

MINUTES OF THE BOARD OF DIRECTORS OF THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA

October 25, 2023

The Regular Meeting of the Board of Directors of the Southeastern Public Service Authority (SPSA) was held at 9:30 a.m. in the Regional Board Room at the Regional Building, 723 Woodlake Drive, Chesapeake, Virginia. The following members were in attendance or as noted:

Mr. John Maxwell ¹	(CH)	Mr. Earl Sorey	(CH)
Ms. Sheryl Raulston	(FR)	Ms. Amanda Jarratt	(FR)
Dr. Dale Baugh ²	(IW)	Mr. Randy Keaton ³	(IW)
Mr. John Keifer	(NO)	Mr. Richard Broad	(NO)
Mr. C.W. "Luke" McCoy	(PO)	Ms. Lavonda Graham-Williams	(PO)
Mr. Tony Parnell	(SH)	Ms. Lynette Lowe ⁴	(SH)
Mr. D. Rossen S. Greene ⁵	(SU)	Mr. Albert Moor	(SU)
Mr. Thomas Leahy	(VB)	Mr. L.J. Hansen	(VB)

(CH) Chesapeake; (FR) Franklin; (IW) Isle of Wight; (NO) Norfolk; (PO) Portsmouth, (SH) Southampton County; (SU) Suffolk; (VB) Virginia Beach

Others present at the meeting included Alternate Ex-Officio Members Mr. Michael Etheridge (IW), Mr. Robert Lewis (SU), Ms. Jocelyn Terry-Adumuah (PO), Mr. Greg Martin (CH), and Mr. Brian Thrower (SH), SPSA executives, Mr. Dennis Bagley, Executive Director, Ms. Tressa Preston, Secretary and Director of Administration, Ms. Sandy Schreiber, Treasurer and Director of Finance, and Mr. Brett Spain, General Counsel.

To accommodate those who could not attend in person, through the meeting notice, members of the public were also invited to listen to, and view presentations displayed at the meeting, by registering for attendance using a GoTo Webinar teleconferencing platform. Members of the public were also invited to speak at the SPSA Board of Directors Meeting during the designated public comment period at the beginning of the meeting by registering in advance with the Secretary through contact information published in the meeting notice. Members of the public were also invited to listen to the SPSA Board Meeting via toll-free telephone.

1. CALL MEETING TO ORDER

Ms. Sheryl Raulston, Vice-Chair of the Board of Directors, called the October Board Meeting to order at 9:30 a.m. and then she led the Pledge of Allegiance.

2. PUBLIC COMMENT

¹ Mr. Maxwell left the meeting at 11:16 p.m.

² Dr. Dale Baugh attended the meeting electronically for the personal reason of a vacation at 4305 Delta Sunset Beach Boulevard in Niceville, FL. There were no objections to his electronic attendance. For the sake of meeting efficiency, Vice-Chair, Sheryl Raulston Chaired the Meeting. Except for the certification motion, for all votes noted below, Dr. Baugh was polled individually.

³ Mr. Keaton was absent, and Mr. Etheridge participated as the voting member from Isle of Wight County.

⁴ Ms. Lowe was absent, and Mr. Thrower participated as the voting member from Southampton County.

⁵ Mr. Greene was absent.

Ms. Preston reported that there were no requests for public comment.

3. **CHAIRMAN'S COMMENTS**

Ms. Raulston drew the Board's attention to forms for the annual review of the Executive Director, which had been placed at their seats and would also be sent electronically as a fillable form after the day's meeting. She and Dr. Baugh asked that the Board give careful consideration to evaluating the goals set for Mr. Bagley at the beginning of 2023 and return their completed forms to Ms. Preston on or before December 1, 2023. A closed session will be held at the December 13, 2023 Board of Directors Meeting for the Executive Director's annual performance review, which will be based on these evaluations. She encouraged anyone with questions about the evaluation content or the process to reach out to her or Dr. Baugh and to reach out to Ms. Preston for assistance with the form itself.

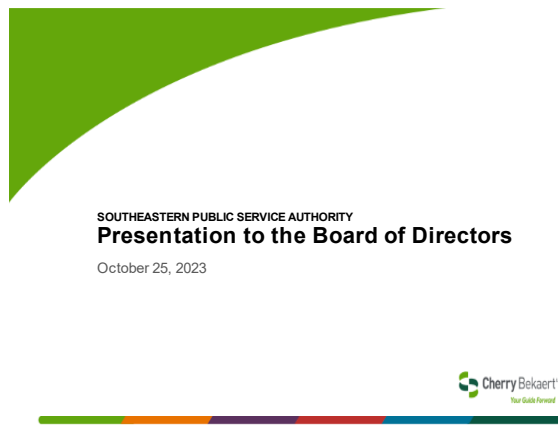
4. **APPROVAL OF MINUTES**

The minutes of the September 27, 2023 Board Meeting had been distributed. Ms. Raulston asked if there were any additions or changes and there were none.

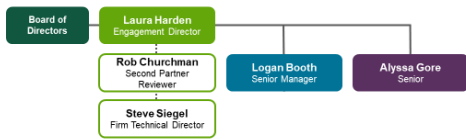
Mr. McCoy moved, seconded by Ms. Graham-Williams, to approve the September 27, 2023 minutes of the SPSA Board of Directors, as presented. The motion was adopted by a unanimous vote in favor.

5. **PRESENTATION OF THE ANNUAL AUDIT**

Ms. Laura Harden introduced herself and her team, outlined the auditing process they underwent, and were pleased to announce that they issued an unmodified opinion on the financial statements from the year ending June 30, 2023, noting that it is the best opinion an organization can receive. She went on to overview the financial statements, accounting practices, communications, upcoming financial reporting changes that the Board can anticipate for the current fiscal year, and other matters of Board interest.



Client Service Team



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Results of the Audit

Financial Statements:

- We have audited the financial statements of the Southeastern Public Service Authority (the "Authority") as of and for the year ended June 30, 2023, and we issued our report thereon dated September 28, 2023.

- We issued an unmodified opinion on the financial statements.

Compliance:

- We identified no instances of noncompliance required to be reported under Government Auditing Standards or the Specifications for Audits of Authorities, Boards, and Commissions.
- We identified no material weaknesses in internal control over financial reporting.



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Financial Statement Overview

Management's Discussion and Analysis:

- Provides an overview and analysis of the financial activities by management for the fiscal year ended June 30, 2023.

Basic Financial Statements – Statement of Net Position:

- Cash decreased \$2.4M due to normal operations
- Investments decreased \$3.4M due to maturity of investments
- Capital assets increased \$12.9M due to the purchase of land, equipment, and vehicles and the acquisition of wetlands credits
- Accounts payable decreased \$2.8M due to the timing of payments
- Change in Pension/OPEB line items as a result of actuarial valuation primarily due to investment experience
 - Net pension asset decreased \$2.3M
 - Deferred outflows decreased \$509K
 - Deferred inflows increased \$4.7M



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Financial Statement Overview

Basic Financial Statements – Statement of Revenues, Expenses, and Changes in Net Position:

- Municipal tipping fees increased \$2.9M due to the rate increase by \$4 to \$65/ton as well as an increase in tonnage by 3.4%
- Personnel costs decreased by \$774K due to a year-end adjustment for pension expense, off-set by a merit increase of 5% for employees
- Wineblabator service contract decreased by \$1.2M due to a fire at the facility, which limited the amount of waste they were able to process
- Waste hauling and disposal contract increased \$969k, the Authority entered into a contract with MBI to replace Wineblabator to haul commercial waste
- Investment income increased \$2.6M due to market gain



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Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management.

Corrected Misstatements

None noted

Uncorrected Misstatements

None noted

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Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Authority are described in Note 1 to the financial statements.

As described in Note 1, the Authority changed accounting policies related to accounting for leases by adopting Government Accounting Standards Board ("GASB") Statement No. 96, effective July 1, 2022.



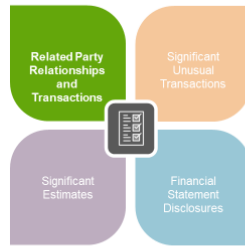
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Qualitative Aspects of Accounting Practices

As part of our audit, we evaluated the Authority's identification of, accounting for, and disclosure of the Authority's relationships and transactions with related parties as required by professional standards.

We noted none of the following:

- Related parties or related party relationships or transactions that were previously undisclosed to us.
- Significant related party transactions that have not been approved in accordance with the Authority's policies or procedures or for which exceptions to the Authority's policies or procedures were granted.
- Significant related party transactions that appeared to lack a business purpose.
- Noncompliance with applicable laws or regulations prohibiting or restricting specific types of related party transactions.
- Difficulties in identifying the party that ultimately controls the entity.

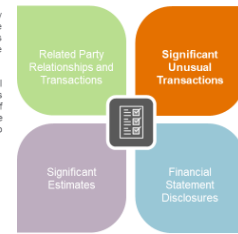


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Qualitative Aspects of Accounting Practices

We noted no transactions entered into by the Authority during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

For purposes of this presentation, professional standards define significant unusual transactions as transactions that are outside the normal course of business for the Authority or that otherwise appear to be unusual due to their timing, size or nature. We noted no significant unusual transactions during our audit.



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Qualitative Aspects of Accounting Practices

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- Depreciation expense
- Actuarially computed assets and liabilities
- Landfill closure and post-closure liability

We evaluated the key factors and assumptions used to develop these estimates in determining that it is reasonable in relation to the financial statements taken as a whole.



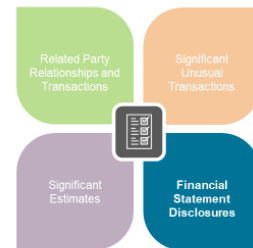
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Qualitative Aspects of Accounting Practices

The financial statement disclosures are neutral, consistent, and clear.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure affecting the financial statements was:

The disclosure of the landfill closure and post-closure care costs in Note 5 of the financial statements describes the future liability of the Authority relating to the state and federal laws and regulations relating to landfills.



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Independence Considerations

Nonattest Services

- ▶ Assist in the preparation of the basic financial statements
- ▶ For all nonattest services we perform, you are responsible for designating a competent employee to oversee the services, make any management decisions, perform any management functions related to the services, evaluate the adequacy of the services, and accept overall responsibility for the results of the services.

Independence Conclusion

- ▶ We are not aware of any other circumstances or relationships that create threats to auditor independence.
- ▶ We are independent of the Authority and have met our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits.

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Other Required Communications

Difficulties Encountered

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Disagreements with Management

Includes disagreements on a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report.

We are pleased to report that no such disagreements arose during the course of our audit.

Auditor Consultations

We noted no matters that are difficult or contentious for which the auditor consulted outside the engagement team.

Management Representations

We have requested certain representations from management that are included in the representation letter dated September 28, 2023.

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Other Required Communications

Management Consultations	Other Findings or Issues	Fraud and Illegal Acts	Going Concern
<p>In some cases, management may decide to consult with other accountants about auditing and accounting matters similar to obtaining a "second opinion" on certain situations.</p> <p>To our knowledge, there were no such consultations with other accountants.</p>	<p>We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year.</p> <p>These discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.</p>	<p>As of the date of this presentation no fraud, illegal acts, or violations of laws and regulations noted.</p>	<p>No events or conditions noted that indicate substantial doubt about the entity's ability to continue as a going concern.</p>

Other Matters

Required Supplementary Information

With respect to the Required Supplementary Information and Management's Discussion and Analysis accompanying the financial statements, we have applied certain limited procedures to the RSI in accordance with generally accepted auditing standards, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information.

Upcoming Financial Reporting Changes

These standards will be effective for the Authority in the upcoming years and may have a significant impact on the Authority's financial reporting.

We would be happy to discuss with management the potential impacts on the Authority's financial statements and how we may be able to assist in the implementation efforts.

**GASB 101,
Compensated Absences**

Other Matters

Required Supplementary Information

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Ms. Harden offered to answer any questions, but there were none. Ms. Graham-Williams, a member of the Audit Committee, thanked Ms. Harden for her detailed analysis and verified that there was, indeed, a great deal of analysis that took place at the Audit Committee. She encouraged the Board to pay close attention to the notes section of the audited financial statements for full clarity on the specific details that explain why the report reads as it does.

Mr. Hansen moved, seconded by Mr. Etheridge, to approve the Annual Audit for fiscal year ending June 30, 2023, as presented. The motion was adopted by a unanimous vote in favor.

Mr. McCoy complimented Ms. Harden's report and requested that future presentations be made in a larger font for ease in reading. Dr. Baugh expressed his gratitude to Ms. Schreiber and the accounting team for their excellent work supporting the audit and carrying out SPSA's financial management plans.

6. EXECUTIVE DIRECTOR UPDATES

Mr. Bagley began his report by recognizing two people who were an important part of the audit process as the SPSA Values in Action Employees of the Month: Ann Carpenter, Senior Accountant, and Angie Sheppard, Accounting Specialist. He wanted to be sure that the Board

knew how much time and hard work the two of them dedicated to ensuring a successful audit while still taking care of all of SPSA's day-to-day accounting business and to express his gratitude to them. Ms. Raulston presented Ms. Carpenter and Ms. Sheppard with certificates and lapel pins as tokens of the Board's appreciation.

Regarding the wetlands permitting process required for the proposed expansion at the Regional Landfill and the Army Corps of Engineers' Environmental Impact Statement (EIS), staff continue to work with the Corps to address comments. Due to the extensive number of tasks being added to VHB's scope of work by the Corps to address both the technical and cultural resources comments that have been received, VHB has provided a contract amendment for additional work outside of the previously approved scope in the amount of \$706,464. Staff recommended that the Board approve a motion to amend the contract, bringing the total current value to \$2,142,129. It was confirmed that there are funds available in the Capital Reserve Fund to cover these costs so that other procurement would not be impacted. Mr. Bagley was regretful of needing to continue to extend this contract, but the Board indicated an understanding that, in this matter, SPSA has no control over the scope of work necessary to complete the required EIS.

Mr. Hansen moved, seconded by Mr. Keifer, to approve a change order to the contract with VHB for Third-Party Preparation of the Environmental Impact Statement associated with expansion of the Regional Landfill, as presented. The motion was adopted by a unanimous vote in favor.

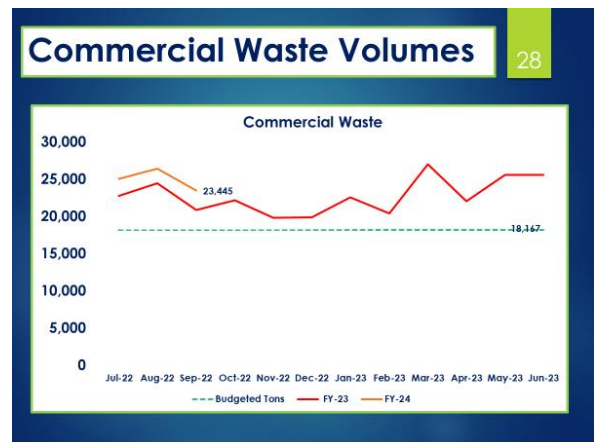
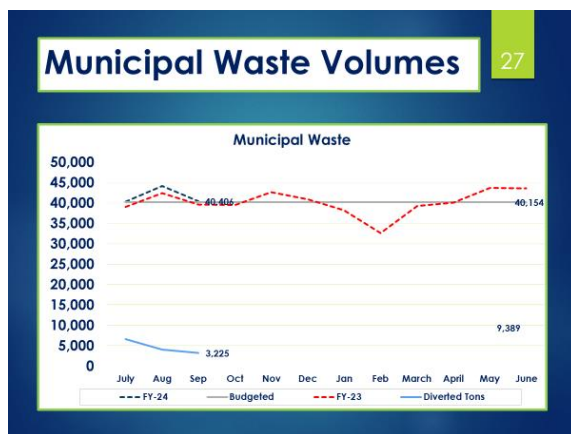
Mr. Bagley updated the Board on new restrictions from HRSD on where SPSA can haul leachate, as well as the need to replace low flow pumps. To mitigate the situation, staff has made a short-term arrangement with Waste Management at Atlantic Landfill to dispose of leachate for \$0.07 per gallon or \$322. This is attractive for SPSA due to the preferable established hauling to Atlantic Landfill and because they will accept deliveries 24-hours a day with no minimum or maximum hauling amounts. Mr. Kelley and Mr. Strickland offered to answer any questions, but there were none.

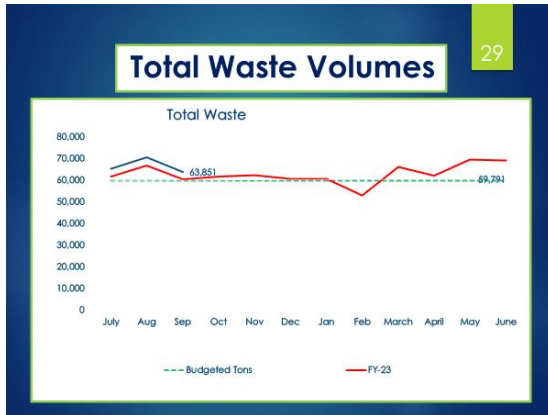
Mr. Bagley provided a final update on the mercaptan incident that took place at the Renewable Natural Gas (RNG) Facility, as well as noting that the Ribbon Cutting Ceremony was a very nice event with no lingering odor of mercaptan. The contractor Terreva Renewables hired to do cleanup has taken additional soil samples and when they are cleared the matter will be concluded. Mr. Bagley reiterated that this was not a landfill concern, but an issue with a contractor's vendor, however, SPSA always monitors and manages these situations to ensure that SPSA's interests are protected. He offered to answer any questions about the matter and how it was handled, but there were none.

Mr. Bagley reintroduced the Board to Mr. Eric Walberg, Principal for Planning and Economics for the Hampton Roads Planning District Commission (HRPDC) to give an update on the Regional Solid Waste Management Plan (RSWMP). Mr. Walberg informed the Board that following the completion of the required public hearings, SPSA's member communities, the regional Chief Administrative Officers, and the full HRPDC Board were briefed on the changes to the RSWMP. The full package should be ready for HRPDC Board approval within the week. There were no questions for Mr. Walberg, but it was determined that, once approved by the HRPDC Board of Directors, the RSWMP would be brought to the SPSA Board of Directors for final approval before being sent to DEQ.

Based on feedback from the September Board Meeting on plans for soliciting Alternative Waste Disposal solutions, Mr. Bagley and staff worked with SCS Engineers to create a draft Request for Information (RFI) that was a best attempt to encompass the Board’s request. That draft RFI was sent to SPSA’s attorneys at Willcox Savage for review and Mr. Kevin Cosgrove was present at the meeting to review expectations with the Board, particularly from a procurement standpoint. Mr. Bagley presented a potential path forward and Mr. Cosgrove detailed the specific differences between Requests for Information, Requests for Qualifications, and Requests for Proposals under the Virginia Public Procurement Act. There was extensive discussion among the Board regarding the viability of options from a number of perspectives including impacts to overall timing, funding, and long-term strategic planning for SPSA’s future. Ultimately, it was determined that the best path forward in the immediate future was to take the first step of staff’s new recommendation and issue a non-binding RFI to gain more information on interest, options available, and vendor needs without adding overly burdensome delays to the process. At the same time, efforts would be made by the Board and by staff to begin socializing the idea of potentially rethinking SPSA’s role in the region and revisiting existing agreements. Ms. Raulston restated the plan, noting that that while a vote was not necessary, the Board was in agreement that staff should proceed with issuing a 21-day RFI with the goal of presenting the results at the December Board Meeting, which would then allow discussion and progress to next steps. She thanked the Board for the good discussion and excellent points that were brought forward.

Mr. Bagley reviewed municipal and commercial waste volumes for the reporting period, as well as total waste volumes and tons diverted. Mr. Bagley noted that municipal waste volumes were on target and that diversions had decreased, which was a good sign. He also pointed out the continued trend of increased commercial waste volumes, which he also called positive, as those tons generate profit and do not get deposited in the Regional Landfill.





Mr. Bagley informed the Board of recent internal operational staff changes, announcing that, as SPSA continues to focus on efficiency, communication, smart financial choices, and future planning, some restructuring has taken place to support that strategy. Mr. Andre Parker has become Interim Transfer Station Manager, Mr. Marshall Tatem, Interim Transportation Manager, Mr. Mike Kelley, Landfill Manager, and Ms. Grace Roquemore, Environmental Manager. Executive staff is confident in each of these managers' abilities to take SPSA to the next level of productivity and accountability necessary for continuous improvement.

Mr. Henry Strickland presented the Operations Report, beginning with updates from the Regional Landfill where staff from the City of Virginia Beach Landfill were recently given tours and the two groups were able to share knowledge. SPSA was given permission from DEQ to proceed with site work and concrete for the Leachate Evaporator while the new site review is being completed. As mentioned earlier, HRSD has stopped allowing SPSA to drop leachate at the Atlantic plant due to construction, so leachate is currently being hauled to the Boat Harbor and Patrick Henry sites, but an agreement will likely be reached with Waste Management to deliver leachate to the more preferable facility at Atlantic Landfill. Mr. Strickland updated the Board on the Caterpillar Certified Rebuilds currently in processes, stating that the compactor has been inspected by staff during a tour of the Roanoke rebuild facility and is scheduled for completion at the end of October, while the loader is being rebuilt at the Chesapeake store and is scheduled for completion the first week of November. He also added that two of the purchases the Board was informed of at the previous meeting, a road vehicle for operations and side dump truck for transportation, have both been delivered to operations for fleet inspection and should be in use in the near future. Mr. Strickland offered to answer any questions, but there were none. However, Mr. Bagley added that the Board could expect to see more proposals for Caterpillar Certified Rebuild projects in the future because they are proving to be a potential solution to longstanding emissions and efficiency issues.

7. QUARTERLY FINANCIAL REPORT

Ms. Schreiber presented the quarterly financial report. Starting with revenues, Ms. Schreiber listed first quarter revenues from the current budget and year-to-date numbers, along with first quarter actuals from FY 2023 and FY 2022 so that comparisons could be more accurate. She reported that for the first quarter revenues were at 25% of the annual budget, with commercial tonnages slightly higher than projected at 29%. She did, however, note that landfill gas revenues were lower than expected, but are anticipated to increase in the second quarter.

Revenues

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	Fiscal Year 2024 – Quarter 1			Historical Comparison	
	Budget	YTD	% of Budget	FY - 23	FY - 22
Revenues					
Tippling Fees	\$49,593,237	\$13,952,104	28.1%	\$13,222,622	\$12,968,614
Tires/HHW/White Goods	\$1,400,000	\$399,155	28.5%	\$419,499	\$382,517
Miscellaneous	\$1,002,686	\$123,152	12.2%	\$483,276	\$174,586
Total Operating Revenue	\$51,995,923	\$14,474,411	27.8%	\$14,125,397	\$13,525,717

Revenue Highlights

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- As of the end of the first quarter, municipal waste tonnages and revenue are right at 25% of the annual projected amount. Commercial tonnages are slightly higher at 29%.
- Landfill Gas Royalty revenue was low in the first quarter, due to Quality Assurance and Quality control testing of the new RNG facility. This was expected and should increase during the 2nd quarter.

Moving on to expenditures, Ms. Schreiber took the same approach of comparing FY 2024 first quarter budget and September 30, 2023 expenses with first quarter actuals from FY 2023 and FY 2022 broken out by expenditure type. Ms. Schreiber reported that operational expenses are 25% of the annual budget for the first quarter of FY 2024. She also noted that salaries and benefits are higher this quarter compared to previous years due to the recent bonuses, and that professional services are higher due to increased legal expenses.

Expenditures

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	Fiscal Year 2024 – Quarter 1			Historical Comparison	
	Budget	YTD	% of Budget	FY - 23	FY - 22
Expenditures					
Salaries/Wages and Employee Benefits	\$11,075,778	\$2,705,745	24.4%	\$2,493,134	\$1,761,644
Professional/Contracted Services	\$3,811,772	\$1,235,470	32.4%	\$812,406	\$721,540
Other Operating Expenses	\$1,380,842	\$261,923	19.0%	\$337,558	\$334,288
Materials/Supplies	\$2,473,691	\$400,083	16.3%	\$419,564	\$376,901
Waste Disposal and Hauling	\$21,071,127	\$4,848,487	23.0%	\$3,812,044	\$6,474,277
Other	\$8,005,000	\$2,000,000	24.9%	\$2,000,000	\$1,560,788
Total Expenditures	\$47,818,210	\$11,651,910	24.4%	\$12,011,377	\$10,568,478

Expenditure Highlights

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- Total Operating expenses are at 25% of the annual budget as of September 30, 2023.
- Salaries and Benefits are higher than the first quarter of previous years due to the bonus payout in September.
- Professional services are also higher than the first quarter of previous years due to legal fees.

Ms. Schreiber also presented revenues versus expenditures in chart and graph form.

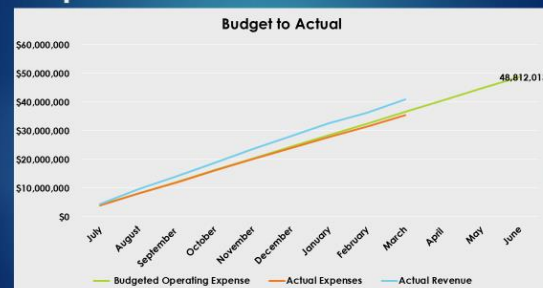
Revenues vs. Expenditures

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	Fiscal Year 2024 Budget	Fiscal Year 2024 – Quarter 1 YTD	%	Historical Comparison	
	Budget	YTD		Q1 FY-23	Q1 FY-22
Total Revenue	\$51,995,923	\$14,474,411	27.8%	\$14,125,397	\$13,525,777
Total Expenses	\$47,818,210	\$11,651,910	24.4%	\$12,011,377	\$10,568,478
Net Revenue / Expenses	-0-	\$2,822,501		\$2,114,020	\$2,957,299

Revenues and Expenditures

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Capital expenditures were listed year to date and cash balances were broken down by fund and amount as of September 30, 2023.

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	Budget	Year to Date
Total Capital Expenditures	\$23,997,997	\$2,896,408
Current Year	\$4,500,000	\$213,066
Rolled Capital Projects from Prior Year	\$19,497,997	\$2,683,342



Ms. Schreiber offered to answer any questions. Mr. Hansen inquired about the low landfill gas royalties. It was explained that during the emissions testing process, landfill gas was flared rather than sold and SPSA only receives royalties for sold RNG. It was also discussed that when reporting landfill gas royalties, it should be reflected that those funds are not profit, per se, but funds earmarked for expansion projects like the flyover and Cell VII. There were no further questions or comments.

Mr. Sorey moved, seconded by Mr. Broad, to approve the quarterly financial reports as presented, pending audit. The motion was adopted by a unanimous vote in favor.

8. WIN WASTE INNOVATIONS MONTHLY WRITTEN REPORT

Ms. Raulston sked if there were any questions regarding the WIN Waste Report, but there were none.

9. CLOSED SESSION

Ms. Raulston informed those present there was a closed session on the agenda for discussion about the WIN Waste contract and announced that only Board Members, SPSA executive staff (Dennis Bagley, Tressa Preston, Henry Strickland, and Sandy Schreiber), and legal counsel (Brett Spain and Brad Nowak for SPSA and Joshua Johnson for the City of Chesapeake) would be present for the closed session. There were no objections to that plan.

Motion to Approve Request for Closed Meeting.

I move that a closed session be held for discussions regarding the Waste Disposal and Services Agreement executed by SPSA and WIN Waste's predecessor on September 18, 2018, in accordance with Virginia Code Section 2.2 3711(A)(8) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

Ms. Jarratt moved, seconded by Mr. Maxwell, to enter closed session, as presented. The motion was adopted by a unanimous roll call vote in favor by all voting members present as noted. The closed session began at 11:15 a.m.

Once back in open session at 11:40 a.m. both in person and electronically the following motion was read.

Motion to Approve Certification after Closed Meeting.

The Board hereby certifies that, to the best of each member's knowledge: (i) only public business matters lawfully exempted from open meeting requirements by Virginia law under the Virginia Freedom of Information Act; and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered in the closed meeting just concluded.

Mr. McCoy moved, seconded by Mr. Leahy, to certify the closed session, as presented. The motion was adopted by a unanimous roll call vote in favor by all voting members present as noted. Dr. Baugh did not attend the closed session and abstained from the certification vote.

10. BUSINESS ARISING FROM CLOSED SESSION

Mr. Brad Nowak, SPSA Special Counsel, made a brief presentation regarding the proposed settlement between SPSA and Wheelabrator/WIN Waste.



WILLIAMS MULLEN

Background/History

- > SPSA previously owned the refuse-derived fuel (RDF) and waste-to-energy (WTE) facilities located in Portsmouth, Va. The RDF and WTE facilities are located on land owned by the U.S. Navy and subject to separate 50-year easements (expiring on July 1, 2049).
- > In 2010, SPSA sold the RDF and WTE facilities (and other assets) to Wheelabrator Portsmouth Inc. (WIN). SPSA retained the truck maintenance facility located next to the RDF facility (also subject to U.S. Navy easement).
- > On Sept. 18, 2018, SPSA and WIN entered into the Waste Disposal and Services Agreement (WDSA), whereby SPSA delivers substantially all acceptable waste received by SPSA from certain transfer stations to the RDF Facility. Waste delivered to the RDF Facility is processed at WIN's waste-to-energy (WTE) facility, which produces steam and electricity.

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WILLIAMS MULLEN *findingyes*

Background/History

- > The WDSA currently expires on June 30, 2027 (unless earlier terminated) and SPSA has the right to extend the term for two additional periods of up to 5 years each (with the extension pricing provisions subject to negotiation and agreement between SPSA and WIN).
- > WIN has a contract with the U.S. Navy to sell steam from the WTE facility. The U.S. Navy is constructing its own steam facility, and WIN's steam contract is planned to expire on June 30, 2024.
- > On Dec. 16, 2022, WIN had a fire in the conveyor gallery connecting the RDF facility with the WTE facility. As a result of the fire, WIN removed the conveyor gallery and has been accepting up to 1,000 tpd of SPSA waste.
- > On Jan. 19, 2023, WIN asserted that the Dec. 16 Fire constituted an "Uncontrollable Circumstance" under the WDSA.
- > On Jan. 27, 2023, SPSA responded by disputing that the Dec. 16 Fire constituted an Uncontrollable Circumstance and requesting additional information substantiating WIN's assertion.
- > SPSA engaged counsel to conduct an investigation involving the Dec. 16 Fire.

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WILLIAMS MULLEN *findingyes*

Background/History (cont.)

- > On April 14, 2023, SPSA delivered notice to WIN asserting that Contractor Events of Default had occurred and requesting a meeting to resolve the dispute involving the Dec. 16 Fire in accordance with the WDSA.
- > On May 24, 2023, SPSA Chairman and Executive Staff and WIN leadership conducted a meeting to attempt to resolve the issues pertaining to the Dec. 16 Fire.
- > Following the May 24, 2023 meeting, SPSA and WIN have been in discussions regarding a possible settlement of (i) the consequences resulting from the Dec. 16 Fire and (ii) WIN's request to amend the WDSA to shorten the term to expire on June 30, 2024.
- > Under the current WDSA, if SPSA terminates the WDSA due to a Contractor Event of Default through June 30, 2024, WIN is liable to pay SPSA \$14.85M in liquidated damages, and after June 30, 2024, \$8.25M.

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WILLIAMS MULLEN *findingyes*

Proposed Settlement/Documentation Structure

- > SPSA Executive Staff and WIN leadership have negotiated proposed settlement documents for consideration and possible approval by SPSA's Board of Directors.
- > Three key documents (Settlement Documents) include:
 1. Settlement Agreement and Second Amendment to WDSA
 2. Purchase and Sale Agreement (PSA)
 3. RDF Services Agreement

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Settlement Agreement and Second Amendment to WDSA

- > Settlement Consideration:
 1. WIN to pay \$5.5M Settlement Payment to SPSA, payable:
 - \$500,000 upon execution; and
 - \$5 million on or before June 30, 2024
 2. WIN to transfer the RDF Acquired Assets (i.e., RDF easement and improvements) to SPSA (via the PSA) on July 1, 2024 (as such date may be extended), at no cost to SPSA.
 3. WIN to perform (or cause to be performed) the demolition and other services under the RDF Services Agreement by December 31, 2024, at no cost to SPSA.
- > SPSA to use commercially reasonable efforts to deliver 1,000 tpd of waste to the RDF facility (rather than to deliver all waste received by SPSA at certain transfer stations)

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Settlement Agreement and Second Amendment to WDSA (cont.)

- > Amend WDSA term to expire on June 30, 2024 (to align with expiration of Navy steam contract) and remove SPSA extension options.
- > WIN's bond to increase to \$4M (from \$3M); bond term revised to the later of (i) expiration of the WDSA or (ii) full payment of Settlement Payment to SPSA.
- > Reduce WIN's liquidated damages for early WDSA termination due to a WIN event of default to \$6M (SPSA's liquidated damages for early WDSA termination due to a SPSA event of default to remain at \$5M).
- > WIN and SPSA to agree to a mutual release of claims relating to the Dec. 16 Fire and to rescind notices related to such dispute.
- > WIN's parent guaranty (Granite Acquisition Inc.) amended to include WIN's obligations under Settlement Agreement and Second Amendment, PSA and RDF Services Agreement.

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Purchase and Sale Agreement (PSA)

- > WIN transfers the "RDF Acquired Assets" (i.e., RDF Easement, RDF facility improvements, and certain permits and other assets) to SPSA on July 1, 2024 (or such later date, if extended) at no cost to SPSA.
- > SPSA only assumes obligations arising out of the RDF Acquired Assets after the Closing Date; WIN retains pre-closing obligations.
- > WIN gives several representations and warranties to SPSA relating to the RDF Acquired Assets, including relating to the RDF Easement, compliance with laws, environmental matters, and no liabilities. Except for specified representations and warranties, acquisition is "as is" purchase.
- > WIN restricted from taking certain actions pre-closing (e.g., amending permits, etc.).

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Purchase and Sale Agreement (cont.)

> Environmental Assessments

- SPSA can conduct a Phase I, Phase I update and Phase II (each, an "Environmental Assessment") during certain times prior to closing.
- Phase I needs to be performed within 60 days after the signing date.
- Phase II can be conducted if a "Recognized Environmental Condition" is identified and would reasonably be expected to (i) have a material and adverse impact on SPSA's operations of the RDF facility, or (ii) require reporting to Government Authorities and constitute a release that would require expenditure of more than \$50,000.
- For a period of 30 days after each final Environmental Assessment, SPSA may terminate the PSA if it identifies a release for which remediation is required and would reasonably likely require the expenditure of \$500,000 or a material liability would likely be assumed or imposed on SPSA.
- If SPSA exercises its termination right, WIN has the right to cure under certain circumstances, in which case, the PSA will not terminate.
- Any disputes to be resolved by neutral Independent Expert under dispute procedure in WDSA.

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Purchase and Sale Agreement (cont.)

> Casualty and Condemnation

- If destruction of or damage or loss to the RDF Facility or any portion thereof, would cost more than \$50,000 to repair, or WIN receives notice of condemnation valued at more than \$50,000, WIN is to notify SPSA.
 - WIN has certain rights to repair the RDF Facility, but if the RDF Facility cannot be repaired or operated (or WIN fails to repair), then SPSA can terminate the PSA or proceed with closing and accept the RDF Acquired Assets in their then condition, in which case WIN shall pay to SPSA any property insurance proceeds or condemnation award.
- ### > Conditions to Closing
- Customary conditions to closing (e.g., bring-down and closing certificates, etc.)
 - U.S. Navy must consent to the assignment of the RDF Easement to SPSA
 - SPSA must obtain specified environmental permits (e.g., assignment of PBR and HRSD industrial wastewater discharge permit)

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Purchase and Sale Agreement (cont.)

> Indemnification

- WIN indemnifies SPSA for:
 - Breach of WIN's representations or warranties;
 - Breach of any WIN covenant or obligation under the PSA;
 - Any Excluded Assets or Excluded Liabilities; and
 - Any fraud, gross negligence, intentional misrepresentation or willful misconduct.
- SPSA indemnifies WIN for (to the extent permitted by applicable law, without waiving sovereign immunity):
 - Breach of SPSA's representations or warranties;
 - Breach of any SPSA covenant or obligation;
 - Any Assumed Liabilities; and
 - Any fraud, gross negligence, intentional misrepresentation or willful misconduct.
- WIN representations and warranties survive for 15 months after the Closing Date, except the environmental matters and tax reps survive the applicable statutes of limitations plus 60 days.
- WIN's liability for any breach of a WIN representation or warranty is subject to a "tipping" \$50,000 threshold and capped at \$2,750,000, except if the claim is based on fraud, willful misconduct or gross negligence.

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Purchase and Sale Agreement (cont.)

> Termination

- The PSA may be terminated prior to closing under certain circumstances, including if:
 - The U.S. Navy does not consent to the assignment of the RDF Easement to SPSA by Sept. 30, 2024 (as such date may be extended for 90 days if there are ongoing conversations).
 - The RDF Easement is terminated for any reason.
 - If the Closing Date has not occurred by Sept. 30, 2024 (as extended for ongoing U.S. Navy conversations).
 - There is a material, uncured breach of a representation, warranty or covenant of either party.
- If (i) SPSA terminates the PSA due to a casualty/condemnation event, (ii) the RDF Easement is terminated, (iii) WIN materially breaches its representations, warranties or covenants and fails to cure, or (iv) WIN fails to close if SPSA has satisfied its conditions precedent to close, then SPSA is entitled to \$2.75M liquidated damages.
- In other circumstances (including if the U.S. Navy does not approve the RDF Facility assignment or based on certain results of the Environmental Assessments), then SPSA is not entitled to damages or the RDF Acquired Assets.

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RDF Services Agreement

- > Following the closing of SPSA's acquisition of the RDF Facility, WIN to perform, or cause to be performed, certain demolition and removal work (the "Work") at the RDF Facility at no cost to SPSA.
- > The Work is to commence on or about July 1, 2024 and be completed prior to December 31, 2024 (unless force majeure or other delay).
- > WIN is entitled to dispose of all property removed from the RDF Facility (and is entitled to any proceeds thereof).
- > WIN is required to post and maintain a \$750,000 payment and performance bond during the term of the RDF Services Agreement and for 6 months afterward.
- > WIN is required to maintain (and cause its subcontractors to maintain) insurance, with SPSA a named insured party.

Questions

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WILLIAMS MULLEN 

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WILLIAMS MULLEN 

As there were no questions, Ms. Preston read aloud the following resolution:

RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT, PURCHASE AND SALE AGREEMENT AND RDF SERVICES AGREEMENT

WHEREAS, Wheelabrator Portsmouth Inc., a Delaware corporation ("Wheelabrator"), and the Southeastern Public Service Authority of Virginia ("SPSA") are parties to that certain Waste Disposal and Services Agreement, dated as of September 18, 2018, as amended by that certain First Amendment to Waste Disposal and Services Agreement dated July 6, 2020 (as amended, the "Agreement"), pursuant to which Wheelabrator (among other things) accepts and processes solid waste delivered by or on behalf of SPSA at the refuse-derived fuel facility owned and operated by Wheelabrator and located at 2 Victory Boulevard, Portsmouth, Virginia (the "RDF Facility");

WHEREAS, on December 16, 2022, a fire occurred in the conveyor gallery (the "December 16 Fire") connecting the RDF Facility to the nearby waste-to-energy facility owned and operated by Wheelabrator (the "WTE Facility" and together with the RDF Facility, the "Facilities");

WHEREAS, as a result of the December 16 Fire, Wheelabrator demolished and removed the conveyor connecting the RDF Facility to the WTE Facility and, since December 16, 2022, Wheelabrator has significantly reduced the amount of waste Wheelabrator accepts from SPSA at the RDF Facility to approximately 1,000 tons per day;

WHEREAS, on January 19, 2023, Wheelabrator sent notice to SPSA asserting that the December 16 Fire constituted an Uncontrollable Circumstance (as such term is defined in the Agreement), and on January 27, 2023, SPSA responded to Wheelabrator's January 19, 2023 letter disputing that the December 16 Fire constituted an Uncontrollable Circumstance and requesting additional information from Wheelabrator substantiating that the December 16 Fire constituted an Uncontrollable Circumstance under the Agreement;

WHEREAS, on April 14, 2023, SPSA delivered notice to Wheelabrator asserting that Contractor Event(s) of Default (as defined in the Agreement) have occurred and requesting a meeting to attempt to resolve the dispute involving the December 16 Fire in accordance with the terms of the Agreement;

WHEREAS, on May 24, 2023, SPSA and Wheelabrator conducted a meeting to attempt to resolve the dispute regarding the December 16 Fire;

WHEREAS, unrelated to the December 16 Fire, Wheelabrator's contract for sale of steam energy generated by the WTE Facility to the U.S. Navy (the "Navy Steam Agreement") will expire on June 30, 2024 and will not be renewed or extended;

WHEREAS, as a result of the expiration of the Navy Steam Agreement, Wheelabrator will permanently close the Facilities on June 30, 2024 and, following that date, will no longer accept and process solid waste from SPSA at the Facilities;

WHEREAS, with the assistance and advice of legal counsel, SPSA's Executive Staff has conducted extensive negotiations with Wheelabrator, including an in-person meeting, regarding resolution of the dispute involving the December 16 Fire, Wheelabrator's request to amend the Agreement to expire on June 30, 2024 to coincide with expiration of the Navy Steam Agreement, and the potential resolution of the foregoing via a negotiated settlement;

WHEREAS, with the assistance and advice of legal counsel, SPSA's Executive Staff has spent considerable time and effort on negotiations with Wheelabrator;

WHEREAS, as a result of extensive negotiations with Wheelabrator, SPSA and Wheelabrator desire to enter into the Settlement Agreement and Second Amendment to Waste Disposal and Services Agreement, substantially in the form provided to the Board of Directors (the "Board") of SPSA (the "Settlement Agreement"), which includes (among other things) (i) a settlement payment by Wheelabrator to SPSA of Five Million Five Hundred Thousand Dollars (\$5,500,000), (ii) a Purchase and Sale Agreement, substantially in the form provided to the Board (the "PSA"), whereby Wheelabrator will assign, convey and transfer the RDF Facility and certain other assets to SPSA at no cost to SPSA, upon satisfaction of certain conditions precedent specified in the PSA (including, without limitation, approval of the U.S. Navy), and (iii) a RDF Services Agreement, substantially in the form provided to the Board (the "RDF Services Agreement"), and together with the Settlement Agreement and PSA, the "Agreements"), whereby following closing of the PSA, Wheelabrator will, among other things, perform, or cause to be performed, certain services relative to the RDF Facility as described therein at no cost to SPSA (collectively, the "Settlement");

WHEREAS, because (i) the services contemplated by the RDF Services Agreement are only available as part of the negotiated settlement of disputed claims between SPSA and Wheelabrator and (ii) Wheelabrator would provide the services specified in the RDF Services Agreement at no cost to SPSA, Wheelabrator is the only source practically available for the services;

WHEREAS, following due consideration of the Agreements, including consideration of the analysis and presentations prepared by SPSA's Executive Staff and its advisors and the terms and conditions of the Agreements, the Board has determined that it is in the best interests of SPSA and its Member Communities to (a) authorize and approve the Settlement, including to authorize and approve the execution, delivery and performance by SPSA of the Agreements and related documents, and (b)(i) with respect to the services to be performed by Wheelabrator pursuant to the RDF Services Agreement, approve and issue an intent to award a contract ("Intent to Award") to Wheelabrator and (ii) following expiration of the time period provided in Section 2.2-4360 of the Virginia Public Procurement Act (the "VPPA") or, if any protest or appeal is timely submitted or filed with respect to the subject procurement, following satisfactory resolution of such matter in SPSA's favor (as determined by SPSA's Executive Director in his discretion), award the RDF Services Agreement to Wheelabrator.

NOW THEREFORE BE IT RESOLVED, by the Board as follows:

1. The Board hereby determines, based on the Board's review and consideration of the Settlement and information and advice provided by SPSA's Executive Staff and legal counsel, that the Settlement, and the forms, terms, and provisions of each of the Agreements, be approved by SPSA.

2. The Board hereby (i) approves and accepts the sole source determination made by SPSA's Executive Director for selection of Wheelabrator to perform the services described in the RDF Services Agreement on the basis that Wheelabrator is the only source practicably available for the services which are being procured, and (ii) approves, authorizes and directs the Executive Director of SPSA to issue an Intent to Award to Wheelabrator based on the RDF Services Agreement in accordance with applicable law, and following expiration of the time period provided in Section 2.2-4360 of the VPPA or, if any protest or appeal is timely submitted or filed with respect to the subject procurement, following satisfactory resolution of such matter in SPSA's favor (as determined by SPSA's Executive Director in his discretion), award a contract to Wheelabrator pursuant to the RDF Services Agreement.

3. The Board hereby authorizes and directs the Chairman or the Executive Director of SPSA, in the name of and on behalf of SPSA, to (i) finalize and execute each of the Agreements and all other documents, instruments, certificates and agreements contemplated thereby, or otherwise related thereto, to which SPSA is a party (collectively, the "Transaction Documents"), with such changes, deletions, additions, supplements and modifications thereto as the Chairman or the Executive Director shall approve, and to deliver the same to Wheelabrator, such execution and delivery of such documents conclusively to evidence the due authorization and approval thereof by SPSA, and (ii) cause SPSA to perform SPSA's obligations as set forth in the Agreements.

4. That the Executive Director of SPSA, in the name and on behalf of SPSA, is authorized and directed to take any and all steps and to do all things that he may deem necessary or advisable in order to effect the purposes of each and all of the foregoing resolutions.

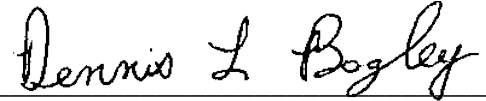
5. That any and all lawful actions taken by SPSA's Executive Staff, prior to the date hereof that are within the authority conferred on such parties are hereby ratified, confirmed and approved in all respects as the act and deed of SPSA.

Ms. Graham-Williams moved, seconded by Ms. Jarratt, to approve the Resolution Authorizing a Settlement Agreement, Purchase and Sale Agreement, and RDF Services Agreement, as presented. The motion was adopted by a unanimous vote in favor.

Mr. McCoy moved, seconded by Ms. Graham-Williams, to allocate the \$500,000 due to SPSA upon execution of the agreements with Wheelabrator/WIN Waste to the Capital Reserve Fund upon payment to SPSA, as presented. The motion was adopted by a unanimous vote in favor.

11. **ADJOURN MEETING**

There being no further business to come before the Board of Directors, the regular meeting was adjourned at 11:58 a.m.



Dennis L. Bagley
Executive Director

Submitted by: Tressa Preston, Secretary, SPSA Board of Directors