

**MEMORANDUM OF INTENT
CONCERNING SPSA ELM AVENUE FACILITIES**

THIS MEMORANDUM OF INTENT, made this ____ day of _____, 2006, by and between THE CITY OF PORTSMOUTH, VIRGINIA (the “City”) and THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY (“SPSA”), provides as follows:

RECITALS

A. SPSA has for many years owned and operated certain facilities used to convert municipal solid waste into energy. Those facilities, referred to herein as the “Elm Avenue Facilities,” are located on Elm Avenue, in the City of Portsmouth, Virginia. One facility is commonly known as the Refuse-Derived Fuel Plant (the “RDF Plant”) and the other facility is commonly known as the “Power Plant.”

B. SPSA has done its best to operate the Elm Avenue Facilities as well as possible, given SPSA’s existing financial limits. However, the facilities have from time to time caused odor and debris to be experienced in nearby areas of Portsmouth. In addition, the facilities’ exterior appearance shows a lack of proper maintenance and cleanliness.

C. Portsmouth desires to have SPSA improve the operations and appearance of the Elm Avenue Facilities in order to eliminate these problems.

D. SPSA contemplates entering into a long-term contract with a subsidiary of Covanta Energy Corporation, by which SPSA will receive substantial revenue for processing out-of-area municipal solid waste at the Elm Avenue Facilities. This new revenue for SPSA will permit additional capital investment and improvements in the Elm Avenue Facilities to correct the City’s concerns.

E. The proposed SPSA - Covanta contract will be possible only if Portsmouth allows nearby property that it controls to be used as a Transfer Station, to bring that solid waste to the area.

E. The City desires enforceable assurances that SPSA will make the needed capital investment and improvements before it grants Covanta permission to use the property in question

as a Transfer Station. SPSA is willing to provide those assurances as an inducement to obtain this approval from the City, contingent on SPSA entering into the contemplated contract with Covanta.

Accordingly, the parties hereby state their INTENT as follows:

INTENT OF THE PARTIES

1. This instrument is a memorandum of intent. It does not create any legally enforceable rights in either party, or in any third party, nor does it create any legally enforceable duty of any party.

2. Even though this instrument is not legally binding, it is the good faith intent of the parties to enter into a legally binding and enforceable contract which embodies the terms and conditions set forth herein. The parties intend for this contract to be finalized, authorized by their respective governing bodies, and executed not later than December 31, 2006.

3. Under the contract, SPSA will legally commit itself to fund, undertake, complete, and implement all capital improvements, operating conditions, and other conditions set forth in the attached Exhibit A, entitled "Portsmouth-SPSA Waste Management Operating Objectives, August 30, 2006," according to the schedule set forth in Exhibit A.

4. SPSA's obligation will be contingent on SPSA entering into the contemplated contract with Covanta or a Covanta subsidiary, as described above and on the City approving the Transfer Station.

WITNESS the following signatures and seals this:

THE CITY OF PORTSMOUTH, VIRGINIA

By _____
James B. Oliver, Jr., City Manager

Approved as to form and legality:

G. Timothy Oksman, City Attorney

SOUTHEASTERN PUBLIC SERVICE AUTHORITY

By _____

John Hadfield, Executive Director

EXHIBIT A

Portsmouth-SPSA Waste Management Operating Objectives August 30, 2006

1. Environmental protection – Air, water, odor, trash/debris and gateway (e.g. eco-industrial) investment including:
 - a. Provide monthly documentation of compliance with federal and state environmental standards.
 - b. Provide quarterly environmental performance reports on the RDF/WTE plant.
 - c. By 2010, implement a Selective Noncatalytic Control System (SNCR) that controls/improves oxides and nitrogen emissions.
 - d. Per the HDR and Woolpert Inc studies, continue to improve and fund fabric filter materials that are currently used for Fine Particulate Controls.
 - e. Per the CH2M-Hill analysis and Damuth Services proposals, study and implement an industrial air exhaust system to prevent the tipping floor trash smell from spreading to adjacent residential neighborhoods. Provide City of Portsmouth with monthly odor monitoring/emissions performance reports.
 - f. Incorporate other environmental upgrades as specified by the September 2006 Stokes environmental study.

2. Capital Improvements - specific modernization of the Elm Avenue plant based on recommendations by HDR, Woolpert Inc., Michael Singer Inc. and other consultants will be required including:
 - a. Commitment to fund all capital improvement projects for the RDF & WTE plant as currently identified in the published and approved FY07-FY11 SPSA Capital Improvement Program (i.e. power plant electrical systems, rotating equipment, refuse cranes, turbine generators, boiler tubes, RDF processing equipment and cooling tower).
 - b. Commitment to fund additional HDR/Woolpert recommendations for FY2012-FY2017.
 - c. Funding of the ash management system as outlined in both the HDR and Woolpert Inc. studies.
 - d. These improvements totaling \$76 million from FY2007-FY2017 will be funded annually using the financial CIP model developed for SPSA by Bill Zieburtz of Jordan, Jones and Goulding Inc. entitled “Covanta.8.xls – JJG’s Covanta pro-forma model prepared for SPSA”.
 - e. Investigate and fund, if a return on investment is ascertained, plant improvements that allow SPSA to export electrical energy (e.g. PJM grid concept).
 - f. Per the HDR and Woolpert Inc. studies, develop an escrow fund for the eventual replacement of the crane systems contemplated in 2010.
 - g. Integrate the HDR, Woolpert Inc. and Michael Singer studies and fund a state-of-the-art renovation of the RDF plant, including the additional associated costs of improved landscaping, roadway entrances and maintenance.

3. Specific Operating Procedures - Truck management, regular clean-up/maintenance, capacity and reliability of the plant including:
 - a. Continue funding all current operation programs and Woolpert Inc. recommendations relating to truck management and regular clean-up/maintenance of the RDF/WTE plant.
 - b. First access priority will exist for all City trucks in the emptying of such trucks at the RDF Plant.
 - c. Study the feasibility of increasing the capacity of the WTE plant.
 - d. Provide monthly reports on the percent of time the plants remain operational
 - e. No empty out of area waste containers stored on trucked away to other than the Allied Site.

4. Financial:
 - a. Comply with investments outline in #1, #2 and #3 above.
 - b. Align RDF/WTE debt with its appraised value no later than 2017.
 - c. Provide financial reports on the RDF/WTE facility operations on a quarterly basis.

5. Commitment of new corporate citizenship by SPSA - Responsible goodwill
 - a. Launch the SPSA/ Portsmouth Waste Management Citizen Advisory Committee.
 - b. Adopt and fund Cradock community clean-highway and neighborhood programs.
 - c. Adopt and participate with a nearby school selected by the Portsmouth School Superintendent.
 - d. No out-of-area waste coming into the City of Portsmouth via trucking or other barge facility other than the Allied Site with Covanta.
 - e. No Covanta barged out-of-area waste going past the RDF/WTE facility (except under those contingencies agreed to by the City).