

**WASTE DISPOSAL AND SERVICES AGREEMENT**

**BY AND BETWEEN**

**WHEELABRATOR PORTSMOUTH INC.**

**AND**

**SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

**September 18, 2018**

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**SCHEDULES**

Schedule 1	-	Definitions
Schedule 2	-	SPSA Transfer Stations
Schedule 3	-	Reporting Requirements
Schedule 4	-	Northwest River Watershed
Schedule 5	-	Performance Bond
Schedule 6	-	Guaranty
Schedule 7	-	Processing Guarantee

## **WASTE DISPOSAL AND SERVICES AGREEMENT**

**THIS WASTE DISPOSAL AND SERVICES AGREEMENT** (this “Agreement”) is made and entered into as of September 18, 2018 (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 January 3, 2018, SPSA issued a Request for Proposal for Municipal Solid Waste (MSW) Disposal Services (RFP 06-18), as subsequently amended (the “RFP”), to establish one or more contracts through competitive negotiation for the acceptance and processing, recycling and/or disposal of Solid Waste by or on behalf of SPSA to contractor’s permitted facility, and for such contractor(s) facility(ies) to serve as a Designated Disposal Mechanism;

**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 the services contemplated by the RFP;

**WHEREAS**, on April 25, 2018, the Board determined that Contractor was clearly more highly qualified than the other RFP responders under consideration, and directed SPSA’s evaluation committee to conduct negotiations with Contractor;

**WHEREAS**, following negotiations with Contractor, the Board selected Contractor in reliance on (a) the Contractor’s submissions and representations in its proposal to SPSA, and (b) the negotiated and finalized Agreement;

**WHEREAS**, SPSA desires to engage the services of Contractor to furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to accept and Process all Acceptable Waste delivered by or on behalf of SPSA to the refuse-derived fuel facility owned and operated by Contractor and located at 2 Victory Boulevard, Portsmouth, Virginia (the “RDF Facility”), 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;

**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 Services and satisfy its other obligations under this Agreement, all in accordance with the terms hereof;

**WHEREAS**, Contractor acknowledges and recognizes that if Contractor is not otherwise able to commence performance of the Services 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 Acceptable Waste at an alternate disposal facility or dispose of such Acceptable Waste at the SPSA Landfill, which the Parties recognize uses available landfill capacity and diminishes the value of such asset; and

**WHEREAS**, as a condition precedent to the execution by SPSA of this Agreement, Granite Acquisition Inc., a Delaware corporation (the “Guarantor”), a parent company of the Contractor, is executing the Guaranty set forth in Schedule 6 (Guaranty) guaranteeing the performance of the Contractor’s obligations hereunder.

**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 DISPOSAL AND SERVICES AGREEMENT**

Section 1.1 Purpose. The purpose of this Agreement is to define the terms and conditions by which Contractor shall (a) accept and Process Acceptable Waste delivered by or on behalf of SPSA (including SPSA Direct Haulers) at the Facilities, (b) manage, operate and maintain the Facilities and (c) provide the other Services, in each case, commencing on the Commencement Date and continuing throughout 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

Schedule 1	-	Definitions
Schedule 2	-	SPSA Transfer Stations
Schedule 3	-	Reporting Requirements
Schedule 4	-	Northwest River Watershed
Schedule 5	-	Performance Bond
Schedule 6	-	Guaranty
Schedule 7	-	Processing Guarantee

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 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 (Definition) 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**

### Section 2.1 Pre-Commencement Matters.

Section 2.1.1 Conditions Precedent to Commencement of Services. On or before November 1, 2018 (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 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 Landfills consistent with the requirements of Section 3.2.1(c).

(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 8.3.

(e) 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 28, 2019, 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(e) 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 on or prior to the Pre-Commencement Date; *provided, however*, if despite Contractor's reasonable efforts, any of the Pre-Commencement Date Conditions are not satisfied by Contractor by the Pre-Commencement Date, the Contractor shall be permitted an additional period of twenty (20) Days following the Pre-Commencement Date to cure such failure(s). 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, as such date is extended for the 20-day cure period in accordance with Section 2.1.2 (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 10.1.2.

### **SECTION 3 OBLIGATIONS OF CONTRACTOR**

Section 3.1 Performance of 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 Services (i) in accordance with all other terms and conditions

of this Agreement, and (ii) in return only for the Service Fee pursuant to Section 6 taking into account, in each case, any set-offs, credits, damages, or other deductions or adjustments recognized in Section 6 or other provisions of this Agreement, or both.

Section 3.2 Management and Operation of the Facilities; Services.

Section 3.2.1 Services. Subject to the more specific requirements, exceptions and limitations set forth herein, Contractor shall:

(a) Subject to the provisions of Section 5.2.2, receive and accept all Acceptable Waste delivered by or on behalf of SPSA (including SPSA Direct Haulers) at the RDF Facility.

(b) Except as expressly provided in Section 3.13.3(ii), load, transport, deliver and dispose of all Residue generated by the WTE Facility to the SPSA Landfill, or if SPSA rejects deliveries of Residue in accordance with Section 4.3.2 or if the SPSA Landfill is otherwise unavailable, transport, deliver and dispose of such Residue at a Landfill for disposal in accordance with Applicable Law.

(c) Handle, transport and properly dispose of all (i) NP Waste, (ii) Processible Waste not Processed at the WTE Facility, and (iii) Prohibited Waste, in each case, in accordance with Applicable Law; *provided, however*, in no event shall any Solid Waste (including NP Waste) received at, or diverted from, the Facilities be transported to any Landfill constructed, operated or otherwise existing within the Northwest River Watershed.

(d) Exercise all reasonable efforts to minimize service disruptions, neighborhood impacts and other inconveniences due to the management, operation, maintenance, repair or replacement activities of Contractor or its Subcontractors, or any combination of such foregoing activities.

Section 3.2.2 Costs and Expenses in the Performance of the Services. Contractor shall be solely responsible for all costs and expenses relative to the Services, including all costs and expenses incurred in connection with repair, replacement, management and operation of the Facilities, Processing of Acceptable Waste, hauling, transportation and disposal of Residue, NP Waste and, if applicable, Processible Waste, including all costs and expenses incurred and/or owed to any Subcontractors, as well as all tolls or assessments assessed by any Governmental Authority or other Person, all gate fees, all fines, penalties, and all charges for traffic offenses and any other cost or expense incurred in connection with the Processing and/or disposal of Acceptable Waste hereunder. For the avoidance of doubt, unless otherwise provided herein, SPSA shall be responsible for its own costs and expenses to transport Acceptable Waste to the RDF Facility.

Section 3.2.3 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 Services.

### Section 3.3 Hours of Operation.

Section 3.3.1 RDF Receiving Time. The RDF Facility shall remain open to receive deliveries of Acceptable Waste hereunder twenty-four (24) hours per day, six (6) days per week, with Sunday from 6:00 a.m. (local time) to Monday at 6:00 a.m. (local time) being the period of non-operation (the “RDF Receiving Time”). Contractor may operate the Facilities to receive Acceptable Waste during periods in addition to the RDF Receiving Time specified herein. Contractor and SPSA may, from time to time, change the RDF Receiving Time by mutual written agreement.

Section 3.3.2 Emergency Conditions. In the event of a natural disaster, significant storm (*e.g.*, hurricane) or other emergency condition, SPSA may request Contractor to accept deliveries of Acceptable Waste at the RDF Facility at times other than the RDF Receiving Time upon two (2) Days prior Notice (or such shorter notice as may be practicable). Contractor shall use reasonable efforts to accommodate SPSA’s request, so long as Contractor is able to accommodate such request in accordance with Applicable Law.

Section 3.4 Compliance with Law. Contractor shall perform all Services in material compliance with all Applicable Laws, and Contractor shall ensure that all Subcontractors performing 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 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 3.5 Contractor Labor.

Section 3.5.1 Personnel. Contractor shall employ a workforce at the Facilities with an appropriate and sufficient number of hourly and salaried employees, consistent with Prudent Industry Practices, to enable Contractor to perform the Services in a timely and efficient manner. All of Contractor’s personnel shall be qualified and appropriately trained in accordance with Applicable Law so that the Services will be performed hereunder in accordance with and consistent with Applicable Law and Prudent Industry Practices.

Section 3.5.2 Contractor Relationships. Contractor and Contractor’s Authorized Representative, together with each individual designated by Contractor to manage and supervise the 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 3.6 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 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 Services, (d) establish and maintain safety procedures for the provision of Services and for the protection of employees of Contractor and all other Persons, including invitees and permittees at the 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 Facilities and their protection from damage, injury or loss at the Facilities.

Section 3.7 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 Services hereunder, including but not limited to any Permits required with respect to the Facilities in connection therewith. Contractor shall thereafter throughout the Term maintain and, as applicable, renew all such Permits required for its performance of the 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 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 senior level executive acceptable to SPSA) of Contractor and/or its Parent Company appear in person before the Board to explain the reason(s) for the Permit violation, the proposed cures and timing thereof, 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 3.8 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 in writing 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 Services hereunder or (c) requires notifications to Governmental Authorities.

Section 3.9 Access to the Facilities.

Section 3.9.1 Access to the 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 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 3.9 shall not materially adversely impact Contractor's operation of the Facilities. Relative to SPSA's inspections and visits as described in this Section 3.9, SPSA's Authorized Representative and SPSA's other representatives and agents shall comply with Contractor's safety rules and regulations, such safety rules and regulations to be applicable to all Persons, with respect to their inspection or visit to the Facilities and shall not unreasonably interfere with operations of the Facilities.

Section 3.9.2 Tours of the Facilities. Contractor shall schedule and provide tours of the Facilities and Facilities Site upon reasonable notice by SPSA's Authorized Representative. SPSA's Authorized Representative may schedule and conduct as many tours as desired upon reasonable notice to Contractor's Authorized Representative, *provided* that any such tours shall not, individually or collectively, unreasonably interfere with Facilities operations and maintenance.

Section 3.10 Taxes and Contributions. Contractor shall be solely 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 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 3.11 Compliance With Schedules. Contractor shall comply with each and every provision of the Schedules in all respects that is applicable to Contractor and/or the performance of its obligations under this Agreement.

Section 3.12 Operation and Maintenance of the Facilities. Contractor shall continually and on a regular basis operate (during at least the RDF Receiving Time) and maintain the Facilities and the Facilities Site, in a clean, neat, orderly, and litter free condition consistent with Prudent Industry Practices. Contractor shall perform all corrective, predictive, preventive and routine maintenance to the Facilities consistent with Prudent Industry Practices, including repairs and replacements, to maintain the equipment, Facilities and Facilities Site, such that they are kept and maintained in good physical, mechanical and operational condition. Without limiting the generality of the foregoing, Contractor shall maintain within the Facilities Site all roads, grounds, landscaping, drainage systems and other appurtenances, including, but not limited to, storm water drainage systems, manholes, inlets, headwalls, flared end sections, cleanouts and rip raps.

Section 3.13 Residue Delivery.

Section 3.13.1 Residue Estimate. At least thirty (30) Days prior to the Commencement Date and each Billing Year thereafter, Contractor shall provide SPSA's Authorized Representative with an estimate of the quantity of Residue (a "Residue Estimate") that Contractor expects to deliver, or cause to be delivered, to the SPSA Landfill hereunder,

during such Billing Year (or partial Billing Year). Contractor may, in its discretion, but shall not be required to, independently update such Residue Estimate from time to time throughout the applicable Billing Year by providing at least thirty (30) Days prior Notice to SPSA's Authorized Representative; *provided, however*, that Contractor's delivery to SPSA in one or more Billing Year(s) of Residue that exceeds, or is less than, the Residue Estimate for such Billing Year(s) shall not, except in breach or violation of Section 3.13.3 or other provision herein, (a) constitute a breach of the Contractor's obligations hereunder, (b) be deemed to be an Uncontrollable Circumstance or Contractor Fault, or (c) give rise to a Contractor Event of Default. **In addition to and not in limitation of the foregoing, and so that there is no doubt, SPSA expressly acknowledges and agrees that (i) Contractor cannot (and does not) make any guarantees regarding the volume of Residue that will be delivered hereunder in any given Billing Year (or at all), and thus any Residue Estimates provided to SPSA shall not (and do not) constitute a guarantee by Contractor; and (ii) Contractor cannot (and does not) commit to delivering any "minimum" amount of Residue during any given Billing Year and/or during the Term.**

Section 3.13.2 Composition; Moisture Content; TCLP and Other Results.

(a) Composition; Moisture Content. Contractor shall only deliver Residue to the SPSA Landfill which is non-hazardous. Contractor shall use commercially reasonable efforts to treat the Residue delivered by or on behalf of Contractor to the SPSA Landfill so that the moisture content of such Residue is reasonably acceptable to SPSA.

(b) Quarterly TCLP Results. Contractor shall, at its sole cost and expense, perform and provide to SPSA on a quarterly basis (*i.e.*, on or before each of January 15, April 15, July 15 and October 15) the periodic toxicity characteristics leaching procedure (TCLP) analysis on representative samples of the Residue and report the test results thereof, in detail reasonably satisfactory to SPSA (the "TCLP Results"). In addition, SPSA may request, and Contractor shall, at its sole cost and expense, promptly perform and provide to SPSA (but not later than ten (10) Business Days following such request), the current or historic TCLP Results and such other information and documentation as may be reasonably requested by SPSA at any time (i) if requested by any Governmental Authority or (ii) if SPSA has reasonable suspicion that the Residue is not in compliance with the terms of this Agreement or Applicable Law.

(c) Other Testing. At any other time, and from time to time, SPSA may, in its discretion, request Contractor to perform more periodic TCLP or other testing or analysis of the Residue and Contractor shall promptly perform such additional testing or analysis and promptly provide to SPSA the TCLP Results and/or such other reporting, documentation or information as may be reasonably requested by SPSA or any Governmental Authority; *provided*, the reasonable third party costs incurred by Contractor to perform such additional testing and reports requested by SPSA shall be reimbursable by SPSA, subject to cost substantiation (*e.g.*, receipts, invoices, etc.).

(d) Testing Procedures; Records. Contractor shall perform, or cause to be performed, all such sampling, testing, reporting and analysis, including the TCLP Results, to be performed in accordance with Prudent Industry Practices and Applicable Law. Contractor

shall maintain all Records pertaining to the testing, analysis and reporting of Residue, including the TCLP Results, for three (3) years following the termination or expiration of this Agreement, and all such Records shall be subject to Section 8.7.

Section 3.13.3 Delivery of All Residue to SPSA Landfill. Contractor shall not (i) sell, transfer, exchange, donate, dispose or otherwise deliver any Residue to any other Persons (other than SPSA) or beneficially use any amount of Residue, or (ii) modify or change its existing Facilities' operations or improve, modify or otherwise alter any of its Facilities, in each case in effect as of the Contract Date, to increase the quantity or percentage of materials recovered from the Residue; *provided, however*, (A) Contractor may recover metals from the Residue in an amount not to exceed 8,550 Tons in any Billing Year, and (B) Contractor may take representative samples of the Residue (not to exceed 10 Tons in any Billing Year) for purposes of testing for beneficial use or other uses.

#### Section 3.14 RDF Tippers.

Section 3.14.1 Management and Use of RDF Tipper(s). Contractor shall, at its sole cost and expense, manage, maintain, repair, replace, direct and supervise the RDF Tippers in accordance with Prudent Industry Practices. Contractor shall, at all times, allow vehicles transporting Acceptable Waste by or on behalf of SPSA to enter the Facility Site by separate line entrance and use the RDF Tippers at no cost or expense to SPSA. SPSA shall have priority use of the RDF Tippers over all other Persons delivering Solid Waste to the RDF Facility other than Mr. Bult's, Inc.

Section 3.14.2 RDF Tipper SOP. Before implementation and use of the RDF Tippers for SPSA vehicles, (a) Contractor shall provide to SPSA all information reasonably requested by SPSA pertaining to the operation, use and management of the RDF Tippers, including engineering verification from a Virginia-licensed engineer, such as to the ability of the RDF Tippers to handle SPSA trailers containing full loads of Acceptable Waste and (b) the Parties shall develop a mutually agreeable written standard operating procedure (the "RDF Tipper SOP") regarding (i) the use of the RDF Tippers by vehicles transporting Acceptable Waste to the RDF Facility and (ii) the calculation, reporting and verification of SPSA vehicles utilizing the RDF Tippers. The RDF Tipper SOP may be amended, supplemented or otherwise modified from time to time by mutual written agreement of the Parties. In no event shall the failure, breakdown or malfunction of, or the inability or refusal to use, the RDF Tippers constitute an Uncontrollable Circumstance, SPSA Fault or SPSA Event of Default hereunder. For the avoidance of doubt, SPSA shall have the right, but not the obligation, to use the RDF Tippers.

Section 3.14.3 Training. From time to time, Contractor shall, at its sole cost and expense, provide all training and training materials (including updates and revisions thereto) on the safe operation and use of the RDF Tippers to SPSA employees and any of its Subcontractors at such place within the SPSA Service Area and at such date(s) and time(s) as may be arranged by Contractor and SPSA. In advance of such training, Contractor shall provide a copy of all training materials to SPSA's Authorized Representative.



Section 3.14.4 Indemnification. Contractor shall indemnify and hold the SPSA Indemnified Parties harmless from and against any Losses incurred in connection with or relating to the use, operation or management of the RDF Tipper; *provided, however*, Contractor shall not be liable under the foregoing indemnification provision if the Loss is determined by a court of competent jurisdiction to have resulted solely from the willful misconduct of a SPSA employee.

Section 3.15 SPSA Landfill Tipper.

Section 3.15.1 SPSA Landfill Tipper. Contractor shall, at its sole cost and expense, be permitted to deliver (or cause to be delivered) the SPSA Landfill Tipper to the SPSA Landfill for use in the delivery and disposal of Residue by or on behalf of Contractor. In coordination with SPSA, Contractor shall, at its sole cost and expense, (i) periodically provide and deliver to the SPSA Landfill all fuel, oil, lubricants and all other items used in the operation, maintenance or repair of the SPSA Landfill Tipper, and (ii) periodically and as needed, from time to time, maintain, repair and replace the SPSA Landfill Tipper, including performing all corrective, predictive, preventive and routine maintenance, in accordance with Prudent Industry Practices and Applicable Law. After being properly trained in accordance with Section 3.15.3, SPSA shall relocate and move the SPSA Landfill Tipper within the SPSA Landfill as needed. From time to time, Contractor shall, at its sole cost, promptly make repairs and perform maintenance to the SPSA Landfill Tipper. SPSA shall be permitted to use the SPSA Landfill Tipper, at no cost or expense to SPSA, for the delivery of Solid Waste to the SPSA Landfill; *provided, however*, unless otherwise approved by Contractor, SPSA shall not use the SPSA Landfill tipper for its own purposes for more than ten (10) trailer loads per Day. Promptly following expiration or termination of this Agreement or at any other time if SPSA reasonably determines, in consultation with Contractor, that the use, operation or performance of the SPSA Landfill Tipper is an operational, health or safety issue or hazard, SPSA may request Contractor to promptly remove the SPSA Landfill Tipper, and Contractor shall promptly (but in no event, more than ten (10) Days following such request) remove (or cause to be removed) the SPSA Landfill Tipper from the SPSA Landfill. In no event shall the failure, breakdown or malfunction of, the inability or refusal to use or request for removal of, the SPSA Landfill Tipper constitute an Uncontrollable Circumstance, SPSA Fault or SPSA Event of Default hereunder.

Section 3.15.2 SPSA Landfill Tipper SOP. Before delivery to the SPSA Landfill, or implementation and use of the SPSA Landfill Tipper, (a) Contractor shall provide to SPSA all information requested by SPSA pertaining to the operation, use, management, repair and replacement of the SPSA Landfill Tipper, including engineering studies and other verification (by an engineer licensed in the State), and (b) the Parties shall develop a mutually agreeable written standard operating procedure (the "SPSA Landfill Tipper SOP") regarding the operation, use, management, repair and replacement of the SPSA Landfill Tipper. The SPSA Landfill Tipper SOP may be amended, supplemented or otherwise modified from time to time by mutual written agreement of the Parties.

Section 3.15.3 Training. In advance of SPSA's use of the SPSA Landfill Tipper, Contractor shall, at its sole cost and expense, provide all training and training materials (including updates and revisions thereto) on the safe use of the SPSA Landfill Tipper to SPSA employees and any of its Subcontractors at the SPSA Landfill (or such other location acceptable to SPSA) and at such date(s) and time(s) as may be arranged by Contractor and SPSA. In

advance of such training, Contractor shall provide a copy of all training materials to SPSA's Authorized Representative.

Section 3.15.4 Liability; Indemnification.

(a) Liability. Except as expressly set forth in Section 3.15.4(b), (i) Contractor shall retain and remain solely responsible for all ownership, risk of loss and liability in any way relating to, arising from or in connection with the SPSA Landfill Tipper (including any damage to or Loss of the SPSA Landfill Tipper itself), including the use by all Persons (including Contractor's Subcontractors) and its movement and relocation by SPSA within the SPSA Landfill, and (ii) Contractor, on behalf of itself and the Contractor Indemnified Parties, expressly waives any claims against SPSA and releases SPSA from any and all claims, liabilities, damages, obligations, losses, demands, actions or causes of action of any kind, known or unknown, past or present, arising out of, relating to or in connection with the SPSA Landfill Tipper. For the avoidance of doubt, the foregoing provision is intended to apply even if such Loss or liability is attributable to, or the result of, the negligence or improper use by SPSA or its employees.

(b) Indemnification. Notwithstanding anything herein to the contrary, Contractor shall indemnify, defend and hold the SPSA Indemnified Parties harmless from and against any and all 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) incurred in any way relating to, arising from or in connection with the placement, use, relocation, movement, operation, management or maintenance of, or otherwise associated with or related to, in any respect, the SPSA Landfill Tipper. This Section 3.15.4(b) is intended to apply even if the injury or Loss is caused 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 is determined by a court of competent jurisdiction to have resulted solely from the willful misconduct of a SPSA employee. The procedure and provisions in Section 8.1.1(b) shall apply to indemnification claims made pursuant to this Section 3.15.4(b).

Section 3.16 Material Subcontracts.

(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 Subcontracts utilized in Contractor's performance of 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 3.16(c) below, Contractor shall not, without the prior written consent of SPSA, (i) terminate, amend or otherwise modify any of the Material Subcontracts or (ii) waive or relinquish any rights or power under any of the Material Subcontracts, if either such action would (x) adversely affect Contractor's ability to perform the 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 Subcontract or any waiver or relinquishment of any rights or power under any of the Material Subcontracts is proposed or if Contractor enters into any replacement Material Subcontracts (or any agreement that affects the interpretation or application of any Material Subcontract), where any of which such actions/documents would or may (i) adversely affect Contractor's ability to perform the 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 3.17 Monthly Reports; Meetings.

Section 3.17.1 Monthly Reports. On or before the fifteenth (15<sup>th</sup>) Day of each Billing Month, Contractor's Authorized Representative shall deliver the Monthly Report to SPSA's Authorized Representative in as many copies as reasonably requested by SPSA's Authorized Representative. At the request of SPSA's Authorized Representative, Contractor's Authorized Representative shall supply the data and information contained in the Monthly Report in an electronic format reasonably acceptable to SPSA's Authorized Representative.

Section 3.17.2 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 Services hereunder; and (b) Contractor's Authorized Representative shall attend and, if requested, make a presentation at SPSA's Board meeting concerning Contractor's performance of the Services hereunder and any other related matters.

## **SECTION 4 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 4.1 Delivery of Acceptable Waste; No Delivery Guarantee.

Section 4.1.1 Delivery of Acceptable Waste. Except as expressly provided hereunder (including for diversions or rejected deliveries pursuant to Section 5.2), SPSA shall deliver, or cause to be delivered, to the RDF Facility substantially all Acceptable Waste delivered by or on behalf of Member Communities received by SPSA at the following SPSA Transfer Stations: (i) Chesapeake, (ii) Landstown, (iii) Norfolk and (iv) Oceana Transfer Stations (or an equivalent amount of Acceptable Waste from other SPSA Transfer Station(s)). Contractor acknowledges and agrees that (a) it is not entitled to receive, charge or collect any fees, charges or other amounts from the delivery of Acceptable Waste by or on behalf of SPSA Direct Haulers to the RDF Facility, (b) SPSA may, from time to time, temporarily (on a short-term basis) close or suspend operations at one or more SPSA Transfer Stations for maintenance, improvement, alteration and/or repair which may impact or prevent SPSA's ability to accept Acceptable Waste at such SPSA Transfer Station(s), and (c) SPSA is solely entitled to collect, receive and retain such fees, charges and other amounts with, or otherwise obligated to pay, SPSA for delivery of Solid Waste to SPSA Transfer Stations or directly to the RDF Facility.

Section 4.1.2 No Sorting Obligation. The Parties acknowledge and agree that once commingled at the SPSA Transfer Stations, Acceptable Waste may include Solid Waste delivered by or on behalf of Member Communities and other Persons (whether with or without a contract with SPSA), which may be comprised of both Processible Waste and NP Waste. At no time shall SPSA be required or obligated to segregate, sort or otherwise deliver separate loads of Solid Waste delivered by or on behalf of Member Communities from Solid Waste received by SPSA from all other Persons. Contractor expressly acknowledges and agrees that (i) SPSA has no obligation to sort or separate Processible Waste from NP Waste, (ii) Acceptable Waste delivered to the RDF Facility will include NP Waste, and Contractor shall accept (and not reject) the same, and (iii) the delivery of NP Waste to the RDF Facility 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.

Section 4.2 Service Fee. SPSA shall pay, or cause to be paid, the Service Fee and such other compensation and amounts due to Contractor at such times and in such amounts as specified in Section 6.

Section 4.3 Disposal of Residue at SPSA Landfill.

Section 4.3.1 Residue Disposal.

(a) Subject to the terms and conditions set forth in this Section 4.3, SPSA shall make available to Contractor the SPSA Landfill for disposal of Residue generated at the Facilities. Contractor shall be solely responsible for all costs and expenses of the handling and loading onto hauling vehicles, transporting and disposal of Residue.

(b) In the event the road conditions at the SPSA Landfill prevent the free, unassisted access of Contractor or its haulers from delivering and disposing their loads of Residue at the SPSA Landfill and such road conditions materially adversely delay the delivery of Residue by Contractor (or its Subcontractors) at the SPSA Landfill, Contractor may request SPSA to accept deliveries of Residue at times other than the Landfill Receiving Time by providing reasonable advance Notice to SPSA's Authorized Representative. SPSA shall use reasonable efforts to accommodate Contractor's request, so long as SPSA is able to accommodate such request in accordance with Applicable Law, including the Permit, and based on SPSA's operational and staffing availability.

(c) Contractor may request (an "Extended Landfill Hours Request") that SPSA extend the Landfill Receiving Time to allow for deliveries of Residue by or on behalf of Contractor at the SPSA Landfill on (i) Saturdays, from 12:00 noon (local time) to 4:00 p.m. (local time) or (ii) on Legal Holidays, from 8:00 a.m. (local time) to 12:00 noon (local time). Such Extended Landfill Hours Request shall be for a four (4) hour period. Contractor shall provide an Extended Landfill Hours Request to SPSA's Authorized Representative, specifying the particular Day(s) and time(s) requested, not less than two (2) Days prior to the Day in which Contractor requests such extended hours. If SPSA is able to accommodate Contractor's Extended Landfill Hours Request, which shall be in SPSA's sole discretion, Contractor shall pay to SPSA an amount equal to Eight Hundred Eighty Dollars (\$880.00), as adjusted by the Adjustment Factor, for such four (4) hour period in which the SPSA Landfill is open pursuant to an Extended Landfill Hours Request. Contractor shall make such payment to SPSA in accordance with Section 6.3.2.

Section 4.3.2 SPSA's Rejection Rights.

(a) SPSA may reject, in its sole discretion, tenders of Residue delivered to the SPSA Landfill by on behalf of Contractor:

(1) at times other than during Landfill Receiving Time (as such Day(s) and time(s) may be extended pursuant to an Extended Landfill Hours Request approved by SPSA in accordance with Section 4.3.1(c) above);

(2) in excess of one hundred eighty thousand (180,000) Tons of Residue in any Billing Year (or pro rata amount in any partial Billing Year);

(3) in the event the SPSA Landfill is unable to receive or process as a result of (i) an Uncontrollable Circumstance, (ii) Contractor Fault, or (iii) the

application of pertinent provisions of this Agreement excusing or modifying SPSA's obligation to accept and receive Residue;

(4) which does not meet, violates or otherwise satisfy requirements for disposal under Applicable Law;

(5) in the event the SPSA Landfill reaches landfill capacity limits;

(6) if the acceptance of which by SPSA would cause SPSA to exceed the SPSA Landfill's daily Permit limit; or

(7) Non-Qualifying Residue.

(b) SPSA shall have the right to deny entry to the SPSA Landfill of vehicles and personnel not possessing the required identification.

(c) Nothing in this Section 4.3 or otherwise in this Agreement shall be construed to limit SPSA's right to close the SPSA Landfill for any purpose specified in this Section 4.3, or to create any obligation on the part of SPSA to provide any alternative delivery point during any period of any closure. In no event shall SPSA have any obligation (i) to undertake any expansion of the SPSA Landfill, or (ii) maintain or cause to be maintained any Landfill or any capacity at the SPSA Landfill for disposal of any Residue or any other waste. SPSA shall provide Notice to Contractor's Authorized Representative following such time when deliveries of Solid Waste to the SPSA Landfill exceed ninety percent (90%) of the SPSA Landfill's daily or annual Permit limits.

(d) SPSA shall have the right, in its sole discretion, to reject any and all deliveries of any other type of waste delivered to the SPSA Landfill not otherwise expressly specified in this Section 4.3. Unless otherwise previously approved in writing by SPSA, in no event shall Contractor deliver, or cause to be delivered, Processible Waste, NP Waste or Prohibited Waste to the SPSA Landfill. If any Hazardous Waste is delivered by or on behalf of Contractor at the SPSA Landfill, upon notice to Contractor's Authorized Representative, Contractor shall promptly remove the material and clean-up, remediate and/or restore the SPSA Landfill satisfactory to SPSA, in its sole discretion and, upon failure of Contractor to remove such material after prompt demand, SPSA may cause such material to be removed and Contractor shall pay to SPSA all actual third party costs and expenses that SPSA incurs relating to (i) the removal, loading, transportation and disposal of the material to and at a permitted Hazardous Waste management facility and (ii) the clean-up, remediation and/or restoration of the SPSA Landfill. SPSA shall exercise all reasonable efforts to mitigate and otherwise minimize the costs referenced in the immediately preceding sentence and provide all supporting documentation (*e.g.*, invoices) to Contractor.

(e) Contractor shall protect, indemnify and hold SPSA Indemnified Parties harmless from and against any and all Losses, including any sums paid or expended by SPSA to any Governmental Authority as a fine, penalty or damages for any violation of any Applicable Law and to remediate, clean-up or remove any Hazardous Waste, and shall defend the SPSA Indemnified Parties in any Legal Proceeding related to or arising out of (i) the acts or

omissions of Contractor, its officers, employees, agents and Subcontractors, and (ii) the characteristics of the Residue delivered to the SPSA Landfill pursuant to this Agreement.

Section 4.4 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 4.5 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 4.6 Prohibited Waste.

Section 4.6.1 Inadvertent Deliveries. SPSA shall not knowingly or intentionally deliver to Contractor at the RDF Facility any Prohibited Waste, and SPSA shall use commercially reasonable efforts to minimize quantities of Prohibited Waste included within the Acceptable Waste delivered by or on behalf of SPSA hereunder; *provided, however*, inadvertent deliveries of Prohibited Waste hereunder, which occur despite such efforts, shall not (a) constitute a breach of SPSA's obligations hereunder, (b) be deemed to be or constitute a SPSA Fault, or (c) give rise to an Event of Default of Contractor or SPSA hereunder.

Section 4.6.2 Segregation and Removal of Prohibited Waste. Upon becoming aware of SPSA's delivery (or attempted delivery) of any Prohibited Waste to the RDF Facility, or if after the acceptance of Acceptable Waste hereunder Contractor determines that such Acceptable 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. Contractor shall provide reasonable and verifiable evidence and documentation to SPSA establishing that such Prohibited Waste was delivered by or on behalf of SPSA hereunder. If Contractor deems it necessary or appropriate for the protection of property, human health or the environment (including, as applicable, the Facilities), or for the continuing safe and efficient performance of Services hereunder, Contractor, acting through itself or others, may, at Contractor's cost and expense, remove and properly dispose of such Prohibited Waste and charge SPSA the actual third party costs that Contractor incurs in connection with removing, transporting and disposing of any such Prohibited Waste (the "Prohibited Waste Costs"). Contractor shall exercise all reasonable efforts to mitigate and otherwise minimize Prohibited Waste Costs and provide all supporting documentation (*e.g.*, invoices) for such Prohibited Waste Costs to SPSA.

Section 4.7 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 5 CERTAIN MATTERS RELATED TO ACCEPTABLE WASTE; REJECTION RIGHTS; WEIGHING AND RELATED MATTERS

Section 5.1 Waste Estimates; Waste Delivery. 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 Acceptable Waste that it anticipates to deliver, or cause to be delivered, to the RDF Facility 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 (each, a "Waste Estimate"). Notwithstanding the foregoing or anything herein to the contrary, SPSA's delivery to Contractor in one or more Billing Year(s) of Acceptable Waste that exceeds, or that is less than, the 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 Acceptable Waste that will be delivered hereunder in any given Billing Year (or at all), and thus any Waste Estimates provided to Contractor shall not (and do not) constitute a guarantee by SPSA; and (ii) SPSA cannot (and does not) commit to delivering any "minimum" amount of Acceptable Waste during any given Billing Year and/or during the Term.**

### Section 5.2 Delivery and Receipt of Acceptable Waste.

Section 5.2.1 Delivery Wait Times; Diversion Event. Notwithstanding the foregoing in Section 5.1, SPSA shall have no obligation to deliver, or to cause to be delivered, Acceptable Waste in circumstances where the queue for vehicles hauling Acceptable Waste to the RDF Facility extends beyond the driveway entrance to the RDF Facility along Victory Boulevard (the "Maximum Waiting Time"). If (a) the Maximum Waiting Time is exceeded or (b) the Contractor wrongfully rejects any delivery of Acceptable Waste hereunder and such Acceptable Waste is diverted to the SPSA Landfill or other disposal facility (each, a "Diversion Event"), then SPSA may provide Notice to Contractor's Authorized Representative requesting that Contractor deliver Contractor-owned or contracted trailers to the Suffolk Transfer Station for loading and transport to the RDF Facility of an equivalent amount of Acceptable Waste to replace some or all of the Tons of Acceptable Waste diverted as a result of one or more Diversion Event(s). Following the Notice described in the immediately preceding sentence, Contractor shall, at its sole cost and expense, promptly provide to the Suffolk Transfer Station a sufficient number of trailers on such Day(s) and time(s) as requested by SPSA for loading of that amount of Acceptable Waste requested by SPSA, and Contractor shall, at its sole cost and expense, haul, transport and deliver, or cause to be hauled, transported and delivered, such trailers of Acceptable Waste to the RDF Facility for Processing in accordance with the terms of this Agreement. For the avoidance of doubt, Contractor shall be solely liable for all costs and expenses associated with the hauling, transportation and delivery of such Acceptable Waste contemplated by this



Section 5.2.1, and SPSA shall pay, for such tonnage, the Waste Tipping Fee pursuant to, and as provided in, Section 6.2.2.

Section 5.2.2 Rejection of Deliveries. Except as expressly provided in this Agreement, Contractor may reject at the RDF Facility deliveries by or on behalf of SPSA of (a) Acceptable Waste delivered by or on behalf of SPSA that Contractor is unable to accept as a result of (i) an Uncontrollable Circumstance or (ii) SPSA Fault; (b) Acceptable Waste that cannot be accepted by Contractor at the RDF Facility due to a mechanical breakdown of SPSA-owned or contracted delivery vehicles, whether or not the breakdown is a result of SPSA Fault; and (c) Acceptable 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 Services for such Acceptable Waste. In no event shall Contractor have the right to reject deliveries of Acceptable Waste by or on behalf of SPSA in favor of third parties. Notwithstanding anything to the contrary in this Agreement, except for an Uncontrollable Circumstance or other expressly excused circumstance specified in this Section 5.2.2, in each case, which prevents Contractor from accepting any Acceptable Waste at the RDF Facility whatsoever, in no event shall Contractor reject tenders of Acceptable Waste delivered by or on behalf of SPSA (including the SPSA Direct Haulers) at the RDF Facility.

Section 5.2.3 Tipping Floor Management. The Tipping Floor shall be operated and managed by Contractor so as to (a) maximize the receiving, sorting and storage of Acceptable Waste, (b) maximize the loading, transporting and removal from the Tipping Floor and the RDF Facility for disposal at a Landfill or other permitted disposal location all NP Waste and, except as specifically provided in Section 4.6, Prohibited Waste, (c) maximize the efficient and continuous delivery of Acceptable Waste at and to the RDF Facility during the RDF Receiving Time and Processing of Processible Waste at the WTE Facility, and (d) minimize hauler or waste delivery vehicle turnaround times. If temporary storage of Acceptable Waste on the Tipping Floor is required, Contractor shall, to the extent allowable by Applicable Law, store Acceptable Waste on the Tipping Floor so as not to impede deliveries. All Acceptable Waste stored on the Tipping Floor shall be sorted as soon as possible with the Processible Waste removed for Processing and the NP Waste removed for disposal at the Landfill or other permitted disposal facility as efficiently and quickly as possible so that Tipping Floor shall be available for Acceptable Waste and hauling vehicles will be able to minimize their turnaround times.

Section 5.2.4 Notice of Scheduled Maintenance. Contractor's Authorized Representative shall provide to SPSA's Authorized Representative a written schedule for its Scheduled Maintenance at least sixty (60) Days prior to each Billing Year, except that Contractor's Authorized Representative shall provide such written schedule relative to the first Billing Year to SPSA's Authorized Representative no later than the Commencement Date. Contractor's Authorized Representative may, upon two (2) weeks' prior written notice to SPSA's Authorized Representative, change the Scheduled Maintenance scheduled to occur on and after such two (2) week period.

Section 5.3 Processing Guarantee. During each Billing Year, but subject to Contractor's rejection rights during any Billing Month specified in Section 5.2.2, Contractor shall receive and accept Acceptable Waste delivered to the RDF Facility, sort the same and

Process Processible Waste through the WTE Facility in an amount at least equal to the Annual Processing Guarantee.

Section 5.4 Weighing and Scales; Weigh Records; Delivery of Data and Information; Calibration of Scales.

Section 5.4.1 SPSA Scales; Weighing at SPSA Transfer Stations and SPSA Landfill. SPSA shall, at its sole cost and expense, operate, maintain, repair and replace its scales at (i) the SPSA Transfer Stations, and associated computer equipment and weigh scale records, for the purpose of weighing and recording the Tons of Acceptable Waste delivered to the RDF Facility by or on behalf of SPSA (other than direct deliveries to the RDF Facility by or on behalf of SPSA Direct Haulers), and (ii) the SPSA Landfill, and associated computer equipment and weigh scale records, for the purpose of weighing and recording the Tons of Residue delivered to the SPSA Landfill by or on behalf of Contractor, in each case, to facilitate 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 SPSA-owned or contracted vehicles removing Acceptable Waste from SPSA Transfer Stations.

Section 5.4.2 Contractor Scales; Weighing at RDF Facility. Contractor shall, at its sole cost and expense, operate, maintain, repair and replace its scales at the RDF Facility and associated computer equipment and weigh scale records in accordance with Prudent Industry Practices, for the purpose of weighing and recording the Tons of Acceptable Waste delivered to the RDF Facility by or on behalf of SPSA Direct Haulers and facilitating the calculation and determination of the information specified in the Contractor Tonnage Reports. Contractor shall operate the in-bound scales at the RDF Facility and the RDF Tipper(s) at all times during the RDF Receiving Time. Contractor shall periodically check the tare weight of vehicles delivering or removing, or both, Solid Waste to or from, or both, the Facilities. SPSA shall have the right to have an authorized representative present from time to time during business hours in the scale houses at the RDF Facility to observe scale house operations, provided that any such observation shall not, individually or collectively, unreasonably interfere with scale house operations.

Section 5.4.3 Weigh Records. Subject to the last sentence of Section 5.4.5(b), the weigh scale records at (a) the SPSA Transfer Station(s) shall be dispositive for purposes of calculating the total Tons of Acceptable Waste delivered by or on behalf of SPSA (other than the SPSA Direct Haulers) to the RDF Facility hereunder; (b) the SPSA Landfill shall be dispositive for purposes of calculating the total Tons of Residue delivered by or on behalf of Contractor to the SPSA Landfill; and (c) the RDF Facility shall be dispositive for purposes of calculating the total Tons of Acceptable Waste delivered by or on behalf of the SPSA Direct Haulers. The weigh scale records at such respective facilities for deliveries of such relevant Acceptable Waste shall be used in determining the Service Fee payable by SPSA hereunder.

Section 5.4.4 Delivery of Data and Information.

(a) SPSA Delivery of Data and Information to Contractor. SPSA shall provide Contractor with the following data and information (the “SPSA Tonnage Reports”) necessary for preparation of Contractor’s invoices to SPSA no later than by 12:00 noon (local time) on the third (3<sup>rd</sup>) Business Day following the last Day of the Billing Month:

(i) The total quantity (in Tons) of Acceptable Waste delivered to the RDF Facility by or on behalf of SPSA (and not by or on behalf of Contractor from SPSA Transfer Stations) during the preceding Billing Month;

(ii) The total quantity (in Tons) of Acceptable Waste delivered, or attempted to be delivered, to the RDF Facility and which Contractor was obligated to accept but was not accepted and was delivered to a Landfill or other permitted disposal facility by or on behalf of SPSA during the preceding Billing Month;

(iii) The total quantity (in Tons) of Qualifying Residue and Non-Qualifying Residue received and disposed at the SPSA Landfill (as weighed in at the SPSA Landfill) during the preceding Billing Month; and

(iv) The total quantity (in Tons) of Acceptable Waste delivered by or on behalf of the Member Communities to the following SPSA Transfer Stations during the preceding Billing Month: Chesapeake, Landstown, Norfolk and Oceana.

If requested by Contractor's Authorized Representative, SPSA shall make copies of all weigh scale records from SPSA's scales at the Chesapeake, Landstown, Norfolk and Oceana SPSA Transfer Stations available to Contractor, and for purposes of Residue deliveries to the SPSA Landfill, the weigh scale records from SPSA's scales at the SPSA Landfill.

(b) Contractor Delivery of Data and Information to SPSA. Contractor shall provide SPSA with the following data and information (the "Contractor Tonnage Reports") no later than by 5:00 p.m. (local time) on the following Business Day of such deliveries to the RDF Facility; provided, with respect to deliveries to the RDF Facility on the last Business Day of the Billing Month, Contractor shall provide the Contractor Tonnage Reports to SPSA no later than by 10:00 a.m. (local time) on the following Business Day of such deliveries:

(i) The total quantity (in Tons) of Acceptable Waste (by hauler, delivery date/time and such other information reasonably requested by SPSA) delivered to the RDF Facility by or on behalf of a SPSA Direct Hauler, in each case, delivered directly to the RDF Facility (and not from SPSA Transfer Stations);

(ii) The total quantity (in Tons) of Prohibited Waste, if any, by type of waste that was delivered by or on behalf of SPSA to the RDF Facility and accepted by Contractor at the RDF Facility and that was neither Sorted nor Processed and waste transferred to either a

Landfill or other permitted facility for disposition during the preceding Billing Month;

(iii) The total quantity (in Tons) of Acceptable Waste not Processed at the Facility and transferred to either a Landfill or other permitted facility for disposition during the preceding Billing Month;

(iv) The total quantity (in Tons) of NP Waste transferred to either a Landfill or other permitted facility for disposition during the preceding Billing Month; and

(v) The total quantity (in Tons) of Solid Waste (by hauler, delivery date/time and such other information reasonably requested by SPSA) received at the RDF Facility.

If requested by the SPSA's Authorized Representative, Contractor shall make copies of all weigh scale records from the RDF Facility scales available to SPSA.

#### Section 5.4.5 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) Each Party, at its sole cost and expense, shall cause its respective weigh scales at the SPSA Transfer Stations and RDF Facility, as applicable, 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. Either Party may, at its sole cost and expense, request more frequent testing of the relevant weigh scales. If the weigh scale records recorded by Contractor at the RDF Facility for deliveries of Acceptable Waste by or on behalf of SPSA from the SPSA Transfer Stations, 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%) 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 5.5 Composition of Acceptable Waste; Ownership.

Section 5.5.1 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 Acceptable 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 Acceptable Waste delivered by or on behalf of SPSA.

Section 5.5.2 Ownership. Upon delivery of Acceptable Waste to the RDF Facility, all of SPSA's ownership interest in and to the Acceptable 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 Acceptable Waste so delivered.

## SECTION 6 COMPENSATION

Section 6.1 General. Commencing with the first Billing Month and for each Billing Month thereafter, SPSA shall pay to Contractor a Service Fee for Services properly performed pursuant to the terms of this Agreement and in accordance with the formula set forth in Section 6.2.1, as further detailed in Sections 6.2 *et. seq.* **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 Service Fee and amounts payable by SPSA hereunder takes into account any and all 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 Service Fee shall be the sole and exclusive compensation to be paid to Contractor for the Services.

### Section 6.2 Monthly Payment Calculation.

Section 6.2.1 Service Fee Formula. The monthly payment shall be calculated as follows:

$$SF = WTF - RDF$$

Where: SF = Service Fee

WTF = Waste Tipping Fee (Section 6.2.2)

RDF = Residue Disposal Fee (Section 6.2.3)

Section 6.2.2 Waste Tipping Fee. For the period beginning on the Commencement Date and continuing through the end of the Term, SPSA shall pay to Contractor a waste tipping fee (the "Waste Tipping Fee") equal to the product of (a) Thirty Two Dollars (\$32.00), as multiplied by the Adjustment Factor for each Billing Year beginning on and after July 1, 2020 (the "Waste Tipping Rate"), multiplied by (b) the aggregate Tons of Acceptable Waste delivered by or on behalf of SPSA (including SPSA Direct Haulers) to the RDF Facility that is accepted and Processed at the Facilities during such Billing Month.

Section 6.2.3 Residue Disposal Fee. For the period beginning on the Commencement Date and continuing through the end of the Term, Contractor shall pay to SPSA a Residue disposal fee (the “Residue Disposal Fee”) calculated as follows:

(a) Qualifying Residue. The Residue Disposal Fee for deliveries of Qualifying Residue shall be equal to the product of (i) Twenty-Five Dollars (\$25.00), as multiplied by the Adjustment Factor for each Billing Year beginning on and after July 1, 2020 (the “Residue Tipping Rate”), multiplied by (ii) the aggregate Tons of Qualifying Residue delivered by or on behalf of Contractor to the SPSA Landfill during such Billing Month.

(b) Non-Qualifying Residue. The Residue Disposal Fee for deliveries of Non-Qualifying Residue shall be equal to the product of (i) Thirty-Five Dollars (\$35.00), as multiplied by the Adjustment Factor for each Billing Year beginning on and after July 1, 2020, multiplied by (ii) the aggregate Tons of Non-Qualifying Residue delivered by or on behalf of Contractor to the SPSA Landfill during such Billing Month. SPSA shall provide notice to Contractor of any deliveries of Non-Qualifying Residue by the end of the next Business Day following receipt thereof. For purposes of this Section 6.2.3(b), any vehicle loads containing any amount of Non-Qualifying Residue shall be considered to contain a full vehicle load of Non-Qualifying Residue.

### Section 6.3 Monthly Payments, Method of Payment; Offset Rights.

#### Section 6.3.1 Payments to Contractor.

(a) No later than noon on the fifth (5<sup>th</sup>) 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 Service Fee owed by SPSA for the immediately preceding Billing Month.

(b) SPSA shall pay Contractor the Service Fee due and owing hereunder and properly reflected in the Monthly Invoice within thirty (30) Days following SPSA’s receipt 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 13.17.

Section 6.3.2 Payment to SPSA. Contractor shall pay (or cause to be paid) SPSA any amounts owed to SPSA under this Agreement within thirty (30) Days after receipt of the 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 13.17.

Section 6.3.3 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 6 or their specific offset rights set forth above.

Section 6.4 Annual Adjustments.

Section 6.4.1 Processing Guarantee Shortfall Damages.

(a) If, in any Billing Year, Contractor fails to meet the Annual Processing Guarantee, then Contractor shall pay to SPSA an amount equal to (i) the product of (1) the difference between (A) the Minimum Processing Percentage and (B) the actual percentage of Acceptable Waste Processed at the Facilities, calculated pursuant to Schedule 7 (Processing Guarantee), multiplied by (2) the aggregate Tons of Acceptable Waste delivered by or on behalf of SPSA (including SPSA Direct Haulers) to the RDF Facility during such Billing Year, multiplied by (b) Five Dollars (\$5.00), as multiplied by the Adjustment Factor for each Billing Year beginning on and after July 1, 2020.

(b) Following the end of each Billing Year during the Term, SPSA shall deliver to Contractor an annual statement and invoice setting forth any amounts due in accordance with Section 6.4.1(a). Contractor shall pay SPSA the amounts due under this Section 6.4.1 within thirty (30) Days after the date of receipt by Contractor of an invoice prepared in accordance with this Section 6.4.1(b).

Section 6.4.2 Most Favored Nation.

(a) If (i) Contractor or any of its Affiliates enters into one or more agreement(s) (whether oral or written) for disposal of Solid Waste at the Facilities with any SPSA Area Community; (ii) such agreement(s) has a term greater than twelve (12) months (consecutive or non-consecutive) (including any options or extensions) (a “MFN Agreement”); and (iii) such MFN Agreement provides for an all-in tipping fee (the “MFN Tipping Fee”) which is lower than the Waste Tipping Rate in effect for the same period hereunder, then Contractor shall, in each Billing Year during which such MFN Agreement is in effect, refund to SPSA an amount (the “MFN Refund”) equal to the product of:

(1) the difference between (x) the Waste Tipping Rate in which such MFN Tipping Fee is in effect and (y) the MFN Tipping Fee during such Billing Year; multiplied by

(2) the lesser of (x) the aggregate number of MFN Tons delivered pursuant to the MFN Agreement during the Billing Year and (y) the aggregate number of Tons delivered by or on behalf of SPSA (including SPSA Direct Haulers) or attempted to be delivered but which were wrongfully rejected by Contractor during such Billing Year.

(b) The term “MFN Tons” for purposes of this Section 6.4.2 shall mean the aggregate Tons delivered under an MFN Agreement to the Facilities on the date after which the term of the agreement(s) with Contractor exceed three hundred sixty five (365) days; provided, however, no rebate or credit shall be due with respect to Tons delivered prior to that date. In the event there are more than one SPSA Area Community with a MFN Tipping Fee lower than SPSA for the same period hereunder in any Billing Year, then the calculations pursuant to Section 6.4.2(a) shall be based initially on the SPSA Area Community with the lowest MFN Tipping Fee and, once such tonnage for such SPSA Area Community is exhausted

for the calculations hereunder, increase to the next lowest (penultimate) MFN Tipping Fee for such other SPSA Area Community(ies), *et seq.*, until the maximum of the aggregate number of Tons delivered or attempted to be delivered by or on behalf of SPSA is met.

(c) Contractor shall pay the MFN Refund, if any, to SPSA within sixty (60) days following the last day of each Billing Year. This Section 6.4.2 shall not be applicable for any contract or agreement providing for delivery of Solid Waste to a facility other than the Facilities; *provided, however*, to the extent any such Tons of Solid Waste are accepted at the Facilities, such Tons shall be counted for all purposes of this Section 6.4.2 and SPSA shall receive a MFN Refund with respect to any such Tons delivered to the Facilities. This Section 6.4.2 shall not apply to any oral or written agreement with a third party commercial or residential hauler which contracts directly with Contractor or any of its Affiliates for disposal of Acceptable Waste at the Facilities.

(d) In order to effectuate the purposes of this Section 6.4.2, Contractor shall provide to SPSA any and all data and information, in reasonable detail, reasonably requested by SPSA to review and confirm the calculation of the MFN Refund, including the MFN Agreement, MFN Tipping Fee and MFN Tons.

Section 6.5 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 13.17 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 13.17 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 7 UNCONTROLLABLE CIRCUMSTANCE; SPSA FAULT; CONTRACTOR FAULT**

Section 7.1 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, including any Change in Law.

Section 7.2 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 Services; (d) exercise all reasonable efforts to continue to perform the affected 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 7.3 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 8 INDEMNIFICATION; LIMITATION OF LIABILITY; INSURANCE; AND SECURITY**

### Section 8.1 Indemnification.

#### Section 8.1.1 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 8.1 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 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 8.1.1 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 8.1.1, but nothing in this Section 8.1.1 or otherwise in this Agreement shall ever create any direct relationship between a Subcontractor and SPSA.

**Section 8.1.2 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. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of Contractor Indemnified Parties, except that SPSA shall not be required to defend or indemnify Contractor Indemnified Parties for a Loss to the extent any such Loss results from (x) the willful misconduct or negligence of any Contractor Indemnified Parties or (y) breach of this Agreement by Contractor.

(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 8.2 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 TWENTY-EIGHT MILLION FIFTY THOUSAND DOLLARS (\$28,050,000); PROVIDED, HOWEVER, THAT (i) NOTHING IN THIS SECTION 8.2 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 8.3 Contractor Insurance Requirements.

Section 8.3.1 Obligation to Secure, Maintain and Pay for Insurance Coverage.

(a) Required Contractor Insurance. Except as otherwise provided in this Section 8.3, 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 8.3.1(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.

(1) Contractor shall obtain and maintain, at its sole cost and expense, the following insurance coverages from insurers who are licensed in the State and who have a Best’s rating of A- or better:

(i) worker’s compensation insurance as required by law;

(ii) employer’s liability insurance having a minimum limit of liability of one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) per employee and one million dollars (\$1,000,000) policy limit;

(iii) 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;

(iv) 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;

(v) property insurance covering all Contractor vehicles and other equipment used in connection with this Agreement having a limit sufficient to replace all such equipment;

(vi) environmental impact liability insurance having a minimum limit of liability of five million dollars (\$5,000,000) per occurrence;

(vii) excess (of subsections (ii), (iii) and (iv) above) liability insurance having a minimum limit of liability of ten million dollars (\$10,000,000) per occurrence and in aggregate per policy year; and

(viii) loss of income and business interruption insurance equal to not less than the estimated gross earnings (as defined in the standard form of business interruption insurance policy) for a period of at least six (6) months based on normal operations of the Facilities and expected revenues.

(2) If Contractor engages a Subcontractor to transport and deliver Residue to the SPSA Landfill, Contractor shall require each Subcontractor to obtain and maintain at its expense the following insurance coverages from insurers who are licensed in the State and who have a Best's rating of A- or better: (i) employer's liability insurance having a minimum limit of liability of one million dollars (\$1,000,000) per occurrence; (ii) comprehensive general liability primary insurance with 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; and (iii) comprehensive automobile liability primary insurance applicable to all owned, hired and non-owned vehicles having a minimum combined single limit of liability of (\$1,000,000) per occurrence.

Section 8.3.2 Insurance Requirements Generally. The following shall be applicable to the Required Contractor Insurance coverages required to be secured and maintained pursuant to Section 8.3.1:

(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 8.3.1(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 8.3, all Required Contractor Insurance to be secured and maintained by Contractor under this Agreement shall be continuously maintained throughout the Term. Failure of Contractor (or its Subcontractor) 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 9.1.2. Failure of Contractor (or its Subcontractor) 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 (i) ten (10) Days' Notice prior to any non-payment of insurance premium and (ii) 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 (i) and (ii), 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 8.3 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 and its Subcontractors under this Section 8.3, 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 8.3 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 8.4 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 insurance, 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 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 8.4, and all such additional insurance costs shall be borne exclusively by SPSA at its sole cost and expense

Section 8.5 Performance Bond. As security for the performance of Contractor’s obligations hereunder, Contractor shall, by the Performance Bond Delivery Date under Section 2.1.1(e) above, obtain and cause to be issued and delivered to SPSA by a Qualified Surety a payment and performance bond (“Performance Bond”) in form and substance as provided in Schedule 5 (Performance Bond) or as may otherwise be acceptable to SPSA. The Performance Bond shall have a bonded sum equal to three million dollars (\$3,000,000) and shall be for a term of one (1) year following the date of delivery of such Performance Bond to SPSA’s Authorized Representative. 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 8.5 shall specify that such Performance Bond shall be subject to and governed by State law.

Section 8.6 Guaranty. Guarantor shall have executed the Guaranty attached hereto as Schedule 6 (Guaranty) (the “Guaranty”) on or before the SPSA Signing Date.

Section 8.7 Audits; Financial Statements. 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. Unless such information is publicly available in documentation filed by the Guarantor with the U.S. Securities and Exchange Commission, Contractor shall, within thirty (30) Days after the end of each Billing Year, provide to SPSA’s Authorized Representative the Guarantor’s most recent Audited Financial Statements.

## **SECTION 9 EVENTS OF DEFAULT**

Section 9.1 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 9.1.1 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 or an Event of Default by SPSA); provided, however, insofar as failure or refusal relates to:

(a) the failure to maintain Required Contractor Insurance, all pursuant to Section 8.3, then Section 9.1.2 shall govern;

(b) the failure to maintain solvency, then Section 9.1.3 shall govern;

(c) any untrue representation or warranty, then Section 9.1.4 shall govern;

(d) this Agreement is assigned by Contractor in breach of Section 13.1 or a Change of Control occurs in breach of Section 13.2, then Section 9.1.5 shall govern;

(e) the failure or refusal of Contractor to establish, obtain, maintain and renew in a timely manner the Performance Bond in accordance with Section 8.5, then Section 9.1.6 shall govern;

(f) a default of the Guarantor under the Guarantee in accordance with Section 8.6, then Section 9.1.7 shall govern;

(g) the failure of the Senior Vice President (or other senior level executive acceptable to SPSA) of Contractor or the Parent Company, or both, to appear before the Board pursuant to Section 3.7, then Section 9.1.8 shall govern;

(h) the failure of Contractor to comply with its obligations under the Contract Waste Agreement, then Section 9.1.9 shall govern; or

(i) Contractor abandons either Facility or discontinues its Services, other than pursuant to its right to suspend performance due to an Uncontrollable Circumstance in accordance with Section 7.1, then Section 9.1.10 shall govern.

Section 9.1.2 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 8.3.

Section 9.1.3 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 9.1.3; (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 9.1.4 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 9.1.5 Assignment; Change of Control. Any (a) assignment of this Agreement by Contractor in breach of Section 13.1 or (b) Change of Control in breach of Section 13.2.

Section 9.1.6 Failure or Refusal to Establish, Obtain, Maintain or Renew the Performance Bond. Any failure of Contractor to establish, obtain, maintain and/or renew in a timely manner the Performance Bond in accordance with Section 8.5.

Section 9.1.7 Guarantor Default Under the Guaranty. The failure of the Guarantor to comply with its obligations under the Guaranty in accordance with the terms and conditions therein.

Section 9.1.8 Failure of the Senior Vice President of Contractor or Parent Company, or both, to Appear before the Board. Failure of the Senior Vice President (or other senior level executive acceptable to SPSA) of Contractor or Parent Company, or both, as determined by SPSA, to appear before the Board following Notice to Contractor pursuant to Section 3.7.

Section 9.1.9 Contractor Default Under the Contract Waste Agreement. The failure of Contractor to comply with its obligations under the Contract Waste Agreement in accordance with the terms and conditions therein.

Section 9.1.10 Abandonment/Discontinuance. Contractor abandons either or both Facilities or discontinues its Services; *provided*, Contractor's exercise of its right to suspend performance due to an Uncontrollable Circumstance in accordance with Section 7.1 shall not constitute abandonment.

Section 9.2 Events of Default by SPSA. The following shall constitute an Event of Default on the part of SPSA:

Section 9.2.1 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 9.2.2 and 9.2.3. **Notwithstanding anything herein to the contrary, and to avoid any doubt, the failure of SPSA to deliver to Contractor any minimum amount of Acceptable Waste in any Billing Year (or in any number of Billing Years) shall not constitute an Event of Default under this Agreement.**

Section 9.2.2 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 9.2.2.

Section 9.2.3 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 9.3 Default Notice. Neither Party may exercise its termination rights pursuant to Section 10.1 or 10.2, 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 9.1 or 9.2. If an Event of Default specified in a required Notice of an Event of Default pursuant to this Section 9.3 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*: (a) if repeated cures (no more than two (2) in any Billing Year or three (3) over any rolling three consecutive Billing Year period) are undertaken to address Events of Default under Section 9.1 (other than Sections 9.1.2, 9.1.3, 9.1.6, 9.1.7 or 9.1.10), SPSA may, notwithstanding this Section 9.3 to the contrary and in SPSA's sole judgment, exercise its right to terminate pursuant to Section 10.1, (b) if repeated cures (no more than two (2) in any Billing Year or three (3) over any rolling three consecutive Billing Year period) are undertaken to address Events of Default under Section 9.2, Contractor may, notwithstanding this Section 9.3 to the contrary and in Contractor's sole judgement, exercise its right to terminate pursuant to

Section 10.2, and (c) there shall be no cure period for an Event of Default pursuant to Sections 9.1.2 (Failure to Maintain Contractor Required Insurance), 9.1.3 (Failure to Maintain Solvency), 9.1.6 (Failure or Refusal to Establish, Obtain, Maintain or Renew the Performance Bond); 9.1.7 (Guarantor Default Under the Guaranty) or Section 9.1.10 (Abandonment/Discontinuance), 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 10 TERMINATION**

### Section 10.1 Termination by SPSA.

Section 10.1.1 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 9.3, terminate this Agreement as of the thirtieth (30<sup>th</sup>) 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 9.1.2 (Failure to Maintain Contractor Required Insurance), 9.1.3 (Failure to Maintain Solvency), 9.1.6 (Failure or Refusal to Establish, Obtain, Maintain, Renew or Replenish the Performance Bond), 9.1.7 (Guarantor Default Under the Guaranty) or 9.1.10 (Abandonment/Discontinuance), 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 10.1.1, 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 6 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, or both, 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, as liquidated damages, the amount of (1) Twenty-Eight Million Fifty Thousand Dollars (\$28,050,000) if this Agreement is terminated in the first or second Billing Year, (2) Twenty-One Million Four Hundred Fifty Thousand Dollars (\$21,450,000) if this Agreement is terminated in the third or fourth Billing Year, (3) Fourteen Million Eight Hundred Fifty Thousand Dollars (\$14,850,000) if this Agreement is terminated in the fifth or sixth Billing Year, and (4) Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) if this Agreement is terminated in any Billing Year after the sixth Billing Year, 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. With respect to the liquidated damages as described and provided for in this Section 10.1.1, the Parties acknowledge and agree that (A) the damages that may be suffered by SPSA in the event of a default by Contractor hereunder are not readily ascertainable and that such liquidated damages as of the date hereof are a reasonable estimate of such damages and are intended to compensate SPSA for any such damage and are not to be construed as a penalty, and (B) for purposes of calculating SPSA's estimated damages, the availability of the SPSA Landfill was not, and should 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 Acceptable Waste accepted, Processed and disposed of by Contractor at the Facilities and, as a result, avoiding the corresponding waste volumes being disposed of at the SPSA Landfill. Except for any indemnification claims and amounts owed to SPSA hereunder, in no event shall SPSA be entitled to, and SPSA hereby waives, any other remedies or damages because of such termination.

Section 10.1.2 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, as such date is extended for the 20-day cure period in accordance with Section 2.1.2 (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 10.1.2, 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. Such termination shall be without payment, damage or penalty to Contractor as a result of such termination and Contractor hereby waives any right to any such damage, penalty or payment. The Parties acknowledge and agree that the damages that may be suffered by SPSA as a result of the failure of Contractor to satisfy the Pre-Commencement Date Conditions by the Pre-Commencement Date are not readily ascertainable and that such liquidated damages, as of the date hereof, are a reasonable estimate of such damages, are intended to compensate SPSA for any such damage and are not to be construed as a penalty.

Section 10.1.3 Termination of Use and Support Agreement. If any T.S. Member Community exercises its right to terminate its Use and Support Agreement, then notwithstanding anything herein to the contrary, SPSA shall have the right, in its sole discretion, to terminate this Agreement by delivery of Notice of termination. SPSA shall give Contractor at least ninety (90) Days' Notice of its intent to terminate this Agreement in accordance with this Section 10.1.3. Such termination shall be without payment, damage or penalty to Contractor as a result of such termination and Contractor hereby waives any right to any such damage, penalty or payment.

Section 10.1.4 Termination of the Existing Service Agreement. If the Existing Service Agreement is terminated prior to the Commencement Date, then notwithstanding anything herein to the contrary, SPSA shall have the right, in its sole and absolute discretion, to terminate this Agreement by delivery of Notice of termination to Contractor. Such termination

shall be without payment, damage or penalty to Contractor as a result of such termination and Contractor hereby waives any right to any such damage, penalty or payment.

Section 10.2 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 9.3, have the right to terminate this Agreement as of the thirtieth (30<sup>th</sup>) 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 6, and (ii) subject to Section 8.2 above, liquidated damages in the amount of Five Million Dollars (\$5,000,000). In no event shall Contractor be entitled to, and Contractor hereby waives, any other remedies or damages because of such termination.

Section 10.3 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 10.3, Contractor shall give SPSA at least ninety (90) Days' Notice of its intent to terminate hereunder. Upon termination under this Section 10.3, 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 6, and vice versa, to the date of such termination but has not been paid.

Section 10.4 Manner of Termination Payment. If the Agreement is terminated pursuant to Section 10.1.2, 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 10.5 Remedies.

Section 10.5.1 Specific Performance. SPSA shall be entitled to equitable relief in the form of an injunction (without posting of bond or other security) to specifically enforce Contractor's obligations to accept and Process Acceptable Waste delivered by or on behalf of SPSA (including deliveries by SPSA Direct Haulers) to the RDF Facility, and otherwise perform all Services, in each case pursuant to this Agreement in the event of any breach or Event of Default thereof by Contractor. The Parties acknowledge and agree that since, *inter alia*, the

Facilities are critical to SPSA's solid waste management plan and, in the interest of public health and safety, Contractor's continuing and uninterrupted acceptance and Processing of Acceptable Waste at and through the Facilities throughout the Term is a fundamental obligation of Contractor, and such obligations of Contractor serve as the basis upon which SPSA is entering into this Agreement to enable SPSA to provide for the disposal of SPSA's Acceptable Waste without landfilling. Accordingly, the Parties acknowledge and agree that (a) any Event of Default or breach by Contractor of any of its obligations under this Agreement would cause irreparable injury to SPSA, (b) the remedies at law for any such Event of Default or breach, including monetary damages, are inadequate compensation for SPSA, (c) Contractor's continued and uninterrupted acceptance and Processing of Acceptable Waste delivered by or on behalf of SPSA at the Facilities is in the best interest of the public, and (d) any defense that a remedy at law would be adequate to compensate SPSA for an Event of Default or breach by Contractor is waived by Contractor in any action for specific performance.

Section 10.5.2 Exclusive Remedies. Except as otherwise provided in Section 10.5.1 or otherwise provided herein, 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 11 RESOLUTION OF DISPUTES**

### Section 11.1 General Procedure.

Section 11.1.1 Disputes. 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 11.1.1 shall be held within ten (10) Days after the written request by either Party for any such meeting.

Section 11.1.2 Mediation; Independent Expert. If, following the Dispute-resolution procedures set forth in Section 11.1.1, 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 11.2.1(a) below, (b) if the Parties agree that the matter primarily involves Technical Issues or Financial Issues and desire that an Independent Expert resolve the matter, refer the matter to an Independent Expert pursuant to Section 11.2.2(b) for resolution, or (c) commence a Legal Proceeding relative to such matter in the courts specified in Section 11.3 below.

## Section 11.2 Procedure for Referral to Mediation or Independent Expert.

### Section 11.2.1 Referral and Decision.

(a) Mediator Referral and Decision. Consistent with each Party's rights pursuant to Section 11.1, 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 11.2.2(a), such mediator shall promptly convene, establish the procedures for the mediation and recommend resolution of the Dispute by written memorandum to the Parties.

(b) Independent Expert Referral and Decision. If the Parties agree to have an Independent Expert render a decision on the matter in controversy, they shall refer the matter to the applicable Independent Expert skilled in the particular discipline that is the matter of controversy selected by the Authorized Representative pursuant to Section 11.2.2(b). Within ten (10) Business Days after the selection of the Independent Expert, the Parties shall each provide to the Independent Expert written notice stating in detail the contested matter and such Party's basis for its position. Within five (5) Business Days thereafter, the Parties shall meet with the Independent Expert to resolve the matter in controversy. Within five (5) Business Days after such meeting or as soon thereafter as possible, the Independent Expert shall decide the matter in controversy and issue a written memorandum decision to the Parties.

### Section 11.2.2 Selection of Mediator and the Independent Expert.

(a) Selection of a Mediator. If a Dispute is referred to mediation pursuant to Section 11.1.2, 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 11.1.2, each Party shall, within five (5) Business Days of the delivery of the Notice pursuant to Section 11.1.2, 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.

(b) Selection of an Independent Expert. If a controversy or dispute shall arise under this Agreement and if the Parties desire to refer the matter to an Independent Expert for resolution pursuant to Section 11.1.2, the Parties shall meet to select and agree in writing on an Independent Expert to hear and to render a determination on such matter. The selected Independent Expert shall be given Notice of such selection by the Parties and the Parties shall secure its agreement to serve as the Independent Expert for such matter. If the selected Independent Expert shall not agree to serve in such capacity, the Parties shall repeat such selection procedure until an Independent Expert is selected and such Independent Expert agrees to service in such capacity. In no event shall the selected Independent Expert be compensated or

perform services unless and until a matter is referred to such Independent Expert for resolution pursuant to the procedures specified in this Section 11.2.2(b). The Independent Expert's costs and expenses after referral of the matter to it for resolution shall be shared equally by the Parties.

Section 11.2.3 Non-Binding. If the matter is referred to a mediator or an Independent Expert pursuant to this Section 11.2, neither the decision of the mediator nor the Independent Expert shall be binding on the Parties, and either Party may, after the mediator renders his or her recommendation or, as applicable, the Independent Expert renders his or her decision, may commence a Legal Proceeding relative to the Dispute in the courts specified in Section 11.3 below.

Section 11.3 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 11.4 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 11.5 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 12 TERM

Section 12.1 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, 2027. **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 12.2 Extended Term(s).

Section 12.2.1 Extended Term(s) Election. SPSA, in its sole and absolute discretion, shall have the right to extend this Agreement for two (2) additional periods of up to



five (5) years each (each, an “Extended Term”), with any such Extended Term to begin immediately upon the expiration of the Initial Term or the first Extended Term, as applicable. If SPSA intends 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 twelve (12) months prior to the expiration of the Initial Term or first Extended Term, as applicable. In such Notice, SPSA shall specify the number of year(s) of such Extended Term. For the avoidance of doubt, the second Extended Term is not required to be the same number of years as the first Extended Term. **Nothing in this Section 12.2 shall obligate SPSA to extend this Agreement for any Extended Term.** Promptly following receipt from SPSA of the Notice described in this Section 12.2.1, if any, Contractor shall, at its sole cost and expense, (a) provide to SPSA its proposal of the Waste Tipping Rate and the Residue Tipping Rate for each Billing Year of the Extended Term, and (b) 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 Services during the relevant Extended Term. For the avoidance of doubt, if SPSA (i) does not provide Contractor with a timely Notice of its decision to extend this Agreement for an Extended Term, or (ii) provides Contractor with Notice that this Agreement will not be extended for an Extended Term, then this Agreement shall terminate automatically upon expiration of the Initial Term or first Extended Term, as applicable.

Section 12.2.2 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 Waste Tipping Rate and the Residue Tipping Rate for each Billing Year of an Extended Term shall be subject to negotiation and mutual written agreement of the Parties with respect to such Extended Term; and *provided, further, however,* if the Parties are unable to agree on the Waste Tipping Rate and the Residue Tipping Rate for such Extended Term prior to the expiration of the Initial Term or first Extended Term, as applicable, or at any time following Notice by SPSA to Contractor’s Authorized Representative, then this Agreement shall terminate automatically on 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 12.3 Term. The Initial Term and any and all Extended Term(s), if any, are referred to herein collectively as the “Term”.

## **SECTION 13 MISCELLANEOUS**

Section 13.1 Assignment. This Agreement shall not be assigned or otherwise transferred by either Party without the prior written consent of the other Party; *provided, however,* 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 13.1 and 13.2, 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 13.2 Change of Control. Contractor shall provide Notice to SPSA not less than ninety (90) Days prior to any Change of Control of Contractor (a “Change of Control Notice”), and no such Change of Control shall be consummated without the prior written consent of SPSA, which consent may be withheld by SPSA in its sole discretion, and any such action without SPSA’s prior written approval shall be null and void at inception and of no force or effect; *provided, however*, subject to the requirements of this Section 13.2, a Change of Control of Contractor may be consummated without SPSA’s prior written consent so long as (a) such transaction is consummated with a Qualified Transferee, (b) the Guaranty continues and remains in full force and effect and such Change of Control does not relieve the Guarantor from its obligations and undertakings under the Guaranty, and the Guarantor (i) has, on and after such transaction, a net worth (as calculated based on its stockholders’ equity), as confirmed based on financial statements provided to SPSA, of (A) at least Three Hundred Fifty Million Dollars (\$350,000,000) if a Change of Control occurs during the first or second Billing Year, (B) at least Three Hundred Million Dollars (\$300,000,000) if a Change of Control occurs during the third or fourth Billing Year, (C) at least Two Hundred Fifty Million Dollars (\$250,000,000) if a Change of Control occurs during the fifth or sixth Billing Year, and (D) at least Two Hundred Million Dollars (\$200,000,000) if a Change of Control occurs after the sixth Billing Year, and (ii) executes and delivers such documents to SPSA as are necessary to ensure that the Guaranty shall continue and remain in full force and effect for the remainder of the Term, and (c) the Performance Bond continues and remains in full force and effect and the Qualified Surety executes such documents as are necessary to ensure that the Performance Bond shall continue and remain in full force and effect in accordance with the terms for the remainder of the Term. Prior to the closing or consummation of a Change of Control with a Qualified Transferee in accordance with this Section 13.2, Contractor shall deliver, or cause to be delivered, to SPSA’s Authorized Representative a bring-down certificate issued to SPSA and dated as of the closing date of such transaction, executed by an authorized officer of the Qualified Transferee and certifying that the proposed transferee satisfies all qualifications specified in the definition of “Qualified Transferee” and the Guarantor satisfies the net worth requirement set forth herein. Contractor shall pay to SPSA any third party expenses incurred by SPSA, up to an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) per such transaction, associated with reviewing or considering such Change of Control transaction.

### Section 13.3 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 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 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 13.4 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 13.4 relative to Confidential Information, this Section 13.4 shall govern.

#### Section 13.5 Subcontractors.

(a) 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 Services hereunder, including, without limitation, any contract for any Landfill, transportation or hauling 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 13.5 shall not apply to Contractor's employment agreements with its employees or to subcontract arrangements that do not relate to the Services.

(b) When Contractor requests approval of a subcontract by SPSA in accordance with this Section 13.5, Contractor shall submit to SPSA's Authorized Representative the qualifications of the Subcontractor and a description of the scope of the applicable 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 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 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 13.6 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 13.7 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):

Williams Mullen  
1666 K Street, NW  
Suite 1200  
Washington, DC 20006  
Attn: Bradley J. Nowak, Esq.  
Fax: (202) 293-5939  
Email: bnowak@williamsmullen.com

and

Willcox & Savage, P.C.  
440 Monticello Avenue, Suite 2200  
Norfolk, Virginia 23510  
Attn: Warren L. Tisdale, Esq.  
Fax: (757) 333-3523  
Email: wtisdale@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

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 13.8 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 13.9 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 Services shall be obtained from that available in the vicinity of the Services to be performed; *provided*, Contractor reserves the right to hire or discharge, or designate the classification of 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 13.10 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 13.11 Representations and Warranties.

Section 13.11.1 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 as disclosed in writing to Contractor, 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 13.11.2 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, 2017, 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 Subcontract), 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 Services to SPSA as contemplated in this Agreement.

(j) Applicable Law Compliance. To the best of its knowledge, neither Contractor nor Guarantor is in material violation of any Applicable Law that (i) is applicable to any of the Facilities, (ii) would adversely affect Contractor's ability to perform the Services, or (iii) if continuing beyond any applicable notice and cure period under this Agreement, would constitute an Event of Default hereunder.

(k) 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 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.

(l) 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 13.11.3 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 13.11.2 becoming untrue: Section 13.11.2(a), Section 13.11.2(b), Section 13.11.2(c), Section 13.11.2(g), Section 13.11.2(i), Section 13.11.2(j) and Section 13.11.2(l) (collectively, 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 13.12 Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 13.13 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 13.14 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 Services shall be of a sort that are ancillary to the 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 13.15 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 13.16 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 13.17 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 13.18 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 13.19 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 13.20 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 13.21 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, including the following Sections: 3.13.2(d), 3.14.4, 3.15.4, 4.3.2(e), 8.1, 8.2, 11.3, 11.5, 13.7, 13.8, 13.10, 13.15, 13.18, 13.21 and 13.28.

Section 13.22 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 13.23 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 13.23.

(b) Contractor shall include the provisions of Section 13.23(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 13.24 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 13.25 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 13.26 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 13.26, "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 13.27 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 13.27 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 9.2.2 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 13.28 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 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: Bruce Stancs  
Title: Corp VP Fuel Services

**SPSA:**

SOUTHEASTERN PUBLIC SERVICE  
AUTHORITY OF VIRGINIA, through its BOARD

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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: \_\_\_\_\_  
Title: \_\_\_\_\_

**SPSA:**

SOUTHEASTERN PUBLIC SERVICE  
AUTHORITY OF VIRGINIA, through its BOARD

By:  \_\_\_\_\_  
Name: Liesl R. DeVary  
Title: Executive Director

## SCHEDULE 1

### DEFINITIONS

“Acceptable Waste” shall mean garbage, trash, rubbish and refuse normally disposed of by and collected from residential, commercial, military, institutional and industrial establishments (including any SPSA contracted waste) delivered by or on behalf of SPSA (or any Member Community or the U.S. Navy under contract with SPSA) to the RDF Facility comprised of Processible Waste and NP Waste.

“Adjustment Factor” means (i) for each Billing Year beginning July 1, 2020, July 1, 2021 and July 1, 2022, an amount equal to two and nine-tenths percent (2.9%), and (ii) for each Billing Year beginning July 1, 2023, July 1, 2024, July 1, 2025 and July 1, 2026, an amount equal to two and one-half percent (2.5%). For the avoidance of doubt, no Adjustment Factor shall apply to adjust any fees in the Agreement for the period beginning on the Commencement Date and ending June 30, 2020.

“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.

“Annual Processing Guarantee” means the quantity of Acceptable Waste that, pursuant to Section 5.3, Contractor guarantees to Process at the WTE Facility in any Billing Year as specified in Schedule 7 (Processing Guarantee), pro rata for a Billing Year less than a full twelve (12) months.

“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.

“Audited Financial Statements” means a balance sheet, income statement and statement of changes in financial position and relating footnotes for the Guarantor’s fiscal year, in each case prepared in accordance with GAAP and audited by a nationally recognized firm of independent certified public accountants in accordance with GAAS and accompanied by such firm’s written audit opinion to the effect that such statements fairly present the Guarantor’s financial position and the results of operations set forth therein.

“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 acquires securities of Contractor representing fifty percent (50%) or more of the combined voting power of the Contractor’s then outstanding securities entitled to vote; (b) there occurs a transaction with respect to which the stockholders, managers, members, partners or owners of Contractor 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 Contractor (then outstanding securities entitled to vote); or (c) all or substantially all of the assets of Contractor are sold, liquidated or distributed. For the avoidance of doubt, a Change of Control of Parent Company, Wheelabrator Environmental Systems Inc., a Delaware corporation, or Wheelabrator Technologies Inc., a Delaware corporation, shall not constitute a Change of Control hereunder.

“Change of Control Notice” shall have the meaning specified in Section 13.2.

“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 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 Services; and (ii) in no event shall the enactment into law or any other change in federal, State or local tax law be considered a Change in Law or any other Uncontrollable Circumstance hereunder.

“Commencement Date” means 12:01 a.m. on February 1, 2019.

“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 13.4; *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.

“Continuing Reps and Warranties” shall have the meaning specified in Section 13.11.3.

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

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

“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 8.1.2(a).

“Contractor’s Authorized Representative” means Contractor’s representative designated pursuant to Section 13.6.

“Contractor Tonnage Reports” shall have the meaning specified in Section 5.4.4(b).

“Contract Waste Agreement” means that certain Waste Hauling and Disposal Services Agreement dated as of May 24, 2017, between Contractor and SPSA, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

“Cure” means any repair, replacement, change, modification, reconstruction, cure, remedy or correction to or on the Facilities.

“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 Solid Waste under its SOP, as designated by the Board from time to time in its sole discretion.

“Dispute” shall have the meaning specified in Section 11.1.1.

“Diversion Event” shall have the meaning specified in Section 5.2.1.

“Event of Default” shall have the meaning specified in Section 9.1.

“Executive Director” means the Executive Director of SPSA.

“Existing Service Agreement” means that certain Service Agreement dated as of September 9, 2009 (as amended, supplemented or otherwise modified), between SPSA and Contractor.

“Extended Landfill Hours Request” shall have the meaning specified in Section 4.3.1(c).

“Extended Term” shall have the meaning specified in Section 12.2.1.

“Facilities” means both the RDF Facility and the WTE Facility, or, as applicable, either such facility.

“Facilities Site” means the land and premises on which the Facilities are located.

“Financial Issues” means an issue or issues primarily of a financial nature and concerns whether the applicable Party’s obligations are being provided or calculated, or both, in accordance with this Agreement.

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

“GAAP” means generally accepted accounting principles, consistently applied.

“GAAS” means generally accepted auditing standards, consistently applied.

“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 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 the Recitals.

“Guaranty” shall have the meaning specified in Section 8.6.

“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.

“Independent Expert” means a reasonably qualified expert in the area in which expertise is sought, which Person may, as applicable, include SPSA’s consulting engineer, a financial advisor or firm, an appraiser or other professionally trained and licensed Person.

“Initial Term” shall have the meaning specified in Section 12.1.

“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, Acceptable Waste, NP Waste, Residue and/or Prohibited Waste. For purposes of this Agreement, the term “Landfill” shall (a) 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, and (b) exclude any landfill constructed, operated or otherwise existing in the Northwest River Watershed.

“Landfill Receiving Time” means the period of operation during which the SPSA Landfill is open and available for the receipt and delivery of Residue which, unless the Parties agree otherwise in writing, shall be (i) 8:00 a.m. (local time) to 4:00 p.m. (local time), Monday through Friday, except for Legal Holidays; *provided, however*, upon sixty (60) Days prior Notice to Contractor’s Authorized Representative, SPSA may, from time to time, change such opening time to 7:00 a.m. (local time), 8:00 a.m. (local time) or 9:00 a.m. (local time), and closing time to 3:00 p.m. (local time), 4:00 p.m. (local time) or 5:00 p.m. (local time) and (ii) 8:00 a.m. (local time) to 12:00 noon (local time) on Saturday, except for Legal Holidays.

“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 3.16(c).

“Material Subcontract” means any contract or agreement with any third Person (including, any Subcontractor) to which Contractor is subject that affects or relates to, in any

material respect, the performance of Contractor of the Services, including, any contract for transportation or hauling services, or disposal services.

“Maximum Waiting Time” shall have the meaning specified in Section 5.2.1.

“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.

“MFN Agreement” shall have the meaning specified in Section 6.4.2(a).

“MFN Tipping Fee” shall have the meaning specified in Section 6.4.2(a).

“MFN Tons” shall have the meaning specified in Section 6.4.2(a).

“Minimum Processing Percentage” means eighty-five percent (85%).

“Monthly Invoice” shall have the meaning specified in Section 6.3.1(a).

“Monthly Report(s)” means those monthly reporting requirements specified in Schedule 3 (Reporting Requirements).

“Non-Qualifying Residue” means Residue that (i) fails to satisfy the Paint Filter Test performed by SPSA or other SPSA Landfill employees on a representative sample of delivered Residue, (ii) is visibly unacceptable or causes a release of dust or particulate matter, in the reasonable opinion of SPSA or the landfill attendant at the SPSA Landfill, or (iii) fails to meet, constitute or be considered as “alternate daily cover” or otherwise satisfy requirements for disposal under Applicable Law.

“Northwest River Watershed” means the geographical areas lying within the boundaries delineated as such and specified as the “Northwest River Watershed” on Schedule 4 (Northwest River Watershed).

“Notice(s)” means written notice from one Party to the other hereunder, all in accordance with Section 13.7 and the timeframes and other requirements of this Agreement.

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

“Paint Filter Test” means the method used to determine the presence of free liquids in a representative sample of Residue selected and performed in accordance with the procedures commonly used by SPSA.

“Parent Company” shall mean Wheelabrator Technologies Holdings 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 8.5.

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

“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 through the Facilities. For the avoidance of doubt, “Process,” “Processed,” or “Processing” does not include the disposal of Processible Waste into any Landfill.

“Processible Waste” means that portion of Solid Waste that is not NP 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.

“Prohibited Waste Costs” shall have the meaning specified in Section 4.6.2.

“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, repair and replacement services on waste-to-energy facilities in the United States of the type similar to, as applicable the RDF Facility or the WTE Facility 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 and licensed to transact suretyship business in the State, and rated by A.M.

Best Company with a financial strength rating of “A-“ or better and a financial size rating of Class X or larger.

“Qualified Transferee” means a Person with demonstrated experience in the operations, management, maintenance and repair of solid waste facilities similar to the Facilities, which experience shall include the ownership and/or operation of at least three (3) Reference Facilities for an aggregate total of at least five (5) years.

“Qualifying Residue” means Residue that is not Non-Qualifying Residue.

“RDF Facility” has the meaning specified in the Recitals.

“RDF Receiving Time” shall have the meaning specified in Section 3.3.1.

“RDF Tippers” means the two (2) pieces of equipment installed at the RDF Facility and supervised, managed and maintained by Contractor used to lift and tip trailers containing loads of Solid Waste being delivered by vehicles to the RDF Facility.

“RDF Tipper SOP” shall have the meaning specified in Section 3.13.2.

“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 Services performed hereunder; (iii) materials to which access is limited by copyrights, patent or bequest; or (iv) identical duplications of a Record.

“Reference Facility(ies)” means a resource recovery (e.g., waste-to-energy), material recovery/recycling, biomass or other power generating facility, which has been operated by the proposed transferee.

“Replacement Tons” shall have the meaning specified in Section 6.2.4(b).

“Required Contractor Insurance” shall have the meaning specified in Section 8.3.1(a).

“Required SPSA Insurance” shall have the meaning specified in Section 8.4.

“Residue” means the material remaining after Processible Waste is Processed, including fly ash, bottom ash, spent reagent and other materials which may or may not be recovered.

“Residue Disposal Fee” shall have the meaning specified in Section 6.2.3.

“Residue Tipping Rate” shall have the meaning specified in Section 6.2.3(a).

“Residue Estimate” shall have the meaning specified in Section 3.13.1.

“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.

“Scheduled Maintenance” means the Contractor-scheduled Facilities downtimes for maintenance of the Facilities.

“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 Fee” shall mean the monthly amount calculated in accordance with Section 6.2.

“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, receiving, accepting and Processing of Acceptable Waste delivered by or on behalf of SPSA at the Facilities and transporting, delivering and disposing of Residue at the SPSA Landfill.

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

“SOP” means that certain standard operating plan adopted by the Board which sets forth certain operational, maintenance, administrative and other responsibilities of SPSA with respect to its disposal system and the performance of the related services by SPSA, as the same may from time to time be amended, supplemented or modified.

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

“SPSA Area Community(ies)” means any of the Cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk or Virginia Beach, or any of the Counties of Isle of Wight or Southampton.

“SPSA Direct Hauler(s)” means haulers delivering Acceptable Waste by or on behalf of any Member Community or the U.S. Navy, in each case, under contract with SPSA directly to the RDF Facility (and not by means of, or via, any SPSA Transfer Station).

“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 Services or materially reduces its revenues, in any case, under this Agreement.

"SPSA Indemnified Parties" shall have the meaning specified in Section 8.1.1(a).

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

"SPSA Landfill Tipper" means the mobile equipment placed at the SPSA Landfill used to lift and tip trailers containing loads of Residue and Solid Waste being delivered by vehicles to the SPSA Landfill.

"SPSA Landfill Tipper SOP" shall have the meaning specified in Section 3.15.2.

"SPSA's Authorized Representative" means SPSA's representative specified in Section 13.6.

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

"SPSA Tonnage Reports" shall have the meaning specified in Section 5.4.4 above.

"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 Services hereunder).

"Suffolk Transfer Station" means the SPSA Transfer Station specified as such on Schedule 2 (SPSA Transfer Stations).

"TCLP Results" shall have the meaning specified in Section 3.13.2(b).

"Technical Issues" means any issue primarily of a technical or engineering nature and which concerns whether the applicable Party's obligations are being provided in accordance with this Agreement.

"Term" shall have the meaning specified in Section 12.3.



“Third Party Waste” shall mean Solid Waste delivered by or on behalf of any Person (excluding SPSA or any Person delivering Acceptable Waste by or on behalf of SPSA) to the RDF Facility.

“Tipping Floor” means the tipping floor where Acceptable Waste is delivered and sorted, and located at and in the RDF Facility.

“T.S. Member Community” means any of the Cities of Chesapeake, Norfolk or Virginia Beach.

“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 Services are performed, directly resulting in a partial or total curtailment of the performance of the 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, uncontrolled leachate, and groundwater, surface water or soil contamination) whether such condition is due to natural circumstances or the failure of engineering systems, that prevents or materially adversely affects the provision of a Party's obligations hereunder; *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

(G) any labor strike, walkout, work stoppage or slowdown or similar industrial or labor action by the employees of Contractor performing 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, inflation or wage rates, insurance costs, commodity or electric prices, or currency fluctuations;

(E) the characteristics, quality, composition or contamination, or any one or more of the foregoing, of the Acceptable 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;

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

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

(N) the failure to renew or extend, or loss of, the contract with the U.S. Navy for sale of steam energy generated by the WTE Facility; and

(O) the failure of SPSA to deliver Acceptable Waste for any reason or provide any minimum amount of Acceptable 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.

"Waste Estimate" shall have the meaning specified in Section 5.1.

"Waste Tipping Fee" shall have the meaning specified in Section 6.2.2.

"Waste Tipping Rate" shall have the meaning specified in Section 6.2.2.

"WTE Facility" means the waste-to-energy facility owned and operated by the Contractor in Portsmouth, Virginia.

[END OF DEFINITIONS]

## **SCHEDULE 2**

### **SPSA TRANSFER STATIONS**

Chesapeake Transfer Station  
901 Hollowell Lane  
Chesapeake, Virginia 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, Virginia 23462

Suffolk Transfer Station  
1 Bob Foeller Drive  
Suffolk, Virginia 23434

## SCHEDULE 3

### REPORTING REQUIREMENTS

#### **1. Monthly Report**

The Monthly Report prepared and submitted by Contractor to SPSA's Authorized Representative pursuant to Section 3.17.1 of the Agreement shall include at least the following sections and information. It is recognized that the data supplied in each Monthly Report may differ from invoices for billings and revenues since many of those items are not read at the beginning and end of each month. The Monthly Report shall be submitted in hardcopy and electronic form acceptable to SPSA's Authorized Representative, and all the data contained in the Monthly Report shall also be submitted in a database format acceptable to SPSA's Authorized Representative.

#### **1.1 Monthly Operating Data**

Contractor shall include in the Monthly Report a summary of operating data for the prior Billing Month. The data shall include monthly totals, calendar year-to-date totals, Billing Year-to-date totals and 12-month rolling averages and shall be summarized in a spreadsheet format. The operating data shall include all of the data in Section 1.1 of this Schedule 3 (Reporting Requirements) plus the estimated heating value of Processible Waste (Btu/pound Processible Waste Processed).

#### **1.2 Monthly Operations Status**

Contractor shall include in the Monthly Report for each Billing Month, the following information at a minimum:

- (a) Description of all scheduled and unscheduled outages during the reporting period for the boilers, turbine-generators and metal recovery equipment including unit identification, start date, outage duration and a detailed description of the reason for each outage.
- (b) Description of any partial or total shutdowns for maintenance and repairs anticipated during the next three (3) Billing Months.
- (c) Description of all environmental testing conducted during the reporting period including air emission, CEM and Residue tests and/or any of those tests that are anticipated to be performed during the next three (3) Billing Months.
- (d) Description of any regulatory or insurance inspections and any inspections of major equipment performed by Contractor or outside party during the reporting period.
- (e) Description of any major safety issues during the reporting period including

all OSHA accidents.

- (f) Description of any notices of violation, proceedings, orders or investigations received or pending concerning Contractor, the Facilities or any of their operations. Copies of any letters or other correspondence should be attached to the Monthly Report. If no notices of violation, proceedings, orders or investigations have been received or are pending, the Monthly Report should include the following statement: “Contractor has not received any notices of violation (NOVs) or orders, and no such NOVs, proceedings, orders or investigations are pending, for the subject period.”
- (g) The dates and descriptions of any reasonably reportable air quality violations and Process upsets.
- (h) Monthly Steam Data identifying total steam energy (1) requested for delivery by the U.S. Navy and (2) delivered by Contractor from the WTE Facility.
- (i) Total Tons of Third Party Waste delivered to the Facilities.
- (j) Total Tons of Prohibited Waste delivered to the Facilities.
- (k) Total Tons of Processible and NP Waste removed from the RDF Facility.
- (l) Total Tons of Residue generated by the WTE Facility.
- (m) Total Tons of Solid Waste diverted to one or more Landfill(s).

\*\*\*\*\*

**SCHEDULE 4**

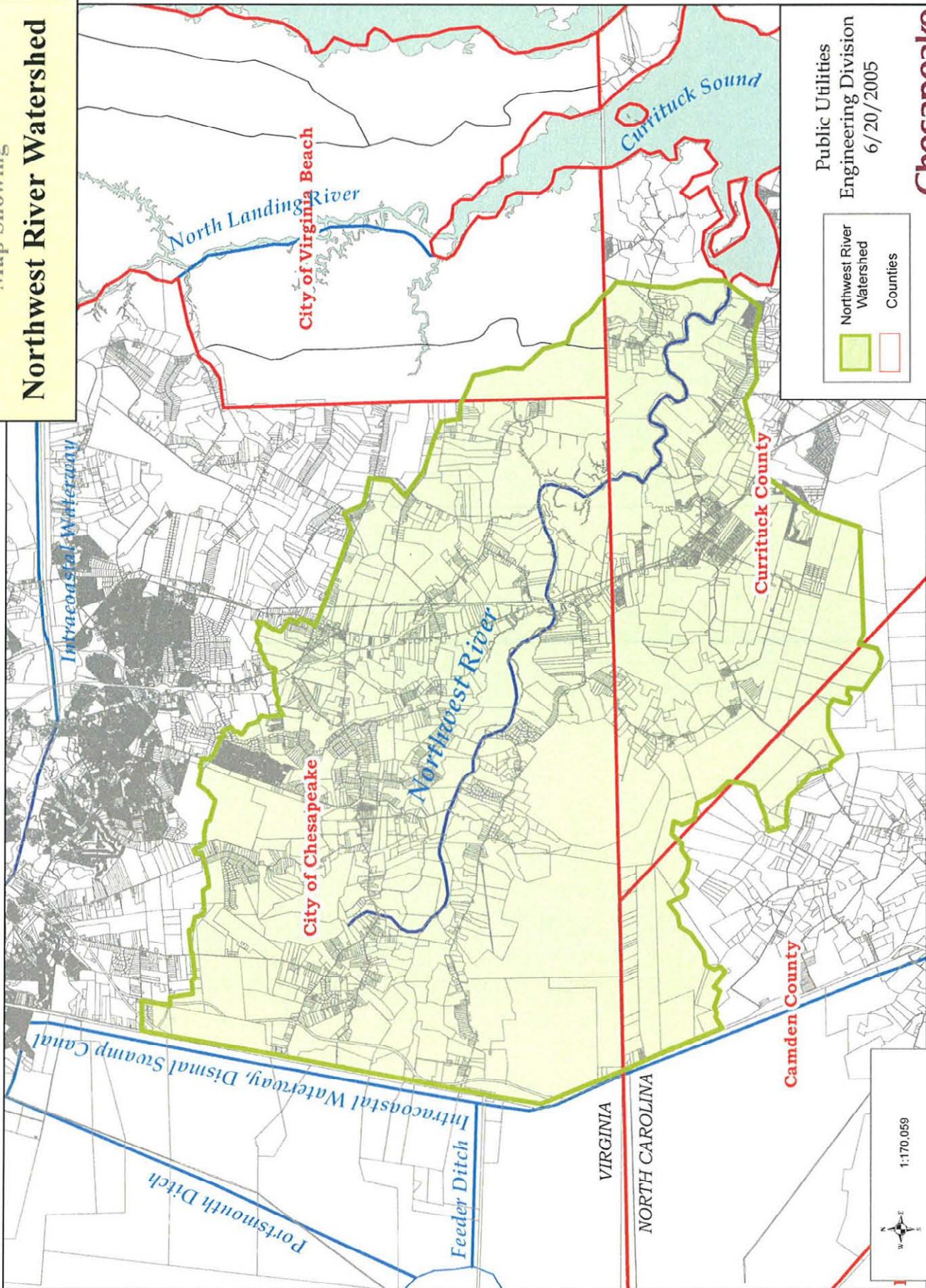
**NORTHWEST RIVER WATERSHED**

[Attached]



Map Showing

# Northwest River Watershed



Public Utilities  
Engineering Division  
6/20/2005



Northwest River Watershed

Counties

- Northwest River Watershed (Green outline)
- Counties (Red outline)

1:170,059

10,000 5,000 0 10,000 Feet



**SCHEDULE 5**

**PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS: THAT WHEELABRATOR PORTSMOUTH INC.,** a Delaware corporation (**“Principal”**), and \_\_\_\_\_ (**“Surety”**), located at \_\_\_\_\_ (Business Address), a surety insurer chartered and existing under the laws of the State of \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, are held and firmly bound unto the **SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA** (**“Obligee”**), located at 723 Woodlake Drive, Chesapeake, Virginia 23320, in the sum of **THREE MILLION DOLLARS (\$3,000,000)** for payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns jointly and severally.

**WHEREAS**, Principal and Obligee have entered into that certain Waste Disposal and Services Agreement, dated as of September \_\_\_\_, 2018 (as further amended, supplemented, modified or restated from time to time, the **“Service Agreement”**), pursuant to which Principal is obligated to, among other things, provide waste disposal and other services, which is incorporated by reference and made part hereof; and

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Service Agreement.

**THE CONDITION OF THIS PERFORMANCE BOND** is that if Principal:

1. Performs the Service Agreement at the times in accordance with and in the manner prescribed in the Service Agreement; and
2. Pays Obligee to the extent provided in the Service Agreement any and all fees, losses, expenses, damages, costs and attorneys’ fees that Obligee sustains because of any default by Principal under the Service Agreement, including, but not limited to, any fees, losses, expenses, damages and costs, whether liquidated or actual, incurred by Obligee; and
3. Performs all Services and work under the Service Agreement, then this Performance Bond is void; otherwise it remains in full force throughout the performance of their obligations under the Service Agreement.

Any changes in or under the Service Agreement and compliance or noncompliance with any formalities with the Service Agreement or the changes do not affect Surety’s obligation under this Performance Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Service Agreement or other work to be performed hereunder, or the specifications referred to therein shall in anyway affect its obligation under this Performance Bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of Service Agreement or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond and shall be governed in accordance with the laws of the Commonwealth of Virginia. Any proceeding, legal or equitable, under this Performance Bond may be instituted in any federal or state court of competent jurisdiction in the Commonwealth of Virginia, as permitted under Section 11.3 of the Service Agreement.

In no event shall the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond, plus the amount of reasonable attorneys' fees provided in this paragraph, regardless of the number of suits that may be filed by the Obligee. If Surety fails to discharge its obligations under this Performance Bond, the Surety shall indemnify Obligee for the reasonable attorneys' fees Obligee incurs thereafter to recover any sums found to be due and owing to Obligee.

Notice to the Surety or the Principal shall be mailed or delivered to the address shown on the page on which their signature appears.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the above bounded parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
In the presence of:

**PRINCIPAL:**

**WHEELABRATOR PORTSMOUTH INC.,**  
a Delaware corporation

\_\_\_\_\_  
Witness as to Principal

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
by \_\_\_\_\_  
of \_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_, on behalf of the entity. He /she is personally known to me or has produced  
Identification (Type of Identification Produced \_\_\_\_\_) and who did (did  
not) take an oath.

\_\_\_\_\_  
NOTARY  
Print Name: \_\_\_\_\_

COMMISSION NUMBER: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
Witness as to Surety

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

or

\_\_\_\_\_  
Witness as Attorney in Fact

BY: \_\_\_\_\_  
As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
Witness as Attorney in Fact

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
by \_\_\_\_\_  
of \_\_\_\_\_, a \_\_\_\_\_  
, on behalf of the entity. He/she is personally known to me or has produced Identification (Type  
of Identification Produced \_\_\_\_\_) and who did (did not) take an oath.

\_\_\_\_\_  
Notary  
Print Name: \_\_\_\_\_  
COMMISSION NUMBER: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## SCHEDULE 6

### GUARANTY

**THIS GUARANTY** (this “Guaranty”) made as of the \_\_\_ day of \_\_\_\_\_, 2018, **GRANITE ACQUISITION INC.**, a Delaware corporation (“Guarantor”), having its principal place of business in \_\_\_\_\_, \_\_\_\_\_, to and for the benefit of **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**, it is proposed that SPSA will enter into that certain Waste Disposal and Services Agreement dated as of even date herewith (as further amended, supplemented or otherwise modified from time to time, the “Service Agreement”), with Wheelabrator Portsmouth Inc., a Delaware corporation (“Contractor”), a subsidiary of Guarantor, for the operation and maintenance of the refuse-derived fuel facility and waste-to-energy facility located in Portsmouth, Virginia and the performance of certain services described therein;

**WHEREAS**, SPSA is willing to enter into the Service Agreement only upon the condition that Guarantor execute and deliver this Guaranty to SPSA in accordance with the terms and conditions of the Service Agreement;

**WHEREAS**, Guarantor has agreed to guarantee the payment and performance of Contractor’s covenants, agreements and obligations under the Service Agreement and any addendum, amendment or amendment and restatement thereto; and

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

**NOW, THEREFORE**, in consideration of the foregoing and for valuable consideration, the receipt and sufficiency of which is 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. Guarantor absolutely, irrevocably and unconditionally guarantees to SPSA: (a) the due and punctual payment of (i) each payment required to be made by Contractor under the Service Agreement, when and as due, including payments in respect of reimbursement of disbursements and interest thereon and (ii) all other monetary obligations of Contractor under the Service Agreement, including without limitation all indemnities, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, whether such obligations now exist or arise hereafter (all such obligations referred to in this clause (a) being collectively referred to as the “Monetary Obligations”); and (b) the due and punctual performance and observance of, and compliance with, all covenants, agreements and obligations

of Contractor under or pursuant to the Service Agreement, or any other agreement or instrument entered into by Contractor in connection with the Service Agreement, whether such obligations now exist or arise hereafter (all such obligations referred to in the preceding clauses (a) and (b) being collectively referred to as the “Obligations”). Guarantor agrees that the Obligations may be extended, amended, modified or renewed, in whole or in part, without notice to or further assent of Guarantor, and that of Guarantor will remain bound by and will honor its guarantee hereunder notwithstanding any extension, amendment, modification or renewal of any Obligation by SPSA and Contractor.

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 Contractor 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 Contractor in respect of the Obligations or otherwise under the provisions of the Service Agreement, or otherwise, or, in each case, 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 Contractor is a party.

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

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 the performance in full of all Obligations, including the indefeasible payment in full of all Monetary Obligations, or the termination of all the Obligations), including: any claim of waiver, release, surrender, alteration or compromise of any of the Obligations; the invalidity, illegality or unenforceability of the Obligations; the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to Contractor or any other person (for purposes hereof, “person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental authority), or the dissolution, liquidation or winding up of Contractor or any other person; any permitted assignment or other transfer of this Guaranty by SPSA or any permitted 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 Contractor or any other change in ownership or control of Contractor; 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 clauses.

(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 the performance in full of all Obligations, including the indefeasible payment in full in cash of all Monetary Obligations, or the termination of all the Obligations).

Section 6. Defenses Waived. SPSA may compromise or adjust any part of the Obligations, make any other accommodation with Contractor or exercise any other right or remedy available to it against Contractor, 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, including the indefeasible payment in full of all Monetary Obligations, 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 Contractor or any security. Guarantor 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 the 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 failures to obtain a necessary consent, defaults and violations which 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 which, if not obtained or made would not, individually or in the aggregate, have a Guarantor Material Adverse Effect.

Section 8. Agreement to Perform and Pay Subordination. 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 Contractor, 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, (a) perform, or cause to be performed, such unperformed Obligations and (b) pay, or cause to be paid, to SPSA the amount of such unpaid Monetary Obligations. Upon payment by Guarantor of any sums to SPSA as provided above, all rights of Guarantor against Contractor, arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate 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 Contractor, 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 or performance in accordance with the terms of the Service Agreement.

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

Section 10. Termination and Reinstatement. This Guaranty shall be effective as of the Contract Date and (a) shall terminate when all the Obligations have been (i) performed in full, including the indefeasible payment in full of the Monetary Obligations or (ii) terminated and (b) 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 Obligation is rescinded or must otherwise be restored by SPSA upon the bankruptcy or reorganization of Contractor 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 entity any legal or equitable rights hereunder. Neither this Guaranty nor any of the rights, interests and 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 rights or obligations by Guarantor shall relieve it from the full liabilities and the full financial responsibility, as provided for under this Guaranty, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and 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 all legal actions and proceedings related to this Guaranty or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in the courts of the Commonwealth of Virginia and the laws of that State shall govern the validity, interpretation, construction and performance of this Guaranty, excluding any conflict-of-law rules which 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), electronic mail (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  
Facsimile: (757) 424-4133  
Email: ldevary@spsa.com

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

Williams Mullen  
1666 K Street, N.W.  
Suite 1200  
Washington, DC 20006  
Attn: Bradley J. Nowak, Esq.  
Facsimile: (202) 293-5939

Email: bnowak@williamsmullen.com

and

Willcox & Savage, P.C.  
440 Monticello Avenue  
Suite 2200  
Norfolk, Virginia 23510  
Attn: Warren L. Tisdale, Esq.  
Facsimile: (757) 628-5566  
Email: wtisdale@wilsav.com

If to the Guarantor:

Granite Acquisition, Inc.  
100 Arboretum Drive, Suite 310  
Portsmouth, NH 03801  
Attn: General Counsel

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 for the purposes of any suit, action or other proceeding arising out of this Guaranty or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Eastern District of Virginia. 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 any such court. 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 (i) the United States District Court for the Eastern District of Virginia or (ii) any other Virginia court sitting in Norfolk, Virginia and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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

Section 16. Survival of Guaranty. All covenants, agreements, representations and warranties made by Guarantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Guaranty 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. Counterparts. This Guaranty may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

Section 18. Rules of Interpretation. The rules of interpretation specified in Section 1.5 of the Service Agreement shall be applicable to this Guaranty.

Section 19. Severability.

(a) If any term or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect. Upon such determination that any term 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 the 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 remain fully valid and effective.

Section 20. Entire Guaranty. 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 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 the Guarantor as of the date first above written.

**GRANITE ACQUISITION INC.**

By: \_\_\_\_\_

Name:

Title:

## SCHEDULE 7

### PROCESSING GUARANTEE

During each Billing Year, Contractor guarantees to SPSA that Contractor will Process not less than the Minimum Processing Percentage of all Solid Waste delivered to the RDF Facility by all Persons (including by or on behalf of SPSA and third Persons). Contractor's compliance with its Annual Processing Guarantee shall be calculated (based on the tonnage amounts for such relevant categories specified in the Monthly Report) following the end of each Billing Year in accordance with the procedures and formulas set forth in Section 6.4.1 and as follows.

#### **Annual Processing Performance Calculation**

The following formula shall be used to calculate the percentage of Acceptable Waste Processed by Contractor during the Billing Year:

$$P = \frac{A - B - C - D}{A}$$

Where:

- P = The percentage of Solid Waste Processed at the Facilities during such Billing Year.
- A = Total Tons of all Solid Waste accepted at the RDF Facility during the Billing Year.
- B = Total Tons of all NP Waste removed from the RDF Facility during the Billing Year.
- C = Total Tons of all Prohibited Waste removed from the RDF Facility during the Billing Year.
- D = Total Tons of all Solid Waste diverted to Landfills from the RDF Facility or SPSA Transfer Stations (only with respect to Acceptable Waste received from SPSA Member Communities, but excluding commercial waste diverted from SPSA Transfer Stations) during the Billing Year.

If the percentage of Solid Waste Processed (P) at the Facilities during the Billing Year *is equal to or greater than* the Minimum Processing Percentage, then Contractor has satisfied its Annual Processing Guarantee for the Billing Year. If the percentage of Solid Waste Processed (P) at the Facilities during the Billing Year is *less than* the Minimum Processing Percentage, then Contractor has not satisfied its Annual Processing Guarantee for the Billing Year and Contractor shall pay the shortfall damages to SPSA in accordance with Section 6.4.1.