

# Attachment 11

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”), is entered into this August 10, 2015 between PENNINGTON SEED COMPANY (“PENNINGTON”) and City of Madison (“MADISON”), the “Parties.” By executing this Agreement, the Parties and their representatives acknowledge being of lawful age and of sound mind, and authorized to enter into the settlement terms.

### RECITALS

**WHEREAS**, PENNINGTON asserted a claim for utility overbilling (the “Claim”);

**WHEREAS**, PENNINGTON and MADISON desire to enter into this Agreement in order to provide for a full settlement and final discharge of any and all claims which are or might have been brought by either of the Parties against the other; and

**NOW THEREFORE**, in consideration of the premises and mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Payment.** PENNINGTON will receive a refund for allegedly erroneous solid waste services billing in the amount of \$93,555. It appears that MADISON billed and PENNINGTON paid for 81 months (Jan. 2008 to Sept. 2014) of solid waste services that were not allegedly delivered. At \$1170 per month this amounts to \$94,770 in charges. PENNINGTON would have paid a small base charge of \$15.00 per month which is billed to all customers, even those who do not use MADISON sanitation services. This charge would reduce the overpayment by \$1215 to \$93,555. As the Sanitation Department only has gross revenues of approximately \$500,000 annually, MADISON shall fully repay the alleged overpayment over two budget years, one payment of 50% in the next 90 days, and another within 30 days after July 1, 2016.

2. **Full and Final Settlement.** The Parties to this Agreement acknowledge, understand and agree that the performance of the obligations detailed in Paragraph 1 of this Agreement shall represent full and final settlement of all claims and causes of action known or unknown, asserted or that could have been asserted by PENNINGTON and MADISON.

3. **Full Release of All Claims.** Upon the payments above, each party shall release, remise, acquit, and forever discharge each other party, its employees, officers, directors, shareholders, agents, representatives, successors, assigns, parent companies, subsidiaries, affiliated companies, sureties and insurers from any and all claims, counterclaims, third-party claims, cross-claims, manners of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, and demands whatsoever, in law or in equity, which and party ever had, now have, or which the Parties hereafter can, shall or may have, against the other, upon or by

reason of any matter, cause or thing whatsoever, at any time, including but not limited to such claims asserted in the Claim, those arising out of or relating to the matters at issue here.

4. **Dismissal with Prejudice.** Reserved.

5. **Who Is Bound.** All Parties and anyone who have/has succeeded to the Parties' rights and responsibilities, such as their successors, predecessors, assigns, parent, subsidiaries and affiliated companies or corporations, heirs, executors and administrators, are bound by this Agreement. This Agreement is made solely for the benefit of the Parties and all who succeed to their respective rights and responsibilities.

6. **No Admissions.** The settlement reflected in this Agreement is a resolution of contested and disputed claims, allegations and assertions, and the Parties enter into this settlement principally to avoid the time, expense, and aggravation of litigation. By entering into this Agreement, the Parties hereto expressly deny and do not admit or confirm any of the claims, allegations, assertions, or opinions of the other in connection therewith.

7. **Attorneys' Fees / Choice of Law.** All Parties shall bear their own attorneys' fees and costs incurred up through and including the date of the execution of this Agreement. Any party to this Agreement may bring an action to enforce this Agreement, in the event any party defaults on its obligations hereunder or breaches any term of this Agreement. The prevailing party in such action is entitled to recover its reasonable attorneys' fees and costs incurred in such action. The Parties agree that any such action shall only be brought in the courts of Morgan County, Georgia, and that such courts are the sole exclusive and proper venue and jurisdiction in which such action may be brought. This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

8. **Agreement Construction.** This Agreement shall be considered as drafted jointly by all Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against the other Parties based on an attribution that the other party drafted the Agreement.

9. **Counseled Agreement.** In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, or have been advised that they are free to seek the advice of an attorney of their choice and that the terms of this Agreement have been read and are fully understood and voluntarily accepted by the Parties.

10. **Severability.** If any provision of this Agreement is construed to be invalid, illegal, against public policy or otherwise unenforceable, then all other provisions hereof shall not be affected by that construction and shall be enforceable with regard to the unenforceable provision.

11. **Authority to Bind.** Each party hereto represents and warrants to the other that (a) it has full capacity and authority to enter into this Agreement; (b) the person executing this Agreement on its

behalf has full authority to do so; and (c) this Agreement constitutes an obligation which is valid and legally binding against it and which is enforceable against it in accordance with its terms.

12. **Signatures.** A scanned or facsimile signature shall be treated the same as an original signature of this Agreement and any party may rely upon a scanned or facsimile signature of the party upon this Agreement. This Agreement may be executed in any number of counterparts, and all counterparts shall be considered together as one agreement. The Parties understand and agree to the terms of this Agreement their authorized company officers have signed below.

13. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein.

SO AGREED:

PENNINGTON Seed Company

\_\_\_\_\_

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

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: August 10, 2015

SO AGREED:

MADISON

\_\_\_\_\_  
Mayor

Attest:

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

Date August 10, 2015