

# **SUMMARY OF PRINCIPAL TERMS**

## **WHEELABRATOR TECHNOLOGIES INC.**

### **OFFER TO PURCHASE AND OPERATE**

### **SPSA WASTE-TO-ENERGY FACILITIES**

This document is intended to assist readers in their review of the Irrevocable Offer made by Wheelabrator Technologies Inc. (“**Wheelabrator**”) for the purchase and operation of the waste-to-energy assets presently owned and operated by Southeastern Public Service Authority of Virginia (“**SPSA**”). The following provides a general summary of the terms and conditions of the Wheelabrator Offer (as defined below). Unless otherwise defined below, capitalized terms herein have the meanings assigned to them in the Purchase and Sale Agreement or the Service Agreement (as defined below).

*This document does not, and is not intended to, cover every aspect of the Purchase and Sale Agreement and Service Agreement. Additional information, including copies of the executed transaction documents comprising the Wheelabrator Offer, can be found on SPSA’s website at: <http://www.spsa.com>.*

## **I. TRANSACTION OVERVIEW**

### **1. *Transaction Summary:***

Sale by SPSA to Wheelabrator of SPSA’s refuse derived fuels (“**RDF**”) facility and power plant in Portsmouth, Virginia (the “**WTE Facilities**”) and concurrent eight-year contract for services whereby:

- SPSA will sell and Wheelabrator will purchase SPSA’s WTE Facilities.
- Wheelabrator will accept and process SPSA member community solid waste at the RDF Facility until January 24, 2018.
- Wheelabrator will haul away SPSA non-processible waste from SPSA Transfer Stations for disposal at a non-SPSA landfill until January 24, 2018.

### **2. *Key Transaction Documents:***

- ***Irrevocable Offer*** whereby Wheelabrator makes a binding and irrevocable offer that allows SPSA to accept and enter into the below agreements at any time until March 1, 2010, which is the final deadline for closing.
- ***Purchase and Sale Agreement*** governing the sale and transfer to Wheelabrator of the WTE Facilities.

- **Service Agreement** relating to Wheelabrator’s management, operation and maintenance of the WTE Facilities and duties to process SPSA solid waste after closing.

The Purchase and Sale Agreement and Service Agreement are referred to together as the “**Wheelabrator Offer**”.

3. **Tentative Selection of Wheelabrator’s Irrevocable Offer:** On September 10, 2009, SPSA’s Board of Directors, by unanimous vote, tentatively selected the Wheelabrator Offer for continuing consideration and possible acceptance after public comment.
4. **Public Hearing on September 23, 2009:** SPSA has scheduled a public hearing to be held on September 23, 2009 at 9:30 a.m. in the Board Room of the Regional Building at 723 Woodlake Drive, Chesapeake, Virginia on proposals that SPSA received relating to the sale of SPSA’s WTE Facilities, including the Wheelabrator Offer.
5. **Conditions to Binding SPSA:** As of September 14, 2009, SPSA has not executed and is not bound by the Wheelabrator transaction documents. SPSA will not be bound unless or until it executes the Wheelabrator transaction documents, which will not occur until at least 30 days after the public hearing at the earliest, if at all.

## **II. IRREVOCABLE OFFER**

1. **Irrevocability of Offer:** The Wheelabrator Offer is irrevocable and may not be revoked, modified or rescinded by Wheelabrator prior to March 1, 2010.
2. **Posting of Security:** The Irrevocable Offer provides that Wheelabrator is required to post either a \$5 million earnest money deposit or letter of credit within three business days following receipt of notification from SPSA of the tentative selection of Wheelabrator’s Offer. SPSA notified Wheelabrator of its tentative selection on Friday, September 11, 2009.

## **III. PURCHASE AND SALE AGREEMENT**

1. **Assets to be sold and transferred to Wheelabrator (“Acquired Assets”) include:**
  - RDF Facility that sorts and processes solid waste into fuel
  - Power Plant that generates electricity and steam
  - Equipment, Rolling Stock, Trucks and Fixtures used in RDF and Power Plant operations
  - Easements with U.S. Navy conveying land rights expiring 2049
  - Governmental Permits (to the extent transferable) relating to the WTE Facilities

- Important Contracts, including:
  - Power Purchase Agreement for electricity sales to AEP
  - Agreement with U.S. Navy for steam sales
  - Waste Disposal Agreements with commercial haulers delivering third party solid waste to SPSA Transfer Stations
  - Contract for disposal of proprietary waste at the RDF Facility
  - Other operation and maintenance contracts relating to the WTE Facilities

**2. *Assets to be Retained by SPSA (“Excluded Assets”) include:***

- Suffolk Landfill
- Transfer Stations
- Tipping floor, scales, scale houses and roadways at the RDF Facility
- Truck Maintenance Facility adjacent to the RDF Facility
- Equipment and Fixtures used in Transfer Station operations
- Trucks, trailers and equipment used in SPSA loading and hauling operations
- All other assets not relating to the WTE Facilities

**3. *Purchase Price for the Sale of the WTE Facilities.***

- Wheelabrator proposes to acquire the WTE Facilities from SPSA for **\$150 million** in cash or immediately available funds.
- The Wheelabrator Offer does not include any financing contingency and is payable in full at closing.

**4. *Adjustments to Purchase Price:*** The purchase price payable at closing is subject to the following adjustments:

- Price is reduced if condition of the WTE Facilities declines during closing period (i.e., price reduced for diminution in value at closing as compared to pre-closing condition, normal wear and tear excluded);
- Payment of SPSA transaction expenses;
- Settlement of accounts receivable and accounts payable relating to the WTE Facilities, to be determined within 60 days after the closing; and
- Amount of inventory at closing, as compared to the pre-closing inventory count.

**5. *Representations and Warranties; Indemnification:***

- The Purchase and Sale Agreement includes customary representations and warranties by both SPSA and Wheelabrator and reciprocal indemnification provisions.

- Wheelabrator will indemnify SPSA for any breach of any of Wheelabrator’s representations or warranties, any assumed liabilities under the acquired contracts and any liabilities arising out of the ownership, management or operation of the WTE Facilities after closing.
- SPSA will indemnify Wheelabrator (to the extent permitted by applicable law, without waiving its sovereign immunity) for breaches of any representation or warranty made by SPSA and for liabilities retained by SPSA arising out of the ownership, management or operation of the WTE Facilities before closing.
- SPSA’s indemnification obligations survive for a period of 18 months after closing and are subject to:
  - an indemnity threshold (i.e., a deductible) of \$1 million; and
  - a cap on maximum liability of \$5 million.
- Liability for fines and penalties arising from carbon monoxide emission violations at the WTE Facilities is allocated as follows:
  - SPSA is liable for 100% prior to installation of the Phase I CO Control Measures (which are to be made at SPSA’s sole cost and expense)
  - SPSA and Wheelabrator are each liable for 50% after installation of the Phase I CO Control Measures
  - Wheelabrator is liable for 100% upon the earlier to occur as follows: (i) completion of the Phase II CO Control Measures; and (ii) 120 days following Closing

**6. *Conditions to Closing.*** The closing of the Purchase and Sale Agreement and transfer of the Acquired Assets to Wheelabrator is expressly contingent on numerous approvals and other actions. These include, but are not limited to, the following:

- Approval of SPSA’s Board of Directors;
- Approval of the Department of Navy, including:
  - Consent to extend the Navy steam agreement for five years through January 2023; and
  - Assignment of Navy land easements to Wheelabrator for land on which the WTE Facilities are sited;
- Consent or approval of certain SPSA creditors, including Virginia Resources Authority, bond insurers and trustees, and Wachovia Bank;
- Installation of certain carbon monoxide control measures at the power plant (which Wheelabrator estimates at \$335,000);
- Execution of a mutually acceptable Lease and Good Neighbor Agreement with the City of Portsmouth relating to small strip of land under the waste transfer house adjacent to Victory Boulevard;

- Private activity bond volume cap allocation from the Commonwealth of Virginia;
- Consents from counterparties to certain SPSA contracts being assigned to Wheelabrator; and
- Satisfaction of all conditions precedent contained in the Service Agreement.

**7. *Termination Events; Deposit/Letter of Credit:***

- ***Termination Events.*** If SPSA executes the Purchase and Sale Agreement, the agreement may subsequently be terminated by:
  - mutual consent of SPSA and Wheelabrator;
  - either party if closing does not occur by March 1, 2010;
  - either party if a court issues an injunction prohibiting the transaction;
  - either party if the other party is in material breach of a representation, warranty, covenant or agreement and such breach has not been timely cured;
  - either party, if all of the conditions precedent have been satisfied by the terminating party, and the non-terminating party breaches its obligation to deliver its required closing deliveries.
- ***Deposit/Letter of Credit forfeited to SPSA upon certain events.*** SPSA is entitled to receive and retain proceeds of the \$5 million earnest money deposit or letter of credit posted by Wheelabrator if:
  - Wheelabrator fails to close the transaction (after satisfaction of all of the conditions to closing); or
  - Wheelabrator is in breach of any representation, warranty, covenant or agreement and such breach cannot be cured or has not been timely cured (so long as SPSA is not in breach).

If the Purchase and Sale Agreement is terminated for any other reason, the \$5 million earnest money deposit or letter of credit (whichever is posted) is to be returned to Wheelabrator.

- ***Other Remedies:*** SPSA is also entitled to pursue other available remedies against Wheelabrator, including damages up to \$40 million.

**IV. SERVICE AGREEMENT**

**1. Wheelabrator's Duty to Accept and Process SPSA Solid Waste Through 2018.**

- ***Initial Term.*** The Service Agreement provides that SPSA will deliver, and Wheelabrator will accept and process, SPSA's solid waste at the WTE Facilities from closing of the transaction until **January 24, 2018**.

- ***Extension.*** SPSA may unilaterally extend the initial term for an additional period not to exceed ten years (January 24, 2028). SPSA is required to give notice to Wheelabrator by December 31, 2014 to extend the term. During any extension, the existing terms of the Service Agreement (including Annual Fee, as adjusted and subject to an extension period fuel surcharge) will remain in place.
2. ***SPSA’s Annual Waste Delivery Guarantee; Annual Fee (“Put or Pay” Arrangement); Excess Tonnage.***
- ***SPSA’s Annual Waste Delivery Guarantee.*** During each year of the Service Agreement, SPSA is required to deliver, and Wheelabrator is required to accept, **500,000 tons** of solid waste delivered by SPSA at the RDF facility.
  - ***Annual Fee payable by SPSA.*** For Wheelabrator’s disposal of SPSA solid waste, SPSA is required to pay Wheelabrator an Annual Fee of **\$18,000,000**. Based on an Annual Delivery Guarantee of 500,000 tons, the Annual Fee for SPSA in fiscal year 2010 is \$36 per ton. In subsequent years, the Annual Fee is subject to a fixed annual increase of \$2 per ton (i.e., a \$1 million aggregate annual increase, before adjustments). The Annual Fee is payable in 12 equal monthly installments.
  - ***Put or Pay Arrangement.*** The Service Agreement is structured as a “***put or pay***” contract – meaning that SPSA is required to pay the fixed monthly fee regardless of how much waste SPSA delivers to the RDF facility (i.e., regardless of whether SPSA satisfies the 500,000 ton delivery guarantee). Regardless of volume, SPSA is required to deliver to Wheelabrator all acceptable solid waste of SPSA’s member communities.
  - ***Excess Tonnage Fee.*** SPSA is required to pay an additional \$36 (as adjusted each year by the Adjustment Factor) for each ton of SPSA waste delivered to the RDF facility in excess of 500,000 tons per year. SPSA has the right to divert any such “excess” waste to a disposal facility of SPSA’s choice, in which case, SPSA will not pay an Excess Tonnage Fee to Wheelabrator for such waste.
3. ***Service Fee Formula and Adjustments. The Service Agreement includes a detailed formula for calculating the Service Fee in any Billing Month.***
- ***Fees payable by SPSA to Wheelabrator:*** SPSA will be responsible to pay Wheelabrator:
    - The Monthly Fee (i.e., 1/12 of the Annual Fee);
    - Excess Tonnage Fees (if any);
    - Pass Through Costs (as described in ***Section IV(4)*** below); and
    - Other possible Adjustments, including a portion of:
      - Hazardous waste disposal costs (if any); and
      - Real property taxes payable to Portsmouth on the WTE Facilities in excess of \$1 million.

- ***Credits Against SPSA Monthly Fee (i.e. Reductions).*** SPSA will receive a credit against (i.e., a reduction of) the Monthly Fee it owes Wheelabrator for:
  - 10% of steam energy revenues received by Wheelabrator (including 10% of amounts received from U.S. Navy for steam);
  - Hauling fee averaging \$11 per ton for transporting commercial waste (i.e., non-municipal waste of member communities) from SPSA’s transfer stations to RDF facility;
  - Loading fee of \$2.50 per ton (as adjusted by the Adjustment Factor) for loading non-processible waste and diverted waste at SPSA Transfer Stations into trailers supplied by Wheelabrator for disposition at a non-SPSA landfill,
  - Residue disposal fee (if achieved in any Billing Year);
  - Fees for transporting and disposing of waste by SPSA (other than at the RDF facility) as a result of Maximum Waiting Time;
  - SPSA Facility Pass Through Costs; and
  - Other possible Adjustments, including sourced special waste sharing fee and non-processible revenue share.

**4. Changes in Law and Resulting Pass Through Costs.**

- ***Pass Through Costs to SPSA.***
  - The Service Agreement requires SPSA to pay certain costs (as pass through costs) that Wheelabrator incurs resulting from Changes in Law occurring after the contract date.
  - SPSA will be liable for a portion of the increase in Wheelabrator’s costs with respect to Wheelabrator’s obligations under the Service Agreement associated with the WTE Facilities, including capital expenditures (based on a straight-line depreciation basis), as a result of a Change in Law.
  - SPSA’s allocable portion of such pass-through costs are essentially limited to SPSA’s pro-rata share of the waste stream based on the total design capacity of the WTE Facility.
  - The “Change-in-Law” costs to be passed through to SPSA or Wheelabrator, as the case may be, are subject to a \$200,000 annual threshold (deductible) and may be rejected to by SPSA or Wheelabrator, as the case may be, before the pass-through takes effect. Except for fees and expenses imposed by the City of Portsmouth, “Change-in-Law” costs up to \$200,000 in any year may not be passed through.
- ***Pass Through Costs to Wheelabrator.*** As a matter of reciprocity, Wheelabrator will be liable for its portion of certain increased costs incurred by SPSA resulting from a Change in Law that impacts the operations of SPSA’s transfer stations and landfills, including straight-line depreciation of certain capital expenditures.

5. **Diversion of Waste from the WTE Facility.**

- ***Diversion Right.*** In certain situations, waste which cannot be processed at the RDF facility can be diverted from SPSA Transfer Stations to a non-SPSA landfill.
- ***Loading Fee Credit for Diverted Waste.*** In the event of such waste diversion events, SPSA is required to load waste into trailers provided by Wheelabrator and Wheelabrator is obligated to transport and dispose of such waste. SPSA will receive a loading fee of \$2.50 per ton for such diverted waste.

6. **Wheelabrator Management, Operation and Maintenance Obligations.**

- ***Wheelabrator Obligations.*** During the term, Wheelabrator is obligated to manage, operate and maintain the WTE Facilities in accordance with the terms and conditions contained in the Service Agreement. Specifically, Wheelabrator is required to:
  - Perform all work in compliance with applicable law;
  - Maintain the WTE Facilities and site in a clean, neat, orderly and litter free condition (including all grounds, landscaping and drainage systems);
  - Secure and maintain all Permits, including environmental permits, necessary to operate the WTE Facilities;
  - Comply with all laws concerning safety related issues;
  - Comply with an emergency procedures plan.
- ***Penalties for Wheelabrator's Failure to Perform.*** SPSA may, in certain situations, withhold funds or impose liquidated damages for Wheelabrator's failure to comply with its obligations under the Service Agreement.

7. **Out of State Waste – Projected Monthly Waste Shortfalls.**

- ***General Prohibition of Out-of-State Waste.*** Wheelabrator will not be allowed to receive Out-of-State Waste (defined as waste from any state outside of Virginia and North Carolina) at the WTE Facilities except in very limited and specific circumstances (generally when Wheelabrator is not receiving sufficient waste from SPSA as fuel to operate the WTE Facilities at capacity and generate sufficient steam and/or electricity). In no event is Wheelabrator permitted to reject deliveries of SPSA Acceptable Waste in favor of Outside-Area Waste or Out-of-State Waste.
- ***Process for Accepting Outside-Area Waste and Out-of-State Waste in circumstances where additional fuel is needed to operate the WTE Facilities.***
  - If Wheelabrator, after consultation with SPSA, reasonably determines that the amount of SPSA Acceptable Waste in any month will be less than 62,500 tons, then Wheelabrator may acquire additional waste subject to and in sequence with the following chronological steps, but only if and to

the extent Wheelabrator requires additional waste to operate the WTE Facilities:

- **Step 1:** Wheelabrator first is required to use all reasonable efforts to obtain waste in the SPSA Service Area (defined to include SPSA's eight member communities).
  - **Step 2:** Wheelabrator second must use all reasonable efforts to obtain Outside-Area Waste (defined as waste from Virginia and North Carolina).
  - **Step 3:** If, despite Wheelabrator's reasonable efforts to obtain additional SPSA Area Waste and Outside-Area Waste, Wheelabrator still needs additional waste to fuel the WTE Facilities, then third Wheelabrator may receive Out-of-State Waste in that particular month, but only in such amount necessary to satisfy any remaining projected waste shortfall.
- All Outside-Area Waste and Out-of-State Waste must be delivered directly to the RDF facility.
  - Wheelabrator is required to maintain detailed records demonstrating Wheelabrator's efforts to obtain SPSA Area Waste and Outside-Area Waste to facilitate SPSA monitoring this situation so it can verify that the Out-of-State Waste restrictions are being followed.

8. **SPSA's Continuing Hauling Operations from Transfer Stations to RDF Facility.**

- ***SPSA Delivery of Third Party Acceptable Waste to RDF Facility.*** SPSA will continue to accept third party hauler waste (i.e., contracted waste arrangements) and non-contract waste at SPSA transfer stations. Wheelabrator will pay SPSA a hauling fee for delivery of this authorized hauler waste to the RDF facility. The Service Agreement provides that SPSA will:
  - Receive third party waste and non-contract waste at SPSA's transfer stations;
  - Deliver such waste (commingled with SPSA solid waste) to the RDF facility or load non-processible waste into Wheelabrator-supplied trailers for disposal at a non-SPSA landfill;
  - Transmit authorized hauler waste delivery information (i.e., number of tons received from each third party hauler at any SPSA transfer station) to Wheelabrator each month for billing purposes; and
  - Use commercially reasonable efforts to identify and segregate third party hauler waste delivered to transfer stations so that non-processible waste can be loaded into trailers and disposed of by Wheelabrator at a non-SPSA landfill.

- ***Third Party Tipping Fees.*** Wheelabrator will receive or be credited for the tipping fees associated with such third party waste and non-contract waste received at SPSA's transfer stations (other than tipping fees for waste received at the Suffolk landfill).

**9. Continued Employment of SPSA Employees.**

- ***Employment of SPSA WTE Facility Employees.*** Wheelabrator is required to offer employment (subject to standard pre-employment screening) to all employees presently employed by SPSA at the WTE Facilities (other than employees who operate the RDF scales who will remain SPSA employees). Wheelabrator will be required to employ such employees until at least the first anniversary of the Closing Date.
- ***Wheelabrator Employee Benefits.*** The Service Agreement requires that employees be paid wages and salaries at least equal to those presently being paid by SPSA, plus a 5% increase in base wage or salary. Wheelabrator is required to provide former SPSA employees with an employee benefits plan, 401(k) plan, and other employee benefits reasonably comparable to those being given to other similarly situated employees of Wheelabrator.

**10. SPSA's Tipping Floor, Scalehouses, Roadways and Truck Maintenance Facility.**

- ***SPSA's Ownership of Tipping Floor; Scalehouses and Roadways; Transfer to Wheelabrator upon expiration or termination of Service Agreement:***
  - Following closing of the transaction, SPSA will continue to own the RDF tipping floor, access roads, scalehouses and truck maintenance facility.
  - SPSA will operate and maintain the scales and scalehouses at the RDF facility to weigh SPSA and non-SPSA waste arriving at the RDF facility.
  - Wheelabrator will operate and maintain the RDF tipping floor and roadways.
  - Wheelabrator will have a purchase option to acquire the RDF tipping floor, scalehouses and access roads for \$1 at the end of the Service Agreement term, (including any extension) or if the Service Agreement is terminated.
- ***SPSA Truck Maintenance Facility:*** SPSA will continue to own and maintain the truck maintenance facility adjacent to the RDF Facility through the end of the remaining 40-year term of the Navy land easement.

**11. Disposal of Ash and Residue at a SPSA owned or contracted landfill.**

- ***Disposal of WTE Facility Ash at SPSA Landfill.*** During the Term, SPSA will make its Suffolk landfill and any other SPSA-contracted landfill (including the Virginia Beach landfill) available to Wheelabrator to dispose of Residue (which includes ash) from the WTE Facilities.

- ***Rejection Rights:*** SPSA has a right to reject deliveries of Residue in a number of events, including if such waste does not otherwise meet or satisfy requirements for disposal or if SPSA's Landfill(s) reach landfill capacity limits.
- ***No obligation to expand Suffolk Landfill.*** SPSA has no obligation to undertake any expansion of its landfills or to maintain any landfill or any landfill capacity for disposal of ash, Residue or any other waste.

**12. Early Termination of the Service Agreement.**

- ***Wheelabrator payment to SPSA if Service Agreement is terminated by SPSA because of Wheelabrator Event of Default.*** If SPSA terminates the Service Agreement based on a Wheelabrator Event of Default, Wheelabrator is required to pay SPSA liquidated damages of:
  - \$40 million if terminated in the first two years,
  - \$35 million if terminated in the third or fourth year,
  - \$30 million if terminated in the fifth or sixth year, and
  - \$25 million if terminated after the sixth year.
- ***SPSA payment to Wheelabrator if Service Agreement is terminated by Wheelabrator because of SPSA Event of Default.*** If Wheelabrator terminates the Service Agreement for a SPSA Event of Default, SPSA is required to pay Wheelabrator liquidated damages of \$10 million.
- ***SPSA Rights to Terminate Service Agreement.*** SPSA has a right to terminate the Service Agreement if:
  - an Uncontrollable Circumstance occurs affecting all or a significant portion of Wheelabrator's material obligations for a period of 180 days or is reasonably anticipated to prevent performance for 180 days, or
  - SPSA's fractional share of the cumulative costs associated with the cure of all Changes in Law during the term of the Service Agreement would have the effect of increasing SPSA's service fee by at least \$10 per ton in the aggregate (not including any costs or expenses imposed by the City of Portsmouth, Virginia).