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DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

This Development Rights and Responsibilities Agreement is entered into as of the _____ day of _____, 20_____, by and between Kent Recycling and Land Reclamation, LLC, a Maryland Limited Liability Company (“the **Developer**”) and The County Commissioners of Kent County, (“the **County**” or “Kent County”).

Recitals

1. Developer is the owner or contract purchaser of approximately 404.844 acres of land in the First Election District of Kent County. That parcel of land is hereinafter referred to as the “**Development Site**” and is more particularly described in **Exhibit A** which is attached hereto and incorporated herein by reference. **Exhibit B** is a site map which indicates the location and land area of the Development Site.

2. The names of all parties having an equitable or legal interest in the Development Site, including lien holders of record, are set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

3. The Development Site is zoned Agricultural Zoning District. Article V, Section 1 of the Kent County Land Use Ordinance sets forth the regulations governing the permitted and accessory uses, special exceptions, density height and bulk, environmental and design standards applicable to the Agricultural Zoning District. Article VII authorizes the Board of Appeals to grant a special exception under certain circumstances for the construction and operation of a rubble landfill.

4. The Developer proposes to develop the Development Site by continuing the sand and gravel extraction operation which is under way on the site, and adding to that operation a facility for recycling and landfill disposal of construction and demolition debris (i.e. a “rubble landfill”), hereinafter, “the **Recycling and Disposal Facility**” or “the Facility.” The areas where sand and gravel extraction, recycling and landfill disposal will occur on the Development Site, as well as all buffer areas and access roads, are approximately shown on the concept plan marked

Exhibit [] These are the only permissible uses of the Development Site authorized under this Agreement and the sand and gravel extraction operation is subject to a separate Special Exception application and approval process by the Board of Appeals which is not included under or affected by this Agreement. The only wastes or materials that may be disposed or processed at the Facility are those allowed by the Maryland Department of the Environment (or its successor agency) for disposal in rubble landfills. Scrap tires and friable asbestos may not be disposed or processed at the Facility in any event. To ensure that only acceptable wastes are recycled and disposed at the Facility, the Developer shall provide video surveillance capable of remote viewing by the County's on-site manager.

5. Pursuant to Section 13.01, Art. 66B of the Maryland Annotated Code and Section 19:1 of the Kent County Code, the County is authorized to enter into a binding Development Rights and Responsibilities Agreement with any person having legal or equitable interest in the Development Site. Both the Developer and the County specifically recognize that a principal purpose of this Agreement is to bind the Developer to long term capital and operating commitments as set forth in this Agreement which it can only make in consideration of and reliance upon the commitment by the County that it will not change the rules and regulations pertaining to the development of the Development Site from those in effect at the time of the execution of this Agreement unless such change in the rules and regulations is essential to ensure the health, safety, or welfare of residents of the County, as defined in Paragraph 23 below.

6. On _____, 20_____, following review of this Agreement, public comments and related information and documents, the Kent County Planning Commission found that the proposed Recycling and Disposal Facility described by the terms, provisions, conditions, obligations and exhibits in this Agreement [placeholder for findings]. as evidenced by adoption of its Minutes, dated _____, a copy of which is attached hereto as **Exhibit F** and incorporated herein by reference.

7. On _____, 20_____, the County Commissioners held a public hearing on this Agreement. [Placeholder for County Commissioners' findings]

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual

covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the County and the Developer hereby agree as follows:

Conditions, Requirements and Restrictions Necessary to Ensure the Public Health, Safety or Welfare

8. In order to ensure the public health, safety, or welfare of the citizens of Kent County, the following conditions are incorporated into this Agreement, all of which must be satisfied by the Developer or the County as the case may be.

A. The location, design, construction, operation, closure and post-closure care for the proposed Recycling and Disposal Facility must be approved by the State of Maryland (including the Department of the Environment or any successor agency) to ensure compliance with all applicable environmental laws, regulations and other legal requirements, including, but not limited to those that protect groundwater and surface water quality, aquatic and marine life, wildlife and its habitat, and those that control dust, noise and odor.

B. This Agreement is conditioned upon the County providing on-site regulatory oversight, inspection and permit compliance review (hereinafter "Regulatory Management") of the Recycling and Disposal Facility's planning, design, construction, operations (including the Facility's Transportation Plan and Operation and Maintenance Plan), maintenance, closure, and post-closure care. The County's Regulatory Management shall be limited to ensuring compliance with all State and County permit requirements, all applicable environmental laws, and all of the terms of this Agreement for the life of the project, including post-closure care. To help offset the cost of the County's Regulatory Management, the reasonable cost (including salary benefits and related expenses) of the equivalent of one full-time (i.e. during all operating hours) on-site manager, which may consist of one or more County employees and/or contactors, shall be reimbursed quarterly to the County by the Developer, beginning with the initiation of construction of the Facility. The Developer shall provide the on-site manager with a climate-controlled office, including sanitary facilities, and necessary office equipment, including desk, computer, copier, printer and file cabinet. The Developer shall be solely responsible for all business and logistical operations and management of the Facility,

subject to compliance with all environmental and other applicable federal, state and County laws and regulations.

C. This Agreement is conditioned upon the County amending the Kent County Solid Waste Plan as necessary to provide for the proposed Recycling and Disposal Facility.

D. This Agreement is conditioned upon a granting of special exception approval by the Kent County Board of Appeals for the proposed Recycling and Disposal Facility, a business operating license from the Clerk of the Circuit Court and a construction and operating permit issued by the Maryland Department of the Environment.

E. This Agreement is conditioned upon review and approval by the Kent County Planning Commission for both preliminary and final site plans.

F. To assist the County in implementing the County's commitment to recycling as a tool in improving the environment, the Developer shall operate at Developer's cost a drop-off center for separated household recyclables at the Recycling and Disposal Facility to be utilized by Kent County residents and by Kent County municipal governments at no cost to them.

G. This Agreement is conditioned upon the Developer's preparation of a Transportation Plan that shall be reviewed and approved by Kent County and, if necessary, by the Maryland State Highway Department prior to initiation of construction at the Facility.. The Transportation Plan will specify traffic routes that will be used by vehicles entering and leaving the Facility, safe truck speed limits for all traffic routes, size and weight limitations of vehicles using the Facility, requirements for covering vehicle loads in Kent County that use the Facility, requirements for washing of trucks entering roads in Kent County, hours of operation of the Facility (limited to not more than 7 o'clock a.m. to 6 o'clock p.m. Monday through Saturday.) and requirements, if any, for the improvement and maintenance of public highways and bridges by the Developer to accommodate vehicular traffic using the Facility, including any necessary upgrading of Alexander Road to meet standards and the maintenance of Alexander Road to handle heavy truck traffic and provide positive drainage along shoulder areas.

H. The County shall appoint members to a Citizens Advisory Board (“CAB”) to review and provide input to Kent County regarding the Facility’s operations, including the Transportation Plan and Operation and Maintenance Plan. Developer agrees to send a representative with authority to implement changes to the Facility and its operations to meetings of the CAB held on at least a quarterly basis.

I. The Developer shall design and implement an end-use plan for the Facility that complies with all applicable Federal, State and County laws and regulations and incorporates the preferences of the County Commissioners as to the final use of the Development Site.

J. Prior to beginning construction of the Facility, the Developer shall secure a performance/closure bond or acceptable letter of credit payable to Kent County from a surety approved by Kent County in the amount of [placeholder for amount to be calculated] to supplement, if necessary, the performance/closure bond required by the Maryland Department of the Environment (or its successor agency). The performance bond shall remain in effect until the Facility has been certified as properly closed by the Maryland Department of the Environment (or its successor agency) and Kent County. The amount of the supplemental performance/closure bond shall be agreed to by the parties at the time the State sets the amount of its performance/closure bond and may be reduced periodically by Kent County as stages of construction/closure are completed. As an alternative to a supplemental performance/closure bond, Developer may deposit on a quarterly basis an amount of approximately \$0.66 per ton (the final amount per ton to be determined by the parties upon final design and engineering of the rubble fill facility) in an interest-bearing escrow account, to be used to pay for intermediate closure(s) which include capping of individual cells, final closure, and post closure expenses of the facility. The County shall have access to this account information. The parties shall appoint an escrow agent who shall promptly approve the amount, purpose and recipient of all disbursements from this account. Escrowed funds, bonds, or letters of credit shall be released to developer at the time when Md. Department of Environment releases all post closure bonds,

K. The parties have determined that the following residential properties are the ones most likely to be potentially affected by the proposed recycling and rubblefill operation: Map 8, Parcel 70; Map 8, Parcel 12; Map 8, Parcel 21; Map 8, Parcel 93; Map 8, Parcel 37; Map 8, Parcel 73; Map 16, Parcel 32; Map 16, Parcel 15; and Map 8, Parcel 164, Map 16, Parcel 14, Map 16, Parcel 52 and Map 16, Parcel 13 and Map 16, Parcel 21.

Developer agrees to purchase those properties at the sole option of the property owner on the terms set forth in this section.

The option period shall begin when the landfill construction begins and shall end three years after the landfill is open for business.

During the option period, the owner of the enumerated parcels above may notify Developer in writing of the owners' exercise of its option to sell under this section. The Developer shall purchase the land at a purchase price equal to the full market value of the land on the date of this Agreement. The value of the land shall be determined by three certified general appraisers, licensed by the State of Maryland, one appointed by the landowner, one appointed by the Developer, and the third selected by the two appointed appraisers. The appraisers' value shall be based upon uses of the property on the date of this Agreement. The final value shall be the average of the two appraisals that are closest together.

Settlement shall occur within 180 days of developer's receipt of the landowner's exercise of option, provided landowner shall deliver to Developer a deed for the property, containing the usual covenants of special warranty, further assurances and against encumbrances, which deed shall transfer and convey the property to Developer in fee simple by a good and merchantable title, and by title which a licensed title insurance company shall insure at its regular rates without exception for liens, easements, encumbrances, restrictions and encroachments.

L. The Developer will use reasonable efforts to employ residents of Kent County at the Facility.

M. This Agreement is conditioned upon the Developer's preparation of an Operation and Maintenance Plan that shall be reviewed and approved by Kent County and the Maryland Department of the Environment (or any successor agency) prior to the initiation of any operations at the Facility. The Operation and Maintenance Plan shall specify how the Developer will conduct operations and maintenance at the Facility that will minimize, control and correct the following conditions:

- (1) dust, dirt and debris;
- (2) leachate generation and on-site impacts;
- (3) receipt and disposal of hazardous and other unacceptable wastes;
- (4) erosion and run-off;
- (5) noise and impacts to air quality;
- (6) Facility fire, explosion and security risks; and
- (7) groundwater and surface water impacts.

N. The Developer shall provide to the designated County official copies of all of the Developer's written reports and correspondence to and from the Maryland Department of the Environment (or any successor agency) and other state and federal agencies concerning the permitting, construction, operations, compliance and closure of the Facility within seven (7) days of issuance or receipt. The Developer shall also notify the designated County official as soon as possible in the event of any condition at the Facility which presents an imminent and substantial threat to public health, safety, welfare or the environment.

O. The Developer shall provide the County and its on-site manager with access to the Facility at all times.

Additional Consideration for this Agreement

9. In addition to the mutual promises and covenants of the Parties contained herein, as additional consideration to help defray the County's costs for Regulatory Management, administration of the CAB in Paragraph 8.H, post-closure oversight and inspection of the Facility and other County actions necessary to ensure the health, safety and welfare of the residents of Kent County, the Developer shall pay to Kent County a Service Charge of Five Percent (5%) of all incoming gate receipts, as further defined in Exhibit [___], for all materials processed or disposed at the Facility. The Service Charges shall be paid by the Developer to the County on a calendar quarter basis with payments for the prior calendar quarter due on fifteenth day of January, April, July and October of each year. The Service Charges provided for in this paragraph shall be in addition to the reimbursement for an on-site manager set forth in Paragraph 9B above.

10. If the Developer determines not to construct and operate the Facility within [x] years following issuance of all initial construction permits for the Facility, then the Developer will reimburse the County for all reasonable documented out-of-pocket expenses incurred by the County in preparing this Agreement and providing Regulatory Management services for the Facility, provided the Developer agrees to terminate this Agreement in accordance with the termination provisions specified herein.

11. In the event the County elects to locate any County facility on or adjacent to part of the Development Site, Developer agrees to allow the County reasonable use of all access roads, parking facilities, manager's office, restroom facilities and recycling area located on the Development Site during regular business hours.

12. Notwithstanding anything in this Agreement to the contrary, the Developer shall be solely responsible for any remediation or other corrective action at or arising from the Facility that is required by the Maryland Department of the Environment (or any successor agency) or any court, including but not limited to the replacement of wells and the remediation of soil, groundwater and surface water affected by the Facility. Notwithstanding anything in this Agreement to the contrary, the Developer shall forever defend, indemnify and hold the County, its elected and appointed officials, employees, agents and contractors from and against all claims,

liability, personal injury, property damage, natural resource damage and costs alleged against or incurred by the County arising from this Agreement or the design, construction, operation, closure and post-closure care of the Facility and any vehicles using the Facility, provided that this paragraph shall not relieve the County of liability for breach of this Agreement. The Developer shall provide a corporate guarantee, letter of credit, insurance policy naming the County as an insured party and/or other financial assurance mechanism deemed acceptable by the County in the amount of [\$X million] to pay for any claims, liability, personal injury, property damage, natural resource damage or other costs alleged against or incurred by the County pursuant to this paragraph.

Statutory Provisions

13. Pursuant to the provisions of Article 66B, Section 13.01(j), the County promises and agrees that the laws, rules, regulations, and policies governing the use, density or intensity of the real property subject to this Agreement shall be the laws, rules, regulations, and policies in force at the time of the execution of this Agreement unless Kent County determines that compliance with laws, rules, regulations, and policies enacted after the effective date of this Agreement is essential to ensure the health, safety, or welfare of residents of Kent County, as defined in Paragraph 23 below.

14. Pursuant to Article 66B, Section 13.01(k), this Agreement shall be recorded in the land records for Kent County within twenty (20) days of the date of execution of this Agreement.

15. The Parties have required protection of sensitive areas through development limitations and permitting requirements as set forth herein.

16. The County and the Developer are not aware of any historic structures on the Development Site.

17. Presently, the utilities serving the subject property are telephone and electricity.

18. The maximum height of structures will be 38 feet. The maximum size of structures will be _____. The maximum finished height of the landfill (including closure cap) will be 75 feet above pre-excavation natural ground contours. The Developer will ensure

there is at least 100 feet of treed or bermed buffer around the entire perimeter of the Facility at all times that is designed to eliminate all reasonably objectionable noise, dust, visual and odor impacts of the Facility beyond the boundaries of the Development Site. The Planning Commission in its site plan approval process will review and approve the location and type of screening required, including berms and forested buffers.

19. The Parties agree that all obligations and benefits assumed by them under this Agreement shall be binding upon them, their subsidiaries or departments, successors and assigns and upon any and all successor owners of record of all or any portion of the Development Site.

20. The Developer will use reasonable efforts during design, construction, operation, closure and post-closure of the Facility to support Leadership in Energy and Environmental Design (“LEED”) certification or the equivalent thereof for users of the Facility.

Breaches and Remedies

21. If the Developer shall fail or refuse to perform its obligations as required, then after thirty (30) days written notice provided to the Developer by the County indicating the nature of said default and if the Developer has not undertaken reasonable efforts to remedy said default, the County may seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction, and further the County shall be entitled to bring a legal action for damages or other redress, or to declare this Agreement null and void and of no further effect.

22. If the County shall fail or refuse to perform its obligations as required, then after thirty (30) days’ written notice provided to the County by the Developer indicating the nature of said default and if the County has not undertaken reasonable efforts to remedy said default, the Developer may seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction or mandamus; and further the Developer shall be entitled to bring a legal action for damages or other redress, or to declare this Agreement null and void and of no further effect.

23. Pursuant to the provisions of Article 66B, Section 13.01(g)(1), the term of this Agreement shall be forty (40) years from the date of execution provided the Developer complies with all applicable laws, regulations and policies governing the Development Site and provided further, pursuant to the provisions of Article 66B, Section 13.01(i)(2), that the County Commissioners (or any successor body) does not determine prior to the expiration date of this Agreement that suspension or termination of the Agreement is essential to ensure the public health, safety, or welfare.. If the County Commissioners (or any successor body) determine that suspension or termination of this Agreement is essential to ensure the public health, safety, or welfare, such determination must be supported by a substantial change in circumstances at the Facility that was not reasonably foreseeable at the time of execution of this Agreement.

Miscellaneous

24. Time is of the essence in performance of all terms and provisions of this Agreement.

25. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States Post Office for delivery by properly addressed, postage prepaid, certified or registered mail at the address set forth below. Notices and communication to the Developer shall be addressed to, and delivered at the following addresses: c/o C. Daniel Saunders, 110 N. Cross Street, P.O. Box 158, Chestertown, MD 21620. or a successor designated in writing pursuant to the notification provisions in this paragraph and _____. Notices and communications to the County Commissioners shall be addressed to and delivered at the following address: Kent County Government Center, 400 High Street, Chestertown, MD 21620.

26. The County Commissioners and the Developer hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by the County with respect to the approval of this Agreement, and the Parties agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. By entering this Agreement, the Developer agrees that it will

not challenge the County's legal right to perform Regulatory Management and other services for the Facility and to receive the Service Charges specified herein from the Developer for such services.

27. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland and Kent County.

28. The Parties irrevocably consent to the jurisdiction of the Circuit Court for Kent County, Maryland.

29. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

30. This Agreement may be amended from time to time, provided it is amended in writing and by mutual assent of the parties hereto.

31. This Agreement will bind the Developer and the County, their respective legal heirs and representatives, and their respective legal successors and assigns. This Agreement may not be assigned by the Developer or the County without the written approval of the other party to this Agreement, which approval shall not be unreasonably withheld provided all of the assigning party's obligations under this Agreement will be met.

32. The rights granted to the Developer by the County under this Agreement shall expire forty years following all initial construction permitting of the Facility unless otherwise suspended, terminated or expended pursuant to the terms of this Agreement. Notwithstanding the expiration, suspension or termination of this Agreement, the Developer's post-closure obligations described herein and the Developer's responsibilities and obligations set forth in Paragraph 12 shall continue until MDE releases all post-closure bonds.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the first date above written.

Kent Recycling and Land Reclamation, LLC

By:

Kent County Commissioners

Ronald H. Fithian, President

William W. Pickrum, Member

Alexander P. Rasin, Member