

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2628.19

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA APPROVING A WASTE DISPOSAL AGREEMENT WITH WHEELABRATOR SOUTH BROWARD, INC.; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Golden Beach, Florida (the "Town") provides residential waste collection services for the Town residents and desires to deliver the waste to a waste management/disposal facility outside of the Town; and

WHEREAS, Wheelabrator South Broward, Inc. ("Wheelabrator") operates a waste disposal facility in Fort Lauderdale, Florida, where it accepts waste for a fee and generates energy from the waste; and

WHEREAS, the Town Council has determined that the Waste Disposal Agreement between the Town and Wheelabrator, attached hereto as Exhibit "A," (the "Agreement") is acceptable and will well serve the needs of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above-stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. The Town Council hereby approves the Waste Disposal Agreement.

Section 3. Implementation. The Town Mayor and Town Manager are directed to take all steps reasonably necessary to implement this Resolution.

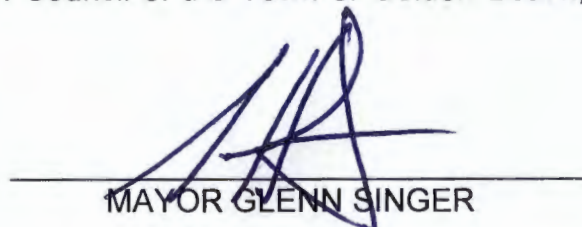
Section 4. Authorization. The Town Manager is authorized to execute the Agreement in substantially the same form as Exhibit "A," subject to the approval of the Town Attorney as to form, content, and legality.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

The Motion to adopt the foregoing Resolution was offered by Councilmember Mendal, seconded by Councilmember Lusskin, and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Kenneth Bernstein	<u>Absent</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Jaime Mendal	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>

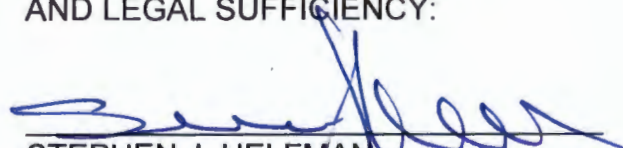
PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 20th day of August, 2019.


MAYOR GLENN SINGER

ATTEST:


LISSETTE PEREZ
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


STEPHEN J. HELFMAN
TOWN ATTORNEY



TOWN OF GOLDEN BEACH

One Golden Beach Drive
Golden Beach, FL 33160

MEMORANDUM

Date: August 20, 2019

To: Honorable Mayor Glenn Singer &
Town Council Members

From: Alexander Diaz, *Alex B*
Town Manager

Subject: **Resolution No. 2628.19 – Approving the Waste Disposal Agreement with Wheelabrator South Broward, Inc.**

Item Number:

11

Recommendation:

It is recommended that the Town Council adopt the attached Resolution No. 2628.19 as presented.

Background:

The Town's existing agreement with Wheelabrator has expired. Their close proximity to the Town and competitive tipping fees make them the right choice for our waste disposal. Wheelabrator is also a waste to energy plant, which is consistent with our "Going Green" approach to Town services.

The proposed increase in tipping fees is below the three year average Consumer Price Index (CPI) for the region.

Fiscal Impact:

As budgeted in the Fiscal Year.

WASTE DISPOSAL AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of 10/01/2019, by and between Wheelabrator South Broward, a Delaware corporation ("Company"), and Town of Golden Beach Florida, a Florida Municipal corporation, a("Hauler"), pursuant to which Hauler may deliver Acceptable Waste (as defined herein) to the resource recovery facility operated by Company and located at 4400 South State Rd 7 Fort Lauderdale, FL 33314 (the "Facility"), in accordance with the following terms and conditions:

1. Delivery of Acceptable Waste. Hauler shall only deliver Acceptable Waste to the Facility subject to the terms and conditions herein. For purposes of this Agreement, Acceptable Waste means all household garbage, trash, rubbish, refuse, normally or which may be hereinafter, collected and disposed of by or on behalf of Hauler, but excluding, without limitation (a) Hazardous Waste, explosives and ordnance materials, pathological wastes, radioactive materials, lead acid batteries, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, nonburnable construction materials and demolition debris and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (b) 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; (c) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (d) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (e) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (f) all other items of waste which Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any 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.

In addition, the parties recognize that some substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, may be determined by the EPA or any other federal, state, or local agency subsequent to the date hereof to be hazardous, toxic, dangerous, or harmful, and at the time of such determination, such substances shall cease to be Acceptable Waste.

For purposes of this Agreement, (i) "Unacceptable Waste" means any waste other than Acceptable Waste and (ii) "Hazardous Waste" means (a) any waste identified as a hazardous waste in 40 CFR Part 261 or in any applicable state or local hazardous waste regulatory program; (b) 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; (c) any waste containing polychlorinated biphenyls in concentrations that are subject to regulation under the federal Toxic Substances Control Act; (d) any waste containing radioactivity at levels that are subject to regulation under federal, state, or local law; or (e) 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.

2. Manner of Delivery. Hauler shall deliver Acceptable Waste in a clean, orderly, and safe manner during scheduled delivery days and hours and in such manner that the Acceptable Waste will not be spilled or blown on the Facility site, or onto any adjacent roadways. Should any waste be so spilled or blown, Hauler shall promptly, at its sole cost and expense, collect and remove such spilled or blown waste and, if Hauler fails to do so, Hauler shall be liable to Company for all costs of such clean-up by Company. Company may inspect the contents of any vehicle delivering waste to the Facility and may require Hauler, if it delivers Unacceptable Waste or Hazardous Waste to the Facility, to separate all such Unacceptable Waste or Hazardous Waste from Acceptable Waste. In the event Company is required to separate any such Unacceptable Waste or Hazardous Waste, or remove from the Facility and dispose of such Unacceptable Waste or Hazardous Waste, Hauler shall pay Company immediately upon demand for any costs and expenses incurred by Company related to such separation, removal, and disposal. If such separation is impractical, Company may refuse the entire load. Hauler agrees to adhere to Company safety rules and regulations at all times while on the Facility premises. Hauler shall cause the Hauler's Declaration in the form attached hereto as Attachment A to be executed by its authorized representative prior to delivering any Acceptable Waste to the Facility.

3. Facility Access. Company shall have the right to designate certain routes to be used by Hauler to deliver Acceptable Waste to the Facility. Hauler agrees to utilize only those designated routes that Company determines to constitute reasonable direct access to the Facility. Company will take whatever action is necessary to ensure compliance with the above directives, including, without limitation, barring the offending truck from the Facility or termination of this Agreement.

4. Delivery Vehicles. Hauler shall cause all vehicles used for deliveries of Acceptable Waste to the Facility to be self-emptying, in safe and clean condition, in good repair, and in compliance with all applicable requirements of the Department of Transportation. At Company's discretion, Hauler shall use only vehicles with the capability of dumping directly into the Facility's refuse pit. Company may at its discretion install transponders in Hauler's vehicles for the purpose of identifying vehicles entering the Facility. Following installation, Hauler shall not remove or tamper with a transponder.

5. Weighing Procedures. Company may utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Waste to the Facility. Waste vehicles delivering Acceptable Waste to the Facility shall have the name of Hauler and truck number

permanently indicated and conspicuously displayed in a location approved by Company. Each incoming waste vehicle shall be weighed, indicating gross weight, time, Hauler, and truck identification number on a weight record. Each vehicle will also be weighed after unloading or a tare weight will be used at the sole discretion of Company. The weight record for all Acceptable Waste delivered to the Facility shall be determined solely from the Facility's scale operations.

6. Refusal of Delivery; Removal of Waste. Company shall have the right, in its sole discretion, to refuse deliveries of:

- (a) Waste other than Acceptable Waste;
- (b) Any waste delivered at other than the then established receiving hours as posted by Company; or
- (c) Any other Acceptable Waste which Company is unable or unwilling to accept or process for any reason including without limitation, the existence of any past due balances owed by Hauler to Company.

Hauler shall immediately and without delay remove from the Facility at its sole cost and expense and in compliance with all applicable laws any waste refused by Company in accordance with the terms of this Agreement. Hauler shall, in the event Company is required to separate such refused waste, remove it from the Facility, and dispose of such waste, pay Company immediately upon demand for any costs and expenses incurred by Company related to such separation, removal, and disposal.

7. Tip Fee and Payment.

(a) Hauler shall deliver, and Company shall accept, in each year during the term hereof, the number of tons of Acceptable Waste set forth on Attachment C for such year (the "Annual Tons"). Hauler agrees to pay Company the tip fee per ton ("short ton" of 2000 pounds) of Acceptable Waste delivered to the Facility set forth on Attachment C for such year. A minimum charge for one ton of delivered waste shall be charged on each delivery weighing less than one ton. Company shall be entitled to additional payment from Hauler for applicable taxes, and for an equitable adjustment to the tip fee in the event of a change in law or regulation that materially impacts Company's disposal of Acceptable Waste hereunder.

(b) Company will invoice Hauler on a weekly basis. All payments shall be due and payable within ten (10) days after the date set forth on the invoice. All invoices shall be delivered to Hauler electronically at the email address below. Hauler shall provide immediate notice to Company updating the email address for invoicing as necessary.

Hauler accounts payable email address for invoicing:

Regular mail:

Town of Golden Beach

1 Golden Beach Drive

Golden Beach, FL 33160

Attn: Maria Camacho, Director of Finance & Alexander Diaz, Town Manager

Payments should be made [*insert appropriate electronic payment method*: through Company's electronic payment site: <https://epay.wtienergy.com>. /or/ by wire transfer to:

Bank name: PNC Bank

Bank ABA #: 031207607

Account Name: Wheelabrator Technologies, Inc.

Account #: 8026321183

Account Type: Checking

Reference: Facility name, Invoice, Hauler Account #/s]

If Hauler is unable to make payment electronically or by wire transfer, Hauler may mail payment to:

PNC Bank

c/o Wheelabrator Technologies Inc.

PO BOX 842226

Boston, MA 02284-2226

Company may assess a monthly late fee of 1.5% (18% annually) of any unpaid amount of an invoice accruing from the due date of the invoice, with a minimum monthly charge of \$5.00, or the maximum late fee allowable under applicable law or regulation. Hauler must provide written notice to the Company within ten (10) days following the date set forth on an invoice in order to validly dispute any amounts set forth therein. All invoiced amounts that are not identified as disputed in such notice are deemed accepted by Hauler and shall be due and payable and incur any applicable late fees in accordance with the terms of this Agreement. Following receipt of notice of disputed terms, Company and Hauler shall work in good faith for a period of thirty (30) days to agree upon such disputed amounts. At the end of such thirty (30) day period all disputed amounts shall be immediately due and payable as determined by the Company in its sole discretion. Company may at its discretion assess a fee for correcting invoicing or ticketing errors determined by the Company to result from Hauler error.

Company may suspend service under this Agreement, choose to accept Acceptable Waste from Customer on a "cash-on-delivery" basis only or refuse any Acceptable Waste if any amounts owed by Hauler are not received by the Company as of the payment due date. Hauler shall pay Company's reasonable investigation costs and attorney's fees associated with collection of amounts owed by Hauler.

8. Term. The term of this Agreement shall begin on 10/1/2019 and continue through 9/30/2022. Company may terminate this Agreement (a) upon 10 day's notice to Hauler; or (b) immediately upon notice to Hauler for failure by Hauler to pay any amounts set forth in Section 7 or failure by Hauler to comply with any of its other obligations hereunder. Hauler's obligation to pay any sum of money due on or prior to the termination or expiration date of this Agreement, and the continuing accrual of any applicable late fees, shall survive the termination or expiration of this Agreement.

9. Indemnity. Hauler hereby agrees, to the maximum extent allowable by law, to indemnify, hold harmless and defend Company, its affiliates, and their respective members, directors, employees, officers and agents, from and against any and all damages, penalties, costs, claims, liabilities, demands, suits, causes of action and expenses (including attorneys' fees) which may be imposed upon or incurred by Company as a result of (a) personal injury (including death) or property damage to any party, including to the person or property of employees of Hauler or Company, arising out of, resulting from or in any way connected with Hauler's use of the Facility or entrance upon the Facility premises, including those arising out of any negligent or willful act or omissions of Hauler or its employees, agents or contractors; provided, however, the obligations of this section shall not extend to any such matters arising from the sole negligence of Company; (b) breach or violation by Hauler of any of its obligations, covenants, or undertakings under this Agreement; (c) breach or violation by Hauler of any federal, state, or local environmental laws or regulations in the performance of its obligations under this Agreement; or (d) any act or omission of Hauler under this Agreement that may result in any liability for Company under any federal, state, or local environmental laws or regulations, including, without limitation, any liability arising from the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any similar state laws. The obligations in this Section 9 shall survive the termination or expiration of this Agreement

10. Insurance. Hauler shall at all times during this Agreement maintain in full force and effect the insurance coverages set forth in Attachment B which is attached and made a part hereof, and all other insurance as may be required by applicable state law. Hauler agrees to comply with all terms and conditions set forth on Attachment B.

11. Surety Bond. If requested, Hauler shall provide a corporate surety bond from a surety company acceptable to Company or establish an escrow fund with a financial institution acceptable to Company as security for the performance of services under this Agreement in an amount determined by Company.

12. Applicable Law. The laws of the state of New Hampshire shall govern the validity, interpretation, construction, and performance of the terms and conditions of this Agreement.

13. Compliance with Laws. Hauler shall comply with all federal, state and local laws, regulations and administrative positions. Hauler has, and will renew, all permits, licenses or permissions of governmental authorities necessary in connection with the performance of its obligations hereunder.

14. Assignment. Hauler shall not assign this Agreement or any rights hereunder without written consent of Company. Any purported assignment by Hauler contrary to this provision shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their permitted successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of Hauler, partnerships, spouses, heirs, and personal and legal representatives. Any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of Hauler, shall be required by written agreement in form and substance satisfactory to Company, to expressly assume and agree to perform this Agreement (including the payment of any and all liabilities accrued hereunder) in the same manner and to the same extent that Hauler would be required to perform if no such succession had taken place.

15. Entire Agreement. This Agreement supersedes all earlier agreements, letters, conversations, purchase orders, proposals, memorandums, and other written and oral communications as of the date hereof, and it contains all the terms agreed to by the parties, with respect to the subject matter hereof and no changes in, additions to, or subtractions from, this Agreement will be binding on the parties unless in writing and signed by Hauler and Company.

16. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be effected thereby.

17. Notices. All notices hereunder shall be in writing with notice deemed to be given upon receipt, addressed as follows:

If to Hauler: Town of Golden Beach
1 Golden Beach Drive
Golden Beach, FL 33160
Attn: Maria Camacho, Director of Finance & Alexander Diaz, Town Manager

If to Company: Wheelabrator Technologies Inc.
100 Arboretum Drive
Suite 310
Portsmouth, NH 03801
Attn: General Counsel

With a copy to: Wheelabrator Technologies Inc.
100 Arboretum Drive
Suite 310
Portsmouth, NH 03801
Attn: Vice President-Fuel Sourcing

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice to the other party. Notice given otherwise than by mailing shall be effective when received.

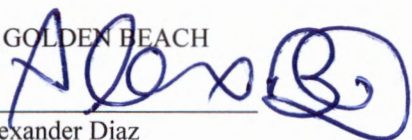
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

WHEELABRATOR SOUTH BROWARD

By: _____
Bruce Stanas
Vice President-Fuel Sourcing

TOWN OF GOLDEN BEACH

By: _____
Alexander Diaz
Town Manager



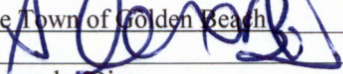
**ATTACHMENT A
HAULER'S DECLARATION**

As the duly authorized and designated representative of Town of Golden Beach, I hereby certify for myself and for and on behalf of Hauler that:

- 1 Hauler has been advised and instructed concerning working conditions, including potential hazards and specified rules as described in.

FM-OPS-COR-410-1 Tipping Floor Rules and Procedures for Haulers and Drivers.
2. Hauler acknowledges that it has read the above mentioned policy and has communicated this policy to all employees that will deliver to Wheelabrator facilities.
3. List a contact person and phone number for the representative of Hauler to whom additional safety and health information can be provided, if needed.

Name: Alexander Diaz, Town Manager
Telephone Number: (305) 932-0744

Hauler Name:	<u>The Town of Golden Beach</u>
Signature:	
Printed Name:	<u>Alexander Diaz</u>
Title:	<u>Town Manager</u>
Date:	<u>09/04/2019</u>

ATTACHMENT B

INSURANCE

During the term of this Agreement, Hauler shall keep in force the following minimum insurance coverages on an occurrence basis with insurance companies rated "B+" or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>	
Comprehensive General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage	For bodily injury and property damage	
	Per Occurrence	\$1,000,000
Comprehensive Excess Umbrella	Per Occurrence	\$4,000,000
Workers' Compensation Insurance	Statutory	
Employers' Liability Insurance	Per Occurrence	\$1,000,000

The comprehensive general liability insurance shall be specifically endorsed to provide coverage for the contractual liability accepted by Hauler in this Agreement.

Prior to disposing of any Acceptable Waste at the Facility, Hauler shall furnish Company certificates of insurance on standard ACORD forms or other evidence satisfactory to 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, Hauler shall furnish 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 South Broward and its affiliates are named as an additional insured with respect to the comprehensive general, excess umbrella, and automobile liability policies set forth herein. A waiver of the underwriter's rights of subrogation applies in favor of Wheelabrator South Broward and its affiliates as their interest may appear with respect to all policies described herein."

ATTACHMENT C

**ANNUAL TONS AND
TIP FEE PER TON**

Year	Annual Tons	Tip Fee per Ton
10/01/2019-09/30/2020	NA	\$66.78/ton
10/01/2020-09/30/2021	NA	\$69.45/ton
10/01/2021-09/30/2022	NA	\$72.30/ton

In consideration of the tip fee per ton set forth above, Hauler shall deliver, and Company shall accept, in each year during the term hereof, the number of tons of Acceptable Waste listed above for such year (the "Annual Tons"), subject to and in accordance with the terms of this Agreement. A minimum charge for one ton of delivered waste shall be charged on each delivery weighing less than one ton. Company shall be entitled to additional payment from Hauler for applicable taxes, and for an equitable adjustment to the tip fee in the event of a change in law or regulation that materially impacts in any way Company's disposal of Acceptable Waste hereunder. Company may reduce the amount of volume of Acceptable Waste accepted in the event of a scheduled or unscheduled plant outage.

Hauler acknowledges that Attachment C, above, is incorporated in the Waste Disposal Agreement, dated 10/01/2019.