

**STATE OF GEORGIA**

**FRANKLIN COUNTY**

**HOST FEE AND LANDFILL OPERATION AGREEMENT**

This Host Fee and Landfill Operation Agreement (hereinafter referred to as this "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between **METRO GREEN FRANKLIN, LLC**, a Georgia limited liability company, with its principal place of business located in Gwinnett County, Georgia ("Metro Green"), and **FRANKLIN COUNTY, GEORGIA**, a political subdivision of the State of Georgia acting through its duly authorized Board of Commissioners (the "County").

**WITNESSETH:**

**WHEREAS**, Metro Green has contracted to purchase the former Earth Resources of Franklin County, LLC Construction and Demolition Waste (C&D) landfill (the "Landfill") and surrounding real property located on SR 51 in Franklin County with said real property being more fully described and depicted on the plat attached hereto as Exhibit "A" (the "Property"); and

**WHEREAS**, the Georgia Department of Natural Resources' Environmental Protection Division ("EPD") approved the transfer of EPD Landfill Permit No. 059-012D(C&D) to Metro Green on January 28, 2020, a copy of which is attached hereto as Exhibit "B" (the "Permit"), thus allowing the operation of the Landfill to continue over the County's objection; and

**WHEREAS**, in connection with the Permit, EPD and Metro Green entered into a Consent Order on January 28, 2020, a copy of which is attached hereto as Exhibit "C" (the "Consent Order"); and

**WHEREAS**, the County documented its objection to the continued operation of the Landfill via the filing of an appeal of the EPD's approval of the transfer of the Permit to Metro Green with the State of Georgia's Office of State Administrative Hearings on or about February 27, 2020 (the "OSAH Appeal"); and

**WHEREAS**, EPD encourages utilization of waste disposal capacity available at existing C&D landfills as an alternative to developing and permitting new waste disposal facilities; and

**WHEREAS**, Metro Green agrees that it will not commence its public operation of the Landfill prior to January 1, 2021; and

**WHEREAS**, the County desires to enter into this Agreement with Metro Green for payment of Host Fees (as defined below) in connection with solid waste disposed in the Landfill and to set forth the agreement of the parties relative to the conditions of operation of the Landfill; and

**WHEREAS**, contemporaneously with the execution hereof, the County shall dismiss with prejudice the OSAH Appeal; and

**WHEREAS**, the parties agree that Metro Green is entitled to operate the Landfill in accord with the Permit and the Consent Order and the matters otherwise set forth in this Agreement; and

**WHEREAS**, in furtherance of the foregoing recitals, the parties desire to enter into this Agreement as follows:

FOR AND IN CONSIDERATION OF the above premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by the County to Metro Green and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and expressly incorporating the foregoing recitals herein, the parties do hereby agree as follows:

1. **TERM OF AGREEMENT.** The Effective Date of this Agreement shall be the date of execution shown above, and this Agreement shall remain in effect until the Landfill is closed in accordance with all EPD requirements.
2. **HOST FEE.** Metro Green shall pay to the County (i) a surcharge equal to One Dollar (\$1.00) per ton as referenced in O.C.G.A. § 12-8-39(d)(1)(C), and (ii) an additional fee in the amount of Twelve Cents (\$0.12) per ton of solid waste disposed of in the Landfill each month (said aggregate amount of One Dollar and Twelve Cents (\$1.12) per ton shall be the “Host Fee”). Beginning on

January 1, 2026 and measured at each 5 year anniversary thereafter, the amount of the Host Fee shall be adjusted for such succeeding 5 year period by an amount equal to the average annual percentage change in the Consumer Price Index (for all items) over such preceding 5 year period as reported in the Wall Street Journal. The parties acknowledge that ad valorem taxes do not constitute a “fee” for purposes of this Paragraph. Metro Green will pay to the County the aggregate Host Fee owed for a particular month no later than thirty (30) days following the month in which the applicable tonnage is deposited in the Landfill. A five percent (5%) per month penalty shall apply to payments received after the due date. In the event that the Georgia General Assembly modifies O.C.G.A. § 12-8-39(d) to increase the solid waste surcharge applicable to all C&D landfills in the State of Georgia, including, the Landfill, that may be collected by host jurisdictions, including, the County, then the County shall be allowed to increase the amount of the Host Fee set forth in this paragraph by an amount equal to the maximum amount allowed pursuant thereto.

3. **VERIFICATION OF TONNAGE.** The County may inspect all books and records of Metro Green relating to the tonnage of solid waste disposed of in the Landfill during the term of this Agreement in order to verify Metro Green’s calculations as to the tonnage of waste subject to the Host Fee herein provided for. These inspections shall take place during Metro Green’s normal operating hours upon forty-eight (48) hours prior notification from the County to Metro Green. The County shall be responsible for paying all costs and expenses that it incurs in connection with these inspections. These inspections shall be conducted in a manner so as to not unreasonably interfere with the operation of the Landfill. All information provided by Metro Green to the County with respect to the tonnage figures and any information collected by the County during any inspection of Metro Green’s books and records shall remain strictly confidential, except to the extent the County may be required by law to disclose such information. It is acknowledged between the parties hereto that this information is proprietary in nature and constitutes trade secrets belonging to Metro Green. If the County determines that

the tonnage payments made by Metro Green have been inaccurate and Metro Green agrees that additional payment is due the County, Metro Green shall pay to the County within thirty (30) days the amount plus a five percent (5%) penalty on any amounts which are due the County.

4. **BINDING ARBITRATION.** In the event of a dispute regarding the accuracy of tonnage or other matter concerning Metro Green's payment of the Host Fees to the County, and/or any matter under this Agreement, the parties agree to submit their dispute to binding arbitration. The disputing party shall give the other party written notice of the dispute and indicate an intent to proceed under this paragraph. Within twenty (20) days of the date of the disputing party's notice, the parties (or representatives thereof) shall meet in an effort to exchange relevant information and to attempt to resolve the dispute. If the matter is not resolved at that meeting, the parties shall refer the dispute to the nearest office of Henning Mediation & Arbitration Service, Inc. ("Henning") for arbitration. The parties are free to select any mutually acceptable arbitrator from the list at Henning. If the parties cannot agree on the selection of an arbitrator, Henning shall provide a list of arbitrators who have expertise in governmental law. From that list, each party may strike one name. If there remains more than one name on the list, the arbitrator shall be assigned by Henning from the remaining names on the list. The arbitration hearing and any pre-hearing matters shall be conducted in accordance with the rules of arbitration as established by Henning.
  
5. **BUFFER RESTRICTION.** The parties agree that the existing two hundred foot (200') buffer within the outer perimeter of the Property required pursuant to the Permit (the "Perimeter Buffer") shall be maintained by Metro Green in accord with the Permit and no material encroachment into said buffer shall be pursued unless required by EPD; in such event, Metro Green shall provide advance notification to the County. The referenced buffer shall be maintained at all times in accordance with the Permit. Additionally, Metro Green shall identify the Perimeter Buffer in a restrictive covenant filed in the deed records of Franklin County to be cross-referenced with the deed(s) to the Property which

covenant shall provide that the Perimeter Buffer shall run with the land.

6. **COMMUNITY ADVISORY BOARD.** Metro Green acknowledges that the County intends to create a Community Advisory Board (“CAB”) consisting of no more than five (5) members who shall be citizens and residents of Franklin County. Metro Green will provide 24-hour contact information for an individual responsible for day-to-day operations at the Landfill to the CAB to facilitate a clear point of contact regarding Landfill operations between and among Metro Green, the CAB and the public in general. Upon the reasonable request of the CAB, Metro Green agrees to provide a representative to attend and participate in periodic meetings of the CAB at least quarterly beginning January 1, 2021 through January 1, 2023, and shall cooperate with the reasonable requests for information made by the CAB from time to time. Metro Green agrees to conduct at least one public meeting with interested members of the community prior to commencement of public operations at the Landfill.
  
7. **CONDITIONS FOR OPERATION.** The parties agree that the Landfill shall operate in accordance with the following conditions:
  - A. **Hours of Operation.** The Landfill shall provide construction and demolition waste disposal in accord with the Permit, and shall operate only between 7:00 a.m. and 6:00 p.m. Mondays through Fridays, and from 7:00 a.m. until 1:00 p.m. on Saturdays, or until sundown on any day of operation, whichever is earlier. The Landfill may be open during additional hours to deal with emergency situations (i.e. tornados, floods, etc.) when such emergency conditions are declared by the appropriate governmental agency.
  - B. **Holidays Observed.** No operation of the Landfill shall be permitted on Sundays, New Year’s Eve, New Year’s Day, Independence Day (July 4), Memorial Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day.
  - C. **Property Maintenance.** All roads and equipment on the Property shall be kept in good repair and maintained to control dust, fumes, and noise; including, but not limited to through

the use of a water truck, with particular attention to hauling roads, access roads, and loading areas. The access driveway to the Landfill operation shall be paved to the scale house as currently exists (a distance of approximately 800 feet from SR 51), and kept in good repair, to further dust abatement.

- D. Biomass Fuel Materials. No materials shall be transported from the Landfill to any biomass facility, including the nearby Georgia Renewable Power (“GRP”) facility, in any manner or through any third parties prior to January 1, 2023. In the event that materials are ever provided to such facility, such materials shall not contain creosote.
- E. No Chipping Operation. Even though allowed pursuant to the Permit, Metro Green agrees not to engage in the commercial chipping of materials of any kind on the Property prior to January 1, 2023.
- F. Wind Control. The scattering of wastes by wind shall be controlled by fences or other barriers. The Property shall be patrolled daily and all litter shall be removed to ensure compliance with this requirement.
- G. Lighting. No direct artificial illumination resulting from any operations on the Property shall fall upon adjacent property which is owned by third parties.
- H. Occupational Tax Certificate. The County shall issue Metro Green an Occupational Tax Certificate in accord with the application previously filed by Metro Green.
- I. Consent Order. While Metro Green agrees that it will not commence its public operation of the Landfill prior to January 1, 2021, nothing in this Agreement shall be construed to restrict Metro Green from engaging in the activities required to be undertaken by it with respect to the maintenance and operation of the Landfill as described in the Consent Order.
- J. After-Acquired Property. In no event shall Metro Green acquire property after the Effective Date of this Agreement for the purpose and intent of using such after-acquired property in a manner that would otherwise violate the terms and conditions of this Agreement, including but not limited to the construction roads for the purpose of transporting materials to the GRP facility. Unless approved in advance by the County, no

roads or paths located on the Property shall be used to transport materials between the Landfill and the GRP facility.

8. **LANDFILL RESTRICTED TO C&D WASTE.** Metro Green shall only operate a C&D solid waste facility at the Landfill in accord with the Permit, and shall not hereafter seek to alter or expand the Landfill, or to modify the Permit, to accept anything other than construction and demolition waste as that phrase is defined in O.C.G.A. § 12-8-1 et seq. In the event that Metro Green intends to seek any “major” modification to the Permit (in accord with EPD regulations), Metro Green shall first provide such application to the County for review and approval, which approval shall not be unreasonably withheld.
9. **OUTSTANDING TIPPING FEES.** Metro Green shall pay to the County upon execution of this Agreement a total of Ninety-four Thousand One Hundred Thirty-Eight and 96/100 (\$94,138.96) Dollars representing the balance of outstanding tipping fees owed that are related to the Landfill. Payment of these funds shall satisfy Metro Green’s obligation pursuant to item # 3 of the Consent Order.
10. **DEFINITIONS.** All terms of art used herein which are not otherwise defined herein shall have the meaning attributable to them under the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-22, *et seq.*, or under the Solid Waste Management Rules of the Georgia Department of Natural Resources Environmental Protection Division, Chapter 391-3-4.
11. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
12. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and to their respective successors in interest and their assigns.
13. **SEVERABILITY.** The provisions of this Agreement are severable, and if any part of this Agreement is found by a court of

law to be unenforceable, the remainder of the Agreement will continue to be valid and effective.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the matters contained herein. This Agreement shall replace and supersede any and all prior agreements related to the operation of a landfill on the Landfill property, including, specifically, but without limitation, that certain Host Fee Agreement, dated September 30, 2010, which agreements shall no longer be of any force and/or effect as of the Effective Date of this Agreement.
  
15. **AUTHORITY.** Metro Green and the County through its Board of Commissioners have full power and authority to enter into this Agreement and to perform all obligations hereunder, and the Franklin County Board of Commissioners has duly authorized the execution and delivery of this Agreement and the County's performance of the obligations contained herein. The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of the parties for the purpose of duly binding the parties to this Agreement.

(Signatures on following page.)



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

METRO GREEN FRANKLIN, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FRANKLIN COUNTY, GEORGIA

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

Its: \_\_\_\_\_