

WASTE HAULING AND DISPOSAL SERVICES AGREEMENT

THIS WASTE HAULING AND DISPOSAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of May 24, 2017 (the “Contract Date”), by and between **WHEELABRATOR PORTSMOUTH INC.**, a Delaware corporation (“Contractor”), and the **SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA** (“SPSA”), a public body politic and corporate of the Commonwealth of Virginia. Contractor, SPSA or both may be referred to herein as the “Party” or the “Parties”, as the context of the usage of such term may require.

RECITALS

WHEREAS, SPSA owns and operates an integrated Solid Waste disposal system in the geographic area of its Member Communities, including a landfill located in Suffolk, Virginia;

WHEREAS, on September 29, 2016, SPSA issued a Request for Proposal for Solid Waste Hauling and Disposal Contract Waste Services for Non-Municipal Waste Received at SPSA Transfer Stations (RFP 03-17), as subsequently amended (the “RFP”), for the purpose of seeking proposals for the hauling and disposal of certain Solid Waste (both Non-Processible Waste and Processible Waste) (as further defined herein, “Contract Waste”);

WHEREAS, Contractor, together with the other RFP respondents in response to the RFP, submitted its proposal describing, among other things, (a) its experience and interest in being selected to perform such services, and (b) its pricing, performance and related proposals relative to the provision of hauling and disposal services for the Contract Waste;

WHEREAS, Contractor was notified by SPSA that it met the requirements of the RFP and was invited to participate in further negotiations;

WHEREAS, following negotiations with other applicable RFP respondents, SPSA selected Contractor in reliance on (a) Contractor’s proposal, submissions and representations in response to the RFP and (b) the negotiated and finalized Agreement;

WHEREAS, SPSA desires to engage the services of Contractor to (a) furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to haul and dispose of Contract Waste collected at the SPSA Transfer Stations and (b) select the applicable disposal location(s) for its disposal of all Contract Waste, all in accordance with the terms and conditions of this Agreement, and Contractor desires to perform all such services under such terms and conditions for the compensation provided herein (collectively, and as further described herein, the “Contract Waste Services”);

WHEREAS, Contractor asserted in its proposal to the RFP and in additional submissions, and thereafter agreed pursuant to the negotiated terms of this Agreement, that from and after the Commencement Date it shall provide all Contract Waste Services and satisfy its other obligations under this Agreement, all in accordance with the terms hereof; and

WHEREAS, Contractor acknowledges and recognizes that if Contractor has not timely satisfied its Pre-Commencement Date Conditions and is not otherwise able to commence performance of the Contract Waste Services hereunder by the Commencement Date, SPSA will

incur substantial damages and costs (both third party and internal), including to procure and arrange for the disposal of Contract Waste at an alternate disposal facility or dispose of such Contract Waste at the SPSA Landfill, which the Parties recognize uses available landfill capacity and diminishes the value of such asset;

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

**SECTION 1
THE WASTE HAULING AND DISPOSAL AGREEMENT**

Section 1.1 Purpose. The purpose of this Agreement is to define the terms and conditions by which Contractor shall manage, operate, maintain and provide the Contract Waste Services commencing on the Commencement Date and continuing through the Term.

Section 1.2 Effective Date. Notwithstanding any provision in this Agreement that may be interpreted or construed to the contrary, the Parties shall neither be bound by the terms and conditions of this Agreement nor shall this Agreement have any force and effect unless and until each Party shall have executed and delivered this Agreement to the other Party hereto. Without limiting the generality of the foregoing, and notwithstanding Contractor's execution and delivery of this Agreement, there shall be no legally binding agreement with respect to SPSA regarding the transactions contemplated by and/or the subject matter of this Agreement unless and until SPSA has duly executed and delivered this Agreement to Contractor (*i.e.*, unless and until the SPSA Signing Date occurs, if at all).

Section 1.3 Cooperation. The Parties shall cooperate and exercise all reasonable efforts in the performance of their obligations and exercise of their rights under this Agreement to facilitate the timely and effective implementation of this Agreement. The Parties shall negotiate in good faith to address and endeavor to resolve disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for more formal resolution.

Section 1.4 Entire Agreement. The following Schedules are attached to and made a part of this Agreement:

SCHEDULES

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|------------|---|--------------------------|
| Schedule 1 | - | Definitions |
| Schedule 2 | - | SPSA Transfer Stations |
| Schedule 3 | - | Operating Plan |
| Schedule 4 | - | Rate Schedule |
| Schedule 5 | - | Fuel Surcharge |
| Schedule 6 | - | Form of Performance Bond |
| Schedule 7 | - | Guaranty |

This Agreement, including the recitals hereto and the foregoing Schedules, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and the terms, conditions and provisions of this Agreement, inclusive of the Schedules, shall govern the obligations of the

Parties with respect to, among other things, Contractor's management, operation, maintenance and provision of the Contract Waste Services to SPSA hereunder. To the extent of any conflict or inconsistency between the provisions of the body of this Agreement and the provisions of any Schedule, the body of this Agreement shall control.

Section 1.5 Definitions; Terms Generally. Capitalized terms not defined above or elsewhere in this Agreement shall have the respective meanings assigned to such terms in Schedule 1 attached hereto. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "approval" and "consent" shall be deemed to be followed by the phrases (a) "without limitation," except as the context may otherwise require, and (b) "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require. The word "or" is not exclusive. Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise. Accounting terms that are used but not otherwise defined herein are to be construed and interpreted in accordance with GAAP or any internationally accepted principles or standards replacing or intended to replace such GAAP. All references to "dollars" or "\$" or "US\$" in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

SECTION 2 PRE-COMMENCEMENT MATTERS; CONTRACT WASTE SERVICES; RELATED CONTRACTOR OBLIGATIONS

Section 2.1 Pre-Commencement Matters.

Section 2.1.1 Conditions Precedent to Commencement of Services. On or before November 1, 2017 (the "Pre-Commencement Date"), each of the following conditions (the "Pre-Commencement Date Conditions") must be satisfied in its entirety by Contractor (or waived in writing by SPSA, in its sole discretion):

(a) All applicable Permits and governmental authorizations and approvals for the performance of the Contract Waste Services that are required to be obtained and in effect on or before the Commencement Date shall have been obtained by or on behalf of Contractor, and Contractor shall have provided reasonable proof of such to SPSA.

(b) As of the Pre-Commencement Date, (i) the representations, warranties, covenants and agreements of Contractor contained in this Agreement shall be true and accurate in all material respects, (ii) Contractor shall have satisfied and performed all of its obligations hereunder required to be satisfied and performed as of such date in all respects and (iii) each of the conditions specified herein shall have been satisfied in all material respects in relation to Contractor. Contractor shall have delivered to SPSA's Authorized Representative a certificate of an authorized officer of Contractor certifying compliance by Contractor of this Section 2.1.1(b).

(c) Contractor shall have provided evidence reasonably satisfactory to SPSA that it has secured, by ownership or contractual arrangement, disposal rights at one or more Disposal Facilities consistent with the requirements of Section 2.2.2(a).

(d) Contractor shall have furnished to SPSA's Authorized Representative evidence that Contractor has secured and has in effect all Required Contractor Insurance meeting the requirements of Section 7.3.

(e) All Material Documents for transportation/hauling services and disposal services related to the Contract Waste Services to be performed hereunder (which shall not include contracts for hauling and disposal of ash or other residual waste generated by any Disposal Facilities utilized by Contractor), in each case as applicable, shall be in full force and effect, and no event of default shall have occurred and be continuing under any such Material Document, *provided however*, that if any such Material Document is not in full force and effect or an event of default shall have occurred or be continuing as of the Pre-Commencement Date, in any such case through no fault of Contractor, then Contractor shall have the opportunity to enter into a replacement Material Document prior to the Commencement Date without incurring any penalty under this Agreement including, without limitation, under Section 9.1.2 (for the avoidance of doubt, SPSA shall be entitled to all applicable rights and remedies hereunder, including under Section 9.1.2, in the event Contractor fails to enter any such replacement Material Document prior to the Commencement Date).

(f) The Performance Bond and the Guaranty shall be in full force and effect on the Pre-Commencement Date; *provided*, however, that Contractor may delay the effectiveness of the Performance Bond until January 1, 2018, upon written notice to SPSA, *if* on the Pre-Commencement Date (i) all other Pre-Commencement Date Conditions have been satisfied in their entirety and (ii) Contractor provides SPSA with reasonable assurances that Contractor will be able to obtain the Performance Bond (the applicable date that the Performance Bond must be in full force and effect under this Section 2.1.1(f) is the "Performance Bond Delivery Date").

Section 2.1.2 Satisfaction of Conditions. Contractor shall exercise commercially reasonable efforts, good faith and due diligence in satisfying all of the Pre-Commencement Date Conditions. Contractor shall give Notice to SPSA's Authorized Representative within five (5) Days after all of the Pre-Commencement Date Conditions have been satisfied by Contractor.

Section 2.1.3 Termination. If the Pre-Commencement Date Conditions have not been satisfied in their entirety by the Pre-Commencement Date (or, in the case of the condition related to the Performance Bond, by the Performance Bond Delivery Date), then SPSA, by Notice to Contractor, may immediately terminate this Agreement in accordance with Section 9.1.2.

Section 2.2 Performance of Contract Waste Services. Subject to the more specific requirements and limitations of this Agreement, Contractor shall, from and after the Commencement Date and throughout the Term, perform the Contract Waste Services with respect to Contract Waste delivered/provided by or on behalf of SPSA (i) in accordance with the Operating Plan and with all other terms and conditions of this Agreement, and (ii) in return only for the Monthly Service Fee and such other compensation as may be provided for pursuant to Section 5 taking into account, in each case, any set-offs, credits, damages, or other deductions or adjustments recognized in Section 5 or other provisions of this Agreement, or both, unless this Agreement otherwise expressly provides for additional compensation to be paid to Contractor.

Section 2.2.1 Hauling Requirements. Contractor shall provide all management, supervision, personnel, materials, equipment, services and supplies necessary to, continuously throughout the Term in a manner consistent with Prudent Industry Practices, during the times specified and otherwise in accordance with Section 3.6 and Section 3.7 below:

(a) receive and accept in Contractor's trailers, whether owned and/or leased by Contractor or its Subcontractors (collectively, "Contractor Trailers"), all Contract Waste delivered/provided by or on behalf of SPSA at the SPSA Transfer Stations, except for any Solid Waste properly rejected pursuant to Section 4.3; and

(b) haul away and otherwise remove from the SPSA Transfer Stations all Contract Waste loaded into the Contractor Trailers by SPSA at the SPSA Transfer Stations, on a daily or other regular periodic basis throughout the Term, including, without limitation, by (i) providing a sufficient number of Contractor Trailers at all SPSA Transfer Stations to perform all hauling required as part of the Contract Waste Services and (ii) removing all Contract Waste from each applicable SPSA Transfer Station within one (1) hour after the stated closing time of the SPSA Transfer Stations, as designated by SPSA from time to time.

Section 2.2.2 Disposal Requirements. Contractor shall provide management, supervision, personnel, materials, equipment, services and supplies necessary to, continuously throughout the Term in a manner consistent with Prudent Industry Practices, dispose, or cause the disposal of, all Contract Waste it removes from the SPSA Transfer Stations as follows:

(a) Contractor shall, by ownership or contractual arrangement under a Material Document, secure and maintain or cause to be maintained at all times on and after the Commencement Date and throughout the Term, one or more Disposal Facilities for disposal of all Contract Waste that Contractor receives from SPSA pursuant to this Agreement, it being acknowledged and agreed by SPSA that Contractor shall in its discretion determine the method of disposal of all Contract Waste, including the applicable Disposal Facilities, provided, (i) such disposal shall be in compliance with all Applicable Law at all times during the Term of this Agreement and (ii) the SPSA Landfill shall not be available for any such disposal requirements; and

(b) Contractor shall transport, at its sole cost and expense, all Contract Waste to the applicable Disposal Facilities for Processing, disposal or other handling, as applicable.

Section 2.2.3 Transportation and Disposal Costs. Unless otherwise specifically provided in this Agreement, Contractor shall be solely responsible for all costs and expenses relative to the Contract Waste Services provided hereunder, including without limitation all costs and expenses incurred in connection with hauling/transporting and disposal of the Contract Waste at the Disposal Facilities, including all costs and expenses incurred under applicable Material Documents and/or owed to any of its Subcontractors in connection with the Contract Waste Services, as well as all tolls or assessments assessed by any Governmental Authority or other Person, all gate fees, all fines/penalties/charges for traffic offenses and any other cost or expense incurred in connection with the hauling, transportation and disposal of Contract Waste hereunder.

Section 2.2.4 General. Notwithstanding anything in this Agreement to the contrary, except to the extent otherwise expressly set forth herein, Contractor shall be solely responsible for all means, methods, techniques, sequences, procedures and programs utilized in connection with its performance of the Contract Waste Services hereunder.

Section 2.3 Compliance with Law. Contractor shall perform all Contract Waste Services contemplated under this Agreement in material compliance with all Applicable Laws, and Contractor shall ensure that all Subcontractors performing Contract Waste Services shall materially comply with all Applicable Laws in the performance thereof. Furthermore, Contractor shall (and Contractor shall ensure that all Subcontractors performing services relative to the Contract Waste Services do) comply with the more stringent of (a) Applicable Laws or (b) the obligations, requirements and standards of this Agreement; *provided* that compliance with the foregoing clause (b) is not a violation of Applicable Law.

Section 2.4 Contractor Trailers and Other Equipment. Contractor shall provide a sufficient number of Contractor Trailers at the SPSA Transfer Stations to provide all hauling required as part of the Contract Waste Services. Contractor shall, at Contractor's sole cost and expense: (a) keep the Contractor Trailers and all equipment used in connection with the performance of Contract Waste Services hereunder in good repair and operating condition and maintain an adequate supply of equipment and spare parts inventory, and maintain such equipment and spare parts inventory, in order to repair and replace the same, if necessary, in a timely fashion and so as not to disrupt the performance of the Contract Waste Services hereunder; (b) operate the Contractor Trailers and such other equipment in accordance with and perform all tests or testing as may be required by all Applicable Law; and (c) notify SPSA promptly if any Contractor Trailers or other major equipment should fail or be seriously damaged, and promptly repair or replace such equipment or procure substitute Contractor Trailers or other equipment of comparable quality.

Section 2.5 Contractor Labor.

Section 2.5.1 Personnel. Contractor shall employ a workforce with an appropriate and sufficient number of hourly and salaried employees, consistent with Prudent Industry Practices, to enable Contractor to perform the Contract Waste Services in a timely and efficient manner. All of Contractor's personnel shall be appropriately trained in accordance with Applicable Law so that the Contract Waste Services will be performed hereunder in accordance with and consistent with Applicable Law and Prudent Industry Practices.

Section 2.5.2 Contractor Relationships. Contractor and Contractor's Authorized Representative, together with each individual designated by Contractor to manage and supervise the Contract Waste Services hereunder, shall establish and maintain during the Term business-like, responsible and responsive working relationships with SPSA's Authorized Representative, SPSA's staff and other officials and representatives of SPSA and all Governmental Authorities and their representatives with whom Contractor has dealings regarding this Agreement.

Section 2.6 Safety Program. Contractor shall (a) ensure that all of its employees and Subcontractors comply with the more stringent of all Applicable Laws or, to the extent available to Contractor, industry recommendations concerning safety related issues, (b) develop safety manuals and amend the same, in each case consistent with clause (a) above, and ensure that all

employees and Subcontractors are trained in safety, health and environmental regulations and procedures specific to the Contract Waste Services, (c) take all reasonable precautions, in accordance with Prudent Industry Practices, to prevent damage, injury or loss, by reason of or related to the provision of Contract Waste Services, (d) establish and maintain safety procedures for the provision of Contract Waste Services and for the protection of employees of Contractor and all other Persons, including invitees and permittees at the Contractor Facilities in connection with the operation and maintenance thereof, at a level consistent with clause (a) above and otherwise consistent with Prudent Industry Practices, and (e) comply with all Applicable Laws relating to the safety of third parties or property at the Contractor Facilities and their protection from damage, injury or loss at the Contractor Facilities.

Section 2.7 Permits. On or before the Pre-Commencement Date, Contractor shall have acquired all Permits required of or for Contractor relative to its performance of the Contract Waste Services hereunder, including but not limited to any Permits required with respect to the Contractor Facilities in connection therewith. Contractor shall thereafter throughout the Term maintain and, as applicable, renew all such Permits required for its performance of the Contract Waste Services and shall be solely liable for the cost and expense of all regulatory fees, levies, assessments and charges pertaining to such Permits. The obligation to obtain and maintain such Permits is solely vested with Contractor. Contractor shall be solely responsible for, and pay when due, all fines, fees and penalties pertaining to Permit violations and all other costs, fees and expenses of performing all work included in administrative orders, notices or similar directives of violation that were the result of Contractor Fault or caused by the occurrence of a Change in Law. If Contractor receives notice of a material Permit violation or is otherwise required to pay any material fine or penalty imposed by any Governmental Authority for a Permit violation, Contractor shall promptly deliver a copy of such notice to SPSA's Authorized Representative and SPSA shall have the right to require, by giving at least five (5) Business Days' prior Notice to Contractor's Authorized Representative, that the Senior Vice President or other appropriate senior level executive designated by Contractor and/or its Parent Company appear in person before the Board to explain the reason(s) for the Permit violation and/or why such payments were or are necessary. If Contractor believes the Permit violation or regulatory fine or penalty is unjustified, Contractor shall have the right to contest the regulatory fine or penalty at its sole cost and expense.

Section 2.8 Regulatory Reports. Contractor shall, in a timely manner, generate, file in an organized and readily retrievable manner, store and provide to all Governmental Authorities all information, applications, renewals and modifications of Permits, notices and reports, including operational data and reports, as may be required of Contractor pursuant to and in form and substance specified by Applicable Law. Contractor shall immediately notify and provide SPSA's Authorized Representative with any and all information as the same becomes available relative to any activity, problem, event or circumstance that (a) threatens or may threaten compliance with the requirements of this Agreement, (b) disrupts or may disrupt performance of Contract Waste Services hereunder or (c) requires notifications to Governmental Authorities.

Section 2.9 Access to the Contractor Facilities. Contractor shall provide SPSA's Authorized Representative and other applicable SPSA representatives and agents, with the full cooperation of Contractor, reasonable access to and rights to visit, photograph and inspect the Contractor Facilities at any reasonable time, upon reasonable prior notice to Contractor's Authorized Representative, for any reason related to this Agreement; provided, that SPSA's

exercise of its rights under this Section 2.9 shall not materially adversely impact Contractor's operation of the Contractor Facilities. Relative to SPSA's inspections and visits as described in this Section 2.9, SPSA's Authorized Representative and SPSA's other representatives and agents shall comply with Contractor's safety rules and regulations with respect to their inspection or visit to the Contractor Facilities and shall not unreasonably interfere with operations of the Contractor Facilities.

Section 2.10 Taxes and Contributions. Contractor shall be liable to pay, and shall pay, when due all taxes, duties, fees, charges, levies, assessments and similar impositions of Governmental Authorities imposed on Contractor under Applicable Law, whether by reason of Contractor's performance of the Contract Waste Services or otherwise, including, but not limited to, (a) sales, excise, storage and consumption taxes, license and registration fees, and all income, profit, franchise, real and personal property taxes; and (b) employment taxes and contributions imposed by Applicable Law or trade union contracts with respect to or measured by compensation (e.g., wages, salaries, benefits or other) paid to Contractor's employees, including taxes and contributions for unemployment compensation insurance, retirement benefits, health and welfare funds, pensions and annuities and disability insurance.

Section 2.11 Compliance With Schedules. Contractor shall comply with each and every provision of the Schedules in all material respects that is applicable to Contractor and/or the performance of its obligations under this Agreement.

Section 2.12 Material Documents.

(a) SPSA shall have the right to review and inspect upon reasonable prior notice to Contractor's Authorized Representative, and to make and retain copies of, all Material Documents utilized in Contractor's performance of Contract Waste Services hereunder or otherwise related to this Agreement, including all contracts and agreements with Subcontractors utilized by Contractor in connection therewith.

(b) Except in accordance with the procedures for Material Amendments set forth in Section 2.12(c) below, Contractor shall *not*, without the prior written consent of SPSA, (i) terminate, amend or otherwise modify any of the Material Documents or (ii) waive or relinquish any rights or power under any of the Material Documents, if either such action would (x) adversely affect Contractor's ability to perform the Contract Waste Services or (y) have the effect of increasing any liability or potential liability of SPSA.

(c) If at any time any amendment or modification is proposed to be made to any Material Document or any waiver or relinquishment of any rights or power under any of the Material Documents is proposed or if Contractor enters into any replacement Material Document (or any agreement that affects the interpretation or application of any Material Document), where any of which such actions/documents would or may (i) adversely affect Contractor's ability to perform the Contract Waste Services or (ii) have the effect of increasing any liability or potential liability of SPSA (each, a "Material Amendment"), then Contractor shall deliver to SPSA's Authorized Representative a copy of each such proposed Material Amendment for SPSA's review and comment at least fifteen (15) Business Days prior to the proposed date of execution of such Material Amendment. Upon receipt of the proposed Material Amendment, SPSA's Authorized Representative shall review the same and shall provide written comments thereon, if

any, within such fifteen (15) Business Day period following receipt of such Material Amendment. Contractor's Authorized Representative shall review such comments and shall use reasonable best efforts to modify the proposed Material Amendment to include such comments. Promptly following the execution or creation of any Material Amendment, but in no event later than five (5) Days after the date of its execution or creation, Contractor shall deliver to SPSA's Authorized Representative a copy of such Material Amendment, certified as a true copy by an officer of Contractor. **Each Material Amendment shall be subject to the prior written approval of SPSA, which approval shall not be unreasonably withheld or delayed; provided however, that notwithstanding the foregoing, such Material Amendment shall be deemed approved fifteen (15) Business Days after the delivery of such Material Amendment to SPSA's Authorized Representative unless SPSA's Authorized Representative disapproves the Material Amendment in writing (stating its objection in reasonable detail and providing comments to the Material Amendment) within such fifteen (15) Business Day period.**

Section 2.13 Meetings. From time to time as may be requested by SPSA's Authorized Representative upon reasonable prior notice to Contractor, (a) Contractor's Authorized Representative shall meet with SPSA's Authorized Representative, SPSA staff and other representatives and agents to review applicable operations, transportation/disposal and other reports, data and other information relating to Contractor's performance of the Contract Waste Services hereunder; and/or (b) Contractor's Authorized Representative shall attend and, if requested, make a presentation at SPSA's Board meeting concerning Contractor's performance of the Contract Waste Services hereunder and any other related matters.

SECTION 3 OBLIGATIONS OF SPSA

From and after the Commencement Date and throughout the Term, and subject to the more specific requirements, limitations and exceptions specified in this Agreement, SPSA shall perform the following:

Section 3.1 Payment of Fees. SPSA shall pay, or cause to be paid, the Monthly Service Fee and such other compensation and amounts due to Contractor at such times and in such amounts as specified in Section 5.

Section 3.2 Allocation of Contract Waste. SPSA shall allocate Solid Waste received at the SPSA Transfer Stations into (a) Solid Waste that SPSA will haul or have hauled to the Designated Disposal Mechanism and (b) Contract Waste that SPSA will load into Contractor Trailers in advance of/in connection with Contractor's performance of Contract Waste hereunder. **Notwithstanding anything in this Agreement to the contrary, and to avoid any doubt, (i) SPSA shall determine in its sole discretion the Solid Waste that it hauls (or has hauled) to the Designated Disposal Mechanism, on the one hand, and that it provides to Contractor for the performance of Contract Waste Services hereunder, on the other hand; and (ii) the Contract Waste may, in SPSA's sole discretion, include Municipal Solid Waste, but the inclusion of any such Municipal Solid Waste within the Contract Waste shall not (or be deemed to) constitute or otherwise establish Contractor as the Designated Disposal Mechanism.**

Section 3.3 Loading of Contract Waste.

(a) SPSA shall load all Contract Waste into the Contractor Trailers provided by or on behalf of Contractor at the SPSA Transfer Stations, and if there is sufficient Contract Waste on hand SPSA shall use best efforts to load each Contractor Trailer to its gross vehicle mass (capacity); *provided*, SPSA may stage any Contractor Trailers used in a drop-and-hook operation as determined by SPSA. In addition, if Contractor is unable to transport the Contract Waste from one or more SPSA Transfer Stations because of Uncontrollable Circumstances, then SPSA shall to the extent reasonably possible in light of capacity and other operational considerations store loaded Contract Waste in the Contractor Trailers at the applicable SPSA Transfer Station(s) for a period not to exceed federal, state or local regulations or twenty-four (24) hours, whichever is less. The storage options shall remain in effect only until normal operating conditions can be restored.

(b) SPSA shall use reasonable efforts to provide Contractor with Contract Waste on a relatively equal and consistent basis over each Billing Year, subject to normal seasonal Contract Waste quantity variations and other factors; *provided*, except as provided in Section 4, Contractor shall receive, accept, haul and dispose of all Contract Waste provided by SPSA to Contractor at the SPSA Transfer Stations regardless of the manner, frequency or volume with respect to which SPSA provides such Contract Waste to Contractor.

Section 3.4 Compliance With Schedules. SPSA shall comply with each and every provision of the Schedules that is applicable to SPSA and/or the performance of its obligations under this Agreement.

Section 3.5 Compliance with Law. SPSA shall perform all of its obligations contemplated under this Agreement in material compliance with all Applicable Laws, and SPSA shall require that all of its Subcontractors performing services relative to SPSA obligations hereunder materially comply with all Applicable Laws.

Section 3.6 SPSA Transfer Station Operating Hours; Changes.

Section 3.6.1 Operating Hours. Subject to Section 3.6.2, Contractor shall receive, collect and haul Contract Waste from the SPSA Transfer Stations during their respective normal operating hours, as may be designated and posted by SPSA from time to time ("Operating Hours"), and for a period of one (1) additional hour after the end of such Operating Hours, subject to such limitations as SPSA may impose from time to time on available Operating Hours at any given SPSA Transfer Station(s); *provided, however*, SPSA shall provide Contractor with as much advance notice of any such limitations it determines to impose as soon as is reasonably practicable under the circumstances. In addition, subject to applicable State regulations and any Permit(s) issued thereunder, Contractor may collect and haul Contract Waste from the SPSA Transfer Stations at such additional times as Contractor and SPSA may agree, if any. Notwithstanding anything in this Agreement to the contrary, and to avoid any doubt, Contractor acknowledges and agrees that, with respect to SPSA Transfer Stations that at any time during the Term maintain Operating Hours on Saturdays, Contractor shall perform Contract Waste Services hereunder, including by receiving, collecting and hauling Contract Waste from such SPSA Transfer Stations, every Saturday during the Term (excluding Saturdays that are Legal Holidays) unless otherwise agreed by SPSA's Authorized Representative.

Section 3.6.2 Changes to Operating Hours.

(a) Notwithstanding anything herein to the contrary, SPSA may change (increase or reduce) the Operating Hours of any SPSA Transfer Station upon forty-five (45) Days' prior written notice to Contractor.

(b) In addition, SPSA shall consider, in good faith, any request by Contractor to temporarily increase the Operating Hours, and accordingly receive Contract Waste delivered by or on behalf of SPSA during such increased Operating Hours, at one or more SPSA Transfer Stations if (i) requested by Contractor to accommodate unusual quantities of Contract Waste delivered to any such SPSA Transfer Station(s) resulting from an emergency or from programs of SPSA or any local governmental entity to promote clean-up of Solid Waste within the SPSA Service Area; (ii) the applicable SPSA Transfer Station(s) is able, in the reasonable judgment of SPSA, to receive such additional quantities of Contract Waste; and (iii) Contractor provides SPSA's Authorized Representative with reasonably adequate advance Notice of and opportunity to respond to any such request.

Section 3.7 SPSA Transfer Station Management.

Section 3.7.1 SPSA shall use commercially reasonable efforts to operate and manage the SPSA Transfer Stations so as to (a) maximize the receiving, sorting and loading of Contract Waste for the benefit of Contractor in connection with its performance of Contract Waste Services hereunder, (b) maximize the efficient and continuous loading of Contract Waste into Contractor Trailers and (c) minimize Contractor vehicle turnaround times, in each case subject to any applicable obligations relative to the Designated Disposal Mechanism. Furthermore, if temporary storage of Contract Waste at the SPSA Transfer Stations is required, SPSA shall, to the extent allowable by Applicable Law (and subject, where applicable, to Section 4.2 below), store Contract Waste at the SPSA Transfer Stations in the Contractor Trailers (and, for the avoidance of doubt, not on the SPSA Transfer Station floors) so as to further the intent of this Section 3.7. SPSA shall have the right to modify the Operating Plan from time to time in connection with its management of the SPSA Transfer Stations. Any such modifications implemented by SPSA shall be designed to maximize/optimize, and otherwise coordinate, the performance by Contractor of all Contract Waste Services hereunder (including without limitation the hauling of Contract Waste), on the one hand, and SPSA's performance of its obligations under any applicable agreement/arrangement with the Designated Disposal Mechanism, on the other hand. Such modifications may include, among other things, identifying the nature and scope of Contract Waste Services to be provided at particular SPSA Transfer Stations (e.g., exclusive hauling of all Solid Waste versus limited hauling of only Non-Processible Waste or other designated Solid Waste). SPSA shall consult with Contractor in advance of any such modifications to the Operating Plan, shall consider in good faith any suggestions and other input Contractor may have with respect thereto and, except in the case of an emergency situation, shall provide Contractor with at least thirty (30) days' prior written notice before implementing any such changes to the Operating Plan; *provided*, however, Contractor acknowledges and agrees that SPSA shall have the right to make any final decision with respect to Operating Plan modifications that relate to the management of the SPSA Transfer Stations and associated activities; *provided, further*, however, that (i) if such Operating Plan modifications related to the management of SPSA Transfer Stations do *not* relate to (x) changes in the particular SPSA Transfer Stations for which Contractor provides exclusive hauling of all

Solid Waste (versus limited hauling of Non-Processible Waste or other designated Solid Waste), (y) estimated Tons to be hauled by Contractor or (z) the actual Tons of Solid Waste hauled from a given SPSA Transfer Station (as compared to the estimated Tons of Solid Waste to be hauled as set forth in the Operating Plan) (*none* of which, for the avoidance of doubt, shall entitle Contractor to any Monthly Service Fee adjustment or other price concession) and (ii) if Contractor demonstrates to SPSA that any such Operating Plan modifications related to the management of SPSA Transfer Stations that are not “excluded” under clause (i) above result in material increased costs to Contractor, then the Parties shall work together in good faith to adjust the Monthly Service Fee payable to Contractor hereunder in a mutually agreeable manner (or otherwise afford with an alternative, mutually agreeable price concession/adjustment) to account for such increased Contractor costs. Any changes to the Operating Plan that do not relate to management of the SPSA Transfer Stations shall be subject to, and shall require, the mutual written agreement of both Parties.

Section 3.7.2 Notwithstanding the foregoing or anything else in this Agreement to the contrary, SPSA’s efforts with respect to Contract Waste and general management of the SPSA Transfer Stations shall not under any circumstances or in any event take priority with respect to or adversely affect SPSA’s receiving, sorting, loading and hauling/transporting of Solid Waste under any applicable agreement/arrangement with the Designated Disposal Mechanism , it being expressly acknowledged and agreed by Contractor that the Solid Waste to be delivered by or on behalf of SPSA from the SPSA Transfer Stations to the Designated Disposal Mechanism shall have priority over any and all obligations to Contractor, and any and all rights of Contractor, hereunder.

Section 3.8 Prohibited Waste.

Section 3.8.1 Inadvertent Deliveries. SPSA shall not knowingly or intentionally deliver/provide to Contractor at any SPSA Transfer Station any Prohibited Waste, and SPSA shall use commercially reasonable efforts to minimize quantities of Prohibited Waste included within the Contract Waste delivered/provided hereunder; provided, however, inadvertent deliveries of Prohibited Waste to Contractor hereunder, which occur despite such efforts, shall not (a) constitute a breach of SPSA’s obligations hereunder, (b) be deemed to be a SPSA Fault, or (c) give rise to an Event of Default of Contractor or SPSA hereunder.

Section 3.8.2 Segregation and Removal of Prohibited Waste. Upon becoming aware of SPSA’s loading (or attempted loading) of any Prohibited Waste into Contractors Trailers, or if after the acceptance of Contract Waste hereunder Contractor determines that such Contract Waste contains Prohibited Waste, then Contractor shall notify SPSA’s Authorized Representative who, with the reasonable assistance and cooperation of Contractor, shall expeditiously and within a period of time reasonable under the circumstances for the industry, remove or arrange for the removal and proper disposal of the Prohibited Waste, at SPSA’s sole cost and expense. However, if Contractor deems it necessary or appropriate for the protection of property, human health or the environment (including, as applicable, the Contractor Facilities or Disposal Facilities), or for the continuing safe and efficient performance of Contract Waste Services hereunder, Contractor, acting through itself or others, may remove and properly dispose of such Prohibited Waste and charge SPSA the actual costs that Contractor incurs in connection with removing and disposing of any such Prohibited Waste.

Section 3.9 Commercial Agreements. Within ninety (90) days after the Contract Date, SPSA shall use reasonable best efforts to enter into, and shall thereafter use reasonable best efforts to maintain, waste disposal agreements with commercial/private haulers for SPSA's acceptance of Solid Waste from applicable locations within the SPSA Service Area at SPSA Transfer Stations (the "Commercial Agreements"); *provided, however*, Contractor acknowledges and agrees that such efforts by SPSA with respect to the Commercial Agreements shall *not* under any circumstances require (or be deemed or construed to require) SPSA to contract with any specific (or specific number of) commercial/private haulers or charge the applicable commercial/private haulers any particular fees or rates (maximum, minimum or otherwise) for the right to use SPSA Transfer Stations to dispose of Solid Waste, including, without limitation, fees or rates that would result in SPSA paying Monthly Service Fees to Contractor hereunder in excess of the amounts it collects from such commercial/private haulers.

Section 3.10 General. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be construed to restrict SPSA's right to (a) sell, transfer or otherwise dispose of any of the SPSA Transfer Stations (or the SPSA Landfill), or (b) contract with a third party for the operation of any of the SPSA Transfer Stations (or the SPSA Landfill); *provided, however*, that any such transaction shall not relieve SPSA from its obligations under this Agreement, and SPSA shall cause any such purchaser, transferee or third party to assume SPSA's obligations hereunder directly associated with such assets, in each case if any.

SECTION 4 CERTAIN MATTERS RELATED TO CONTRACT WASTE; REJECTION RIGHTS; WEIGHING AND RELATED MATTERS

Section 4.1 Contract Waste Estimates. Subject to the terms and conditions of this Agreement, within thirty (30) Days after the commencement of each Billing Year during the Term, SPSA shall provide Contractor with an estimate of the Contract Waste that it expects to provide to Contractor hereunder, both in aggregate and per SPSA Transfer Station, during such Billing Year (SPSA may in its discretion, but shall not be required to, independently update such estimates throughout the applicable Billing Year, though SPSA shall provide Contractor with additional and/or more frequent estimates to the extent that SPSA receives additional/more frequent updates from commercial/private users of the SPSA Transfer Stations and SPSA shall use commercially reasonable efforts to include such additional/more frequent estimates in the terms of any Commercial Agreements) (each, a "Contract Waste Estimate"); *provided, however*, that SPSA's delivery to Contractor in one or more Billing Year(s) of Contract Waste that exceeds, or that is less than, the Contract Waste Estimate for such Billing Year(s) shall *not* under any circumstances (a) constitute a breach of SPSA's obligations hereunder, (b) be deemed to be an Uncontrollable Circumstance or SPSA Fault, or (c) give rise to a SPSA Event of Default hereunder. **In addition to and not in limitation of the foregoing, and so that there is no doubt, Contractor expressly acknowledges and agrees that (i) SPSA cannot (and does not) make any guarantees regarding the volume of Contract Waste that will be provided to Contractor hereunder in any given Billing Year (or at all), and thus any Contract Waste Estimates provided to Contractor shall not (and do not) constitute a guarantee by SPSA; and (ii) SPSA cannot (and does not) commit to provide Contractor with any "minimum" amount of Contract Waste during any given Billing Year and/or during the Term of the Agreement.**

Section 4.2 Contractor Penalties. Contractor and SPSA shall reasonably cooperate on the dispatch of Contractor Trailers removing Contract Waste from the SPSA Transfer Stations. Notwithstanding the foregoing or anything in this Agreement to the contrary, and in addition to and not in lieu of any other rights and remedies provided herein, from and after the date that is ninety (90) days after the Commencement Date and throughout the remainder of the Term thereafter, Contractor shall pay to SPSA, as liquidated damages, an amount (the "Contractor Penalty") equal to One Thousand Dollars (\$1,000) for (a) each instance (*i.e.*, on a per-trailer basis) that Contractor fails to provide Contractor Trailers in sufficient numbers to accept, hold and/or timely remove from any SPSA Transfer Station(s) all Contract Waste provided by SPSA at such SPSA Transfer Station(s) on any given Day(s); or (b) any Contractor Trailer that contains a full load (or partial load if required by Applicable Law) of Contract Waste that remains at a given SPSA Transfer Station more than one (1) hour after the end of the Proposed Loading Hours for such SPSA Transfer Station as set forth in the Operating Plan, in each case except to the extent any such incident is the result of Uncontrollable Circumstances or SPSA Fault; *provided*, however, that if Contractor provides SPSA with as much notice as is reasonably practicable of any extenuating circumstances that will or are reasonably likely to affect Contractor's timely removal of Contractor Trailers from the SPSA Transfer Stations hereunder (such as, by way of example and not limitation, last minute requests by SPSA to haul remaining Solid Waste at the end of the Proposed Loading Hours for a given SPSA Transfer Station(s) where Contractor is not the "exclusive" hauler, as set forth in the Operating Plan), then SPSA shall consider such extenuating circumstances in good faith and, if the applicable circumstances were not reasonably foreseeable by Contractor and/or otherwise outside of Contractor's control, then SPSA shall waive the applicable Contractor Penalty; *provided, further*, however, that (x) if the extenuating circumstance(s) resulting in the Contractor Penalties are *not* directly caused by a non-routine, unanticipated, atypical or unforeseen request by or action of SPSA, then Contractor shall not be entitled to more than five (5) such waivers of the corresponding Contractor Penalties in any given Fiscal Year, *but* (y) if the extenuating circumstance(s) resulting in the Contractor Penalties *are* directly caused by a non-routine, unanticipated, atypical or unforeseen request by or action of SPSA (such as, by way of example and not limitation, unanticipated last minute requests by SPSA to haul remaining Solid Waste at the end of the Proposed Loading Hours for a given SPSA Transfer Station(s) where Contractor is not the "exclusive" hauler, as set forth in the Operating Plan), then there shall not be any limitation on such waivers of the corresponding Contractor Penalties in any given Fiscal Year. SPSA shall provide Contractor with Notice of a Contractor Penalty as soon as reasonably practicable, and in any event within three (3) Business Days after the Contractor Penalty has been incurred, and Contractor shall pay such Contractor Penalty in accordance with Section 5.3.2 below. The Parties acknowledge and agree that the Contractor Penalties provided for in this Section 4.2 (i) are to be liquidated damages, (ii) are intended to measure as accurately as possible the actual damages of SPSA, and (iii) are reasonable and necessary for the protection of SPSA, and do not constitute an unlawful penalty.

Section 4.3 Rejection of Deliveries. Except as expressly provided in this Agreement, Contractor may reject at the SPSA Transfer Station tenders by or on behalf of SPSA of (a) Contract Waste delivered/provided by SPSA that Contractor is unable to accept as a result of (i) an Uncontrollable Circumstance or (ii) SPSA Fault; (b) Contract Waste that cannot be accepted by Contractor at the SPSA Transfer Stations due to a mechanical breakdown of SPSA-owned or contracted equipment, whether or not the breakdown is a result of SPSA Fault; and (c) Contract Waste under circumstances wherein Contractor discovers Prohibited Waste and the requirements

associated with the loading, transport and disposition of such Prohibited Waste unreasonably delays the provision of Contract Waste Services for such Contract Waste.

Section 4.4 Weighing and Scales; Weigh Records; Delivery of Data and Information; Calibration of Scales.

Section 4.4.1 Weighing; SPSA Scales. SPSA shall, at its sole cost and expense, operate and maintain its scales at the SPSA Transfer Stations, and associated computer equipment and weigh scale records, for the purpose of weighing and recording the Tons of Contract Waste delivered/provided to Contractor under this Agreement and facilitating the calculation and determination of the information specified in the SPSA Tonnage Reports. In connection therewith, SPSA shall periodically check, confirm and record the tare weight of Contractor vehicles removing Contract Waste from SPSA Transfer Stations. Contractor shall have the right to have an authorized representative present from time to time during business hours in the scale houses at the SPSA Transfer Stations to observe scale house operations.

Section 4.4.2 Weigh Records. Subject to the last sentence of Section 4.4.4, the weigh scale records at the SPSA Transfer Station(s) shall be dispositive for purposes of (a) calculating the total Tons of Contract Waste delivered/provided to Contractor hereunder and (b) determining the Monthly Service Fees payable by SPSA under this Agreement.

Section 4.4.3 SPSA Tonnage Reports.

(a) On a daily basis, no later than 5:00 p.m. (local time) on each Business Day of the Billing Month, SPSA shall cause to be transmitted electronically to Contractor's Authorized Representative the total quantity (in Tons) of all Contract Waste loaded by SPSA into Contractor Trailers at the SPSA Transfer Stations during the preceding Day, broken down (identified) per SPSA Transfer Station (the "SPSA Tonnage Reports").

(b) If requested by Contractor's Authorized Representative, SPSA shall make copies of all weigh scale records pertaining to the information specified in the SPSA Tonnage Reports at no cost or charge to Contractor. Contractor shall also have reasonable access to SPSA's scale records for audit purposes throughout the Term.

Section 4.4.4 Unavailability of Scale Records; Calibration of Weigh Scales.

(a) If actual data for any given Day(s) during the preceding Billing Month is not available, SPSA shall reasonably estimate the quantity of Tons and such estimates shall be the definitive basis for the Monthly Invoice for the Billing Month; *provided*, however, that Contractor shall have the right to review any and all such estimates upon written request to SPSA's Authorized Representative, and the Parties shall promptly work together to resolve any discrepancies in such estimates that are identified by Contractor in good faith within ten (10) Business Days after Contractor's review thereof (for clarity, estimates shall be definitive, and final, for purposes of this Agreement unless Contractor notifies SPSA of any such discrepancies within such ten (10)-Business Day period).

(b) SPSA, at its sole cost and expense, shall cause the weigh scales at scales at the SPSA Transfer Stations to be tested and calibrated by an independent third party experienced in the testing and calibration of these types of weigh scales as often as is required by

Applicable Law. (The Parties acknowledge and agree that the State is an experienced, independent third party for purposes of the preceding sentence.) Contractor may at its sole cost and expense request more frequent testing of the weigh scales at the SPSA Transfer Stations. If the weigh scale records recorded by Contractor at its Disposal Facility as compared to those recorded by SPSA at the SPSA Transfer Stations and reported in the SPSA Tonnage Reports reflect a discrepancy of two percent (2.0%) or more on any applicable reports, the Parties shall promptly work together to resolve and, based on such mutual resolution, reconcile any overpayments or underpayments as soon as reasonably practicable.

Section 4.5 Composition of Contract Waste; Ownership.

Section 4.5.1 Composition Not Guaranteed. Nothing in this Agreement shall be construed to guarantee, and Contractor understands and agrees that SPSA does not in any manner guarantee, the composition, quality or contamination of any Contract Waste delivered by or on behalf of SPSA, including the proportion of any particular material contained therein (such as Processible Waste) or any other property of Contract Waste delivered by or on behalf of SPSA.

Section 4.5.2 Ownership. Upon acceptance of Contract Waste by Contractor, all of SPSA's ownership interest in and to the Contract Waste, other than any Hazardous Waste, if any, shall be assigned, transferred and conveyed to Contractor, and Contractor hereby accepts all right, title and interest in and to such Contract Waste so delivered.

SECTION 5 COMPENSATION

Section 5.1 General. Commencing with the first Billing Month and for each Billing Month thereafter, SPSA shall pay to Contractor the applicable fees for Contract Waste Services properly performed pursuant to the terms of this Agreement and in accordance with the terms of this Section 5. **During the period between the Contract Date and the Commencement Date, Contractor shall receive no compensation hereunder, and no compensation shall accrue whatsoever.** Contractor acknowledges and agrees that its pricing of the amounts payable by SPSA hereunder takes into account any and all Contract Waste Services performed, including any such services performed by its Subcontractors, and all liability incurred by Contractor in satisfying all obligations during the period between the Contract Date and the Commencement Date. Unless otherwise expressly set forth in this Agreement, the applicable amounts payable under this Section 5 shall be the sole and exclusive compensation to be paid to Contractor for the Contract Waste Services.

Section 5.2 Monthly Service Fee. Beginning on the first Billing Month and continuing through the end of the Term, the monthly fee payable by SPSA to Contractor for Contract Waste Services provided hereunder during a given Billing Month (the "Monthly Service Fee") shall be calculated in accordance with Section 5.2.1 and Section 5.2.2, collectively, below.

Section 5.2.1 Monthly Transfer Station Amount. With respect to each SPSA Transfer Station, the "Monthly Transfer Station Amount" for each SPSA Transfer Station shall equal (a) the total Tons loaded by SPSA on to Contractor Trailers at such SPSA Transfer Station during such Billing Month and hauled away by Contractor in accordance with this Agreement, as

determined based on the SPSA Tonnage Reports for such Billing Month, *times* (b) the applicable Service Rate for such SPSA Transfer Station in effect for the applicable Billing Year (as set forth the Rate Schedule).

Section 5.2.2 Total Monthly Service Fee. The Monthly Transfer Station Amount for each SPSA Transfer Station shall then be aggregated, and then added together with the applicable Fuel Surcharge, for each given Billing Month to determine the total Monthly Service Fee for such Billing Month.

Section 5.3 Monthly Payments, Method of Payment; Offset Rights.

Section 5.3.1 Payments to Contractor.

(a) No later than noon on the fifth (5th) Business Day of each Billing Month, Contractor shall prepare and deliver to SPSA's Authorized Representative a monthly invoice, in a form reasonably satisfactory to SPSA (the "Monthly Invoice"), reflecting the Monthly Service Fee owed by SPSA for the immediately preceding Billing Month.

(b) SPSA shall pay Contractor the Monthly Service Fee due and owing hereunder and reflected in the Monthly Invoice within thirty (30) Days following the date of the Monthly Invoice. If the due date for payment is not a Business Day, payment is due on the next Business Day following that date. If SPSA fails to remit the full amount payable when due, interest on the unpaid portion shall accrue at the rate provided in Section 12.16.

Section 5.3.2 Payment to SPSA. Contractor shall pay (or cause to be paid) SPSA any Contractor Penalties or other amounts owed to SPSA under this Agreement within thirty (30) Days after receipt of Notice of the Contractor Penalty or other invoice. If the due date for payment is not a Business Day, payment is due on the next Business Day following that date. If Contractor fails to remit the full amount payable when due, interest on the unpaid portion shall accrue at the rate provided in Section 12.16.

Section 5.3.3 General Offset Rights. The Parties acknowledge and agree that amounts payable by SPSA to Contractor, on the one hand, or by Contractor to SPSA on the other hand, in respect of a given Billing Month may be credited or "netted" so that only one payment is made by SPSA to Contractor or Contractor to SPSA, as the case may be; *provided, however*, the foregoing general offset rights shall neither limit nor be deemed a limitation on the Parties' respective payment obligations under this Section 5 or their specific offset rights set forth above.

Section 5.4 Payment Disputes. Notwithstanding anything in this Agreement to the contrary, if a good faith dispute arises between the Parties concerning the Monthly Invoice or any invoice provided hereunder, the disputing Party shall (a) give Notice to the other Party of such disputed amount on or before the due date of the amount disputed, together with sufficient information to allow the other Party to understand the nature of the Dispute; and (b) pay all undisputed amounts on the due date. If the resolution of any good faith dispute determines that (i) one Party has *underpaid* the other Party, then such underpaid amount shall be paid promptly with interest accruing at the rate calculated pursuant to Section 12.16 from the date that the underpaid amount was due until the date of refund of the resolved amount, and/or (ii) one Party has overpaid the other Party, then such overpaid amount shall be refunded promptly with interest accruing at the rate calculated pursuant to Section 12.16 from the date that the overpaid amount

was paid until the date of refund of the resolved amount. The remedies for disputes over payment are exclusively limited to those provided in this Agreement.

SECTION 6 UNCONTROLLABLE CIRCUMSTANCE; SPSA FAULT; CONTRACTOR FAULT

Section 6.1 Uncontrollable Circumstance. Each Party shall be excused from the performance of its applicable obligations under this Agreement to the extent such Party is prevented or, individually or in the aggregate, materially delayed from performing such obligations due to an Uncontrollable Circumstance. If either Party claims an Uncontrollable Circumstance as a basis for not performing its obligations under this Agreement, then the Party making such claim shall (a) promptly upon discovery thereof provide telephone or oral, or both, notice thereof, including Notice, to the other Party of the Uncontrollable Circumstance; (b) provide an estimate of its expected duration; (c) describe in reasonable detail its probable effect on the performance of its obligations hereunder; (d) exercise all reasonable efforts to continue to perform its obligations hereunder to the extent not prevented or delayed by the Uncontrollable Circumstance; (e) expeditiously take action to cure the Uncontrollable Circumstance; (f) exercise all reasonable efforts to mitigate or limit damages or other adverse effects to the other Party; and (g) provide prompt notice, including Notice, to the other Party of the cessation of the Uncontrollable Circumstance that gave rise to its inability to perform.

Notwithstanding any provision in this Agreement that may be interpreted to the contrary, SPSA shall not be liable or otherwise responsible for any increased costs, charge, fees or expenses (including any capital costs) or decreased or lost revenues incurred or suffered, as the case may be, by Contractor arising as a result of the occurrence of an Uncontrollable Circumstance.

Section 6.2 SPSA Fault. Contractor shall be excused for failure or delay in performance of any act or obligation under this Agreement to the extent Contractor is prevented from performing such act or obligation by reason of SPSA Fault. If Contractor claims the occurrence of SPSA Fault as the basis for not performing its obligations under this Agreement, then Contractor's Authorized Representative shall (a) promptly upon the discovery thereof provide telephone or oral, or both, notice thereof, including Notice, to SPSA's Authorized Representative of the occurrence of SPSA Fault; (b) provide an estimate of the expected duration of and impact on the relevant provisions of this Agreement; (c) describe in reasonable detail its probable effect on the performance of the applicable Contract Waste Services; (d) exercise all reasonable efforts to continue to perform the affected Contract Waste Services to the extent not prevented by the impact of SPSA Fault; (e) exercise all reasonable efforts to mitigate or limit damages to SPSA; and (f) provide prompt notice, including Notice, to SPSA's Authorized Representative of the cessation of the impact of SPSA Fault that gave rise to its inability to perform.

Section 6.3 Contractor Fault. SPSA shall be excused for failure or delay in performance of any act or obligation under this Agreement to the extent SPSA is prevented from performing such act or obligation by reason of Contractor Fault. If SPSA claims the occurrence of Contractor Fault as the basis for not performing its obligations under this Agreement, then SPSA's Authorized Representative shall (a) promptly upon the discovery thereof provide telephone or oral, or both, notice thereof, including Notice, to Contractor's Authorized

Representative of the occurrence of Contractor Fault; (b) provide an estimate of the expected duration of and impact on the relevant provisions of this Agreement; (c) describe in reasonable detail its probable effect on the performance of SPSA's obligations hereunder; (d) exercise all reasonable efforts to continue to perform the affected obligations to the extent not prevented by the impact of Contractor Fault; (e) exercise all reasonable efforts to mitigate or limit damages to Contractor; and (f) provide prompt notice, including Notice, to Contractor's Authorized Representative of the cessation of the impact of Contractor Fault which gave rise to its inability to perform.

SECTION 7 INDEMNIFICATION; LIMITATION OF LIABILITY; INSURANCE; AND SECURITY

Section 7.1 Indemnification.

Section 7.1.1 Indemnification by Contractor.

(a) Contractor shall indemnify, defend and hold harmless SPSA, the Board, and SPSA's agents, officers, servants, subcontractors, employees and contractors (collectively, the "SPSA Indemnified Parties") from and against any and all liability for violations or alleged violation of any Applicable Law (hereinafter in this Section 7.1 referred to as "liability") and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under "workers compensation laws" or any other Applicable Laws) arising in connection with, or out of, or resulting from the performance of the Contract Waste Services under this Agreement, if any such liability or Loss (i) is attributable to: (A) bodily injury, sickness, disease or death; (B) violation of any statutory or regulatory rule designed to protect against bodily injury, sickness, disease or death; (C) damage to or destruction of tangible property, including any diminution in value and the loss of use resulting therefrom; (D) any violation of any Applicable Law or any common law duty; or (E) any sums paid or expended by SPSA to any Governmental Authority as a fine, penalty or damage for any violation of any Applicable Law; and (ii) is caused by or results from, in whole or in part, any act or omission of Contractor, any tier of Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them or SPSA may be liable. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of SPSA Indemnified Parties, except that Contractor shall not be required to defend or indemnify SPSA Indemnified Parties for a Loss to the extent any such Loss results from (x) the willful misconduct or negligence of any SPSA Indemnified Parties or (y) breach of this Agreement by SPSA.

(b) Contractor shall promptly notify SPSA's Authorized Representative of the assertion of any claim with respect to which SPSA Indemnified Parties may be entitled to indemnification hereunder, and SPSA shall likewise promptly notify Contractor of the assertion of any claims against which SPSA Indemnified Parties seek (or may seek) to be indemnified hereunder, provided, however, that any failure or delay by SPSA in giving such notice shall not affect Contractor's indemnification obligations hereunder except to the extent of a showing by Contractor of actual, substantive prejudice to its ability to satisfy such indemnification obligations. Contractor shall thereafter defend the SPSA Indemnified Parties, and may assume sole and exclusive control over the defense and settlement of any claim with

respect to which the foregoing indemnity obligations apply, so long as there is not a conflict of interest in such defense; *provided, however*, that Contractor will not enter into any settlement that adversely affects SPSA's rights or interests, imposes any liability or obligation on SPSA or contains any admission or acknowledgement of wrongdoing by SPSA without SPSA's prior written consent (which may be granted or withheld in SPSA's sole and absolute discretion). The SPSA Indemnified Parties shall provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim. SPSA shall be entitled to participate in the defense of any such claim at its sole cost and expense. The extent of Contractor's indemnification obligations hereunder shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy processed or provided in connection with this Agreement. In any and all claims against SPSA Indemnified Parties by any employee of Contractor or SPSA, the indemnification obligations under this Section 7.1.1 shall not be limited in any way as to the amount and types of damages, compensation or benefit acts or other employee benefit acts. Contractor's obligations hereunder shall not be affected by Contractor's use of Subcontractors, but Contractor shall use commercially reasonable efforts to require each Subcontractor to indemnify SPSA Indemnified Parties under any contract entered into by Contractor with each such Subcontractor in terms similar to the indemnification provided for the benefit of SPSA Indemnified Parties under this Section 7.1.1, but nothing in this Section 7.1.1 or otherwise in this Agreement shall ever create any direct relationship between a Subcontractor and SPSA.

Section 7.1.2 Indemnification by SPSA.

(a) To the extent permitted by Applicable Law (without waiving its sovereign immunity), SPSA shall indemnify and hold harmless Contractor, and its agents, officers, directors and employees (collectively, the "Contractor Indemnified Parties"), from and against all liability for Losses arising in connection with, or out of, or resulting from the negligence or willful misconduct of SPSA, its officers, employees or agents if such liability or Loss is attributable to: (i) bodily injury, sickness, disease or death; (ii) violation of any statutory or regulatory rule designed to protect against bodily injury, sickness, disease or death; (iii) damage to or destruction of tangible property, including any diminution in value and the loss of use resulting therefrom; or (iv) any violation by SPSA of any Applicable Law or any common law duty.

(b) To the extent that SPSA is found to be responsible for any liability or Loss, nothing herein shall be construed to waive any sovereign immunity SPSA may have under Applicable Law, or to waive the procedural or notice provisions contained therein.

Section 7.2 Exclusion of Certain Damages; Limitation and Liability. EXCEPT FOR LIABILITY IN RESPECT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (a) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOST REVENUES OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES, AND (b) IN NO EVENT, WHETHER BECAUSE OF A BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT, TERM OR ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER CAUSE

OF ACTION OF ANY KIND OR NATURE WHATSOEVER, WHETHER BASED UPON CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE BY A PARTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, SHALL A PARTY'S TOTAL LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT EXCEED FIVE MILLION DOLLARS (\$5,000,000); PROVIDED, HOWEVER, THAT (i) NOTHING IN THIS SECTION 7.2 SHALL BE CONSTRUED TO LIMIT THE RESPONSIBILITY OR LIABILITY OF CONTRACTOR FOR ACTIONS OR CLAIMS BROUGHT BY THIRD PARTIES, AND (ii) TO THE EXTENT THAT SPSA IS FOUND TO BE RESPONSIBLE FOR ANY LOSS, NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE THE SOVEREIGN IMMUNITY OF SPSA BEYOND THAT DESCRIBED IN APPLICABLE LAW OF THE STATE, OR TO WAIVE THE PROCEDURAL OR NOTICE PROVISIONS CONTAINED THEREIN.

Section 7.3 Contractor Insurance Requirements.

Section 7.3.1 Obligation to Secure, Maintain and Pay for Insurance Coverage.

(a) Required Contractor Insurance. Except as otherwise provided in this Section 7.3, Contractor, on its own behalf and on behalf of anyone directly employed by it for whose acts or omissions Contractor may be liable, shall secure or cause to be secured on or before the Pre-Commencement Date, and maintain during and through the Term, the insurance policies with the policy limits specified in Section 7.3.1(b) below (the "Required Contractor Insurance"). Evidence of the Required Contractor Insurance shall be provided to SPSA's Authorized Representative promptly following receipt thereof. The administrative and premium payments for each such policy shall be borne exclusively by Contractor. Contractor may also secure insurance coverages and policies in addition to the Required Contractor Insurance, and all such insurance costs shall be borne exclusively by Contractor at its sole cost and expense.

(b) Required Contractor Insurance. Contractor shall obtain and maintain at its expense the following insurance coverages from insurers who are licensed in the Commonwealth of Virginia and who have a Best's rating of A- or better: (a) worker's compensation insurance as required by law; (b) employer's liability insurance having a minimum limit of liability of one million dollars (\$1,000,000) per occurrence; (c) comprehensive general liability primary insurance with a broad form endorsement including personal injury, property damage and blanket liability coverage having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate; (d) comprehensive automobile liability primary insurance applicable to all owned, hired and non-owned vehicles having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence; (e) property insurance covering all Contractor vehicles and other equipment used in connection with this Agreement having a limit sufficient to replace all such equipment; (f) environmental impact liability insurance having a minimum limit of liability of five million dollars (\$5,000,000) per occurrence, and (g) excess (of (b), (c) and (d) above) liability insurance having a minimum limit of liability of five million dollars (\$5,000,000) per occurrence and in aggregate per policy year.

Section 7.3.2 Insurance Requirements Generally. The following shall be applicable to the Required Contractor Insurance coverages required to be secured and maintained pursuant to Section 7.3.1:

(a) Insurance Deductibles. Contractor shall be responsible to (and shall) satisfy any and all deductibles and self-insured retentions contained in the Required Contractor Insurance coverages required to be secured and maintained by Contractor under this Agreement, as well as any excluded loss or losses, if the same are within Contractor's liability under this Agreement. Notwithstanding the minimum limits of coverage stated in Section 7.3.1(b), the limit of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage, and no individual insurance coverage shall have a deductible in excess of one hundred thousand dollars (\$100,000) without the prior express written consent of SPSA.

(b) Duty to Maintain Insurance. Subject to this Section 7.3, all Required Contractor Insurance to be secured and maintained by Contractor under this Agreement shall be continuously maintained throughout the Term. Failure of Contractor to obtain and maintain the insurance required under and pursuant to the terms of this Agreement shall be deemed an Event of Default for purposes of Section 8.1.2 Failure of Contractor to maintain any Required Contractor Insurance shall also not relieve Contractor from any liability under this Agreement, nor shall these requirements be construed to conflict with Contractor's indemnification obligations. Contractor shall further ensure that all Required Contractor Insurance is not canceled or materially changed, and that it is renewed during the Term, and Contractor at its sole cost and expense shall pay such extra premium as required to ensure no lapse of Required Contractor Insurance coverage for any time period.

(c) Policies of Insurance; Certificates as Evidence of Insurance. Certificates of Insurance shall be furnished to SPSA's Authorized Representative for review and approval on or before the Pre-Commencement Date. If a policy of Required Contractor Insurance is canceled, not renewed or materially changed, Contractor shall provide, or cause to be provided, a certificate for the substitute policy to SPSA's Authorized Representative for review and approval as early as possible before the commencement of the substitute policy period. If a policy of Required Contractor Insurance is renewed without material change, Contractor shall supply to SPSA's Authorized Representative a certificate of insurance that reflects the policy number of Contractor's approved policy, lists the coverages provided and shows the policy's effective and termination dates. Contractor shall provide to SPSA's Authorized Representative proof of renewed Required Contractor Insurance coverages in the form of a certificate of insurance of each such policy as far in advance of the renewal as possible.

(d) Carrier Renewal and Cancellation Notification. Any policy or policies procured, or caused to be procured, by Contractor shall provide by endorsement that SPSA shall, without exception, be given not less than (a) ten (10) Days' Notice prior to any non-payment of insurance premium and (b) sixty (60) Days' Notice prior to the carrier's cancellation, non-renewal or material change, or within such other period of Days required by Applicable Law, and that, in the case of both clause (a) and (b), such Notice shall be delivered to SPSA Authorized Representative as provided for in this Agreement. Confirmation of this mandatory Notice of nonrenewal, cancellation or material change shall appear on the certificate of insurance and on any and all policies for Required Contractor Insurance. If any such policy is subject to

expiration or cancellation and Contractor fails to provide SPSA with written commitments to renew or purchase other such insurance meeting the requirements of this Section 7.3 at least sixty (60) Days prior to the effective date of such expiration or cancellation, then SPSA, upon written notice to Contractor's Authorized Representative, shall have the right to purchase or renew such coverage and Contractor shall then be obligated to reimburse SPSA for the premiums and broker fee costs for such insurance.

(e) Additional Insured. SPSA shall be covered as an additional insured under all Required Contractor Insurance to be secured and maintained by Contractor under this Section 7.3, and such insurance shall be primary with respect to the additional insured status and a severability of interest provision shall be applicable to each policy.

(f) No Representation of Coverage Adequacy. The Required Contractor Insurance coverages as required in this Section 7.3 represent that amount of insurance coverage considered by SPSA in its reasonable judgment to be proper and prudent for this Agreement, but SPSA is not representing that the coverages and limits required will necessarily be adequate to protect Contractor, and such coverages and limits shall not under any circumstances be construed nor deemed to be a limitation on Contractor's liability under this Agreement.

Section 7.4 SPSA Insurance Requirements. SPSA shall secure or cause to be secured at least thirty (30) Days prior to the Commencement Date, and maintain throughout the Term of this Agreement, commercial general liability and property insurance written to insure the SPSA Transfer Stations and applicable SPSA tangible personal property, with such policy limits to be determined in the reasonable discretion of SPSA, (the "Required SPSA Insurance"), and SPSA's Authorized Representative shall provide evidence of the Required SPSA Insurance to the Contractor's Authorized Representative. The administrative and premium payments for the Required SPSA Insurance shall be borne exclusively by SPSA. Neither Contractor nor any of its Subcontractors shall be obligated or required to commence any Contract Waste Services of any kind under this Agreement until all Required SPSA Insurance shall have been obtained and evidence of the same has been provided to Contractor. SPSA may secure in addition to the Required SPSA Insurance, insurance coverages and policies not specified or required under this Section 7.4, and all such additional insurance costs shall be borne exclusively by SPSA at its sole cost and expense

Section 7.5 Performance Bond. As security for the performance of Contractor's obligations under this Agreement, Contractor shall, by the Performance Bond Delivery Date under Section 2.1.1(f) above, obtain and cause to be issued and delivered to SPSA by a Qualified Surety a performance bond ("Performance Bond") in form and substance as provided in Schedule 6 or as may otherwise be acceptable to SPSA. The Performance Bond shall have a bonded sum equal to five million dollars (\$5,000,000) and shall be for a term of one (1) year. At least sixty (60) Days prior to the expiration of each term of such Performance Bond, Contractor shall cause the Performance Bond to be renewed for an additional one (1) year term. Contractor shall repeat such renewal process each year thereafter for the Term, and such renewal shall be through a Qualified Surety. Contractor's Performance Bond required to be secured, maintained and renewed under this Section 7.5 shall specify that such Performance Bond shall be subject to and governed by State law.

Section 7.6 Guaranty. The Parent Company or such other Person satisfactory to SPSA in its sole discretion (the "Guarantor") shall have executed the Guaranty attached hereto as Schedule 7 on or before the SPSA Signing Date (the "Guaranty"). SPSA shall consider in good faith any written requests made by Contractor from time to time during the Term to replace the existing Guarantor under the Guaranty with another Person satisfactory to SPSA.

Section 7.7 Audit. SPSA, or a third Person auditing firm at the discretion of SPSA's Authorized Representative, shall have the right to audit Contractor's Records, including financial and tax records and invoices for fees, expenses, costs and charges paid by SPSA to Contractor under this Agreement, at any time at SPSA's sole cost and expense. Contractor shall make all such Records available at a mutually agreeable location within the SPSA Service Area. Contractor shall fully cooperate with SPSA regarding any and all such audits.

SECTION 8 EVENTS OF DEFAULT

Section 8.1 Events of Default by Contractor. The occurrence of any of the following at any time during the Term shall constitute an Event of Default (herein, an "Event of Default") by Contractor:

Section 8.1.1 Failure or Refusal to Perform. The inability, failure or refusal by Contractor to perform timely any material obligation under this Agreement, and despite the fact that Contractor may be liable for and paying damages to SPSA relative to any such inability, failure or refusal under this Agreement (*unless* such failure or refusal is caused by an Uncontrollable Circumstance, SPSA Fault, an Event of Default by SPSA or other clearly recognized justification, if any, under this Agreement); *provided, however*, insofar as failure or refusal relates to:

- (a) the failure to maintain Required Contractor Insurance, all pursuant to Section 7.3, then Section 8.1.2 shall govern;
- (b) the failure to maintain solvency, then Section 8.1.3 shall govern;
- (c) any untrue representation or warranty, then Section 8.1.4 shall govern;
- (d) this Agreement is assigned by Contractor in breach of Section 12.1, then Section 8.1.5 shall govern;
- (e) the failure or refusal of Contractor to (i) establish, obtain, maintain and renew in a timely manner the Performance Bond in accordance with Section 7.5, or (ii) a default of the Guarantor under the Guarantee in accordance with Section 7.6, then in each case Section 8.1.6 shall govern; or
- (f) Contractor abandons its performance of the Contract Waste Services, other than pursuant to its right to suspend performance due to an Uncontrollable Circumstance in accordance with Section 6.1, then Section 8.1.7 shall govern.

Section 8.1.2 Failure to Maintain Required Contractor Insurance. Failure of Contractor to obtain, maintain and, as applicable, renew in a timely manner, the Required Contractor Insurance all in accordance with Section 7.3.

Section 8.1.3 Failure to Maintain Solvency. Failure of Contractor or Guarantor to maintain solvency, as determined under the applicable definition of “insolvent” contained in 11 U.S.C. § 101(32), as amended. The occurrence of any of the following are deemed a failure to maintain solvency:

(a) inability, failure, or refusal to pay debts as they mature; entry into an arrangement by Contractor or Guarantor with or for the benefit of their creditors; Contractor’s or Guarantor’s consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of Contractor’s or Guarantor’s property; or

(b) a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against Contractor or Guarantor under the laws of any jurisdiction, which proceeding is not dismissed within sixty (60) Days of filing; or

(c) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which Contractor or Guarantor approves of, consents to, or acquiesces in, any such proceeding; or

(d) the levy of any distress, execution, or attachment upon the property of Contractor or Guarantor which shall substantially interfere with its performance hereunder or under the Guarantee, as applicable.

If Contractor is or becomes insolvent or bankrupt, Contractor shall (i) assume this Agreement within sixty (60) Days after the order for relief; (ii) promptly cure any failure to perform its obligations or any Event of Default arising under this Agreement for reasons other than the event set forth in this Section 8.1.3; (iii) compensate or provide adequate assurance that it will promptly compensate SPSA for any amounts due SPSA under this Agreement; and (iv) provide adequate assurance of future performance under this Agreement under 11 U.S.C. § 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code, which adequate assurance shall include the posting of a letter of credit or other security by Contractor in an amount sufficient to secure its obligations under this Agreement. The foregoing provisions shall not prevent SPSA from requesting such other conditions to assumption of this Agreement as it deems reasonable and necessary.

Section 8.1.4 Untrue Representation or Warranty. Any representation or warranty of Contractor under this Agreement that is untrue in any material respect as and when made or, as applicable, reconfirmed.

Section 8.1.5 Assignment. Any assignment of this Agreement by Contractor in breach of Section 12.1.

Section 8.1.6 Failure or Refusal to Establish, Obtain, Maintain or Renew the Performance Bond; Guarantor Default Under the Guaranty. (a) Any failure of Contractor to establish, obtain, maintain and/or renew in a timely manner the Performance Bond in accordance

with Section 7.5; or (b) the failure of the Guarantor to comply with its obligations under the Guaranty in accordance with the terms and conditions therein.

Section 8.1.7 Abandonment. Contractor abandons its performance of Contract Waste Services hereunder; *provided*, Contractor's exercise of its right to suspend performance due to an Uncontrollable Circumstance in accordance with Section 6.1 shall not constitute abandonment.

Section 8.2 Events of Default by SPSA. The following shall constitute an Event of Default on the part of SPSA:

Section 8.2.1 Failure or Refusal to Perform. The failure or refusal of SPSA to perform timely any material obligation under this Agreement (*unless* such failure or refusal is caused by an Uncontrollable Circumstance, Contractor Fault, an Event of Default by Contractor or other clearly recognized justification, if any, under this Agreement), except for an Event of Default described in Sections 8.2.2 and 8.2.3. **Notwithstanding anything herein to the contrary, and to avoid any doubt, the failure of SPSA to provide/deliver to Contractor any minimum amount of Contract Waste in any Billing Year (or in any number of Billing Years) shall not constitute an Event of Default under this Agreement.**

Section 8.2.2 Failure or Refusal to Make Payments. Failure of SPSA to pay undisputed amounts due and owing to Contractor under this Agreement in accordance with the applicable timeframes specified in this Agreement; *provided, however*, Contractor shall have given Notice of any such non-payment to SPSA's Authorized Representative after the due date and at least ten (10) Days before Contractor exercises its rights under this Section 8.2.2.

Section 8.2.3 Untrue Representation or Warranty. Any representation or warranty of SPSA under this Agreement that is untrue in any material respect as and when made or, as applicable, reconfirmed.

Section 8.3 Default Notice. Neither Party may exercise its termination rights pursuant to Section 9.1 or 9.2, as applicable, unless and until such Party shall have given the other Party Notice of its failure or refusal to perform pursuant to, as applicable, Section 8.1 or 8.2. If an Event of Default specified in a required Notice of an Event of Default pursuant to this Section 8.3 is cured within thirty (30) Days after such Notice or if an Event of Default cannot be cured within thirty (30) Days through the exercise of due diligence, but expeditious and substantive steps are taken within said thirty (30) Day period to cure the Event of Default and thereafter pursued with due diligence to completion, no Event of Default shall occur pursuant to such Notice; *provided, however*, there shall be no cure period for an Event of Default pursuant to Sections 8.1.2 (Failure to Maintain Contractor Required Insurance), 8.1.3 (Failure to Maintain Solvency), 8.1.6 (Failure or Refusal to Establish, Obtain, Maintain or Renew the Performance Bond; Guarantor Default Under the Guaranty) or Section 8.1.7 (Abandonment), and SPSA may terminate this Agreement immediately upon Notice to Contractor's Authorized Representative for an Event of Default under any of the foregoing provisions.

SECTION 9 TERMINATION

Section 9.1 Termination by SPSA.

Section 9.1.1 Contractor Event of Default. SPSA shall, in accordance with the provisions of this Agreement, have the right to terminate this Agreement for a Contractor Event of Default. Should such a Contractor Event of Default occur, SPSA shall have the right to:

(a) subject to Section 8.3, terminate this Agreement as of the thirtieth (30th) Day or at any time thereafter after having provided Contractor's Authorized Representative with Notice of such termination, *except* that with respect to a Contractor Event of Default pursuant to Sections 8.1.2 (Failure to Maintain Contractor Required Insurance), 8.1.3 (Failure to Maintain Solvency), 8.1.6 (Failure or Refusal to Establish, Obtain, Maintain or Renew the Performance Bond; Replenish Security Amount; Guarantor Default Under the Guaranty) or Section 8.1.7 (Abandonment), SPSA may terminate this Agreement immediately by delivery of Notice to Contractor;

(b) institute a Legal Proceeding and shall have all legal and equitable remedies available to it; and/or

(c) resort to such other remedies as it deems necessary or appropriate.

If this Agreement is terminated in accordance with this Section 9.1.1, SPSA shall have no liability to Contractor as a result of such termination under this Agreement, except that Contractor shall be paid those amounts due and owing pursuant to Section 5 through the date of such termination. Termination of this Agreement by SPSA for a Contractor Event of Default shall not impair SPSA's rights under the Performance Bond or under the Guaranty, as applicable. If SPSA terminates this Agreement as a result of a Contractor Event of Default, (i) Contractor shall pay (or cause to be paid) to SPSA, subject to Section 7.2 above, any actual Losses incurred or suffered by SPSA as a result of such termination, including any and all costs incurred by SPSA to procure and contract similar services to cover any Contractor Event of Default, and (ii) SPSA may give written notice of the termination of this Agreement to the Qualified Surety or Guarantor, as applicable, whereupon the Qualified Surety or Guarantor, as applicable, shall pay any amounts owed under the Performance Bond or the Guaranty, as applicable, to SPSA. The Parties acknowledge that if SPSA terminates this Agreement as a result of a Contractor Event of Default, for purposes of establishing any Losses incurred or suffered by SPSA as a result of such termination, the availability of the SPSA Landfill shall *not* be considered or deemed to be an alternative disposal option insofar as SPSA has selected and contracted with Contractor, among other things, on the basis of, and in reliance of, having its Contract Waste disposed of by Contractor at the applicable Disposal Facilities and, as a result, avoiding the corresponding waste volumes being disposed of at the SPSA Landfill.

Section 9.1.2 Failure to Satisfy Pre-Commencement Date Conditions. If Contractor has not satisfied the Pre-Commencement Date Conditions in their entirety by the Pre-Commencement Date (or, in the case of the condition related to the Performance Bond, by the Performance Bond Delivery Date), then notwithstanding anything herein to the contrary, SPSA, in its sole discretion, shall have the right to immediately terminate this Agreement by

delivery to Contractor of a Notice of termination. If this Agreement is terminated pursuant to this Section 9.1.2, then Contractor shall pay to SPSA a termination fee, as liquidated damages, in an amount equal to Five Hundred Thousand Dollars (\$500,000); *provided*, if any such termination fee/liquidated damages are not timely paid by Contractor to SPSA, SPSA may immediately obtain such payment pursuant to the Performance Bond or Guaranty, as applicable, by written demand upon the Qualified Surety or Guarantor, as applicable.

Section 9.2 Termination by Contractor. Contractor shall, in accordance with the provisions of this Agreement, have the right to terminate this Agreement for a SPSA Event of Default. Should such a SPSA Event of Default occur, Contractor shall, subject to Section 8.3, have the right to terminate this Agreement as of the thirtieth (30th) Day or at any time thereafter after having provided SPSA with Notice of such termination; *provided* that: (a) such termination shall be ineffective if within such thirty (30) Day period SPSA cures such Event of Default and (b) such termination may be stayed, at the sole option of Contractor, pending cure of such Event of Default. If this Agreement is terminated for a SPSA Event of Default, SPSA shall pay Contractor (i) the amounts Contractor has earned, is entitled to or has accrued as of the termination date but has not been paid in accordance with Section 5, and (ii) subject to Section 7.2 above, any actual Losses incurred by Contractor as a result of such termination. In no event shall Contractor be entitled to, and Contractor hereby waives, any prospective profits because of such termination.

Section 9.3 Termination for an Uncontrollable Circumstance. If an Uncontrollable Circumstance shall occur relative to a material obligation of either Party, and such Uncontrollable Circumstance or the effect thereof prevents or is reasonably anticipated to prevent the performance of such obligation for a period of one hundred eighty (180) Days or more, either Party, upon Notice to the other Party, may, in such Party's sole discretion, terminate this Agreement forthwith without payment, damage or penalty as a result of such termination and the Parties hereby waive any right to any such damage, penalty or payment; *provided, however*, that with respect to any Contractor termination of this Agreement under this Section 9.3, Contractor shall give SPSA at least ninety (90) Days' Notice of its intent to terminate hereunder. Upon termination under this Section 9.3, neither Party shall be obligated to the other for the payment of any costs or expenses, except that SPSA shall be obligated to pay Contractor the amount Contractor has earned or incurred under Section 5, and vice versa, to the date of such termination but has not been paid.

Section 9.4 Manner of Termination Payment. If the Agreement is terminated pursuant to Section 9.1.2, Contractor shall pay SPSA the liquidated damage amount specified therein within five (5) Business Days following the date of termination of this Agreement. For any amount payable by Contractor to SPSA as a result of termination of this Agreement, SPSA may give written notice of the termination of this Agreement to the Qualified Surety or Guarantor, as applicable, whereupon the Qualified Surety or Guarantor, as applicable, shall pay any amounts owed pursuant to the Performance Bond or under the Guaranty, as applicable, to SPSA.

Section 9.5 Remedies.

(a) SPSA shall be entitled to equitable relief in the form of an injunction to specifically enforce Contractor's obligations to accept Contract Waste at the SPSA Transfer Stations, haul such Contract Waste to the Disposal Facilities and dispose of such Contract Waste

at the Disposal Facilities, and otherwise perform all applicable Contract Waste Services, in each case pursuant to this Agreement in the event of any breach thereof by Contractor.

(b) Except as otherwise provided in Section 9.5(a), the remedies specifically set forth in this Agreement are exclusive, and the Parties waive any other remedies they may have at law or in equity; *provided, however*, that either Party may seek judicial enforcement of any remedy provided herein and any amounts payable hereunder.

SECTION 10 RESOLUTION OF DISPUTES

Section 10.1 General Procedure.

Section 10.1.1 To facilitate the timely and effective resolution of any dispute, claim or controversy that may arise between the Parties hereunder (each, a “Dispute”), prior to resorting to any Legal Proceeding in respect of such Dispute, each Party shall cause one or more senior members of its executive staff (*e.g.*, in the case of Contractor, its General Counsel, Senior Vice President of Operations or such other appropriate senior level executive as may be designated by Contractor; or, in the case of SPSA, its Chairman, Executive Director or Deputy Executive Director) to first meet with senior members of the executive staff of the other Party and attempt to resolve such Dispute by mutual agreement. The initial meeting under this Section 10.1.1 shall be held within ten (10) Days’ after the written request by either Party for any such meeting.

Section 10.1.2 If, following the Dispute-resolution procedures set forth in Section 10.1.1, the Parties cannot resolve such Dispute, either Party may, to the extent that its interests are adversely affected, in its sole discretion either (a) refer the matter to mediation in accordance with Section 10.2 below or (b) commence a Legal Proceeding relative to such matter in the courts specified in Section 10.3 below.

Section 10.2 Procedure for Mediation.

Section 10.2.1 Mediator Referral and Decision. Consistent with each Party’s rights pursuant to Section 10.1, either Party may refer a Dispute to a mediator by delivering Notice of its claim and intention of pursuing mediation to the other Party. The Notice shall state in detail the nature of the Dispute and the initiating Party’s basis for its opinion. Once the mediator is selected pursuant to Section 10.2.2, such mediator shall promptly convene, establish the procedures for the mediation and recommend resolution of the Dispute by written memorandum to the Parties.

Section 10.2.2 Selection of Mediator. If a Dispute is referred to mediation pursuant to Section 10.1.2, the Parties shall select a mutually acceptable mediator from the pool of mediators who provide mediation services within Norfolk or Virginia Beach, Virginia. If the Parties cannot agree on the selection of such mediator within ten (10) Business Days after the Parties referral to mediation pursuant to Section 10.1.2, each Party shall, within five (5) Business Days of the delivery of the Notice pursuant to Section 10.1.2, select a mediator from the pool of mediators who provide mediation services within Norfolk or Virginia Beach, Virginia. Each Party shall give Notice of such selection to the other Party and each Party’s selected mediator. The selected mediators shall then select a third mediator from the pool of mediators who provide

mediation services within Norfolk or Virginia Beach, Virginia, and such third mediator shall serve as the mediator for the Dispute. The mediator's costs and expenses shall be shared equally by the Parties.

Section 10.2.3 Non-Binding. If the matter is referred to a mediator pursuant to this Section 10.2, the decision of the mediator shall *not* be binding on the Parties, and either Party may, after the mediator renders his or her recommendation, commence a Legal Proceeding relative to the Dispute in the courts specified in Section 10.3 below.

Section 10.3 Legal Proceedings. Any Legal Proceeding relative to any Dispute hereunder shall be exclusively brought in the United States District Court for the Eastern District of Virginia (Norfolk Division) or any other Virginia State court sitting in Norfolk, Virginia. Each Party waives any right it may have to commence a Legal Proceeding relative to any Dispute in any other judicial forum, and any commencement of a Legal Proceeding relative to any Dispute in any other judicial forum shall be null and void at inception.

Section 10.4 Obligation to Continue to Perform. The Parties shall continue to perform under this Agreement pending resolution of any Dispute(s) unless the matter at issue precludes such continued activity until resolved, provided that each Party shall nevertheless have its rights that are provided under this Agreement.

Section 10.5 WAIVER OF JURY TRIAL. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER ORAL OR WRITTEN) RELATING TO THE FOREGOING. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT AND SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION 11 TERM

Section 11.1 Initial Term. This Agreement shall become effective and the initial term hereof (the "Initial Term") shall commence on the SPSA Signing Date and, unless earlier terminated in accordance with its terms, shall continue until June 30, 2023. **Notwithstanding Contractor's execution and delivery of this Agreement, there shall be no legally binding agreement with respect to SPSA regarding the transactions contemplated by and/or the subject matter of this Agreement unless and until SPSA has duly executed and delivered this Agreement to Contractor (i.e., unless and until the SPSA Signing Date occurs, if at all).**

Section 11.2 Extended Term.

Section 11.2.1 Extended Term Election. SPSA, in its sole and absolute discretion, shall have the right to extend this Agreement for two additional periods of five (5) years each (each, an "Extended Term"), with any such Extended Period to begin immediately upon the expiration of the Initial Term or first Extended Term, as applicable. If SPSA elects to exercise its right to extend this Agreement for an Extended Term, SPSA must provide Notice to Contractor's

Authorized Representative of such extension not less than one hundred eighty (180) Days prior to the expiration of the Initial Term or first Extended Term, as applicable. **Nothing in this Section 11.2 shall obligate SPSA to extend this Agreement for any Extended Term.** Promptly following receipt from SPSA of the Notice described in this Section 11.2.1, if any, Contractor shall faithfully and diligently request and pursue, or cause to be requested and pursued, all extensions, renewals or amendments, including Permit extension(s), necessary for Contractor to continue to perform its Contract Waste Services during the Extended Term. For the avoidance of doubt, if SPSA does not provide Contractor with a timely Notice of its decision to extend this Agreement for an Extended Term, *or* if SPSA provides Contractor with Notice that this Agreement will not be extended for an Extended Term, then this Agreement shall terminate automatically upon the expiration of the Initial Term or first Extended Term, as applicable.

Section 11.2.2 Terms, Conditions and Provisions During Extended Term. All of the terms, covenants and provisions of this Agreement set forth herein with respect to the Initial Term shall apply to and remain in effect during each Extended Term, if any; *provided, however,* the Rate Schedule shall be subject to negotiation and mutual agreement of the Parties with respect to any such Extended Term; and *provided, further, however,* if the Parties are unable to agree on the Rate Schedule for any Extended Term, then this Agreement shall terminate immediately upon the expiration of the Initial Term or first Extended Term, as applicable, regardless of and notwithstanding any Notice of extension that may have previously been provided by SPSA.

Section 11.3 Term. The Initial Term and any and all Extended Terms, if any, are referred to herein collectively as the "Term".

SECTION 12 MISCELLANEOUS

Section 12.1 Assignment. This Agreement shall not be assignable by either Party without the prior written consent of the other Party, except as expressly provided herein. Contractor may, without SPSA's consent, assign this Agreement solely and exclusively in connection with a Change of Control if, *and only if,* (a) the Guaranty continues and remains in full force and effect and such assignment does not relieve the Guarantor from its obligations and undertakings under the Guaranty, with the Guarantor executing such documents as are necessary to ensure that the Guaranty shall continue and remain in full force and effect for the remainder of the Term of this Agreement, and (b) the Performance Bond continues and remains in full force and effect and the Qualified Financial Institution executes such documents as are necessary to ensure that the Performance Bond shall continue and remain in full force and effect in accordance with its terms for the remainder of the Term of this Agreement. SPSA may, without the prior written consent of Contractor, assign this Agreement to a successor by merger or consolidation or a validly constituted agency or authority of the State, a duly created municipal corporation or authority or similar entity created by SPSA or by State legislation to which all or substantially all of its assets (including this Agreement) are transferred or assigned. Except as expressly permitted herein, any other assignment of this Agreement by either Party without the express written consent of the other Party shall be null and void at inception. Subject to the provisions of this Section 12.1, this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, any permitted successors or assigns of either Party hereto.

Section 12.2 Relationship of the Parties.

(a) Except as otherwise expressly provided herein, neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party, and nothing in this Agreement shall be deemed to constitute either Party a partner, agent, employee or legal representative of the other Party or to create any fiduciary relationship between the Parties. Contractor has entered into this Agreement and shall be performing the services contemplated herein as an independent contractor. As an independent contractor, Contractor and all of its Subcontractors are each solely responsible for the means, methods, techniques, procedures and schedules used to perform the Contract Waste Services, and Contractor has the sole right to control and direct the means, manner and method by which the obligations of this Agreement are satisfied, in each case subject to any requirements and/or limitations expressly set forth herein.

(b) Nothing in this Agreement may be interpreted to mean SPSA may exercise control over the manner in which Contract Waste Services are provided by Contractor nor how Contractor satisfies its obligations under this Agreement. Except as expressly set forth herein, nothing in this Agreement may or shall be interpreted to give the appearance that either Party possesses the apparent or actual authority to act or speak for the other Party, and neither Party shall by words, act or representations convey to the general public, any Person or any Governmental Authority the impression that such Party has the authority to speak or act for the other Party. If any Person believes that either Party has the necessary power to bind such other Party or believes that either Party has the power to control how services are provided by the other Party, such first Party shall take all reasonable actions as are necessary to correct the erroneous inferences and prevent reliance on such a mistake of fact.

Section 12.3 Confidential Information. To the extent allowed by Applicable Law, SPSA shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third party Persons; *provided, however,* SPSA shall not be precluded from disclosing Confidential Information that, in its sole judgment, is in the public domain or subject to disclosure by Applicable Law or by lawful demand of any Governmental Authority notwithstanding that Contractor may have labeled such information as being Confidential Information; *provided further, however,* that prior to disclosing any Confidential Information that Contractor has labeled as such, SPSA shall provide at least five (5) Business Days' prior Notice to Contractor of SPSA's intent to disclose such Confidential Information. SPSA, however, shall not be required to provide any prior Notice to Contractor of SPSA's intent to disclose Confidential Information that Contractor did not clearly label as Confidential Information. The rights and obligations of the Parties set forth herein with respect to Confidential Information are further subject to Applicable Law, including State common law and State and local laws pertaining to public records. To the extent any provision in this Agreement is inconsistent with this Section 12.3 relative to Confidential Information, this Section 12.3 shall govern.

Section 12.4 Subcontractors.

(a) In addition to and not in limitation of its rights with respect to Material Documents and Material Amendments under this Agreement, except with the prior written approval of SPSA (not to be unreasonably withheld), Contractor shall not enter into a

subcontract with any Subcontractor, including any subcontracts with Affiliates of Contractor, that affects or relates to, in any material respect, the performance by Contractor of the Contract Waste Services hereunder, including, without limitation, any contract for third-party Disposal Facilities (including any Landfill), transportation or hauling services, or disposal services, and any such subcontract entered into without such prior written approval shall be null and void at inception. For the avoidance of doubt, this Section 12.4 shall not apply to Contractor's employment agreements with its employees or to subcontract arrangements that do not relate to Contract Waste Services (including subcontracts for hauling and disposal of ash or other residual waste generated by any Disposal Facilities utilized by Contractor).

(b) When Contractor requests approval of a subcontract by SPSA in accordance with this Section 12.4, Contractor shall submit to SPSA's Authorized Representative the qualifications of the Subcontractor and a description of the scope of the applicable Contract Waste Services to be performed by such Subcontractor. Such subcontract shall be deemed approved ten (10) Business Days after the complete submission of the required information unless SPSA's Authorized Representative disapproves the subcontract in writing (stating its objection in reasonable detail) or requests any relevant information that has not been previously provided to it within such ten (10) Business Day period. **Notwithstanding anything herein to the contrary, and to avoid any doubt, SPSA's review or approval of any subcontracts or Subcontractor shall not relieve Contractor from any of its obligations under this Agreement with respect to the subcontracted Contract Waste Services, and without limiting the generality of the foregoing (i) Contractor shall be responsible for the engagement, management and supervision of its Subcontractors and for supervising and directing all Contract Waste Services to be performed by such Subcontractors, using Contractor's commercially customary skill and attention, and (ii) Contractor shall be fully responsible for the acts and omissions of its Subcontractors and of persons employed by its Subcontractors in the same manner as Contractor is responsible for the acts and omissions of Contractor's own employees.**

Section 12.5 Authorized Representatives. The Authorized Representative of SPSA for purposes of this Agreement shall be the Executive Director or his or her designee ("SPSA's Authorized Representative"). The Authorized Representative of Contractor for purposes of this Agreement shall be the Senior Vice President or other appropriate senior level executive designated by Contractor (the "Contractor's Authorized Representative"). Either Party may change its Authorized Representative upon five (5) Days' prior Notice to the other Party.

Section 12.6 Notices. All Notices and consents required or permitted by this Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with Notice deemed to be given upon receipt, postage prepaid, (b) delivered by hand or by nationally recognized courier service or (c) facsimile transmission, electronic mail or other electronic communication system acceptable to SPSA's Authorized Representative with confirmed receipt thereof, and in all cases addressed as follows:

If to SPSA:

Southeastern Public Service Authority of Virginia
723 Woodlake Drive
Chesapeake, Virginia 23320
Attn: Executive Director
Fax: (757) 965-9528

with copies to (which shall not constitute notice):

Willcox & Savage, P.C.
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
Attn: Henry J. Huelsberg, III, Esq.
Fax: (757) 333-3523
Email: thuelsberg@wilsav.com

If to Contractor:

Wheelabrator Portsmouth, Inc.
3809 Elm Avenue
Portsmouth, Virginia 23704
Attn: Mr. Robert Johnson
Email: rjohns15@wtienergy.com

With copies to (which shall not constitute notice):

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

and

Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, Virginia 23514-3037
Attn: Vincent J. Mastracco, Jr., Esquire
Email: vjmastracco@kaufcan.com

Changes in either or both of the respective names and addresses to which such Notices may be directed may be made from time to time by either Party by Notice to the other Party. **If an Event of Default occurs, the Notice required to be given under this Agreement shall clearly identify in bold letters that such event has occurred.**

Section 12.7 Governing Law. The law of the State (excluding the conflicts of law principles thereof) shall govern the validity, interpretation, construction and performance of this Agreement.

Section 12.8 Labor Relations. To the extent that it is practicable and consistent with the efficient performance of this Agreement, labor employed by Contractor for management, operation, maintenance and performance of the Contract Waste Services shall be obtained from that available in the vicinity of the Contract Waste Services to be performed; provided, Contractor reserves the right to hire or discharge, or designate the classification of Contract Waste Services to be performed by, each of its employees. All labor employed by Contractor shall be paid by Contractor, at its sole cost and expense.

Section 12.9 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

Section 12.10 Representations and Warranties.

Section 12.10.1 SPSA Representations and Warranties. SPSA represents and warrants to Contractor as of the SPSA Signing Date as follows:

(a) Existence. SPSA is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(b) Powers. SPSA has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by SPSA (i) have been duly authorized by SPSA, acting by and through the Board, (ii) do not require any other approvals by any other governmental officer or body, other than those Permits or approvals contemplated to be obtained after the SPSA Signing Date and on or before the Commencement Date, (iii) do not require any consent or referendum of voters, (iv) will not violate any judgment, order, law or regulation applicable to SPSA, and (v) do not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of SPSA under, any agreement or instrument to which SPSA is a party or by which SPSA or its assets may be bound or affected.

(c) Due Authorization and Binding Obligation. This Agreement has been duly entered into and delivered by SPSA and constitutes a legal, valid and binding obligation of SPSA, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity, and (iii) limitations on the enforceability of rights to indemnification by federal or State laws or regulations or public policy.

(d) No Material Adverse Effect. To SPSA's best information and belief and without independent investigation, there is no action, suit or proceeding, at law or in equity, before or by any court or Governmental Authority, pending or overtly threatened against SPSA, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by SPSA of its obligations hereunder or the other transactions contemplated hereby, or which in any way would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by SPSA in connection with the transaction contemplated hereby.

(e) No Litigation. Except for a "Bid Protest" delivered by Select Waste Recycling Services to SPSA on December 1, 2016 (which SPSA denied by written response dated December 9, 2016), no action, suit, proceeding or official investigation has been publicly announced or commenced by any Person or Governmental Authority in any federal, State or local governmental authority or agency or in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to (i) SPSA or (ii) the agreements referred to in this Agreement, as a result of SPSA's negotiation, execution, delivery or performance of this Agreement or its participation or intended participation in any transaction contemplated thereby where any such action, suit, proceeding or investigation would, if adversely determined, materially adversely affect this Agreement, the performance by the Parties of their respective obligations hereunder or the transactions contemplated thereby.

Section 12.10.2 Contractor Representations and Warranties. Contractor hereby represents and warrants to SPSA as of the Contract Date, and again as of the SPSA Signing Date (if and to the extent the SPSA Signing Date occurs), as follows:

(a) Existence and Qualification. Contractor is (i) duly organized, validly existing and in good standing in the State of Delaware, (ii) qualified to do business in the State and is in good standing therein, and (iii) duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) Power; Authorization. Contractor has the full power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof by Contractor (i) have been duly authorized, (ii) do not require the approval of any Governmental Authority, other than those Permits or approvals required or contemplated to be obtained after the Contract Date and prior to the Commencement Date, (iii) will not violate any judgment, order, law or regulation applicable to Contractor or any provision of Contractor's organizational documents and (iv) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of Contractor under any agreement or instrument to which Contractor is a party or by which Contractor or its assets may be bound or affected.

(c) Enforceability. This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of Contractor, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.

(d) Material Adverse Effect. There is no action, suit or proceeding, at law or in equity, before or by any court or Governmental Authority, pending or threatened against Contractor or any of its Affiliates (including its Parent Company), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Contractor or such Affiliate of its obligations hereunder or the other transactions contemplated hereby, or that in any way would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Contractor or any of its Affiliates in connection with the transactions contemplated hereby (including but not limited to the Guaranty).

(e) No Material Adverse Change. There has been no material adverse change in Contractor's or any of its Affiliates' (including its Parent Company's) financial condition since January 1, 2016, and neither Contractor nor any of its Affiliates is aware of any occurrence, event or situation that could reasonably be expected to cause a material adverse change in Contractor's or any of its Affiliates' (including its Parent Company's) financial condition in the future that, in either case, would impair Contractor's ability to perform its obligations under this Agreement.

(f) RFP. Contractor has met, during the RFP procurement process period and through the Contract Date, all of the minimum qualification criteria set forth in the RFP.

(g) No Conflict. Contractor's and each of its applicable Affiliates' (including its Parent Company's) performance of its obligations under this Agreement and the transactions contemplated hereby do not conflict with Contractor's or such Affiliates' (including its Parent Company's) performance under any other agreements or instruments to which Contractor or any of its Affiliates is a party or by which Contractor or any of its Affiliates or its or their assets may be bound or affected, in each case including its Parent Company.

(h) No Litigation. No action, suit, proceeding or official investigation has been publicly announced or commenced by any Person or Governmental Authority in any federal, State or local Governmental Authority or in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to (i) Contractor or any of its Affiliates (including its Parent Company) or Subcontractors, (ii) any Permits to be obtained by Contractor pursuant to this Agreement or (iii) the agreements referred to in this Agreement (including but not limited to the Guaranty and any Material Documents), as a result of Contractor's negotiation, execution, delivery or performance of this Agreement or its participation or intended participation in any transaction contemplated thereby where any such action, suit, proceeding or investigation would, if adversely determined, adversely affect any of such Permits, this Agreement, the performance by the Parties of their respective obligations hereunder or the transactions contemplated thereby.

(i) Knowledge and Experience. Contractor, together with its Affiliates, has such knowledge and experience in financial and business matters, specifically the business of providing waste hauling and disposal services, in order to provide the Contract Waste Services to SPSA as contemplated in this Agreement.

(j) Information Supplied by Contractor. The information supplied and all representations and warranties made by or on behalf of Contractor and its Affiliates (including

its Parent Company) in all submittals made in response to the RFP and in all post-proposal submittals with respect to Contractor, its Affiliates or the Contract Waste Services (and, to Contractor's knowledge, all information supplied in such submittals with respect to its Subcontractors) are true, correct and complete in all material respects.

(k) No Gratuities. Neither Contractor nor any of its Affiliates (including its Parent Company) has, directly or indirectly, offered or given any gratuities (in the form of entertainment, gifts or otherwise) to any SPSA Board member or SPSA employee with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

Section 12.10.3 Continuing Accuracy of Certain Contractor Representations and Warranties. During the Term, neither Contractor nor any of its Affiliates (including its Parent Company) shall take any action or omit to perform any act that results in any of the following representations and warranties made in Section 12.10.2 becoming untrue: Section 12.10.2(a), Section 12.10.2(b), Section 12.10.2(c), Section 12.10.2(g), Section 12.10.2(i) and Section 12.10.2(k) (the "Continuing Reps and Warranties"). Contractor shall promptly send Notice to SPSA's Authorized Representative if Contractor or any of its Affiliates (including its Parent Company) take any action or omit to perform any act that results in any such Continuing Reps and Warranties becoming untrue. From time to time, Contractor shall provide to SPSA, upon SPSA's Authorized Representative's request, with written certification of the continuing accuracy of the Continuing Reps and Warranties.

Section 12.11 Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 12.12 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Section 12.13 Amendment. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the Parties. In addition to and not in limitation of the foregoing, from and after the Contract Date, the Parties may agree in writing to modify the terms, conditions or scope of this Agreement; provided, however, that (a) any goods or services to be provided by Contractor under such modified Agreement in addition to the Contract Waste Services shall be of a sort that are ancillary to the Contract Waste Services, or that are within the same broad product or service categories, as contemplated by this Agreement prior to any such modification, and (b) any additional fees or any increase or decrease in amounts payable under the Agreement resulting from any such modification shall be agreed to by the Parties as a part of their written agreement to modify the scope of this Agreement.

Section 12.14 Severability. If any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and

the other terms of this Agreement, as so amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

Section 12.15 Further Assurances. Each Party agrees to, and shall use reasonable best efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be necessary, reasonably requested or required by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumption of obligations other than those provided for in this Agreement in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 12.16 Interest on Late Payments. All payments to be made pursuant to this Agreement, whether payments from SPSA to Contractor or payments from Contractor to SPSA, outstanding after the applicable due date shall accrue interest at the Interest Rate.

Section 12.17 Liability of Officers and Employees. No member of SPSA's Board nor any director, officer, agent, consultant, representative or employee of either Party shall be charged personally by the other Party or held contractually liable the other Party under any term or provision of this Agreement; *provided, however*, that all Persons remain responsible for any of their own criminal actions.

Section 12.18 Pledge of Credit. Contractor shall not pledge SPSA's or any Member Community's credit or make SPSA or any Member Community a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Contractor further represents and warrants that it has no obligation or indebtedness that would materially impair its ability to fulfill the terms of this Agreement.

Section 12.19 Third Party Beneficiary. This Agreement is intended to be solely for the benefit of Contractor and SPSA and their successors and permitted assigns, and except as otherwise expressly set forth herein is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

Section 12.20 Survivability. Any term, condition, covenant or obligation that requires performance by a Party subsequent to termination or expiration of this Agreement, or that by its nature is reasonably intended to survive and extend beyond the termination or expiration hereof, shall remain enforceable against such Party subsequent to such termination or expiration.

Section 12.21 No Conflict of Interest. Without receiving prior written authorization from SPSA, Contractor shall not enter into any agreement(s) that would or could conflict with Contractor's performance of its obligations under this Agreement or the other transactions contemplated herein.

Section 12.22 Anti-Discrimination.

(a) During the performance of this Agreement, Contractor agrees as follows:

(1) Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of

Contractor. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) Contractor, in all solicitation or advertisements for employees placed by or on behalf of Contractor, will state that such contractor is an equal opportunity employer.

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose meeting the requirements of this Section 12.22.

(b) Contractor shall include the provisions of Section 12.22(a) in every subcontract or purchase order of over Fifty Thousand Dollars (\$50,000), so that the provisions will be binding upon each Subcontractor or vendor.

Section 12.23 Compliance with Federal, State and Local Laws and Federal Immigration Law. Contractor represents and warrants to SPSA that it does not, and Contractor covenants that it shall not during the performance of the Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Section 12.24 Authorization to Transact Business in the State. At all times during the Term, Contractor shall be authorized to transact business in the State as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50 of the Code of Virginia, as amended, to be revoked or cancelled at any time during the Term.

Section 12.25 Drug-Free Workplace. During the performance of this Agreement, Contractor agrees (a) to provide a drug-free workplace for Contractor's employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor. For purposes of this Section 12.25, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 12.26 Availability of Funds. It is understood and agreed by the Parties that the obligations of SPSA under this Agreement are subject to annual appropriations by SPSA pursuant to applicable law and SPSA shall have no liability beyond the funds available or which may hereafter become available for the purpose of this Agreement; *provided*, notwithstanding the foregoing, and to avoid any doubt, nothing in this Section 12.26 shall limit or be deemed a limitation on Contractor's remedies for any SPSA Event of Default or other breach of this

Agreement by SPSA, including but not limited to any SPSA Event of Default under Section 8.2.2 hereof. SPSA, acting through its Board, shall use commercially reasonable efforts to appropriate all necessary funds for it to perform its obligations under this Agreement, and under no circumstances shall SPSA intentionally fail to obtain appropriation of funds necessary to perform under this Agreement for the purpose of avoiding its obligations to Contractor and/or terminating its relationship with Contractor hereunder.


Section 12.27 Entire and Complete Agreement. This Agreement, together with the Schedules attached to this Agreement, constitutes the entire and complete agreement and commitment of the Parties with respect to the award and execution of this Agreement for the management, operation and performance of the Contract Waste Services hereunder and all other subject matter hereof. All prior or contemporaneous understandings, arrangements, negotiations or commitments, or any or all of the foregoing, whether oral or written, have been superseded by this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name by a duly-authorized person as of the date set forth above.

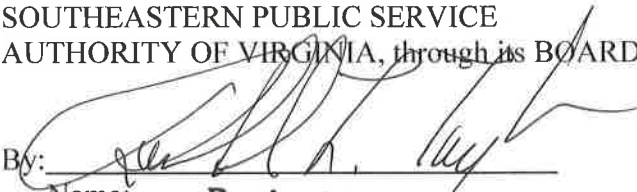
CONTRACTOR:

WHEELABRATOR PORTSMOUTH INC.,
a Delaware corporation

By: 
Name: Michael F. O'Friel
Title: Senior Vice President

SPSA:

SOUTHEASTERN PUBLIC SERVICE
AUTHORITY OF VIRGINIA, through its BOARD

By: 
Name: Rowland L. Taylor
Title: Executive Director

SCHEDULE 1

DEFINITIONS

“Affiliate” means any corporation, limited liability company, partnership, joint venture or other entity controlled by, controlling or under common control, directly or indirectly with, Contractor or any one of such entities, and their respective officers, directors, and beneficial owners of five percent (5%) or more of any class of their equity or options.

“Agreement” shall have the meaning set forth in the opening paragraph of this Agreement identifying the Parties hereto.

“Applicable Law(s)” means every federal, State, county, or local law, code, rule, mandate, statute, regulation, ordinance, municipal charter provision, order, decree, Permit, license, judgment or other governmental requirement or resolution, the common law arising from final, nonappealable decisions of Governmental Authorities in the United States, and any interpretation or administration of any of the foregoing by any Governmental Authority, that applies to the services or obligations, or both, of either Party under this Agreement, whether now or hereafter in effect.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Commencement Date and end at the end of the last Day of the month in which such Commencement Date occurs and (b) the last Billing Month shall end concurrently with the end of the Term or, as applicable, the date of termination or expiration of this Agreement.

“Billing Year” means a Fiscal Year comprised of twelve (12) Billing Months, except that (a) the first Billing Year shall commence on the Commencement Date and end on June 30, 2019 and (b) the last Billing Year shall end concurrently with the end of the Term or, as applicable, the date of termination or expiration of this Agreement.

“Board” means SPSA’s Board of Directors.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a Legal Holiday.

“Change of Control” shall be deemed to have occurred if: (a) any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity or Person, or any syndicate or group becomes the beneficial owner, directly or indirectly, of securities of the Parent Company or Contractor (as applicable) representing fifty percent (50%) or more of the combined voting power of the Parent Company’s or Contractor’s (as applicable) then outstanding securities entitled to vote; (b) there occurs a transaction with respect to which the stockholders, managers, members, partners or owners of the Parent Company or Contractor (as applicable) immediately prior to such transaction do not, immediately after the transaction, own or control more than fifty percent (50%) of the combined voting power of the Parent Company or Contractor (as applicable) then outstanding securities entitled to vote; or (c) all or substantially all of the assets of the Parent Company or Contractor (as applicable) are sold, liquidated or distributed.

“Change(s) in Law” means (a) the enactment, adoption, promulgation, modification or repeal, after the Contract Date, of any Applicable Law or any change in interpretation thereof by any Governmental Authority, including any suspension or moratorium, or (b) the imposition, after the Contract Date, of any material conditions on the issuance, modification or renewal of any Permit that, in the case of either clause (a) or (b), adversely affects, in a material respect, Contractor’s performance of the Contract Waste Services or affects SPSA’s performance of its obligations under this Agreement; provided, however, that (i) for purposes of clause (a) of this definition, no enactment, adoption, promulgation or modification of any Applicable Laws shall be considered a Change in Law if such Applicable Law does not directly affect or delay the Contract Waste Services; and (ii) in no event shall the enactment into law or any other change in federal, State or local tax law after the Contract Date be considered a Change in Law or any other Uncontrollable Circumstance hereunder.

“Commencement Date” means 12:01 a.m. on January 25, 2018.

“Confidential Information” means Contractor’s (a) trade secrets as such term is defined and interpreted by Applicable Law and (b) Records deemed confidential under Applicable Law and clearly marked as such pursuant to Section 12.3; provided, however, that Confidential Information shall not include information (i) that hereafter becomes publicly available through no wrongful act of SPSA, (ii) previously known to SPSA on a non-confidential basis, (iii) subsequently obtained by SPSA from a third party not known by SPSA to be under any obligation to maintain the confidentiality of such information, (iv) that SPSA is required to disclose pursuant to Applicable Law, or (v) developed by SPSA independently without use of or reference to any Confidential Information.

“Contract Date” shall have the meaning set forth in the Preamble hereof.

“Contract Waste” means, collectively, that portion of the Solid Waste (both Processible Waste and Non-Processible Waste) that (a) is received by SPSA at any SPSA Transfer Station during the Term of this Agreement and (b) SPSA provides to Contractor for the performance of Contract Waste Services hereunder, which shall consist of substantially all Solid Waste received by SPSA that SPSA does not haul or have hauled to the Designated Disposal Mechanism. For all purposes of this Agreement, all references to deliveries of Contract Waste shall include applicable Solid Waste delivered to a SPSA Transfer Station by any authorized Person, including without limitation applicable Solid Waste provided by or on behalf of (x) the Member Communities, and (y) any Person(s) contracted or otherwise arranged by SPSA to deliver Solid Waste to the SPSA Transfer Stations, including but not necessarily limited to residents of Member Communities and third-party haulers/waste-disposal companies.

“Contract Waste Estimate” shall have the meaning specified in Section 4.1.

“Contract Waste Services” means, collectively, all of the obligations, duties, responsibilities, services and activities Contractor is responsible for performing or causing to be performed pursuant to the requirements of this Agreement, including in particular, but not limited to, accepting, receiving, hauling/transporting and disposing of Contract Waste.

“Contractor” shall have the meaning ascribed to it in the opening paragraph of this Agreement identifying the Parties hereto.

“Contractor Facilities” means, collectively, all properties and facilities owned and/or leased by Contractor and used (or maintained for use) in connection with the performance of Contract Waste Services hereunder.

“Contractor Fault” means (a) any breach, failure, nonperformance or noncompliance by Contractor (including those of any of its Subcontractors) with the terms and provisions of this Agreement for any reason, *except* to the extent such breach, failure, nonperformance or noncompliance is caused by the occurrence or continuing effect of an Uncontrollable Circumstance or SPSA Fault, or (b) any negligence or willful misconduct of Contractor or any agent, officer, employee, contractor or Subcontractor (at any tier) of or to Contractor or any or all of the foregoing that, in the case of either clause (a) or (b) of this definition, (i) prevents or, individually or cumulatively, materially interferes with or materially delays Contractor’s or SPSA’s performance of its obligations, (ii) deprives SPSA of any of its material rights or (iii) materially increases SPSA’s costs of performing its obligations under this Agreement.

“Contractor Indemnified Parties” shall have the meaning specified in Section 7.1.2(a).

“Contractor Penalty” shall have the meaning specified in Section 4.2.

“Contractor Trailers” shall have the meaning specified in Section 2.2.1(a).

“Contractor’s Authorized Representative” means Contractor’s representative designated pursuant to Section 12.5.

“Day” means a calendar day of time, beginning at midnight in the eastern time zone of the United States coinciding with the calendar day, whether or not a Sunday or Legal Holiday.

“Designated Disposal Mechanism” means the method (or methods) utilized by SPSA for final disposal of all or any portion of Municipal Solid Waste under its Strategic Operating Plan, as designated by the Board from time to time in its sole discretion. The Designated Disposal Mechanism may include, among other methods, (a) disposal of Municipal Solid Waste in the SPSA Landfill, (b) disposal of Municipal Solid Waste through one or more facilities owned and/or operated by SPSA and/or (c) disposal of Municipal Solid Waste pursuant to agreements between SPSA and one or more third parties. SPSA is currently a party to a Waste Supply and Services Agreement with RePower South Chesapeake, LLC (“RePower”), dated March 4, 2016 (the “RePower Agreement”), pursuant to which RePower is obligated serve as the Designated Disposal Mechanism from and after the Commencement Date. For so long as the RePower Agreement remains in effect, RePower shall be considered the Designated Disposal Mechanism for all purposes hereunder. If, however, the RePower Agreement terminates for any reason, the “successor” method (or methods) utilized by SPSA for disposal of Municipal Solid Waste, as designated by the Board in its sole discretion, shall be the considered the Designated Disposal Mechanism for all purposes hereunder.

“Disposal Facilities” means, collectively, all facilities that Contractor shall have, by ownership and/or contractual arrangement, secured for the Processing and/or disposal of all Contract Waste that SPSA provides to Contractor at the SPSA Transfer Stations pursuant to the terms and conditions of this Agreement. Disposal Facilities may include Contractor Facilities, one or more third party Landfills and/or any other properly-Permitted third party facilities; *provided*, however, that the Disposal Facilities shall *not* include the SPSA Landfill.

“Dispute” shall have the meaning specified in Section 10.1.1.

“Event of Default” shall have the meaning specified in Section 8.1.

“Executive Director” means the Executive Director of SPSA.

“Extended Term” shall have the meaning specified in Section 11.2.1.

“Fiscal Year” means SPSA’s fiscal year commencing on July 1 and ending on the immediately succeeding June 30.

“Fuel Surcharge” means a supplemental fee determined in accordance with Schedule 5.

“Governmental Authority(ies)” means any federal, State, regional, city, county, or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, board, agency, commission, administration, bureau or court having jurisdiction over, as applicable, (a) the performance of the Contract Waste Services, or (b) the obligations or the rights, or both, of either or both of the Parties under this Agreement.

“Guarantor” shall have the meaning specified in Section 7.6.

“Guaranty” shall have the meaning specified in Section 7.6.

“Hazardous Waste” means any material or substance that by reason of its composition or characteristics is (a) hazardous waste as defined in the Solid Waste Disposal Act, 42 U.S.C. § 6901, et. seq., as amended, replaced or superseded, and the regulations implementing the same, (b) material the disposal of which is regulated by the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq., as amended, replaced or superseded, and the regulations implementing same, or (c) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, or (d) otherwise treated as hazardous waste under Applicable Law.

“Initial Term” shall have the meaning specified in Section 11.1.

“Interest Rate” means interest on any payment due after the due date in the amount of the lesser of (a) three percent (3.0%) per annum or (b) the maximum rate prescribed under applicable State law.

“Landfill” means any landfill permitted in accordance with all Applicable Laws and permitted to accept, as applicable, for disposal, Contract Waste and/or Prohibited Waste. For purposes of this Agreement, the term “Landfill” shall include the SPSA Landfill if and to the extent (but only if and to the extent) applicable in the context in which it is used.

“Legal Holiday” means New Year’s Day, Lee-Jackson Day, Martin Luther King, Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Columbus Day, Wednesday immediately before Thanksgiving Day (half day), Thanksgiving Day, Friday following Thanksgiving Day, Christmas Eve, Christmas and such other Day(s) as may be (a) designated as a holiday by any applicable Governmental Authority and/or (b) mutually designated from time to time by the Parties.

“Legal Proceeding” means every judicial, regulatory or administrative action, suit, litigation, administrative proceeding, or other legal or equitable proceeding (including appeals).

“Loss” or “Losses” means, collectively, any and all losses, liabilities, damages, actions, forfeitures, obligations, liens, claims, delays, fines, penalties, recoveries, judgments, payments, demands, costs, fees and expenses (including reasonable fees and expenses of attorneys, expert witnesses, consultants and other Persons, and expenses reasonably incurred in connection with any Legal Proceeding, suits and causes of action of every kind and character).

“Material Amendment” shall have the meaning specified in Section 2.12.

“Material Document” means any contract or agreement with any third party (including but not limited to any Subcontractor) to which Contractor is subject that affects or relates to, in any material respect, the performance by Contractor of the Contract Waste Services hereunder, including, without limitation, any contract for third-party Disposal Facilities (including any Landfill), transportation or hauling services, or disposal services. For the avoidance of doubt, Material Documents shall *not* include subcontractor arrangements that do not relate to Contract Waste Services, including subcontracts for hauling and disposal of ash or other residual waste generated by any Disposal Facilities utilized by Contractor.

“Member Community(ies)” means each of those Persons that at any given time during the Term is party to a Use and Support Agreement with SPSA.

“Monthly Invoice” shall have the meaning specified in Section 5.3.1.

“Monthly Service Fee” shall have the meaning given in, and shall be the amount calculated in accordance with, Section 5.2.

“Monthly Transfer Station Amount” shall have the meaning specified in Section 5.2.1.

“Municipal Solid Waste” means all Solid Waste the collection of which is controlled by the Member Communities, including (a) Solid Waste that is generated anywhere within the SPSA Service Area and collected by the Member Communities, and (b) residential Solid Waste that is generated anywhere within the SPSA Service Area and collected by a third party for the benefit of (and under the direction and control of) the Member Communities, in each case subject to specific exclusions under the Strategic Operation Plan for SPSA.

“Non-Processible Waste” means Solid Waste that is not Processible due to its size or its physical or chemical composition.

“Notice(s)” means written notice from one Party to the other hereunder, all in accordance with Section 12.6 and the timeframes and other requirements of this Agreement.

“Operating Hours” shall have the meaning specified in Section 3.6.1.

“Operating Plan” is the document that, among other things, describes certain Contractor processes and procedures for satisfying the Contract Waste Services described herein, and SPSA’s management of the SPSA Transfer Stations and associated activities, as may be modified from time to time in accordance with the terms of this Agreement. The initial

Operating Plan as of the Contract Date and any subsequent modified Operating Plan shall be attached hereto as Schedule 3 and incorporated herein by reference as if fully set forth herein for all applicable purposes.

“Parent Company” shall mean Wheelabrator Technologies, Inc., a Delaware corporation.

“Party” or “Parties” shall have the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Performance Bond” shall have the meaning specified in Section 7.5.

“Performance Bond Delivery Date” shall have the meaning specified in Section 2.1.1(f).

“Permit(s)” means all actions, reviews, approvals, leases, property rights, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, licenses, filings, zoning changes or variances, and entitlements, of whatever kind and however described, that are required under Applicable Law or by any Governmental Authority to be obtained or maintained, or both, by Contractor or SPSA with respect to their respective obligations under this Agreement.

“Person(s)” means without limitation, any natural or artificial entity, including an individual, person, firm, corporation, limited liability company, partnership (including general and limited), joint venture, association, joint-stock company, trust (including business trust(s)), unincorporated organization, Governmental Authority and other entities.

“Pre-Commencement Date” shall have the meaning specified in Section 2.1.1.

“Pre-Commencement Date Conditions” shall have the meaning specified in Section 2.1.1.

“Process,” “Processed,” “Processible,” or “Processing” means the separation, sorting, crushing, bailing, shredding, flattening, processing, manufacture, combustion or other treatment of Solid Waste.

“Processible Waste” means that portion of Solid Waste delivered to the SPSA Transfer Stations that is not Non-Processible Waste or Prohibited Waste or both.

“Prohibited Waste” means any portion of Solid Waste that is (a) Hazardous Waste, (b) not permitted to be Processed because it is prohibited by Permit or other Applicable Law, or (c) deemed to be a significant risk to human health or the environment, create a nuisance or otherwise expose Contractor or SPSA to potential liability, in each case, as determined by Contractor’s Authorized Representative in consultation with SPSA’s Authorized Representative.

“Prudent Industry Practices” means those practices, methods, techniques, specifications and standards of safety, maintenance and performance, as the same may change from time to time, as are commonly observed in the United States and commonly performed by competent, qualified operators performing management, operation, maintenance and performance of services similar to Contract Waste Services that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are (a) considered good, safe and

prudent practice in connection with such services and (b) commensurate with a prudent standard of safety, performance, dependability and efficiency.

“Qualified Surety” means any nationally recognized property and casualty insurance company, authorized to write surety bonds, that is licensed by the insurance department of the Commonwealth of Virginia and otherwise acceptable to SPSA in its reasonable discretion.

“Rate Schedule” consists of Schedule 4 attached hereto, which sets forth for each Billing Year of the Term the applicable Service Rates -- per SPSA Transfer Station -- for the provision of Contract Waste Services hereunder in such Billing Year with respect to each such SPSA Transfer Station.

“Records” means any materials on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, that are prepared or received by Contractor in connection with this Agreement. “Records” includes handwritten, typed or printed pages, maps, charts, photographs, film, recordings, tapes (including computer tapes), computer data, computer printouts, magnetic storage media and optical disks. “Records” do not include (i) drafts, notes, preliminary computations or like materials prepared for the originator’s personal use or prepared by the originator in the name of a Person for whom the originator is working, or both; (ii) materials that have no relation to the Contract Waste Services performed hereunder; (iii) materials to which access is limited by copyrights, patent or bequest; or (iv) identical duplications of a Record.

“Required Contractor Insurance” shall have the meaning specified in Section 7.3.1(a).

“Required SPSA Insurance” shall have the meaning specified in Section 7.4.

“RFP” shall have the meaning specified in the Recitals.

“Schedule(s)” means a schedule attached hereto and incorporated herein and made a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another amendment or agreement.

“Section” means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or a statute or other Applicable Law.

“Service Rate” means, for any given Billing Year and any given SPSA Transfer Station, the rate payable by SPSA to Contractor (determined on a per-Ton of Contract Waste basis) for the performance of Contract Waste Services in such Billing Year and for such SPSA Transfer Station, as specified on the Rate Schedule.

“Solid Waste” shall have the meaning ascribed to such term pursuant to Applicable Law in the State.

“SPSA” shall have the meaning ascribed to it in the opening paragraph of this Agreement identifying the Parties hereto.

“SPSA Fault” means (a) any breach, failure, nonperformance or noncompliance by SPSA with the terms and provisions of this Agreement for any reason, except to the extent such breach,

failure, nonperformance or noncompliance is caused by the occurrence or continuing effect of an Uncontrollable Circumstance or Contractor Fault, or (b) any negligence or willful misconduct of SPSA or any agent, officer, employee, contractor, subcontractor at any tier or independent contractor of or to SPSA, or any one or more or all of the foregoing, which in the case of either clause (a) or (b) of this definition (i) prevents or, individually or cumulatively, materially interferes with or materially delays SPSA's or Contractor's performance of its obligations; (ii) deprives Contractor of any of its material rights; or (iii) materially increases Contractor's costs of performing the Contract Waste Services or materially reduces its revenues, in any case, under this Agreement.

"SPSA Indemnified Parties" shall have the meaning specified in Section 7.1.1(a).

"SPSA Landfill" means the landfill located in Suffolk, Virginia, that is currently owned by SPSA.

"SPSA's Authorized Representative" means SPSA's representative specified in Section 12.5.

"SPSA Service Area" means the geographic area covered by the political subdivision boundaries of the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk and Virginia Beach, Virginia and the counties of Isle of Wight and Southampton, Virginia.

"SPSA Signing Date" means the date on which SPSA executes and delivers this Agreement to Contractor.

"SPSA Tonnage Reports" shall have the meaning specified in Section 4.4.3 above

"SPSA Transfer Stations" means the seven (7) specific transfer stations owned or leased and operated by SPSA as more particularly identified in Schedule 2, as the same may be modified by SPSA from time to time.

"State" means the Commonwealth of Virginia and all of its appropriate administrative, contracting and regulatory agencies and offices.

"Subcontractor" means any Person, other than the respective Party or its employees, who or which directly or indirectly contracts with the Party to provide labor, services, materials, supplies, equipment or spare parts for or with respect to its respective obligations under this Agreement (including, in the case of Contractor, its obligations to provide Contract Waste Services hereunder).

"Term" shall have the meaning specified in Section 11.3.

"Ton" means two thousand (2,000) pounds.

"Uncontrollable Circumstance(s)" means any act, event or condition that (a) prevents or, individually or in the aggregate, materially delays Contractor or SPSA from satisfying or (b) materially increases the cost of performing, in the case of either clause (a) or (b), the applicable Party's obligations under this Agreement, to the extent such act, event or condition is due to circumstances beyond the reasonable control of the Party asserting an Uncontrollable

Circumstance as justification for being prevented from satisfying such obligations or the cause of such materially increased costs; provided, with respect to the asserting Party, that such act, event or condition is not the result of such Party's failure to perform its obligations hereunder in accordance with the terms and conditions of this Agreement.

(1) Subject to the terms and conditions of the immediately preceding paragraph of this definition, the following acts, events or conditions are examples of, but not necessarily limitations on, what may qualify as an Uncontrollable Circumstance under this Agreement:

(A) Hurricane, tornado, severe storm, severe flood, epidemic, pandemic, severe earthquake, catastrophic fire, explosion (if as a result of sabotage) or landslide, act of a public enemy, terrorism, war, blockade, insurrection, riot, restraint of government and people, civil disturbance, sabotage or similar occurrence;

(B) the order, injunction or judgment of any Governmental Authority, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity, so long as such order, injunction or judgment did not arise in connection with or is not related to the negligence or the willful misconduct of the Party relying thereon; provided, however, that neither the contesting in good faith of any such order, injunction or judgment nor the reasonable failure to so contest shall constitute or be construed as negligence or the misconduct of such Party;

(C) the suspension, termination, interruption, denial, failure to issue within a reasonably customary time period, modification, or failure of renewal or extension of any Permit, so long as such act, event or condition did not arise in connection with or is not related to the negligence or the willful misconduct of the Party relying thereon; provided, however, that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as negligence or the misconduct of such Party;

(D) a Change in Law;

(E) the loss of or inability to obtain utility services from any federal, State, county or city public agency or private utility (electric energy, natural gas, water, wastewater, fuel oil) having operational jurisdiction in the area in which the Contract Waste Services are performed, directly resulting in a partial or total curtailment of the performance of the Contract Waste Services for reasons other than, as applicable, Contractor Fault or SPSA Fault;

(F) any subsurface or latent physical condition (including the presence of Hazardous Waste) that prevents or materially adversely affects the provision of the Contract Waste Services; provided that the condition was unknown to Contractor and could not have been discovered with reasonable diligence by Contractor on or before the date hereof; and

(J) any labor strike, walkout, work stoppage or slowdown or similar industrial or labor action by the employees of Contractor performing Contract Waste Services that directly results in a material reduction or curtailment of Contractor's performance of such services, it being agreed and understood by the Parties that up to and including the first thirty (30) continuous Days thereof shall be deemed to be the result of Contractor Fault.

(2) Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that *none* of the following acts, events or conditions shall constitute an Uncontrollable Circumstance hereunder:

(A) any act, event or condition that is caused by the negligence or misconduct of (i) Contractor, any of its Affiliates, any of their respective Subcontractors or any of their respective Affiliates or (ii) SPSA, its subcontractors, agents or employees, to the extent the Party claiming the Uncontrollable Circumstance caused the applicable act, event or condition through its negligence or misconduct;

(B) any act, event or condition reasonably foreseeable prior to the occurrence of such act, event or condition, which a diligent Party could reasonably have been expected to (i) take into account in a reasonably timely manner prior to such occurrence and (ii) prevent or adequately protect against using commercially reasonable efforts;

(C) the failure of any Subcontractor to furnish, provide or perform services, materials, utilities or equipment, *unless* such failure is the result of an act, event or condition outside of the Subcontractor's reasonable control and not due to such Subcontractor's negligence or misconduct;

(D) economic infeasibility, general economic conditions, interest or inflation rates or currency fluctuations;

(E) the characteristics, quality, composition or contamination, or any one or more of the foregoing, of the Contract Waste delivered to Contractor hereunder;

(F) any order, injunction or judgment of any Governmental Authority interpreting (as opposed to the enactment of) federal, State or local tax laws;

(G) reasonably anticipated weather conditions in the SPSA Service Area, other than those listed in clause (1)(A) of this definition;

(H) equipment failure, except to the extent such failure is due to acts, events or conditions specifically enumerated herein as an Uncontrollable Circumstance;

(I) changes in the financial condition of SPSA, any Member Community, Contractor, Affiliates or any Subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement, or the termination for any reason of any Use & Support Agreement;

(J) union or labor work rules, requirements or demands that have the effect of increasing the number of employees employed by or otherwise increasing the cost to Contractor or any of its Subcontractors of performing the Contract Waste Services;

(K) any impact of prevailing wage or similar law, customs or practices on the Contract Waste Services;

(L) any Change in Law regarding the quality, condition or disposal of Solid Waste, the terms and conditions of which do not impose more stringent or burdensome requirements on Contractor than are imposed on Contractor as of the Contract Date;

(M) any replacement of any Subcontractor or Affiliate that results in increased costs for any service, material, supply or chemical provided or to be provided hereunder; and

(N) the failure of SPSA to provide to Contractor any minimum amount of Contract Waste in one or more Billing Year(s).

“Use and Support Agreement” means any or each, as the content may require, Use and Support Agreement (as the same may be amended, supplemented or modified from time to time) by and between SPSA and the other party thereto, the initial term of which commences on January 25, 2018 and remains in effect, providing for, among other things, SPSA management and disposal of such party’s Solid Waste.

[END OF DEFINITIONS]

SCHEDULE 2

TRANSFER STATIONS

Chesapeake Transfer Station
901 Hollowell Lane
Chesapeake, VA 23320

Franklin Transfer Station
30521 General Thomas Highway
Franklin, Virginia 23851

Isle of Wight Transfer Station
13191 Four Square Road
Smithfield, Virginia 23430

Landstown Transfer Station
1825 Concert Drive
Virginia Beach, Virginia 23453

Norfolk Transfer Station
3136 Woodland Avenue
Norfolk, Virginia 23504

Oceana Transfer Station
2025 Virginia Beach Boulevard
Virginia Beach, VA 23462

Suffolk Transfer Station
1 Bob Foeller Drive
Suffolk, VA 23434

SCHEDULE 3
OPERATING PLAN

Hauling Requirements:

Contractor and/or Subcontractor shall provide a sufficient number of Contractor Trailers at designated SPSA Transfer Stations to provide all hauling required as part of the Contract Waste Services as outlined below.

Based on a *non-guaranteed* estimated total annual 324,000 tons of Contract Waste, as listed below by applicable SPSA Transfer Station, the Contractor and/or Subcontractor will provide the following equipment contingent.

<u>Transfer Station</u>	<u>Estimated Tons</u>	<u>Tractor /Trailers</u>
Chesapeake Transfer Station 901 Hollowell Lane Chesapeake, VA 23320	5,000	1/1
Franklin Transfer Station 30521 General Thomas Highway Franklin, Virginia 23851	21,740	1/4
Isle of Wight Transfer Station 13191 Four Square Road Smithfield, Virginia 23430	23,930	1/4
Landstown Transfer Station 1825 Concert Drive Virginia Beach, Virginia 23453	163,000	7/7
Norfolk Transfer Station 3136 Woodland Avenue Norfolk, Virginia 23504	23,000	1/1
Oceana Transfer Station 2025 Virginia Beach Boulevard Virginia Beach, VA 23462	76,100	3/9
Suffolk Transfer Station 1 Bob Foeller Drive Suffolk, VA 23434	<u>11,230</u>	<u>1/3</u>
Total	<u>324,000</u>	<u>15/29</u>

Hauling Requirements (continued):

Contractor and/or Subcontractor shall haul away all Contract Waste loaded into the Contractor Trailers by SPSA at the applicable SPSA Transfer Stations on a daily basis six days a week (Monday through Saturday) in accordance with and subject to the terms of the Agreement. Contractor and/or Subcontractor will provide daily transfer trailer service at the SPSA Transfer Stations and remove all loaded Contractor Trailers in accordance with and subject to the terms and conditions of the Agreement.

Contractor will ensure that Subcontractor and its equipment/vehicles shall comply with all applicable federal, state and local laws and regulations throughout the Term of the Agreement. Without limiting the foregoing, Contractor and/or Subcontractor vehicles shall at all times meet all DOT and appropriate state inspections, licenses, regulations and permits.

Disposal Requirements:

Contractor shall dispose, or cause the disposal of, all Contract Waste it removes from SPSA Transfer Stations at Contractor's Portsmouth waste-to-energy facility and/or a fully permitted landfill facility or other facility (i.e., one or more Disposal Facilities), in each case as required under and in accordance with the terms of the Agreement; *provided*, each such Disposal Facility shall be in compliance with all applicable federal, state, and local laws, regulations, and ordinances at all times during the term of the Agreement.

SPSA Transfer Station Hours

Transfer Station	Proposed Receiving Hours	Proposed Loading Hours
Chesapeake	8-5 M-F, 8-Noon Sat	8-5 M-F, 8-1 Sat
Franklin	8-3 M-F, 8-Noon Sat	8-4 M-F, 8-1 Sat
Isle of Wight	8-3 M-F, 8-Noon Sat	8-4 M-F, 8-1 Sat
Landstown	8-5 M-F, 8-Noon Sat	8-11 M-F, 8-1 Sat
Norfolk	8-5 M-F, 8-Noon Sat	8-11 M-F, 8-1 Sat
Oceana	6-3 M-F, 8 – Noon Sat Closed on Saturdays October - March	6-3 M-F, 8-1 Sat Closed on Saturdays October - March
Suffolk	8-4 M-F, 8-Noon Sat	8-4 M-F, 8-1 Sat

Acknowledgements

This Operating Plan may be modified in accordance with the applicable terms of the Agreement, including but not limited to Section 3.7 thereof. In the event of any conflict or inconsistency between the terms and conditions of this Operating Plan, as modified from time to time, and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control with respect to the subject matter thereof.

SCHEDULE 4
RATE SCHEDULE

TRANSFER STATION ORIGINATION	YEAR 1 2018 Dollars
	PRICE PER TON (B)
Chesapeake Transfer Station	\$ 41.09
Franklin Transfer Station	\$ 47.49
Isle of Wight Transfer Station	\$ 44.99
Landstown Transfer Station	\$ 42.49
Norfolk Transfer Station	\$ 41.34
Oceana Transfer Station	\$ 42.74
Suffolk Transfer Station	\$ 41.74

TRANSFER STATION ORIGINATION	YEAR 2
	PRICE PER TON (B)
Chesapeake Transfer Station	\$ 42.33
Franklin Transfer Station	\$ 48.92
Isle of Wight Transfer Station	\$ 46.34
Landstown Transfer Station	\$ 43.77
Norfolk Transfer Station	\$ 42.59
Oceana Transfer Station	\$ 44.03
Suffolk Transfer Station	\$ 43.00

TRANSFER STATION ORINATION	YEAR 3	
	PRICE PER TON	
	(B)	
Chesapeake Transfer Station	\$	43.60
Franklin Transfer Station	\$	50.39
Isle of Wight Transfer Station	\$	47.73
Landstown Transfer Station	\$	45.08
Norfolk Transfer Station	\$	43.86
Oceana Transfer Station	\$	45.35
Suffolk Transfer Station	\$	44.29

TRANSFER STATION ORINATION	YEAR 4	
	PRICE PER TON	
	(B)	
Chesapeake Transfer Station	\$	44.91
Franklin Transfer Station	\$	51.90
Isle of Wight Transfer Station	\$	49.17
Landstown Transfer Station	\$	46.43
Norfolk Transfer Station	\$	45.18
Oceana Transfer Station	\$	46.71
Suffolk Transfer Station	\$	45.62

TRANSFER STATION ORIGINATION	YEAR 5
	PRICE PER TON (B)
Chesapeake Transfer Station	\$ 46.25
Franklin Transfer Station	\$ 53.46
Isle of Wight Transfer Station	\$ 50.64
Landstown Transfer Station	\$ 47.83
Norfolk Transfer Station	\$ 46.53
Oceana Transfer Station	\$ 48.11
Suffolk Transfer Station	\$ 46.98

SCHEDULE 5

FUEL SURCHARGE

A Fuel Surcharge shall be applied at the beginning of any Billing Year that (i) the Current Fuel Index is greater than (ii) the Base Fuel Index (i.e. Fuel Surcharge = Base Fuel Cost x Fuel Factor).

Where:

1. Base Fuel Cost =

<i>SPSA Transfer Station</i>	<i>Base Fuel Cost \$ Per Ton of Contract Waste</i>
Norfolk Transfer Station	\$1.07
Chesapeake Transfer Station	\$1.34
Landstown Transfer Station	\$1.42
Suffolk Transfer Station	\$1.26
Oceana Transfer Station	\$1.42
Isle of Wight Transfer Station	\$1.78
Franklin Transfer Station	\$2.41

2. Fuel Factor = the greater of zero or [Current Fuel Index / Base Fuel Index minus one (1)]
3. Fuel Index = the Ultra Low Sulfur (15 ppm and Under) posted on the first of every month using the average price of diesel fuel for the previous 12 months. Prices determined by the Department of Energy (DOE) Diesel Fuel Price Index as shown in the Transportation Topics, https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r10_m.htm and reported by the DOE Index Service phone number (202) 586-6966.
4. Current Fuel Index = the Fuel Index for the applicable Billing Year.
5. Base Fuel Index = \$2.47 per gallon

Example 1:

Haul from Norfolk to the applicable Disposal Facility

Base Fuel Cost = \$1.07 per ton

Assume Base Fuel Index is \$2.47

Assume Current Fuel Index (average fuel costs for 12 months) is \$2.609

Fuel Factor = $(\$2.609/\$2.47) - 1 = 0.056$ (greater than 0, so Fuel Factor is set at .056)

Fuel Surcharge = $\$1.07 \times .056 = \0.06 per ton of Contract Waste

Example 2:

Haul from Chesapeake to the applicable Disposal Facility

Base Fuel Cost = \$1.34 per ton

Assume Base Fuel Index is \$2.47

Assume Current Fuel Index is (average fuel costs for 12 months) is \$2.609

Fuel Factor = $(\$2.609/\$2.47) - 1 = .056$ (greater than 0, so Fuel Factor is set at .056)

Fuel Surcharge = $\$1.34 \times .056 = \0.08 per ton of Contract Waste

SCHEDULE 6

FORM OF PERFORMANCE BOND

See attached.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That Wheelabrator Portsmouth Inc. ("Principal"), whose principal place of business is located at 3809 Elm Avenue, Portsmouth, Virginia 23704, and _____ ("Surety"), whose address for delivery of notices is located at _____, are held and firmly bound unto the Southeastern Public Service Authority of Virginia ("Obligee"), in the amount of **Five Million Dollars (\$5,000,000)** (the "Bonded Sum") for the payment whereof Principal and Surety bind themselves, and their respective successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal and Obligee have by written agreement dated May 24, 2017 entered into a Waste Hauling and Disposal Services Agreement (the "Service Agreement"), and the Service Agreement is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly and faithfully perform all its obligations under the Service Agreement in strict conformity with the obligations, requirements, specifications and conditions of the Service Agreement, including but not limited to all payment obligations thereunder, during the term thereof and any extensions thereof as may be granted by the Obligee with or without notice to Surety, and shall also promptly and faithfully perform all requirements of any amendment to the Service Agreement made as provided in the Service Agreement, then this Performance Bond and Surety's obligations hereunder shall be null and void; otherwise it shall remain in full force and effect.

Any amendments that may be made in the terms of the Service Agreement, or in the services to be provided under the Service Agreement, or the giving by the Obligee of any extension of time for the performance of the Service Agreement, or any other amendments, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them or their respective successors or assigns, from their liability hereunder, notice to the Surety of any such amendment, extension, or forbearance being hereby waived.

The initial term of this Performance Bond shall apply from January 1, 2018 until December 31, 2018, and shall be extended, unless SPSA is in breach under the Service Agreement, for additional annual periods throughout the term of the Service Agreement by issuance of a continuation certificate or new bond issued and executed by the Surety and Principal, however, the failure to provide an extension or additional bonds (i) shall not itself constitute a loss to the Obligee recoverable under this Performance Bond, but (ii) shall not constitute (or be deemed to constitute) a waiver of Principal's obligations under the Service Agreement with respect to the maintenance and renewal of a performance bond. The aggregate liability of the Surety is limited to the Bonded Sum stated herein regardless of the number or amount of claims brought against this Performance Bond and regardless of the number of years this Performance Bond remains in force.

Whenever the Principal is in breach of the Service Agreement and the Obligee has given Surety written notice of such breach and written demand for Surety to act under this paragraph, the

Surety shall contact the Obligees in writing and arrange an in-person or telephone conference to be held with Obligees within ten days of such written demand to discuss methods of remedying the breach. Within twenty (20) days after such written demand, the Surety shall take one of the following actions: (1) fully remedy the breach; or (2) pay to the Obligees the amount of any loss or damages incurred by the Obligees (including but not limited to any liquidated damages payable to Obligees under the Service Agreement) up to the Bonded Sum of the Performance Bond.

No action shall be brought on this Performance Bond unless brought within one year after (a) expiration or termination of the Service Agreement, including the expiration of all warranties and guarantees, or (b) discovery of the failure to perform under or breach of the Service Agreement that gave rise to the action. No other delay by Obligees in exercising rights under this Performance Bond shall operate as a waiver of such rights. The validity, interpretation, and enforcement of this Performance Bond shall be governed in all respects by Virginia law. Any suit in connection with this Performance Bond shall be brought solely and shall be exclusively in the United States District Court for the Eastern District of Virginia (Norfolk Division) or any other Virginia State court sitting in Norfolk, Virginia.

Signed and sealed this ____ day of _____, 2017.

	_____ <i>Principal</i>
	(SEAL)
	By: _____
	Title: _____
	_____ <i>Surety</i>
	(SEAL)
	By: _____
	<i>Attorney-in-Fact</i>
	Typed Name: _____

Witness

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH OF VIRGINIA, CITY/COUNTY OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing Performance Bond in the sum of Five Million Dollars (\$5,000,000), which is dated _____ and which names the Southeastern Public Service Authority of Virginia as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation that is the Surety in the foregoing Performance Bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing Performance Bond and acknowledged the foregoing Performance Bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the Performance Bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this __ day of _____, 2017.

_____(SEAL)
Notary Public

My name (printed) is:

My commission expires:

SCHEDULE 7

GUARANTY

See attached.

GUARANTY

THIS GUARANTY made as of the 24th day of May, 2017, by **WHEELABRATOR TECHNOLOGIES INC.**, a Delaware corporation ("Guarantor"), having its principal place of business in Portsmouth, New Hampshire, to and for the benefit of the **SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**, a public body politic and corporate of the Commonwealth of Virginia ("SPSA"). Guarantor and SPSA are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, SPSA contracted with Wheelabrator Portsmouth Inc. ("Company"), a wholly owned subsidiary of Guarantor, for the performance of certain Contract Waste Services pursuant to that certain Waste Hauling and Disposal Services Agreement, dated as of May 24, 2017 (as amended, supplemented or otherwise modified from time to time, the "Service Agreement");

WHEREAS, SPSA is willing to enter into the Service Agreement only upon the condition that Guarantor execute this Guaranty;

WHEREAS, Guarantor has agreed to guarantee performance and payment of the Company's covenants, agreements and obligations under the Service Agreement and any amendment thereto; and

WHEREAS, Guarantor will benefit from the transactions contemplated by the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor for the purpose of inducing SPSA to enter into the Service Agreement, Guarantor hereby makes the following guarantees to and agreements with SPSA:

Section 1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings assigned them in the Service Agreement.

Section 2. Guaranty. From and after the Contract Date, Guarantor absolutely, irrevocably and unconditionally guarantees to SPSA: (a) the due and punctual performance and observance of, and compliance with, all covenants, agreements and obligations of the Company under or pursuant to the Service Agreement, or any other agreement or instrument entered into by the Company in connection with the Service Agreement, whether such obligations now exist or arise hereafter, including but not limited to performance in full of all applicable Contract Waste Services (the "Performance Obligations"); and (b) the due and punctual payment of (i) each payment required to be made by Company under the Service Agreement, when and as due, and (ii) all other monetary obligations of the Company under the Service Agreement, including without limitation all liabilities, indemnities, fees, damages, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, whether such obligations now exist or arise hereafter (the "Monetary Obligations") (the Performance Obligations and the Monetary Obligations are collectively referred to herein as the "Obligations"). Guarantor agrees that the Obligations may be extended, amended, modified or renewed, in whole or in part, by SPSA

without notice to or further assent of Guarantor, and that Guarantor will remain bound by and will honor its guarantee hereunder notwithstanding any such extension, amendment, modification or renewal of any Obligation.

Section 3. Obligations Not Waived. To the fullest extent permitted by applicable law, Guarantor waives all notices whatsoever with respect to this Guaranty and the Service Agreement or with respect to the Obligations, including presentment to, demand of payment from and protest to the Company of any of the Obligations, and notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the Obligations of Guarantor hereunder shall not be affected by (a) the failure of SPSA to assert any claim or demand or to enforce or exercise any right or remedy against the Company in respect of the Obligations or otherwise under the provisions of the Service Agreement, or any delay in connection therewith, or (b) any rescission, waiver, amendment or modification of or any release from any of the terms or provisions of the Service Agreement or any other agreement to which the Company is a party.

Section 4. Continuing Guaranty of Performance and Payment. Guarantor further agrees that its guaranty constitutes a continuing guaranty of performance and payment when due, and not of collection, and Guarantor further waives any right to require that any resort be had by SPSA to any other security in respect thereof.

Section 5. No Discharge or Diminishment of Guaranty.

(a) The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination, or be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, or otherwise be affected, for any reason (other than (i) the performance in full of all Obligations, including the performance in their entirety of all Performance Obligations and/or the indefeasible payment in full of all Monetary Obligations, or (ii) the termination of all Obligations), including: any claim of waiver, release, surrender, alteration or compromise of any of the Obligations; the invalidity, illegality or unenforceability of any of the Obligations; the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to the Company or any other Person, or the dissolution, liquidation or winding up of the Company or any other Person; any permitted assignment or other transfer of this Guaranty permitted by SPSA or any assignment or other transfer of the Service Agreement; any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in the Company or any other change in control or ownership of the Company; or the absence of any notice to, or knowledge on behalf of, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing.

(b) Without limiting the generality of the foregoing, the Obligations of Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of SPSA to assert any claim or demand or to enforce any remedy under the Service Agreement, by any waiver or modification of any provision thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of Guarantor or that would otherwise operate as a discharge of Guarantor as a matter of law or equity (other than (i) the performance in full of

all Obligations, including the performance in their entirety of all Performance Obligations and/or the indefeasible payment in full of all Monetary Obligations, or (ii) the termination of all Obligations).

Section 6. Defenses Waived. SPSA may compromise or adjust any part of the Obligations, make any other accommodation with the Company or exercise any other right or remedy available to it against the Company, in each and every case without affecting or impairing in any way the liability of Guarantor hereunder except to the extent all the Obligations have been fully and finally performed or terminated. To the fullest extent permitted by applicable law, Guarantor waives any defense arising out of any such SPSA election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against the Company or any security in respect thereof. Guarantor further waives all defenses to which it may be entitled under applicable law as in effect or construed from time to time.

Section 7. Representations and Warranties of Guarantor. Guarantor represents and warrants to SPSA as follows:

(a) Organization. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

(b) Authority Relative to this Guaranty. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by Guarantor of this Guaranty and performance by Guarantor of its obligations hereunder have been duly and validly authorized by and on behalf of Guarantor and no other corporate proceedings on the part of Guarantor are necessary to authorize this Guaranty or performance by Guarantor of its obligations hereunder. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) Consents and Approvals; No Violation.

(i) Neither the execution and delivery of this Guaranty by Guarantor nor performance by Guarantor of its obligations hereunder will (x) conflict with or result in any breach of any provision of the organizational or governing documents or instruments of Guarantor, (y) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (z) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Guarantor, or any of its assets, except in the case of clauses (y) and (z) for such defaults and violations that would not, individually or in the aggregate, have a material adverse effect on the ability of Guarantor to discharge its obligations under this Guaranty (a "Guarantor Material Adverse Effect").

(ii) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for performance by Guarantor of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, consents or approvals that if not obtained or made would not, individually or in the aggregate, have a Guarantor Material Adverse Effect.

Section 8. Agreement to Perform; Pay Subordination.

(a) In furtherance of the foregoing and not in limitation of any other right that SPSA has at law or in equity against Guarantor by virtue hereof, upon the failure of the Company to perform or pay any Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith, as the case may be, (i) perform, or cause to be performed, any unperformed Performance Obligations and (ii) pay, or cause to be paid, to SPSA the amount of any unpaid Monetary Obligations.

(b) Upon payment by Guarantor of any sums to SPSA in respect of any Monetary Obligations as provided above, all rights of Guarantor against the Company arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate to and junior in right of payment to the prior indefeasible payment in full of all the Monetary Obligations. If any amount shall erroneously be paid to Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of the Company, such amount shall be held in trust for the benefit of SPSA and shall forthwith be paid to SPSA to be credited against the payment of the Monetary Obligations in accordance with the terms of the Service Agreement.

Section 9. Information. Guarantor assumes all responsibility for being and keeping itself informed of the Company's financial condition and assets, and of all other circumstances bearing upon the risk of nonperformance of the Obligations (including the nonperformance of Performance Obligations and/or the nonpayment of Monetary Obligations) and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder, and Guarantor further acknowledges and agrees that SPSA does not have any duty to advise Guarantor of information known to it regarding such circumstances or risks.

Section 10. Effectiveness, Termination and Reinstatement. This Guaranty shall be effective as of the Contract Date. This Guaranty shall terminate only when all the Obligations have been (a) performed in full, including the performance in their entirety of all Performance Obligations and the indefeasible payment in full of all Monetary Obligations, or (b) terminated; provided, notwithstanding the foregoing, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, of any Monetary Obligation is rescinded or must otherwise be restored by SPSA upon the bankruptcy or reorganization of the Company or Guarantor or for any other reason.

Section 11. Assignment; No Third Party Beneficiaries. This Guaranty and all of the provisions hereunder shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and nothing herein express or implied will give or be construed to give any other Person any legal or equitable rights hereunder. Neither this Guaranty nor any of the Obligations hereunder shall be assigned by Guarantor, including by

operation of law, without the prior written consent of SPSA; provided, however, that no assignment or transfer of Obligations by Guarantor shall relieve it from the full performance of all Obligations hereunder and the full financial responsibility in respect thereof, as provided for under this Guaranty, unless and until (a) the transferee or assignee shall agree in writing to assume such Obligations and responsibilities and (b) SPSA has consented in writing to such assumption.

Section 12. Amendment and Modification, Extension; Waiver. This Guaranty may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Guaranty shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Guaranty to assert any of its rights under this Guaranty or otherwise shall not constitute a waiver of such rights.

Section 13. Governing Law. It is the express intention of the Parties that the validity, interpretation, construction and performance of this Guaranty and any rights or any relationship between the Parties arising hereunder shall be governed by the laws of the Commonwealth of Virginia, excluding any conflict-of-law rules that would direct the application of the law of another jurisdiction.

Section 14. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a facsimile communication, of the times of confirmation) if delivered personally, facsimile (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to SPSA:

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

With a copy to (which shall not constitute notice):

Willcox & Savage, P.C.
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
Attn: Henry J. Huelsberg, III

If to the Guarantor:

Wheelabrator Technologies Inc.
100 Arboretum Drive, Suite 310
Portsmouth, New Hampshire 03801
Attn: General Counsel

With a copy to:

Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, Virginia 23514-3037
Attn: Vincent J. Mastracco, Jr., Esquire
Email: vjmastracco@kaufcan.com

Section 15. Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the United States District Court for the Eastern District of Virginia or (ii) any other Virginia court sitting in Norfolk, Virginia (collectively, the “Chosen Courts”), for the purposes of any suit, action or other proceeding arising out of this Guaranty or any transaction contemplated hereby, and each of the Parties agrees to commence any action, suit or proceeding relating hereto only in the Chosen Courts. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 14 (or such other address specified by such Party from time to time pursuant to Section 14) shall be effective service of process for any action, suit or proceeding brought against such Party in the Chosen Courts. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Guaranty or the transactions contemplated hereby in the Chosen Courts, and each Party hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any court that any such action, suit or proceeding brought in any Chosen Court has been brought in an inconvenient forum.

(b) Guarantor agrees that irreparable damage would occur in the event that any of the provisions of this Guaranty were not performed by Guarantor in accordance with their specific terms or were otherwise breached. It is accordingly agreed that SPSA shall be entitled to equitable relief, including, without limitation, injunctions to prevent breaches of this Guaranty and to specifically enforce the terms and provisions of this Guaranty, such equitable relief being in addition to any other remedy to which it is entitled, whether at law or in equity.

Section 16. Survival of Guaranty. All covenants, agreements, representations and warranties made by Guarantor herein shall be considered to have been relied upon by SPSA and shall unconditionally survive the consummation of the transactions contemplated by the Service Agreement, regardless of any investigation made by SPSA or on its behalf, and shall continue in full force and effect as long as any Obligations remain outstanding.

Section 17. Severability.

(a) If any term, condition or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Guaranty shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Guaranty so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable

law, in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.


(b) In the event that any provisions of this Guaranty are claimed or held to be inconsistent with any other agreement or instrument evidencing the Obligations, the terms of this Guaranty shall nonetheless remain fully valid and effective and shall control with respect to the subject matter hereof.

Section 18. Entire Agreement. This Guaranty embodies the entire agreement and understanding of the Parties in respect of the matters contemplated hereby. There are no restrictions, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof other than those expressly set forth or referred to herein. This Guaranty supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated hereby.

[Signature Page Follows]

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by Guarantor as of the date first above written.

WHEELABRATOR TECHNOLOGIES INC.

By: 
Name: Michael F. O'Friel
Title: Senior Vice President