agreement, as established from time to time under Section 6.1.

"Holiday" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"Indebtedness" shall have the meaning given in the Facility Agreement.

"Independent Engineer" shall have the meaning given in the Facility Agreement.

"Independent Public Accountants" means the firm of Arthur Andersen & Co. or another firm of independent public accountants of recognized national standing retained by the Authority.

"Participating Subdivisions" means, collectively, Baltimore County, Maryland, and the Mayor and City Council of Baltimore, Maryland.

"Performance Tests" has the meaning given in the Facility Agreement.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company or unincorporated organization, or any government unit or agency or political subdivision.

"Project Agreements" has the meaning given in the Facility Agreement.

"Project Secured Indebtedness" has the meaning given in the Facility Agreement.

"Project Secured Initial Indebtedness" has the meaning given in the Facility Agreement.

"Receiving Hours" means the hours during which the Facility shall be open for the receiving of Acceptable Waste as set forth in Section 2.3.

"Recovered Materials" means metals recovered from Acceptable Waste or Facility residues.

"Regional Agreement" means the Northeast Maryland Regional Solid Waste Management Agreement, referred to in Recital Clause C, dated December 1, 1980, as modified by amendment dated January 9, 1981, among the Participating Subdivisions, Anne Arundel County, Harford County, the Maryland Environmental Service and the Authority, as such agreement was in effect as of May 20, 1981.

"Rejected Waste" means any waste delivered to the Facility that is determined to be Unacceptable Waste by the Authority after being deposited in the receiving pit.

"Residue" means the material (including, but not limited to, fly ash, bottom ash and siftings) remaining after processing waste and after removal of any Recovered Materials.

"Residue Disposal Contracts" means the agreement or agreements, referred to in Recital Clause H, (and any agreement assigning or otherwise making available to the Company any of the Authority's rights under any thereof) as such agreement or agreements may from time to time be amended, modified or supplemented in accordance with the respective terms thereof.

"Residue Landfill" means any landfill or similar disposal facility available to the Authority or the Company (as the case may be) under any Residue Disposal Contract.

"Returned Waste" means any waste delivered to the Facility that is determined by the Authority to be Unacceptable Waste before being deposited in the receiving pit.

"Salvage Contract" means the deeds, instruments and arrangements, referred to in Recital Clause I, providing for the transfer of certain existing improvements on the Facility Site, as such deeds, instruments and arrangements may from time to time be amended, modified or supplemented in accordance with the respective terms thereof.

"Shortfall Fee" has the meaning given in Section 6.2(b).

"Shutdown" has the meaning given in Section 5.1(a).

"Site Lease" means the lease agreement, referred to in Recital Clause I, pertaining to the Facility Site, as such agreement may from time to time be amended, modified or supplemented in accordance with the terms thereof.

"Subdivision" means the subdivision party to this Subdivision User Contract, as shown on the signature page hereof, a body politic and corporate and a political subdivision of the State of Maryland, and its successors and, to the extent permitted by the terms hereof, assigns.

"Subdivision Representative" has the meaning given in Section 8.1.

"Subdivision User Contracts" means, collectively, this Subdivision User Contract and the Subdivision User Contract between the Authority and Mayor and City Council of Baltimore, Maryland, in each case as the same may from time to time be amended, modified or supplemented in accordance with the respective terms thereof and of the Disposal Agreement.

"Tipping Fee" means the per-ton fee payable to the Authority by the Subdivision pursuant to Section 6.2(a) or Section 13.2 (as the case may be).

The term "ton" means a "short ton" of two thousand (2,000) pounds.

"Trust Indenture" means any trust indenture, bond resolution or comparable instrument under which Indebtedness is issued by the Authority in connection with the

financing or refinancing of the Company's Facility or any modifications thereof or additions thereto, which Indebtedness is, in whole or in part, payable from and secured by the Company's Facility, the revenues to be derived from the operation thereof or the Additional Contributions Agreement (as defined in the Facility Agreement).

**"Unacceptable Waste"** means pathological and biological waste, oil sludge, large concentrations of plastics, cess-pool or other human waste, human and animal remains, large automobile and vehicular parts (except occasional tires), trailers, agricultural equipment, marine vessels, or similar items, farm and other large machinery, wire and cable, tree logs and wood greater than six (6) feet in length and six (6) inches in diameter, tree stumps greater than twelve (12) inches in diameter, liquid wastes, non-burnable construction material and/or demolition debris, explosives (including ammunition and firearms), chemicals (including any empty containers thereof), radioactive materials, and hazardous refuse of any kind (including any empty containers thereof), such as cleaning fluids, flammables, petroleum products (including drained oil), cutting oils, paints, acids, caustics, pesticides, insecticides, poisons, drugs, or any other materials that would be likely to cause the Facility to violate an air or water quality effluent standard or to pose a threat to health or safety or which may cause damage to or adversely affect the operation of the Facility. If any governmental agency or unit having appropriate jurisdiction shall determine that certain chemicals or other substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, are harmful, toxic or dangerous, such chemicals or other substances shall thereafter be deemed Unacceptable Waste.

**"Uncontrollable Circumstance"** means any event or condition, whether affecting the Facility, the Subdivision, the Authority, the Company or any other Person, having, or which may reasonably be expected to have, a material adverse effect on any of the Project Agreements or any Alternate Disposal Facility Agreements, or on the Facility or the Facility Site or the acquisition, design, construction, equipping, start-up, operation, ownership or possession of either or both of them, if such event or condition is beyond the reasonable or prudent control, investigation, forecasting or planning, and not the result of willful or negligent action or a lack of reasonable diligence, of the party (the "Non-Performing Party") relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder. The foregoing provisions shall not be construed to require that the Non-

Performing Party observe a higher standard of conduct than that required by the usual and customary standards of the industry or other field of activity in question, as a condition to claiming the existence of Uncontrollable Circumstance. Such events or conditions may include but shall not be limited to circumstances of the following kind:

(a) (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence, an act of the public enemy, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or (ii) a strike, lockout, or similar industrial or labor action, or (iii) damage caused directly or indirectly by Unacceptable Waste entering the Facility, unless (x) at the time of such entry, the Authority shall not have had an employee stationed on the floor of the receiving area having as part of his duties to detect, to the extent reasonably practicable, Unacceptable Waste deposited in the receiving pit, (y) if Unacceptable Waste was detected, the Authority shall not have made efforts, to the extent reasonably practicable in light of all the circumstances, to remove such waste from the receiving pit, and (z) in the case of Unacceptable Waste delivered to the Facility by an entity delivering waste to the Facility for the first time, the Authority shall not have made reasonable inquiry (at the scale house or otherwise) as to the type of waste being so delivered (or to be delivered in the future);

(b) the order and/or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Non-Performing Party, provided that the contesting in good faith of any such order and/or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of such Non-Performing Party;

(c) the failure to obtain, or suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the Facility as provided for herein or required with respect hereto, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Non-Performing Party, provided that the contesting in good faith of any such failure to obtain, suspension, termination, interruption or failure of renewal

shall not be construed as a willful or negligent action or a lack of reasonable diligence of such Non-Performing Party;

(d) the adoption, promulgation, issuance, material modification or change in interpretation, after September 30, 1982, of any federal, state or local law, regulation, rule, requirement, or ordinance, unless such law, regulation, rule, requirement or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state or local governmental body, administrative agency or governmental official having jurisdiction;

(e) any failure of title to the Facility Site or any enforcement of any lien, charge or encumbrance on the Facility Site or any of the improvements thereon not consented to in writing, or arising out of any action, by the Authority;

(f) the failure of any subcontractor or supplier (except The Whiting-Turner Contracting Company or a subcontractor or supplier which is an Affiliate of the Company or the managing partner thereof) selected with reasonable care and in good faith to furnish labor, services, materials, or equipment in connection with the design, construction, equipping, operation or maintenance of the Facility by the date agreed to, provided that the Non-Performing Party is not reasonably able timely to obtain substitute labor, services, materials or equipment on equivalent terms;

(g) the failure of The Whiting-Turner Contracting Company or any other subcontractor or supplier which is an Affiliate of the Company or the managing partner thereof to furnish labor, services, materials, or equipment in connection with the design, construction, equipping, operation or maintenance of the Facility by the date agreed to, as a result of Uncontrollable Circumstances affecting such subcontractor or supplier, provided that the Non-Performing Party is not reasonably able timely to obtain substitute labor, services, materials or equipment on equivalent terms;

(h) the failure or inability of the party providing landfill capacity at a Residue Landfill pursuant to any Residue Disposal Contract to accept for disposal at such Residue Landfill residue or other materials deliverable under such Contract, or

the failure of the jurisdiction in which the Facility or any Residue Landfill is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area of location of the Facility or any Residue Landfill to provide and maintain and assure the maintenance of all utilities, services, sewerage, and water lines to the Facility or such Residue Landfill for operation of the Facility or such Residue Landfill, provided they are essential to the Facility; and

(i) any obstruction, features or conditions in respect of the Facility Site or any characteristic of any facilities for access to the Facility Site or of any utilities for any purpose in connection with Facility Site preparation or the construction, testing or operation of the Facility that is deemed to constitute Uncontrollable Circumstances under Section 2.4 or 2.5, as the case may be, of the Facility Agreement.

## ARTICLE II

### OBLIGATIONS RELATING TO DELIVERY AND ACCEPTANCE OF WASTE; OPERATING PROCEDURES

#### Section 2.1. Delivery and Acceptance of Waste.

##### (a) Prior to Commercial Operations Date

Prior to the Commercial Operations Date, the Subdivision may offer to deliver, and the Authority may accept, Acceptable Waste, in such amounts as the Subdivision and the Authority may agree, provided that, prior to such date, the Subdivision shall deliver, or cause to be delivered, to the Facility such amounts of Acceptable Waste as the Subdivision may reasonably be able to furnish and as the Authority may reasonably determine to be necessary for start-up and the performance of Performance Tests or any Throughput Test (as defined in the Facility Agreement). Such amounts and the manner of said delivery shall be specified in the final delivery schedule and the final Performance Test plan furnished to the Subdivision in accordance with Section 3.2 of the Facility Agreement (such delivery schedule being subject to modification from time to time on reasonable prior notice to the Subdivision to increase or decrease the amount of Acceptable Waste required to be delivered by the Subdivi-

sion or to postpone deliveries thereof). In delivering, or causing to be delivered, Acceptable Waste for the performance of such Tests, the Subdivision shall attempt to avoid delivery of oversized items of Acceptable Waste, including (but not limited to) the items enumerated in paragraph (a)(i) of the definition of "Acceptable Waste" contained in Section 1.1.

(b) After Commercial Operations Date

Beginning on the Commercial Operations Date and throughout the term of this Agreement, but subject to the provisions of this Section 2.1(b) and of Sections 2.11, 2.13 and 5.1, the Subdivision shall deliver, or cause to be delivered, to the Facility Acceptable Waste in each calendar year (prorated for portions of years) in an amount at least equal to its Guaranteed Annual Tonnage and in each calendar month (prorated for portions of months) in an amount at least equal to its Guaranteed Monthly Tonnage, all in accordance with the provisions of this Agreement and without cost to the Authority, and the Authority shall accept such Acceptable Waste from the Subdivision.

The Authority and the Subdivision recognize that the tonnage of solid waste collected by the Subdivision may vary from time to time depending, among other factors, upon the season in which such waste is collected, and that the Subdivision cannot predict with precision its need for solid waste disposal capacity in any given period. Accordingly, the Authority and the Subdivision agree that the Subdivision shall have the rights:

(i) to deliver, or cause to be delivered, to the Facility in any calendar year, Acceptable Waste in an aggregate amount in excess of its Guaranteed Annual Tonnage, and the Authority shall accept such excess, (x) if the aggregate tonnage so delivered by the Subdivision during such calendar year does not (or will not, as reasonably estimated by the Authority) exceed 105% of its Guaranteed Annual Tonnage or (y) to the extent that the Authority, in its discretion, is willing to accept such excess;

(ii) to deliver, or cause to be delivered, to the Facility in any calendar month, Acceptable Waste in an aggregate amount in excess of its Guaranteed Monthly Tonnage, on such prior notice (which may be oral) as the Subdivision is reasonably able to give, and the Authority shall accept such excess, if (w) the aggregate tonnage so

delivered during such calendar month does not (or will not, as reasonably estimated by the Authority) exceed 130% of the Subdivision's Guaranteed Monthly Tonnage, (x) the delivery and acceptance for processing of such excess would not, in the judgment of the Authority, interfere with the performance by the Authority or other operator of the Facility of its obligations, under any agreements then existing for the disposal of solid waste at the Facility, to accept for processing minimum tonnages of solid waste, provided that, in the event that the Authority shall at any time not have sufficient capacity available at the Facility to accept all of the excess quantities of Acceptable Waste proposed to be delivered by the Subdivision under this clause (ii), the Authority shall in any event make available to the Subdivision for deliveries under this clause (ii) a proportion of such available capacity as may then exist at the Facility at least equal to the proportion of the Subdivision's Guaranteed Annual Tonnage to the normal operating capacity of the Facility, (y) the aggregate tonnage delivered by the Subdivision during the calendar year in question does not (or will not, as reasonably estimated by the Authority) exceed 105% of its Guaranteed Annual Tonnage, and (z) the Subdivision complies with delivery schedules established under Section 2.14; and

(iii) during any two consecutive calendar months, not to deliver to the Facility up to 20% of an amount equal to twice the Guaranteed Monthly Tonnage, provided that the rights of the Subdivision under this clause (iii) shall in no way diminish or otherwise affect the obligation of the Subdivision to deliver its Guaranteed Annual Tonnage, and that the Subdivision shall not deliver in any calendar month less than 70% of its Guaranteed Monthly Tonnage.

All Acceptable Waste delivered, or caused to be delivered, to the Facility by the Subdivision in accordance with Section 2.1(b) (except for Acceptable Waste which the Authority rightfully refuses to accept pursuant to Section 2.13(a)(ii), 2.13(a)(iii) or 2.13(c)), and all Diverted Waste disposed of pursuant to Section 5.1, shall be deemed to have been delivered by the Subdivision for the purpose of determining whether the Subdivision has delivered its Guaranteed Monthly Tonnage or Guaranteed Annual Tonnage, provided that no quantities of Acceptable Waste originating outside the boundaries of the Participating Subdivisions shall

be taken into account for purposes of determining whether the Subdivision has performed its obligations hereunder to deliver its Guaranteed Annual Tonnage or Guaranteed Monthly Tonnage in respect of any period.

(c) Disposal of Waste

Subject to the terms and conditions of this Agreement, the Authority shall dispose of all Acceptable Waste delivered to the receiving pits of the Facility by the Subdivision pursuant to this Section 2.1 in accordance with all applicable law and at the cost and expense of the Authority.

Section 2.2. Commencement of Operations.

The Authority's current estimate (which is nonbinding) of the approximate Commercial Operations Date is October 31, 1985. The Authority shall notify the Subdivision quarterly, during each January, April, July and October, of any change in such estimate of the Commercial Operations Date which results in a cumulative deviation of more than 30 days from the estimate most recently given to the Subdivision. The Authority shall give the Subdivision at least seven days' prior notice of the date expected to be the actual Commercial Operations Date.

Section 2.3. Receiving Hours.

The Authority shall keep the Facility open for the receiving of Acceptable Waste twenty-four (24) hours per day Monday through Friday and from 8 a.m. until 2 p.m. on Saturdays, except Holidays (the "Receiving Hours"). The estimate to be given to the Subdivision pursuant to Section 6.8 of this Agreement shall be accompanied by a statement indicating the days of the week on which the Authority will observe any Holidays during the next calendar year.

Section 2.4. Emergency Operation.

In the event that, due to a natural disaster or other emergency condition, the Subdivision requests the Authority to accept Acceptable Waste in quantities in excess of amounts which the Authority is obligated to accept under Section 2.1(b) or to receive Acceptable Waste at hours other than the Receiving Hours, the Authority shall (to the extent reasonably consistent with its obligations to the other Participating Subdivision and any obligations of the Authority or other operator of the Facility under its then existing contracts with other Persons relating to the disposal

of waste at the Facility) use reasonable efforts to accommodate the Subdivision's request; however, the Authority's determination as to its ability to do so shall be final. Payment for any such emergency operation to accept Acceptable Waste in quantities in excess of amounts which the Authority is obligated to accept under Section 2.1(b) shall be made as provided in Section 6.2(a). Additional charges for deliveries under this Section 2.4 of Acceptable Waste at hours other than the Receiving Hours shall be payable by the Subdivision as provided in Section 6.5.

**Section 2.5. Additional Hours of Operation.**

The Authority at its discretion may, upon the request of the Subdivision or otherwise, agree to receive Acceptable Waste at hours other than the Receiving Hours to the extent permitted by applicable law, and the Authority shall receive Acceptable Waste at hours other than the Receiving Hours to the extent permitted by applicable law if the Subdivision shall have given the Authority 14 days' prior written notice of the delivery thereof. Additional charges for operations outside of Receiving Hours pursuant to this Section 2.5 shall be payable by the Subdivision as provided in Section 6.5.

**Section 2.6. Repairs and Maintenance.**

Except as otherwise provided herein, the Authority at its expense shall maintain the Facility in good condition, including necessary repairs and replacement, consistent with solid waste handling, secondary materials recovery, and normal steam and electric generating plant practices. The Authority shall maintain the safety of the Facility at a level consistent with applicable law and normal boiler and electric generating plant practices. The Authority shall maintain the Facility Site, including the bulkheads located on the perimeter of the Facility Site, in good repair and in a neat and orderly condition to protect the Facility and the Facility Site against deterioration and to maintain the aesthetic quality of the Facility and the Facility Site.

**Section 2.7. Access and Security.**

The Subdivision Representative shall have the right to visit or inspect the Facility at any reasonable time upon giving the Authority reasonable notice. Any such visits shall be conducted in a manner so as to cause minimum interference with the operations of the Facility. In connection with such visits and inspections the Subdivi-

sion Representative and any other agent or representative of the Subdivision shall comply with all reasonable rules and regulations adopted by the Authority or other operator of the Facility. Such rules and regulations may include a requirement that each Person, including any agent or representative of the Subdivision, visiting the Facility shall sign a statement (a) assuming the risk of the visit to the Facility, (b) stating that such Person shall not, except as may be required by law, intentionally disclose or use any confidential information of the Authority or other operator of the Facility other than for the purpose for which it was furnished and that no such information shall be duplicated or disclosed to others or used in whole or part for any other purpose, except that portions of it may be furnished to other Persons who (i) have agreed in writing to restrict the use thereof as herein provided and (ii) have been retained by the Subdivision to comment upon or evaluate such information.

#### Section 2.8. Regulatory Requirements.

The Authority shall use its best efforts to operate the Facility in a manner which will not violate any federal, state or local law or regulation. The Authority shall not be deemed to have breached its obligations under the preceding sentence in respect of any period during which it may in good faith be contesting the validity or application of any such law or regulation or be diligently attempting to comply therewith, in each case to the extent that applicable law permits continued operation pending resolution of said dispute.

#### Section 2.9. Weighing Records.

The Authority shall operate and maintain motor truck scales, calibrated to the accuracy required by Maryland law, to weigh all vehicles delivering waste to the Facility or removing Rejected Waste, Residue, Recovered Materials or Returned Waste. Each vehicle delivering waste for the account of the Subdivision shall have its tare weight and an identification of the Subdivision permanently indicated and conspicuously displayed on the exterior of the vehicle in a location designated by the Authority. The Authority and the Subdivision may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles. Each loaded vehicle shall be weighed, indicating gross weight, tare weight, date and time and vehicle identification on a weight record.

If all weighing facilities are incapacitated or are being tested, the Authority shall estimate the quantity of waste delivered on the basis of truck volumes and estimated data obtained through historical information pertinent to the Subdivision. These estimates shall be the basis for records during the outage and shall take the place of actual weighing records during the scale outage. If, upon conclusion of testing, the test indicates that the scale did not meet the accuracy requirements required by Maryland law, any adjustments of scale records actually recorded since the previous test will be negotiated by the Subdivision and the Authority, and payments due from the Subdivision shall be adjusted consistent with such adjustments of scale records.

The Authority shall maintain daily records of the total tonnage of waste delivered to the Facility, the tonnage of Acceptable Waste accepted by the Authority, and the tonnages of Recovered Materials, Rejected Waste, Residue and Returned Waste, respectively. The Authority shall furnish to the Subdivision in respect of each month such information as may be reasonably required by the Subdivision in order to administer its contracts with haulers of solid waste, within ten days after the end of such month. Copies of all weight tickets will be maintained by the Authority for a period of at least two years.

**Section 2.10. Ownership of Acceptable Waste.**

Upon acceptance by the Authority of any Acceptable Waste, the Authority shall receive title thereto.

**Section 2.11. Returned and Rejected Waste; Recovered Materials; Residue Disposal.**

The Authority, or its designated agent, shall remove from the Facility and dispose of Residue and Recovered Materials. In the event that the Subdivision shall deliver, or cause to be delivered, waste which is determined by the Authority to be Unacceptable Waste after it has been deposited in the receiving pit, the Authority shall remove and dispose of such waste, as Rejected Waste, at the Subdivision's cost and expense. In the event that the Subdivision shall deliver, or cause to be delivered, waste which is determined by the Authority to be Unacceptable Waste (or waste which contains Unacceptable Waste if the Authority deems it impracticable to separate such Unacceptable Waste or the Subdivision or its designated hauler delivering such waste is unwilling to make such separation) prior to being deposited in the receiving pit, such waste shall be deemed Returned Waste and the Authority may,

at its election, (a) refuse to accept such waste, upon which refusal the Subdivision or its designated hauler shall promptly remove and dispose of all of such waste so refused or (b) remove and dispose of such waste, in either case at the cost and expense of the Subdivision. Any invoice submitted in respect of costs and expenses to be borne by the Subdivision under this Section 2.11 shall be payable by the Subdivision within 21 days of the date thereof.

The Authority shall maintain cost records with respect to (i) the removal and disposal of Residue, Rejected Waste, Recovered Materials and Returned Waste that the Authority elects to remove and dispose of under clause (b) of this Section 2.11, and (ii) the cost of correcting damage and cleaning up spillage for which the Subdivision is responsible pursuant to Section 2.12, all in accordance with generally accepted accounting principles. Such cost records, to the extent they relate to Rejected Waste, or Returned Waste that the Authority elects to remove and dispose of under such clause or such damage or spillage, allocable to the Subdivision, shall be made available for inspection by the Subdivision at such times during normal business hours as the Subdivision may reasonably request.

**Section 2.12. Manner of Deliveries.**

The Subdivision shall provide the Authority with the following information about each hauler delivering Acceptable Waste to the Facility for the account of the Subdivision: name and address; make, body type and motor vehicle registration number of each vehicle used; area of collection; and status as municipal vehicle operator or contract hauler. All vehicles used to deliver Acceptable Waste shall have a net capacity of at least five cubic yards and shall be capable of dumping directly into the Facility's receiving pit(s).

The Subdivision, and its designated haulers, shall use their best efforts to deliver only Acceptable Waste to the Facility, and not to bring any vehicle onto the Facility Site which is carrying refuse which may leak, spill or allow waste to be blown or scattered on the Facility Site before unloading at the Facility, all in accordance with the Authority's regulations. The Subdivision shall bear the cost of correcting any damage or cleaning up any spillage caused by its employees or its designated haulers, and shall reimburse the Authority on demand for all such costs.

Section 2.13. Refusal of Deliveries.

(a) Extent of Refusal Rights

Notwithstanding Section 2.1, 2.4 or 2.5, the Authority may refuse delivery of:

- (i) any waste other than Acceptable Waste;
- (ii) any waste delivered at hours other than Receiving Hours or such other hours as may be established under Section 2.4 or 2.5;
- (iii) any Acceptable Waste which the Authority is not obligated to accept under Section 2.1 or 2.13(c); and
- (iv) any waste it is entitled to divert during Shutdowns pursuant to Section 5.1.

(b) Effect of Refusal Rights

Any waste which the Authority rightfully refuses to accept pursuant to paragraphs (a)(i) through (a)(iii) above shall be deemed not to have been delivered by the Subdivision for the purposes of determining whether the Subdivision has delivered its Guaranteed Monthly Tonnage or Guaranteed Annual Tonnage.

(c) Inspection of Delivered Waste

The Authority shall have the right but not the obligation to inspect all vehicles delivering waste to the Facility hereunder, and shall have the right to require that the Subdivision or its designated hauler remove from any such vehicle before it is unloaded at the receiving pit at the Facility all waste which is not Acceptable Waste. If the Authority determines that it is impractical to separate Acceptable Waste from Unacceptable Waste in any vehicle, or the Subdivision or its designated hauler delivering such waste is unwilling to make such separation, then the Authority may reject the entire vehicle, the waste in such vehicle shall constitute Returned Waste, and such waste shall be removed and disposed of as provided in Section 2.11, all at the cost and expense of the Subdivision.

(d) Wrongful Refusal

In the event the Authority wrongfully refuses to accept Acceptable Waste hereunder, the Authority shall

reimburse the Subdivision for the amount by which the direct costs and expenses incurred by the Subdivision in hauling away and disposing of such wrongfully refused Acceptable Waste exceeds the amounts that would otherwise have been payable hereunder in respect of such disposal, and such wrongfully refused Acceptable Waste shall be deemed Diverted Waste for purposes of determining the "County Delivery Shortfall" under Section 6.2(b). In the event of a dispute hereunder the burden of proof of wrongful refusal shall be on the Subdivision.

**Section 2.14. Deliveries.**

Deliveries of Acceptable Waste hereunder shall be substantially in accordance with schedules reasonably determined by the Authority after consultation with the Participating Subdivisions and incorporated in the rules and regulations adopted by the Authority or other operator of the Facility with respect thereto. Such scheduling shall not unreasonably impede the ability of each Participating Subdivision to deliver efficiently all Acceptable Waste which the Authority is obligated to accept from such Subdivisions. The Subdivision shall cooperate with the Authority in the development and implementation of such scheduling procedures.

**Section 2.15. Other Contracts for Waste Delivery.**

The Subdivision acknowledges and agrees that the Authority or other operator of the Facility may enter into agreements for the disposition of Acceptable Waste with other Persons that do not impair the ability of the Authority to perform its obligations under the first paragraph of Section 2.1(b). Without limiting the foregoing, it shall be the general policy of the Authority to require that vehicles delivering waste to the Facility have a capacity of not less than five cubic yards and be capable of dumping directly into the Facility's receiving pit, it being understood that the Authority may from time to time make reasonable exceptions from such policy.

**Section 2.16. Right of First Refusal.**

The Subdivision shall not enter into any contract or arrangement or make other provision for the disposal of Acceptable Waste the effect of which is to increase the waste disposal capacity for Acceptable Waste available to the Subdivision on the date of execution and delivery hereof (or replace or substitute for any portion of such capacity) or, unless required to do so pursuant to the

terms of a written agreement now in effect, as to which the Authority and the Company have been given written notice by the Subdivision prior to the date hereof, to materially increase (excluding normal seasonal variations) the annual rate at which such capacity is being utilized, without first providing the Authority with a written notice setting forth the proposed terms of such contract, arrangement or provision and offering to enter into a contract with the Authority for the disposal of waste at the Facility having terms substantially equivalent in economic effect to the Subdivision and providing generally equivalent public benefits to the Subdivision, such offer to remain open for 90 days following such notice, provided that the right of first refusal provided for in this Section 2.16 shall not apply (a) during any period in which the Guaranteed Annual Tonnage of the Subdivision hereunder equals or exceeds 168,300 tons, being the sum of (i) the number of tons to be committed to the Facility by the Subdivision as shown on the "Waste Allocation Flow Chart -- Time Frame: Sept. 1984" included in Appendix A to the Regional Agreement plus (ii) 76,500 tons, representing the number of tons which the Subdivision had committed to a facility to be developed in Harford County, the proposed capacity of which facility has been reduced subsequent to the execution of the Regional Agreement or (b) to any such contract, arrangement or provision entered into or made by the Subdivision if (x) the Subdivision has prior thereto given the Authority written notice of the Subdivision's estimate of the terms, economic effect and public benefits of such contract, arrangement or provision and the Authority has not within 45 days of such notice given the Subdivision a written offer (to remain open for 90 days) to enter into a contract with the Subdivision for the disposal of waste at the Facility having terms substantially equivalent in the economic effects and public benefits to those stated in such notice and (y) the terms of such contract, arrangement or provision entered into or made by the Subdivision are at least as favorable as the estimate thereof referred to in clause (x) of this Section 2.16. For purposes of this Section 2.16, economic effects include (without limitation) factors such as hauling costs and revenue accruing to the Subdivision pursuant to such contract, arrangement or provision, and public benefits may include (without limitation) the benefits associated with the codisposal of sludge or land reclamation.

ARTICLE III  
RESOURCE RECOVERY

**Section 3.1. Sale of Recovered Materials.**

The Authority intends to recover such Recovered Materials and other salable by-products derived from Acceptable Waste disposed of at the Facility as are included in the revenue sharing formula set forth in Section III of Schedule 2, to the extent consistent with the maximizing of the net revenues from operation of the Facility as a whole.

**Section 3.2. Sale of Electricity, etc:**

The Subdivision acknowledges that the Authority and the Company are entering into the Electric Power Purchase Contract with respect to the sale to Baltimore Gas and Electric Company of electricity generated by the Facility, and that, except as provided in Schedule 2 and Section 6.18, the Subdivision has no interest in any payments made under the Electric Power Purchase Contract.

**Section 3.3. Steam Generation.**

(a) Subject to the provisions of Section 3.3(b), the Subdivision acknowledges that, as provided in Section 3.3 of the Disposal Agreement, the Company may at any time, at its sole cost and expense, make such capital improvements to the Facility as may be necessary or appropriate to enable the Facility to sell steam. In the event that the Company shall make such capital improvements, the Tipping Fee shall not be adjusted in respect of the cost of such improvements or any increase in the operating costs of the Facility related to such improvements, and revenues from the sale of steam shall not be included in the revenue sharing formula set forth in Schedule 2, provided that in the event that the production of steam at the Facility shall have the effect of reducing the quantity of electricity that would otherwise have been produced and sold in the absence of steam production, a portion of the revenues from the sale of steam, as reasonably determined in accordance with the principles set forth in Schedule 2, shall be deemed to be revenues from the sale of electricity for the purpose of such formula.

(b) In the event that the Company shall at any time propose to make such capital improvements to enable the Facility to sell steam, the Authority shall, prior to the

making of such improvements, so notify the Subdivision and furnish to the Subdivision such information as the Subdivision may reasonably request in respect of such proposed improvements, including, without limitation, information as to the estimated capital cost thereof and the estimated impact (if any) of the making of such improvements on the operating costs of the Facility. Both (but not less than both) of the Participating Subdivisions may elect to share in the capital costs in respect of such improvements and in any such increased operating costs, and to share in the revenues from the sale of steam, all as provided below, by notice given to the Company and the Authority not more than 45 days subsequent to the date of the notice provided for in the first sentence of this Section 3.3(b). In the event that both Participating Subdivisions shall so elect, (i) the Tipping Fee payable hereunder shall be adjusted in respect of such capital costs (x) in accordance with the principles and procedures set forth in Section 6.9, if such improvements are to be made prior to the date on which the Company shall have performed its obligations under Section 3 of the Facility Agreement (or will have performed such obligations, as estimated by the Authority), or (y) in accordance with the formula and procedures set forth in Section 6.10, if such improvements are made (or will be made, as estimated by the Authority) subsequent to such date, as the case may be, (ii) the Tipping Fee shall be further adjusted in respect of the increase, if any, in the operating costs of the Facility as a result of such improvements, in the manner provided for in Section 6.12, and (iii) revenues from the sale of steam shall be included in the revenue sharing formula set forth in Schedule 2, in accordance with the principles set forth in such Schedule.

## ARTICLE IV

### DOCUMENTS TO BE DELIVERED

#### Section 4.1. Documents to be Delivered.

The Authority shall deliver to the Subdivision conformed copies of each of the Facility Agreement, the Disposal Agreement, the Subdivision User Contract to which the other Participating Subdivision is a party, the Site Lease, the Salvage Contract, the Electric Power Purchase Contract, any Residue Disposal Contract, the Additional Contributions Agreement (as defined in the Facility Agreement) and the Project Completion Agreement (as defined in the Facility

Agreement), as soon as practicable after the execution of each thereof. The Authority shall also deliver to the Subdivision the proposed form of any Trust Indenture as soon as practicable after the execution and delivery of this Agreement.

## ARTICLE V

### SHUTDOWNS

#### Section 5.1. Shutdowns; Notice; Allocation of Capacity.

(a) As used in this Agreement, the term "Shutdown" shall mean any shutdown, reduction in capacity or any other inability of the Facility (or, from and after the Disposal Agreement Termination Date, any inability of the Authority) to accept and dispose of such tonnages of Acceptable Waste as the Authority is required to accept from the Participating Subdivisions from time to time under Section 2.1(b) of their respective Subdivision User Contracts, existing, for any reason, on or after the Commercial Operations Date. In the event of any Shutdown, the Authority shall promptly advise the Subdivision, and confirm such advice in writing, of the occurrence thereof, as to the effect thereof on the ability of the Authority to accept tonnages of Acceptable Waste from the Subdivision under Section 2.1(b), and as to the probable duration of such Shutdown.

(b) The Authority shall seek to schedule maintenance Shutdowns at periods when a low quantity flow of Acceptable Waste is anticipated.

(c) The Authority shall use its best efforts to give 14 days' prior written notice to the Subdivision of a maintenance Shutdown. Such notice shall indicate the expected time, duration and nature of such Shutdown.

(d) During the period of any Shutdown, the Subdivision shall, at no cost to the Authority, divert and landfill or otherwise dispose of any Acceptable Waste that cannot be disposed of by the Facility and that the Authority would otherwise have been required to accept under Section 2.1(b). Such waste is referred to herein as "Diverted Waste". During any such period, the Authority shall accept and dispose of Acceptable Waste delivered by the Participating Subdivisions, on a pro rata basis in accordance with their respective Guaranteed Annual Tonnages, to the extent of

the Facility capacity then existing. The parties shall use all reasonable efforts to resume normal operation of the Facility.

(e) For each day (except Sundays and Holidays) on which any Shutdown of the Facility shall exist, the Subdivision shall be deemed, for purposes of determining compliance with the respective obligations of the parties under the first paragraph of Section 2.1(b) in respect of the delivery and acceptance of the Guaranteed Annual Tonnage and Guaranteed Monthly Tonnage and for purposes of determining the number of tons of Diverted Waste under Section 6.2(b), to have delivered to the Facility a quantity of Acceptable Waste equal to 1/300th of the Subdivision's Guaranteed Annual Tonnage, such quantity to be subject to mutually agreeable adjustment by the Authority and the Subdivision to take into account relevant historical data as to deliveries of Acceptable Waste by the Subdivision hereunder, seasonal variations in such deliveries and other relevant factors.

(f) In the event of any Shutdown of the Facility, the Participating Subdivisions shall have, as to their respective Guaranteed Monthly Tonnages and Guaranteed Annual Tonnages, priority with respect to the disposal at the Facility of such tonnages over tonnages delivered by or on behalf of any other governmental unit or any other Person.

## ARTICLE VI

### GUARANTEED TONNAGES; PAYMENTS

#### Section 6.1. Guaranteed Annual Tonnage; Guaranteed Monthly Tonnage.

(a) The initial Guaranteed Annual Tonnage and initial Guaranteed Monthly Tonnage of Acceptable Waste to be delivered by the Subdivision is set forth in Schedule 1 hereto. If the Subdivision wishes to increase its Guaranteed Annual Tonnage under this Section 6.1(a), it shall request such increase by notice to the Authority during September of the year preceding the calendar year for which the Subdivision wishes the increase to become effective. The Authority shall grant such request if (i) the new Guaranteed Annual Tonnage would be not more than 2% in excess of the then current Guaranteed Annual Tonnage and would be not in excess of 110% of the Subdivision's initial Guaranteed Annual Tonnage as set forth in Schedule 1, (ii) the grant of such request would not, in the judg-

ment of the Authority or other operator of the Facility, impede its ability to perform its obligations under any of the agreements then existing relating to the disposal of waste at the Facility, and (iii) the Authority or other operator of the Facility determines that the Facility has sufficient capacity to accept the Guaranteed Annual Tonnage as so increased. If not all requested increases of the Participating Subdivisions can be so granted, the available capacity shall be allocated among the Participating Subdivisions requesting increases, pro rata, in accordance with their then existing Guaranteed Annual Tonnages.

If the Subdivision wishes to decrease its Guaranteed Annual Tonnage for a future calendar year, it may do so on advance notice to the Authority as provided in the preceding paragraph if the new Guaranteed Annual Tonnage (x) would be equal to at least 98% of its then current Guaranteed Annual Tonnage and (y) would be equal to at least 95% of the Subdivision's initial Guaranteed Annual Tonnage as set forth in Schedule 1.

The Subdivision, with the prior written consent of the Authority (which may not be unreasonably withheld), may also assign its rights hereunder in respect of all or any portion of its Guaranteed Annual Tonnage to the other Participating Subdivision on notice to the Authority as provided in the first paragraph of this Section 6.1 if such other Participating Subdivision assumes, in a writing given to the Authority, all of the Subdivision's obligations with respect to such assigned Guaranteed Annual Tonnage.

The rights of the Subdivision to increase its Guaranteed Annual Tonnage and its Guaranteed Monthly Tonnage under this Section 6.1(a) shall be in addition to its rights under Section 6.1(b).

(b) Subject to the succeeding provisions of this Section 6.1, the Subdivision may, by notice given to the Authority at any time prior to the second anniversary of the Commercial Operations Date, request that its Guaranteed Annual Tonnage be increased by an amount specified in such notice, effective as of a date to be specified in such notice (which date shall be not prior to 90 days nor subsequent to 180 days after the date of such notice), for the remainder of the term hereof. The Authority shall grant such request unless (i) such grant would in the judgment of the Authority or other operator of the Facility impede its ability to perform its obligations under any of

the agreements then existing relating to the disposal of waste at the Facility or (ii) the Authority or other operator of the Facility determines that the Facility does not have sufficient capacity to accept the Guaranteed Annual Tonnage as so increased.

(c) In the event of any change in the Guaranteed Annual Tonnage of the Subdivision under Section 6.1(a) or (b), the Guaranteed Monthly Tonnage of the Subdivision shall be changed in the same proportion for all purposes of this Agreement.

(d) Except as provided in Section 6.1(e), upon any increase or decrease in the Guaranteed Annual Tonnage and the Guaranteed Monthly Tonnage of the Subdivision pursuant to Section 6.1(a) or (b), such Tonnages shall be deemed increased or decreased, as the case may be, for all purposes of this Agreement and, without limiting the foregoing, the same Tipping Fee (as in effect from time to time) shall be payable in respect of all such Tonnages as so increased or decreased.

(e) In the event that the Guaranteed Annual Tonnage of the Subdivision shall be increased under Section 6.1(b) pursuant to a request by the Subdivision made subsequent to the Commercial Operations Date, the Subdivision shall be deemed for all purposes of this Agreement to have waived its rights, under the revenue sharing formula set forth in Section III of Schedule 2, to any amount of the Tipping Fee credit represented by RCGM, as determined under such Section III, which would otherwise be applicable in the calculation of the Tipping Fee under such Schedule, in respect of a number of tons (the "Waiver Tonnage") of Acceptable Waste equal to the aggregate amount of (i) the amount of such increase, multiplied by (ii) a fraction, the numerator of which is the number of calendar months (or portions thereof) elapsed between the Commercial Operations Date and the date on which the request in respect of such increase was made, and the denominator of which is twelve. Such waiver shall apply to all Tipping Fee payments in respect of tonnages as to which such Tipping Fee credit would otherwise be applicable, covered by any invoice rendered to the Subdivision under Section 6.3(a) until Tipping Fees have been so invoiced in respect of a number of tons equal to the Waiver Tonnage.

Section 6.2. Fees.

(a) Tipping Fee for Delivered Waste, etc.

The Subdivision shall pay to the Authority as provided in Section 6.3(a) a tipping fee (the "Tipping Fee") for each ton of Acceptable Waste delivered to the Facility and accepted for disposal hereunder. The initial basic Tipping Fee payable hereunder, which is provided for herein and in Section I of Schedule 2, is estimated to be \$23.80 (expressed in January 1, 1982 dollars), based on an assumed Effective Annual Interest Cost (as defined in Schedule 2) of the Project Secured Initial Indebtedness of between 13.75% and 15.00%, inclusive. As provided in Section II of Schedule 2, the actual initial basic Tipping Fee shall be established on or as of the first date on which not less than \$150 million of Project Secured Initial Indebtedness shall have been issued and sold, to reflect the actual Effective Annual Interest Cost for such Indebtedness, but in no event shall such initial basic Tipping Fee exceed \$23.80. The initial basic Tipping Fee as so established shall be subject to further adjustment from time to time in accordance with such Schedule and the other terms and conditions of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, from and after the Disposal Agreement Termination Date, the Tipping Fee payable by the Subdivision for the disposal of waste hereunder shall be established in accordance with Schedule 3. The Authority and the Subdivision have determined that the Tipping Fee as so established and adjusted represents reasonable terms for the payment by the Subdivision of the cost of disposing Acceptable Waste hereunder.

(b) Certain Definitions.

The following are definitions of certain terms used in this Section 6.2.

The term "County Delivery Shortfall" shall mean, for any calendar year, the excess, if any, of (i) the Guaranteed Annual Tonnage over (ii) the sum of (x) the number of tons of Acceptable Waste delivered by or on behalf of the Subdivision to the Facility and accepted for disposal under Section 2.1(b) and (y) the number of tons of Diverted Waste.

The term "Facility Utilization Shortfall" shall mean, for any calendar year, the excess, if any, of 586,920 over the number of tons of Acceptable Waste disposed of at the Facility during such year.

The term "Alternate Facility Utilization Shortfall" shall mean, for any calendar year, the excess, if any, of 562,500 over the number of tons of Acceptable Waste disposed of at the Facility during such year in respect of which tipping fees at least equal to the Tipping Fee for such year shall have been paid.

The term "Shortfall Fee" shall mean, for any calendar year, a dollar amount per ton, as reasonably determined by the Authority from time to time, representing the average gross revenues per ton then realized by the Company (or other operator of the Facility) from the sale of electric energy, ferrous metals or other saleable by-products then produced at the Facility (including, without limitation, steam).

The term "Total Subdivision Delivery Shortfall" shall mean, for any calendar year, the sum of the County Delivery Shortfall and the "City Delivery Shortfall" under the Baltimore City Subdivision User Contract.

(c) Year End Rebate.

Unless both Participating Subdivisions make the election provided for in the second paragraph of Section 6.2(f) of their respective Subdivision User Contracts for such year, the Authority shall pay to the Subdivision, in respect of any calendar year from and after the Commercial Operations Date, an amount equal to the product of (i) the sum of (x) the lesser of (A) the lowest aggregate amount of tipping fees received by the Company in respect of the disposal at the Facility during such year of a quantity of Acceptable Waste equal to the excess, if any, of the Total Subdivision Delivery Shortfall in respect of such year over the Facility Utilization Shortfall for such year (i.e., on the assumption that such quantity was composed of the particular tonnages as to which the Company received the lowest tipping fees) and (B) the product of the Tipping Fee in respect of such year, multiplied by the number of tons of such excess, minus (y) an amount equal to the reasonable additional administrative costs incurred by the Company by reason of the non-delivery of the Total Subdivision Delivery Shortfall, multiplied by (ii) the percentage of the Total Subdivision Delivery Shortfall represented by the County Delivery Shortfall.

In the event both Participating Subdivisions shall make the election provided for in the second paragraph of Section 6.2(f) of their respective Subdivision User Contracts for such year, the Authority shall pay to the Subdivision, in respect of any calendar year from and after the Commercial Operations Date, an amount equal to the product of (i) the Tipping Fee for such year, multiplied by the amount, if any, by which the Total Subdivision Delivery Shortfall exceeds the Alternate Facility Utilization Shortfall, multiplied by (ii) the percentage of the Total Subdivision Delivery Shortfall represented by the County Delivery Shortfall.

(d) Shortfall Fee Payments.

For each calendar year from and after the Commercial Operations Date as to which there is a County Delivery Shortfall, the Subdivision shall pay to the Authority an amount equal to (i) the Shortfall Fee, multiplied by the lesser of (x) the Facility Utilization Shortfall (or, in the event both Participating Subdivisions so elect pursuant to the second paragraph of Section 6.2(f) of their respective Subdivision User Contracts, the Alternate Facility Utilization Shortfall) and (y) the Total Subdivision Delivery Shortfall, multiplied by (ii) the percentage of the Total Subdivision Delivery Shortfall represented by the County Delivery Shortfall.

(e) Year End Rebate for Waste Accepted from Non-Participating Subdivisions at Discounted Tipping Fees.

The Authority shall pay to the Subdivision, for each calendar year from and after the Commercial Operations Date, an amount equal to the Subdivision's Share (as defined below) of the total amount payable by the Authority under this Section 6.2(e) in respect of Acceptable Waste delivered by or on behalf of any political subdivision or other political entity other than the Participating Subdivisions and accepted for disposal at the Facility during such year for tipping fees per ton which represent discounts from the then current Tipping Fee. The Authority shall pay an amount for each ton of Acceptable Waste so accepted in accordance with the following scale:

<u>Percentage Discount from Tipping Fee</u>	<u>Dollar Amount Payable Per Ton</u>
0%	\$0.00
25%	\$1.00
50%	\$2.00
75% or greater	\$3.00

The amount payable for any percentage discount between those shown in the above table shall be determined by linear interpolation between the dollar amounts for the percentage discounts shown. The "Subdivision's Share" is equal to a fraction the numerator of which is the Subdivision's Guaranteed Annual Tonnage and the denominator of which is the sum of the Guaranteed Annual Tonnages of the Participating Subdivisions. It is understood that the dollar amounts referred to above are to escalate with inflation on the same basis that the Tipping Fee escalates with inflation.

(f) Procurement of Waste; Payments, etc.

The Subdivision acknowledges that pursuant to Section 6.2(f) of the Disposal Agreement the Company is obligated at all times during the term thereof to use its best efforts, and the Subdivision hereby agrees, subject to its Charter and applicable law, at all times during the term hereof to use its best efforts, to procure or cause to be procured, from both public and private sources, Acceptable Waste for processing at the Facility at tipping fees at least equal to the then current Tipping Fee in order to maximize utilization of the Facility.

Within thirty (30) days following the end of any calendar year, the Authority will provide the Participating Subdivisions with sufficient information to permit them to make the election referred to in this Section 6.2(f) in respect of the amounts payable under Sections 6.2(c) and 6.2(d) of their respective Subdivision User Contracts. Within fifteen (15) days of the Participating Subdivisions' receipt of such information, they may jointly, but not separately, elect, by delivering written notice to the Authority whether any amounts payable for such year pursuant to such Sections 6.2(c) are to be determined in accordance with the provisions of the second paragraph of such Sections 6.2(c) and, consistently with such election, whether any amounts payable pursuant to Sections 6.2(d) are to be determined by applying the Alternate Facility Utilization Shortfall.

In the case of any partial calendar year, the amount of any payment under Sections 6.2(c) and 6.2(d) shall be determined on a pro rata basis. All payments under such Sections shall be made in accordance with Section 6.3(b). The Authority's obligation to make any payment under Section 6.2(c) in respect of any calendar year shall be subject to the Subdivision's performance of its obligations under Section 6.2(c) shall be of no further force and

effect after the Disposal Agreement Termination Date except as to obligations accrued as of such Date.

Section 6.3. Payments.

(a) All amounts payable under Sections 6.2(a), 6.4 or 6.19 (or under Section 13.2(b), in the event that the Disposal Agreement Termination Date shall have occurred) with respect to any calendar month shall be invoiced to the Subdivision by the Authority no earlier than the seventh day of the following month, and shall be paid by the Subdivision within 21 days of the date of such invoice.

(b) All amounts payable under Section 6.2(d) for any calendar year (or part thereof) shall be invoiced to the Subdivision by the Authority no earlier than 30 days after the Subdivision's receipt of the information referred to in the second paragraph of Section 6.2(f), and shall be paid by the Subdivision within forty-five (45) days of the date of such invoice. All amounts payable under Section 6.2(c) for any calendar year (or part thereof) shall be paid to the Subdivision by the Authority no later than March 15 of the following year.

Section 6.4. Minimum Payments.

Notwithstanding any other provision of this Agreement, the minimum monthly payment hereunder by the Subdivision for each month after the month in which the Commercial Operations Date occurs shall be an amount equal to the Tipping Fee then applicable under Section 6.2(a) or Section 13.2(b) (as the case may be) multiplied by an amount equal to (a) the then applicable Guaranteed Monthly Tonnage, minus (b) the number of tons of Diverted Waste (as determined in accordance with Section 5.1(e)) disposed of by the Subdivision during the month for which such payment is being calculated.

To the extent the amounts payable for any month under this Section 6.4 exceed the amounts otherwise due for such month under Section 6.2(a) or Section 13.2(b) (as the case may be), the Subdivision shall be entitled to a credit in the amount of such excess, which credit shall be applicable to amounts thereafter payable for any following month under Section 6.2(a) or Section 13.2(b) (as the case may be), to the extent such amounts exceed the minimum amount payable under this Section 6.4 for such month, provided that no credit accrued under this paragraph in respect of any calendar year shall be carried forward or otherwise applicable to amounts payable hereunder in respect of any subsequent calendar year.

Section 6.5. Payment for Out-of-Hours Deliveries.

The Authority shall establish and make available to the Subdivision a schedule of charges for deliveries of Acceptable Waste outside of Receiving Hours pursuant to Section 2.4 or 2.5, which charges shall be in addition to Tipping Fees and other fees payable under Section 6.2 or Section 13.2(b) (as the case may be) in respect of such deliveries. Such schedule may be amended from time to time by the Authority on at least 30 days' prior notice to the Subdivision. Such charges shall fairly compensate the Authority for actual additional costs incurred by the Authority or other operator of the Facility in accepting deliveries outside of Receiving Hours. The Authority shall furnish the Subdivision on request reasonably detailed justification for such charges. Any amounts payable by the Subdivision hereunder on account of deliveries outside of Receiving Hours may be included in the monthly invoice delivered to the Subdivision under Section 6.3(a) or separately invoiced to the Subdivision from time to time, as the Authority may elect.

Section 6.6. Late Payment.

Any amounts payable hereunder by the Subdivision which are not paid when due in accordance with this Agreement shall bear interest at the annual rate of 15%.

Section 6.7. No Set-Off, etc.

The obligation of the Subdivision to pay the amounts to be paid by it from time to time hereunder shall not be subject to diminution by reason of any shutdown of the Facility, set-off, abatement, counter-claim, existence of a dispute or any other reason, known or unknown, foreseeable or unforeseeable, which might otherwise constitute a legal or equitable defense or discharge of the liabilities of the Subdivision hereunder or limit recourse against the Subdivision. The foregoing provisions of this Section 6.7 shall not affect any right of the Subdivision to pursue independently any claim it may have against the Authority based upon non-performance by the Authority of its obligations hereunder.

Section 6.8. Estimates of Tipping Fee Adjustments;  
Subdivision Budgeting Obligations.

The Authority shall, on or before January 31 of each year, provide the Subdivision with the information as to Holidays referred to in Section 2.3 and with non-binding

estimates of (a) the Tipping Fee, calculated in accordance with the terms hereof and of Schedule 2 or Schedule 3 (as the case may be) payable by the Subdivision during the fiscal year of the Subdivision commencing in such year and (b) the aggregate amount payable by the Subdivision during such fiscal year in respect of taxes, fees, assessments and other charges under Section 6.19. Such estimates shall be based on the assumption that the Participating Subdivisions will deliver at least 100% of their respective Guaranteed Annual Tonnages during such period. The Authority may revise such estimates by a statement furnished to the Subdivision at least 90 days prior to the beginning of such fiscal year and any such revised estimates (which shall be non-binding) shall determine the Subdivision's obligations under the next succeeding paragraph.

In order to assure the timely payment of amounts required to be made by the Subdivision under this Agreement, the Subdivision shall include in its annual budget for such next fiscal year an amount sufficient to meet all of its obligations under this Agreement or take such other appropriate action as may be necessary to ensure the availability of funds sufficient to meet all such obligations. The Subdivision shall be deemed to have complied with this requirement if it budgets or takes such other appropriate action to assure the availability of an amount at least equal to the sum of (i) its Guaranteed Annual Tonnage for the period covered by such budget or action, multiplied by the estimate by the Authority referred to above in this Section 6.8 of the per ton Tipping Fee for such period, (ii) the estimate referred to above in this Section of the amount payable under Section 6.19, and (iii) a contingency allowance, determined in good faith by the Authority, to provide for additional amounts that may be payable by the Subdivision hereunder during such period. Notwithstanding the preceding sentence, no failure or inability of the Subdivision to include in its budget or take appropriate action to assure the availability of amounts sufficient to enable the Subdivision to meet all of its obligations under this Agreement shall excuse, limit, impair or extend the time of performance or payment of any of its obligations hereunder, whether or not any estimates of the Tipping Fee or other amounts payable hereunder prove to be inaccurate.

#### Section 6.9. Financing of Certain Facility Cost Increases.

In the event that as a result of any Uncontrollable Circumstance additional investment is required to cover an increase in the cost of designing, constructing or equip-

ping the Facility so as to enable the Company to perform its obligations under Section 3 of the Facility Agreement, the Company will, subject to the terms and conditions of the applicable financing agreements and of Section 6.9 of the Disposal Agreement, make or cause to be made such additional investment. The Subdivision acknowledges and agrees that if (a) as a result of any Uncontrollable Circumstance of the type referred to in clause (b), (c) or (d) of the definition of such term contained in Section 1.1, such additional investment is required or (b) if as a result of any other Uncontrollable Circumstance which does not constitute an event or condition which is a breach by the Company's selected general contractor of its agreements with the Company, such additional investment is required, the Subdivision shall share in the capital cost of such additional investment, except to the extent that the costs thereof (i) could be covered under the terms of a builder's risk policy written for "all risks", with a "time element coverage endorsement" in a form available on commercially reasonable terms or, (ii) in the event that the Subdivision approves the form of any such policy and endorsement the Authority proposes to obtain pursuant to the last paragraph of Section 9.1 and the Authority obtains such policy and endorsement, are covered under the terms of such policy and endorsement, through an adjustment to the Tipping Fee, in respect of the financing of such investment, in an amount sufficient (assuming the payment of Tipping Fees in respect of 586,920 tons of waste per year) to provide for the repayment of principal with interest thereon of any indebtedness incurred to finance such investment and to provide for the return to the Company of any equity funds used to finance such investment, in each case so as to assure that the Company's return on equity and profitability are not less than the rate of return and profitability reflected in the projections of Facility economics upon which the initial basic Tipping Fee established under the Disposal Agreement was based. The Subdivision further acknowledges and agrees that pursuant to such Section 6.9, the Company may finance such additional investment in such manner as it may determine, but in arranging financing shall take into account, as a fundamental consideration, the cost of such financing. It is understood that if the term of such financing shall be less than the remaining duration of the initial term of this Agreement, then for purposes of computing the adjustment to the Tipping Fee, it will be assumed that the payment of principal and interest with respect to such financing shall be in constant monthly payments over a period of years equal to the remaining duration of the initial term of this Agreement. It is also understood that any investment in which the Participating Subdivisions so share is only to be funded by equity funds after the Company has

made a reasonable effort to borrow the maximum amount of such investment, and then only to the extent of the part now borrowed or borrowable. In the event that the indebtedness so incurred shall be refinanced, the Tipping Fee shall be further adjusted to reflect 50% of the net annual savings per ton resulting from such refinancing (assuming the payment of Tipping Fees in respect of 586,920 tons of waste per year) on a basis consistent with this Section 6.9 (without duplication of amounts already amortized through Tipping Fee adjustments under such Section) to reflect the terms and conditions of such refinancing. The amount of any cost (i.e., "installed cost") which is the subject of any investment as to which an adjustment is made under this Section 6.9, shall not exceed the amount provided for under Section 7.3(a) of the Facility Agreement, and such amount, as determined under Section 7.3(a), shall be binding upon and conclusive as between the Subdivision and the Authority.

Any adjustment to the Tipping Fee under this Section 6.9 shall be made in accordance with the principles set forth in Schedule 2. The basis for any such adjustment, in reasonable detail, shall be delivered by the Authority to the Participating Subdivisions at least 15 days before the proposed adjustment is to take effect, and if any Participating Subdivision reasonably disagrees with the computation of such adjustment, it shall be entitled to request that the Independent Public Accountants review such computation. Such adjustment, as it may be revised by such accountants, shall be final.

#### **Section 6.10. Financing of Certain Capital Improvements.**

The Subdivision acknowledges and agrees that if, as the result of any Uncontrollable Circumstance, additional capital investment in respect of the Facility is required, subsequent to the first date on which the Company has performed all of its obligations under Section 3 of the Facility Agreement, to restore the Facility to the condition contemplated by Sections 2, 3 and 4 of the Facility Agreement or to repair any modification or improvement to the Facility from which the Participating Subdivisions directly benefit, through revenue sharing or otherwise, the Company will make or cause to be made such investment subject to the terms and conditions of the applicable financing agreements and Section 6.10 of the Disposal Agreement. The Participating Subdivisions shall share in all the capitalized costs of such additional investment through an adjustment to the Tipping Fee, in an amount sufficient (assuming the payment of Tipping Fees in respect of 450,000 tons and 500,000 tons, respectively, in the first and second years

subsequent to the Commercial Operations Date, and 586,920 tons in each year thereafter) to amortize on a straight-line basis over the remaining term of this Agreement (irrespective of the actual method of financing utilized) the sum of (i) an amount equal to 75% of such costs of such investment, with interest thereon at an assumed interest rate equal to the average interest rate payable on A-rated tax-exempt bonds issued during the month such investment was made and having a term approximating the remaining term of this Agreement, all as determined by the managing underwriters for the Initial Indebtedness, plus (ii) an amount equal to 25% of such costs of such investment, together with an annual return thereon (the "Annual Return") equal to five percentage points over the best commercial rate charged by Citibank, N.A. at the time such investment was made on unsecured borrowings having a 90-day maturity. The amount of any cost (i.e. "installed cost") which is the subject of any investment as to which an adjustment is made under this Section 6.10, shall not exceed the amount provided for under Section 7.3(b) of the Facility Agreement, and such amount, as determined under such Section 7.3(b), shall be binding upon and conclusive as between the Subdivision and the Authority.

Any adjustment to the Tipping Fee under this Section 6.10 shall be made as further provided in Schedule 2. The basis for any such adjustment, in reasonable detail, shall be delivered by the Authority to the Participating Subdivisions at least 15 days before the proposed adjustment is to take effect, and if any Participating Subdivision reasonably disagrees with the computation of such adjustment, it shall be entitled to request that the Independent Public Accountants review such computation. Such adjustment, as it may be revised by such accountants, shall be final.

#### **Section 6.11. Capital Investments with Respect to Bulkheads.**

The Subdivision acknowledges and agrees that, as provided in Section 6.11 of the Disposal Agreement, in the event that the Company shall at any time determine that capital investment is required with respect to the bulkheads located on the Facility Site (whether or not as a result of Uncontrollable Circumstances), which investment was not taken into account in determining the Facility Price under the Facility Agreement, the Company will make or cause to be made such investment and the Participating Subdivisions shall share in the capitalized cost of such investment through an adjustment to the Tipping Fee, in

accordance with the principles and procedures set forth in Section 6.9, if such investment is to be made prior to the date on which the Company shall have performed its obligations under Section 3 of the Facility Agreement (or will have performed its obligations, as estimated by the Authority), or in accordance with the formula and procedures set forth in Section 6.10, if such investment is made (or will be made, as estimated by the Authority) subsequent to such date, as the case may be.

Any adjustment to the Tipping Fee under this Section 6.11 shall be made as further provided in Schedule 2.

**Section 6.12. Financing of Certain Operating Cost Increases.**

The Subdivision acknowledges and agrees that, as provided in Section 6.12 of the Disposal Agreement, in the event that, as the result of any Uncontrollable Circumstance of the type referred to in clause (b), (c), (d) or (h) of the definition of such term contained in Section 1.1, the annual operating costs of the Facility (exclusive of any addition or improvement thereto from which the Participating Subdivisions do not directly benefit, through revenue sharing or otherwise) and of activities incident to the operation thereof are increased, the Participating Subdivisions will share in such cost increase through an adjustment to the Tipping Fee in an amount equal to (a) the amount of such increase in annual operating costs, divided by (b) 586,920.

Any adjustment to the Tipping Fee under this Section 6.12 shall be made as further provided in Schedule 2. The basis for any such adjustment, in reasonable detail, shall be delivered by the Authority to the Participating Subdivisions at least 15 days before the proposed adjustment is to take effect. If any Participating Subdivision reasonably disagrees with the amount of such adjustment, it shall be entitled to request that the Independent Engineer review the basis of such cost increase. Unless the Independent Engineer shall deliver to the Authority, no later than 30 days after the delivery by the Authority to the Subdivision of the basis for such adjustment, its reasonable written opinion to the effect that the basis for such cost increase was not reasonable, the determination of the Authority with respect thereto shall be final. If the Authority shall not agree with such opinion of the Independent Engineer, it may refer the matter to Arbitration. The Subdivision shall also be entitled to request (whether or not it has requested that the Independent Engineer review the basis

of such cost increase) that the Independent Public Accountants review the computation of the amount of such adjustment. The computation of such adjustment, as it may be revised by such Accountants, shall be final.

**Section 6.13. Change in Waste Composition Resulting from Change in Law.**

Any material change in the Btu content of Acceptable Waste from that normally collected by the Subdivision, resulting from any Uncontrollable Circumstance of the nature referred to in clauses (b), (c) and (d) of the definition of such term in Section 1.1, which requires additional capital investment in the Facility, increases the per-ton operating costs of the Facility, or prevents the Facility from being operated at the rate reflected by its normal operating capacity, shall be dealt with as provided in Section 6.9, 6.10 or 6.12, as the case may be. A change of more than 10% in average Btu content from the average Btu content previously prevailing shall be material. Determination of the Btu content of Acceptable Waste for purposes of this Agreement shall be made in accordance with the test procedures set forth in Schedule 4, provided that if it shall be impracticable to utilize the test procedures set forth in such Schedule with respect to any such determination to be made prior to the date on which Completion of the Facility has occurred under the Facility Agreement, such determination shall be made in accordance with an alternate method reasonably satisfactory to the Subdivision and the Authority.

**Section 6.14. Insurance Proceeds, etc.**

In the event that the Authority shall, subsequent to the date on which any Tipping Fee adjustment under Section 6.9, 6.10, 6.11, 6.12 or 6.13 shall have become effective, receive proceeds from insurance or any third party with respect to any loss or claim in respect of which such adjustment was made, the Subdivision shall share in such proceeds (net of reasonable collection costs) on an equitable basis, either through a reduction in the Tipping Fee or otherwise, as the Authority shall reasonably determine, it being understood that the Authority may, but shall not be obligated to, pay to the Subdivision a lump sum in respect of its share of such proceeds.

**Section 6.15. Useful Life of Certain Investments.**

In the event that the Subdivision shall share in the cost of financing any portion of the Facility through increases in the Tipping Fee in the circumstances contem-

plated by Section 6.10, and the portion of the Facility so financed has a useful life extending beyond the term (including any renewal term) of this Agreement provided for in Article XI, the Authority shall pay the Subdivision, upon the expiration of such term, an amount equal to (a) the Excess Value (as defined below) of such portion, multiplied by (b) a fraction, the numerator of which is the Guaranteed Annual Tonnage of the Subdivision in effect at the time the investment in such portion was made, and the denominator of which is 586,920. For purposes of this Section 6.15, "Excess Value" shall mean the greater of (i) if such portion can be removed from the Facility without damaging the Facility, the salvage value of such portion after deduction for the estimated expense of removal and (ii) the increase, if any, in the market value of the Facility as a whole attributable to the value of such portion, in each case as reasonably determined as of the date of such expiration by the Independent Engineer, provided that Excess Value shall in no case exceed (x) the cost of such portion, minus (y) the amount of such cost, multiplied by a fraction, the numerator of which is the number of years such portion was utilized at the Facility and the denominator of which is 15.

#### Section 6.16. Audit.

The Authority shall provide to the Subdivision within 120 days after the last day of each fiscal year of the Company during the term of the Disposal Agreement a financial statement of the Company prepared in accordance with generally accepted accounting principles, and audited by the Independent Public Accountants in accordance with generally accepted auditing standards, accompanied by the report of such Accountants as to such financial statement and a statement of such Accountants summarizing the results of an audit of the records maintained pursuant to Sections 2.9 and 2.11.

#### Section 6.17. Certain Matters as to Tipping Fee Adjustments.

In the event of any disagreement as to the amount of any Tipping Fee adjustment provided for in Sections 6.9, 6.10, 6.12 and 6.13, the Tipping Fee shall be adjusted based on the amount of the Authority's proposed adjustment pending the resolution of such disagreement. In the event that such disagreement is resolved in such manner that the Authority is determined to be entitled to less than all of such proposed adjustment, the Authority shall, promptly upon such resolution, reimburse to the Subdivision the aggregate amount of any overpayment.

### Section 6.18. Certain Additional Payments.

In the event that the Baltimore Gas and Electric Company ("BG&E") shall at any time claim that it is relieved of its payment obligations under Section 4 of the Electric Power Purchase Contract as a result of force majeure pursuant to Section 7 of such Contract, the Subdivision shall pay to the Authority, in addition to any Tipping Fees or other amounts payable hereunder, an amount equal to (a) the amount which BG&E shall have not paid and so claimed to be relieved of its obligation to pay, multiplied by (b) a fraction, the numerator of which is its then existing Guaranteed Annual Tonnage, and the denominator of which is 586,920. Amounts payable from time to time by the Subdivision under this Section 6.18 may be included in monthly invoices to the Subdivision under Section 6.3(a) or separately invoiced to the Subdivision (but not more often than monthly), as the Authority may elect, and shall be paid by the Subdivision within 21 days of the date of such invoice. In the event that the Company shall, subsequent to the date any payment under this Section 6.18 shall have been made by the Subdivision, receive payment from BG&E or the proceeds of insurance, in either case in respect of such amounts previously unpaid by BG&E, the Authority shall pay to the Subdivision an amount equal to (a) the amount of such payment or proceeds (net of reasonable collection costs), multiplied by (b) a fraction, the numerator of which is the Guaranteed Annual Tonnage as of the date of the invoice given under this Section 6.18 with respect to such payment by the Subdivision, and the denominator of which is 586,920. The Subdivision acknowledges and agrees that, as provided in the Disposal Agreement, the Company is required to exercise with due diligence such rights as it may have against BG&E, or any insurer under any policy of insurance covering such non-payment by BG&E, to effect recovery of any amounts which BG&E shall have so claimed to be relieved of its obligation to pay, but that (i) the taking of action by the Company to attempt to effect such recovery shall not be a condition precedent to any payment by the Subdivision under this Section 6.18, and (ii) the Company shall not be required under the Disposal Agreement to take any action with respect to any such exercise if the Company in good faith determines, based upon the advice of counsel and after consultation with the Authority and the Participating Subdivisions, that the taking of such action is not justified by the amount of any potential recovery, the likelihood of such recovery and the expense of such action.

The amount of any such payment made by the Subdivision under this Section 6.18 (without taking into account any reimbursement made under the preceding paragraph) shall be included in gross revenues realized from the sale of electric energy for all purposes of this Agreement, including the revenue sharing formula set forth in Section III of Schedule 2.

**Section 6.19. Payments in Respect of Certain Taxes.**

The Subdivision shall, pursuant to invoices given by the Authority from time to time as provided below, pay to the Authority, in addition to any Tipping Fees and other amounts payable by it hereunder:

(a) an amount equal to the aggregate amount from time to time of all taxes, fees, assessments or other charges, direct or indirect (including, without limitation, those based on or measured by the value of real or personal property or net income), levied or imposed by Baltimore County (or any agency, public authority, special district, subdivision or other public instrumentality thereof) on the Company, the Facility, or the activities contemplated by the Project Agreements, and paid or incurred by the Company, but not including (i) sales or excise taxes, user fees, assessments or other charges for benefits, services, utilities, licenses or permits, in each case established on a basis that does not have the effect of discriminating against waste disposal facilities and payable by a broad range of businesses and industries, (ii) interest, penalties or fines, or (iii) amounts payable by the Company to Baltimore County under contractual arrangements therewith, including tipping fees payable under the Residue Disposal Contract with the County.

(b) an amount, without duplication of amounts included in clause (a) above, equal to (i) the aggregate amount from time to time of (x) all taxes, fees, assessments or other charges, direct or indirect, established subsequent to May 5, 1981 and (y) without duplication of amounts included in clause (x), all taxes, fees, assessments or other charges based on or measured by the value of real or personal property, in each case levied or imposed by the State of Maryland, the United States or any other governmental entity or authority having jurisdiction over the Company, the Facility, or the activities contemplated by the Project Agreements (other than the City of Baltimore and Baltimore County, or any agency, public authority, special district, subdivision or other

public instrumentality of either thereof) on the Company, the Facility, or the activities contemplated by the Project Agreements, and paid or incurred by the Company, but not including (1) any such taxes, fees, assessments or other charges as may be based on or measured by net income, sales or excise taxes, user fees, assessments or other charges for benefits, services, utilities, licenses or permits, in each case established on a basis that does not have the effect of discriminating against waste disposal facilities and payable by a broad range of businesses and industries, (2) interest, penalties or fines, (3) amounts payable by the Company to the State of Maryland, the United States or any such other entity or authority having jurisdiction under contractual arrangements with any thereof, multiplied by (ii) a fraction, the numerator of which is the then existing Guaranteed Annual Tonnage of the Subdivision hereunder and the denominator of which is the sum of the then existing Guaranteed Annual Tonnages of the Participating Subdivisions under their respective Subdivision User Contracts, provided that in the case of such taxes, fees, assessments and other charges as may be payable to the Authority under clause (x) of this clause (b) which are established on a basis that does not have the effect of discriminating against waste disposal facilities and are payable by a broad range of businesses and industries, the denominator referred to in clause (ii) of this clause (b) shall be 586,920.

Amounts payable from time to time by the Subdivision under this Section 6.19 may be included in monthly invoices given to the Subdivision under Section 6.3(a) or separately invoiced to the Subdivision (but not more often than monthly), as the Subdivision may elect, and shall be paid by the Subdivision within 21 days of the date of such invoice, provided that the obligation of the Subdivision to pay any such invoice rendered by the Authority shall be suspended during the continuance (but only during the continuance) of any Shutdown which is not caused by an Uncontrollable Circumstance and which results in the diversion by the Authority pursuant to Section 5.1 of a material proportion of such tonnages of Acceptable Waste as the Authority is required to accept from the Subdivision from time to time under Section 2.1(b), it being understood that during the period of any such suspension no interest in respect of late payment shall accrue under Section 6.6. The Authority shall pay any such tax which is the subject of an invoice to the Subdivision under this Section 6.19 within five days after receiving payment of such invoice.

## ARTICLE VII

### ALTERATIONS AND ADDITIONS

#### Section 7.1. Changes in Design, Construction or Operation.

Any restorations, alterations, additions or modifications (collectively, "Changes") made to the Facility shall be made at no cost to the Subdivision except as provided in Articles III, VI and XIII. The Authority shall not, except as may be required by law, make any Changes to the Facility which would permanently impair the ability of the Facility to accept and dispose of the then applicable aggregate Guaranteed Annual Tonnages of the Participating Subdivisions.

#### Section 7.2. Cost Records.

The Authority shall account for all materials, machinery, equipment, labor and other additional costs in respect of which adjustments to the Tipping Fee are made pursuant to Sections 6.9, 6.10 and 6.11 or Article XIII, and shall keep records with respect thereto in accordance with its normal business practices and with generally accepted accounting principles and methods.

## ARTICLE VIII

### SUBDIVISION REPRESENTATIVE

#### Section 8.1. Subdivision Representative, etc.

The authorized representative of the Subdivision (the "Subdivision Representative") for purposes of this Agreement shall be the Deputy Director of its Department of Public Works, or such other person as the chief executive officer of the Subdivision may from time to time designate by written notice to the Authority. The authorized representative of the Authority for purposes of this Agreement shall be its Executive Director or such other person as the Executive Director of the Authority may from time to time designate to the Subdivision. Either party may change its representative upon five days' written notice to the other party.

ARTICLE IX  
INSURANCE

**Section 9.1. Types of Insurance for the Authority.**

The Authority shall obtain and maintain, or cause to be obtained and maintained, the following insurance with respect to the operation of the Company's Facility in such form and with such deductible limits as may be acceptable to the Authority. Additional insurance may be required or permitted under the Facility Agreement.

**(a) Workmen's Compensation Insurance**

Workmen's Compensation Insurance as prescribed or permitted by law.

**(b) Comprehensive General Liability Insurance**

Comprehensive General Liability and Property Damage Insurance, with Contractual Liability and Products/Completed Operations coverage, with primary limits of liability of \$1 million, combined occurrence, for bodily injury and property damage, and \$3 million, combined aggregate, for bodily injury and property damage.

**(c) Automobile Liability Coverage**

Comprehensive Automobile Liability Insurance, as required by Maryland law, but with limits of not less than \$1 million per occurrence for bodily injury and property damage, combined single limit.

**(d) Excess Umbrella Liability Coverage**

Excess Umbrella Liability Insurance in the amount of \$25 million, to be reviewed every five years to reflect inflation and other appropriate factors.

**(e) Property Damage Insurance**

Insurance for loss, damages or destruction to the Facility caused by "all risk" peril in an amount at all times equal to the full replacement value of the Facility (including, to the extent available on commercially reasonable terms, insurance for such loss, damages or destruction caused by flood or earthquake).

(f) Business Interruption Insurance

Business Interruption and Extra Expense Insurance to protect the Authority against certain expenses and losses that may be incurred if a partial or total shutdown of the Facility occurs due to an occurrence insured by the insurance specified in Section 9.1(e). Such insurance coverage shall be provided in such amount as may be appropriate to provide coverage in an aggregate amount approximating the fixed costs relating to the ownership, operation and maintenance of the Facility for a period of one year.

The Authority shall also obtain and maintain or cause to be obtained or maintained during construction of the Facility "All Risk" Builders' Risk insurance with a "Time Element Coverage Endorsement" in an amount not less than full replacement value from time to time, subject to a deductible not to exceed \$100,000. In the event that the Authority shall request the Subdivision to approve the form of any such policy and endorsement which the Authority proposes to obtain and provides the Subdivision with a copy of such proposed policy and endorsement, the Subdivision will, on 60 days' notice, approve such policy and endorsement for the purposes of Section 6.9 hereof, unless the Subdivision reasonably determines that another such policy and endorsement is available on commercially reasonable terms and provides more comprehensive or otherwise superior coverage, and identifies such policy and endorsement to the Authority in writing.

Section 9.2. Insurance Certificates.

The Authority shall furnish to the Subdivision certificates of insurance as to the insurance coverage required under Section 9.1, in form reasonably satisfactory to the Subdivision Representative, from time to time (but not more often than annually) upon such Representative's request. The Authority will deliver to the Subdivision copies of all insurance policies required to be obtained and maintained hereunder and any amendments thereto and renewals thereof, will cause each such policy to provide for 30 days' prior notice of termination or cancellation thereof to be given by the insurer to the Subdivision and will endeavor to have the Subdivision named as an insured as its interest may appear in any such policy to the extent and when appropriate.

## ARTICLE X

### DEFAULT AND TERMINATION

#### Section 10.1. Remedies for Default.

In the event of the breach by any party of an obligation under this Agreement, the right to recover damages or to be reimbursed will ordinarily constitute an adequate remedy. Therefore, no party shall have the right to terminate this Agreement for cause for any breach unless an Event of Default (as defined in Sections 10.2 and 10.3) on the part of the other party shall have occurred and be continuing.

#### Section 10.2. Events of Default by the Authority.

The persistent or repeated failure or refusal by the Authority substantially to fulfill any of its material obligations in accordance with this Agreement shall constitute an Event of Default on the part of the Authority, unless such failure or refusal shall be excused or justified by Uncontrollable Circumstance or a default by one or both of the Participating Subdivisions, provided, however, that no such failure or refusal shall constitute an Event of Default unless and until:

(a) both of the Participating Subdivisions shall have given prior written notice to the Authority stating that in their opinion a particular default or defaults (to be described in reasonable detail in such notice) exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Authority and which will, in their opinion, give the Participating Subdivisions a right to terminate their respective Subdivision User Contracts for cause under this Section unless such default is corrected within a reasonable period of time, and the Disposal Agreement Termination Date shall have occurred, and

(b) the Authority shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time (which shall in any event be not less than 180 days from the date of the notice given pursuant to clause (a) of this Section 10.2 or from the Disposal Agreement Termination Date, whichever is later), provided that if the Authority shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not consti-

tute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct such default.

A material breach shall be deemed to have been corrected for purposes of this Section 10.2, if it has been alleviated to the degree that its existence no longer makes damages an inadequate remedy.

Section 10.3. Events of Default by the Subdivision.

Each of the following shall constitute an Event of Default on the part of the Subdivision:

(a) The failure on the part of the Subdivision to pay any amount required to be paid to the Authority under this Agreement when such amount becomes due and payable if the Authority has made written demand therefor accompanied by notice that unless such amount is paid within 30 days after such demand the default will constitute an Event of Default, and such amount is not so paid.

(b) The persistent or repeated failure or refusal by the Subdivision substantially to fulfill any of its material obligations in accordance with this Agreement, unless such failure or refusal shall be excused or justified by Uncontrollable Circumstance, provided that no such failure or refusal shall constitute an Event of Default unless and until (i) the Authority shall have given prior written notice to the Subdivision stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Subdivision and which will, in its opinion, give the Authority a right to terminate this Agreement for cause under this Section 10.3(b) unless such default is corrected within a reasonable period of time, and (ii) the Subdivision shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time (which shall in any event be not less than thirty (30) days from the date of the notice given pursuant to clause (i) of this Section 10.3(b)), provided that if the Subdivision shall have commenced to take appropriate steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as the Subdivision is continuing to take reasonable steps to correct such default.

A material breach shall be deemed to have been corrected for purposes of this Section 10.3, if it has been alleviated to the degree that its existence no longer makes damages an inadequate remedy.

**Section 10.4. Termination on Default.**

If any party shall have a right of termination for cause in accordance with the second sentence of Section 10.1, the same may be exercised only by written notice of termination given to the party in default. The proper exercise of such right of termination shall be in addition to and not in substitution for such other remedies, whether damages or otherwise, as the party exercising the right of termination may have.

**Section 10.5. Adjustment of Tipping Fee in Certain Circumstances.**

If the Company shall at any time reasonably determine that the Company is or will be unable to pay when due amounts payable from time to time under any Trust Indenture or to satisfy its other payment obligations accruing from time to time in connection with the financing, ownership, operation and maintenance of the Company's Facility or any modifications or additions thereto, and no funds shall at the time of such determination be available from other sources, the Authority may give a notice to such effect to the Subdivision and propose that the Tipping Fee be increased in an amount sufficient to enable the Company to satisfy such payment obligations as and when due and payable, and otherwise to permit the continued operation of the Facility by the Company. The Subdivision shall in good faith consider any such request, taking into account the advantages to be derived by it from the continued operation of the Facility and may, in its discretion, agree to an increase in the Tipping Fee in accordance with the Authority's request, all upon such terms and conditions as the Authority and Subdivision may mutually agree.

**Section 10.6. Termination for Failure of Condition.**

In the event that the Company or the Authority shall have exercised its right to terminate the Disposal Agreement in accordance with Section 10.6 thereof, either party hereto may terminate this Agreement, by written notice to the other party.

Section 10.7. Termination in Certain Events.

In the event that the Company or the Authority shall have exercised its right to terminate the Disposal Agreement in accordance with Section 10.7 thereof, either party hereto may terminate this Agreement upon written notice to the other party. From and after the Disposal Agreement Termination Date, the Subdivision may terminate this Agreement in the manner provided in Section 10 of Schedule 3 to this Agreement.

Section 10.8. Survival of Certain Rights and Obligations.

The rights and obligations of the parties under Section 2.7 with respect to the non-disclosure of confidential information and Article XII shall survive any termination of this Agreement. No termination of this Agreement under Section 10.4 or otherwise hereunder shall limit or otherwise affect the respective rights and obligations of either party accrued prior to the date of such termination.

ARTICLE XI

TERM

Section 11.1. Term.

This Agreement shall enter into effect on the date hereof and, unless sooner terminated in accordance with the terms hereof, shall continue in effect until the later of (a) the twentieth anniversary of the Commercial Operations Date and (b) the Maturity Date of Initial Indebtedness (as defined in the Facility Agreement).

Section 11.2. Rights of First Refusal.

In the event that it shall be proposed to continue to operate the Facility beyond the term hereof, the Subdivision agrees that before entering into negotiations with any third party for the disposal of Acceptable Waste on terms similar in whole or in part to those contained herein, the Subdivision shall first negotiate in good faith with the Authority or other operator of the Facility for such disposal.

Similarly, if it shall be proposed to continue to operate the Facility beyond the term hereof, the Authority

shall so advise the Participating Subdivisions and, upon the request of both Participating Subdivisions, negotiate in good faith with such Subdivisions the terms upon which the Authority or other operator of the Facility would accept and process a tonnage of Acceptable Waste at least equal to the sum of their Guaranteed Annual Tonnages in effect as of the end of the term of their respective Subdivision User Contracts.

## ARTICLE XII

### REPRESENTATIONS AND WARRANTIES, ETC.

#### Section 12.1. Representations and Warranties of the Subdivision.

The Subdivision hereby makes the following representations and warranties to and for the benefit of the Authority:

(a) The Subdivision is a political subdivision of the State of Maryland and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Subdivision has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Subdivision and constitutes a legal, valid and binding obligation of the Subdivision, enforceable against the Subdivision in accordance with its terms.

(c) Neither the execution or delivery by the Subdivision of this Agreement, nor the performance by the Subdivision of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Subdivision of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Subdivision, (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Subdivision is a party or by which the Subdivision or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Subdivision.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the Subdivision, except such as have been duly obtained or made.

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Subdivision's knowledge, threatened, against the Subdivision, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Subdivision of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by the Subdivision in connection with the transactions contemplated hereby.

**Section 12.2. Representations and Warranties of the Authority.**

The Authority hereby makes the following representations and warranties to and for the benefit of the Subdivision:

(a) The Authority is a body politic and corporate and a public instrumentality of the State of Maryland, duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement and the Disposal Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement and the Disposal Agreement and both such Agreements have been duly executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.

(c) Neither the execution or delivery by the Authority of this Agreement or the Disposal Agreement, nor the performance by the Authority of its obligations in connection with the transactions contemplated by such Agreements, or the fulfillment by the Authority of the respective terms or conditions hereof and thereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Authority, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Authority is a party

or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement or the Disposal Agreement by the Authority, except such as have been duly obtained or made.

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Authority's knowledge, threatened, against the Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Authority of its obligations hereunder or under the Disposal Agreement or in connection with the transactions contemplated by each thereof, or which, in any way, would adversely affect the validity or enforceability of this Agreement or the Disposal Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

#### ARTICLE XIII

##### APPOINTMENT OF DESIGNEE, ETC.

##### Section 13.1. Appointment of the Authority's Designee.

The Subdivision acknowledges that, in order to facilitate the performance by the Authority of its obligations under the Subdivision User Contracts, the Authority is entering into the Disposal Agreement with the Company, dated the date hereof, which Agreement provides for the performance by the Company of obligations generally corresponding to the obligations undertaken by the Authority hereunder. The Subdivision further acknowledges and agrees that, pursuant to Section 13.4 of the Disposal Agreement, the Authority has appointed the Company as the Authority's designee, with full, exclusive and irrevocable right, power and authority, for so long as the Disposal Agreement shall be in effect, in the name, on behalf and in the place and stead of the Authority, to perform all of the obligations of the Authority under this Agreement and to exercise, enjoy and enforce all such rights, remedies, powers, privileges, elections and other benefits as the Authority may have or to which it may be entitled under this Agreement, including, without limitation, all rights of the Authority hereunder in respect of the delivery by the Subdivision of Acceptable

Waste and the payment of all amounts payable by the Subdivision. The Subdivision further acknowledges that, pursuant to the Disposal Agreement, the Authority has agreed that it shall not take any action, or omit to take any action, which action or omission to act would in any way impede, interfere with, restrict or otherwise limit the ability of the Company to exercise such right, power and authority of the Company as designee of the Authority hereunder. The Subdivision further acknowledges and agrees that the performance by the Company on behalf of the Authority of the Authority's obligations under this Agreement shall constitute performance of such obligations by the Authority for all purposes hereof, and the Authority hereby acknowledges and agrees that the performance by the Subdivision of its obligations hereunder to the satisfaction of the Company shall constitute performance of its obligations to the Authority hereunder for all purposes hereof. Until the Disposal Agreement Termination Date (as defined below), the Subdivision hereby agrees (a) to render performance of all of its obligations hereunder (including, without limitation, all obligations with respect to the delivery of Acceptable Waste and the payment of amounts payable by the Subdivision from time to time) directly to the Company in accordance with the terms hereof, (b) that the Company shall be entitled, either in its own name or in the name of the Authority, to enforce all of the representations, warranties, covenants and obligations of the Subdivision hereunder, and that the Subdivision consents to be sued by the Company in accordance with the terms hereof for any violation or breach by the Subdivision of, or default by the Subdivision in respect of, any such representation, warranty, covenant or obligation, (c) that it shall not act or otherwise rely upon any notice, advice, direction, consent or other communication delivered or given hereunder by or on behalf of the Authority which shall not also have been delivered or consented to by the Company in a writing given to the Subdivision, and (d) that it shall deliver directly to the Company (with a copy to the Authority) any notice, advice, direction, consent or other communication delivered or given by it hereunder. As used herein, the term "Disposal Agreement Termination Date" shall mean the date occurring 30 days after the first date on which both the Disposal Agreement shall have been terminated by the Authority in accordance with Section 10.4 thereof and the Subdivision shall have received a written notice from the Authority to such effect, accompanied by a certificate of the trustee under the Financing Agreements concurring in such termination.

Section 13.2. Effect of Occurrence of Disposal Agreement Termination Date.

(a) In the event that the Disposal Agreement Termination Date shall have occurred prior to the termination of this Agreement, the Authority shall, promptly after such Date, furnish to the Subdivision a statement in reasonable detail as to the manner in which the Authority proposes to continue to perform or provide for the performance of its obligations hereunder. In connection with such continued performance, the Authority may implement any existing arrangements and/or enter into such additional or alternative arrangements as it reasonably determines to be necessary or desirable to provide for the disposal of the Guaranteed Annual Tonnage and Guaranteed Monthly Tonnage and to perform its other obligations hereunder, including, without limitation, arrangements with respect to the continued operation of the Company's Facility by the Authority (or another operator selected by the Authority), the utilization of any Residue Landfill provided for in any Residue Disposal Contract, and the utilization of any other Alternate Disposal Facility or Facilities (whether or not such facilities provide for the recovery of energy or other recoverable materials as contemplated hereunder). In connection with the continued performance of its obligations hereunder, the Authority shall, to the extent reasonably practicable, endeavor to minimize the cost of waste disposal consistent with the effective performance of such obligations. From and after the Disposal Agreement Termination Date, the Authority, the Subdivision and the other Participating Subdivision shall, upon the request of any of them, consult with one another as to any modification of or supplement to the provisions hereof which may be necessary or appropriate to reflect or implement any change in the waste disposal arrangements made by the Authority in accordance with this Section 13.2, from the arrangements which were in effect as of the Disposal Agreement Termination Date (including, without limitation, such modifications of or supplements to the respective rights and obligations of the Subdivision and the Authority under Sections 2.3 through 2.5 inclusive, and Sections 2.7, 2.9, and 2.11 through 2.14 inclusive, as may be necessary to reflect the operating or technical characteristics of any Alternate Disposal Facility or Facilities). Following such consultation, the Authority and the Subdivision shall in good faith determine and establish any such modifications and supplements to this Agreement. Except as expressly provided in this Section 13.2, notwithstanding any occurrence of the Disposal Agreement Termination Date, this Agreement shall remain in full force and effect and shall be enforceable by the parties hereto in accordance with its terms.

(b) From and after the Disposal Agreement Termination Date, the provisions of Schedule 2 and of Sections 3.3, 6.1(e), 6.9 through 6.13 inclusive, 6.18, and 10.5 shall be of no further force and effect, and the Tipping Fee payable hereunder shall be established from time to time in accordance with Schedule 3.

## ARTICLE XIV

### MISCELLANEOUS

#### Section 14.1. Uncontrollable Circumstance.

Each party hereto shall be excused for its failure to perform in accordance with this Agreement any obligation required to be performed by it hereunder, to the extent that such failure results from an Uncontrollable Circumstance, provided, that in no event shall any Uncontrollable Circumstance excuse the Subdivision from making any payment hereunder in accordance with the terms hereof. Each party shall seek diligently and in good faith to overcome or remove such Uncontrollable Circumstance, provided, however, that the settlement of strikes, lockouts, and other industrial disturbances or of any legal actions or administrative proceedings shall be entirely in the discretion of the party suffering the same, and it shall not be required to make settlement of strikes, lockouts, and other industrial disturbances or of legal actions or administrative proceedings when such settlement would be unfavorable, in the judgment of the party suffering the strike, labor dispute or other industrial disturbance or legal action or administrative proceedings. A party claiming the benefit of this Section 14.1 shall give prompt notice thereof to the other party. The Authority shall notify the Subdivision of the adoption, promulgation, issuance, material modification or change in interpretation of any federal, state or local law, regulation, rule, requirement, or ordinance constituting Applicable Law occurring after September 30, 1982 and before the Commencement Date which comes to the attention of the Authority.

#### Section 14.2. Dispute Resolution.

Subject to applicable law, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, which the parties are unable to resolve themselves shall be finally settled by arbitration in accordance with this Section 14.2 and (except to the extent inconsistent with the express provisions of such Section) the Arbitration

Rules of the American Arbitration Association ("AAA"), by a single arbitrator chosen in accordance with such Rules. The agreement to arbitrate disputes as provided in this Agreement shall be specifically enforceable in any court having jurisdiction. Notwithstanding the foregoing provisions of this Section 14.2, no controversy or claim, the manner of resolution of which is provided for herein otherwise than under this Section 14.2 and is expressly specified to be final, binding or conclusive on the parties, shall be arbitrable hereunder, nor shall any controversy or claim arising out of or relating to the termination of the Disposal Agreement pursuant to Section 10.4 thereof or the occurrence of the Disposal Agreement Termination Date be arbitrable hereunder.

No individual who is, or has at any time been, an officer, employee or consultant of either party shall be an arbitrator without the express written consent of both parties.

Either party may initiate arbitration proceedings by giving notice to the other party and to the Washington, D.C. Regional Director of the AAA requesting arbitration thereof. The award of the arbitrator shall be in writing and shall include written findings of fact.

All arbitration proceedings shall be held in Baltimore, Maryland or such other place reasonably convenient to the parties as the arbitrator shall determine. Each of the parties shall produce such records as the arbitrator may request.

The arbitrator shall determine a fair and equitable allocation of the reasonable fees and expenses of each party incurred in connection with any arbitration hereunder, and such allocation shall be binding upon the parties.

Each party submits to the jurisdiction of the arbitrator appointed in accordance herewith. The determination of the arbitrator shall be final and binding upon the parties and may be entered in any court having jurisdiction.

#### Section 14.3. Assignment.

This Agreement may not be assigned by either party without the prior written consent of the other party hereto (and, unless the Disposal Agreement Termination Date shall have occurred, of the Company), except that the Authority or any permitted assignee thereof may, without the consent

of the Subdivision, assign its interest and obligations hereunder to (a) the Company or (b) a trustee or trustees as collateral for or otherwise in connection with arrangements for the financing or refinancing of all or part of the Facility or any modification thereof or addition thereto. In the event of an assignment by the Authority under this Section 14.3, the Subdivision shall be notified thereof in writing and shall make payments due hereunder to such Person as may be designated by such assignee in such notice or otherwise.

**Section 14.4. Relationship of the Parties.**

No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party and nothing in this Agreement shall be deemed to constitute either party a partner, agent, or local representative of the other party or to create any fiduciary relationship between the parties.

**Section 14.5. Notices.**

All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall (except as permitted under Section 2.1(b)) be in writing and may be telexed, cabled or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

**If to the Subdivision:**

Baltimore County, Maryland  
County Office Building  
Towson, Maryland 21204  
Attention: Director of Public Works

**If to the Authority:**

Northeast Maryland Waste Disposal Authority  
One East Redwood Street  
Baltimore, Maryland 21201  
Attention: Executive Director

**In either case, prior to the Disposal Agreement Termination Date, with a copy to the Company at:**

Baltimore Refuse Energy Systems Company,  
Limited Partnership  
c/o Wheelabrator-Frye Inc.  
Liberty Lane  
Hampton, New Hampshire 03842  
Attention: Secretary

Changes in the respective addresses to which such notices, consents, invoices or other communications may be directed and may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this Section 14.5 shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

**Section 14.6. Entire and Complete Agreement.**

This Agreement constitutes the entire and complete agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings, arrangements, commitments and representations, all of which, whether oral or written, are merged herein. Except as otherwise expressly provided in Section 2.16 hereof, this Agreement shall not be construed to supersede the Regional Agreement.

**Section 14.7. Binding Effect.**

This Agreement shall bind and inure to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder consistent with Section 14.3 and, to the extent provided herein, the Company or any successor thereof.

**Section 14.8. Other Documents.**

Each party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other party or by the Company in order to give full effect to this Agreement.

**Section 14.9. Applicable Law.**

The law of the State of Maryland shall govern the validity, interpretation, construction and performance of this Agreement.

**Section 14.10. Headings.**

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

**Section 14.11. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which

when executed and delivered shall together constitute one and the same instrument.

**Section 14.12. Amendment or Waiver, etc.**

(a) Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is sought.

(b) Unless the Disposal Agreement Termination Date shall have occurred, neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented, waived or terminated except upon the prior written consent of the Company.

**Section 14.13. Waiver of Sovereign Immunity.**

The Subdivision, to the maximum extent permitted by applicable law, hereby irrevocably waives and renounces any and all rights to sovereign immunity (or similar rights and defenses) the Subdivision may have under applicable law with respect to, and agrees not to raise sovereign immunity (or any similar defense) as a defense to, any claim, suit or proceeding (of whatever nature), based on or arising out of this Agreement, or the transactions contemplated hereby, or any breach hereof, against the Subdivision, asserted or brought by or on behalf of the Authority, the Company (or any partner thereof), their respective Affiliates or any member, officer, director, employee or agent of any thereof.

**Section 14.14. Severability.**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement

shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

IN WITNESS WHEREOF, Baltimore County has caused this Agreement to be executed in its name by its County Executive, and has caused its seal to be attached to this Agreement as of the third day of November, 1982.

[SEAL]

BALTIMORE COUNTY, MARYLAND

Attest:

By

[Signature]  
County Executive

By

[Signature]  
Secretary to the County Executive

IN WITNESS WHEREOF, the Authority has caused this Agreement to be executed in its name by its authorized member and has caused the corporate seal of the Authority to be attached to this Agreement, as of the third day of November, 1982.

[SEAL]

NORTHEAST MARYLAND WASTE  
DISPOSAL AUTHORITY

Attest:

By

[Signature]  
Executive Director


By

[Signature]  
Authorized Member

Approved as to form and legal sufficiency this 3rd day of November, 1982.

[Signature]  
County Attorney

Approved by the Director of  
Public Works on November 3,  
1982.

  
\_\_\_\_\_  
Director of Public Works

Schedule 1  
to  
Subdivision User Contract

Guaranteed Tonnages

1. The Guaranteed Annual Tonnage, until changed pursuant to Section 6.1 of the Subdivision User Contract to which this Schedule is annexed, is 93,750 tons.
2. The Guaranteed Monthly Tonnage, until changed pursuant to Section 6.1 of the Subdivision User Contract to which this Schedule is annexed, is 7,812 tons.

Schedule 2  
to  
Subdivision User  
Contract  
[Baltimore County]

## DETERMINATION OF TIPPING FEE

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### Section I - Initial Basic Tipping Fee

The initial basic Tipping Fee is estimated to be \$23.80 (expressed in January 1, 1982 dollars), which amount reflects the application of RCA<sub>1</sub> (as defined in paragraph (2) of Section III hereof). Such initial basic Tipping Fee is subject to adjustment from time to time for inflation and certain other factors as provided in Section II and the other provisions of this Schedule 2.

### Section II - Computation of Tipping Fee

The per ton Tipping Fee payable in respect of each calendar year (year "X") from and after January 1, 1982 shall be calculated in accordance with the following equation and with the procedures set forth in Section IV hereof:

$$TF_X = BTF \left[ 1 + \frac{(\Delta CPI + \Delta GNP)}{2} \right] + TFA + HCF - RAX + SACK$$

Where:

$TF_X$  = Tipping Fee in year X

$BTF$  = In respect of (a) each calendar year (or portion thereof) prior to the calendar year ("Calendar Year 1") in which the Commercial Operations Date shall occur, (b) Calendar Year 1 and (c) each succeeding calendar year ("Calendar Years 2-22", as the case may be), the amount (expressed in January 1, 1982 dollars) applicable to such year in Table 1 below (as such amount shall be adjusted in accordance with Note 5 to this Section II), plus the algebraic sum of all adjustments thereto made from time to time in accordance with Sections 3.3, 6.9, 6.11 and 6.13 of the Subdivision User Contract and Notes 1 and 4 to this Section II. The amount set forth in Table 1 applicable to each calendar year prior to and including Calendar Year 3 reflects the application of the amount of  $RCA_1$  (as defined in paragraph (2) of Section III hereof) applicable in respect of such year.

Table 1

<u>Calendar Year</u>	<u>BTF</u>
All years prior to Calendar Year 1	\$23.80
1	23.80
2	24.30
3	28.30
4-22	31.30

$$\Delta CPI = \frac{CPI_X - CPI_B}{CPI_B}$$

$CPI$  = Consumer Price Index for the Baltimore Standard Metropolitan Statistical Area,

All-Items for Urban Wage Earners and Clerical Workers, seasonally adjusted, as published by the United States Department of Labor, or a mutually agreeable index if such index is no longer published or the method of computation thereof is substantially modified.

$CPI_X$  = CPI as of June 30 of each calendar year X

$CPI_B$  = CPI as of December 31, 1981

$$\Delta GNP = \frac{GNP_X - GNP_B}{GNP_B}$$

GNP = Implicit Price Deflator for Gross National Product, seasonally adjusted, as published by the United States Department of Commerce, Bureau of Economic Analysis, or a mutually agreeable index if such index is no longer published or the method of computation thereof is substantially modified.

$GNP_X$  = GNP as of June 30 of calendar year X

$GNP_B$  = GNP as of December 31, 1981

TFA = The algebraic sum (which may be a negative number) of Tipping Fee adjustments from time to time in accordance with Sections 3.3, 6.10, 6.11, 6.12 and 6.13 of the Subdivision User Contract, Section 6.4 of the Facility Agreement, and the provisions of Notes 2 and 3 of this Section II.

HCF = Host Community Fee (a Tipping Fee component which is fixed at \$1.00 per ton, representing certain amounts to be paid by the Company to the Authority, as provided in Section 6.20 of the Disposal Agreement).

$RA_X$  = Tipping Fee adjustments from time to time in accordance with paragraph (1) of Section III of this Schedule 2.

SAO<sub>x</sub> = Tipping Fee adjustments from time to time in accordance with paragraph (2) of Section III of this Schedule 2.

Note 1: Any adjustment to the Tipping Fee for (a) Uncontrollable Circumstances pursuant to Section 6.9 of the Subdivision User Contract, (b) capital investment in respect of bulkheads pursuant to Section 6.11 thereof, (c) capital investment with respect to steam generation pursuant to Section 3.3 thereof, or (d) change in BTU content pursuant to Section 6.13 thereof (which, as provided in such Sections, is to be calculated in accordance with such Section 6.9) shall be incorporated into BTF under this Section II, and shall, subject to Section 6.17 of the Subdivision User Contract, take effect for all deliveries of Acceptable Waste made or required to be made by the Subdivision under the Subdivision User Contract more than 15 days after notice of such adjustment is given to the Subdivision. As contemplated by the Subdivision User Contract, this Note 1 deals with adjustments to BTF in respect of additional costs or capital investment to be incurred or made prior to the date on which the Company shall have performed its

obligations under Section 3 of the Facility Agreement.

Note 2: Any adjustment to the Tipping Fee for (a) Uncontrollable Circumstances pursuant to Section 6.10 of the Subdivision User Contract, (b) capital investment in respect of bulkheads pursuant to Section 6.11 thereof, (c) capital investment with respect to steam generation pursuant to Section 3.3 thereof, (d) change in BTU content pursuant to Section 6.13 thereof, or (e) increased operating costs pursuant to Section 3.3 or 6.12 thereof (which, as provided in such Sections, is to be calculated in accordance with Section 6.10 or 6.12, as the case may be) shall be incorporated into TFA under this Section II, and shall, subject to Section 6.17 of the Subdivision User Contract, take effect for all deliveries of Acceptable Waste made or required to be made by the Subdivision under the Subdivision User Contract more than 15 days after notice of such adjustment is given to the Subdivision. Except as otherwise contemplated by the Sections referred to in this Note 2, this Note 2 deals

with adjustments to TFA made in respect of additional costs or capital investment incurred or made subsequent to the date on which the Company shall have performed its obligations under Section 3 of the Facility Agreement.

Note 3: In the event of any refinancing of Project Secured Initial Indebtedness (or any Indebtedness issued to refinance such Indebtedness), as contemplated by Section 6.4 of the Facility Agreement, the amount of TFA which would, but for the provisions of this Note 3, have been applicable in respect of each calendar year (or portion thereof) from and after the date of such refinancing shall be decreased in an amount, if any, equal to:

(a) 50% of an amount, determined in good faith by the Authority, equal to the excess, if any, of (i) the aggregate amount of principal and interest ("Debt Service") that would otherwise have been payable in such year in respect of the Indebtedness being refinanced (the "Refinanced Indebtedness"), over (ii) the aggregate amount of Debt Service payable in such year in respect of the Indebtedness issued and sold to

effect such refinancing (the "Refunding Indebtedness") (including, as an element of Debt Service payable in respect of the Refunding Indebtedness, (x) all costs incurred in such year in connection with such refinancing and not paid from the proceeds of such refinancing, including, without limitation, the aggregate amount of any redemption premiums paid to retire the Refinanced Indebtedness and all costs relating to the issuance and sale of the Refunding Indebtedness and (y) such additional amount as may be required under the next succeeding sentence), divided by

(b) 586,920, it being understood that (1) TFA may be a negative number in the formula set forth in this Section II and (2) the amount of any decrease in TFA under this Note 3 in respect of each calendar year shall be limited to the determination of TFA applicable in respect of such year and shall not be taken into account in determining the amount of TFA applicable in respect of any succeeding year.

If in any calendar year the aggregate amount of Debt Service payable in respect of the Refunding Indebtedness (including any amounts added to such Debt Service in accordance with this sen-

tence) exceeds the amount of Debt Service that would have been payable in such year in respect of the Refinanced Indebtedness, no adjustment to TFA in respect of such year shall be made under this Note 3, and the amount of such excess (plus interest thereon compounded annually at the effective annual interest rate, as determined in good faith by the Authority, of the principal amount of the Refunding Indebtedness outstanding as of the first day of such year or portion thereof) shall be added to the amount of Debt Service payable in respect of the Refunding Indebtedness in the next succeeding calendar year (and each subsequent year until all such excess amounts have been reflected in TFA adjustments) for the purpose of determining the amount, if any, of the adjustment to TFA under this Note 3 in respect of such succeeding year or years. Any adjustment to the Tipping Fee under this Note 3 shall take effect for deliveries of Acceptable Waste made or required to be made by the Subdivision under the Subdivision User Contract subsequent to the date of the refinancing in question.

Note 4: The Subdivision acknowledges and agrees that, in accordance with Schedule 2 to the Disposal Agreement, in the event that a change in law of the type set forth in paragraph (d) of the definition of Uncontrollable Circumstances in Section 1.1 of such Agreement shall have occurred prior to Completion (as defined in the Facility Agreement), which change in law would permit a change in the Specifications (as defined in the Facility Agreement) that may decrease the costs of designing, constructing or equipping the Facility from the costs which would otherwise have been incurred, the Company may, but shall not be obligated to, make such change in the Specifications. If the Company shall elect to make such change in the Specifications, BTF shall be decreased by an amount equal to (a) the amount of the initial basic Tipping Fee set forth in Section I of Schedule 2 to the Disposal Agreement (as such amount may be adjusted in accordance with Note 5 to Section II of such Schedule), multiplied by (b) a fraction, the numerator of which is the amount of the actual decrease, if any, in such costs (as reasonably determined in good faith by the Authority) and

the denominator, of which is the projected total costs of designing, constructing and equipping the Facility (i.e., excluding financing and similar costs), as shown as "Total Construction" costs in Schedule 5 to the Facility Agreement. Any adjustment under this Note 4 shall take effect as of the Commercial Operations Date.

Note 5: The dollar amounts for BTF set forth in Table 1 in this Section II are based on an assumed Effective Annual Interest Cost (as defined in the Memorandum of Understanding referred to below) of the Project Secured Initial Indebtedness of between 13.75% and 15.00%, inclusive. Such amounts shall be adjusted, as of the first date on which not less than \$150 million of such Indebtedness shall have been issued and sold, to reflect the difference, if any, between such assumed cost and the actual Effective Annual Interest Cost of such Indebtedness, such adjustment to be determined in good faith by the Authority in accordance with the Memorandum of Understanding, dated as of the date of the Subdivision User Contract between the Company and the Authority (the "Memorandum of Understanding"), which is

hereby incorporated herein and made a part hereof.

Section III - Certain Revenue Adjustments and Offsets

(1) Revenue Adjustment. The per ton Revenue Adjustment ("RAX") included in the equation for the computation of the Tipping Fee set forth in Section II of this Schedule 2, shall be determined in accordance with the following formula and upon the conditions set forth in Note 3 below:

$$RAX = RCEM + RCA_2 + RCA_3$$

Where:

$$RCEM = 1/2 \times \left[ \frac{1}{TAX} [(PEX - PEO) TEX - (PPEX - PEX) TPEX + (PMX - PMO) TMX] \right]$$

Where:

PEX = Average price per Kwh received by the Company for electric energy sold in Calendar Year X (as defined in the definition of BTF in Section II hereof) (Note 1).

PEO = Average price per Kwh received by the Company for electric energy in the first operating year, commencing with the Commercial Operations Date and ending on the first anniversary of such Date (or if no such energy is sold in such first operating year, in the first Calendar Year in which such energy is sold) (Note 1).

PPEX = Average price per Kwh paid by the Company for electric energy purchased by the Company in Calendar Year X.

- TE<sub>x</sub>** = Gross electric energy output in Kwh (before in-plant usage) in Calendar Year X (but not including any such output in the first operating year commencing with the Commercial Operations Date and ending on the first anniversary of such Date) (Note 1).
- TPE<sub>x</sub>** = Number of Kwh of electric energy purchased by the Company in Calendar Year X.
- PM<sub>x</sub>** = Average per ton revenue of the Company from recovered metals (including white goods) sold in Calendar Year X (net of all transportation costs and other costs incurred in connection with any off-site activities or the sale or other disposition of such recovered metals).
- PM<sub>0</sub>** = Average per ton revenue of the Company from recovered metals (including white goods) in the first full Calendar Year following the Commercial Operations Date in which such metals are sold (net of all transportation costs and other costs incurred in connection with any off-site activities or the sale or other disposition of such recovered metals).
- TM<sub>x</sub>** = Total tons of recovered metals (including white goods) sold in Calendar Year X.
- TAX** = Total actual tonnage of Acceptable Waste processed at the Facility in Calendar Year X.
- RCA<sub>2</sub>** = In respect of each of the four Calendar Years commencing with Calendar Year 3, the amount (expressed in January 1, 1982 dollars) applicable to such Calendar Year in Table 1, below, which amount is subject to adjustment in accordance with the provisions of Note 2 to this paragraph (1).

Table 1

<u>Calendar Year</u>	<u>RCA<sub>2</sub></u>
3	\$3.70
4	6
5	4
6	1

RCA<sub>3</sub> = In respect of each of the ten Calendar Years commencing with Calendar Year 13, the amount (expressed in January 1, 1982 dollars) applicable to such Calendar Year in Table 2, below, which amount is subject to adjustment in accordance with the provisions of Note 2 to this paragraph (1).

Table 2

<u>Calendar Year</u>	<u>RCA<sub>3</sub></u>
13	\$1
14	2
15	2
16	3
17	3
18	4
19	5
20	7
21	8
22	8

Note 1: (a) In the event that the Participating Subdivisions shall not elect to share in the capital costs in respect of improvements to enable the Facility to produce steam for resale, as contemplated by Section 3.3 of the Subdivision User Contract, and the Authority shall determine, in

good faith after consultation with the Independent Engineer, that such production shall have the effect of reducing the quantity of electric energy that would otherwise have been produced, the amount of TEx in the formula for determining RC<sub>EM</sub> set forth above shall be appropriately increased in an amount, determined by the Authority in accordance with applicable engineering principles after consultation with the Independent Engineer, equivalent to the amount of such reduction in the quantity of electric energy produced.

(b) In the event that both Participating Subdivisions shall elect to share in such capital costs with respect to steam production, as contemplated by such Section 3.3, such formula for determining RC<sub>EM</sub> shall be appropriately modified, in a manner agreed to by the Authority and the Participating Subdivisions, to permit the Participating Subdivisions to share (on a basis consistent with the basis on which they share in revenues from electric energy and recovered metals) in the revenues realized by the Company from the sale of steam.

Note 2: The dollar amounts for RCA<sub>2</sub> and RCA<sub>3</sub> set forth above in Tables 1 and 2, respectively, are based on an assumed Effective Annual Interest Cost of the Project Secured Initial Indebtedness of between 13.75% and 15.00%, inclusive. Such amounts shall be adjusted, as of the first date on which not less than \$150 million of such Indebtedness shall have been issued and sold, to reflect the difference, if any, between such assumed cost and the actual Effective Annual Interest Cost of such Indebtedness, such adjustment to be determined in good faith by the Authority in accordance with the Memorandum of Understanding. Such amounts, as so adjusted, shall be further adjusted for inflation in accordance with the inflation factor included in the formula set forth in Section II hereof and the procedures set forth in Section IV hereof.

Note 3: Application of the Revenue Adjustment in respect of tonnages delivered or required to be delivered under the Subdivision User Contract in any calendar year is subject to the following conditions:

(a) No Revenue Adjustment shall result in an increase in the Tipping Fee.

(b) In respect of any calendar year, (i) the sum of  $RC_{EM}$  and  $RCA_2$ , multiplied by the sum of the then existing Guaranteed Annual Tonnages of the Participating Subdivisions under their respective Subdivision User Contracts, shall not exceed 100% of the Company's pre-tax net income (before giving effect to  $RC_{EM}$  and  $RCA_2$ ) in respect of such year (as shown on the Company's annual audited financial statements), and (ii) the sum of  $RC_{EM}$  and  $RCA_3$ , multiplied by the sum of such Guaranteed Annual Tonnages, shall not exceed 50% of the pre-tax net income (before giving effect to  $RC_{EM}$  and  $RCA_3$ ) in respect of such year (as shown on such statements). For purposes of this paragraph (b) and paragraph (c) of this Note 3, the Company's pre-tax net income in respect of any calendar year shall be determined without giving effect to any costs included in clause (z) of paragraph (d) of this Note 3 in respect of such year.

(c)  $RC_{EM}$  and  $RCA_3$  shall not be included in  $RA_x$  in respect of any calendar year unless the aggregate pre-tax net income of the Company

for such year and all prior years exceeds the aggregate pre-tax net losses of the Company for such year and all prior years, all as shown on the annual audited financial statements of the Company.

(d) RC<sub>EM</sub>, RCA<sub>2</sub> and RCA<sub>3</sub> shall not be included in RA<sub>x</sub> in respect of any calendar year as to which the Authority reasonably determines that the inclusion thereof could result in a payment or other default under any applicable financing agreements (without taking into account any funds available to the Company under the Additional Contributions Agreement (as defined in the Facility Agreement)). The Subdivision acknowledges that, pursuant to Schedule 2 to the Disposal Agreement, the Company is required to use its best efforts to the end that no such financing agreement shall include any covenant binding on the Company which restricts the application of RC<sub>EM</sub>, RCA<sub>2</sub> and RCA<sub>3</sub> on conditions materially more burdensome from the point of view of the Authority than the applicable covenants in the financing agreements relating to the Initial Indebtedness. In the event that,

during the course of any calendar year in respect of which RCEM and RCA<sub>2</sub> or RCA<sub>3</sub> (as the case may be) shall have theretofore been included in the calculation of the Tipping Fee payable in respect of such year, funds shall have been required to be made available to the Company under the Additional Contributions Agreement, the Authority shall be entitled (i) to adjust the Tipping Fee payable in respect of the remaining portion of such calendar year to exclude the application of RCEM and RCA<sub>2</sub> or RCA<sub>3</sub> (as the case may be), which adjustment shall take effect for all deliveries of Acceptable Waste made or required to be made under the Subdivision User Contract subsequent to the date such funds were so made available, and (ii) to increase the Tipping Fee payable in respect of the next succeeding calendar year in an amount, determined in good faith by the Authority, sufficient to amortize over Tipping Fee payments that the Authority estimates will be made by the Subdivision during such year the portion of such funds which would not otherwise have been required to be made available if

RCEM and RCA<sub>2</sub> or RCA<sub>3</sub> (as the case may be) had not been applied in the preceding year (plus accrued interest on such portion at an annual rate of 15%). Notwithstanding the provisions of the foregoing sentence, the Tipping Fee shall be adjusted by the Authority under clauses (i) and (ii) of such sentence, in respect of any calendar year, only to the extent that the amount of funds so required to be made available under the Additional Contributions Agreement exceeds the sum of (w) the aggregate amount of any distributions made to the partners of the Company during such year, (x) debt service (principal and interest) payable in respect of such year on indebtedness incurred to finance costs of designing, constructing, equipping, starting up and financing the Facility, in excess of the aggregate amount of costs included in the Facility Price, as adjusted under Section 6.2 of the Facility Agreement (the "Adjusted Facility Price"), and Facility Price increases under Section 7.3 of such Agreement, (y) interest in respect of such year on indebtedness for borrowed money of the Company payable to any partner of the Company, to the extent that the annual interest rate on such indebtedness exceeds the Annual Return (as defined in

Section 6.10 of the Subdivision User Contract), and (z) without duplication of amounts included in clause (x) or (y) of this paragraph (d), interest costs payable in respect of such year on any indebtedness issued to refinance Initial Indebtedness (as defined in the Facility Agreement) which is not Project Secured Indebtedness or on any indebtedness (other than Initial Indebtedness) which is not Project Secured Indebtedness and which is issued and sold to finance or refinance any of the costs included in the Adjusted Facility Price not originally financed with Project Secured Indebtedness. Any portion of the Revenue Adjustment for any calendar year which would, but for the provisions of this paragraph (d), have been applicable, shall be carried forward and, subject to the foregoing provisions of such paragraph, be included in the Revenue Adjustment applicable in respect of the next succeeding calendar year (and each subsequent year until the aggregate amount of such portion of the Revenue Adjustment so excluded shall have been reflected in Tipping Fee adjustments).

(e) Except as provided in paragraph (d) of this Note 3, no portion of the Revenue Adjustment for any calendar year which would, but for the

provisions of this Note 3, have been applicable shall be carried forward to any subsequent year, provided in the case of each calendar year commencing after the first two consecutive calendar years commencing after the Commercial Operations Date in respect of which the ratio which the Company's annual pre-tax net operating income bears to the actual annual debt service on the Project Secured Indebtedness shall equal or exceed 1.75, that any portion of the Revenue Adjustment for such year which would, but for the provisions of paragraph (b) or (c) of this Note 3, have been applicable shall be carried forward and, subject to the provisions of this Note 3, be included in the Revenue Adjustment applicable in respect of the next succeeding calendar year (and each subsequent year until the aggregate amount of such portion of the Revenue Adjustment so originally carried forward shall have been reflected in Tipping Fee adjustments).

(2) Subdivision Adjustment Offset. The per ton Subdivision Adjustment Offset ("SAO<sub>x</sub>") (which shall in no case be a negative number in the equation for the calculation of the Tipping Fee set forth in Section II of this Schedule 2) shall be determined in accordance with the formula and conditions set forth below and shall be

applicable in respect of each calendar year subsequent to the first calendar year (or portion thereof) (the "First Delivery Year") in which tonnages were delivered and accepted for disposal under the Subdivision User Contract.

$$SAO_x = P_x + I_x$$

Where:

$$P_x = \frac{PAX}{F_x} \quad \text{and} \quad I_x = \frac{IAX}{93,750(\text{Note 1})}$$

Where:

$F_x$  = in respect of each of Calendar Years 4 through 13 (as defined in Section II hereof), the amount applicable in respect of such year in the following table (it being understood that, in respect of each calendar year prior to and including Calendar Year 3,  $P_x$  shall be equal to 0).

<u>Calendar Year</u>	<u>F</u>
4	1,000,000
5	900,000
6	800,000
7	687,500
8	575,000
9	462,500
10	350,000
11	225,000
12	93,750 (Note 1)
13	93,750 or the number of tons which the Authority estimates the Subdivision will deliver or be required to deliver in Calendar Year 13, whichever is less (Note 1)

$$PA_X^* = PA_{X-1} + (TX_{-1} \times RCA_{1X-1}) - (PP_{X-1} + LSP_{X-1}) + IY_{X-1}$$

Where:

$PA_{X-1}$  = an amount, determined in accordance with the equation for calculating  $PA_X$  set forth above, which shall be equal to 0 until the second calendar year following the First Delivery Year (as defined above) in respect of which  $PA_X$  shall be determined.

$TX_{-1}$  = the number of tons delivered or required to be delivered under the Subdivision User Contract in calendar year  $X-1$  in respect of which Tipping Fee payments were invoiced to the Subdivision.

$RCA_{1X-1}$  = the amount, if any, of  $RCA_1$  applicable to calendar year  $X-1$ , as determined in accordance with Table 1 below and Note 2 to this paragraph (2).

Table 1

<u>Calendar Year</u>	<u><math>RCA_1</math></u>
All years prior to Calendar Year 1	\$ 7.50
1	7.50
2	7
3	3

$PP_{X-1} = PX_{-1} \times TX_{-1}$

$IY_{X-1} = IX_{-1} \times (93,750 - TX_{-1})$ , it being understood that, if  $(93,750 - TX_{-1})$  is a negative number,  $IY_{X-1}$  shall

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\* As of January 1 of calendar year X.

be a subtraction in the equation set forth above for determining  $PA_X$ , and if it is a positive number,  $IX_{X-1}$  shall be an addition in such equation.

$LSP_{X-1}$  = the aggregate amount of such lump sum payments, in excess of Tipping Fee and other payments required to be made by the Subdivision under the Subdivision User Contract, as the Subdivision may have elected to make to the Authority in calendar year  $X-1$  to reduce the amount of  $PA_X$ .

$$IA_X = (R \times PA_X) \times Z$$

Where:

R = the sum of (i) the actual Effective Annual Interest Cost (expressed as a percentage) of the Project Secured Initial Indebtedness (as such cost shall be determined, as of the first date on which not less than \$150 million of such Indebtedness shall have been issued and sold, in good faith by the Authority in accordance with the Memorandum of Understanding), and (ii) 1%.

Z = (a) in respect of the calendar year immediately succeeding the First Delivery Year (as defined above), a factor equal to (i) the number of days in the First Delivery Year, commencing with the first day in such Year on which tonnages were delivered and accepted for disposal under the Subdivision User Contract and ending on December 31 of such Year, divided by (ii) 365; and (b) in respect of each succeeding calendar year, a factor equal to 1.

Note 1: (a) In the event that the number of tons in respect of which Tipping Fee payments shall have been invoiced to the Subdivision under the Subdivision User Contract in respect of Calendar Year 12 shall exceed 93,750, the Authority shall, no later than January 31 of Calendar Year 13, make a lump sum payment to the Subdivision in an amount equal to (i) the sum of  $P_x$  and  $I_x$  applicable in respect of Calendar Year 12, multiplied by (ii) such excess number of tons.

(b) In the event that the number of tons in respect of which Tipping Fee payments shall have been invoiced to the Subdivision in respect of Calendar Year 12 shall be less than 93,750, the amount of  $F$  applicable in respect of Calendar Year 13 and the divisor in the equation set forth above in this paragraph (2) for determining  $I_x$  in respect of such Year shall each be equal to the number of tons (but not to exceed 93,750) which the Authority in good faith estimates the Subdivision will deliver or be required to deliver under the Subdivision User

Contract in Calendar Year 13; provided that, if at any time during Calendar Year 13 the Authority shall determine that such estimate (or any adjusted estimate contemplated by this proviso) may exceed the number of tons in respect of which Tipping Fee payments shall be invoiced to the Subdivision in respect of such Year, the Authority shall be entitled to make such adjustment in the estimated amount of F and of such divisor as it shall determine necessary to ensure that the aggregate amount of PAx and IAx applicable in respect of Calendar Year 13 shall be recovered through Tipping Fee payments in respect of such Year. In the event that an amount in excess of the aggregate amount of PAx and IAx applicable in respect of Calendar Year 13 shall have been so recovered, the Authority shall, no later than January 31 of Calendar Year 14, make a lump sum payment to the Subdivision in the amount of such excess.

Note 2: The dollar amounts for RCA<sub>1</sub> set forth above in Table 1 of this paragraph (2), are based on an assumed Effective Annual Interest Cost of

the Project Secured Initial Indebtedness of between 13.75% and 15.00%, inclusive. Such amounts shall be adjusted, as of the first date on which not less than \$150 million of such Indebtedness shall have been issued and sold, to reflect the difference, if any, between such assumed cost and the actual Effective Annual Interest Cost of such Indebtedness, such adjustment to be determined in good faith by the Authority in accordance with the Memorandum of Understanding. Such amounts, as so adjusted, shall be further adjusted for inflation in accordance with the formula set forth in Section II hereof and the procedures set forth in Section IV hereof.

Section IV - Tipping Fee Payable in Respect of Each Calendar Year

The Tipping Fee payable by the Subdivision in respect of each calendar year shall be established by the Authority annually in accordance with the provisions of this Section IV. In establishing such Tipping Fee, the Authority shall take into account the factors set forth below in this Section IV and shall, on or before January 31 of each year, furnish to the Subdivision a written statement setting forth the Tipping Fee as so established, which statement shall set forth the following:

(1) the Tipping Fee as in effect as of the end of the preceding calendar year (the "Prior Tipping Fee");

(2) the amount of any increase or decrease in the Prior Tipping Fee necessary to reflect the Authority's reasonable projection as to the CPI and GNP as of the succeeding June 30;

(3) the amount of any increase or decrease in the Prior Tipping Fee necessary to reflect any difference between actual CPI and GNP as of the previous June 30 and the estimates thereof used to establish the Prior Tipping Fee;

(4) the amount of the per ton Revenue Adjustment which the Authority estimates will be applicable in respect of the then-current calendar year;

(5) the amount of any increase or decrease in the Prior Tipping Fee necessary to reflect any difference between (a) the per ton Revenue Adjustment applicable in respect of the preceding calendar year based on the Company's unaudited financial statements for such year, and (b) the estimate of such Revenue Adjustment made by the Authority at the beginning of such year.

Promptly after preparation of the audited financial statements of the Company in respect of any year,

the Authority shall furnish to the Subdivision a statement setting forth in reasonable detail the difference (plus or minus), if any, between the per ton Revenue Adjustment based on the Company's unaudited financial statements for such year and the amount of such adjustment based on the audited financial statements for such year. The Authority or the Subdivision (as the case may be) shall, no later than July 31 of the next succeeding year or 30 days after the date of the statement furnished to the Subdivision by the Authority under this paragraph (whichever is later), make a lump sum payment to the other in an amount equal to (i) the amount of such difference in the per ton Revenue Adjustment, multiplied by (ii) the aggregate number of tons in respect of which Tipping Fees were invoiced to the Subdivision under the Subdivision User Contract in respect of the preceding calendar year.

Any Tipping Fee established under this Section IV in respect of any calendar year shall be subject to adjustment during such year in accordance with the provisions of Sections II and III hereof.

Promptly after preparation of the audited financial statements of the Company in respect of the calendar year in which the Disposal Agreement shall have terminated,

the Authority shall furnish to the Subdivision a statement setting forth in reasonable detail the Tipping Fee in effect as of the date of such termination and the amount of any decrease or increase to such Tipping Fee necessary to reflect (x) any difference between actual CPI and GNP as of June 30 of such year and the estimates thereof used to establish such Tipping Fee, and (y) any difference between the per ton Revenue Adjustment applicable in respect of such year (based on such audited financial statements) and the estimate of such Revenue Adjustment made at the beginning of such year. The Authority or the Subdivision (as the case may be) shall, no later than 30 days after the date of the statement furnished to the Subdivision by the Authority under this paragraph, make a lump sum payment to the other in an amount equal to (1) the amount of such decrease or increase, multiplied by (2) the aggregate number of tons in respect of which Tipping Fees were invoiced to the Subdivision under the Subdivision User Contract in respect of such year. Notwithstanding any provision of the Subdivision User Contract to the contrary, or any occurrence of the Disposal Agreement Termination Date prior to the termination of such Contract, the Subdivision shall make any lump sum payment required to be made by it under this paragraph directly to the Company and the Company shall have the right to enforce such pay-

ment obligation to the same extent that it, as the Authority's designee, was entitled to enforce the obligations of the Subdivision under such Contract prior to the Disposal Agreement Termination Date.

SCHEDULE 3  
TO  
SUBDIVISION USER CONTRACT

DETERMINATION OF TIPPING FEE

(Applicable only after Disposal  
Agreement Termination Date)

Section 1. Basis of Payment. From and after the Disposal Agreement Termination Date, the per ton Tipping Fee payable with respect to any fiscal year of the Subdivision (or in the event the Disposal Agreement Termination Date does not occur on the first day of such fiscal year, for the remainder of such fiscal year) shall be an amount equal to the sum of (i) the Base Fee plus (ii) the Disposal Cost, all as reasonably estimated by the Authority with respect to such year (or portion thereof) in a notice furnished to the Subdivision in accordance with Section 6.8 not later than 90 days prior to the beginning of the Subdivision's fiscal year, or Section 8 of this Schedule 3, and as defined and calculated in accordance with this Schedule 3. The Subdivision shall be entitled to a Net Revenues Credit determined and applied on a monthly basis in accordance with Section 5 of this Schedule. The funds and accounts referred to in this Schedule shall be established by the Authority promptly upon the occurrence of the Disposal Agreement Termination Date.

Section 2. Base Fee. The Base Fee shall be equal to the sum of (i) Operating and Maintenance Costs plus (ii) Debt Service plus (iii) Other Fixed Costs, divided by (iv) the sum of the Guaranteed Annual Tonnages of the Participating Subdivisions as of the first day of the fiscal year of the Authority and the Participating Subdivisions in question.

"Operating and Maintenance Costs" shall be an amount, without duplication of other amounts included in the Base Fee, equal to the aggregate annual costs incurred by the Authority to dispose of the aggregate amount of the Participating Subdivisions' Guaranteed Annual Tonnages. Operating and Maintenance Costs shall include, without limitation, the cost of compensating any Person with whom the Authority enters into an agreement to purchase, construct, operate, maintain, repair, improve, alter or in any manner render services in connection with any Facility.

"Debt Service" shall be an amount, without duplication of other amounts included in the Base Fee, equal to (i) the aggregate amount required for scheduled debt service payments to be made by or on behalf of the Authority during or with respect to such year pursuant to any Trust Indenture or any other financing agreements with respect to the acquisition, design, construction, equipping, financing, or operation of, or any modification or addition to, any Facility (collectively, "Applicable Financing Agreements") plus (ii) such

amounts as may be necessary to satisfy any debt service coverage or other financial test required to be maintained or satisfied under any Applicable Financing Agreement (the "Debt Service Coverage Component"), plus (iii) the aggregate amount of any other payments required to be made to the funds and accounts established under any such Trust Indenture or other Applicable Financing Agreements. Debt Service shall include (without limitation) all payments with respect to the principal of and premium (if any) and interest on the Authority's Resource Recovery Revenue Bonds (Southwest Resource Recovery Facility Project), 1982 Series.

"Other Fixed Costs" shall be an amount, without duplication of other amounts included in the Base Fee, equal to the aggregate cost of rentals and other payments required during such year under the Site Lease, and for insurance (including deductible portions of insurance claims), bonds, fees and all federal, state and local taxes with respect to any Facility and for payments to reserves for working capital or for operation, repair, renewal or replacement of any Facility established by the Authority and any other costs or expenses which are paid or incurred by the Authority in connection with any Facility or the disposal of waste under the Subdivision User Contracts.

Section 3. Annual Adjustments to Base Fee Account.

From the aggregate Tipping Fee payments made by the Subdivision

from time to time, that portion representing the Base Fee shall be placed in a single Base Fee Account. Except as provided herein, amounts in the Base Fee Account shall be expended only for costs properly allocable to Operating and Maintenance Costs, Debt Service or Other Fixed Costs, or to reimburse the Authority for payments made by it in respect of such items.

Any excess in the Base Fee Account after payment of or provision for all amounts attributable to Debt Service, Operating and Maintenance Costs and Other Fixed Costs for such year, together with any interest earned thereon, shall be distributed as soon as practicable after the last Business Day of each Fiscal Year or at such other times as the Authority in its discretion shall determine as follows and in the following order of priority:

(i) To make any required payments under any Trust Indenture or other Applicable Financing Agreements referred to in the definition of "Debt Service" to the debt service reserve fund and other funds and accounts established under such Trust Indenture or financing agreements;

(ii) To any operator of any Facility in respect of any amounts due and not then paid under any agreement between the Authority and any such operator with respect to the operation of such Facility;

(iii) To the account of the Subdivision for application to Tipping Fees payable by the Subdivision during the succeeding fiscal years, an amount equal to the Debt Service Coverage Component of the Base Fee, times the Subdivision's Guaranteed Annual Tonnage;

(iv) In the event that the Subdivision delivered Acceptable Waste hereunder in excess of its Guaranteed Annual Tonnage ("Excess Tons"), an amount equal to the sum of the Debt Service Coverage Component of the Base Fee and the Other Fixed Costs Component of the Base Fee, times the Excess Tons of the Subdivision, plus an amount (as determined by the Authority in its good faith discretion) equal to the amount (if any) by which the per ton Operating and Maintenance Fee exceeded the marginal cost of disposing of each Excess Ton, times the number of Excess Tons of the Subdivision; and

(v) At the option of the Authority (x) to the Subdivision or (y) for the application to Tipping Fees payable in respect of the succeeding year, an amount equal to the balance then remaining in the Base Fee Account, times the Subdivision's Share.

"Subdivision's Share" means the amount equal to the Subdivision's Guaranteed Annual Tonnage, divided by the sum of the Guaranteed Annual Tonnages of both Participating Subdivisions.

"Debt Service Coverage Component of the Base Fee" is an amount equal to the Debt Service Coverage Component, divided by the total Guaranteed Annual Tonnages of both Participating Subdivisions.

"Other Fixed Costs Component of the Base Fee" is an amount equal to Other Fixed Costs, divided by the total Guaranteed Annual Tonnages of both Participating Subdivisions.

Section 4. Residue Disposal Costs. The Subdivision shall pay the Authority an amount equal to the Disposal Costs per ton times its Guaranteed Annual Tonnage and Excess Tons. The "Disposal Costs" shall be an amount equal to the aggregate annual cost of transporting Residue to any Residue Landfill, plus the cost of disposing of such Residue at such Residue Landfill divided by the number of tons disposed of. Disposal Costs shall be paid on a monthly basis, pursuant to invoices rendered by the Authority, and be deposited in a special account to be held by the Authority for the purpose of paying Disposal Costs. At the end of each year, the Authority shall credit any remaining amounts in such account not required to pay or provide for accrued Disposal Costs or payments to funds and accounts established under any Trust Indenture or other Applicable Financing Agreements of the type referred to in the definition of "Debt Service" to the accounts of the Participating Subdivisions in proportion to the respective tonnages of Acceptable Waste delivered by each Participating

Subdivision during such year for application to Disposal Costs payable by the respective Participating Subdivisions during succeeding Fiscal Years.

Section 5. Net Revenues. Net Revenues shall be deposited in a separate account to be held by or on behalf of the Authority. At the end of each month the Authority shall calculate the "Net Revenues Credit" which for any period shall be equal to the aggregate amount of Net Revenues multiplied by the Subdivision's Share. The Subdivision's Net Revenues Credit shall be deposited in the Base Fee Account and applied as a credit against amounts due from the Subdivision to the Authority in respect of Tipping Fees in the succeeding months. If the Net Revenues Credit is in the excess of the Subdivision's aggregate Base Fee for the next six months, the Authority may, to the extent it is permitted to do so under the Applicable Financing Agreements, pay the amount of such excess directly to the Subdivision.

"Net Revenues" means the aggregate amount of any fees, revenues and income (other than any fees paid by the Participating Subdivisions) received by the Authority in connection with the operation of any Facility, including, without limitation, any tipping fees paid to the Authority in respect of the disposal at any Facility of Acceptable Waste delivered other than waste delivered by the Parti-

cipating Subdivisions, revenues from the sale of energy, steam or marketable materials derived from the processing of waste at any Facility, and the aggregate of all Short-fall Fees paid by persons other than the Participating Subdivisions during such period, in each case net of any costs incurred by the Authority in connection with the operation of any Facility to the extent that such costs are not included in the Base Fee payable by the Participating Subdivisions in respect of their Guaranteed Annual Tonnages, including, without limitation, any Disposal Costs with respect to Acceptable Waste accepted by the Authority at any Facility other than waste delivered on behalf of the Participating Subdivisions.

Section 6. Certain Payments. Payments under this Subdivision User Contract in respect of operations outside of Receiving Hours, Returned Waste, Rejected Waste, and costs of damage or cleaning up of spillage shall be made in accordance with Sections 2.5, 2.11, and 2.12, respectively. Neither the expenses relating thereto nor the payments made shall be taken into account in determining the Base Fee or the Net Revenues.

Section 7. Diverted Wastes. The Authority shall use all reasonable efforts to secure adequate waste disposal capacity to fulfill its obligations under this Subdivision User Contract. So long as the Authority has available waste dis-

posal capacity, it shall not unreasonably refuse to take any Acceptable Waste delivered by the Subdivision to the Facility.

Section 8. Adjustments to Tipping Fee Estimates.

The Authority may at any time adjust its estimate of the per ton Tipping Fee payable under this Schedule 3 in order to provide for the timely payment of items included in the Operating and Maintenance Costs, Debt Service, Other Fixed Costs or Disposal Costs or to comply with the provisions of the Trust Indenture or any other Applicable Financing Agreements. The Tipping Fee as so adjusted shall take effect with respect to all deliveries made 15 days after notice of such adjustment is given to the Subdivision.

Section 9. Audit. At the end of each fiscal year of the Authority, all books and records of the Authority shall be audited by a firm of independent public accountants selected by the Authority. A report of such audit shall be delivered to the Subdivision within 120 days after the end of each fiscal year.

Section 10. Early Termination. At any time from and after the Disposal Agreement Termination Date, the Participating Subdivisions may jointly, but not separately, elect, by giving 60 days' written notice to the Authority, to terminate their obligations under their respective Subdivision User Contracts by taking the following actions:

(a) by depositing with the trustee for the Project Secured Indebtedness an amount in cash sufficient to defease such Indebtedness in accordance with the terms of the Trust Indenture with respect to such Indebtedness and by instructing the Authority to instruct the trustee under such Trust Indenture to provide for the payment or redemption of such Indebtedness on the next succeeding date on which such Indebtedness may be paid or redeemed in accordance with its terms, (b) by depositing with the Authority, or with any receiver, trustee or escrow agent for the Authority appointed for such purpose, an amount in cash sufficient to pay or provide for the payment of all other obligations of the Authority in connection with the acquisition, design, equipping, operation, ownership, leasing, maintenance or financing of any Facility or the performance of its obligations under the Subdivision User Contracts, other than any such obligations which are at such time contingent, unliquidated or not subject to precise determination, and (c) by executing and delivering to the Authority such further agreements and documents as the Authority reasonably may deem necessary to evidence each Subdivision's continuing obligation to pay and discharge any such contingent, unliquidated or indeterminable obligations of the Authority as such obligations become fixed, liquidated and determinable.

Upon the payment of the amounts and the execution and delivery of the agreements referred to in the foregoing clauses (a), (b) and (c), this Agreement shall terminate.

Section 11. Consultation with Participating Subdivisions. In the event that the Disposal Agreement Termination Date shall have occurred prior to the termination of this Agreement, the Authority shall, promptly after such Date, retain an Independent Engineer to evaluate the Facility and make recommendations as to the most economic means practicable by which the Authority may provide for the disposal of the Guaranteed Annual Tonnages and Guaranteed Monthly Tonnages of the Participating Subdivisions and the performance of its other obligations under the Subdivision User Contracts, consistent with the performance of its obligations under the Trust Indenture in respect of the Project Secured Indebtedness, and furnish to the Subdivision a statement in reasonable detail as to the means, which shall be consistent with the recommendations of such Independent Engineer, by which the Authority proposes to continue to perform or provide for the performance of such obligations. From and after the Disposal Agreement Termination Date, the Authority shall perform its obligations under the Subdivision User Contracts by the most economic means practicable, consistent with the performance of its obligations under the Trust

Indenture in respect of the Project Secured Indebtedness.

From and after the Disposal Agreement Termination Date, the Authority shall keep the Subdivision reasonably advised as to its arrangements with respect to the disposal of such Guaranteed Annual Tonnages and Guaranteed Monthly Tonnages and the performance of its other obligations under the Subdivision User Contracts and, upon the request of the Subdivision, consult with the Subdivision and provide the Subdivision with such information as it may reasonably request with respect to such arrangements.

In the event that at any time from and after the Disposal Agreement Termination Date the Participating Subdivisions believe that the Authority is not providing for the disposal of their respective Guaranteed Annual Tonnages and Guaranteed Monthly Tonnages and the performance of its other obligations under their respective Subdivision User Contracts by the most economic means practicable and jointly request the Authority to direct the Independent Engineer to evaluate the means by which the Authority is providing for the performance of such obligations, the Authority shall direct the Independent Engineer to perform such evaluation and, in connection therewith, to consider any information the Participating Subdivisions may provide, and, if the Independent Engineer determines that the Authority may provide

for the performance of such obligations by more economic means, consistent with the performance of its obligations under the Trust Indenture in respect of the Project Secured Indebtedness, the Authority shall so provide for the performance of such obligations.

**BTU CONTENT TEST PROCEDURES**

The test described in this Schedule 4 (the "Test") will be repeated four times in a one-year period at three-month intervals. The four figures for BTU content of Acceptable Waste determined by performing the Test each of the four times will be averaged, and the resulting average figure will be used in connection with a possible adjustment to the Tipping Fee as provided in Section 6.13 of the foregoing Agreement.

**1. Test Conditions**

The Company's Facility will be operated at a refuse throughput rate of one thousand nine hundred ten (1,910) tons per day or 95 per cent of maximum continuous rating of the aggregate of all three furnace-boiler systems, whichever is higher. Refuse fired during the Test will be as nearly representative of the Acceptable Waste located within the boundaries of the Participating Subdivisions at the time of the Test as is reasonably practicable. Such waste will be stored in a designated area of the receiving pit for purposes of the Test. All three furnace-boiler systems will be operated in concert and maintained at equal operating conditions by observation and appropriate adjustment of all operating parameters. The Test shall be conducted in accordance with the American Society of Mechanical Engineers Performance Test Code 4.1 - 1974, reaffirmed 1979, (the "Test Code"), for Steam Generating Units, as modified or supplemented below for determination of all heat losses, heat outputs and heat credits, using the heat loss efficiency method.

**2. Test Schedule**

Twenty days prior to commencement of the Test, the Company will submit to the Subdivision and/or the Authority test documentation which will include, but not necessarily be limited to, the following:

1. Test schedule together with measurements and sampling matrices and a test personnel staffing plan which identifies all personnel to be present during the Test.
2. Detailed test procedures including a description of the manner in which Acceptable Waste will be selected for the Test.

4. Complete turbogenerator and condenser specifications including predicted performance curves.
5. Certification report on all instrumentation to be used with the testing of 3. and 4. above, be it of the stationary or of the portable type.
6. Identification and description of the credentials of the test director.

Ten days prior to commencement of the Test, the Authority will notify the Subdivision of the test date.

### 3. Test Procedures

The Test shall be performed when all boilers have had a minimum of four (4) weeks of cumulative operating time each since the last major cleaning, to allow the heat transfer surfaces to become fouled to a normal operating mode. During this operating period, no cleaning shall take place other than normal rapping at regular intervals.

- (a) During a twenty-four (24) hour test period, pertinent test data will be recorded at appropriate intervals and in accordance with the Test Code. ~~Measurements will include but not necessarily be limited to the following:~~
  1. Processible Waste feed rates, temperatures and specific heats.
  2. Boiler outlet steam rates, temperatures, and pressures.
  3. Feedwater rates, temperatures and pressures.
  4. Attenuator water rates, temperatures and pressures.
  5. Boiler drum pressures.
  6. Turbine Generator throttle flow, pressure and temperature.
  7. Air temperatures at the air inlets.
  8. Flue gas rates and temperatures at the economizer outlets.
  9. CO<sub>2</sub>, O<sub>2</sub>, CO, H<sub>2</sub>O, in the flue gas at the economizer outlets.
  10. Residue, siftings, and fly ash quantities and unburned carbon content.

11. Barometric pressure and relative humidity.
12. Ambient wet/dry bulb temperatures.
13. Residue quench water quantities and temperatures.
14. Moisture in residues.
15. Turbine generator electrical output.
16. In-house power consumption.
17. In-house steam consumption.
18. Turbine exhaust pressure.
19. Steam quality - percent moisture or ppm.
20. Boiler blowdown rate.

- (b) Continuous and properly calibrated strip chart recordings are to be provided for the display of temperature, pressure and flow rate for superheated steam, at the outlet header of each boiler and at the inlet header to the turbine. These charts shall be properly identified and, if more than one parameter is to be displayed on the same chart, adequate color coding shall be used.

A test log book must be kept into which all relevant events are recorded by the test director or his assistant. Entries shall include, but not necessarily be limited to, the following:

1. Equipment malfunctions.
2. Equipment failures, both incipient and catastrophic.
3. Repairs or adjustments made.
4. Duty cycle of each individual, on a shift-by-shift basis, who is present during the test.

- (c) Test measurements will be taken from installed plant instruments which will have been previously calibrated and agreed upon by the Subdivision, or its designated representative, in accordance with Section 2 above. Special portable instrumentation may also be used where required and agreed upon. Laboratory analyses of samples taken during the Test will be performed by laboratory organizations previously approved by the Authority and the Subdivision.

4. Data Analysis

Utilizing the measurements and test data taken during the Test, calculations will be made in accordance with the Test Code for the determination of all boiler heat losses, heat outputs, and heat credits. All measurements and data will be averaged for the twenty-four hour test period first for each furnace-boiler system individually, and then for all three systems combined.

Calculations for heat credits will include sensible and latent heat in the combustion air.

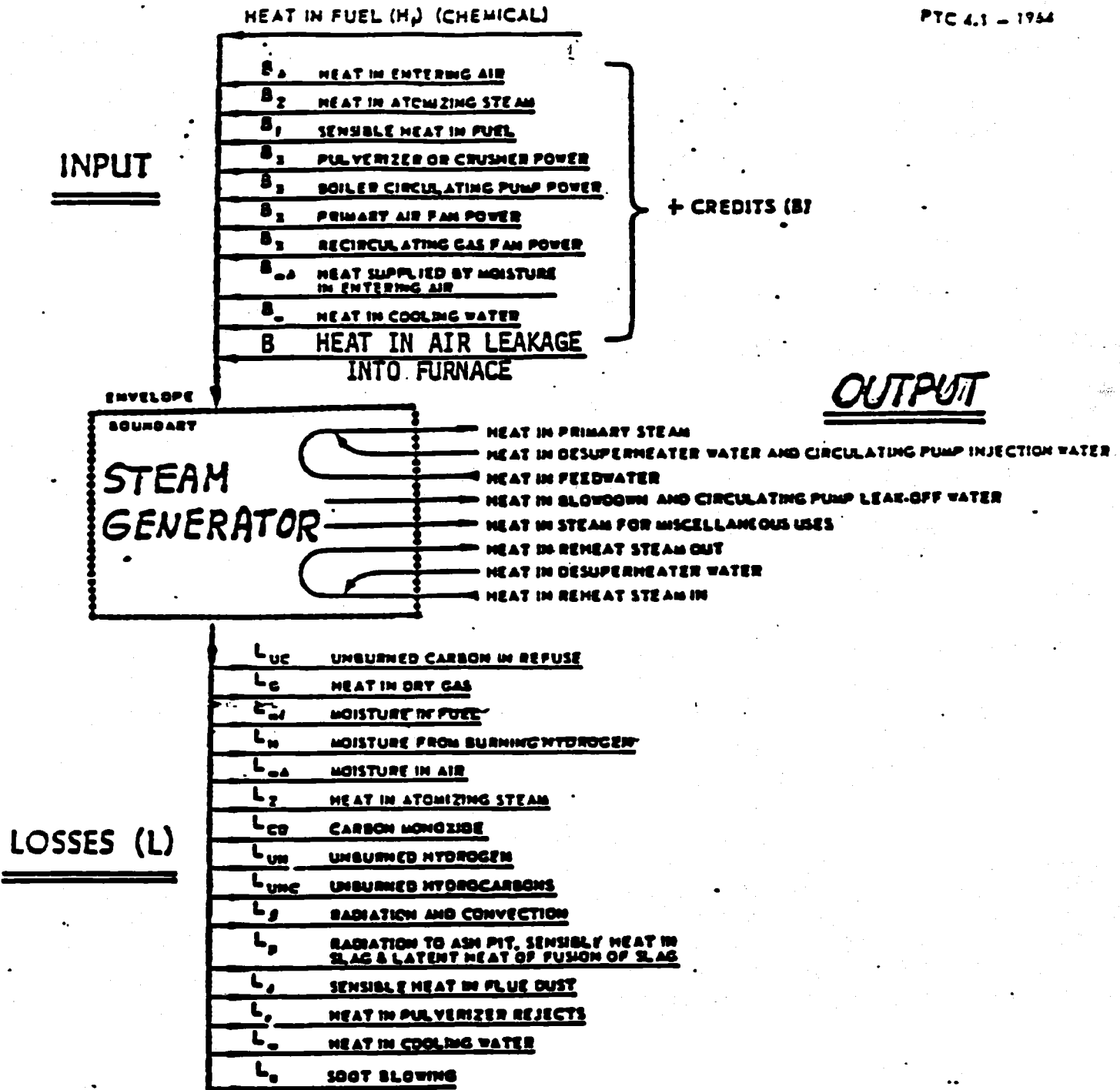
Calculations for heat outputs will include heat in the output steam.

Calculations for heat losses will include:

1. Carbon loss due to unburned combustibles in the residue and fly ash.
2. Incomplete combustion of carbon monoxide.
3. Sensible and latent heat in the wet flue gas.
4. Heat loss due to radiation and convection from the boilers.
5. Sensible heat in the residue, siftings, and fly ash.
6. Heat loss in the quench cooling water vapor in the combustion gases.
7. Heat loss in the blowdown.

In order to derive the (average) refuse higher heating value, several consecutive calculations need to be performed in accordance with the formulae shown in Figure 1. First, the heat input will be calculated by totaling up all heat outputs and heat losses. Next, the (chemical) heat in refuse is calculated by subtracting the sum of all heat credits from the heat input. Finally, the refuse higher heating value is calculated by dividing the heat in refuse through the measured refuse throughput.

PTC 4.1 - 1954



$$\text{OUTPUT} = \text{INPUT} - \text{LOSSES}$$

$$\text{DEFINITION: EFFICIENCY (PERCENT)} = \eta_s (\%) = \frac{\text{OUTPUT}}{\text{INPUT}} \times 100 = \frac{\text{INPUT} - L}{H_f + B} \times 100$$

$$\text{HEAT BALANCE: } H_f + B = \text{OUTPUT} + L \text{ OR } \eta_s (\%) = \left[ 1 - \frac{L}{H_f + B} \right] \times 100$$

Figure 1 HEAT BALANCE OF STEAM GENERATOR

AMENDMENT NO. 1

TO

SUBDIVISION USER CONTRACT

THIS AMENDMENT, dated as of January 1, 1988, between Northeast Maryland Waste Disposal Authority (the "Authority"), a body politic and corporate organized and existing under the laws of the State of Maryland and Baltimore County, Maryland (the "County"), a body politic and corporate and political subdivision of the State of Maryland, to the Subdivision User Contract dated as of November 3, 1982 (the "Original Agreement"), between the Authority and the Company. Capitalized terms used herein without other definition have the respective meanings assigned thereto in the Original Agreement.

RECITALS

A. The Company has entered into the Operating Agreement with Operator pursuant to which the Operator has undertaken to maintain and operate the Facility.

B. The Authority and the Company desire to make certain amendments to the Original Agreement that are necessary or appropriate, in the light of the Operating Agreement, in order to avoid prejudicing their existing rights under the Original Agreement.

NOW THEREFORE, in consideration of the premises, the Authority and the City hereby agree as follows:

1. Amendment to Original Agreement. (a) Section 1.1 (i) The definition of "Uncontrollable Circumstance" in Section 1.1 is amended by adding at the end thereof the following sentence:

Any event or condition beyond the reasonable or prudent control, investigation, forecasting or planning of the Operator and the Company and not the result of willful or negligent action or lack of reasonable diligence of the Operator or the Company shall be deemed an Uncontrollable Circumstance with respect to any obligation of, or the compliance with any condition by, the Company under the Agreement.

(ii) The following additional definitions are added to Section 1.1:

"Funds Deficiency Agreement" means the Funds Deficiency Agreement, dated as of January 1, 1987, among The Henley Group, Inc., a Delaware corporation, WESI Baltimore Inc., a Delaware corporation, WESI Maryland INC, a Delaware corporation, and Operator, as the same may from time to time be amended or supplemented and, in the event any such modification, amendment or supplement would have a material adverse effect upon the Authority or Trustee, the prior written consent of each thereof.

"Operating Expenses" means, for any period, all expenses of the Operator (other than interest on indebtedness for money (borrowed) arising from the performance of its obligations under the Operating Agreement, including, without limitation, all costs and expenses incurred in connection with the operation, repair and maintenance of the Facility, and the amount of the Operator's overhead and direct and indirect employee costs properly allocable to such performance (all such expenses being determined in accordance with generally accepted accounting principles consistently applied).

"Operator" means Wheelabrator Baltimore Inc., a Delaware corporation, and its successors and assigns.

"Operator Revenues" means, for any period, all revenues of the Operator (including all operating and non-operating revenues) other than the operating fees paid by the Company pursuant to the Operating Agreement.

(b) Schedule 2. (i) Note 3 of Section III to Schedule 2 of the Original Agreement is amended by adding thereto a new paragraph (f) reading as follows:

(f) With respect to the computation of pre-tax net income or loss and pre-tax net operating income of the Company for the purposes of paragraphs (b), (c) and (e) of this Note 3 in respect of any calendar year during the term of the Operating Agreement, the amount of revenues and expenses of the Company shall be determined

as if the Company had incurred all Operating Expenses incurred by the Operator during such calendar year and received all Operator Revenues received by the Operator during such calendar year but without having incurred the operating fee under the Operating Agreement.

(ii) Clause (w) of the third sentence of paragraph (d), Note 3 of Section III to Schedule 2 will be amended to read as follows:

(w) the aggregate amount of any distributions made to the partners of the Company during such year (treating as such a distribution for this purpose the amount, if any, by which the operating fees paid to the Operator for such year exceed the sum of (i) Operating Expenses for such year plus (ii) amounts received by the Company during such year pursuant to the Funds Deficiency Agreement to fund the payment of such operating fees to the extent a contribution of such amounts would not have been required by the Additional Contributions Agreement).

2. Ratification. Except as hereby expressly amended and supplemented, the Original Agreement is in all respects ratified and confirmed, and the terms and conditions thereof shall be and remain in full force and effect.

3. Modifications. Additions to the Original Agreement are noted by underscoring; deletions are noted by brackets.

4. Execution of Counterparts. This Amendment may be executed simultaneously in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority and the City have caused this Amendment to be executed by their respective officers thereunto duly authorized, all as of the date first above written.

[SEAL]

NORTHEAST MARYLAND WASTE  
DISPOSAL AUTHORITY

Attest:

M. Catherine Cobb

By:

Michael Gagliardo  
Michael Gagliardo  
Executive Director

[SEAL]

BALTIMORE COUNTY, MARYLAND

Attest:

[Signature]

By:

[Signature]  
Dennis F. Rasmussen  
County Executive

Pursuant to Section 8.14 of the Northeast Maryland Waste Disposal Authority Bond Resolution dated January 19, 1983 relating to the issuance by it of \$190,765,000 aggregate principal amount of its Resource Recovery Revenue Bonds (Southwest Resource Recovery Facility) Series 1983, the undersigned, as Trustee, hereby consents to the foregoing Amendment No. 1 to Subdivision User Contract.

[SEAL]

MARYLAND NATIONAL BANK,  
as Trustee

Attest:

Patricia Linardi

By:

[Signature]  
Authorized Officer

REVIEWED FOR FORM &  
LEGAL SUFFICIENCY &  
APPROVED FOR EXECUTION.