

**AIR POLLUTION EMISSION CONTROL  
AND MONITORING AGREEMENT**

THIS AIR POLLUTION EMISSION CONTROL AND MONITORING AGREEMENT (the "Agreement") is made and entered into this 4<sup>th</sup> day of November, 2020, by and among the Mayor and City Council of Baltimore ("City"), and Wheelabrator Baltimore, L.P. ("Wheelabrator" or the "Company") (together, the City and Wheelabrator are referred to herein as the "Parties" and individually as a "Party").

**Recitals**

WHEREAS, Wheelabrator operates a municipal waste combustor in the City of Baltimore, Maryland (the "Facility"); and

WHEREAS, in 2018, the City enacted the Baltimore Clean Air Act, Council Bill 18-0306, Ordinance 19-232 (the "BCAA"), which imposed air pollution emissions limits and monitoring requirements on Wheelabrator's Facility that were more stringent than those set forth in the Wheelabrator Facility's Title V/Part 70 Permit; and

WHEREAS, Wheelabrator filed a Complaint against the City in the U.S. District Court for the District of Maryland styled *Wheelabrator Baltimore, L.P., et al. v. Mayor and City Council of Baltimore*, Case No. 1:19-cv-01264-GLR (the "Litigation"), in which it alleged, *inter alia*, that the Baltimore Clean Air Act was preempted by federal and state law; and

WHEREAS, the City denies and disputes Wheelabrator's allegations in the Litigation; and

WHEREAS, the U.S. District Court for the District of Maryland granted partial summary judgment in favor of Wheelabrator on the preemption issue, finding that the BCAA was preempted; and

WHEREAS, the City noted an appeal to the U.S. Court of Appeals for the Fourth Circuit of the preemption ruling, and Wheelabrator cross-appealed on a separate issue (the "Appeal"); and

WHEREAS, the City and Wheelabrator now desire to fully compromise and settle finally and forever any now existing or future claims or disputes asserted or which could have been asserted in the Litigation, of whatever nature, including without limitation, any and all claims, causes of action, costs and demands of whatever name or nature, in any manner arising, growing out of, or on account of the Litigation.

**Agreement**

NOW THEREFORE, as an inducement to the City's agreement to the Settlement Agreement and Release dated November 4, 2020 and the Related Agreements set forth therein, and in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wheelabrator and the City agree as follows:

1. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings given in the Waste Disposal Agreement. 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 Effective Date, 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.

“ASNCR” means an advanced selective non-catalytic reduction NOx control system incorporating real time furnace temperature monitoring, independent NOx reducing reagent injection levels and control algorithms.

“Air Emission Requirements” means the air emission limits set forth in Section 3.

“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” means the Northeast Maryland Waste Disposal Authority, a body politic and corporate organized and existing under the laws of the State of Maryland.

“Completion” means (i) the completion of the Facility Improvements in all material respects except for any punchlist and similar items such that the Facility and the Facility Improvements are in good working order in all material respects and (ii) the Facility is meeting the Air Emission Requirements.

“Completion Date” means December 31, 2023, as such date may be extended as a result of a Facility Improvements Uncontrollable Circumstance as provided in this Agreement.

“Continuous Emissions Monitoring” or “CEM” means the continuous emissions monitoring system referred to in Wheelabrator's Title V/Part 70 Permit.

“Facility Improvements” means (i) an ASNCR and (ii) an FF Baghouse on each of the Facility’s three boiler unit trains, and (for the avoidance of doubt) includes the Phase 1 Facility Improvements and the Phase 2 Facility Improvements

“Facility Improvements 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 or the design, construction, equipping or testing of the Facility Improvements 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 or the managing partner thereof) selected with reasonable care and good faith to furnish labor, services, materials, or equipment in connection with the operation or maintenance of the Facility or the design, construction,

equipping or testing of the Facility Improvements 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 Residue Disposal 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.

"FF Baghouse" means a pulse jet baghouse (fabric filter) utilizing fabric filtration to remove particulate (fly ash, lime and carbon) from the flue gas by collecting particulate on fabric material.

"NO<sub>x</sub>" means Nitrogen Oxides.

"NO<sub>x</sub> Emission Performance Guarantee" means an average 90 parts per million dry volume (PPMVD) corrected at 7% O<sub>2</sub> (calendar year flow rate weighted average basis) of NO<sub>x</sub> emissions for all three boiler unit trains combined on a calendar year flow rate weighted average basis.

"NO<sub>x</sub> Reduction Shortfall" has the meaning given to it in Section 4(a) of this Agreement.

"Phase 1 Facility Improvements" means the ASNCR and the first of three FF Baghouse systems.

"Phase 2 Facility Improvements" means the second and third FF Baghouse systems.

"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 Company is required to accept from the Authority from time to time under Section 2.1(a) of the Waste Disposal Agreement, existing, for any reason, on or after the Original Effective Date.

"Subdivision User Contract" means the Amended and Restated Subdivision User Contract dated November 4, 2020 between the Authority and the City.

"TEQ" means TEQ<sub>DFWHO98</sub>, a unit of measurement for dioxins and furans, standardized to toxic equivalents, calculated in accordance with the World Health Organization's 1998 Method.

"Title V/Part 70 Permit" means the Part 70 permit issued to Wheelabrator with respect to the Facility pursuant to Code of Maryland Regulations Section 26.11.03.

"Waste Disposal Agreement" means the Amended and Restated Waste Disposal Agreement dated November 4, 2020 between the Company and the Authority.

2. Facility Improvements.

(a) No later than December 31, 2022, Wheelabrator shall, at its expense, complete the design, permitting, installation, construction, and commencement of operations at the Facility of the Phase 1 Facility Improvements in a good and workmanlike manner and shall furnish, directly through contractors or subcontractors selected by it all work, labor and materials required for the design, construction and equipping of the Phase 1 Facility Improvements. The City and the Authority shall have no responsibility therefor or liability with respect thereto except as expressly provided in this Agreement.

(b) No later than December 31, 2023, Wheelabrator shall, at its expense, complete the design, permitting, installation, construction, and commencement of operations at the Facility of the Phase 2 Facility Improvements in a good and workmanlike manner and shall furnish, directly through contractors or subcontractors selected by it all work, labor and materials required for the design, construction and equipping of the Phase 2 Facility Improvements. The City and Authority shall have no responsibility therefor or liability with respect thereto except as expressly provided in this Agreement.

(c) Wheelabrator shall commence permitting and engineering for the Facility Improvements within 30 days after the execution and delivery of this Agreement and shall carry out such work with reasonable diligence in order to complete the Facility Improvements by the Completion Date.

(d) Wheelabrator shall construct the Facility Improvements so that the Facility will comply with the Air Emissions Requirements and shall include the Air Emissions Requirements in any applicable permit or approval applications for the Facility Improvements. Wheelabrator at its expense shall obtain all permits, licenses and consents required by Applicable Law to construct, install and operate the Facility Improvements. The City shall cooperate in good faith and provide all reasonable assistance and support to the Company in order to assist Wheelabrator in obtaining all required permits and approvals. During the construction of the Facility Improvements Wheelabrator shall comply with the requirements of Article 5, Subtitle 28 of the Baltimore City Code, as applicable.

(e) From the date that Wheelabrator commences design and engineering work on the Facility Improvements until Completion Wheelabrator at its expense shall deliver to the City monthly reports describing the progress of the work on the Facility Improvements, such reports to be delivered no later than the tenth day of each month and describing such progress of the work occurring in the previous month.

(f) As among the City, the Authority, and Wheelabrator, Wheelabrator shall assume total responsibility for payment of all costs arising out of any accident or incident relating to the construction of the Facility Improvements and shall indemnify and hold harmless the City and the Authority and their employees, representatives and agents for all costs (including reasonable attorney's fees) resulting from such accident or incident except to the extent caused by the negligence or willful misconduct of the City or the Authority or their employees, agents or representatives. This paragraph survives expiration or termination of this Agreement.

3. Air Emissions Requirements.

(a) Wheelabrator shall cause the following air emissions limits to be incorporated into: (i) its permit to construct the Facility Improvements, and (ii) its Part V/Title 70 Permit upon the next renewal of such permit. On and after December 31, 2023, Wheelabrator shall cause the Facility to achieve the more stringent of: the air emissions limits set forth in its permit to construct the Facility Improvements; the air emissions limits set forth in its Title V/Part 70 Permit; or the air emissions limits set forth in this Agreement, as follows:

<u>Pollutant</u>	<u>Emissions Limit</u>
Nitrogen Oxides (NO <sub>x</sub> )	105 parts per million dry volume (PPMVD) corrected at 7% O <sub>2</sub> (30-day rolling average)
Sulfur Dioxide (SO <sub>2</sub> )	18 parts per million dry volume (PPMVD) corrected at 7% O <sub>2</sub> (24 hour block geometric mean)
Dioxins/Furans (PCDD/F)	2 nanograms TEQ <sub>DF</sub> -WHO <sub>98</sub> * per dry standard cubic meter (ng/dscm), corrected at 7% O <sub>2</sub>
Dioxins/Furans (PCDD/F)	15 nanograms per dry standard cubic meter (ng/dscm), corrected at 7% O <sub>2</sub>
Mercury	15 micrograms per dry standard cubic meter (µg/dscm) corrected at 7% O <sub>2</sub>
Cadmium	25 micrograms per dry standard cubic meter (µg/dscm) corrected at 7% O <sub>2</sub>
Lead	250 micrograms per dry standard cubic meter (µg/dscm) corrected at 7% O <sub>2</sub>

(b) Compliance with the Air Emissions Requirements shall be determined by the “Continuous Emissions Monitoring” or “CEM” referred to in Company's Title V/Part 70 Permit and the stack testing analytical results from the three time per year emissions monitoring conducted pursuant to the air emission monitoring and reporting provisions in Section 5(c).

4. NO<sub>x</sub> Contractual Air Emissions Requirement.

(a) Beginning on the Completion Date and notwithstanding the Air Emissions Requirement for NO<sub>x</sub>, the Company shall use reasonable efforts to meet the NO<sub>x</sub> Emission Performance Guarantee. The determination of whether the Company has complied with the NO<sub>x</sub> Emission Performance Guarantee shall be made on a calendar year basis and be based upon continuous emission monitoring data and flow monitoring data. In the event the Company fails to meet the NO<sub>x</sub> Emission Performance Guarantee in any calendar year, the Company shall pay the City the difference between the actual tons of NO<sub>x</sub> emissions (as calculated using the CEMS and flow monitoring) and the number of tons of NO<sub>x</sub> that would have been emitted had the Company

met the NOx Emission Performance Guarantee at the same stack flow rates (the "NOx Reduction Shortfall") expressed in \$/ton of NOx Reduction Shortfall in the amount set forth below:

Tier 1	90 ppmdv <conc*<99 ppmdv	\$2,000/ton of NOx Reduction Shortfall
Tier 2	conc* > 99 ppmdv	\$3,000/ton of NOx Reduction Shortfall

\*Annual Average NOx Stack Concentration

(b) Notwithstanding the foregoing in no event shall the amount payable by the Company for a NOx Reduction Shortfall in any calendar year exceed \$50,000. Within thirty days after the end of each calendar year the Company shall provide the Authority its NOx emissions for the calendar year and together if applicable the calculation of any NOx Reduction Shortfall and any amounts payable by the Company as a result.

5. Air Emissions Monitoring and Reporting.

(a) Wheelabrator shall continue to operate at the Facility CEM equipment for measurement of NOx and SO<sub>2</sub> as required by Wheelabrator's Title V/Part 70 Permit.

(b) Wheelabrator shall provide CEM results for NOx and SO<sub>2</sub> emissions to the City's Director of Public Works or designee, by email or such other method as is prescribed by such Director, no later than the fifth business day after the end of each week, commencing the first week after the Facility is required to meet the Air Emission Requirements as provided in Section 3.

(c) On and after December 31, 2023, in addition to all monitoring required by its Title V/Part 70 Permit, Wheelabrator shall perform emissions monitoring at the Facility three times each calendar year, by collecting samples of stack emissions and sending such samples to a qualified laboratory for analysis for Dioxins, Mercury, Cadmium, and Lead, using the sampling and analysis methods prescribed for annual monitoring in Wheelabrator's Title V/Part 70 Permit. Three emissions monitoring tests shall be performed in each calendar year with each monitoring test no less than three months nor more than five months apart.

(d) Wheelabrator shall provide stack testing analytical results for Dioxins, Mercury, Cadmium, and Lead to the City's Director of Public Works or designee, by email or such other method as is prescribed by the Director, no later than five business days after Wheelabrator receives the final results of such testing.

6. Default and Termination.

The following shall constitute an Event of Default on the part of the Company under this Agreement:

(a) The failure on the part of the Company 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 failure or refusal by the Company to (x) install the Facility Improvements by the Completion Date, (y) meet the Air Emissions Requirements as provided in Section 3 of this Agreement, or (z) perform the air emissions monitoring and reporting obligations of the Company provided in Section 5 of this Agreement, unless in each case such failure or refusal shall be excused or justified by a Facility Improvements Uncontrollable Circumstance or a default by the City under the City Agreement 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 or Authority shall have given prior written notice to the Company 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 Company and which will, in its opinion, give the Authority a right, or the City the right to direct the Authority, to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(ii) the Company 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 6(b)), provided that if the Company 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.

7. Continuing Operation of the Facility.

During the construction of the Facility Improvements, Wheelabrator shall continue to accept and dispose of all Acceptable Waste it is required to accept from the Authority under the Waste Disposal Agreement. Notwithstanding the foregoing, the City recognizes that during the construction of the Facility Improvements there may be periods of Shutdown. During any Shutdown, Wheelabrator and the Authority shall have the rights and obligations with respect to Shutdowns as set forth in Section 4.1 of the Waste Disposal Agreement. Wheelabrator shall use reasonable efforts to minimize the number of Shutdowns during the construction of the Facility Improvements.

8. Financing of the Facility Improvements.

Wheelabrator may finance the cost of the Facility Improvements through tax-exempt bonds or otherwise. The City shall reasonably cooperate with Wheelabrator in obtaining such financing including without limitation executing such documents as Wheelabrator may reasonably request in connection therewith, except that the City will not be an obligor, guarantor, or otherwise liable for payment of such bonds.

9. Additional Provisions.

(a) Drafting of the Agreement: The Parties acknowledge and agree that this Agreement represents the products of negotiations and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in

this Agreement, the Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party other than the other.

(b) Knowing and Voluntary Act: Each of the Parties represents that it has read this Agreement and acknowledges that it has been represented or had the opportunity to be represented by legal counsel of its own choice throughout all of the negotiations which preceded the execution of this Agreement and that each party has voluntarily executed this Agreement with the consent and/or on the advice of such legal counsel. Each of the Parties further acknowledges that each and such party's counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the considerations specified herein.

(c) Notice: 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 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

If to Wheelabrator:

Wheelabrator Baltimore, L.P.  
c/o Wheelabrator Technologies Inc.  
100 Arboretum Drive, Suite 310  
Portsmouth, New Hampshire 03801  
Attention: General Counsel

and

Wheelabrator Baltimore, L.P.  
1801 Annapolis Road  
Baltimore, Maryland 21230  
Attention: Plant Manager

If to the Authority:

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

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 9(c) 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.

(d) Governing Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions, and any disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Baltimore City, Maryland.

(e) Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument.

(f) Third-Party Beneficiaries: The Parties agree and acknowledge that it is the express intent of the Parties that the Authority is an intended third-party beneficiary of this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions against Wheelabrator as if the Authority were a party to this Agreement. The Parties confer standing on the Authority to enforce this Agreement and its terms as against Wheelabrator, and Wheelabrator hereby waives any argument or defense that the Authority lacks standing to bring an action against Wheelabrator for enforcement of this Agreement or any of its provisions, for damages caused by Wheelabrator's breach of any provision of this Agreement, or for any similar remedy. Nothing in this Agreement shall create or be deemed to create any rights in any person or entity other than the Parties and the Authority and their respective successors and permitted assigns.

(g) Audits: At any reasonable time during business hours, there shall be made available to the City, Authority, and their authorized representatives for examination Wheelabrator's records with respect to matters covered by this Agreement. Wheelabrator shall permit the City, Authority, and their representatives, at the cost and expense of the City and the Authority, to audit, examine and make excerpts or transcripts from such records relating to matters covered by this Agreement.

(h) Retention of Records: Wheelabrator shall retain and maintain all records and documents relating to this Agreement for a minimum of three (3) years from the date of its termination, except in cases where unresolved audit questions require retention for a longer period as determined by federal, state, or local authorities. Wheelabrator shall make such records and documents available for inspection and audit at any reasonable time during business hours to authorized representatives of the City or Authority, and if applicable to federal, state, or local government authorized representatives. If Wheelabrator should cease to exist, custody of all records related to this Agreement will be transferred to the City and the Authority.

(i) No Agency: This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the Parties, and a Party shall not make any contrary representation to any person.

(j) Severability: If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any material respect, the Parties shall take such actions as are provided in Section 11.14 of the Waste Disposal Agreement, and the other provisions of this Agreement shall, as the same may be amended, modified or supplemented, or otherwise affected by any such action, remain in full force and effect.

(k) Effect of Agreement: The rights and obligations set forth in this Agreement are binding upon and shall inure to the benefit of the Parties and their respective successors, heirs, executors, administrators, and permitted assigns of the Parties.

(l) Assignment: Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

(m) Waiver: Either Party's waiver of, or failure to exercise, any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement. No waiver of any right, obligation, restriction or breach under this Agreement will be effective or binding unless it is specifically set forth in a writing signed by the Party against whom enforcement of such waiver is sought.

(n) Headings: The headings of the various sections hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.

(o) Representation on Authority of Signatories: Each person signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement. Each Party represents and warrants to the other Party that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement.

(p) Recitals: The recitals are hereby incorporated as part of this Agreement.

(q) Facility Improvements Uncontrollable Circumstances: Neither Party will be liable for its non-performance or delayed performance if caused by a Facility Improvements Uncontrollable Circumstance, except that in no event shall any Facility Improvements Uncontrollable Circumstance excuse either Party from making any payment hereunder in

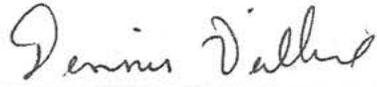
accordance with the terms hereof. Each Party shall seek diligently and in good faith to overcome or remove such Facility Improvements Uncontrollable Circumstance (subject to the proviso set forth in Section 11.1 of the Waste Disposal Agreement). Each Party will notify the other if it becomes aware of any Facility Improvements Uncontrollable Circumstance that will significantly delay performance. The notifying Party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Facility Improvements Uncontrollable Circumstance. Without limiting the generality of the foregoing, the Completion Date, the date for completion of the Phase 1 Facility Improvements and the Phase 2 Facility Improvements in Section 2 and the date for achieving the air emissions limits in Section 3 may be extended for such reasonable period of time as is required as a result of the occurrence of a Facility Improvements Uncontrollable Circumstance.

(r) Complete Agreement/Amendment: This Agreement, with all exhibits hereto, together with the Subdivision User Contract, the Waste Disposal Agreement, the Residue Disposal Contract (as defined in the Waste Disposal Contract) and the assignment of the Residue Disposal Contract by the Authority to Wheelabrator, and the Guaranty (as defined in the Waste Disposal Agreement), with all exhibits to such agreements, represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, communications, understandings, or agreements, between the Parties, whether written or oral, concerning its subject matter. This Agreement shall not be amended except by a written instrument signed by all the Parties.

(s) Term: This Agreement shall be effective as of the date hereof, and, unless sooner terminated in accordance with the terms hereof or the Waste Disposal Agreement, shall continue in effect until December 31, 2031.

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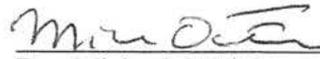
IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:



Attest

Wheelabrator Baltimore, L.P.

By: WESI Baltimore Inc.

 (SEAL)

By: Michael O'Friel

General Counsel and Senior Vice President

Mayor and City Council of Baltimore

\_\_\_\_\_  
Custodian of the City Seal

\_\_\_\_\_  
Bernard C. "Jack" Young  
Mayor

Approved as to form and  
legal sufficiency:

Approved by the Board of Estimates:

\_\_\_\_\_  
Dana P. Moore  
Acting City Solicitor

\_\_\_\_\_  
Clerk Date

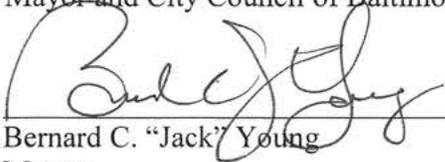
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Wheelabrator Baltimore, L.P.  
By: WESI Baltimore Inc.

\_\_\_\_\_  
(SEAL)  
By: Michael O'Friel  
General Counsel and Senior Vice President

\_\_\_\_\_  
Attest

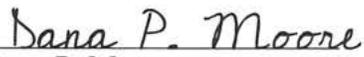
Mayor and City Council of Baltimore

  
\_\_\_\_\_  
Bernard C. "Jack" Young  
Mayor

\_\_\_\_\_  
Custodian of the City Seal

Approved as to form and  
legal sufficiency:

Approved by the Board of Estimates:

  
\_\_\_\_\_  
Dana P. Moore  
Acting City Solicitor

\_\_\_\_\_  
Clerk Date