

**HOST COMMUNITY AND GOOD NEIGHBOR AGREEMENT BETWEEN
THE CITY OF SUFFOLK AND
THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

The Host Community and Good Neighbor Agreement, made and entered into this 23rd day of May, 2016 (the “Effective Date”), by and between the CITY OF SUFFOLK, VIRGINIA (hereinafter “Suffolk”), and the SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA (hereinafter “SPSA”) (collectively referred to as the “parties”).

NOW THEREFORE, in consideration of the promises and mutual obligations set forth herein, and other good and valuable consideration including, but not limited to, (i) providing for the health, safety and welfare of the citizens of Suffolk and (ii) providing for the long-term disposal capacity of the Landfill for the benefit of SPSA and its member communities, the receipt of which is acknowledged by the parties hereto, Suffolk and SPSA agree as follows:

DEFINITIONS

Agreement – this Host Community and Good Neighbor Agreement and all schedules, exhibits, attachments, documents and instruments affixed or attached hereto and made a part hereof by specific reference and all duly adopted, written amendments hereto.

Applicable Law – collectively, the Virginia Water and Waste Authorities Act (as amended by Section 15.2-5102.1 of the Code of Virginia, sometimes referred to as the “Cosgrove Act”), the Virginia Waste Management Act, the Virginia Solid Waste Management Regulations, the Virginia Hazardous Waste Management Regulations, the Resource Conservation and Recovery Act, the Code of the City of Suffolk, Suffolk’s Unified Development Ordinance (UDO), and any other federal, state or local law, rule, regulation, ordinance, permit (including, but not necessarily limited to, the Landfill DEQ Permit and any Conditional Use Permit), decree or other governmental requirement that applies to the services or obligations of either party under this Agreement, each as may be amended from time to time.

Authorized Waste – that Solid Waste specifically permitted for acceptance and disposal under the terms of the Solid Waste Permit, issued by VDEQ, at the Landfill.

Complaint Log – refers to the log of any complaints related to the Landfill maintained by SPSA, as described in Section 2.8 of this Agreement.

Composting Facility – a VDEQ permitted facility that produces compost through the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition. Compost as defined by VDEQ is a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

Conditional Use Permit (or CUP) – a permit issued by Suffolk with respect to the Landfill pursuant to the UDO.

Host Community Fee – A fee paid to Suffolk by SPSA in consideration for negative externalities, such as litter, dust, odor, noise, vectors, fire, traffic, road maintenance and repair, and aesthetic impairments, that could occur as a result of Solid Waste deposited at the Landfill.

Landfill – The portion of the Property that at any time while this Agreement is in effect is developed, owned and operated by SPSA for the disposal of Solid Waste via landfilling activities (but expressly excluding any portion of the Property serving as a Composting Facility).

Landfill DEQ Permit – Solid Waste Facility Permit 417, issued by the VDEQ with respect to the Landfill, including the Cell VII Landfill Expansion approved by the VDEQ on June 8, 2011, and any other amendments, modifications and/or renewals thereto or thereof.

Post-Closure Care Termination – Completion of all activities required by VDEQ, whether identified in the Post-Closure plan or not, necessary to effect the final satisfaction of all regulatory permits, bonds, liens or regulations tied to the disposal of waste at the Landfill.

Property – All parcels of land located in the City of Suffolk, Virginia, under ownership or control of SPSA at any time during the term of this Agreement, including but not limited to the Landfill and all undeveloped property contemplated for use in future landfilling, soil borrow and stockpiling operations, and/or composting activities (such Property currently under ownership or control of SPSA is reflected on Exhibit A attached hereto). The Property also includes property(ies) serving as a buffer and storm water systems located, as well as all easements situated, within the footprint of those parcels.

Solid Waste – Any garbage, refuse, sludge, debris and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or residential/community activities, excluding (a) solid or dissolved material in domestic sewage, (b) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board and (c) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

Unauthorized Waste – Solid Waste that is or contains: (a) hazardous waste as described by the Virginia Hazardous Waste Management Regulations, (b) potentially infectious medical waste; (c) regulated levels of polychlorinated biphenyls as defined by the Toxic Substances Control Act, 15 U.S.C. § 2601-2629 or regulations adopted thereunder; or (d) radioactive waste or low-level radioactive waste as defined by the Atomic Energy Act, 42 U.S.C. § 2011, et seq. or the Southeast Interstate Low-Level Radioactive Waste Management Compact or the implementing regulations of either.

VDEQ – the Virginia Department of Environmental Quality or any agents, boards or authorities appointed by the Commonwealth of Virginia for the purpose of regulating, permitting, construction or operation of a landfill and other Solid Waste treatment, management or disposal facility and related facilities.

1. TERM OF AGREEMENT

1.1 Term. This Agreement shall become effective upon the Effective Date set forth above, following execution hereof by both parties. This Agreement

shall expire on the date that is twenty (20) years after the VDEQ certified Post-Closure Care Termination.

1.2 Periodic Review. Notwithstanding the expected long-term duration of this Agreement and relationship of the parties hereunder with respect to the Landfill, the parties acknowledge that circumstances may change over time (such as, by way of example and not limitation, changes in Applicable Law, SPSA's utilization of the Landfill and/or the Landfill's impact on Suffolk and its citizens), and that such changed circumstances may render it necessary or appropriate to review and reconsider certain provisions of this Agreement and the parties' respective obligations hereunder. Accordingly, the parties agree that as and when circumstances warrant following the tenth (10th) anniversary of the Effective Date, and at least once every ten (10) years thereafter, members of their respective executive staff shall meet and discuss any such changed circumstances, the implications thereof on the parties hereunder and any modifications of or amendments to this Agreement that may be reasonably necessary or appropriate, if any.

1.3 Amendments. Notwithstanding the foregoing periodic review provisions or anything in this Agreement to the contrary, no amendment or modification of this Agreement, or any provision hereof, shall be valid unless such amendment or modification (a) is set forth in writing and executed by both SPSA and Suffolk, and (b) has been (i) authorized by a resolution approved by at least seventy-five percent (75%) of the Board of Directors of SPSA and (ii) approved by the Suffolk City Council.

2. OPERATIONS

2.1 Performance Commitment. SPSA intends to operate the Landfill in accordance with this Agreement and Applicable Law. Further, regarding compliance with Applicable Law, SPSA makes certain specific commitments to Suffolk with respect to performance standards specified by or otherwise required under Applicable Law or this Agreement. Any

conditions that are part of a Conditional Use Permit approved by Suffolk or permits approved by the VDEQ shall be deemed to be incorporated herein by reference as part of this Agreement. In addition, such Conditional Use Permit conditions shall be independently enforceable by Suffolk. These commitments are collectively intended to ensure the safety and environmental integrity of the Landfill.

2.2 Operational Commitment. SPSA commits that it will be the sole operator of the Landfill; provided, however, that SPSA may transfer ownership of all or any portion of the Property (including the Landfill) and/or delegate or assign its rights and obligations to operate the Landfill or any operations related to the Landfill, in each case only with the written approval of Suffolk, which approval shall not be unreasonably withheld. Suffolk has the right to review and approve only the qualifications, experience, financial stability, and operating experience of the proposed entity to which the Landfill ownership is being transferred or assigned. In the event of any such contemplated transfer, delegation or assignment hereunder, SPSA shall (a) provide to Suffolk for its review and approval the necessary documentation relevant to its review-rights as stated above, in each case at least ninety (90) days prior to the consummation of such transfer, delegation or assignment, and (b) where applicable, comply with the Right of First Refusal under Section 6.3 below. For the avoidance of doubt, Suffolk acknowledges that it has consented to the Landfill Gas Rights Easement and Lease by and between Southeastern Public Service Authority of Virginia, as Owner, and Suffolk Energy Partners, LLC, as Gasco, dated January 21, 2011.

2.3 Authorized Waste. SPSA shall accept only Authorized Waste at the Landfill. SPSA shall comply with all relevant regulations and siting conditions relative to load checking and waste acceptance and shall immediately upon becoming aware thereof inform Suffolk orally and in writing of any Unauthorized Waste that has been accepted and disposed of

at the Landfill. All such Unauthorized Waste, including any residuals of its treatment or admixtures with other wastes, shall be removed from the Property to a lawful location within a reasonable time, unless VDEQ expressly assents to the storage, treatment or disposal of such Unauthorized Waste at the Property.

- 2.4 Unauthorized Waste. SPSA shall not accept, treat, or dispose of at the Landfill any Unauthorized Waste. For the avoidance of doubt, nothing in the foregoing shall limit or be deemed a limitation on SPSA's right or ability to operate a program for the collection of residential Household Hazardous Waste and/or a Composting Facility at or on the Property (including at the Landfill) in accordance with Applicable Law.
- 2.5 Landfill Design and Operating Standards. The Landfill shall be sited, designed, developed, constructed, operated, closed and maintained in post closure care so as to comply with all applicable provisions of Applicable Law, conditions and requirements of any permits issued by applicable governmental agencies, this Agreement (where applicable), and all other applicable rules and regulations now in effect or enacted hereafter.
- 2.6 Access and Inspection Rights. SPSA shall provide Suffolk and its agents with access to the Property, with reasonable cause, for the express purpose of inspecting the Landfill's compliance with the following nuisance and environmental performance standards set forth in this Agreement: Sections 3.2(c), (f), (j), (q), (r), (s), (t), and (u). Suffolk shall provide advance notice and reason for the inspection to the Landfill supervisor via telephone communication, except in the case of emergency. Suffolk and its agents shall be escorted by the Landfill supervisor or his designee to minimize the disruption to the Landfill operations and ensure that the inspection is completed in a timely and safe manner.
- 2.7 Litter Control. SPSA agrees to keep all areas of the Property free from loose debris or litter resulting from operation and maintenance of the

Landfill and shall keep Bob Foeller Drive and any alternate access roadway from a public street free from mud, dust and litter caused by vehicles using the Landfill. The Landfill shall be operated in accordance with the Applicable Law and its VDEQ approved Operations Plan with respect to control of litter on and off the Property, including by complying with the following requirements:

- (a) Daily soil cover or VDEQ approved alternate daily cover shall be placed upon and maintained on all exposed solid waste at the end of the operating day to control windblown litter. Should the Landfill require operations on a 24 hour schedule, the Landfill will cover waste during the evening shift.
- (b) The active working area shall be maintained throughout the day so that litter does not create a nuisance.
- (c) Temporary portable fences shall be placed in the vicinity of and downwind from working areas to catch blowing litter.
- (d) During windy weather, cover material shall be applied more frequently to control windblown litter. During periods of excessively high wind, operations may be either temporarily suspended or relocated to a more enclosed, shielded area.
- (e) All litter blown from the Landfill operations shall be collected on a daily or as needed basis.
- (f) Litter on an along Bob Foeller Drive and any alternate access roadway from a public street, caused by the delivery of waste to the Landfill, shall be collected at a minimum on a weekly basis.

2.8 Community Relations/Complaint Resolution. SPSA shall assign and designate a telephone number and representative who shall be responsible for receipt of complaints which may arise from the public, relative to the

development or operation of the Landfill, or to report incidents of alleged violations of this Agreement, environmental or employee health regulations, Applicable Law, and Conditional Use Permit conditions. All such complaints and inquiries received from the public shall be responded to promptly and, further, shall be addressed as promptly as is reasonably practicable under the applicable circumstances. SPSA shall also keep a Complaint Log of the date and time such complaint, inquiry or communication was received, the nature of the complaint, inquiry or communication, the name of the person initiating such contact (or “anonymous” if no name is given), the date and time which response was made to such complaint, inquiry or communication, as well as the method in which any such complaint, inquiry or communication was addressed and/or resolved. SPSA shall transmit the Complaint Log to Suffolk every business day in which a complaint is received by SPSA. The Complaint Log shall be transmitted to Suffolk by electronic mail or other manner designated by Suffolk. SPSA shall designate a single person to be located at the Landfill with responsibility for responding to complaints about the Landfill and for maintaining the Complaint Log. SPSA shall advise Suffolk annually of the name, title, address, electronic mail address, and telephone number of such person, and shall advise Suffolk immediately upon any change with respect to such information.

3. PERFORMANCE STANDARDS AND OTHER OBLIGATIONS

- 3.1 Compliance. At all times in connection with the operation of the Landfill, SPSA shall comply with all Applicable Laws relating to the operation of the Landfill.
- 3.2 Performance Standards. The parties hereto acknowledge that the following listed performance standards are essential to an appropriately sited, well-managed and operated Landfill, irrespective of permits, variances, and approvals that may be granted by VDEQ. SPSA shall therefore not:

- (a) Place waste outside the horizontal and vertical boundaries of permitted disposal areas.
- (b) Transfer ownership or operation of the Landfill, including any component of the landfill gas management system, without obtaining (i) any relevant VDEQ approval of the transfer of the Landfill DEQ Permit and any other applicable permits, and (ii) approval from Suffolk in accordance with Section 2.2 above.
- (c) Cause significant and repeated discharges of surface water outside the scope of any VDEQ approved or authorized surface water management and discharge plans or negatively affect surface and subsurface drainage or water quality of adjacent upstream and downstream properties.
- (d) Fail to monitor groundwater in accordance with the VDEQ approved groundwater monitoring plan, including, by way of example, the failure to undertake compliance monitoring, assessment monitoring and development and implementation of corrective measures plan, if required.
- (e) Cause or threaten, by a confirmed release or groundwater flow alteration at the Landfill, an adverse impact to water quality or diminishment of the yield of an offsite water well used for either potable and/or agricultural purposes.
- (f) Fail to operate the Landfill or require the operation of the landfill gas management system in accordance with VDEQ permits and VDEQ approved Operations Plan and Odor Control Plan to effectively control odors so they do not constitute a nuisance as defined by VDEQ or the UDO. VDEQ defines a nuisance as a condition that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes

with the rights of others by causing damage, annoyance, or inconvenience. The UDO Sections 31-608(b) and (c)(1) define what is considered to be an odor and require that odors be confined or minimized so that they are not emitted on a continuous, frequent or repetitive basis, so as to be so injurious or detrimental to the adjacent uses, neighborhood, or the general public. In addition to and not in limitation of the foregoing general provisions of this Section 3.2(f), SPSA acknowledges and agrees that:

- (1) The Landfill gas management system shall be operated, by way of example: (i) to prevent oxygen intrusion above applicable regulatory standards; (ii) to regularly monitor the integrity of Landfill gas collection wells and undertake necessary repairs or replacement of compromised wells; and (iii) to prevent water or leachate from the wells to accumulate in a way that compromises a well or causes landfill gas to migrate into existing and/or future structures outside the boundaries of the Property.
- (2) The Landfill Operations Plan and Odor Control Plan shall include the following provisions with respect to management of odors:
 - (A) Applying daily cover;
 - (B) Activating odor neutralizing system when odor is detected by Landfill staff or the public beyond the Property line, or when the wind direction is toward surrounding residential areas;
 - (C) Installing temporary gas collection system to flare Landfill gas from areas suspected of generating odors, but which are not yet of size and nature to

facilitate connection to the overall Landfill gas collection system; and

- (D) Upon receipt of an odor complaint, SPSA shall initiate the Environmental Standard Operating Procedure SOP 1.33, as amended and approved by VDEQ, for responding to the odor complaint. The SOP requires SPSA personnel to (i) quickly respond to the odor complaint, (ii) confirm the existence of an odor and identify the possible sources, (iii) document all odor readings taken and other pertinent data, (iv) notify all affected parties (complainant, VDEQ and Suffolk) of actions taken to remedy the odor if it is determined to be generated by the Landfill, and (v) document the corrective actions taken to mitigate the odor from the Landfill.

- (g) Fail to operate any Composting Facility located on the Property in accordance with the applicable VDEQ permits and VDEQ approved Operations Plan and in conformance with the UDO.

- (h) Discharge leachate into a sewage collection system without valid permits or in violation of a permit.

- (i) Allow waste filling patterns or phasing that could compromise the structural integrity or stability of the Landfill or undertake excavations in, or around, the Landfill without first undertaking necessary and appropriate geotechnical evaluations.

- (j) Construct the Landfill in a manner that deviates significantly from VDEQ approved development/operating plans or the applicable Conditional Use Permits, or erosion and sediment control plan, including, by way of example, the following components of the

Landfill design: (i) excavation depth and base grades; (ii) liner and sidewalls; (iii) leachate collection system and leachate storage tank(s) location; (iv) site entrance location; (v) Landfill gas management system; (vi) groundwater monitoring well installation; (vii) final elevation and slopes; (viii) final cover; and (ix) surface water management systems, including basin and surface water controls.

- (k) Fail to certify, by means of as-built drawings and construction quality assurance data, that the Landfill has been constructed in accordance with VDEQ approved design and applicable Conditional Use Permits, including, by way of example, fail to provide certified as-built drawings for the following components of the Landfill design: excavation depth and base grades; liner and sidewalls; leachate collection system; Landfill gas management system; groundwater monitoring well installation; final elevation and slopes; final cover; and retention basins and surface water control.
- (l) Excavate or relocate Solid Waste already disposed in the Landfill for purposes of re-grading, landfill gas well and piping installation, or other waste disturbance activities that are likely to generate odors off-site without VDEQ approval and notification to Suffolk.
- (m) Fail to maintain financial assurance as required by VDEQ.
- (n) Cause or allow habitual violations of Applicable Law by reason of dedicating inadequate human resources and equipment to operate the Landfill, or tolerate inadequate operating practices that result in repeated and significant violations of Applicable Law.
- (o) Fail to comply with essential security procedures at the Landfill.

- (p) Allow significant violations of the Landfill's Unauthorized Acceptable Waste Plan ("UAW"), including, by way of example, (i) accept for disposal at the Landfill waste that is not authorized by the UAW, (ii) dispose of Solid Waste at the Landfill by unsupervised, unqualified and untrained Landfill personnel, (iii) dispose of special waste (as defined under Applicable Law) in violation of the UAW and completed special waste profile sheet, or (iv) dispose of Unauthorized Waste.
- (q) Violate any dust control obligations set forth in the Landfill DEQ Permit so as to cause chronic migration of dust, dirt, soil or mud off the Property, as a result of vehicle tracking or being blown by wind.
- (r) Violate any litter control obligations set forth in the Landfill DEQ Permit, the UDO or this Agreement, including, by way of example, fail to collect litter on the Property and maintain necessary litter control devices (such as litter control fences) or to otherwise cause chronic dispersion of litter on private and public properties in the vicinity of the Landfill.
- (s) Fail to maintain final and intermediate cover so as to (i) prevent excessive soil erosion; (ii) properly maintain vegetative cover; or (iii) eliminate exposure of waste.
- (t) Fail to manage stormwater that comes in contact with Solid Waste as leachate as a Solid Waste or pollutant.
- (u) Fail to prevent noise levels beyond the boundary of the Landfill in violation of the UDO. The existing buffer of trees and other vegetation maintained between the Landfill operating areas and residential areas has provided adequate reduction in noise in addition to protective measures utilized in connection with and/or on operating equipment. UDO Section 31-608(c)(8) defines the

maximum decibel level based on the time of the day and duration of the sound, and includes applicable corrections for a noise if it is not smooth and continuous. SPSA acknowledges and agrees that the exceptions to the noise level standards afforded to some operations by UDO 31-608(c)(8) C are not applicable to the Landfill.

3.3 Insurance. SPSA shall obtain the following minimum insurance:

- (a) Comprehensive, broad form local government general liability insurance, covering all activities conducted or to be conducted by SPSA on or from the Landfill, including blanket contractual liability coverage, premises coverage, personal injury coverage, completed operations coverage, and owned and non-owned vehicles and equipment coverage; and
- (b) Pollution liability insurance covering bodily injury and property damage arising out of the actual or threatened release of contaminants from the Property, both on and off-site coverage, and covering the costs of remedial action for any contaminants which have been or are threatened to be released from the Property.
- (c) Limits of liability shall be as set forth below:
 - (1) All vehicles and equipment used by SPSA shall have the following types of coverage and amounts of coverage:

Liability	\$1,000,000
Medical Payments, Private Passenger	\$5,000
Uninsured and Underinsured Motorist	\$1,000,000
 - (2) Comprehensive, broad form local government general liability insurance shall have the following types of coverage and amounts of coverage:

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Products Completed Operations	\$2,000,000
Fire Damage Limit (Any One Fire)	\$300,000
Medical Expense Limit (Any One Person)	\$10,000
Personal and Advertising Injury	\$1,000,000

- (3) Worker's Compensation coverage in accordance with the requirements of Applicable Law.
- (4) Pollution Liability coverage with \$5,000,000 of coverage.
- (5) Umbrella/Excess Liability coverage as follows:

Each Incident Limit	\$10,000,000
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Required coverage shall be maintained for so long as this Agreement remains in effect. Suffolk may, upon written request to SPSA, obtain complete copies of any then-applicable policies and an original endorsement naming Suffolk as an additional insured. So as to ensure maintenance of adequate levels of future insurance coverage for the term of this Agreement, SPSA shall, at least annually, review its insurance coverage and, as and when necessary, update and/or modify such insurance coverage (including, when appropriate, by increasing coverage limits) to ensure that it is in compliance with all Applicable Law and otherwise consistent with reasonable industry standards. SPSA shall further provide Suffolk with:

- (i) ninety (90) days advance notice, in writing, of any proposed material policy change; and
- (ii) endorsements delivered to Suffolk at:

City of Suffolk
442 West Washington Street
Suffolk, VA 23434
Attention: City Manager

- 3.4 Suffolk Response Costs for Spills or Releases. SPSA shall provide or arrange for such response actions as are directed by VDEQ, Suffolk or other applicable regulatory authority or agency, and shall otherwise be responsible for the reasonable response costs of Suffolk and any affected municipality, in the event of a spill, or accident involving the threatened spill, of Solid Waste or any waste or other materials that could be harmful to human and/or environmental health, at or on the Property (including the Landfill). This commitment by SPSA is not intended to be, nor shall it be construed as, an admission by SPSA or a determination by Suffolk that SPSA is legally liable for such spills or accidents.
- 3.5 Environmental Protection Trust Fund. SPSA shall continue to maintain an Environmental Protection Trust Fund to address costs related to any legal suits, mitigation claims, or similar activities, not covered by insurance, relating to environmental pollution or groundwater damage claims made against SPSA. As of the Effective Date hereof, the trust fund had a balance of \$416,600.
- (a) SPSA shall continue to make annual contributions in the amount of \$5,000.00 per year to the existing interest bearing trust fund or any successor trust fund administered by a financial institution jointly selected by both SPSA and Suffolk. SPSA shall make such annual contributions to the account until the earlier of (i) the date that both (x) SPSA is no longer disposing of Solid Waste in the Landfill and (y) SPSA has provided the VDEQ with notice of intent to close the then-current permitted Landfill cell(s), or (ii) the effective date of termination of this Agreement. The Environmental Protection Trust Fund shall remain in existence for a period of thirty (30) years after

VDEQ certification of final closure of the Landfill. Upon expiration of the thirty (30) year period, the unused principal and accrued interest shall be distributed to each city or county that is or was a member of SPSA during the term of the Environmental Protection Trust Fund in the same proportion as the aggregate amount of tipping fees paid by such city or county during its term as a member bear to the total amount of tipping fees paid by all members of SPSA during the term of the Environmental Protection Trust Fund.

- (b) SPSA shall prepare and include in the notes to its audited financial statements, on an annual basis for so long as this Agreement remains in effect, information detailing all funds contributed to and all interest accrued by the Environmental Protection Trust Fund.
- (c) SPSA and Suffolk may not withdraw funds from the account without countersignature of the other party.

4. HOST COMMUNITY FEE

4.1 Payment. Beginning on January 25, 2018, but subject to Section 5.3 below, SPSA shall pay a Host Community Fee to Suffolk as follows:

- (a) SPSA shall pay a Host Community Fee to Suffolk in the amount of Four Dollars (\$4.00) per ton of Solid Waste disposed of into the Landfill. However, no Host Community Fee shall be payable for or in respect of any soil, clay, and/or material approved by the VDEQ for alternative, daily, temporary or final cover for the Landfill.
- (b) The Host Community Fee shall be adjusted annually at the beginning of each SPSA fiscal year, at a minimum by 1% per year but no more than 3% each year, based on year-over-year changes in the Consumer Price Index for all Urban Consumers (CPI-U), with the first such adjustment to be effective at the beginning of fiscal year 2020 (i.e., July 1, 2019).

(c) Notwithstanding anything to the contrary in the foregoing or elsewhere in this Agreement, SPSA's obligations to pay the Host Community Fee shall terminate, and SPSA shall no longer be required or liable to pay Suffolk any Host Community Fee, on the date that both (i) SPSA is no longer disposing of Solid Waste in the Landfill and (ii) SPSA has provided the VDEQ with notice of intent to close the then-current permitted Landfill cell(s).

4.2 Time of Payment. Once and for so long as it is payable under Section 4.1 above, the Host Community Fee shall be paid quarterly. The quarterly payments shall be payable in arrears, calculated for the three month periods ending on the last day of March, June, September and December of each year that such amounts are payable in accordance with Section 4.1 above. Each such payment shall be made not later than 30 days after the last day of the preceding quarter.

4.3 Payment Form. Each Host Community Fee payment shall be accompanied by a form prescribed by Suffolk and stating the weight of Solid Waste disposed at the Landfill during the payment period and providing such other information as may be necessary for Suffolk to assure compliance with this Agreement. The form shall be signed by SPSA's Executive Director confirming the nature of such payment.

4.4 Books and Records; Audit Rights. SPSA shall keep complete and accurate books and records relating to the determination of the Host Community Fees owed under Section 4.1 of this Agreement, in an auditable form. Upon reasonable advance written notice to SPSA, no more often than twice in any fiscal year, SPSA shall permit Suffolk's designated representatives access to such books and records for inspection and photocopying, during SPSA administration's normal business hours. In the event that such inspection reveals any underpayment(s) of the Host Community Fees owed for the period audited, then (a) SPSA shall promptly pay to Suffolk the amount(s)

of such underpayment(s); and (b) if the amount of such underpayment(s) equals five percent (5%) or more of the Host Community Fees actually owed by SPSA for the period audited, then SPSA shall also (i) pay interest at 6% per annum on the amount of such underpayment(s), accruing from the time the applicable Host Community Fees were due and payable to Suffolk, and (ii) reimburse Suffolk for its reasonable costs and expenses of such inspection and, if necessary, collection, including any reasonable professional and technical fees incurred in connection therewith. In the event that such inspection reveals any overpayment(s) of the Host Community Fees owed for the period audited, then the amount of such overpayment(s) shall be credited against the payments of Host Community Fees owed by SPSA in subsequent quarters.

5. SUFFOLK OBLIGATIONS

5.1 General Agreement. Suffolk shall cooperate and collaborate with SPSA in providing for the long-term waste disposal capacity of the Landfill for the benefit of SPSA and its member communities, including but not necessarily limited to the review and consideration of Conditional Use Permit applications and rezoning applications that SPSA may from time to time submit with respect to the Landfill specifically and/or the Property in general.

5.2 Acknowledgements.

(a) Without limiting the generality of the foregoing Section 5.1, Suffolk acknowledges and understands that, following the execution and delivery of this Agreement, SPSA intends to pursue (i) a new Conditional Use Permit covering the portion of the Landfill known as Cell VII (for purposes of landfilling activities) and Cells VIII and IX (for borrow activities), as specifically identified on Exhibit B attached hereto, with mutually agreeable stipulations/conditions (collectively, the "New CUP"); and (ii) rezoning of the Property

identified on Exhibit C attached hereto (the “Designated Property”) from Agricultural (A) to Heavy Manufacturing District (M-2), conditioned upon the submission of a “master plan” with respect to SPSA’s contemplated use of the Designated Property (the “Rezoning”). SPSA shall submit complete applications (as determined pursuant to the UDO) for the New CUP and the Rezoning to Suffolk for contemporaneous consideration on or before December 31, 2016.

- (b) Suffolk agrees to support SPSA in its initiatives with respect to its pursuit of the New CUP and the Rezoning, in each and every case to the extent permitted by law; provided, however, SPSA understands and agrees that (i) Suffolk shall be under no obligation to approve the New CUP or the Rezoning unless Suffolk finds that approving the New CUP and the Rezoning are reasonable, consistent with good land-use planning and in the best interests of the health, safety and welfare of the citizens of Suffolk and serve a public purpose, and (ii) in no event shall the failure to approve the New CUP or the Rezoning be deemed a breach of this Agreement by Suffolk entitling SPSA to monetary damages or equitable remedies of any kind.

5.3 Special Termination Rights.

- (a) Suffolk further acknowledges and understands, however, that SPSA’s core purpose and fundamental obligations include providing for and maintaining long-term waste disposal capacity for its member communities and, moreover, that the Landfill is a critical component of providing for and maintaining such disposal capacity. Furthermore, if the Landfill-expansion initiatives described in Section 5.2 above are not successful and/or are not maintained in effect for so long as SPSA is disposing of Solid Waste in the

Landfill, and SPSA's ability to utilize the Landfill is limited to the existing developed and active cells (Cell V and Cell VI), then SPSA's ability to provide for the long-term waste disposal capacity needs of its member communities will be impaired in a very material respect, and SPSA will be forced to evaluate and pursue alternative means/mechanisms to fulfill its core purpose and provide for such waste disposable needs of its member communities.

- (b) Accordingly, in the event that (i) the New CUP application complies with all regulations of the applicable zoning district and meets the approval criteria established in the UDO but the New CUP is not approved by December 31, 2017, or (ii) the Rezoning of the Designated Property is not approved by December 31, 2017, or (iii) the New CUP, as approved by Suffolk, or any portion thereof, is at any time suspended, revoked, rescinded, terminated or otherwise deemed "inactive" or not available to allow landfilling activities on all or any portion of the Landfill covered by the New CUP (any such event identified in the foregoing clauses (i), (ii) and (iii) is a "Landfill Expansion Failure"), then SPSA shall have the right, as its sole and exclusive recourse in such event, to terminate this Agreement on written notice to Suffolk provided at any time after the applicable Landfill Expansion Failure event, and such termination of this Agreement shall be without any liability to or further obligation of SPSA except to pay any and all Host Community Fees that accrue and are payable through the effective date of such termination, if any.

6. CLOSURE

- 6.1 Landfill Closure Plan. SPSA shall develop and update a Landfill Closure Plan, consistent with the requirements of 9VAC20-81-160, or its revisions or replacements, from time to time for so long as this Agreement remains in effect. SPSA shall maintain financial assurance as required by VDEQ and,

in connection therewith, shall maintain cash reserves that fund the liabilities associated with the Landfill Closure Plan in an amount equal to (at a minimum) the cash reserves (a) that are required by VDEQ to be maintained on hand from time to time in accordance with Applicable Law and/or (b) that are based on SPSA's capacity utilization of the Landfill at the applicable time (collectively, "Landfill Closure Reserves"). SPSA shall have the right to "pool"/maintain the Landfill Closure Reserves together with its other reserves of cash and cash equivalents (investments); provided, however, that SPSA's financial statements shall identify as "restricted funds" (or with such other designation appropriate to indicate the limited use of such funds) the applicable portion of the Landfill Closure Reserves that is required by VDEQ to be maintained on hand to satisfy financial assurance requirements under Applicable Law. Suffolk shall have the right to review the Landfill Closure Plan at any time upon request to SPSA.

- 6.2 Post-Closure Care Plan. No less than 180 days prior to the beginning of construction activities related to closure activities identified in 9VAC20-81-160, or its subsequent replacements, SPSA shall submit a draft copy of the Post-Closure Care Plan, identified in 9VAC20-81-170, or its subsequent replacements, to Suffolk for its review. In the event that Suffolk, through its experts, reasonably determines that the Post-Closure Care Plan does not adequately address the post-closure requirements for the Landfill as specified under Applicable Law, SPSA shall modify the Post-Closure Care Plan to ensure that it satisfies all requirements under Applicable Law, and provide Suffolk with a copy of such modified plan, prior to its submittal to the DEQ for review.

6.3 Right of First Refusal. For so long as this Agreement remains in effect, Suffolk shall have a continuing right of first refusal (“Right of First Refusal”) with respect to the Property, as described below.

- (a) Specifically, if SPSA receives a bona fide offer from a third party that SPSA proposes to accept (an “Offer”) to purchase fee simple title to all or any portion of the Property (including but not limited to the Landfill) (the “Offered Property”), then SPSA shall transmit such Offer in writing to Suffolk for approval in accordance with Section 2.2 above, including by providing Suffolk with all relevant information contemplated under Section 2.2. During the ninety (90) day period following Suffolk’s receipt of the Offer (the “Response Period”), Suffolk may exercise its Right of First Refusal and elect to purchase the Offered Property on the same terms and conditions as those set forth in the Offer by delivering written notice of such election to SPSA prior to the expiration of the Response Period, time being of the essence, and such election to purchase the Offered Property by Suffolk shall be binding on both parties.
- (b) If Suffolk exercises its Right of First Refusal and elects to purchase the Offered Property by giving timely written notice of such election prior to the expiration of the Response Period, then SPSA shall convey to Suffolk fee simple title to the Offered Property, and Suffolk shall pay to SPSA the purchase price for the Offered Property in cash, all in accordance with the terms and conditions set forth in the Offer (together, the “ROFR Closing”). Unless otherwise agreed by the parties, the ROFR Closing shall occur within ninety (90) days after SPSA’s receipt of written notice from Suffolk electing to purchase the Offered Property.
- (c) If Suffolk does not elect to purchase the Offered Property by delivering written notice of such election to SPSA prior to the

expiration of the Response Period (or if Suffolk fails to respond at all during the Response Period), then SPSA may convey the Offered Property to the proposed purchaser identified in the Offer and in accordance with the terms identified in the Offer, subject to Suffolk's approval requirements under Section 2.2 above.

- (d) Upon any change in the proposed purchaser or upon any decrease in the purchase price or modification of other material terms of the Offer (extensions of due diligence or closing periods and modifications to cure title issues or to correct survey/property/environmental related matters shall not be deemed to be material changes), or upon the failure of any sale pursuant to the Offer, Suffolk shall again have the same Right of First Refusal with respect to the Offered Property (and, for the avoidance of doubt, any other portions of the Property not included within the Offered Property); provided, notwithstanding anything to the contrary above, the proposed purchaser in the Offer shall have the right to assign its rights to purchase the Offered Property to any person or entity controlled by or at least fifty percent (50%) owned by principals of the proposed purchaser, or to any person or entity controlled by or at least fifty percent (50%) owned by a person or entity that also controls or owns at least fifty percent (50%) of the proposed purchaser, without Suffolk having the right to again exercise its Right of First Refusal with respect to the Offered Property.
- (e) Notwithstanding any provision contained herein to the contrary, the Right of First Refusal granted to Suffolk hereunder shall not apply to: (i) any lease or other transfer of any interest in all or any portion of the Property other than a conveyance of fee simple title to the Property; (ii) any mortgage, deed of trust or security instrument pertaining to all or any portion of the Property that secures the

repayment of borrowings by SPSA; or (iii) a foreclosure sale by the holder of any such mortgage, deed of trust or security instrument (a “foreclosure sale” as referenced in this clause (iii) shall include a non-judicial or judicial foreclosure and a conveyance in lieu of foreclosure).

7. **DEFAULT AND REMEDIES**

7.1 Defaults.

- (a) A material default and breach of this Agreement by SPSA includes, but is not limited to, the following:
- (1) The failure to make payment of any Host Community Fee payment required to be made under this Agreement after ten (10) days written notice of such failure to make payment.
 - (2) The failure to properly maintain insurance required pursuant to the terms and conditions of this Agreement.
 - (3) The failure to correct or remedy promptly and in the proper and required manner any actual violation of any Applicable Law relating to the development, operation, and closure/post closure care of the Landfill, including Conditional Use Permit conditions. For purposes of this Agreement, SPSA shall be deemed to have acted promptly if it corrects or commences correction of the violation in question within the time allowed by Applicable Law, or within the time otherwise allowed by a court, tribunal or a governmental agency of competent jurisdiction.
 - (4) The failure to observe or perform any of the other covenants, terms, conditions or provisions of this Agreement and Conditional Use Permit conditions to be observed or

performed, where such failure shall continue for a period of thirty (30) days after written notice thereof from Suffolk to SPSA; provided, however, that if the nature of the failure is such that more than thirty (30) days are reasonably required for its cure, then SPSA shall not be deemed to be in default if SPSA commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) Suffolk Default. A material default and breach of this Agreement by Suffolk includes, but is not limited to, the following:

- (1) The failure to correct or remedy promptly and in the proper and required manner any actual violation of any Applicable Law relating to Suffolk's obligations under this Agreement. For purposes of this Agreement, Suffolk shall be deemed to have acted promptly if it corrects or commences correction of the violation in question within the time allowed by Applicable Law, or within the time otherwise allowed by a court, tribunal or a governmental agency of competent jurisdiction.
- (2) The failure to observe or perform any of the other covenants, terms, conditions or provisions of this Agreement, where such failure shall continue for a period of thirty (30) days after written notice thereof from SPSA to Suffolk; provided, however, that if the nature of the failure is such that more than thirty (30) days are reasonably required for its cure, then Suffolk shall not be deemed to be in default if Suffolk commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

7.2 Remedies. In the event of any default or breach by a party (the “Defaulting Party”) of its obligations hereunder, the other party (the “Non-Defaulting Party”) may bring an action to enforce this Agreement and seek any and all relief available at law or in equity, in each case subject to and in accordance with the dispute resolution procedures in Section 8.6 below. If the Non-Defaulting Party substantially prevails in any action to enforce this Agreement or obtain such other relief, then the Defaulting Party shall reimburse the Non-Defaulting Party for such reasonable attorney’s fees and costs (including fees for expert witnesses and consultants) incurred in enforcing this Agreement as may be awarded by the applicable court under Section 8.6(c) below.

7.3 Remedies Not Exclusive. Except to the extent otherwise expressly set forth in this Agreement, no right, power or remedy conferred upon or reserved to any Non-Defaulting Party under this Agreement or under law shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder or now or hereafter available at law or in equity or by statute or otherwise, and every right, power and remedy given by this Agreement to any Non-Defaulting Party may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding any Non-Defaulting Party’s simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of the Non-Defaulting Party to exercise any right, power or remedy arising from any default or breach hereof on the part of the Defaulting Party shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or breach or any acquiescence therein.

8. MISCELLANEOUS

8.1 Assignment. SPSA shall not assign its rights or obligations under this Agreement without the consent of Suffolk, which shall not be unreasonably

withheld; provided, however, that Suffolk's consent shall not be required in connection with the assignment of this Agreement to any acquiror of the Landfill in a transaction approved by Suffolk in accordance with the terms of Section 2.2 above if (but only if) such assignee expressly agrees in writing to assume all applicable obligations of SPSA under this Agreement. Any assignment of this Agreement or SPSA's rights and obligations hereunder in violation of the foregoing requirements shall be void and of no force or effect.

8.2 Notice. Any notice to be given hereunder by either party to another shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated when delivered or after four (4) business days from the date of mailing, whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the others.

To SPSA: Executive Director
 Southeastern Public Service Authority of Virginia
 723 Woodlake Drive
 Chesapeake, Virginia 23320

To Suffolk: City Manager
 City of Suffolk
 442 West Washington Street
 Suffolk, Virginia 23434

8.3 Agreement Controls – Merger Clause. This Agreement constitutes the entire agreement of the parties hereto relating to the subject matter hereof, and all prior communications, discussions, understandings and agreements are hereby superseded in their entirety by this Agreement and merged herein. Notwithstanding the foregoing, however, SPSA and Suffolk acknowledge and agree that (i) they are parties to an Amended and Restated Agreement for Use and Support of a Solid Waste Disposal System dated as

of June 26, 2002, as amended (the "Legacy Suffolk Use & Support Agreement"), which terminates by its terms effective January 24, 2018, after which time it will be of no further force or effect; and (ii) until the termination of the Legacy Suffolk Use & Support Agreement, to the extent of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Legacy Suffolk Use & Support Agreement, the terms and conditions of this Agreement shall control with respect to the subject matter hereof unless otherwise expressly agreed in writing by the parties.

- 8.4 Captions. Captions of the paragraph, sections and sub-sections of this Agreement are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- 8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
- 8.6 Dispute Resolution. Any dispute, claim or controversy arising under, out of, in connection with or relating to this Agreement, or the transactions contemplated hereby, or any course of conduct, course of dealing, or actions of any party relating to this Agreement, including any claim based on or arising from an alleged tort (each, a "Dispute"), shall be resolved exclusively in the following manner:
- (a) Pre-Mediation Procedures. Prior to resorting to litigation in respect of any Dispute hereunder, each party shall cause one or more senior members of its executive staff (*e.g.*, City Manager or Deputy City Manager, in the case of Suffolk, and Executive Director or Deputy Executive Director, in the case of SPSA) to first meet with senior members of the executive staff of the other party and attempt to resolve the Dispute by mutual agreement. The initial meeting under

this Section 8.6(a) shall be held within ten (10) days after the request by either party for any such meeting.

(b) Mediation.

- (1) If the Dispute is not resolved by the parties under Section 8.6(a) above, either party may submit to the other party a written request for non-binding mediation of such Dispute. Within fifteen (15) days after such written request is made, the parties shall attempt to agree on a single mediator. If the parties cannot agree on a mediator within such period of time, then the mediator shall be jointly designated by similarly-situated outside advisors of the parties (for instance, the respective accounting firms or law firms then providing services to the respective parties).
- (2) Mediation shall take place at the place or places and at the time or times set by the mediator, but shall not be held in public. The rules of procedure, evidence and discovery with respect to any mediation shall be as directed by the mediator. Neither party may be represented at hearings before the mediator by an attorney, but each party may consult with counsel outside the hearing room and counsel may assist in preparing any written materials to be used in the mediation, including statements and briefs.
- (3) The mediator shall facilitate communications between the parties and assist them in attempting to reach a mutually acceptable resolution of the Dispute by agreement. The mediator shall make no binding determinations, findings, or decisions.

- (4) The mediator's expenses shall be borne equally by the parties.
- (5) At any point in the mediation process after the initial meeting with the mediator, either party may declare in writing that an impasse exists, and thereafter either party may proceed to litigation in accordance with the terms of Section 8.6(c) below.

(c) Litigation. Any Dispute not resolved in accordance with the foregoing provisions shall be exclusively resolved by a court of competent jurisdiction located in (i) the City of Suffolk, in the case of any suit, action, proceeding or other litigation initiated by SPSA with respect to any Dispute hereunder; or (ii) the City of Chesapeake, in the case of any suit, action, proceeding or other litigation initiated by Suffolk with respect to any Dispute hereunder. Each party hereby irrevocably (x) consents and submits to the exclusive jurisdiction of the foregoing stipulated courts for any suit, action or proceeding initiated in respect of any Dispute hereunder, and (y) waives all right to trial by jury in any suit, action or proceeding initiated in respect of such Dispute.

8.7 Force Majeure. Failure of SPSA to perform under this Agreement, expressly excluding payment of monies owed hereunder, by reason of Force Majeure shall not constitute default under or be cause for termination of this Agreement. However, SPSA shall notify Suffolk of the failure as promptly as practicable under the circumstances, including the reasons therefor, and shall use reasonable best efforts to correct such failure to perform as promptly as practicable under the circumstances. "Force Majeure" shall mean any cause beyond the reasonable control of SPSA, including but not limited to acts of God, war, terrorism, riot, fire, explosion, storm, flood, labor disputes, inability to obtain or use fuel, power or raw materials,

shortage or failure of the usual means of transportation, injunction, governmental action (expressly excluding action by the party whose performance is affected), accident or breakdown of machinery or equipment, whether or not any such occurrence is caused by the negligence, active or otherwise, of the affected party, its agents and/or employees.

- 8.8 Authorization. Each of the parties hereto represents to the other that the individual(s) executing this Agreement on its behalf are duly authorized and empowered to bind such party.
- 8.9 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- 8.10 Agreement to Cooperate. The parties hereto agree to take any and all actions reasonably necessary to effectuate the terms of this Agreement.
- 8.11 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall constitute one and the same instrument.
- 8.12 Compliance with Law. Compliance with a statute, regulation, ordinance or other Applicable Law as used herein means compliance with the current form of statute, regulation, ordinance or other Applicable Law at the Effective Date or as amended thereafter.
- 8.13 Waiver. Any waiver of a right, power or remedy under this Agreement must be in writing and accompanied by legal opinion stating (a) the signing party has the power and authority to waive the right, power or remedy under this Agreement; (b) the person(s) signing the waiver on behalf of the waiving party has been properly authorized to do so; and (c) the waiver has been duly authorized, executed, and delivered by the waiving party and constitute the valid binding amendment of the Agreement of the signing party and is enforceable against the signing party in accordance with its terms. The failure of either party to object to a breach or default by the other

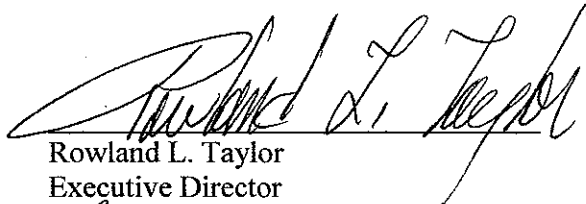
party under this Agreement shall not constitute a waiver of that party's rights with respect to any subsequent breach or default as to the same or any other obligation or condition of this Agreement. No provisions of this Agreement shall be deemed waived without express written consent of waiver as described above.

8.14 Severability. If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the parties shall make good faith efforts to modify this Agreement in a manner that will implement the intent of the parties as embodied herein. Any resulting modification and the remaining provisions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, SPSA and Suffolk have caused this agreement to be executed on their behalf and their seals to be affixed and attested by officials thereunto duly authorized, all as of the day and year first above written.

SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA

By:

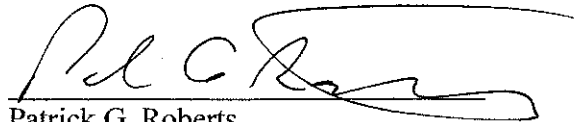

Rowland L. Taylor
Executive Director

ATTEST:

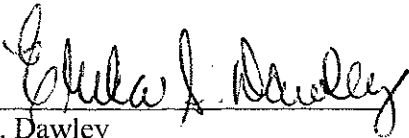

Blanche Christian
Secretary

CITY OF SUFFOLK, VIRGINIA

By:


Patrick G. Roberts
City Manager

ATTEST:


Erika S. Dawley
City Clerk

Approved as to Form:


Assistant City Attorney

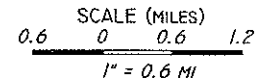
EXHIBIT A

SPSA Property



NOTES:

1. AERIAL IMAGE ACQUIRED FROM CITY OF SUFFOLK GIS WEBSITE MAP NUMBERS 27*37, 27*37*1, AND 27*28A.
2. APPROXIMATE ACREAGE OF SPSA PROPERTY BOUNDARY IS 874.25 AC.



**SPSA PROPERTY MAP
HOST COMMUNITY
AND GOOD NEIGHBOR AGREEMENT**

SPSA REGIONAL LANDFILL, SUFFOLK, VA

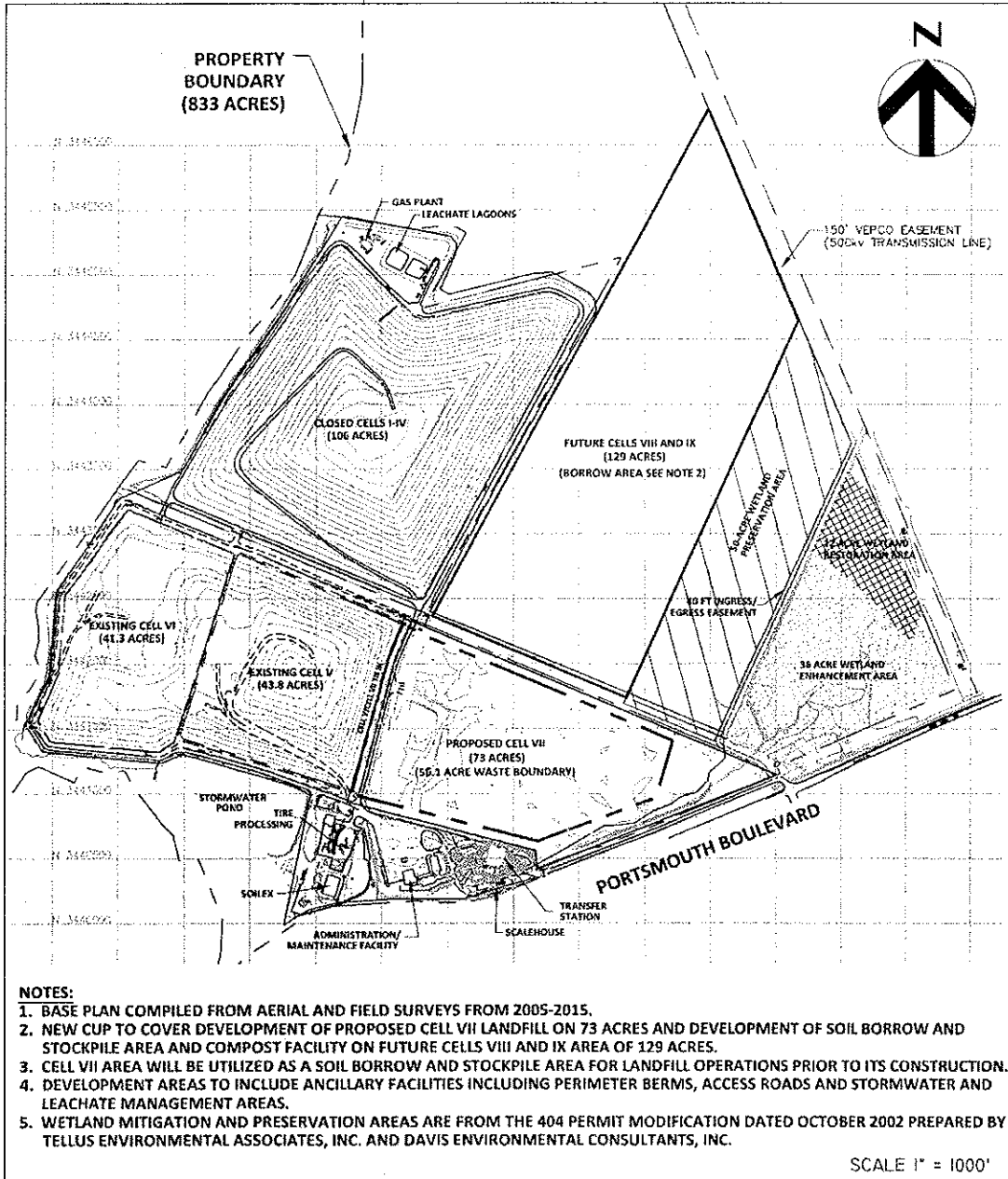


DATE
APRIL 2016

FIGURE
EXHIBIT A

EXHIBIT B

Area of Landfill Covered by New CUP



**AREA OF LANDFILL COVERED BY NEW CUP
HOST COMMUNITY
AND GOOD NEIGHBOR AGREEMENT**

SPSA REGIONAL LANDFILL, SUFFOLK, VA



DATE
APRIL 2016

FIGURE
EXHIBIT B

EXHIBIT C

Designated Property
(for Rezoning)



**DESIGNATED PROPERTY MAP
HOST COMMUNITY
AND GOOD NEIGHBOR AGREEMENT**

SPSA REGIONAL LANDFILL, SUFFOLK, VA



DATE
APRIL 2016
FIGURE
EXHIBIT C