

WHEELABRATOR GOOD NEIGHBOR AGREEMENT

This **GOOD NEIGHBOR AGREEMENT** (this “Agreement”) made this ____ day of April, 2010, with an effective date as specified in Section 1, below, by and between **THE CITY OF PORTSMOUTH, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“the City”) and **WHEELABRATOR PORTSMOUTH INC.**, a Delaware corporation (“WP”), provides as follows:

RECITALS

A. WP is purchasing from the Southeastern Public Service Authority (“SPSA”) a Waste to Energy facility located in Portsmouth that converts municipal solid waste to energy in the form of steam and electricity (the “WTE Facilities”). The WTE Facilities consist of specific discrete facilities located on three separate properties, which are separated from each other by city streets.

B. The individual facilities are commonly known as the Refuse Derived Fuel or “RDF” Plant, the Conveyor Exchange System and the Power Plant. The Conveyor Exchange System occupies land that is partly owned by WP, partly owned by the Navy and partly owned by the City. The portion owned by the City (the “Property”) is being transferred from the City to SPSA in exchange for a commitment from SPSA to operate certain SPSA facilities with due regard for the environment and for community quality.

C. The City desires to encourage and promote the commitment of WP to operate the WTE Facilities with due regard for the environment and for community quality. Wheelabrator desires to establish, maintain, and benefit from a positive long-term working relationship with the City.

D. The overall purpose of this instrument is to facilitate WP’s operation of WTE Facilities in an environmentally responsible way that respects community quality while

preserving WTE's ability and right to operate the WTE Facilities autonomously, efficiently, and profitably.

WHEREFOR, in exchange for the mutual consideration recited herein, the parties do hereby AGREE as follows:

AGREEMENT

1. **Term.** The term of this Agreement shall be for twenty-five years. It shall commence on the date WT acquires ownership of the WTE Facilities from SPSA (the "Effective Date"). It shall renew automatically for succeeding twenty-five year terms, unless otherwise agreed by the parties.

2. **Air Emissions.**

2.1. WP is committed to being a good corporate citizen and steward of the environment. Throughout the term of this Agreement, WP shall endeavor to keep air emissions at the WTE Facilities at or below applicable state and federal standards and limits contained in WP's air permits, and shall, to the extent WP in its reasonable discretion determines to be commercially practicable and affordable, consider technologies that would further reduce emissions below the applicable standards and permit requirements. WP shall continue to monitor the composition and moisture level of fuel input for such purposes. Before applying for any permit reissuance or modification, WP shall meet with representatives of the City as set forth in Section 6 to discuss the selected permit option, conditions, and alternatives.

2.2. WP shall use reasonable efforts for the WTE Facilities not to emit into the atmosphere any emissions or releases which cause an odor objectionable to individuals of ordinary sensibility in any nearby Portsmouth residential neighborhood.

2.3. WP shall promptly investigate and respond to any complaints of odor arising from any nearby Portsmouth residential neighborhoods, based on the standard of being objectionable to an individual of ordinary sensibility. If qualifying odor complaints persist and cannot be resolved with existing facilities, WP agrees to evaluate the technical and economical feasibility of potential additional odor control measures (including evaluating the installation of a back up generator dedicated to maintain power for the existing odor control system in the event of electricity failures), to provide the City with such evaluation, to give reasonable consideration to any qualified professional recommendations provided by the City, and to thereafter implement a reasonable plan for improved odor control. In all circumstances, the objective of such measures shall be to meet the standard outlined in Section 2.2.

2.4. WP shall continue to utilize fabric filter materials for fine particulate controls at the Power Plant unless and until replaced with a better technology that WP has determined in its reasonable discretion, after consultation with the City, is economically and technologically acceptable.

2.5. WP shall continue to operate and improve wet scrubbers to reduce sulfur dioxide emissions at the Power Plant until replaced with a better technology that WP has determined in its reasonable discretion, after consultation with the City, is economically and technologically acceptable.

2.6. WP shall use reasonable efforts to operate the WTE Facilities in a manner that limits truck idling time and waiting time.

3. Water Runoff. WP shall adhere to or exceed the following minimum standards concerning storm and surface water runoff (referred to collectively as “water runoff”):

- 3.1. Manage water runoff so that the WTE facilities at least maintain the present qualification for “Model Level River Star” status, under the River Star environmental stewardship project maintained by the Elizabeth River Project.
- 3.2. Conduct regular street sweeping of the paved areas around the RDF Plant so as to reduce contamination in any water runoff.
- 3.3. Diligently pursue a contract modification with the Navy to authorize the removal of the coal pile.
- 3.4. WP shall upgrade the existing stormwater management system at the WTE Facilities by constructing the system improvements that are developed using the principles set forth in the Stormwater Upgrade Plan (the “Upgrade Plan”) attached hereto as Exhibit A. WP shall perform the vegetative management improvements contained within the Upgrade Plan within one year from the Effective Date. WP shall perform the remainder of the Upgrade Plan within three years from the Effective Date. The City, in conjunction with the Elizabeth River Project, shall seek out any potential grants or other funds that could be used to pay all or a portion of the Upgrade Plan costs. WP shall assist the the City or the Elizabeth River Project as necessary, including providing such documentation as is reasonably required, to apply for such grants.

4. Vehicle Control Plan. WP shall implement a Vehicle Control Plan, as follows:

- 4.1. WP shall adopt a preferred route map for trucks serving the WTE Facilities. The map shall provide that the preferred route shall be to access the WTE Facilities by Elm Avenue rather than Victory Boulevard, to the extent feasible at any point in time; and that trucks shall not use Afton Parkway unless they are providing local service to the Cradock neighborhood. WP shall encourage voluntary compliance with the preferred route map

by existing contract haulers, and it shall include the map in future hauling contracts.

Provided, that if there is a change in circumstances that materially affects the ability of WP to operate efficiently using this preferred route map, then the parties shall meet and confer for the purpose of revising the map.

4.2 WP shall prepare and provide to its contract haulers tipping floor procedures and rules that require the trucks to be fully cleaned of loose debris before leaving the WTE Facilities. Such rules will also be posted at the tipping floor.

4.3 Lessee will encourage compliance by contract haulers with all applicable vehicle and traffic laws, including without limitation securing of loads and exhaust noise.

5. Appearance of the WTE Facilities and Approach Roads. WP shall adhere to the following requirements for the appearance of the WTE Facilities, and also for Elm Avenue and Victory Boulevard between the WTE Facilities and George Washington Highway for each street (the "Access Roads"):

5.1. Operate, maintain, repair, and manage the WTE Facilities in accordance with good industry standards and practices, including the ASME Boiler and Pressure Vessel Code for boiler repair work, in good repair and working order, and in a good, clean, orderly, and reasonably litter- and debris-free condition, with proper exterior maintenance.

5.2. Mow and trim all grass at the WTE Facilities no less frequently than once a month, including grass that may be within City right-of-way.

5.3. Properly maintain all landscaping (meaning trees, shrubs, bushes, flowers, and the like) at the WTE Facilities, including weeding, watering, trimming, and replacement of dead or diseased plants, and including landscaping that may be within City right-of-way.

5.4. Pick up litter at the WTE Facilities daily and pick up litter along the Access Roads no less frequently than once a week.

5.5. Conduct reasonable measures at the WTE Facilities to minimize the attraction and presence of pests and rodents (including roaches, rats, mice, wild dogs, muskrats, seagulls, and the like).

6. Corporate Citizenship. WP shall be a good corporate citizen of the City by adhering to the following practices:

6.1. WP shall meet not less than a total of four times annually with a civic action group (the "CAG") comprised of organizations that represent nearby Portsmouth neighborhoods, as designated from time to time by the Portsmouth City Manager and at least one representative of the City as designated from time to time by the City Manager. The CAG may also include technical experts with relevant expertise from the public sector, the private sector and academia. These meetings shall be conducted in a spirit of mutual good faith and courtesy, with information to be freely exchanged for the purposes of (1) minimizing adverse effects from WP's operations of the WTE Facilities on the quality of life in the affected neighborhoods, and (2) ensuring community support for WP's operation of the WTE Facilities. WP shall continue working in good faith, within reasonable financial constraints, to protect and improve community quality. The City, for its part, shall use its best efforts to help ensure citizen understanding of the reasonable operational needs of WP.

6.2. At the last quarterly meeting of the year, WP shall provide its proposed WTE Facilities capital improvements program for the upcoming year. If WP plans for any major capital improvement that could directly affect the environment, and if the

improvement has an expected cost greater than \$500,000, it shall share that information with the CAG.

6.3. WP shall maintain a 24-hour “Hotline” which citizens can call to report environmental concerns or complaints. WP shall make a reasonable response to any such concern or complaint made on the Hotline.

6.4. WP shall maintain an online website that discloses current and recent air emission readings for all substances for which environmental record keeping is required by the United States Environmental Protection Agency or the Virginia Department of Environmental Quality (or successor organizations). The website shall also disclose all environment violations involving air, soil, or runoff water as soon as reasonably possible after they are documented.

6.5. WP shall from time to time consider providing financial and/or organizational support to worthy community projects or charitable causes in Portsmouth, subject to availability of funds and in accordance with WP’s corporate responsibility program. This section shall not be interpreted to mandate any particular contribution or any particular level of contribution.

6.6. WP shall, if requested, consider cooperating with the Portsmouth Public School System in conducting education projects for school children about waste to energy facilities and environmental stewardship.

7. Taxes. WP shall timely and fully pay all applicable real estate and personal property taxes that are validly assessed by the City against WP’s property interests in the WTE Facilities. WP shall retain the right to appeal the amount of any such assessment, in the manner authorized by law, and it shall retain all rights associated with any such appeal.

8. Dispute Resolution. In the event that there is a dispute between the City and WP concerning interpretation of, or compliance with, any portion of this instrument, the following procedure shall apply:

8.1. The City shall provide written notice to WP in sufficient detail for WP to determine what provision of this instrument is allegedly out of compliance, and in what way.

8.2. Authorized representatives of the parties shall meet and confer in person and in good faith in an attempt to resolve the matter. If WP agrees that there has been noncompliance, WP shall have a reasonable opportunity to cure.

8.3. In the event that said “meet and confer” efforts do not resolve the matter, it shall be referred to non-binding mediation by a mutually acceptable mediator. The cost of mediation shall be divided equally between the parties. Neither party shall have the right to pursue any legal remedy unless mediation has been pursued in good faith and has not proved successful.

9. Remedies. In the event that the City determines that WP is out of compliance with any term of this instrument, and if the dispute resolution procedures set forth in Section 8 do not resolve the matter, then the City shall be entitled to damages, if damages that are the proximate result of the noncompliance can be reasonably ascertained, equitable relief if damages cannot be determined, or a mixture of damages and equitable relief, as may be justified by the facts and the law.

10. Implementation Date. WP shall begin working towards compliance with the requirements of Sections 2 through 5 (both inclusive) on the Effective Date, but, except as otherwise set forth herein, it shall not be responsible for full compliance until one year thereafter.

11. Possible sale or transfer of WTE Facilities. Should WP ever sell or transfer the WTE Facilities, it shall require as a condition of said transaction that this Agreement be assigned to, accepted by, and made binding on the purchaser or transferee.

12. Force Majeure. Any delay or failure of performance by any party hereunder shall not constitute a default hereunder or give rise to any claims for damages if, and to the extent that, such delay or failure is primarily caused by any act, event or conditions beyond that party's reasonable control and significantly adversely affecting its ability to perform its obligations hereunder, including, without limitation, acts of God, strike, lockout or labor disturbance.

13. General Provisions.

13.1. Recognizing that this Agreement term is for an extended period of time, in the event that there is any change in technology, law, or other circumstance materially affecting any requirement of this Agreement, such that it is no longer reasonable to maintain the requirement as originally written, or such that there is a better way to achieve the goal of the requirement, then the parties shall meet and confer in good faith to negotiate an amendment hereto which honors the overall intent of this Agreement as summarized in Recital E, in a way consistent with the changed circumstance(s).

13.2. This Agreement shall not be applied or interpreted so as to require WP to reveal any trade secret, or to disclose any confidential corporate information that could put it at a competitive disadvantage.

13.3. This Agreement represents the complete agreement between the parties on the subject matter contained herein. Any prior written or oral representations or agreements on said subject matter are hereby superceded. This Agreement may be amended or modified only in writing signed by authorized representatives of the parties.

13.4. This Agreement is a Virginia contract, made under and to be interpreted and construed pursuant to, Virginia law.

13.5. If any provision of this Agreement is deemed illegal or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable, and its invalidity shall not affect the validity of the remainder of this Agreement.

13.6. This Agreement may be enforced solely by the parties hereto, and no third party shall have any enforcement rights hereunder.

13.7. Within ten business days after receipt of a request, the City and WP shall deliver to the other party a duly executed and acknowledged certificate setting forth (i) that this Agreement is in full force and effect, (ii) the existence of any default, including the nature and extent thereof, (iii) whether there are any defenses, counterclaims or offsets to such default, (iv) the description of this Agreement and any amendments or modifications and (v) such other matters relating to this Agreement and Property as may be reasonably requested.

13.8. So long as WP is not in default of this Agreement beyond any applicable notice and cure periods, the City covenants that WP shall have the peaceable and quiet enjoyment and possession of the Property, without interference from any party. The City represents and warrants that it has good and marketable fee simple title to the Property, except that conveyance of any interest or any portion of Victory Boulevard shall be in the nature of quitclaim, without any warranty of title.

WITNESS the following signatures:

THE CITY OF PORTSMOUTH, VIRGINIA

By _____
Kenneth L. Chandler, City Manager

Approved as to form and legality:

G. Timothy Oksman, City Attorney

WHEELABRATOR PORTSMOUTH, INC.

By _____
Title _____