

Exhibit D

EXECUTION VERSION

SUBDIVISION USER CONTRACT

between
NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY
and
THE MAYOR AND CITY COUNCIL OF BALTIMORE

Dated as of June 22, 2011

Submission Not an Offer. The submission of a draft of this document or a summary of some or all of its provisions does not constitute an offer to create a legally binding obligation on the part of any prospective party, it being understood and agreed that no such party shall be legally obligated with respect to the matters addressed herein unless and until a definitive agreement has been executed by all parties.

EXECUTION VERSION

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EXECUTION VERSION

SUBDIVISION USER CONTRACT

THIS SUBDIVISION USER CONTRACT is made and entered into as of the 22nd day of June, 2011, by and 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 Mayor and City Council of Baltimore, a body politic and corporate and a political subdivision of the State of Maryland (the "City").

RECITALS

A. The Authority has entered into a separate contract with Wheelabrator Baltimore, L.P. (the "Company") (the "Waste Disposal Agreement"), substantially identical in form and substance and dated of even date herewith, which provides for the disposal of the City's solid waste by the Company.

B. The Company operates a solid waste disposal facility with a nameplate capacity of 2,250 Tons of waste per day, including steam-generating equipment feeding a turbine generator, air-pollution control equipment and facilities for recovery of ferrous metals from the incinerator residues, located in the City (the "Facility").

C. The City and the Authority wish to contract for the disposal by the Authority at the Company's Facility of waste delivered.

D. The City desires to purchase renewable energy from the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties 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 all household garbage, trash, rubbish, and refuse, but excluding all Unacceptable Waste. In no event shall Acceptable Waste include any materials defined herein as Unacceptable Waste. In addition, the parties recognize that some substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, may be determined by the EPA or any other federal, state or local Governmental Body subsequent to the Effective Date to be hazardous, toxic, dangerous, or harmful, and at the

time of receipt of notice from the Company to the City following such determination, such substances shall cease to be Acceptable Waste and become Unacceptable Waste. If any Governmental Body having appropriate jurisdiction shall determine that any chemicals or other substances which are not, as of the Effective Date, 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 Company, the Authority and the City 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 City and the Authority, as the same may from time to time be amended, modified or supplemented in accordance with the terms hereof.

"Alternate Disposal Service" has the meaning given in Section 5.2(c).

"Applicable Law" means: (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to: (a) the siting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of municipal solid waste resource recovery systems, including the Facility; (b) the air, noise, dust and odor emissions therefrom; (c) the transfer, handling, processing, transportation or disposal of Unacceptable Waste, Residue and other by-products produced thereby; (d) the performance by a Party of its obligations hereunder; or (e) any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to solid waste processing, waste disposal, health, safety, fire, environmental protection, labor relations, building codes and non-discrimination).

"Authority" has the meaning given in the preamble to this Agreement.

"Authority Representative" has the meaning given in Section 6.1.

"Baltimore Regional Cooperative Purchasing Council (BRCPC)" means the buying cooperative managed by the Baltimore Metropolitan Council (BMC). Members of BRCPC are purchasing officers from BMC's six member jurisdictions, their school systems, the City of Annapolis and the Maryland Department of General Services. BRCPC purchases electricity for

its members, and it or its designated electricity supplier may be the counterparty for the electricity transaction with Authority.

"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.

"Change in Law" means:

(a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation, of any Applicable Law after the Effective Date hereof, unless such Applicable Law was on or prior to the Effective 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 Governmental Body; or

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

(c) to the extent occurring after the Effective Date, (i) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or (ii) the imposition of a term, condition or requirement in a Governmental Approval which is materially more stringent or burdensome than the terms and conditions set forth in connection with the issuance of such Governmental Approval, in either case, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Authority or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence; provided that Change in Law shall not include any changes in Applicable Laws relating to taxes, fees or charges imposed by Governmental Authority.

"Change in Law Adjustment" means, if and only if the City in its sole discretion agrees in writing to such Change in Law Adjustment, an adjustment to the Tipping Fee to account for the City's Percentage of increased capital costs or operation and maintenance costs incurred by Authority as a result of a Change in Law, with the City's Percentage of any such capital costs

attributable to a Change in Law amortized over the remaining life of the applicable assets in accordance with generally accepted accounting principles; provided that no Change in Law Adjustment shall be effective unless the City, in its sole discretion authorizes such Change in Law Adjustment in writing.

"Change in Law Notice" has the meaning given in Section 5.2(b).

"City" has the meaning given in the preamble to this Agreement.

"Company Payments" has the meaning given in Section 11.15.

"City's Percentage" means, for each contract year, a fraction, the numerator of which is the tonnage delivered by the City under this Agreement in the prior calendar year (except with respect to the first contract year the tonnage shall equal 200,000 tons), and the denominator of which is the average annual tonnage of waste delivered to the Facility in the prior five (5) calendar years.

"City Representative" has the meaning given in Section 6.1.

"City Subcontract" has the meaning given in Section 2.1(c).

"City Surcharge" means the surcharge imposed on haulers of solid waste and payable by waste disposal facilities pursuant to Baltimore City Code, Article 23, Subtitle 11.

"Company" has the meaning given in Recital Clause A.

"County" shall mean Baltimore County, Maryland.

"Designated Hauler" means a municipal or private hauler designated by the City as delivery for the account of the City. Absent written instructions to the contrary from the City's authorized representative, all trucks or vehicles operated by City employees shall be Designated Haulers delivering for the City's account.

"Diverted Waste" has the meaning given in Section 4.1(d).

"Effective Date" shall mean January 1, 2012, except that the provisions of Article 3 shall become effective on July 1, 2011..

"Energy Payment Amount" has the meaning given in Section 3.1(b).

"Event of Default" has the respective meanings specified in Sections 8.2 and 8.3.

"Facility" means the solid waste disposal facility described in Recital Clause B.

"First Energy Delivery Period" has the meaning given in Section 3.1(b).

"Governmental Approval" means all permits, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of any Governmental Body, of whatever kind and however described, which are required under Applicable Law to be obtained or maintained with respect to the operation, maintenance or ownership of the Facility or the performance by a Party of its obligations hereunder or under the Waste Disposal Agreement.

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

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

"Late Payment Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus one percent (1%) and (b) the maximum rate permitted by Applicable Law.

"Participating County" has the meaning given in Section 2.1(c).

"Party" means the Authority or the City.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company or unincorporated organization, or any Governmental Body.

"Receiving Hours" means the hours during which the Facility shall be open for the receiving of Acceptable Waste as set forth in Section 2.2.

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

"Rejected Waste" means any waste delivered to the Facility hereunder that is determined to be Unacceptable Waste by the Company (acting pursuant to the Waste Disposal Agreement) 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 Contract" has the meaning given in Section 2.5(c).

“Residue Landfill” means the City’s Quarantine Road Landfill (also known as the Hawkins Point Landfill) or any other landfill at which the City disposes of Residue pursuant to the Residue Disposal Contract.

“Returned Waste” means any waste delivered to the Facility that is determined by the Company (acting pursuant to the Waste Disposal Agreement) to be Unacceptable Waste before being deposited in the receiving pit.

“Shutdown” has the meaning given in Section 4.1(a).

“State Entity” means any state of the United States of America, any political subdivision or municipal corporation existing or organized under the laws of any such state, or any agency, instrumentality, department or other part of any such state, political subdivision or municipal corporation (including, without limitation, any authority, district or similar entity).

“Tipping Fee” has the meaning given in Section 5.1.

“Ton” or “ton” means a “short ton” of two thousand (2,000) pounds.

“Unacceptable Waste” means any waste that is both within any of the following categories of waste and is included as “Unacceptable Waste” in the Company (acting pursuant to the Waste Disposal Agreement) rules applicable to substantially all haulers of municipal solid waste to the Facility: (a) hazardous waste, explosives and ordnance materials, pathological wastes, radioactive materials, lead acid batteries, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, non-burnable construction materials and demolition debris and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency (“EPA”) pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (b) unless consented to by the Facility’s plant manager, any item of waste exceeding six (6) feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight (8) inches could be contained within such solid mass portion; (c) all large household appliances, commonly referred to as “white goods” including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (d) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (e) any material that a waste-to-energy facility cannot accept pursuant to any Applicable Law of the City, the State of Maryland or any Governmental Body; (f) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; (g) tires and cathode ray tubes (in each case in excess of a de

minimis amount); and (h) all other items of waste which the Company (acting pursuant to the Waste Disposal Agreement) reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any Governmental Approval or Applicable Law. Any substances which are determined by the EPA or any other federal, state, or local agency subsequent to the Effective Date to be hazardous, toxic, dangerous, harmful, or otherwise designated as a "waste ban," shall, at the time of notice to the Authority and the City by the Authority and/or the Company following such determination be considered Unacceptable Waste.

"Uncontrollable Circumstance" means any act, event, or condition that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation, covenant or agreement or complying with any condition required of such Party under this Agreement, to the extent such act, event or condition is not the result of or does not arise from the willful or negligent act, error or omission, failure to exercise reasonable care or diligence, equipment failure or breach of this Agreement on the part of the Party. Such acts, conditions or events include, but are not limited to, the following (but only to the extent and for such duration as such act, condition or event reasonably affects a Party's performance under this Agreement):

(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;

(b) the order and/or judgment of any federal, state or local court or Governmental 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 Governmental Approval essential to the operation, ownership or possession of the Facility as provided for herein or required with respect hereto or the performance by a Party of its obligations hereunder, 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; and

(d) a Change in Law;

(e) the failure of any subcontractor or supplier (except a subcontractor or supplier which is an Affiliate of the Company) selected with reasonable care and good faith to furnish labor, services, materials, or equipment in connection with the 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; and

(f) the failure or inability of the City to accept for disposal residue or other materials deliverable pursuant to the Hawkins Point Disposal Contract as amended consistent with the Second Amendment thereto, the form of which is set forth on Schedule 2 to the Waste Disposal Agreement; 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.

“Waste Disposal Agreement” has the meaning given in Recital Clause A.

ARTICLE II OBLIGATIONS RELATING TO DELIVERY AND ACCEPTANCE OF WASTE

Section 2.1. Delivery and Acceptance of Waste.

(a) Delivery of Waste

Throughout the term of this Agreement, but subject to the provisions of this Section 2.1(a) and of Sections 2.5, 2.6 and 4.1, the City shall deliver, or cause to be delivered, to the Facility substantially all Acceptable Waste collected by the City, as well as Acceptable Waste delivered under City Subcontracts, but excluding (i) waste that is disposed of in a City landfill for the purposes of creating a fluff layer in any new cell at the City landfill and (ii) quantities of waste disposed of at a City landfill or other disposal facility if such disposal is necessary to avoid service efficiency delinquencies and the quantities are consistent with the City’s historic practices. All Acceptable Waste delivered hereunder shall be delivered in accordance with the provisions of this Agreement and without cost to the Authority, and the Authority shall cause acceptance of such Acceptable Waste from the City by the Company at the Facility. Nothing in this Agreement shall limit the ability of the City or the Authority to recycle Acceptable Waste or require the City or the Authority to deliver waste that is collected pursuant to the Authority, City or private recycling programs.

(b) Disposal of Waste

Subject to the terms and conditions of this Agreement, the Authority shall cause acceptance and disposal of all Acceptable Waste delivered to the receiving pits of the Facility by or on behalf of the City pursuant to this Section 2.1 in accordance with all Applicable Law and at the cost and expense of the Authority.

(c) City Contracts.

The City may enter into one or more contracts for the delivery of Acceptable Waste to the Facility at the Tipping Fees (each, a "City Subcontract") if (i) the counterparty to such City Subcontract is a county that is a member of the Authority (a "Participating County"), (ii) either the Participating County agrees to make payment directly to the Authority of tipping fees sufficient to pay all amounts due under the Waste Disposal Agreement (in which case the City shall not be liable for amounts under the City subcontract) or the City has agreed to pay for waste delivered under the City Subcontract, (iii) such City Subcontract is approved by the Company, such approval not to be withheld unless the deliveries under the City Subcontract would interfere with the Company's ability to perform its obligations under other existing disposal agreements or the terms of the City Subcontract are not consistent with the terms of this Agreement or the Waste Disposal Agreement, and (iv) either the Participating County has agreed to pay any City Surcharge or the delivery and/or disposal is not subject to the City Surcharge.

Section 2.2. Receiving Hours.

Subject to Applicable Law, the Authority shall cause the Company to keep the Facility open for the receiving of Acceptable Waste twenty-four (24) hours per day, seven days per week, except Holidays (the "Receiving Hours").

Section 2.3. Weighing Records.

The Authority shall cause the Company to 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 hereunder shall have its tare weight permanently indicated and conspicuously displayed on the exterior of the vehicle in a location designated by the Company. The Company, the Authority or the City 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 cause the Company to estimate the quantity of waste delivered on the basis of truck volumes and estimated

data obtained through historical information pertinent to the waste delivered hereunder. 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 City and the Authority, in connection with the Company, and payments due from the City shall be adjusted consistent with such adjustments of scale records.

The Authority shall cause the Company to maintain daily records of the total tonnage of waste delivered to the Facility, the tonnage of Acceptable Waste accepted by the Company on behalf of the Authority, and the tonnages of Recovered Materials, Rejected Waste, Residue and Returned Waste, respectively. The Authority shall furnish to the City in respect of each month such information as may be reasonably required by the City in order to administer the City's contracts with haulers of solid waste, within 10 days after the end of such month. The Authority shall cause the Company to maintain copies of all weight tickets for a period of at least two years.

Section 2.4. Ownership of Acceptable Waste.

Upon acceptance by the Company under the Waste Disposal Agreement of any Acceptable Waste delivered hereunder, the Company shall receive title thereto.

Section 2.5. Returned and Rejected Waste; Recovered Materials; Residue Disposal.

(a) Returned and Rejected Waste. In the event that the City shall deliver, or cause to be delivered, waste which is determined by the Company (acting under the Waste Disposal Agreement) to be Unacceptable Waste after it has been deposited in the receiving pit, the Authority shall cause the Company to remove and dispose of such waste, as Rejected Waste, at the City's cost and expense. In the event that the City shall deliver, or cause to be delivered, waste which is determined by the Company (acting under the Waste Disposal Agreement) to be Unacceptable Waste (or waste which contains Unacceptable Waste if the Company (acting under the Waste Disposal Agreement) deems it impracticable to separate such Unacceptable Waste or the City 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 and by and through the Company, (a) refuse to accept such waste, upon which refusal the City 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 City.

(b) Recovered Materials. The Company, or its designated agent, shall remove from the Facility and dispose of Recovered Materials.

(c) Residue Disposal. The Residue generated by the Facility and certain other materials delivered to the Facility shall be disposed of pursuant to a Second Amendment to Hawkins Point Disposal Contract, as amended, executed of even date herewith (the "Residue Disposal Contract"). Nothing in this Agreement shall limit the ability of the Company to market and extract metals and other materials from the Residue at the Facility site.

(d) Invoices and Records. Any invoice submitted by the Company (acting under the Waste Disposal Agreement) in respect of costs and expenses to be borne by the City under this Section 2.5 shall be payable by the City within 30 days of the date of receipt by the City thereof. The Authority shall maintain, or cause the Company to maintain, cost records with respect to the removal and disposal of Residue, Rejected Waste, Recovered Materials and Returned Waste that the Authority by or through the Company elects to remove and dispose of under this Section 2.5. Such cost records, to the extent they relate to Rejected Waste, or Returned Waste that the Company (acting under the Waste Disposal Agreement) elects to remove and dispose of under such clause, allocable to the City, shall be made available for inspection by the City at such times during normal business hours as the City may reasonably request.

Section 2.6. Refusal of Deliveries.

(a) Extent of Refusal Rights

Notwithstanding any provision to the contrary contained herein, the Authority by or through the Company, may refuse delivery of:

- (i) any waste other than Acceptable Waste;
- (ii) any waste delivered at any time other than during the established Receiving Hours of the Facility as set forth herein or as otherwise agreed by the Parties; and
- (iii) any waste that the Company is entitled to divert or is not otherwise obligated to accept under this Agreement under Section 2.6(b) or 4.1(b); and
- (iv) any waste the Company is unable to accept due to an Uncontrollable Circumstance.

(b) Inspection of Delivered Waste

The Company (acting under the Waste Disposal Agreement), 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 City 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 Company (acting under the Waste Disposal Agreement) determines that it is impractical to

separate Acceptable Waste from Unacceptable Waste in any vehicle, or the City or its Designated Hauler delivering such waste is unwilling to make such separation, then the Company (acting under the Waste Disposal Agreement), 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 2.5, all at the cost and expense of the City.

(c) Wrongful Refusal

In the event the Authority, by or through the Company, wrongfully refuses to accept Acceptable Waste hereunder (i.e., rejects deliveries for reasons other than those set forth in Section 2.6(a)), the Authority shall reimburse the City for the amount (if any) by which the direct costs and expenses incurred by the City (as the case may be) in transporting (including the City's associated labor expense and additional fuel) and disposing of such wrongfully refused Acceptable Waste exceeds the Tipping Fee that would have applied to such Acceptable Waste.

Section 2.7. Deliveries.

Deliveries of Acceptable Waste hereunder shall be substantially in accordance with schedules reasonably determined by the Authority after consultation with the City and the Authority shall cause to be incorporated in the Company's rules and regulations pertaining to the Facility. Such scheduling shall not unreasonably impede the ability of the City to deliver efficiently all Acceptable Waste which the Authority is obligated to accept from the City. The City shall cooperate with the Authority in the development and implementation of such scheduling procedures.

**ARTICLE III
SALE OF ELECTRICITY**

Section 3.1. Sale of Electricity.

(a) The Company has previously entered into an agreement with third parties for the sale of energy from the Facility until July 1, 2013.

(b) To provide the Authority and the City the advantage of a fixed price of \$55.00 per MW hour for 10 MWs of energy from July 1, 2011 until June 30, 2013 (the "First Energy Delivery Period"), the City and the Authority will complete a fixed-for-floating financial swap on the following terms: Under the Waste Disposal Agreement, the Company will calculate for each month of the First Energy Delivery Period an amount equal to (1) 10 MWs times (2) the number of hours in such month times (3) the difference of (a) \$55.00 minus (b) the average Electricity PJM- DAILY- Real Time LMPS during such month ("Energy Payment Amount"). For the purpose of this calculation, the Electricity PJM- DAILY- Real Time LMPS shall mean PJM's hourly Real -Time Energy Market locational marginal pricing (LMP) for energy for PnodeID:

50694 Name: WESTPORT 34kV BRESKO available on the PJM website at <http://www.pjm.com/markets-and-operations/energy/real-time/lmp.aspx> under the headings "Real-Time Energy Market: Daily Real-Time LMP Files: WESTPORT" or any successor headings, for every hour of every day, which for the avoidance of doubt, shall include Hour Ending ("HE") 0100 through HE 2400 (24 hours each day), Eastern Prevailing Time ("EPT"), Monday, Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday, including any day that is a holiday as defined by the North American Electric Reliability Council ("NERC"). If the Energy Payment Amount calculated is a negative number, pursuant to the Waste Disposal Agreement, the Company shall make a payment of the absolute value of the Energy Payment Amount to the Authority for deposit to the City in accordance with the instructions of the City Representative. If the Energy Payment Amount calculated is a positive number, pursuant to the Waste Disposal Agreement, the Authority shall make payment of the Energy Payment Amount to the Company. Under the Waste Disposal Agreement, the Company will prepare a separate monthly invoice to the Authority, which will be delivered to the Authority and the City's Department of General Services on or before the fifth Business Day of each month. Pursuant to the Waste Disposal Agreement, the Company will make payment of amounts due under this Section on or before the last Business Day of the month. The City will make payments of the Energy Payment Amount within 30 days after the receipt of the invoice for the Energy Payment Amount.

(c) The Authority will assign to the City the power purchase agreement between the Authority and the Company described in Schedule 3 to provide for the delivery of energy from the Facility to the City or an electric supplier acting on behalf of the City. In the event the parties fail to enter into an agreement by July 1, 2012, the Company's obligations with respect to the sale of energy to the City shall terminate in all respects.

ARTICLE IV SHUTDOWNS

Section 4.1. 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 to accept and dispose of such tonnages of Acceptable Waste as the Authority is required to cause the Company to accept from the City from time to time under Section 2.1(a), existing, for any reason, on or after the date hereof. In the event of any Shutdown, the Authority shall promptly advise the City after notice from the Company, and confirm such advice in writing, of the occurrence thereof, as to the effect thereof on the ability of the Authority to cause the Company to accept tonnages of Acceptable Waste from the City under Section 2.1, and as to the probable duration of such Shutdown.

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

(c) The Authority shall cause the Company to endeavor to give prior written notice to the City 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 City shall, at no cost to the Authority, divert and landfill or otherwise dispose of, or cause the City to 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(a). Such waste is referred to herein as "Diverted Waste." During any such period, the Authority shall cause the Company to accept and dispose of Acceptable Waste delivered by the City to the extent of the Facility capacity then existing. The Authority shall cause the Company to use all reasonable efforts to resume normal operation of the Facility. Unless the Authority is excused from accepting such Diverted Waste due to an Uncontrollable Circumstances in accordance with Section 11.1 or as permitted by Section 2.6(a), the Authority shall pay the City an amount equal to the total number of Tons of Diverted Waste times the excess if any of the City's cost of transportation (including the City's associated labor expense and additional fuel) and disposal of such Diverted Waste over the Tipping Fee, provided that the City shall make reasonable efforts and cooperate with the Authority to ensure that all Diverted Waste is transported and disposed of in a cost-effective and commercially reasonable manner. The excess costs described in this subsection (d) shall be payable within 30 days after the Authority's receipt of an invoice in which the City's actual costs are properly documented. For purposes of this Section 4.1(d), Diverted Waste delivered by or on behalf of the City to the City's landfill is deemed to be disposal in a cost-effective and commercially reasonable manner.

ARTICLE V PAYMENTS

Section 5.1. Tipping Fee for Delivered Waste.

The City shall pay to the Authority, as provided in Section 5.3, a tipping fee for each Ton of Acceptable Waste delivered by or on behalf of the City pursuant to Section 2.1(a) (the "Tipping Fee") to the Facility and disposed of under the Waste Disposal Agreement. The Tipping Fee shall be determined pursuant to Schedule 1.

Section 5.2. Change In Law Costs.

(a) **The City shall not be obligated to approve or accept any Change in Law Adjustment.** For the avoidance of doubt, failure by the City to approve any Change in Law

Adjustment shall not serve to create any liability running to the City or otherwise affect the rights and obligations of the Company or the Authority, except as set forth in Section 5.2(c).

(b) In the event of a Change in Law that requires cost reimbursements, the Company shall submit a written request for a Change in Law Adjustment that shall include a sworn statement signed by the Company's authorized representative accompanied by full and complete certified documentation presented for approval by the City, including a discussion of pre-existing conditions and costs; changed conditions and costs; cost substantiation and cost analyses and detailed cost records; an allocation of the City's Percentage of costs associated with the Change in Law; and such other information as may be reasonably required by the City for evaluation of the Change in Law Adjustment (the "Change in Law Notice"). The City shall not be required to approve or accept any Change in Law Adjustment. Change in Law Adjustment shall not include any costs incurred prior to the delivery of the Change in Law Notice. The Change in Law Notice shall be submitted to the City by Authority at least 90 days prior to the Change in Law coming into effect or, if it is not possible to give 90 days prior notice, within five (5) business days of Authority becoming aware of the necessity for a Change in Law Adjustment. The Parties shall negotiate in good faith to determine the proper amount to be deemed to be a Change in Law Adjustment. Either Party may invoke its right to submit a dispute relating to the determination of the amount of a Change in Law Adjustment pursuant to Section 11.2 of this Agreement. Notwithstanding the foregoing, the City shall make no payments on any disputed Change in Law Adjustment pending any resolution of any such dispute resolution proceeding.

(c) If (i) a Change in Law Adjustment, together with all other previously approved Change in Law Adjustments, would result in more than a 15% per ton increase in the aggregate, to the Tipping Fee (excluding any Change in Law Adjustments) in effect on the date on which the Change in Law comes into effect, and (ii) the City does not approve such Change in Law Adjustment within 90 days after receipt of the Change in Law Notice and the required information, and (iii) the Company elects to shut down the Facility and no longer process Acceptable Waste at the Facility as provided herein, then the Authority must cause the Company to perform its obligations hereunder to accept and dispose of Acceptable Waste but may accomplish the disposal thereof by Alternate Disposal Service for the remainder of the term.. The Parties acknowledge that if the Company elects to shut down the Facility, the requirements of the Company pursuant to the Waste Disposal Agreement with respect to the sale of electricity thereunder shall terminate and the City may terminate this Agreement by giving written notice to the Authority within 30 days after the shutdown occurs. "Alternate Disposal Service" means (i) the acceptance during the Receiving Hours of waste delivered hereunder at the Facility or at a transfer station on the Facility site, (ii) the transportation of the Acceptable Waste, and (iii) the disposal of such waste at a landfill or other disposal facility in accordance with Applicable Law, at the Authority's sole cost and expense and without any increase in the Tipping Fee or reduction

in the Host Community Fee. For the avoidance of doubt, Alternative Disposal Service shall not result in reduction of the City's rights to deliver Acceptable Waste hereunder

(d) In the event of a Change in Law Adjustment that is approved by the City, in its sole discretion, Authority shall be reimbursed for such Change in Law Adjustment by the City as follows: (i) such Change in Law Adjustment shall be shared by the City and Authority, with the City responsible for the City's Percentage of such Change in Law Adjustment, (ii) the amount of such City's Percentage of the Change in Law Adjustment applicable to such contract year shall be incorporated into the Tipping Fee for such contract year; provided, however, if the costs associated with a Change in Law Adjustment are amortized beyond the end of the contract term, the Tipping Fee shall only be adjusted to the extent the City's Percentage of the Change in Law Adjustment falls within the remainder of the contract term.

Section 5.3. Payments.

All amounts payable under Section 5.1 or 5.2 with respect to any calendar month shall be invoiced to the City by the Authority the following month, and shall be paid by the City within 30 days after the date of receipt by the City of such invoice. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any billing dispute or billing adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten Business Days of such resolution along with interest accrued at the Late Payment Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

Section 5.4. Late Payment.

A Party shall be entitled to interest at the Late Payment Rate (or the maximum amount allowable by law) on any outstanding balance not paid within 30 days after the receipt of the applicable invoice by the other Party.

Section 5.5. No Set-Off.

The obligation of a Party 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 such Party hereunder or limit recourse against such Party. The foregoing provisions of this Section 5.5 shall not affect any right of a Party to pursue independently any claim it may have against the other Party based upon non-performance by the other Party of its obligations hereunder.

Section 5.6. Reserved.

Section 5.7. Host Community Fee.

The City and the Authority each acknowledge that the "Host Community Fee" (as such term is defined in the Waste Disposal Agreement) shall be paid by the Company to the City via the Authority.

Section 5.8. Payments in Respect of Certain Charges.

The Tipping Fee was established based upon the current exemption from the City Surcharge for waste delivered by the City under the Waste Disposal Agreement. Accordingly, if the City Surcharge becomes applicable to waste delivered pursuant to this Agreement, the Authority shall be entitled to reimbursement by the City for any City Surcharge payable on waste delivered pursuant to this Agreement.

Section 5.9. Inspection.

The City has the right, at its sole expense and during normal working hours, to examine the records of the Authority to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

ARTICLE VI
AUTHORIZED REPRESENTATIVES

Section 6.1. Authorized Representatives.

The authorized representative of the Authority (the “Authority Representative”) 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 by written notice to the City. The authorized representative of the City (the “City Representative”) shall be such person as may be designated from time to time, in a written notice delivered to the Authority by the City. Either Party may change its representative upon five days’ written notice to the other Party.

ARTICLE VII
INSURANCE

Section 7.1 Types of Insurance for the Authority.

The Authority shall cause the Company to obtain and maintain all insurance required pursuant to the Waste Disposal Agreement. Such insurance shall name the City as additional insured. The Authority shall cause the Company to provide certificates of insurance in form reasonably satisfactory to the City evidencing such coverage and naming the City as additional insured upon the City’s request, from time to time, but not more than once annually.

ARTICLE VIII
DEFAULT AND TERMINATION

Section 8.1. 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 8.2 and 8.3) on the part of the other Party shall have occurred and be continuing.

Section 8.2. Events of Default by Authority.

The following shall constitute an Event of Default on the part of the Authority:

- (a) The failure on the part of the Authority to pay any undisputed amount required to be paid to the City under this Agreement when such amount becomes due and payable if the City has made written demand therefor accompanied by notice that unless

such amount is paid within 90 days after such demand the default will constitute an Event of Default, and such amount is not so paid; and

(b) The persistent or repeated failure or refusal by the Authority 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 or a default by the Authority under the Waste Disposal Agreement, provided, however, that no such failure or refusal shall constitute an Event of Default unless and until:

(i) the City shall have given prior written notice to the Authority 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 Authority and which will, in its opinion, give the City a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(ii) 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 thirty (30) days from the date of the notice given pursuant to clause (a) of this Section 8.2), provided that if the Authority 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 Authority is continuing to take reasonable steps to correct such default.

A material breach shall be deemed to have been corrected for purposes of clause (a) above, if it has been alleviated to the degree that its existence no longer makes damages an inadequate remedy.

Section 8.3. Events of Default by the City.

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

(a) Subject to Section 8.4, the failure on the part of the City to pay any undisputed 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 to the City accompanied by notice that unless such amount is paid within 90 days after such demand the default will constitute an Event of Default, and such amount is not so paid; and

(b) The persistent or repeated failure or refusal by the City 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 City 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 City and which will, in its opinion, give the Authority a right to terminate this Agreement for cause under this Section 8.3(b) unless such default is corrected within a reasonable period of time, and (ii) the City 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 8.3(b)), provided that if the City 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 City 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 8.3, if it has been alleviated to the degree that its existence no longer makes damages an inadequate remedy.

Section 8.4. Termination for Events of Default.

If any Party shall have a right of termination for an Event of Default in accordance with the second sentence of Section 8.1, the same may be exercised only by written notice of termination given to the other Party; provided that (a) either Party's failure to pay amounts due and owing under Section 3.1 shall entitle the other Party to suspend performance of, or terminate, its obligations under Section 3.1 in respect of the sale of electricity to the City under the Waste Disposal Agreement or the power purchase agreement referenced in Section 3.1, but not to terminate this Agreement in its entirety; and (b) failure by the City to pay undisputed Tipping Fees due and owing to the Authority shall not entitle the Authority or the Company to suspend performance of, or terminate, its obligations under this Agreement or the Waste Disposal Agreement in respect of the sale of electricity to the City, pursuant to Section 3.1 of this Agreement or the Waste Disposal Agreement or under such power purchase agreement. The proper exercise of any right of termination under this Section 8.4 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 8.5. Survival of Certain Rights and Obligations.

No termination of this Agreement under Section 8.4 or otherwise hereunder shall limit or otherwise affect the respective rights and obligations of either Party accrued prior to the date of such termination.

Section 8.6. Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE IX
TERM**

Section 9.1. Term; Conditions Precedent.

(a) This Agreement shall become effective on the Effective Date, subject to satisfaction of the conditions set forth in paragraph (b) below, and, unless sooner terminated in accordance with the terms hereof, shall continue in effect until December 31, 2021; provided that the provisions of Article 3 shall become effective on July 1, 2011.

(b) Notwithstanding the foregoing, this Agreement shall not be effective unless and until the following conditions precedent have been met or waived by both Parties:

(i) The Authority and the Company shall have fully executed the Waste Disposal Agreement, providing for the disposal of Acceptable Waste collected from the City for a term that is at a minimum coterminous with this Agreement;

(ii) The City and the Company shall have entered into the Second Amendment to Hawkins Point Disposal Contract in substantially the form set forth on Schedule 2 to the Waste Disposal Agreement (or an amended and restated Hawkins Point Disposal Contract that incorporates the Second Amendment) ;

(iii) Each Party shall have provided the other Party with an opinion of counsel to the effect that this Agreement, and the transactions contemplated hereby, have been duly authorized, executed and delivered by such Party and constitute a legally binding obligation of such Party, enforceable against such Party in accordance with its terms;

(iv) The Authority shall have provided the Company with an opinion of counsel to the City to the effect that the City Agreement, and the transactions contemplated thereby, have been duly authorized, executed and delivered by the City and constitutes a legally binding obligation of the City, enforceable against the City in accordance with its terms; and

(v) The Company shall have provided the Authority a guarantee of the Company's performance under the Waste Disposal Agreement by Waste Management, Inc.

ARTICLE X
REPRESENTATIONS AND WARRANTIES, CERTAIN COVENANTS.

Section 10.1. Representations and Warranties of the City.

The City hereby makes the following representations and warranties to and for the benefit of the Authority as of the Effective Date:

(a) The City is a body politic and corporate and a political subdivision 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.

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

(c) Neither the execution or delivery by the City of this Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated

hereby or thereby or the fulfillment by the City 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 City 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 City is a party or by which the City 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 Body is required for the valid execution and delivery by the City of this Agreement, 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 City's knowledge, threatened, against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City 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 other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

Section 10.2. Representations and Warranties of the Authority.

The Authority hereby makes the following representations and warranties to and for the benefit of the City as of the Effective Date:

(a) The Authority is 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 Waste Disposal Agreement.

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

(c) Neither the execution or delivery by the Authority of this Agreement and the Waste Disposal Agreement, nor the performance by the Authority of its obligations in connection with the transactions contemplated hereby or thereby or the fulfillment by the Authority 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 Authority, or (ii) conflicts with, violates or results in a breach of an 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 Waste 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 in connection with the transactions contemplated hereby or thereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or the Waste Disposal Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby or thereby.

Section 10.3. Certain Covenants of the City.

Except as provided in Article VIII with respect to termination rights, the City shall not exercise any right, privilege or election it may have hereunder in a manner inconsistent with the exercise by the Authority of its respective rights, privileges and elections under the Waste Disposal Agreement. No provision of this Agreement shall be construed in such manner as to enlarge, or have the effect of enlarging, the respective rights, privileges and elections of the Authority under the Waste Disposal Agreement.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1. Uncontrollable Circumstance.

Each Party 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 either Party 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 11.1 shall give prompt notice thereof to the other Party.

Section 11.2. Dispute Resolution.

Any judicial action arising out of, resulting from or in any way relating to this Agreement shall be brought only in a state or federal court of competent jurisdiction in the State of Maryland.

Section 11.3. Assignment.

Except as otherwise provided herein, this Agreement may not be assigned by either Party without the prior written consent of the other Party except that the Authority or any permitted assignee thereof may, without such consent assign its interest and obligations hereunder to any corporation or other entity with which or into which the Authority or such assignee shall merge or consolidate or to which the Authority or such assignee shall transfer all or substantially all of its assets, including the Facility so long as, (i) the assignee assumes all of the Authority's obligations hereunder in writing and (ii) in the event of an assignment by the Authority under this Section 11.3 the City 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 in writing.

Section 11.4. Appointment of Authority as City's Designee.

The City acknowledges that, in order to facilitate the performance by the Authority of its obligations under this Agreement, the Authority is entering into the Waste 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 City further acknowledges and agrees that, except with respect to the Reserved Rights (as defined in the Waste Disposal Agreement), the Authority has appointed the Company as the Authority's designee for so long as the Waste Disposal Agreement shall be in effect, to act in the name, on behalf and in the place and stead of the Authority, to perform all of the Authority's obligations 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 City of Acceptable Waste and the payment of all amounts payable by the City. The City further acknowledges that, pursuant to the Waste 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 City 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 City 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 Waste Disposal Agreement expires or terminates by its terms, the City 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 City 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 City hereunder, and that the City consents to be sued by the Company in accordance with the terms hereof for any violation or breach by the City of, or default by the City 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 City, 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. If requested by the City Representative, the Authority will cooperate with the City in connection with administration or enforcement of the City's rights under this Agreement relating to the obligations of the Company under the Waste Disposal Agreement, and the City agrees to reimburse the Authority for reasonable costs and expenses incurred by the Authority in connection with such administration or enforcement.

Section 11.5. Notices.

All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be 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 Authority:

Northeast Maryland Waste Disposal Authority
100 South Charles Street
Tower II, Suite 402
Baltimore, Maryland 21201
Attention: Executive Director

If to the Mayor and City Council of Baltimore:

Director of Public Works
600 Abel Wolman Municipal Building
200 N. Holliday Street
Baltimore, Maryland 21202

with copies to:

Director of Finance
Room 469, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

and

City Solicitor
Room 101
City Hall
Baltimore, Maryland 21202

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 11.5 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 11.6. 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, representations, arrangements and commitments, all of which, whether oral or written, are merged herein.

Section 11.7. 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 11.3.

Section 11.8. Other Documents.

Each Party shall execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other Party or by the City in order to give full effect to this Agreement.

Section 11.9. Applicable Law.

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

Section 11.10. Headings.

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

Section 11.11. 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 11.12. Amendment or Waiver.

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.

Section 11.13. Waiver of Sovereign Immunity.

The City reserves any rights it may have under Applicable Law in respect of any right or defense of sovereign immunity (or similar rights and defenses).

The Authority, 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) it 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 by the Authority, asserted or brought by or on behalf of the City, its Affiliates or any officer, employee or agent thereof.

Section 11.14. 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 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.

Section 11.15. Limitation of Liability and Defenses.

(a) The City acknowledges that the Authority's ability to perform its obligations hereunder is dependent in part upon the performance by the Company of its obligations under the Waste Disposal Agreement. Accordingly, the City agrees that any amounts payable hereunder by the Authority pursuant to Schedule 1 or Article V or otherwise in respect of the disposal of Acceptable Waste hereunder shall be payable to the City solely from such amounts as may be paid to the Authority by the Company pursuant to the Waste Disposal Agreement.

(b) Notwithstanding any other provision of this Agreement to the contrary, the liability and obligation of the Authority for all monetary payments with respect to or arising as a result of this Agreement are limited obligations payable solely from amounts paid by the Company under the Waste Disposal Agreement ("Company Payments") as and to the extent such Company Payments are received and available to pay such amounts under Applicable Law. The liability of the Authority for any monetary payments to the City with respect to, or as a result of, this Agreement are not payable from the general funds of the City or any amounts received by the City in respect of the City Fee and the incurrence or nonperformance of such obligations or payments will not constitute or create a claim against, any of the assets or property of the Authority or of its income, receipts or revenues, except Company Payments available to pay such amounts under Applicable Law.

(c) No recourse for the payment of any amounts due by the Authority under this Agreement or upon any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any document, certificate or instrument that this Agreement requires to be executed and delivered by the Authority or for any claim hereon or thereon shall be had by the City, except from Company Payments.

(d) The execution and delivery of this Agreement by either party does not impose any personal liability on the members, officers, employees or agents of either party. No recourse must be had by either party for any claims based on this Agreement against any member, officer, employee or other agent of the other party in his or her individual capacity, all such liability, if any, being expressly waived by both parties by the execution of this Agreement.

Section 11.16. Reports / Information / Inspections / Audits.

The Authority acknowledges and agrees that the City (a) may elect to exercise certain rights to inspect and copy certain records, information and documentation of the Company related to the subject matter of the Waste Disposal Agreement, (b) is entitled to a copy of the report, prepared by the Company, providing a summary of the results of an independent review of the records maintained in accordance with Sections 2.3 and 2.5 of the Waste Disposal Agreement, and (c) may request that the Company, at the expense of the Company, to have

performed an independent audit of the Company's financial information, each pursuant to, and in accordance with, the terms and conditions of the Waste Disposal Agreement.

COPY

IN WITNESS WHEREOF, Northeast Maryland Waste Disposal Authority has caused this Agreement to be executed in its name by its authorized member, and has caused its seal to be attached to this Agreement as of this 22nd day of June, 2011.

[SEAL]

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Witness:

By

Charles W. Slagg

By

Robin B. Davidson

Executive Director

COPY

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name by _____, and has caused the seal of the City to be attached to this Agreement, as of this _____ day of _____, 2011.

[SEAL]

MAYOR AND CITY COUNCIL OF
BALTIMORE

Witness:

By *Steve Hall*
~~Attestation of the City Seal~~

By *Stephen D. Bane*
Mayor

Approved for form and legal sufficiency this 23rd day of June 2011.

CHIEF SOLICITOR

APPROVED BY THE BOARD OF ESTIMATES:

By *John Chen*

Bernice N. Taylor
Date JUL 20 2011 Clerk

ROC

EXECUTION VERSION

Schedule 1

TIPPING FEE

The Authority shall charge the City the following Tipping Fee per ton during the calendar year noted, as may be adjusted according to the terms set forth in the Agreement.

| <u>Calendar Year</u> | <u>Tipping Fee</u> |
|----------------------|--------------------|
| 1/1/12 to 12/31/12 | \$46.23 |
| 1/1/13 to 12/31/13 | \$47.39 |
| 1/1/14 to 12/31/14 | \$48.57 |
| 1/1/15 to 12/31/15 | \$49.78 |
| 1/1/16 to 12/31/16 | \$51.03 |
| 1/1/17 to 12/31/17 | \$52.31 |
| 1/1/18 to 12/31/18 | \$53.61 |
| 1/1/19 to 12/31/19 | \$54.95 |
| 1/1/20 to 12/31/20 | \$56.33 |
| 1/1/21 to 12/31/21 | \$57.74 |

EXECUTION VERSION

Schedule 2

RESERVED

EXECUTION VERSIONSchedule 3Energy Sale (10 MW) from Wheelabrator Baltimore L.P. ("BRESKO"):

Section 3.1 of the Agreement makes provision for the City to receive the benefit of a fixed energy price for the period from the July 1, 2011 to July 1, 2013..

BRESKO will sell the City (or an energy supplier designated by the City) 10 MW of physically delivered energy per hour via PJM Day-Ahead Internal Bilateral Transaction for a 96 month period starting July 1, 2013 through June 30, 2021. BRESKO will deliver energy on a strictly wholesale basis. Physical delivery may be made at City's direction to a qualified retail electricity supplier for benefit of City's electric accounts. The energy will be generated by the Facility and delivered on a unit contingent basis. The delivery point shall be PJM Pnode ID "50694".

The sale of energy shall be contingent upon the City or its agent or designated haulers delivering 150,000 tons of waste per year to the Facility. If the City or its agent or designated haulers fails to deliver 150,000 tons per year of waste to BRESKO for two consecutive years, BRESKO shall have the right to terminate the power purchase agreement. This transaction is for energy only and does not include capacity or any other ancillary services (including environmental attributes). Furthermore, BRESKO is excused from these obligations when it has a scheduled turbine outage or if the Facility is shut down. The power purchase agreement will be executed under an ISDA master agreement form or another form acceptable to both parties. Neither party will be required to furnish security.

Price for Period #1 (or years 1 through 5) is outlined below. This price was determined based on a straight five year average of energy rates in the attached spreadsheet.

| Period | Contract Period | Price | Type of Transaction | Settlement / Delivery LMP | Delivery Location |
|--------|-------------------|--------------------------|---------------------|---------------------------|---------------------|
| 1 | 7/1/13 to 6/30/16 | \$62.00/MWh | Physical | Day-Ahead | PJM PnodeID "50694" |
| 2 | 7/1/16 to 6/30/21 | "Market" Plus \$7/MWh | Physical | Day-Ahead | PJM PnodeID "50694" |

Price for Period #2 will be based on the average NYMEX Index-PJM West Hub forward market index price ("Market") and be set twelve months prior to the start of each contract year. For example, the fiscal 2017 contract year price (i.e. July 1, 2016 to June 30, 2017) will be set on July 1, 2015. A basis differential of \$7/MWh will be added to the Market price to compensate for the congestion between the BRESKO Node and the PJMW Hub. Within 270 days after the price for any year in Period 2 is set, the City may elect to terminate the power purchase agreement for the remainder of Period 2 beginning on the date that such price was to become effective.

Market price is calculated by taking the weighted average of the (a) PJM Western Hub Off-Peak Calendar-Month Day-Ahead LMP Swap Futures multiplied by the off-peak hours in the month + (b) PJM Western Hub Peak Calendar-Month Day-Ahead LMP Swap Futures multiplied by the on-peak hours in the month + (c) \$7/MWh basis differential between the PJM Western Hub and the node. An example is provided below:

| | |
|---|--|
| <i>Month:</i> | <i>August, 2013</i> |
| NYMEX PJMW Peak Price: | \$65.00/MWh |
| NYMEX PJM Off-Peak Price: | \$55.00/MWh |
| August Peak Hours: | 368 |
| August Off-Peak Hours: | 376 |
| <i>Weighted Avg. Price Calculation:</i> | $(\$65 * 368 + \$55 * 376) / (368 + 376) = \$59.9/MWh$ |
| <i>Total Price Paid to BRESCO:</i> | $\$59.9 + \$7 = \$66.9/MWh$ |

Market price will be obtained from the NYMEX website as outlined below. In the event no pricing is available from NYMEX, the settlement will be based on a mutually agreed upon source.

PJMW - Peak:

PJM Western Hub Peak Calendar-Month Day-Ahead LMP Swap Futures

NYMEX Product symbol - J4

http://www.cmegroup.com/trading/energy/electricity/pjm-western-hub-peak-calendar-month-day-ahead-lmp-swap-futures_contract_specifications.html

PJMW- Off-Peak:

PJM Western Hub Off-Peak Calendar-Month Day-Ahead LMP Swap Futures

NYMEX Product Symbol - E4

http://www.cmegroup.com/trading/energy/electricity/pjm-western-hub-off-peak-calendar-month-day-ahead-lmp-swap-futures_contract_specifications.html