

FORSYTH COUNTY

STATE OF GEORGIA

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is made and entered into effective as of December 7, 2017 (the "Effective Date"), by and between **ADVANCED DISPOSAL SERVICES, INC.**, a Delaware corporation, whose headquarters are located at 90 Fort Wade Road, Ponte Vedra, Florida 32081 ("ADS"), **EAGLE POINT LANDFILL, LLC**, a Delaware limited liability company with offices located at 8880 Old Federal Road, Ball Ground, Forsyth County, Georgia 30107 ("Eagle Point") and **FORSYTH COUNTY**, a political subdivision of the State of Georgia, located at 110 East Main Street, Suite 210, Cumming, Georgia 30040, (the "County"). ADS, Eagle Point and the County are hereinafter sometimes collectively referred to as the "Parties" or singularly referred to as a "Party."

Statement of Facts

WHEREAS, ADS, through its wholly-owned subsidiary Eagle Point, is the owner and operator of a landfill located at 8880 Old Federal Road, Ball Ground, Forsyth County, Georgia 30107, commonly known as Eagle Point Landfill (hereinafter referred to as the "Landfill").

WHEREAS, the Parties executed and delivered a Settlement Agreement and Release of Claims (the "Settlement Agreement") on February 3, 2010.

WHEREAS, ADS has applied for a non-appealable expansion of the Landfill in accordance with all applicable zoning and use requirements, regulations, and rules.

NOW THEREFORE, for Ten Dollars (\$10.00) and consideration of the following mutual covenants and agreements, the receipt and sufficiency of which are acknowledged by each of the Parties, the Parties agree as follows:

Statement of Terms

1. **Rules of Construction; Certain Definitions.** Certain words and terms used in this Memorandum, signified by initial capitalization whenever the same appear, are defined terms having the meanings ascribed to them wherever they first appear, unless the context otherwise requires. This Memorandum shall be interpreted fairly and in accordance with the plain meaning of its terms. No provision of this Memorandum shall be construed against or interpreted to the disadvantage of any of the Parties by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision. As used in this Memorandum, the following terms shall have the following meanings:

All Tons as reported to the State of Georgia Environmental Protection Division ("GA EPD"), to specifically include both municipal solid waste and construction and demolition waste.

Expansion means the non-appealable expansion permit for the Eagle Point Landfill from the GA EPD that was applied for prior to the execution of this Memorandum.

Forsyth County's Support means subject to approval by the Board of Commissioners and with the understanding between the Parties that the Forsyth County Board of Commissioners retains its full regulatory and legislative discretion regarding same, Forsyth County's continued support for the vertical

and/or horizontal expansion(s) of the Landfill as defined in the Settlement Agreement to the extent allowed by law. Forsyth County will, in good faith, consider any request by ADS for a rezoning or special use permit, but with it understood that the County shall at all times retain its full legislative discretion in matters pertaining to land use. Forsyth County will cooperate with ADS with respect to necessary easements road crossings and land disturbance permits, but this cooperation shall not be deemed to include any action wherein ADS seeks to expand the landfill footprint beyond the boundaries of the 1993 special use permit.

Municipal Solid Waste means all waste included in the definition of "Municipal Solid Waste" as set forth in O.C.G.A. § 12-8-22(18), or any successor provision thereto to specifically include construction and demolition waste.

Ton means a unit of weight equal to 2,000 pounds.

2. **Agreements.** In consideration for Forsyth County's Support, ADS hereby agrees to the following:

2.1 **Final Non-Appealable Expansion Permit from the GA EPD.** ADS agrees that within ninety (90) days of receiving its final non-appealable Expansion permit from the GA EPD, it will remit payment to the County of the Expansion fee in the amount of Ten Cents (\$0.10) per cubic yard of additional sanitary landfill capacity approved that is due under the Settlement Agreement. At the time of tendering payment of the Expansion fee, ADS will provide documentation to the County confirming the total cubic yards of additional landfill capacity created by the Expansion; which, as of the date of this Memorandum, is estimated at 20,000,000 to 25,000,000 cubic yards.

2.2 **Host Fee.** In further consideration for Forsyth County's Support, ADS will commence payment, within sixty (60) days of receipt of the final non-appealable Expansion permit from the GA EPD, of \$1.50/ton for All Tons. Commencing Jan 1, 2028, ADS will pay \$2.00 for All Tons for the life of the landfill. In the event that the State of Georgia enacts by general law an increase in the statutory minimum host fee, the host fee required by this Memorandum shall be increased accordingly. For purposes of explanation, the statutory minimum host fee at the time of executing this Memorandum is \$1.00 per ton for All Tons. The \$1.50/ton established in this Memorandum constitutes a \$.50 increase over the State statutory minimum. If the State of Georgia, by general law, increases the statutory minimum to \$2.00/ton, then the host fees under this Agreement shall be increased correspondingly. Therefore, assuming the statutory host fee is increased by general law to \$2.00/ton, then the host fee required by this Memorandum shall automatically become \$2.50/ton (\$.50 over the State minimum) contemporaneous with the general law becoming effective. As a means of further example, if the State host fee is increased to \$2.00/ton after January 1, 2028, then the host fee required by this Memorandum would be \$3.00/ton (\$1.00 over the State minimum).

2.3 **Code Enforcement.**

2.3.1 ADS will provide access to ADS's scale house security footage to the County for the County's sole use to monitor the site 24/7/365. It is the expectation of the Parties, and the objective of ADS, that the video feed identified in this paragraph will be broadcast or digitally transmitted for live streaming in the County offices.

2.3.2 ADS will agree to allow a qualified third-party certified public accountancy ("CPA") firm or forensic audit firm to conduct an annual audit, with the scope of said audit to be determined by the County, upon prior written notice. The County is limited to a thirty-six month lookback

on the audit. A claim, if any, for unpaid host fees under this Memorandum shall be brought by the County within the time-period for bringing actions under contract.

2.3.3 ADS will provide a paved lot on ADS's property for the primary use of a County regulatory official or Sheriff's deputy, or both, to monitor all vehicles entering and exiting the landfill for applicable County ordinance enforcement purposes related to overweight vehicles, tire washing, weighing of vehicles, proper tarping of vehicles and litter related issues, all at County's sole expense. This paved lot shall not be used for the 'stacking' or 'staging' of vehicles waiting to enter the landfill. In addition, ADS agrees that a duly authorized County employee or County Sheriff's deputy shall be entitled to enter and inspect the ADS premises. Any such employee or officer entering ADS premises may not unreasonably interfere with ADS' business operations.

2.4 Property Conveyance(s). ADS agrees to notify the County whenever ADS determines that it desires to convey future acquired soil borrow lands once all said activities have been completed. If the County desires to acquire such lands, then such conveyance shall be subject to mutually agreed terms and conditions, which may include but are not limited to deed and third-party conveyance restrictions, use limitations, access rights, and other mutually agreed terms and conditions. In no event shall any potential conveyance under this paragraph be a precursor to landfill expansion.

2.5 County's Solid Waste Plan. ADS shall and does hereby guarantee air space for the County's waste volume until calendar year 2038 or until landfill closing, whichever is earlier. ADS will provide the County a two-year notice of the estimated closing date.

2.6 Ground Water Monitoring. ADS agrees to provide split samples to the County, and the County will utilize an independent, third party qualified environmental professional or company with a GA EPD certified analytical approval to conduct groundwater testing of the semi-annual GA EPD permit mandated groundwater monitoring events. When ADS is required to undertake State-mandated water sampling and testing, ADS agrees to provide the County reasonable advance notice of same in order that a County official may attend and participate in the sampling. The Parties agree that they will exchange the lab results of such sampling with the other.

2.7 Odor Control Management. In addition to ADS's permit-required and existing odor control measures, ADS hereby agrees to install and operate an appropriate odor misting curtain system for odor management of the active work face in order to minimize the potential for off-site active work face odors. Any chemicals used in this odor misting operation shall be tested to ensure they are safe for the environment and for human contact. ADS agrees that the misting curtain system will be operational and active as needed when waste disposal operations are ongoing. ADS will explore the utilization of future proven technologies and practices for the minimization and management of working face odors. The County agrees that a methane to energy conversion facility is one means of mitigating landfill offsite odors; but further agrees that prompt dirt covering is optimal and the best practice for odor abatement.

2.8 Tire Wash. ADS shall provide for an operational and in good repair tire washing system(s) for utilization by customers prior to exiting the landfill onto public road-ways in an effort to prevent tracking of mud and other debris. ADS shall post no less than two signs at the main entrance and exit to the facility with a font size large enough to be easily read by those in waste disposal trucks, stating substantially the following: "*Per Forsyth County Ordinance, no operator of a motor vehicle leaving this facility may track mud, dirt and debris onto County roadways or right of way. Doing so may result in citation and magistrate court prosecution, up to a \$1,000 fine per offense, incarceration for up to six months, and other sanctions.*"

2.8.2. Tarp signage. ADS also agrees that the signage referenced in Paragraph 2.8 shall contain language referencing that failure to properly cover or tarp waste disposal trucks may also result in citation issuance.

2.9 Community Website. ADS agrees that no later than March 1, 2018 to create and have operational for citizen viewing a website dedicated to the community to provide neighbor alerts including through text messaging, news on the landfill, and a portal for citizen complaints. ADS also agrees to conduct quarterly meetings along with a County representative. ADS will provide to Forsyth County all EPD-based regulatory compliance reports. Forsyth County shall, at periodic intervals, create summaries of such reports and post same on the County's website.

2.10 [Purposefully left blank].

2.11 Future Expansion. ADS agrees that it will not seek to expand the landfill footprint of the 1993 special use permit.

2.12 Water Infrastructure and Water Meters. Forsyth County shall, within thirty-six months from the date of this Memorandum, install water delivery infrastructure along Old Federal Road [to at least the last parcel with a residence that is closest to the Cherokee County border] and along Blanton Lane. ADS will fund a single residential water meter for any Forsyth County owner of property whose property is located west of the County's Eagle's Beak Park and that is otherwise physically adjacent to Old Federal Road or Blanton Lane that wishes to connect to County water. One meter per parcel only. Advanced Disposal's obligation to pay for residential water meters under this Memorandum shall commence upon substantial completion of the water delivery infrastructure project by the County and shall expire twenty-four months thereafter. If a request for payment has not been made to ADS within that twenty-four-month period, ADS shall have no obligation to fund such a meter. A residential water meter, for purposes of this Memorandum, costs \$1,600 per meter. Monthly water service fees shall be borne exclusively and solely by each respective property owner. Notwithstanding any other term in this paragraph, ADS' total financial obligation under this paragraph shall be \$45,000.00. Once ADS has expended \$45,000 on water meters per the terms of this paragraph, its obligation to fund water meters shall be deemed fulfilled, irrespective of whether the twenty-four month period has expired. The language in this paragraph does not preclude ADS and any citizen from entering into a private agreement regarding private well testing.

2.13 Mutuality of Obligations. The Parties agree that ADS and Eagle Point both have obligations with respect to ownership and operation of the landfill, and both ADS and Eagle Point agree that this Memorandum is binding on both and whenever an obligation under this Memorandum requires performance by either ADS, Eagle Point, or both, that each individually or jointly is required to perform to the fullest extent to fully effectuate the terms hereunder.

3. Representations and Warranties of ADS. ADS and Eagle Point hereby represents and warrants to the County, each such representation and warranty being a material inducement to the County to enter into and accept the terms of this Memorandum, (i) that ADS is a corporation duly organized, validity existing and in good standing under the laws of the State of Delaware, duly qualified to do business in Georgia as a foreign corporation, and has all requisite power and authority to carry on its business as it has been and is currently conducted as of the date of this Memorandum and as contemplated hereby, and to enter into, execute, deliver and perform its obligations under the terms of this Memorandum, (ii) that Eagle Point is a limited liability company duly organized, validity existing and in good standing under the laws of the State of Delaware, duly qualified to do business in Georgia as a foreign corporation, and has all requisite power and authority to carry on its business as it has been and is currently conducted as of the date of this Memorandum and as contemplated hereby, and to enter into,

execute, deliver and perform its obligations under the terms of this Memorandum, (iii) that the execution, delivery and performance by ADS of this Memorandum have been duly authorized by all necessary corporate action, (iii) that the execution and delivery of this Memorandum is free from duress, coercion and all other defenses to its execution, and that this Agreement constitutes the legal, valid and binding obligation of ADS, enforceable in accordance with its terms, except to the extent limited by bankruptcy, insolvency, moratorium, reorganization and other laws affecting the enforcement of creditors' rights generally and by general principles of equity.

4. **Representations and Warranties of the County.** The County hereby represents and warrants to ADS and Eagle Point, each such representation and warranty being a material inducement to ADS to enter into and accept the terms of this Memorandum, (i) that the County is a political subdivision of the State of Georgia, duly created and existing under the Constitution and laws of the State of Georgia, and, acting by and through the Board of Commissioners, has the corporate power and authority to enter into, execute, deliver and perform its obligations under the terms of this Memorandum, (ii) that the County has taken all action legally required to authorize the execution, delivery and performance of this Memorandum, (iii) that this Memorandum has been duly executed and delivered by the County, (iv) that such action constitutes all of the action necessary with respect to the execution and delivery of this Agreement by the County, and (iv) that the execution and delivery of this Memorandum is free from duress, coercion and all other defenses to its execution, and that this Memorandum constitutes the legal, valid and binding obligation of the County, enforceable in accordance with its terms, except to the extent limited by bankruptcy, insolvency, moratorium, reorganization, public policy, and other laws affecting the enforcement of creditors' rights generally and by general principles of equity.

5. **Notices.** Any notices or other communications required or permitted under this Memorandum shall be sufficiently given if delivered personally or sent by fax or e-mail or by registered or certified mail, postage prepaid, addressed as follows:

To the County: Eric. R. Johnson
County Manager,
110 East Main Street, Suite 210
Cumming, Georgia 30040
Fax: 770-781-2199
E-Mail: ERJohnson@forsythco.com

With required copy to: Ken Jarrard, Esq.
Jarrard & Davis, LLP
105 Pilgrim Village Drive, Suite 200
Cumming, Georgia 30040
Fax: 678-455-7149
E-Mail: kjarrard@jarrard-davis.com

To ADS or Eagle Point: Advanced Disposal Services, Inc.
Attn.: Charlie Gray
300 Colonial Center Parkway, Suite #230
Roswell, Georgia 30076
Fax: _____
E-Mail: Charlie.Gray@advanceddisposal.com

With required copy to: Emory Lipscomb, Esq.
Lipscomb, Johnson, Sleister, Dailey & Smith, LLP
112 North Main Street

Cumming, Georgia 30040
Fax: 770-889-8123
E-Mail: emory@lipscombjohnson.com

With required copy to: Advanced Disposal Services, Inc.
Attn: Michael Slattery
VP & General Counsel
90 Fort Wade Road
Ponte Vedra, Florida 32081

or such other address as shall be furnished in writing by any of the Parties, and any such notice or communication shall be deemed to have been received when actually received.

6. **Entire Agreement.** The Parties agree that the Settlement Agreement remains in full force and effect except as modified by the terms and provisions of this Memorandum. In the event there is a conflict between the Settlement Agreement and the Memorandum, this Memorandum shall control. The Parties further agree that this Memorandum has been jointly prepared by the Parties hereto and reviewed and approved, if approval is required, by appropriate persons, including counsel for both Parties. The parties acknowledge that they have had the opportunity to obtain independent advice of lawyers of their own selection and acknowledge that they have entered into this Memorandum freely and voluntarily, believing it to be in their best interest. Neither party has made any representations upon which either Party has relied that are not contained in this Memorandum. ADS and Eagle Point acknowledge that the County may adopt an ordinance or regulation prohibiting the disposal of fly ash or coal ash in any landfill or disposal facility in the County, and may also adopt an ordinance prohibiting leachate spraying, misting, or aerosolization (whether treated or untreated) (any such ordinance shall not prohibit any leachate evaporation or any other leachate reduction or treatment technologies, so long as such evaporation or reduction or treatment technologies do not result in the spraying, misting, or aerosolization of treated or untreated leachate), in any landfill or disposal facility in the County; and, if the County adopts such an ordinance or regulation exclusively limited to the aforementioned prohibition on fly ash or coal ash, or leachate spraying, misting, or aerosolization (whether treated or untreated), ADS and Eagle Point, to include any affiliated entity, agree that they will not legally challenge such regulation or ordinance and shall abide by such ordinance or regulation until same is amended, modified, or repealed. For purposes of this paragraph, the phrase 'legally challenge' means to initiate, bring, file, or continue a lawsuit in any State or federal court, to include a claim before any administrative tribunal, seeking to have the ordinance declared void, illegal, or unenforceable. ADS and Eagle Point agree that a coal ash/no-leachate misting ordinance that is the same or substantially similar to that version attached hereto as Exhibit A is consistent with the representations, agreements and confirmations in this paragraph.

7. **Parties in Interest; Successors and Assigns.** Each and all of the covenants, terms, provisions, and agreements contained in this Memorandum shall be binding upon and inure to the benefit of the Parties and their respective successors or assigns. The use of the phrase 'Memorandum of Understanding' is not intended to lessen the force and effect of this document; as it is the express mutual understanding of the Parties that this Memorandum is intended to be a legally binding, fully enforceable, contract, irrespective of any law or authority to the contrary.

8. **Application of Georgia Law; Severability.** This Memorandum is entered into in Georgia and will be construed and interpreted in accordance with Georgia law. If any provision of this Memorandum or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable to any extent, the remainder of this Memorandum and its application shall not be affected and shall be enforceable to the fullest extent permitted by law. Nothing in this Memorandum shall either authorize or restrict the adoption of future Forsyth County

ordinances pertaining to solid waste and/or landfills. In the event of such action by Forsyth County, ADS and/or Eagle Point reserve all rights to assert any legal or equitable objections or defense to such ordinance, including an objection or defense to any change in regulatory host fees.

9. **Amendments.** This Memorandum may not be amended except by the written agreement of all Parties.

10. **Notice and Cure.** If ADS or the County fails to fulfill any of its obligations hereunder this Memorandum, either ADS or the County upon written notice by the other Party will have ten (10) calendar days upon which the Party shall cure such failure to fulfill any of its obligations. If such failure cannot be cured within ten (10) calendar days, then the other Party shall extend the period to cure for such an amount of time as may be reasonably necessary to effect a cure, provided that the Party has commenced to cure within the ten (10) calendar day period and diligently pursues such cure to completion.

11. **Waivers.** The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Memorandum shall not prevent a subsequent act that would have originally constituted a violation, from having the effect of an original violation.

12. **Expenses.** The Parties will bear their respective costs and expenses of all attorneys, accountants, and advisors retained by or representing them in connection with this transaction.

13. **Non-Reliance.** The making, execution and delivery of this Memorandum by the Parties hereto has not been induced by any representations, warranties, statements or agreements other than those expressed in this Memorandum.

14. **Additional Documents.** Each of the Parties agrees, at any time and from time to time after the execution and delivery of this Memorandum, at the request of either ADS, Eagle Point or the County, to cooperate fully, execute all documents, and take all additional actions that may be necessary to give full force and effect to the terms and intent of this Memorandum.

15. **Resolution of Disputes.** Any disputes between the Parties arising from this Memorandum shall first be the subject of mediation as a means of conflict resolution, with the mediator to be mutually agreed between the Parties. If mediation is unsuccessful or if one Party declares impasse, then the aggrieved party may pursue any means of legal or equitable redress in a court of competent jurisdiction. The Party bringing such action shall plead that an effort at mediation was a condition precedent to bringing suit and that mediation, in good faith, was attempted but was unsuccessful. The prevailing party in such litigation shall be entitled to their reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed in their respective names and caused their respective seals to be affixed hereto, all to become operative and enforceable on the Effective Date.

COUNTY:

FORSYTH COUNTY, GEORGIA

By: *Todd Lewis*
Chairman, Board of Commissioners

[SEAL]

Authenticated:

By: *Sonya Bush*
Clerk, Board of Commissioners

Sworn to and subscribed before me,
this 21st day of December, 2017.

Carla Floyd
Notary Public



My Commission Expires 6-6-21

[Signatures Continued Below]

[Signatures Continued]

ADVANCED DISPOSAL SERVICES, INC.

By: [Signature]
Its: CEO

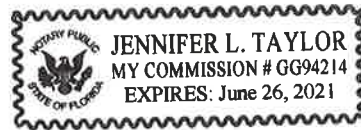
[CORPORATE SEAL]

Sworn to and subscribed before me,
this 13 day of December, 2017.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 6-26-2021



EAGLE POINT LANDFILL, LLC

By: [Signature]
Charlie Gray
Its: Region Vice President

[CORPORATE SEAL]

Sworn to and subscribed before me,
this 13 day of December, 2017.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 6-26-2021

