

**RESOLUTION NO. 2023 – 56**

**BE IT RESOLVED** by the City Council (the "Council") of the **CITY OF CULLMAN, ALABAMA**, a municipal corporation under the laws of the State of Alabama (the "City"), as follows:

**Section 1. Findings.** The Council has ascertained and does hereby find and declare as follows:

(a) there presently exists a landfill for the processing and disposal of solid waste (the "Facility") and certain related real property adjacent thereto (the "Expansion Land") aggregating approximately 311 acres and located at 2885 AL Highway 69 South, Cullman, Alabama 35057, all of which is located in unincorporated Cullman County, outside the corporate limits of any municipality within the state; and

(b) the Facility is the primary solid waste disposal site for the City, as well as Cullman County, Alabama (the "County"), and it is in the public interest that the Facility be operated, maintained, and expanded over the near and distant future to ensure a reliable location for the solid waste disposal needs of the City and its citizens, and to safeguard the overall and long-term quality of life of citizens of the City; and

(c) the Facility is presently owned and operated by Cullman Environmental, Inc., an Alabama corporation (the "Company"), which has indicated it no longer desires to own or operate the Facility and has proposed selling the same; and

(d) it would be in the public interest if the Facility is acquired and operated by a public corporation organized as a solid waste disposal authority (the "SWDA") under Section 11-89A-1, *et seq.*, of the Code of Alabama 1975, as amended, created jointly by the City and the County, and governed by a five-member board of directors appointed jointly by the City and the County (with the City Council appointing two of the directors, the Cullman County Commission appointing two of the directors, and the directors appointed by the City and the County appointing one of the directors), all as more particularly described in the Memorandum of Understanding hereinafter authorized and described; and

(e) the Company holds an option to purchase the Expansion Land for the sum of \$1,300,000, which such option expires on July 29, 2023, and the City believes that causing the Expansion Land to be conveyed to the SWDA along with the Facility would enhance and promote the long-term operations of the Facility by extending significantly the overall life and utility of the Facility; and

(f) the Company has proposed to transfer the Facility, and to acquire and transfer the Expansion Land, to the SWDA through the SWDA's purchase of all shares of the Company by September 30, 2023, at and for a price equal to \$27,100,000, of which amount the City will pay \$13,550,000 and the County will pay \$13,550,000; and

(g) it will be necessary that the City and the County memorialize their mutual understandings and intentions respecting the creation of the SWDA, the financing of the purchase price for the transfer of the Facility and the Expansion Land to the SWDA, the operation of the Facility by the SWDA, and various other matters related to the foregoing by entering the Memorandum of Understanding.

**Section 2. Transfer of the Facility and Expansion Land; Approval of Memorandum of Understanding.** (a) The Council does hereby declare that it is necessary, wise, and in the public interest to pursue the creation of the SWDA and the transfer thereto of the Facility and Expansion Land as hereinabove described. The Council does hereby authorize and approve a Memorandum of Understanding between the City and the County, the form of which is attached as Exhibit I hereto (the "Memorandum of Understanding"), and the Mayor is hereby authorized and directed to execute and deliver the Memorandum of Understanding on behalf of the City.

(b) The Mayor, the City Clerk, and such other officers, agents or representatives of the City are hereby authorized and directed to take such actions as shall be described in the Memorandum of Understanding or as otherwise are provided for or contemplated by this resolution, respecting the creation of the SWDA, the transfer of the Facility and the Expansion Land from the Company to the SWDA, and the operation of such facilities and assets.

ADOPTED BY THE CITY COUNCIL, this the 24<sup>th</sup> day of July, 2023.

\_\_\_\_\_  
President of the City Council

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED BY THE MAYOR this the 24th day of July, 2023.

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Mayor

**Exhibit I**  
**Form of Memorandum of Understanding**

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**

**CULLMAN  
COUNTY**

**AND**

**CITY OF  
CULLMAN**

This Memorandum of Understanding (this "Memorandum of Understanding") is dated this \_\_\_ day of June, 2023, and is entered into between Cullman County, a political subdivision of the State of Alabama (the "County"), and the City of Cullman, a municipal corporation under the laws of the State of Alabama (the "City"). The County and the City are herein, from time to time, referred to collectively as the "Parties" and each, individually, as a "Party".

**RECITALS:**

**WHEREAS**, there presently exists a landfill for the processing and disposal of solid waste (the "Facility") and certain related real property (the "Expansion Land") aggregating approximately 311 acres and located at 2885 AL Highway 69 South, Cullman, Alabama 35057; and

**WHEREAS**, the Facility and the Expansion Land are located in unincorporated Cullman County, outside the corporate limits of any municipality within the state; and

**WHEREAS**, the Facility is the primary solid waste disposal site for the County and the City, each of which has determined that it is necessary, wise and in the public interest that the Facility be operated, maintained and expanded over the near and distant future to ensure a reliable location for the solid waste disposal needs of each of their citizens and to safeguard the overall quality of life in their respective jurisdictions; and

**WHEREAS**, the Facility is presently owned and operated by Cullman Environmental, Inc., an Alabama corporation (the "Company"), which has indicated it no longer desires to own or operate the Facility and has proposed selling the same; and

**WHEREAS**, the Company also has a right to purchase and acquire the Expansion Land from the current holder thereof; and

**WHEREAS**, it would be in the public interest if the Facility and the Expansion Property were acquired and operated jointly by the County and the City, and the Parties have determined it to be necessary to outline their understandings and intentions respecting such acquisition and operation in this Memorandum of Understanding, from which definitive actions, agreements and instruments shall be taken and prepared;

**NOW, THEREFORE**, the Parties have delivered this Memorandum of Understanding to establish the agreed common purpose, and reasonable expectations of the Parties, with respect to the acquisition, financing and operation by the Parties of the Facility and the Expansion Property, as provided herein:

**Section 1. Creation of SWDA; Completion of Transactions.**

(a) (1) The Parties will authorize the incorporation of the SWDA pursuant to Chapter 89A of Title 11 of the Code of Alabama 1975 (the "Enabling Law") and the Articles of Incorporation attached hereto as Appendix A.

(2) The SWDA will own and operate the Facility.

(3) The Parties will provide proposed Bylaws to the Authority in form and of content as attached hereto as Appendix B.

(4) The Parties will proceed to authorize, and cause, the incorporation of the SWDA by such date as will best enable the timely completion of the documents and transactions set forth herein.

(5) Each of the County and the City shall be a be a "determining subdivision" (as such term is used in the Enabling Law) of the SWDA, and the SWDA will be formed only upon approval by each of the County Commission of the County (the "County Commission") and the City Council of the City (the "City Council") in accordance with the Enabling Law.

(6) The SWDA shall be governed by a board of directors (the "SWDA Board"), which shall consist of five (5) directors; two (2) directors to be appointed by the Commission, two (2) directors to be appointed by the City Council, and one (1) director to be appointed by the other four (4) directors.

(7) The SWDA Board shall appoint or elect all relevant officers, consisting of a Chair of the SWDA Board, a Vice-Chair of the SWDA Board and a Secretary and a Treasurer of the SWDA.

(b) The parties shall allocate the primary responsibility for preparation of the various agreements referenced herein between the Parties to permit parallel preparation; provided, however, the final form and content of each such agreement shall be fully acceptable to both Parties.

(c) The Parties shall work together in good faith to cause the creation of the SWDA and the appointment of the members of the SWDA Board by or before the date the City sells the City Warrants (defined below) and the County sells the County Warrants (defined below).

**Section 2. Acquisition of the Facility; Acquisition of Expansion Land.** (a)

The Parties shall work in good faith with the Company to deliver an agreement by July 25, 2023 (the "Purchase Agreement") for the acquisition of the Facility and the Expansion Land by the SWDA by means of the purchase of the entire ownership interests of the Company. The Purchase Agreement shall, on terms agreeable to the City, the County, and the Company, provide for (i) the acquisition by the Company of title to the Expansion Land by July 29, 2023 with funds provided by the City in the amount of \$650,000 and funds provided by the County of \$650,000, such funds to be held in escrow for such purpose and delivered to the Company to effect such purchase of the Expansion Land or returned to the City and County if purchase of the Expansion Land does not occur by the close of business on July 29, 2023, and (ii) the inclusion of the Expansion Land in the assets of the Company, and (iii) the acquisition by the SWDA of the entire ownership interest of the Company by September 29, 2023, upon satisfaction of stated conditions precedent (which may include the prior acquisition of the Expansion Land) by payment to the owners of the Company of a purchase price of \$25,800,000 in return for delivery of all evidences of such ownership interests.

(b) The City and the County agree to closely coordinate the preparation of the Purchase Agreement, to provide for respective amounts of the purchase price of the Expansion Land to be paid as provided in the Purchase Agreement, and to provide for the immediate transfer of the assets of the Company to the SWDA upon acquisition by the SWDA of the ownership interests of the Company.

(c) Each Party shall use cash for payment of the price to transfer the Company to the SWDA that is referable to the Expansion Land. As to each Party, within sixty (60) days of the date it pays its share of the said purchase price referable to the Expansion Land, such Party may adopt a resolution permitting it to reimburse its general fund proceeds of the warrants that it issues. The amount referable to the purchase price of the Expansion Land may, if mutually agreeable to each of the City and the County, be remitted and paid by the City and the County prior to such date as the Company may become the owner of the Expansion Land, or prior to such date as the SWDA becomes the owner of the Company, including the Facility and the Expansion Land.

**Section 3. Solid Waste Disposal Contracts between the SWDA and each of the County and the City.** (a)

The Parties shall work in good faith to negotiate the form of a contract between the SWDA and the City and between the SWDA and the County regarding solid waste disposal services provided by the SWDA at the Facility (collectively, the "Waste Disposal Contracts"). The Waste Disposal Contracts between the SWDA and the City, and the contract between SWDA and the County, shall be identical and shall (among other things) (i) obligate each of the City and the County to dispose of all of its solid waste at the Facility, (ii) charge the same rates and/or tipping

fees for the acceptance of solid waste at the Facility, provided, however, each of the Parties may independently set the rates charged thereby for collection of solid waste, (iii) be in place for a long-term period (presently contemplated to be at least thirty (30) years), (iv) provide that if the expenses of operating the Facility exceed the revenues generated by the Facility, the counterparty shall be responsible for paying 50% of the difference, and (v) that the SWDA may convey, incumber or otherwise create any liens on the Facility with the prior written consent of each of the City and the County.

(b) The Parties shall work in good faith to negotiate the form of the Waste Disposal Contracts while the other activities described in this Memorandum of Understanding are being conducted so that the Waste Disposal Contracts are in substantially final form before the date of sale of the City Warrants and the County Warrants.

**Section 4. Operation of the SWDA and the Facility; Other Documents and Agreements.**

(a) The Parties shall work in good faith to negotiate an operating agreement among the SWDA, the City and the County (the "Facility Operating Agreement") that details and describes the long-term operations of the SWDA and the Facility. The Facility Operating Agreement shall include all pertinent operational terms and provisions including, without limitation, the following: (i) physical operation of the Facility and whether personnel will be employed directly by the SWDA or whether employees of the City and/or the County will be used to conduct operational activities, and if so, appropriate provisions for reimbursement to the City and the County for any costs they may incur in relation thereto, (ii) required insurance on the Facility and the Expansion Land, (iii) permitting, licensing and approval requirements and compliance, (iv) the types of waste that will and will not be accepted in the Facility, (v) information technology, (vi) human resources, (vii) payroll and bookkeeping, (viii) the incurrence of costs of operating, equipping, altering, enlarging, extending or improving the Facility, (ix) the disposition of revenues from the Facility, and (x) whether any of the forgoing items will be conducted by the SWDA itself or by the City or the County on the SWDA's behalf, and if so, appropriate provisions for reimbursement to the City and the County for any costs they may incur in relation thereto.

(b) The Parties shall work in good faith to negotiate an agreement among the SWDA, the City, and the County (the "Transition Services Agreement") to provide for the manner by which the Facility will be operated before the structure for long-term operations of the Facility pursuant to the Facility Operating Agreement is in place. During the period in which the Transition Services Agreement is in effect (expected to be not longer than three months) day-to-day operations of the Facility shall be run under the direction of a person competent for such role.

(c) The Parties will work in good faith to negotiate the terms of the Facility Operating Agreement and the Transition Services Agreement while the other activities described in this Memorandum of Understanding are being conducted such that those agreements may be signed by the time the City Warrants and the County Warrants are sold.

(d) The Parties will work in good faith to negotiate and enter such other documents, instruments, and agreements as may become necessary or desirable in connection with the purchase and acquisition of the Facility and the Expansion Land, and with the acquisition and initial operation by the Authority of the same.

**Section 5. Financing of the Facility.** (a) As stated in Section 2 above, the City and the County shall each be responsible for 50% of the cost of purchasing the Company from the Company. In order to finance this obligation, the City will issue a series of general obligation warrants secured by a pledge of the full faith and credit of the City (the "City Warrants") and the County will issue a series of general obligation warrants secured by the full faith and credit of the County (the "County Warrants").

(b) The City Warrants and the County Warrants may be issued under and pursuant to Amendment 772 to the Constitution of Alabama of 1901, as amended, so that the County Warrants will not be chargeable to the general constitutional debt limit of the County, and the City Warrants will not be chargeable to the general constitutional debt limit of the City.

(c) All work and preparation for the issuance of the City Warrants, and the payment of debt service on the City Warrants, shall be the sole responsibility of the City. All work and preparation for the issuance of the County Warrants, and the payment of debt service on the County Warrants, shall be the sole responsibility of the County. The City will in no way be responsible for the payment of debt service on the County Warrants, and the County will in no way be responsible for the payment of debt service on the City Warrants.

(d) The Parties expect that the City Warrants and the County Warrants will be issued on the public debt market based on the expected long-term amortization of debt service. In order to sell debt on the public debt market at a time that is optimal for such sale and, further, coordinated between the County and the City, each Party shall use an underwriter that allows for the sale of its warrants, and the "writing of tickets" relating to its warrants, pursuant to a short-form resolution (a "BPA Resolution"). Each Party will have a BPA Resolution authorizing the execution by a Party of a warrant purchase agreement, with the final approval of such financing, the warrants and all related terms being subject to subsequent approval by the full City Council (in the case of the City Warrants) or County Commission (in the case of the County Warrants). The form of each Party's BPA Resolution is attached as Appendix C hereto.

(e) Upon execution of this Memorandum of Understanding, the Parties shall work in good faith to identify and engage appropriate members of a financing team (including an underwriter and bond counsel) to work on the issuance of the financing warrants as promptly as possible. The Parties understand that the process of preparing offering statements and other materials for the sale of warrants through the public debt market can take several months, and as such the Parties will commence working on such financings as soon as possible once this Memorandum of Understanding is executed.



(f) The Parties shall work in good faith to coordinate the sale date and time of the City Warrants and the County Warrants to the end that neither Party sells its respective warrants or otherwise executes a warrant purchase agreement without the other Party doing so simultaneously. The Parties will coordinate and work in good faith to ensure that the closing of the City Warrants and the County Warrants, and the closing of the purchase of the Facility, occur on the same date which will be not later than September 30, 2023 or such later date as shall be agreed upon by the Parties (such date, the "Closing Date").

(g) On the Closing Date, the City and the County shall each remit to the Company, out of proceeds of the City Warrants and the County Warrants, as applicable, 50% of the total purchase price of acquiring the Facility. Each Party may elect to reimburse itself for its share of the cash expended for the purchase of the Expansion Land out of proceeds from the issuance of its warrants. All other costs and liabilities of the purchasers arising pursuant to the Facility Purchase Agreement shall be borne 50/50 between the City and the County.

**Section 6. General Provision.** The Parties agree, in consideration of the mutual undertakings intended by, and the common purposes of, this Memorandum of Understanding, that:

(a) This Memorandum of Understanding is solely an expression of intent between the City and the County regarding the actions to be taken, and the contractual documents to be prepared, to provide for the completion of the within-described transactions during the current fiscal year, if possible.

(b) Each Party may cancel this Memorandum of Understanding at any time by written notice thereof to the other Party, whereupon all agreements and undertakings by each of the Parties shall thereupon terminate and be discharged.

(c) The provisions of Sections 1 through 5, inclusive, of this Memorandum of Understanding do not operate, and shall not be construed, to create any binding or enforceable obligations of the City to the County, and the County waives and releases all claim and recourse against the City for any costs, expenses or other liabilities (whether direct, indirect or contingent) assumed or incurred by the County in furtherance of the purposes of this Memorandum of Understanding.

(d) The provisions of Sections 1 through 5, inclusive, of this Memorandum of Understanding do not operate, and shall not be construed, to create any binding or enforceable obligations of the County to the City, and the City waives and releases all claim and recourse against the County for any costs, expenses or other liabilities (whether direct, indirect or contingent) assumed or incurred by the City in furtherance of the purposes of this Memorandum of Understanding.

(e) This Memorandum of Understanding may be amended only by the Parties by an instrument in writing duly authorized, executed and delivered by the Parties.

(f) The Parties are legally bound by, and each Party may enforce, the provisions of this Section 6.

This Memorandum of Understanding is dated this \_\_\_\_ day of June, 2023.

**CULLMAN COUNTY**  
**CULLMAN**

**CITY**                      **OF**

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

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

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

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

**Appendix A**  
**Form of Articles of Incorporation**

**Appendix B**  
**Form of Bylaws**

**Appendix C-1**  
**Form of Warrant Purchase Agreement Authorizing Resolution**  
**of the City Council of the City of Cullman, Alabama**

**Appendix C-2**  
**Form of Warrant Purchase Agreement Authorizing Resolution**  
**of the County Commission of Cullman County, Alabama**