

## RESOLUTION

### **RESOLUTION MAKING PUBLIC PURPOSE DETERMINATION UNDER THE PPEA, SELECTING A SINGLE PRIVATE ENTITY PROPOSAL FOR THE PURCHASE AND OPERATION OF SPSA'S WASTE-TO-ENERGY FACILITIES, AND CALLING FOR A PUBLIC HEARING**

**WHEREAS**, the Southeastern Public Service Authority of Virginia (“SPSA”) received an unsolicited proposal pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act (“PPEA”) from Covanta Energy Corporation (“Covanta”) for the purchase of SPSA’s waste-to-energy facilities in Portsmouth, Virginia (the “Facilities”); and

**WHEREAS**, by resolution adopted on June 5, 2008, SPSA’s Board accepted the proposal from Covanta (the “Covanta Proposal”) for conceptual phase consideration and authorized the Executive Director with the assistance of staff to review and accept for conceptual phase consideration additional PPEA proposals for the purchase of the Facilities; and

**WHEREAS**, SPSA received and reviewed additional PPEA proposals (the “Additional Proposals”) from Fortistar LLC, Energy Answers International, Inc., and Wheelabrator Technologies Inc. (“Wheelabrator”); and

**WHEREAS**, by Resolution adopted on August 27, 2008, SPSA’s Board confirmed the Executive Director’s acceptance of the Additional Proposals for conceptual phase consideration; and

**WHEREAS**, by Resolution adopted on August 27, 2008, SPSA’s Board determined that it would use the competitive negotiation method in reviewing and evaluating the Covanta Proposal and the Additional Proposals (“Proposals”); and

**WHEREAS**, SPSA’s staff, with the advice and assistance of SPSA’s consultant that was retained in accordance with the requirements of SPSA’s PPEA Guidelines and the PPEA (the “Consultant”), conducted the conceptual phase review, analyzed the Proposals based upon the criteria set forth in SPSA’s PPEA Guidelines (“the Guidelines”) and recommended that SPSA proceed to the detailed review phase with proposals received from Covanta and Wheelabrator; and

**WHEREAS**, after reviewing the information provided by staff and the Consultant and receiving staff’s recommendation, the Board by Resolution adopted September 24, 2008 selected the proposals submitted by Covanta and Wheelabrator for detailed review; and

**WHEREAS**, with the assistance and advice of legal counsel and the Consultant, SPSA conducted a detailed review of the proposals and engaged in competitive negotiation with Covanta and Wheelabrator to negotiate terms for inclusion in a comprehensive agreement consisting of a purchase and sale agreement and service agreement (“Comprehensive Agreement”); and

**WHEREAS**, both Covanta and Wheelabrator have submitted detailed proposals for consideration, but only Wheelabrator has submitted a binding offer set forth in a Comprehensive Agreement; and

**WHEREAS**, SPSA has received an updated binding and irrevocable offer from Wheelabrator (the “Wheelabrator Offer”) that was submitted on condition that its prior offers be rescinded and released; and

**WHEREAS**, the Board has determined that a sale and operation of the Facilities pursuant to the Wheelabrator Offer serves the public purpose of the PPEA; and

**WHEREAS**, the outsourcing of the Facilities pursuant to the Wheelabrator Offer will result in reduced costs to SPSA; and

**WHEREAS**, based upon a review of the proposals submitted by Covanta and Wheelabrator and the advice of the Consultant, SPSA’s staff and counsel, the Board has selected the Wheelabrator Offer as the only proposal for posting and for consideration after a public hearing;

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

1. Based upon SPSA’s review of proposals SPSA received from Covanta and Wheelabrator and information and advice provided by SPSA’s staff, the Consultant and legal counsel, the Board determines that the sale of the Facilities and entering into the service agreement for the disposal of solid waste that supports the operation of the Facilities for SPSA’s benefit pursuant to the Wheelabrator Offer serve the public purpose because (i) there is a public need and benefit to be derived from such sale and operation, (ii) the purchase price for the sale of the Facilities and the service fees that support the operation of the Facilities are reasonable in relation to similar facilities, and (iii) the proposals will result in a timely sale and operation of the Facilities.

2. Based upon information and advice provided by SPSA’s staff, SPSA’s legal counsel and the Consultant and the criteria set forth in the Guidelines, the PPEA and application of SPSA’s evaluation criteria with respect to the waste-to-energy sale, the Board tentatively selects the Wheelabrator Offer as

the proposal for the sale and operation of the SPSA's Facilities for continuing consideration and possible acceptance pending public comment including a public hearing.

3. SPSA hereby releases any and all other prior offers and proposals relating to the sale of the Facilities.

4. The Board hereby directs SPSA's staff to make the Wheelabrator Offer available to the public by posting it on SPSA's website and further directs staff to post and publish a notice of a public hearing on the proposals to be held during SPSA's regular Board meeting on September 23, 2009 at 9:30 a.m.

Adopted this 10<sup>th</sup> day of September,  
2009

Attest: Donald L. Williams  
Donald L. Williams, Chairman