

**GOOD NEIGHBOR AGREEMENT
(SPSA Operations Property)**

This GOOD NEIGHBOR AGREEMENT made this ____ day of April, 2010 (the “Effective Date”), by and between THE CITY OF PORTSMOUTH, VIRGINIA, a political subdivision of the Commonwealth of Virginia (“City” or “Portsmouth”) and THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA, a public body politic and corporate (“SPSA”), provides as follows:

RECITALS

A. SPSA has since approximately 1983 provided regional municipal solid waste services to the Cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, Suffolk, and Franklin and to the counties of Isle of Wight and Southampton.

B. In connection with said services, SPSA operates a Waste to Energy facility that converts municipal solid waste to energy in the form of steam and electricity (the “WTE Facilities”).

C. The WTE Facilities are located in Portsmouth. They are to be sold to a private concern, Wheelabrator Portsmouth Inc., a Delaware corporation (“Wheelabrator”), except that one property, commonly known as the Refuse-Derived Fuel Plant (the “RDF Plant”) will be partially conveyed to Wheelabrator (the “Wheelabrator RDF Property”) and partially retained by SPSA (the “SPSA Operations Property”). The SPSA Operations Property and the Wheelabrator RDF Property are shown on Exhibit A as “Parcel ‘2A’” and “Parcel ‘2B’” respectively. SPSA intends to use the SPSA Operations Property primarily as a vehicle maintenance facility, and also for other related purposes.

D. Portsmouth desires to enter into an agreement with SPSA to ensure that the SPSA Operations Property is operated by SPSA with due regard for the environment and community quality.

E. In connection with its sale of the WTE Facilities to Wheelabrator (the “Wheelabrator Transaction”), SPSA desires to obtain clear title to certain real property owned of record by Portsmouth, which property has long been used by SPSA for a conveyor system serving the WTE Facilities (the “Portsmouth Property”). The Portsmouth Property consists of the land and easements that are as described in a deed attached hereto as Exhibit B.

F. The intent of this agreement is to permit SPSA to operate the SPSA Operations Property in a way that is productive and efficient for SPSA, and with due regard for the environment and community quality, and also to facilitate approval of the Wheelabrator transaction.

WHEREFORE, in exchange for the mutual consideration recited above, the parties do hereby AGREE as follows:

AGREEMENT

1. Conveyance of the Portsmouth Property. Portsmouth will convey the Portsmouth Property to SPSA by a deed substantially the same as that attached hereto as Exhibit B, subject to final review and approval by counsel. The conveyance shall be made in escrow a reasonable period in advance of closing on the Wheelabrator Transaction, to be released from escrow and recorded as part of the Wheelabrator Transaction.

2. Certain Shared RDF Property. There are portions of the RDF Plant that will be owned by SPSA but under the operational control of Wheelabrator (the “Shared RDF Property”). The

Shared RDF Property is shown on Exhibit A as “Parcel ‘2C’”. Wheelabrator will ultimately assume certain environmental stewardship responsibilities concerning the Shared RDF Property. SPSA shall authorize Wheelabrator to perform all maintenance and all improvements to the Shared RDF Property that are reasonably necessary for Wheelabrator to comply with its responsibilities therefor.

3. Odor. The SPSA Operations Property has limited potential to cause odors that are reasonably objectionable in nearby Portsmouth neighborhoods. SPSA shall take reasonable steps to prevent the SPSA Operations Property from being the source of such odors. By way of example, and without limitation, such steps shall include:

3.1. SPSA shall maintain a telephone number and/or a website to which citizens may report odor complaints relating to the SPSA Operations Property. Upon receipt of any such complaint, SPSA shall investigate it, using odor meters and/or sensors of an appropriate technology. If the complaint is determined to be well founded, SPSA shall take action which is reasonable under the circumstances to correct the problem and shall timely report its investigation and actions to the maker of such odor complaint.

3.2. SPSA shall keep the SPSA Operations Property reasonably well policed for litter, and all parking surfaces shall be washed and/or swept as necessary from time to time to prevent them from being a source of municipal solid waste odor.

3.3. All solid waste trailers that are brought to the SPSA Operations Property for maintenance shall have their interiors swept and/or washed as needed to prevent them from becoming a source of such odor.

4. Stormwater Runoff. SPSA understands and stipulates that the entire RDF Plant

(consisting of the SPSA portion and the Wheelabrator portion), which is approximately eighteen acres in size and largely impervious, is a potential source of stormwater runoff during heavy rain events, and that such runoff from the entire site would flow primarily into Paradise Creek from the SPSA Operations Property. The parties jointly desire to minimize the environmental effect of such runoff. To that end:

4.1. Wheelabrator intends to construct certain stormwater improvements on the SPSA Operations Property (the “Stormwater Improvements”), to be approved in advance by SPSA, with such approval not to be unreasonably withheld, conditioned, or delayed. The Stormwater Improvements must not interfere with SPSA’s use and operation of the SPSA Operations Property and shall not be unduly burdensome or costly to maintain. SPSA will authorize Wheelabrator to enter on the SPSA Operations Property to construct the Stormwater Improvements and will cooperate with Wheelabrator to enable construction. The City shall expedite any official approvals that may be needed for the Stormwater Improvements. The Stormwater Improvements shall thereafter be maintained by SPSA in good working order.

4.2. SPSA shall continue to take reasonable steps to protect against contaminants (such as petroleum products and solid and liquid components of solid waste) being in stormwater that reaches Paradise Creek from the SPSA Operations Property. These steps shall include reasonable site maintenance and cleaning, and also good faith consideration from time to time of new technology. Provided, however, that this subsection shall not be interpreted to require SPSA to install any new technology that SPSA reasonably determines to be not affordable or not practical.

4.3. SPSA shall conduct stormwater operations so that the SPSA Operations Property at least maintain the present qualification for “Model Level River Star” status, under the River Star environmental stewardship project maintained by the Elizabeth River Project.

4.4. SPSA shall inform Portsmouth a reasonable time in advance of any planned transfer, renewal, or modification of the NPDES Permit for the SPSA Operations Property. SPSA shall promptly inform Portsmouth of any NPDES violations.

5. Vehicles. SPSA shall be responsible for ensuring that all vehicles that are serviced at the SPSA Operations Property do not create excessive noise, vibration, or litter or debris along Victory Boulevard or in the Cradock neighborhood.

6. Appearance of the SPSA Operations Property. SPSA shall keep the SPSA Operations Property in accordance with good industry standards and practices, and in a good, clean and orderly condition, with proper exterior maintenance, reasonably well policed for litter and debris. SPSA shall also conduct activities there so as to minimize the attraction and presence of pests and rodents (including roaches, rats, mice, wild dogs, muskrats, seagulls, and the like) at the SPSA Operations Property.

7. Term. This agreement shall be of a continuing nature for an indefinite term.

8. Dispute Resolution. In the event that there is a dispute between Portsmouth and SPSA concerning interpretation of, or compliance with, any portion of this instrument, the following procedure shall apply:

8.1. The City shall provide written notice to SPSA in sufficient detail for SPSA to determine what provision of this instrument is allegedly out of compliance, and in what way.

8.2. Authorized representatives of the parties shall meet and confer in person and in good faith in an attempt to resolve the matter. If SPSA agrees that there has been noncompliance, SPSA shall have a reasonable opportunity to cure.

8.3. In the event that said “meet and confer” efforts do not resolve the matter, it shall be referred to non-binding mediation by a mutually acceptable mediator. The cost of mediation shall be divided equally between the parties. Neither party shall have the right to pursue any legal remedy unless mediation has been pursued in good faith and has not proved successful.

9. Remedies. In the event that SPSA is out of compliance with any term of this instrument, and if the dispute resolution procedures set forth in Section 8 do not resolve the matter, then the City shall be entitled to seek (A) damages that (i) are the proximate result of the noncompliance and (ii) can be reasonably ascertained, (B) equitable relief if damages cannot be reasonably ascertained, or (C) a mixture of damages and equitable relief, as may be justified by the facts and the law.

10. Recordation. SPSA shall provide to Portsmouth such documentation and further assurances as may be needed to permit recordation of this instrument so that its effect is that of a restrictive covenant on the SPSA Operations Property, running in favor of the City.

11. General Provisions.

11.1. This instrument represents the complete agreement between the parties on the subject matter contained herein. Any prior written or oral representations or agreements on said subject matter are hereby superceded. This instrument may be amended or modified only in writing signed by authorized representatives of the parties.

11.2. This instrument is a Virginia contract, made under and to be interpreted and construed pursuant to, Virginia law.

11.3. If any provision of this instrument is deemed illegal or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable, and its invalidity shall not affect the validity of the remainder of this instrument.

11.4. This instrument may be enforced solely by the parties hereto, and no third party shall have any enforcement rights hereunder.

11.5. If there are ever changed conditions of any type which make it impractical for the overall intent of this agreement to be met, the parties shall meet and confer in good faith for the purpose of seeking an amendment or successor agreement which allows the overall intent to be met in light of the changed conditions.

11.6. Within ten business days after receipt of a request, SPSA and Portsmouth shall deliver to the other party a duly executed and acknowledged certificate setting forth (i) that this agreement is in full force and effect, (ii) the existence of any default, including the nature and extent thereof, (iii) whether there are any defenses, counterclaims or offsets to such default, (iv) the description of this agreement and any amendments or modifications and (v) such other matters relating to this agreement as may be reasonably requested.

12. Contingent on Closing. This agreement is contingent on the sale of the WTE Facilities to Wheelabrator being consummated by December 31, 2010. Should closing not occur by that date, this instrument shall be of no further force and effect unless renewed or extended by mutual consent of the parties.

WITNESS the following signatures:

THE CITY OF PORTSMOUTH, VIRGINIA

By _____
Kenneth L. Chandler, City Manager

Approved as to form and legality:

G. Timothy Oksman, City Attorney

**SOUTHEASTERN PUBLIC SERVICE AUTHORITY
OF VIRGINIA**

By _____
Rowland L. Taylor, Executive Director

Approved as to form and legality:

Anthony M. Thiel, General Counsel