BALTIMORE COUNTY, MARYLAND

CONTRACT

THIS AGREEMENT made as of this ___ day of October 2020, (the "Agreement") is by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic (hereinafter "County") and WHEELABRATOR BALTIMORE, L.P., a Maryland limited partnership (hereinafter the "Company"). The Company and the County are sometimes referred to in this Agreement individually as a "party" and collectively as the "parties".

WHEREAS, the Company is the owner and operator of a resource recovery facility located in Baltimore, Maryland (the "Facility") where the Company accepts Acceptable Waste (defined on Attachment A, attached hereto) for disposal by the process of combustion, generating electricity thereby, and disposing of Residue (defined on Attachment A, attached hereto); and

WHEREAS, the Company and the County are parties to a contract dated December 7, 2009, as amended by Amendment No. 1 dated as of December 19, 2011, by Amendment No. 2 dated as of May 25, 2012 and by Amendment No. 3 dated as of December 16, 2014 (collectively, the "Original Agreement"); and

WHEREAS, the parties wish to terminate the Original Agreement effective as of October 1, 2020 and enter into this Agreement, all on the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants, the parties hereto agree as follows:

1. **Company's and County's Duties.** The Company and the County shall perform their respective obligations as provided in this Agreement including Attachment A (Additional Terms and Conditions), Attachment A-1 (Hauler's Safety Declaration) and Attachment B (Insurance), all of which are hereby incorporated into and made a part of this Agreement. Any reference to Attachment A, Attachment A-1 or Attachment B in this Agreement shall be deemed to refer to Attachment A (Additional Terms and Conditions), Attachment A-1 (Hauler's Safety Declaration) and Attachment B (Insurance), respectively, of this Agreement. For the avoidance of doubt, the terms "Paragraph" and "Section" are used interchangeably in this Agreement, including such Attachments. Capitalized terms used herein shall have the meaning given to them in Attachment A and elsewhere in this Agreement.

2. **Compensation.**

2.1 In consideration of the services to be performed by the Company, the County shall pay the Company in accordance with the terms set forth in Attachment A.

2.2 The Company shall submit invoices to the County monthly. The
Company’s invoices shall reflect the:

- Company’s name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- County Origin Ticket #
- Services performed during the preceding billing period, as provided in Section 5 of Attachment A

Original invoices shall be submitted to Office of Budget and Finance, Disbursements, 400 Washington Avenue, Room 148, Towson, Maryland 21204. Invoices in the proper form and approved by the County shall be paid by the County within thirty (30) days of receipt thereof and otherwise as provided in Section 5 of Attachment A. The County reserves the right to request such additional information as the County reasonably requires to verify an invoice.

2.3 In no event shall the compensation paid to the Company exceed the sum of the County Council approved appropriation, in accordance with the provisions of Paragraph 5 of Attachment A during the entire term of this Agreement including renewals thereof

3. Term. The Original Agreement shall terminate and be of no further force and effect as of the Commencement Date without any further action on the part of either party except for any obligation to pay any sum of money that may have accrued and be due and payable thereunder prior to the Commencement Date (as such term is defined in Attachment A). This Agreement shall be effective on the date it is signed by all parties hereto, but the obligations of the parties shall be retroactive to the Commencement Date. Upon the Commencement Date the term of this Agreement shall commence and thereafter shall remain in effect until September 30, 2026, unless sooner terminated pursuant to this Agreement.

4. Representations and Warranties.

4.1 Representations and Warranties of the County. The County hereby represents and warrants to the Company as follows:

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

(b) The County has duly authorized the execution and delivery of this Agreement and the performance by the County of its obligations hereunder and this Agreement has been duly and validly executed and delivered by the County and constitutes a legal, valid and
binding obligation of the County, enforceable against the County in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and to the exercise of judicial discretion in appropriate cases.

(c) Neither the execution or delivery by the County of this Agreement, nor the performance by the County of its obligations hereunder (i) conflicts with, violates or results in a breach of any law, regulation, requirement or order of any federal, state or local agency or governmental body applicable on the date hereof to the performance of any obligations under this Agreement, (ii) violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder, or (iii) results in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the properties or assets of the County.

(d) No additional approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution, delivery and performance of this Agreement by the County, 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 County's knowledge, threatened against the County, wherein an unfavorable decision, ruling or finding would materially and adversely affect the performance by the County of its obligations hereunder or which, in any way, materially and adversely affects the validity or enforceability of this Agreement.

4.2 Representations and Warranties of the Company. The Company hereby represents and warrants to the County as follows:

(a) The Company is duly created, validly existing and in good standing under the laws of the State with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Company has duly authorized the execution and delivery of this Agreement and the performance by the Company of its obligations hereunder and this Agreement has been duly and validly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and to the exercise of judicial discretion in appropriate cases.
Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its obligations hereunder (i) conflicts with, violates or results in a breach of any law, regulation, requirement or order of any federal, state or local agency or governmental body applicable from time to time to the performance of any obligations under this Agreement, (ii) violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder, or (iii) results in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

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

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 Company's knowledge, threatened, against the Company, wherein an unfavorable decision, ruling or finding would materially and adversely affect the performance by the Company of its obligations hereunder or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement.

Neither the Company, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has: (1) been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property; (2) been convicted of any criminal violation of a state or federal antitrust statute; (3) been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract; (4) been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland; (5) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above; (6) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract; (7) admitted
in writing or under oath, during the course of an official investigation or other proceedings, acts or
omissions that would constitute grounds for conviction or liability under any law or statute
described above.

(g) Neither the Company nor any of its officers, directors, partners, members,
affiliates, or any of its employees directly involved in obtaining or performing contracts with public
bodies, has ever been suspended or debarred (including being issued a limited denial of
participation) by any public entity.

5. **Insurance.**

   (a) The County shall at all times during the term of this Agreement maintain,
or cause any hauler delivering Acceptable Waste to the Facility on behalf of the County to
maintain, in full force and effect the insurance coverages applicable to the County set forth in
Attachment B which is attached and made a part hereof, and all other insurances as may be
required by applicable law. Such insurance coverages shall name the Company as additional
insured except for the workers' compensation and employers' liability insurance. Certificates of
insurance must be furnished to the Company prior to delivery of Acceptable Waste to the Facility,
and annually thereafter, evidencing that such insurance has been procured and remains in force.
Notwithstanding the foregoing, the Company acknowledges that the County is self-insured with
respect to any and all claims concerning public liability and property damage liability; provided,
however, that any such self-insurance by the County shall not relieve any hauler from maintaining
in full force and effect the insurance coverages applicable to the County set forth in Attachment
B. Upon execution of this Agreement, the County shall furnish and shall cause its haulers to
furnish to the Company a Certificate of Insurance evidencing coverage as required by this
Agreement and naming the Company as an additional insured on the policy.

   (b) The Company shall at all times during the term of this Agreement maintain
in full force and effect the insurance coverages applicable to the Company set forth in Attachment
B which is attached and made a part hereof, and all other insurances as may be required by
applicable law. Such insurance coverages shall name the County as an additional insured except
for the workers' compensation and employers' liability insurance. Certificates of insurance must
be furnished to the County prior to delivery of Acceptable Waste to the Facility, and annually
thereafter in the month of July, evidencing that such insurance has been procured and remains
in force.

6. **Default.**

   6.1 The following shall constitute events of default by the County:

      (a) the failure of the County to make any payment required to be made
to the Company under this Agreement within thirty (30) days after receipt of written notice from the Company that such amount is due;

(b) the failure of the County to perform any of its other material obligations under this Agreement which failure is not cured within sixty (60) days, or a cure commenced and diligently pursued within sixty (60) days and cured within ninety (90) days, after the date of written notice from the Company of such failure;

(c) in the event the County shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated as bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it; or

(d) the failure of the Baltimore County Council in any fiscal year to appropriate funds sufficient to pay the County Financial Obligations (whether such failure is a reduction of funds or the elimination of funds) in order to avail itself of an Alternative Disposal Solution as provided in Section 5(f) of Attachment A.

6.2 The following shall constitute events of default by the Company:

(a) the failure of the Company to make any payment required to be made to the County under this Agreement within thirty (30) days after receipt of written notice from the County that such amount is due;

(b) the failure of the Company to perform any of its material obligations under this Agreement which failure is not cured within sixty (60) days, or a cure commenced and diligently pursued within sixty (60) days and cured within ninety (90) days, after the date of written notice from the County of such failure; or

(c) in the event the Company shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.
7. **Remedies for Default.** The non-defaulting party shall have the right upon the happening of any event of default of the Company or event of default of the County, which is not cured as hereinabove provided, as applicable:

   (a) In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part upon written notice to the defaulting party; and/or

   (b) To proceed at any time or from time to time to protect and enforce all rights and remedies available to the non-defaulting party, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under this Agreement, including but not limited to, calling upon any security, letter of credit, or bond and any other action authorized or permitted by applicable law, regulation, or equity.

8. **Remedies Cumulative and Concurrent.** No remedy herein conferred upon or reserved to the County or the Company is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the County or the Company shall be concurrent and may be pursued separately, successively or together against the other party, and every right, power and remedy given to either party may be exercised from time to time as often as may be deemed expedient by such party.

9. **Conflict of Interest.** The Company represents and warrants that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension or renewal thereof, the Company shall immediately advise the County in writing thereof.

10. **Assignment.**

   10.1 Neither the County nor the Company shall assign or transfer its interest or obligations under this Agreement to any third party, without the prior written consent of the other, and any such assignment or attempted assignment without such written consent shall be void. Notwithstanding the foregoing, the Company may assign its interests and obligations hereunder without the prior written consent of the County to a person, firm or corporation acquiring all or substantially all of the business and assets of the Company, by merger, consolidation, transfer of assets or otherwise, or to an entity controlling or controlled by or under common control with the Company, provided that this Agreement shall remain in full force and effect after such assignment; provided, however, that the Company shall give the County no less than ninety days’ prior written
notice of any such assignment in any instance in which the assignee will be unwilling or unable to perform the Company's obligations hereunder, to enable the County to procure the goods or services elsewhere.

10.2 Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County or the Company, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement or any permitted assignee.

11. **Delegation of Duties.** The Company shall not delegate the Company's duties under this Agreement without the prior written consent of the County; provided, however, that the Company may engage subcontractors as part of its operation of the Facility for those functions for which operations of the Facility are customarily subcontracted.

12. **Indemnification.**

12.1 The Company shall, except to the extent caused by the negligent acts or omissions or willful misconduct of the County, indemnify, defend and hold harmless the County from and against any and all loss, damage, cost, charge, expense and claim (including without limitation reasonable attorneys' fees), to which it may be subject (i) to the extent caused by any act, action, neglect, omission or default on the part of the Company or any of its agents, subcontractors and employees in the performance of its obligations under this Agreement or (ii) arising out of a claim, suit or administrative action alleging that the Company has failed to fulfill its obligations hereunder.

12.2 The County shall, to the extent permitted by applicable law and except to the extent caused by the negligent acts or omissions or willful misconduct of the Company, indemnify, defend and hold harmless the Company from and against any and all loss, damage, cost, charge, expense and claim (including without limitation reasonable attorneys' fees), to which it may be subject (i) to the extent caused by any act, action, neglect, omission or default on the part of the County or any of its agents, subcontractors and employees in the performance of its obligations under this Agreement or (ii) arising out of a claim, suit or administrative action alleging that the County has failed to fulfill its obligations hereunder. Notwithstanding the foregoing, The Company acknowledges that the County is a political subdivision of the State of Maryland and is self-insured with respect to any and all claims concerning public liability and property damage. The County's liability coverage is limited by Maryland State law in accordance with the provisions of Section 5-301 et seq. of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, also known as the "Local Government Tort Claims Act". In no event will the County's obligation hereunder be greater than that set forth in such Local Government Tort Claims Act, as
amended from time to time, with respect to those matters to which such Local Government Tort Claims Act applies.

13. **Limitation of Liability.** Except for the specific obligations of the parties provided in Paragraph 12, above, and in Attachment A, Paragraph 5(b), in no event, whether based upon contract, tort or warranty shall either party hereto be liable to the other party hereto for or obligated in any manner to pay special, consequential or indirect damages, including, but not limited to, loss of profits. For the avoidance of doubt, Shortfall Damages payable by the County shall not be considered special, consequential or indirect damages.

14. **Integration and Modification.** All prior agreements, understandings and negotiations are merged herein and superseded hereby, there being no other agreement or understanding than those written or specified herein. No custom, act, forbearance, or words or silence at any time, gratuitous or otherwise, shall impose any additional obligation or liability upon either party or waive or release either party from any default or the performance or fulfillment of any obligation or liability or operate against either party as a supplement, alteration or amendment or change of any term or provision unless set forth in a written instrument duly executed by such party expressly stating that it is intended to impose such an additional obligation or liability or to constitute such a waiver or release, or that it is intended to operate as such a supplement, alteration, amendment or change.

15. **Fee Prohibition.** The Company has advised, and the County acknowledges that the Company has been represented by lobbyists and attorneys with respect to negotiation of the terms of this Agreement. The Company warrants and represents that, other than the employment of such persons or entities, and the payment of fees and charges related to such services (including entering into this Agreement), it has not employed or engaged any person or entity to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Company agrees to indemnify and hold harmless the County, from all such claims, suits or demands.

16. **No Partnership.** Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Company and the County other than expressly specified herein and the Company and the County shall not be considered partners or co-venturers for any purpose on account of this Agreement. The Company shall be an independent contractor and shall be responsible for the reporting and remittance of all state and federal taxes applicable to it.

17. **Governing Law.** This Agreement shall be governed by and construed in
accordance with the laws of the State.

18. **Recitals.** The clauses beginning "Whereas" on the first page of this Agreement, which constitute the Recitals to this Agreement, are hereby incorporated into this Agreement and made a part of this Agreement.

19. **Severability.** If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

20. **Force Majeure.** In addition to the relief the Company is entitled to pursuant to Attachment A, Paragraph 3 hereof, which Paragraph shall govern an Event of Force Majeure described therein, 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 such failure results from an Event of Force Majeure; provided that in no event shall any Event of Force Majeure 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 Event of Force Majeure. A party claiming the benefit of this Paragraph 20 shall give prompt notice thereof to the other party.

21. **Termination.** This Agreement may be terminated (i) by the non-defaulting party, for an event of default pursuant to Paragraph 6.1 or Paragraph 6.2, as applicable, and the failure of the defaulting party to cure any such event of default as provided in this Agreement; (ii) by the Company, for an Event of Force Majeure resulting in closure of the Facility, as set forth in Attachment A, Paragraph 3, or (iii) by the County, due to the elimination by the Baltimore County Council of all funds in the budget for the applicable fiscal year of the County to pay the Company amounts owed under this Agreement, as set forth in Attachment A, Paragraph 5(f).

22. **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

23. **Negotiation, And Dispute Resolution.** While this Agreement is in effect, the Company and the County shall attempt, in good faith, to resolve disputes arising out of or relating to this Agreement. In the event of a dispute, the Company and the County shall exchange relevant information and shall attempt to resolve the dispute prior to any party instituting any formal legal proceedings. If the matter cannot be resolved, then either party is permitted to institute legal proceedings as such party deems appropriate. Any litigation or other
legal proceedings shall be brought only in a state or federal court with jurisdiction within the State.

24. Discrimination Prohibited: MBWE.

24.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Company shall not:

   a. Fail or refuse to hire, or discharge, any individual, or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, age, national origin, political affiliation, marital status, sexual orientation, gender identity or expression, genetic information, status as a veteran, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual’s refusal to submit to a genetic test or make available the results of a genetic test;

   b. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee, because of the individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity or expression, genetic information, status as a veteran, political affiliation or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual’s refusal to submit to a genetic test or make available the results of a genetic test; or

   c. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

24.2 All solicitations or advertisements for employees shall state that the Company is an equal opportunity employer.

24.3 The Company shall use reasonable efforts to utilize minority-owned business enterprises and/or women-owned business enterprises for fifteen percent (15%) of the services subcontracted by the Company to operate the Facility and perform its obligations under this Agreement.

25. Reports / Information/and Audits.

25.1 At the request of the County, the Company shall provide the County and its employees such information and documentation as the Company reasonably requests related to the monthly invoices of the Company or other amounts that the County is required to pay under this Agreement. The Company is not obligated to provide the County with any information or
documentation unrelated to the determination of the amounts which the County is required to pay under this Agreement, including (without limitation) any information that relates to the profit or loss of the Company in its operation of the Facility. The Company shall retain all records, information, and documentation of the Company related to this Agreement and the amounts that the County is required to pay under this Agreement for at least two (2) years after the termination of this Agreement.

25.2 The County may engage an independent auditor, at the expense of the County, to verify the amounts paid by the County under this Agreement.

25.3 All prime contractors and MBE/WBE subcontractors are required to report monthly to the County through an online system called PRISM at www.baltimorecountymd.gov/qo/mwbe under MWBE directory/Vendor Compliance. If the Company cannot submit this report on time, the Company must notify the County MBE/WBE office and request additional time to submit the report. Failure of the Company to report in a timely manner may result in a finding of noncompliance. The County, in its sole discretion, may require additional reports regarding MBE/WBE. Questions regarding the use of this system can be directed to the MBE/WBE Officer/Liaison at 410-887-3119 or 410-887-3407.

26. Notice. All notices pertaining to this Agreement shall be in writing, shall be deemed delivered (i) if personally delivered or (ii) within two (2) days after having been transmitted by prepaid certified mail, return receipt requested, or by overnight mail, at the following addresses and individuals or at such other address and/or such other individual as a party may identify in writing to the other party:

FOR THE COUNTY: Director, Department of Public Works
County Office Building
111 W. Chesapeake Ave.
Towson, MD 21204
(410) 887-3306

WITH A COPY TO: County Attorney
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

FOR THE COMPANY: Chief Operating Officer
Wheelabrator Technologies Inc.
100 Arboretum Drive
Portsmouth, NH 03801
(603) 929-3188
27. **Political Contribution Disclosure Affirmation.** The Company affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, that a person making or having a single contract with a single governmental entity involving cumulative consideration of at least $200,000 shall file an initial statement, and semi-annual statements as applicable, with the State Board of Election disclosing applicable contributions of $500 or more, or the lack thereof.

28. **No Waiver, Etc.** No failure or delay by the County or the Company to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the County or the Company from exercising any such right, power, or remedy at any later time or times.

29. **Survival.** Those sections in this Agreement which by their nature are intended to survive, including but not limited to Sections 4 (Representations and Warranties), 12 (Indemnification), and 25 (Reports/Information/Inspections/and Audits), and any obligation to pay any sum of money that may have accrued and be due and payable hereunder, shall survive the termination of this Agreement.

30. **Advertising and Public Disclosure.** Neither party shall issue any press release which mentions the other party or the transactions contemplated by this Agreement without the prior consent of the other party, which consent shall not be unreasonably withheld. Any oral or written materials related to services performed under this Agreement shall include only services that have been accepted by the County. Each party shall notify the other in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the County, including without limitation the County Executive, the Director of Information Technology, the County Council or the County Auditor or with respect to the Company, to the shareholders, officers, directors, advisors, lenders or rating agencies of the Company or any of its affiliates.

31. **Marketing Support.** The Company may not use County's name or seal without County's written consent.
IN WITNESS WHEREOF, it is the intent of the parties that the Company has signed this Agreement under seal and further, that the parties have executed this Agreement the day and year first written above.

WITNESS:

WHEELABRATOR BALTIMORE, L.P.
Federal Identification No. 36-4057307

By: [Signature]

Name: Michael O’Friel
Title: Senior Vice President, West Baltimore Inc.
Managing General Partner

[Signatures continued on next page]
WITNESS:

BALTIMORE COUNTY, MARYLAND

By: Stacy L. Rodgers Date
County Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY*
(Subject to Execution by A Duly Authorized County
Administrative Official and County Council, If Indicated)

By: Robert M Preston Date
Office of Budget and Finance

MASTER AGREEMENT ONLY
ENCUMBRANCES ARE BY DELIVERY ORDER

REVIEWED AND APPROVED:

ROBERT M PRESTON
Oct 15, 2020
Office of Budget and Finance

Baltimore County Council

By: Chair Date

Director, Department of Public Works

15
ATTACHMENT A

ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions are hereby incorporated into this Agreement and are made a part of this Agreement.

1. Definitions: For purposes of this Agreement, the following capitalized words and phrases shall be given the following respective meanings:

   (a) "Acceptable Waste" means all household garbage, trash, rubbish, refuse, normally or which may be hereinafter collected and disposed of by or on behalf of the County, but excluding, without limitation (i) Hazardous Waste, explosives, ammunition and ordnance materials, pathological and biological wastes, radioactive materials, sludges, highly inflammable substances, cesspool or other human wastes, liquid wastes, human and animal remains, and leaves and yard waste (other than amounts legally acceptable in municipal solid waste), motor vehicles or large parts thereof, lead acid batteries, motorcyles, auto springs, auto transmissions, trailers, farm or other large machinery or large parts thereof and marine vehicles or large parts thereof, large concentrations of plastics and tires, asphalt shingles, wallboard, sheetrock and wire and cable, nonburnable construction materials and demolition debris, cleaning fluids, crankcase oils, cutting oils, petroleum products (including without limitation drained oil), hazardous paints, acids, caustics, pesticides, insecticides, poisons, drugs, chemicals, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (ii) any item of waste exceeding six 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 inches could be contained within such solid mass portion; (iii) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, dishwashers, washing machines, drying machines, water heaters, and the like; (iv) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (v) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; (vi) tires and cathode ray tubes (in excess of a de minimis amount) and (vii) all other items of waste which the Company reasonably believes would be likely to pose a threat to health or safety or the acceptance, disposal and processing of which may cause damage to the Facility or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations. The parties recognize that some substances which are not, as of the date of this Agreement, considered Hazardous Waste or which the Company is not prohibited from processing at the Facility, may be determined by any federal, state, or local agency subsequent to the date hereof to be hazardous, toxic, dangerous, or harmful or which the Company may be prohibited from processing at the Facility, and at the time of such determination, such substances shall cease to be Acceptable Waste.

   (b) "Alternative Disposal Solution" has the meaning given to it in Section 5(f) hereof.

   (c) "Closure Date" has the meaning given to it in Section 3(b) hereof.

   (d) "Commencement Date" means October 1, 2020.

   (e) "Contract Year" means a one-year period beginning on October 1 of each year during the term hereof and ending on September 30 of the following year.
(f) "County Administration" has the meaning given to it in Section 5(f).

(g) "County Financial Obligations" has the meaning given to it in Section 5(f) hereof.

(h) "Demurrage Fee" has the meaning given to it in Section 7 hereof.

(i) "Environmental Laws" means any and all federal, state and local statutory or common laws, regulations, rules, ordinances, permits, authorizations, approvals, registrations and licenses, administrative orders, judicial decrees, judgments or the like, whether currently effective or subsequently enacted and retroactive, relating to (i) pollution, contamination, remediation or protection of the environment, natural resources or human health from any Hazardous Waste, (ii) nuisance, trespass or "toxic tort", so called, (iii) emissions, discharges, releases or threatened releases of any Hazardous Waste, (iv) the manufacture, processing, importation, distribution, use, generation, treatment, storage, disposal; transportation or handling of any Hazardous Waste or (v) reporting, licensing, permitting, investigation, mitigation and/or removal of Hazardous Waste. By way of representation, Environmental Laws include, but are not limited to, the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977, the Safe Drinking Water Act, the Occupational Safety and Health Act of 1970, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments of 1984, the Medical Waste Tracking Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act of 1976, the Federal Insecticide, Fungicide and Rodenticide Control Act, as the same may have been subsequently amended, and any similar laws of the State, all as amended and any rules and regulations promulgated thereunder.

(j) "Event of Force Majeure" means any of the following acts or events affecting a party which have a material adverse effect on its rights or obligations under this Agreement, if such act or event is through no fault of or beyond the reasonable control of the affected party, and could not have been prevented or avoided by the exercise of commercially reasonable care on the part of such party except, however, unanticipated or increased costs or expenses associated with the implementation of the actions required under this Agreement or changed financial circumstances or lack or insufficiency of funds shall not, for the performance of the actions required by this Agreement, be considered an Event of Force Majeure beyond the control and without the fault of a party:

(i) an act of God, landslide, lightning, earthquake, fire or explosion (which is not also the result of the willful or negligent action of or a lack of due diligence by the non-performing party), storm, flood, an act of war or of the civil or military authorities, civil disturbance, strike, lockout, work slowdown, or similar industrial or labor action or any other similar occurrence;

(ii) the order and/or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of the willful or negligent action of the non-performing party or a lack of due diligence by the non-performing; provided that the contesting in good faith of any such order and/or judgment shall not, of itself, constitute or be construed as a willful or negligent action or lack of due diligence by the non-performing;
(iii) the failure to obtain, or suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the operation, ownership or possession of the Facility or the operation of the Landfill, if it is not also the result of the willful or negligent action of the non-performing party or a lack of due diligence by the non-performing party (and, for the avoidance of doubt, the foregoing shall not constitute an Event of Force Majeure if the County is the non-performing party and the permit, license, consent, authorization or approval is issued by the County or otherwise within the authority of the County to grant); provided that the contesting in good faith of any such failure to obtain, suspension, termination, interruption or failure of renewal shall not, of itself, be construed as a willful or negligent action or a lack of due diligence by the non-performing party;

(iv) the adoption, promulgation, issuance, material modification or change in interpretation after the date of this Agreement of any federal, state or local law, regulation, rule, requirement, or ordinance, unless such law, regulation, rule, requirement or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state or local governmental body, administrative agency or governmental official having jurisdiction (and for the avoidance of doubt the foregoing shall not constitute an Event of Force Majeure if the County is the non-performing party and the law, regulation, rule, requirement or ordinance was adopted, promulgated, issued or otherwise officially modified or changed in interpretation by the County);

(v) any act or omission by the City of Baltimore that makes continued operation of the Facility infeasible; or

(vi) the closure or material reduction in the capacity of the Landfill, if it is not also the result of the willful or negligent action of the non-performing party or a lack of due diligence by the non-performing (and, for the avoidance of doubt, the closure or material reduction in the capacity of the Landfill shall not constitute an Event of Force Majeure with respect to the County if the County is the non-performing party and the closure or material reduction in the capacity of the Landfill is made or caused to be made by the County).

(k) "Guaranteed Annual Tonnage" has the meaning given to it in Section 2(a) hereof.

(l) "Guaranteed Residual Disposal Payment" has the meaning given to it in Section 6(b) hereof.

(m) "Hazardous Waste" means (i) any waste identified as a hazardous waste in 40 CFR Part 261 or in any applicable state or local hazardous waste regulatory program; (ii) any waste that is mixed with a listed Hazardous Waste as regulated in 40 CFR Part 261.3(a)(2)(iv) or any applicable state or local hazardous waste regulatory program; (iii) any waste containing polychlorinated biphenyls in concentrations that are subject to regulation under the federal Toxic Substances Control Act; (iv) any waste containing radioactivity at levels that are subject to regulation under federal, state, or local law; or (v) any other waste that is regulated as a hazardous waste by any applicable federal, state, or local statutory or common laws, regulations, rules, or ordinances.

(o) "Landfill" means the County landfill located at 6259 Days Cove Road, White Marsh, MD. 21162.

(p) "Minimum Residue Delivery Amount" has the meaning given to it in Section 6(a) hereof.

(q) "Residue" means the material (including, without limitation, fly ash, bottom ash and siftings) remaining after processing Acceptable Waste and after removal of Recovered Materials at the Facility.

(r) "Recovered Materials" means the metals recovered from Acceptable Waste or Residue.

(s) "Service Fee" has the meaning given to it in Section 6(b) hereof.

(t) "Shortfall Damages" has the meaning given to it in Section 5(b) hereof.

(u) "Shutdown" has the meaning given to it in Section 3(a) hereof.

(v) "State" means the State of Maryland.

(w) "Tipping Fee" has the meaning given to it in Section 5(a) hereof.

(x) "Ton" means a "short ton" of 2,000 pounds.

(y) "Tons Shortfall" means the difference between (i) the Guaranteed Annual Tonnage and (ii) the number of Tons of Acceptable Waste delivered to the Facility by or on behalf of the County in a Contract Year.


(a) The County shall deliver or cause to be delivered, to the Facility, and, except as hereinafter provided, the Company shall accept at the Facility, two hundred and fifteen thousand (215,000) Tons of Acceptable Waste in each Contract Year (the "Guaranteed Annual Tonnage"). The County shall deliver or cause to be delivered the Guaranteed Annual Tonnage on a "put or pay" basis and shall pay for the Guaranteed Annual Tonnage whether or not it is delivered to the Facility, as provided in Section 5 hereof. The County shall not deliver, and shall use reasonable efforts to cause its haulers not to deliver, to the Facility any Acceptable Waste that is generated in any location other than within the jurisdiction of the County or to which the County does not have title. The County's haulers are, for purposes of Baltimore City's solid waste surcharge ordinance only, considered by the County to be authorized agents of the County for the delivery of Acceptable Waste under this Agreement. Deliveries by the County of Acceptable Waste will be made on a regular basis throughout the entire Contract Year pursuant to an agreed upon delivery schedule. The County will provide an estimated monthly delivery schedule for the next Contract Year to the Company no later than September 1st each year commencing September 1, 2021 for approval, which approval shall not be unreasonably withheld; provided however that in the first Contract Year the County shall deliver such schedule on the Commencement Date. The County shall update the delivery schedule as necessary and provide the Company with a copy thereof within ten (10) days after the end of each calendar quarter.
(b) The County shall promptly remove, at its sole cost, any waste rejected by the Company at the Facility, subject to and in accordance with Section 3(a) hereof and shall be liable to the Company for all reasonable costs incurred by the Company in removing and disposing of such rejected waste if the County fails to do so. The County shall not be obligated to pay a Tipping Fee for waste so rejected. Notwithstanding the foregoing, if the Company rejects waste pursuant to Section 3(a)(i) which was subsequently determined to be Acceptable Waste delivered to the Company in conformance with this Agreement and which was wrongfully rejected, upon notice to the Company by the County, the Company shall reimburse the County all reasonable costs and expenses the County incurred in removing and disposing of such rejected waste, such waste shall be considered delivered to the Facility for purposes of determining whether the County has delivered its Guaranteed Annual Tonnage and, to the extent such rejected waste has not been disposed of, the Company shall accept such waste and dispose of it in the normal course pursuant to the terms and provisions of this Agreement.

(c) The County shall perform its obligations under this Agreement in material conformance with all applicable laws, including, without limitation, Environmental Laws. The Company shall operate the Facility and perform its obligations under this Agreement in material conformance with all applicable laws, including, without limitation, Environmental Laws.

(d) For purposes of this Agreement, any reference to the County shall also include any hauler delivering waste to the Facility on behalf of the County whether or not there is a specific reference to such haulers after any reference to the County herein. The County shall cause all its haulers to comply with the obligations of the County hereunder, including, without limitation, including such obligations in all of its current contracts with its haulers, to the extent such contracts may be amended by the County, and in all future contracts with its haulers. Before the Company shall accept any delivery of waste from any private hauler, not the County, pursuant to this Agreement, the County shall confirm to the Company that such hauler is authorized to deliver waste to the Facility or alternative, on its behalf.

(e) The Company will receive title to all Acceptable Waste upon acceptance of it for processing at the Facility.

3. **Right of Refusal.**

(a) The Company shall have the right without any liability to the County (except as otherwise provided herein) to refuse deliveries of:

(i) waste other than Acceptable Waste; or

(ii) any waste delivered at other than the then established receiving hours as set forth herein or in a written notice from the Company to the County; or

(iii) any waste delivered by or on behalf of the County not in conformity with the terms of this Agreement; or

(iv) any waste that the Company is unable to accept as a result of an Event of Force Majeure or any other reason that the Facility or a substantial portion thereof is shut down (a "Shutdown").

(b) If as a result of a Shutdown, the Company is unable to accept and process Acceptable Waste at the Facility, the Company shall give the County not less than 24 hours'
notice of any such Shutdown and the County shall deliver such Acceptable Waste to the Landfill or, if the Landfill is not available to accept such Acceptable Waste, to an alternate disposal site reasonably selected by the County. The County shall not be obligated to pay the Company the per ton Tipping Fee for such Acceptable Waste. The Company shall be responsible for the reasonable additional costs of the County or its haulers if the Acceptable Waste is delivered to the Landfill which shall not include any transportation costs to, or tipping fees at, the Landfill and if the Acceptable Waste is delivered to an alternate disposal site the costs in excess of the cost of transporting and disposing of such Acceptable Waste at the Facility. During any Shutdown the County shall be considered to have delivered to the Facility, for purposes of determining whether the County has delivered its Guaranteed Annual Tonnage, the number of Tons of Acceptable Waste diverted to the Landfill or an alternate disposal site based on the Landfill’s or the alternate disposal site’s weight records or if such records are not available a pro rata portion of the Guaranteed Annual Tonnage allocable to the period of the Shutdown (but in no case less than zero).

Notwithstanding the foregoing:

(i) During any Shutdown, the Company, at its expense, will promptly, diligently and in good faith take all action reasonably necessary for it to be able to accept and process such amount of Acceptable Waste from the County as it is able to process including, without limitation, all actions reasonably necessary to obtain any temporary restraining orders, preliminary or permanent injunctions, approvals, licenses or permits needed to resume acceptance and processing of such Acceptable Waste and any repairs or other improvements to the Facility and any modifications to the operation thereof required for such purpose. The Company shall, during any such period, keep the County duly notified of all such actions, and the expected duration of any such period.

(ii) The Company may, in its discretion, elect to permanently close the Facility upon the occurrence of an Event of Force Majeure that the Company determines, in its discretion, renders the continued operation of the Facility uneconomic and if the Company elects to do so the Company shall notify the County at least six (6) months prior to the date the Company intends to close the Facility (the “Closure Date”). This Agreement shall terminate on the Closure Date and from and after the Closure Date and except as otherwise provided herein, neither the Company nor the County shall have any further obligation or liability to the other party hereunder.


(a) The County shall deliver or cause to be delivered Acceptable Waste in an orderly and safe manner, including, without limitation, in such a manner that it will not be spilled, other than on the tipping floor, or blown on the site, of the Facility. If Acceptable Waste is so spilled or blown, the County shall promptly, at its sole cost, collect and remove such spilled or blown Acceptable Waste and if the County fails to do so, the County shall be liable to the Company for all actual costs of such clean-up by the Company. The County shall adhere, and shall require haulers delivering on behalf of the County to adhere, to all safety rules and regulations of the Company in delivering Acceptable Waste to the Facility, but only to the extent the Company provided the County such safety rules and regulations. The County shall cause its haulers to execute the Hauler’s Safety Declaration attached hereto as Attachment A-1.

(b) Unless otherwise modified in writing by the Company, the Facility shall be open for accepting Acceptable Waste twenty-four (24) hours per day, seven days a week, except
Holidays. The Company will provide the County a live camera feed of the scale house at the Facility to allow the County to determine the optimal time to deliver Acceptable Waste to the Facility.

(c) The Company shall utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Waste to the Facility in accordance with applicable state law. Each vehicle delivering Acceptable Waste to the Facility shall be weighed, indicating gross weight, tare weight, time and truck identification on a weight record. Such records shall be used by the Company for calculating monthly and yearly deliveries made by the County. In the event of a material discrepancy between the County's estimate and the weights produced by the Company, the Company shall reasonably promptly notify the County and the parties hereto shall endeavor to reconcile the calculations. The Company reserves the right to modify the above arrangement with any other system designed in accordance with applicable State law to perform the same functions. The Company shall maintain records of the tonnage delivered by the County and accepted by the Company each day and each month, which will be retained for a period of no less than three (3) years.

(d) The County shall cause all vehicles used for delivery of Acceptable Waste to the Facility to be in a safe and clean condition and in good repair and to be properly covered or enclosed so as to prevent any refuse, dirt, dust or other materials from falling or blowing out from the vehicles. The County shall use or cause to be used only vehicles with the capability of dumping directly into the waste pit at the Facility and which have a capacity of three (3) tons or more. Such vehicles shall bear such names or means of identification as may be reasonably acceptable to the Company.

(e) The Company shall inspect all waste delivered to the Facility and shall promptly notify the County if the Company becomes aware the County or its haulers have delivered any Hazardous Waste to the Facility specifying the type and nature of the Hazardous Waste found. The County shall pay the Company all costs, damages or expenses incurred by the Company in removing and disposing of Hazardous Waste delivered by the County or its haulers.

5. **Tipping Fee and Payment.**

(a) The County shall pay the Company a tipping fee (the "Tipping Fee") per Ton of Acceptable Waste accepted at the Facility during each Contract Year as follows:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Tipping Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2020 through September 30, 2021</td>
<td>$41.00</td>
</tr>
<tr>
<td>October 1, 2021 through September 30, 2022</td>
<td>$42.00</td>
</tr>
<tr>
<td>October 1, 2022 through September 30, 2023</td>
<td>$45.50</td>
</tr>
<tr>
<td>October 1, 2023 through September 30, 2024</td>
<td>$46.87</td>
</tr>
<tr>
<td>October 1, 2024 through September 30, 2025</td>
<td>$48.28</td>
</tr>
<tr>
<td>October 1, 2025 through September 30, 2026</td>
<td>$49.73</td>
</tr>
</tbody>
</table>

(b) If in any Contract Year the County does not deliver the Guaranteed Annual
Tonnage, the County shall pay to the Company, in addition to the Tipping Fees for Acceptable Waste delivered to the Facility during the Contract Year an amount equal to the sum of clauses (i), and (ii) below (the “Shortfall Damages”):

(i) (x) the product of (A) the Tons Shortfall and (B) the Tipping Fee for such Contract Year less (y) the amount (if any) received from third parties for Tons of Acceptable Waste in replacement of the Tons Shortfall in such Contract Year (but not less than zero); and

(ii) to the extent the Company was not able to obtain Tons of Acceptable Waste from third parties in replacement of the Tons Shortfall during such Contract Year:

(x) revenues from the sale of energy (including without limitation electricity, capacity, renewable energy credits and steam) and Recovered Materials that the Company would otherwise have been able to generate or receive had the County delivered the Tons Shortfall in such Contract Year; and

(y) any amounts payable by the Company to third parties, whether as liquidated damages, cover damages under energy supply, capacity or renewable energy credit agreements or otherwise resulting from the County’s failure to deliver the Tons Shortfall.

Acceptable Waste in replacement of any Tons Shortfall shall be reasonably determined by the Company and shall not include Acceptable Waste that is under contract with the Company to be delivered to the Facility at the beginning of the Contract Year in which the Tons Shortfall occurs.

(c) The Company will invoice the County within ten (10) days after (i) the end of each month for all deliveries of Acceptable Waste at the Facility during such month and (ii) the end of each Contract Year for all Shortfall Damages. The County shall pay such invoices within thirty (30) days from the date an invoice is received by the County.

(d) Intentionally deleted.

(e) Subject to the provisions of this Agreement, the obligation of the County to pay the amounts to be paid by it from time to time hereunder shall not be subject to diminution by reason of any set-off, abatement, counterclaim, 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 either party hereunder or limit recourse against either party. The provisions of this Section 5(e) shall not affect the obligations of the County and the Company under Section 3 hereof or the right of either party to pursue independently any claim it might have against the other party based upon nonperformance by such party of its obligations hereunder.

(f) (i) The Company acknowledges that the Baltimore County Council has the right to reduce or eliminate items from the County budget in any fiscal year and the County may terminate this Agreement due to the Baltimore County Council failing to appropriate sufficient funds for the Tipping Fees and all other amounts due or required hereunder by providing written notice to the Company, as hereinafter set forth. Notwithstanding the foregoing, the County Administrative Officer, the County Executive and the other County administrative officers and staff
(collectively, "County Administration") shall use reasonable efforts to appropriate sufficient funds for this Agreement, including, without limitation, including in the budget of the County presented to the Baltimore County Council for approval for each fiscal year during the term of this Agreement funds sufficient to pay the Company the Tipping Fee and other amounts payable to the Company under this Agreement and to perform the other obligations of the County under this Agreement (collectively, the "County Financial Obligations").

(ii) Notwithstanding the right of the Baltimore County Council to reduce or eliminate items from the County budget in any fiscal year, the failure of the Baltimore County Council in any fiscal year to appropriate funds sufficient to pay the County Financial Obligations (whether such failure is a reduction of funds or the elimination of funds) in order to avail itself of another disposal solution or alternative to the Facility for the County's Acceptable Waste, including, without limitation, using the Landfill to dispose of Acceptable Waste (an "Alternative Disposal Solution") shall constitute an immediate event of default of the County under this Agreement not subject to cure. If the Baltimore County Council in any fiscal year reduces or eliminates the appropriation of sufficient funds to pay the County Financial Obligations in order to avail itself of an Alternative Disposal Solution, then the Company may pursue any remedies available to it under this Agreement for an event of default of the County.

(iii) In the event the Baltimore County Council in any fiscal year reduces or eliminates the appropriation of sufficient funds to pay the County Financial Obligations other than to avail itself of an Alternative Disposal Solution, then such reduction shall not constitute an event of default of the County under this Agreement, even if the end result of such failure to appropriate results in the County needing to dispose of some or all of its Acceptable Waste in the Landfill for one or more fiscal years. In such event, the County shall still use best efforts to meet the Guaranteed Annual Tonnage for the applicable fiscal year(s), but if it is unable to do so, the Guaranteed Annual Tonnage shall be proportionally reduced for the applicable fiscal year(s).

(iv) The County Administrative Officer or designee shall notify the Company in writing of any reduction or elimination of such funds within five (5) business days of approval of the budget of the County by the Baltimore County Council (which usually occurs in early May). The Company acknowledges that the absence of a reciprocal right of termination does not render this Agreement illusory or unenforceable.

6. County Landfill.

(a) The Company shall have the right to deliver up to sixty thousand two hundred (60,200) Tons of Residue per Contract Year (the "Minimum Residue Delivery Amount") to the Landfill. In the event the County is allowed to use Residue as daily cover at the Landfill following the completion of an environmental impact study or under applicable law, regulation or policy then the Company may dispose of up to two hundred thousand (200,000) Tons of Residue per Contract Year at the Landfill. Notwithstanding anything to the contrary contained herein the County shall be under no obligation to obtain an environmental impact study. All Tons of Residue shall be delivered to the Landfill at the Company's expense.

(b) The Company shall pay the County each Contract Year a guaranteed Residue disposal payment for up to the Minimum Residue Delivery Amount regardless of the number of Tons of Residue delivered to the Landfill by the Company during such Contract Year as set forth below (the "Guaranteed Residue Disposal Payment"): 24
In addition, the Company shall pay the Service Fee per Ton as set forth in the preceding table above on all Tons of Residue delivered to the Landfill in excess of the Minimum Residue Delivery Amount during the applicable Contract Year (the “Service Fee”). For the avoidance of doubt, the Service Fee shall not be payable by the Company on the Minimum Residue Disposal Amount.

(c) Notwithstanding the foregoing Section 6(b), if the Landfill is closed, the Company shall not be obligated to pay the Guaranteed Residue Disposal Payment and, for the Contract Year in which the closing occurs, the Company shall pay the proportionate amount of the Guaranteed Residue Disposal Payment (based upon the number of months in such Contract Year during which the Landfill is not closed), and if the capacity of the Landfill is reduced to the extent that the Company is unable to deliver the Minimum Residue Disposal Amount to the Landfill in a Contract Year, the Company may, at its option, pay the Service Fee for the number of Tons of Residue accepted at the Landfill or a proportionate amount of the Guaranteed Residue Disposal Payment (based upon the number of Tons of Residue accepted at the Landfill compared to the Minimum Residue Disposal Amount).

(d) The Company shall pay the Guaranteed Residue Disposal Payment within thirty (30) days after the end of each Contract Year. If the Company owes the County Service Fees for Tons of Residue delivered to the Landfill in excess of the Minimum Residue Delivery Amount the County shall invoice the Company for such Service Fees within ten (10) days after the end of each Contract Year and the Company shall pay such invoice within thirty (30) days from the date received.

7. **County Wait Times.** In the event any vehicle delivering Acceptable Waste to the Facility on behalf of the County is subject to a wait time in excess of one and one half hours from

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Residue Tons</th>
<th>Service Fee per Ton</th>
<th>Guaranteed Residue Disposal Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2020 through September 30, 2021</td>
<td>60,200</td>
<td>$21.93</td>
<td>$1,320,186</td>
</tr>
<tr>
<td>October 1, 2021 through September 30, 2022</td>
<td>60,200</td>
<td>$22.59</td>
<td>$1,359,792</td>
</tr>
<tr>
<td>October 1, 2022 through September 30, 2023</td>
<td>60,200</td>
<td>$23.27</td>
<td>$1,400,585</td>
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<tr>
<td>October 1, 2023 through September 30, 2024</td>
<td>60,200</td>
<td>$23.96</td>
<td>$1,442,603</td>
</tr>
<tr>
<td>October 1, 2024 through September 30, 2025</td>
<td>60,200</td>
<td>$24.68</td>
<td>$1,485,881</td>
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<tr>
<td>October 1, 2025 through September 30, 2026</td>
<td>60,200</td>
<td>$25.42</td>
<td>$1,530,457</td>
</tr>
</tbody>
</table>
the time such vehicle enters the Facility's scale house to the time it leaves the Facility's scale house, a demurrage fee of One Hundred Dollars ($100) per load (the "Demurrage Fee") shall be payable by the Company to the County as a credit issued on the next monthly County invoice processed by the Company, except in the event that such delay is a direct result of actions taken or omissions of the County or the party delivering the Acceptable Waste to the Facility on the County's behalf. To the extent that vehicles delivering Acceptable Waste to the Facility on behalf of the County are experiencing material delays after getting into the queue to enter but prior to entering the Facility's scale house, the Company shall use commercially reasonable efforts to minimize any vehicle wait times outside the Facility's scale house. The Demurrage Fee shall be the only remuneration payable to the County for excessive wait times at the Facility. The Company shall remit the Demurrage Fee to the County within ten (10) days of any excessive wait time. In the event the Company fails to do so, the County shall have the right to set off any Demurrage Fee owed to the County against any sums owed by the County to the Company. The Company shall make available to the County, upon request, its scale reports regarding vehicles delivering Acceptable Waste to the Facility on behalf of the County.
HAULERS' DECLARATION

As the duly authorized and designated representative of [insert Hauler’s name] (the “Hauling Company”), I hereby certify for myself and for and on behalf of the Hauling Company that:

1. Capitalized terms used herein but not defined shall have the meaning given to them in the Agreement between Baltimore County, Maryland and Wheelabrator Baltimore LP dated as of October __, 2020 (the “Agreement”).

2. The Hauling Company has been advised and instructed concerning the Facility’s Tipping Floor Rules and Procedures for Haulers and Drivers.

3. The Hauling Company acknowledges that it has read the above mentioned policy and has communicated this policy to all its employees that will deliver Acceptable Waste to the Facility.

4. List a contact person and phone number for the representative of the Hauling Company to whom additional safety and health information can be provided, if needed.

   Name:_________________________
   Telephone Number:_________________________

5. The Hauling Company has provided proof of insurance required under the Agreement

   Hauling Company Name:_________________________
   Signature:_________________________
   Printed Name:_________________________
   Title:_________________________
   Date:_________________________
ATTACHMENT B

INSURANCE

A. During the term of this Agreement, the County or any hauler delivering Acceptable Waste to the Facility on behalf of the County shall keep in force the following minimum insurance coverages on an occurrence basis:

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Limits of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive General Liability Insurance</td>
<td>Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>including contractual and products/completed operations</td>
<td>General Aggregate: $2,000,000</td>
</tr>
<tr>
<td>Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage</td>
<td>Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>Per Occurrence: $4,000,000</td>
<td></td>
</tr>
<tr>
<td>Comprehensive Excess Umbrella</td>
<td>Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>Workers' Compensation Insurance</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>Pollution Liability</td>
<td>$5,000,000 Each Occurrence</td>
</tr>
<tr>
<td></td>
<td>$5,000,000 Annual Aggregate</td>
</tr>
</tbody>
</table>

Prior to the delivery of Acceptable Waste to the Facility, the County shall furnish and shall cause its haulers to furnish the Company certificates of insurance on standard ACORD forms or other evidence satisfactory to the Company to the effect that such insurance has been procured and is in force. At least thirty (30) days prior to the expiration of any of the insurance policies required herein, the County shall furnish and shall cause its haulers to furnish the Company certificates of insurance on standard ACORD forms, in accordance with the terms hereof, evidencing the renewal of such insurance for a period equal to at least the earlier of (a) the expiration of the term of this Agreement and (b) one year from the date of expiration of the then current insurance policies.

The insurance policies required herein shall be endorsed with, and the certificates of insurance shall contain, the following language:

"Wheelabrator Baltimore L.P. and its affiliates are named as an additional insured with respect to the comprehensive general, excess umbrella, automobile and pollution liability policies set forth herein."
B. During the term of this Agreement, the Company shall keep in force the following minimum insurance coverages on an occurrence basis:

<table>
<thead>
<tr>
<th>Coverages</th>
<th>Limits of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive General Liability Insurance, including contractual and products/completed operations</td>
<td>Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage</td>
<td>For bodily injury and property damage: Per Occurrence: $1,000,000</td>
</tr>
<tr>
<td>Comprehensive Excess Umbrella</td>
<td>Per Occurrence: $4,000,000</td>
</tr>
<tr>
<td>Workers' Compensation Insurance</td>
<td>Statutory: $1,000,000</td>
</tr>
<tr>
<td>Employers' Liability Insurance</td>
<td>Per Occurrence: $5,000,000</td>
</tr>
</tbody>
</table>

Pollution Liability: $5,000,000 Each Occurrence
$5,000,000 Annual Aggregate

At the time of execution hereof the Company shall furnish to the County certificates of insurance on standard ACORD forms or other evidence satisfactory to the County to the effect that such insurance has been procured and is in force. At least thirty (30) days prior to the expiration of any of the insurance policies required herein, the Company shall furnish the County with certificates of insurance on standard ACORD forms, in accordance with the terms hereof, evidencing the renewal of such insurance for a period equal to at least the earlier of (a) the expiration of the term of this Agreement and (b) one year from the date of expiration of the then current insurance policies.

The insurance policies required herein shall be endorsed with, and the certificates of insurance shall contain, the following language:

"Baltimore County, Maryland is named as an additional insured with respect to the comprehensive general, excess umbrella, automobile and pollution liability policies set forth herein."