IN THE SUPERIOR COURT OF ELBERT COUNTY

STATE OF GEORGIA

SWEET CITY LANDFILL, LLC, a Georgia Limited Liability Company, RUSTY ADAMS, and JACK STOVALL, JR.,

Plaintiffs,

v.

ELBERT COUNTY, GEORGIA; THE BOARD OF COMMISSIONERS OF ELBERT COUNTY, GEORGIA; RUSSELL T. ("TOMMY") LYON, W. D. ALBERTSON, FRANK EAVES, HORACE HARPER, JERRY HEWELL, and JOHN HUBBARD in their official capacities as members of the Board of Commissioners of Elbert County, Georgia; GREENFIRST, LLC, an Alabama Limited Liability Company, and PLANT GRANITE LLC, a Georgia Limited Liability Company,

Defendants.

CIVIL ACTION FILE

NO. 10EV200M

VERIFIED COMPLAINT FOR THE INVALIDATION OF *ULTRA VIRES* GOVERNMENTAL DECISIONS AND FOR RELATED DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

COME NOW PLAINTIFFS, SWEET CITY LANDFILL, LLC, a Georgia Limited Liability Company, RUSTY ADAMS, and JACK STOVALL, JR. ("hereinafter collectively,

Plaintiffs"), by and through their counsel of record, and file this their Verified Complaint for the Invalidation of *Ultra Vires* Governmental Decisions and for Related Declaratory and Injunctive Relief and for Damages, respectfully showing the Court the following:

I. ***Introduction***

1.

This action constitutes a substantive and procedural challenge by Plaintiffs—pursuant to O.C.G.A. §9-6-24 & 41 U.S.C. §1983, *inter* alia—to a recent series of *ultra vires* decisions by the Defendant Elbert County Board of Commissioners ("BOC") on February 8, 2010 (hereinafter collectively, "Contested BOC Decisions"), which were all designed to promote a garbage-to-energy incinerator project ("W2E Facility") proposed for Elbert County by Defendants Green First, LLC, and Plant Granite LLC ("Plant Granite") and to guarantee Plant Granite a 45-year monopoly over all garbage disposal operations in Elbert County.

2.

Plaintiffs seek related declaratory and injunctive relief and damages.

II. ***The Parties***

3.

Plaintiff **SWEET CITY LANDFILL, LLC** ("Sweet City") is a Georgia limited liability company that received inadequate notice of the November 16, 2009, public hearing by the BOC that was purportedly held to adopt the Solid Waste Amendment; and, as a result, it had no representatives present at such hearing.

4.

Sweet City has a joint venture agreement, lease, and purchase option with Elberton Timberlands, LLC, for the development of a Landfill Gas Waste-to-Energy Facility ("LFG") and related Municipal Solid Waste Landfill ("MSWLF") and Materials Recovery Facility ("MRF") on all or a portion of an approximately 5,250-acre tract in and around the intersection of Sweet City Road and Stinchcomb Road in Elbert County, Georgia (hereinafter, "Parent Tract").

5.

Beginning in the Summer of 2009, Sweet City approached officials with Defendant Elbert County about its intent to site in Elbert County a state-of-the-art MSWLF, as defined in the Georgia Solid Waste Management Rules of the Department of Natural Resources ("DNR"), §391-3-4-.01(38), which would be comprehensively regulated by the Environmental Protection Division ("EPD") of the DNR pursuant to the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. §§12-8-20 *et seq.*, and the aforesaid Georgia Solid Waste Management Rules found in Chapter 391-3-4 of the Georgia Administrative Code. That initial plan for an MSWLF has grown to include an LFG and MRF.

6.

The LFG/MSWLF/MRF being proposed by Sweet City (hereinafter collectively, "Landfill Project") would be located on a parcel within the larger Parent Tract that contains approximately 500 acres and that is part of Elbert County Tax Parcel 002 027 (the "Site");

and the Site lies within the outer perimeter of the five thousand two hundred fifty (5,250) acres now being leased by Sweet City Landfill, LLC, with a purchase option from Elberton Timberlands, LLC ("Lease/Purchase Option").

7.

Plaintiff Sweet City has expended considerable monies in pursuant of its Landfill Project; and it fears that the Contested BOC Decisions completely destroy the viability of that project.

8.

Sweet City anticipates at least a ninety percent (multi-million dollar) diminution in the value of the Site and its Lease/Purchase Option if the Contested BOC Decisions are allowed to stand.

9.

Because of the financial investment by Sweet City in its Landfill Project, made with the active encouragement of certain Elbert County officials, it has a special interest in having the state and local laws executed (and the related legal duties enforced) that Defendant BOC has flouted in making the Contested BOC Decisions—and it will suffer special damages not shared by the general public if the Contested BOC Decisions are allowed to stand.

10.

Plaintiff **RUSTY ADAMS** is an individual citizen, resident, and taxpayer of Elbert County, Georgia, whose address is 1500 Willow Oak, Elberton, Georgia 30635; he is a Member of Sweet City Landfill, LLC; and he, too, has a special interest in having the

applicable state and local laws executed (and the related legal duties enforced) that Defendant BOC has flouted in making the Contested BOC Decisions—and will suffer special damages not shared by the general public, if they are not.

11.

Plaintiff **JACK STOVALL, JR.,** is an individual citizen, resident, and taxpayer of Elbert County, Georgia, whose address is 1046 Flagstone Road, Elberton, Georgia 30635; he is a Member of Sweet City Landfill, LLC; and he, too, has a special interest in having the applicable state and local laws executed (and the related legal duties enforced) that Defendant BOC has flouted in making the Contested BOC Decisions—and will suffer special damages not shared by the general public, if they are not.

12.

Defendant **ELBERT COUNTY, GEORGIA** ("Elbert County") is a political subdivision of the State of Georgia with the power to sue and be sued and may be served with process by serving Hon. Tommy Lyon, Chairman of the Elbert County Board of Commissioners, at his office located in the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

13.

Defendant **ELBERT COUNTY BOARD OF COMMISSIONERS** ("BOC") is the governing authority of Elbert County, Georgia, and is empowered by general statute by the Georgia Constitution of 1983, As Amended, to enact and implement land use regulations. The BOC may be served with process by serving Hon. Tommy Lyon, Chairman of the Elbert

County Board of Commissioners, at the address listed in Paragraph 12 above.

14.

Defendant **RUSSELL T. ("TOMMY") LYON** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

15.

Defendant **W. D. ALBERTSON** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

16.

Defendant **FRANK EAVES** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

17.

Defendant **HORACE HARPER** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

18.

Defendant **JERRY HEWELL** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

19.

Defendant **JOHN HUBBARD** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

20.

Defendant **GREENFIRST, LLC** ("GreenFirst") is an Alabama Limited Liability Company, with its principal office at 2600 East South Boulevard, Suite 350, Montgomery, Alabama 36116, which is developing a proposed waste-to-energy facility ("W2E Facility") and associated solid waste landfill in Elbert County that would be a direct competitor with the Landfill Project being proposed by Sweet City, and which actively and successfully lobbied the BOC to adopt the Contested BOC Decisions on its behalf; and it may be served with process by serving its Registered Agent, Corporation Service Company, at 40 Technology Parkway South, Norcross, Georgia 30092.

21.

Defendant **PLANT GRANITE LLC** ("Plant Granite") is a Georgia Limited Liability Company, with its principal office at 2600 East South Boulevard, Suite 300, Montgomery, Alabama 36116, which is developing a proposed waste-to-energy facility ("W2E Facility") and associated solid waste landfill in Elbert County that would be a direct competitor with the Landfill Project being proposed by Sweet City, and which actively and successfully lobbied the BOC to adopt the Contested BOC Decisions and to send "land use" compliance and "solid waste plan" consistency letters to the Georgia EPD on behalf of its W2E Facility; and it may be served with process by serving its Registered Agent, CT Corporation System, at 1201 Peachtree Street, N. E., Atlanta, Georgia 30361.

III. ***Jurisdiction & Venue***

22.

This Court has jurisdiction to adjudicate this action based on the provisions of Art. VI, Sec. IV, Para's I & II, of the Georgia Constitution of 1983, As Amended, and O.C.G.A. §§9-4-1 *et seq.* and 9-5-1 *et seq.*, and 42 U.S.C. §§1983 & 1988.

23.

This Court is a proper venue in which to adjudicate this action by virtue of the provisions of Art. VI, Sec. II, Para's II, III, IV, & VI, of the Georgia Constitution of 1983, As Amended, and O.C.G.A. §14-2-510.

24.

Defendants are all subject to the jurisdiction of this Court.

IV. *Operative Facts and Applicable Law*

CONTESTED BOC DECISIONS

25.

On February 8, 2010, the Elbert County Board of Commissioners purported to adopt an amendment to the so-called "Elbert County Solid Waste Management Plan" (hereinafter, "Plan Amendment") and to authorize the Plan Amendment to be transmitted it to the Northeast Georgia Regional Commission ("NEGRC") and to the Georgia Department of Community Affairs ("DCA") and to make other decisions challenged herein (collectively, "Contested BOC Decisions").

26.

In the process Elbert County committed numerous substantive and procedural violations of applicable federal, state, and local law.

27.

In expounding on those violations, this Complaint will utilize the following eight separate background documents, which are attached hereto as Exhibits and to which repeated references will be made hereinbelow:

Item I. Excerpts from the Response by Elbert County to Open Records Act request by Sweet City Landfill, LLC, pp. 1-59—attached hereto as Exhibit "A" and by this reference made a part hereof;

Item II. Adoption Resolutions by Elbert County, the City of Elberton, and the City of Bowman *vis-à-vis* the Northeast Georgia Regional Solid Waste Management Plan, pp. 1-4—attached hereto as Exhibit "B" and by this reference made a part hereof;

Item III. DCA Solid Waste Management ("DCA SWM") Rules 110-4-3-.01 through 110-4-3-.05, pp. 1-34—attached hereto as Exhibit "C" and by this reference made a part hereof;

Item IV. Relevant Georgia statutory excerpts concerning the mandatory NEGRC & DCA Review Process for Solid Waste Management Plans & Amendments thereto, pp. 1-6—attached hereto as Exhibit "D" and by this reference made a part hereof;

Item V. Overview of mandatory DRI Review Process for Developments of Regional Impact, including all new solid waste handling facilities, and Relevant Georgia statutory and regulatory excerpts, pp. 1-7—attached hereto as Exhibit "E" and by this reference made a part hereof;

Item VI. Relevant excerpts from the Northeast Georgia Regional Solid Waste Management Plan—attached hereto as Exhibit "F" and by this reference made a part hereof.

Item VII. Purported Host Agreement between Elbert County, Georgia, and Plant Granite LLC, dated February 8, 2010—attached hereto as Exhibit "G" and by this reference made a part hereof; and

Item VIII. Copy of Verified Complaint in Sweet City Landfill, LLC, et al. v. Elbert County, Georgia, et al., Elbert County Superior Court Civil Action File No. 09 EV940M (hereinafter, "Current Lawsuit")—attached hereto as Exhibit "H" and by this reference made a part hereof.

28.

On February 8, 2010, the Elbert County Board of Commissioners held a series of noticed public hearings and meetings, which began at 4:30 p.m. with a public hearing for the purpose of adopting the Plan Amendment to the so-called "Elbert County Solid Waste Management Plan" so as to include in that Plan the W2E Facility "proposed to be located in Elbert County by [Defendant] Plant Granite, LLC."

29.

A second hearing was held immediately thereafter to determine the consistency of the proposed W2E Facility "with the Elbert County Solid Waste Management Plan, in accordance with the procedures in Section 5.7.2 of the Plan."

30.

And after that hearing a public meeting was held in conjunction with the regularly-scheduled meeting of the Board of Commissioners to consider approval and execution of a proposed contract and agreement (hereinafter, "Host Agreement") between Elbert County and Plant Granite LLC, with respect to its proposed W2E Facility. See Item I, pp. 17-21.

31.

Subsequently, in the course of its regularly-scheduled meeting the Board of Commissioners adopted without discussion or debate the proposed Host Agreement by a vote of 5-to-0. See Item I, p. 35.

32.

Next, the Board of Commissioners without discussion or debate purported to adopt the Plan Amendment to the Elbert County Solid Waste Management Plan by a vote of 5-to-0. See Item I, p. 35.

33.

Next, the Board of Commissioners purported without discussion or debate to make a determination as to the "consistency" of the proposed Plant Granite W2E Facility with the so-called Elbert County Solid Waste Management Plan "as amended" ("Amended Plan")—even

though the advertised public hearing on that subject pursuant to Section 5.7.2 of the Plan was advertised for purposes of determining the consistency of the W2E Facility with the unamended "Elbert County Solid Waste Management Plan" and even though that required hearing was held before the Plan was purportedly amended. As a result, no "consistency" determination hearing was ever held as to the consistency of the proposed W2E Facility with the Amended Plan.

34.

Moreover, the Plan Amendment was *ultra vires* and void. Nonetheless, the Board of Commissioners by a vote of 5-to-0 purported to make such a consistency determination *vis-à-vis* the proposed W2E Facility and the Amended Plan and authorized the Commission Chairman to send a "Plan Consistency" letter to the Georgia EPD pursuant to the requirements of O.C.G.A. §§12-8-24 & 12-8-31.1. See Item I, pp. 35-36.

35.

Finally, the Board of Commissioners decided without debate or discussion to authorize the Commission Chairman to provide a "Land Use Compliance" Letter to the Georgia EPD with respect to Plant Granite's proposed W2E Facility—pursuant to O.C.G.A. §§12-8-24(g) & 12-8-31.1(e) and EPD Solid Waste Rule 391-3-4-.05(1)(a) and based on the Solid Waste Ordinance Amendment that is being challenged in the Current Lawsuit. See Item I, p. 36, & Item VIII.

36.

Later that same evening, Commission Chairman Lyon wasted no time in signing three separate *ultra vires* letters to Mr. Jeffrey Cown, Program Manager of the Solid Waste Management Program at the Georgia EPD, whereby he purported (i) to notify EPD that Elbert County had duly complied with the public "siting decision" meeting requirement in O.C.G.A. §12-8-26(b) and EPD Solid Waste Rule 391-3-4-.05(1)(b) ("Siting Decision Letter") despite the fact that the Elbert County Board of Commissioners was not eligible to make the "siting decision" in question, including but not limited to its adoption of the purported Host Agreement, because it did so in contravention of the state-mandated DRI Review Process and the state-mandated DCA Solid Waste Plan Amendment Review Process, see Item I, p. 48; (ii) to notify EPD pursuant to O.C.G.A. §12-8-24(g) that the proposed Plant Granite W2E Facility was "consistent" with "the approved Solid Waste Management Plan for Elbert County, dated November 2004 as amended on February 8, 2010" (emphasis added), together with a certification that the underlying "consistency determination" was made by the Board of Commissioners following a public hearing and in accordance with "procedures and criteria" contained in the Plan and adopted pursuant to the Department of Community Affairs Solid Waste Planning Rules in Chapter 110-4-3 of the Georgia Administrative Code, see Item I, p. 50; and (iii) to notify EPD pursuant to O.C.G.A. §12-8-24(g) that the proposed Plant Granite W2E Facility "complied" with "local zoning and land use requirements," see Item I, p. 49.

37.

Finally, on February 17, 2010, Chairman Lyon sent a letter to the Executive Director of the Northeast Georgia Regional Commission ("NEGRC"), wherein he stated that the BOC had "approved an Amendment to the approved Elbert County Solid Waste Management Plan," along with a Resolution authorizing the transmittal of that Plan Amendment to NEGRC and DCA for review and approval for consistency with the Solid Waste Planning Standards and Procedures in the DCA Rules. Chairman Lyon indicated that "[a] copy of the . . . Plan Amendment was made available to the public five days prior to the hearing and again at the public hearing." See Item I, pp. 56-57.

PLAN AMENDMENT

38.

The purported Plan Amendment to the so-called Elbert County Solid Waste Management Plan ("Plan") adopted by Elbert County on February 8, 2010, is a Major Amendment to the Plan because it involves a new solid waste facility as per DCA SWM Rule 110-4-3-.05(7)(b)(5). See Item III, DCA SWM Rules, p. 33. Accordingly, adoption of the proposed Plan Amendment by Elbert County is governed by the procedures for "major plan amendments" contained in DCA SWM Rule 110-4-3-.05(7)(c). See Item III, pp. 33-34.

39.

DCA SWM Rule 110-4-3-.01(3)(d) notes that "[c]ities and counties are encouraged by the [Georgia Comprehensive Solid Waste Management] Act to jointly develop multi-jurisdictional . . . plans, preparation of which is to be guided by the Minimum Planning

Standards and Procedures for Solid Waste Management."

40.

The DCA SWM Rules provide that for major amendments to multi-jurisdictional plans, "one centrally-held public hearing by the jurisdiction(s) proposing the amendment will be considered adequate in meeting this requirement, provided that the individual local government(s) have followed their customary public hearing notice procedures and all local governments party to the plan have been notified." DCA SWM Rule 110-4-3-.05(7)(c)(3).

41.

By Resolution dated February 14, 2005, Elbert County purported to adopt, not the Elbert County Solid Waste Management Plan, but "the update of the Northeast Georgia Regional Solid Waste Management Plan dated November 2004 ["Northeast Georgia Plan"]." Likewise, by Resolution dated February 7, 2005, the City of Elberton purported to adopt "the update of the Northeast Georgia Regional Solid Waste Management Plan dated November 2004."

42.

Accordingly, pursuant to Georgia law and the DCA SWM Rules, there simply is no stand-alone "Elbert County Solid Waste Management Plan."

43.

On the contrary, what Elbert County persists in calling the "Elbert County Solid Waste Management Plan" is in reality merely Section 5 of the Northeast Georgia Plan, which is a multi-jurisdictional plan involving ten Georgia counties and their associated municipalities.

See footnote 5, *infra*. Indeed, Section 1.1 of the Northeast Georgia Plan confirms that it is "a multi-jurisdictional plan"—with the result that all the local governments who originally adopted the Northeast Georgia Plan are considered "participating local governments" in that multi-jurisdictional plan, see Item VI, pp.1-1 & 1-2; and the DCA SWM Rules make it plain that *inter alia* "[a]ll participating local governments must adopt . . . Plan Amendments . . . before [DCA] . . . will make an eligibility determination for any of the local governments participating in the plan." DCA SWM Rule 110-4-3-.04(3)(a)(2).

44.

On the other hand, it is true that Elbert County and the Cities of Elberton and Bowman, which are the exclusive subjects of Section 5 of the Northeast Georgia Plan, see Item VI, pp. 5-1 to 5-24, may be the only local governments required to submit a proposed major amendment affecting that portion of the Northeast Georgia Plan to the NEGRC and DCA for review.

45.

Despite Open Records Act requests to the Defendant Elbert County Board of Commissioners by Plaintiffs pursuant to O.C.G.A. §50-18-70, it does not appear that Elbert County ever properly adopted the so-called Northeast Georgia Plan in the first place so as to be eligible to propose a Plan Amendment thereto—in which case it must start over again with the adoption of a new solid waste management plan from scratch.

46.

In any event, Elbert County published a public-hearing notice concerning "a proposed amendment to the Elbert County Solid Waste Management Plan"—which indicated that the only "[o]ther participants in the Elbert County Solid Waste Management Plan are the cities of Elberton and Bowman." The public notice went on to inform the public that "[a] written copy of the proposed amendment to the Solid Waste Management Plan will be available for public review at the public hearing, and in the Office of the Elbert County Administrator beginning on Wednesday, February 3, 2010."

47.

DCA SWM Rule 110-4-3-.05(3) provides that "[a]ll local governments developing . . . solid waste management . . . plan amendments . . . are required to provide adequate opportunity for public participation in the planning process."

48.

In fact, a copy of "the proposed amendment to the Solid Waste Management Plan" was not available in the Office of the Elbert County Administrator beginning on Wednesday, February 3, 2010, as advertised.

49.

On the contrary, when representatives of Plaintiffs went to the County Administrator's office on Wednesday, February 3rd, and requested a copy of the proposed amendment to the so-called Elbert County Solid Waste Management Plan, they were given only an unexecuted copy of the eventual Resolution by Elbert County that purported to adopt the Plan

Amendment, which is found at Item I, pp. 38-40.

50.

After repeated protests by or on behalf of Plaintiffs and others, it was not until late on Friday, February 5, that a copy of the proposed Plan Amendment in the form of that found at Item I, pp. 41-47, was made available to inquiring members of the public by the Office of the County Administrator.

51.

The public hearing on the Plan Amendment, as well as the public hearing on the "consistency determination," were both noticed for the "Commissioners Meeting Room" at the Elbert County Government Complex with the knowledge on the part of the Board of Commissioners that this room was too small to accommodate the interested public and would discourage turnout.

52.

That public notice amounted to an attempt on the part of the BOC to discourage turnout by those opposed to the W2E Facility, who do not want to be relegated to the hallway a second time. The Georgia Open Meetings Act, O.C.G.A. §§50-14-1(b) & (c), guarantees that such hearings will not only be "open" to the public, but also "accessible" to them; and that means not only "handicapped accessibility" but reasonable access for the large number of the citizens who had demonstrated an interest in this matter and who were wrongfully shut out of the last regularly-scheduled Commissioners' meeting in January—even though an alternative and larger venue was and remained available in the Government Complex.

53.

In fact, the actual hearings were held in a somewhat larger room in the Elbert County Government Complex, despite the availability of a much larger room in the complex; and, again, hundreds of people again had to be turned away and there was no effort on the part of the Board of Commissioners to provide the overflow with any "access" to the public hearings or ability to participate therein, hearings which were conducted behind closed doors with no ability on the part of those excluded to participate or to access a copy of the proposed Plan Amendment.

54.

In any event, the Resolution actually adopted by the Elbert County Board of Commissioners on February 8, 2010, which is found at Item I, pp. 38-40, clearly violates the letter and spirit of the DCA Minimum Planning Standards and Procedures as set forth in the DCA SWM Rules.

55.

That is because the Resolution in question actually purports to amend the Elbert County Solid Waste Management Plan, effective immediately; whereas, the DCA SWM Rules make it abundantly clear that the only resolution that a local government is authorized to adopt at this stage of the requisite DCA Review Process is a resolution transmitting a "draft" or "proposed amendment" to the Regional Commission and the DCA "for review." DCA SWM Rule 110-4-3-.05(7)(c)(4).

56.

And only after the extended Regional Commission/DCA review process for "major amendments" has been successfully concluded, which incorporates the same review procedures established for new solid waste management plans, can the "local government(s) . . . proceed with [actual] adoption of the plan amendment." DCA SWM Rule 110-4-3-.05(7)(c)(10).[1] Indeed, the DCA SWM Rules actually define DCA "Plan Approval" to mean the certification conferred by DCA acknowledging that local government(s) have received written confirmation from DCA that their proposed plan amendment "meets the minimum standards and procedures and may be adopted." DCA SWM Rule 110-4-3-.02(2)(hh) (emphasis added).

57.

This fundamental tenet of the DCA SWM Rules is reaffirmed in DCA SWM Rule 110-4-3-.03(2)(f), where it is stated that DCA shall review all solid waste plan amendments for consistency with the Minimum Planning Standards and Procedures—and only after its review is completed is "the plan [amendment] . . . eligible for local adoption." See also DCA SWM Rule 110-4-3-.05(7)(c)(10).

58.

In short, before Elbert County was authorized to adopt any amendment to any solid waste management plan to which it is a party, the NEGRC and DCA were required to review

[1]In particular, DCA SWM Rule 110-4-3-.05(7)(c)(10) provides that the "local government(s) can proceed with adoption of the plan amendment" only after all of the preceding requirements" in subsections (7)(c)(1) through (9) have been met.

the proposed amendment from the standpoint of any possible interjurisdictional conflicts, after notifying not only other participating governments in the plan but also local governments contiguous to the submitting local government(s) and other local governments that are likely to be affected by the plan, see DCA SWM Rule 110-4-3-.05(4)(b)(1)—including not only possible solid waste planning conflicts but any other conflicts "with other local government plans in the region, including but not limited to a local government's Comprehensive Plan"! See DCA SWM Rule 110-4-3-.03(5)(c)(4).

59.

In that connection, the Regional Commission has a duty to "coordinate mediation or other forms of resolving conflicts" relating to any proposed plan amendment, see DCA SWM Rule 110-4-3-.03(5)(c)(5), which may include holding a regional review hearing within twenty-five days after a receipt of the "draft" plan amendment, at which any local government my present its views on the submitted plan amendment. See DCA SWM Rules 110-4-3-.05(4)(b)(2) & 110-4-3-.05(7)(c)(5).

60.

If potential interjurisdictional conflicts cannot be resolved within the forty days allocated to the Regional Commission to review a "draft" solid waste plan amendment, then it must notify DCA of those unresolved conflicts. DCA SWM Rule 110-4-3-.05(4)(b)(3)(i)(I).

61.

Once DCA determines whether the plan meets the Minimum Standards and Procedures *vel non*, the options available to the submitting local government(s) are set out in DCA SWM Rule 110-4-3-.05(4)(d).

62.

Again, the DCA SWM Rule 110-4-3-.05(4)(d)(4) makes it clear that no adoption by a local government of a submitted "draft" or proposed plan amendment "shall occur until [at least] sixty days after the plan is first submitted to the Regional [Commission] . . . for review, ninety days if reconsideration is requested, or unless an express written waiver by [DCA] . . . is issued." (Emphasis added.)

63.

In short, the state-mandated public hearing that was held by Elbert County on February 8th was not supposed to result in an adoption of the amendment—but merely in a resolution "authorizing the transmittal of the proposed amendment(s) to the Regional [Commission] and Department [of Community Affairs] for [preliminary] review," so that the process of dispute resolution of possible interjurisdictional disputes could begin. DCA SWM Rule 110-4-3-.05(7)(c)(4).

64.

In addition, in the case of a multi-jurisdictional plan like the Northeast Georgia Plan, a local resolution proposing an amendment thereto should identify "the local government(s) included in the plan that could potentially be affected by the proposed amendment." See

DCA SWM Rule 110-4-3-.05(7)(c)(4). That provision requiring notification of the Regional Commission of other jurisdictions that might be adversely affected by an amendment underscores the fact that once a proposed major amendment is submitted to the Regional Commission and DCA, the review procedures for major amendments and the focus on potential interjurisdictional conflicts are "essentially the same as those review procedures established for new solid waste management plans." DCA SWM Rule 110-4-3-.05(7)(c)(5).

65.

Again, the Regional Commission is supposed to review major amendments for "potential interjurisdictional conflicts or conflicts with other local government plans in the region"—even in areas outside of solid waste planning—and will complete its review within forty days of receiving the plan and notify DCA of any identified conflicts and work with the affected parties to resolve the conflicts; and within sixty days of the Regional Commission receiving the draft plan DCA must review it and determine if it complies with the minimum planning procedures.[2]

66.

In the current situation, however, Elbert County has prematurely purported to adopt an amendment to the non-existent Elbert County Solid Waste Management Plan—without waiting for the extended NEGRC/DCA review process focusing on potential interjurisdictional conflicts to take place.

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[2]The DCA SWM Rules provide for a rehearing procedure before the Regional Commission if one or more of the submitting local government(s) disagrees with DCA's review findings, but the final determination rests with DCA.

67.

This was not the result of possible drafting imprecision in their resolution. When the Elbert County Board of Commissioners purported to "amend," effective immediately, their existing DCA-approved solid waste management plan, they did not mean to say that they were merely proposing the draft amendment in question for preliminary review by DCA and future adoption by the Board.[3]

68.

On the contrary, Elbert County Commission Chairman Tommy Lyon sent a letter to Mr. Jeffrey Cown, Program Manager of the EPD Solid Waste Management Program, dated the same night as the Board purported to "amend" the County's solid waste management plan, wherein he assured EPD pursuant to O.C.G.A. §12-8-24(g), that the proposed Plant Granite Waste-to-Energy Facility "is included in and consistent with the approved Solid Waste Management Plan for Elbert County, dated November 2004 as amended on February 8, 2010." See Item I, p. 50 (emphasis added).

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[3]The Official Minutes for the February 8 meeting of the Elbert County Board of Commissioners confirm that the Commission did purport to adopt the proposed Amendment to the "Elbert County Solid Waste Management Plan":

> Commissioner Hewell made a motion to adopt the amendment to the Solid Waste Plan. Commissioner Hubbard seconded the motion. Upon voting the motion carried 5-0.

See Item I, p. 35.

69.

The letter in question goes on to certify that the "Solid Waste Plan consistency determination" contained in the letter was made by the governing authority of Elbert County "following a public hearing, in accordance with procedures and criteria adopted pursuant to the Georgia Department of Community Affairs, 'Criteria for Solid Waste Planning,' Chapter 110-4-3 in the Elbert County Solid Waste Plan." Id.

70.

In point of fact, DCA SWM Rule 110-4-3-.04(5)(d)(3) provides that solid waste management plans must specify a procedure whereby "consistency" determinations are made—and that those procedures at a minimum shall address "the effect the [proposed new solid waste handling] facility will have upon waste generated within the state achieving the State's 25% per capita waste disposal reduction goal," *inter alia*.

71.

Similarly, §5.7.2 of Section 5 of the Northeast Georgia Plan provides that the relevant criteria to be addressed in reaching a "consistency" determination concerning a proposed new facility in Elbert County include, *inter alia*, (i) a "Determin[ation] whether the proposed facility . . . is sited in an area deemed unsuitable according to the criteria list[ed] above . . .," (ii) a "Determin[ation] whether the proposed facility . . . negatively impacts . . . natural or cultural resources of the County," and (iii) a "Determin[ation] whether the proposed facility . . . negatively impacts the County's ability to contribute to the State's twenty-five percent waste reduction goal." See Item VI, pp. 5-18 & 5-19.

72.

By pretending that the relevant solid waste management plan for Elbert County had already been amended to write the proposed Plant Granite facility into the very heart of the plan—which it was not yet eligible to do by virtue of the mandatory DCA Review Process that had to come first, not to mention the fact that the public hearing occurred even before the Plan Amendment was purportedly adopted—the Elbert County Commission unceremoniously dispensed on February 8, 2010, with all of the requisite procedural "consistency" determinations required "at a minimum" by both the DCA SWM Rules and §5.7.2 of the Northeast Georgia Plan.

73.

The Official Minutes of the February 8 meeting of the Elbert County Board of Commissioners confirms that there was no debate or discussion or other procedural determinations or findings made *vis-à-vis* the stipulated mimimum "criteria" for a "consistency" conclusion. Instead, the minutes reflect that:

> Commissioner Harper made a motion to approve the determination of "consistency" of the proposed energy-from-waste facility with Elbert County Solid Waste Management Plan as amended. Commissioner Eaves seconded the motion. Upon voting the motion carried 5-0.

See Item I, pp. 35-36 (emphasis added).

74.

On February 25, 2010, Plaintiffs submitted an Open Records Act ("ORA") Request to Elbert County.

75.

As indicated by correspondence contained in the County's ORA Response, it is obvious that the entire February 8 process followed by Elbert County and the resultant Contested BOC Decisions were orchestrated by the attorney for Plant Granite, Robert C. ("Bob") Norman of Macon, whose office prepared (and whose initials appear at the bottom of) the original draft Resolution for the Elbert County and the draft letters to Mr. Cown of EPD for the Commission Chairman to sign, copies of which appear at Item I, pp.25-30—and Mr. Norman's documents had Elbert County purporting to adopt the "Plan Amendment" to the non-existent "Elbert County Solid Waste Management Plan" in violation of the mandatory pre-adoption DCA "review" procedures required by the DCA SWM Rules and then make a "consistency" determination on the basis of that *ultra vires* Plan Amendment.

76.

By short-circuiting and ignoring the mandatory DCA "review" process, Elbert County has conveniently sought to eliminate the possibility that it will have to "negotiate" or "mediate" potential interjurisdictional conflicts.[4] The potential for such interjurisdictional

[4]Again, the Regional Commission and DCA review procedures for major amendments are essentially the same as those for review of a new solid waste plan, see DCA SWM Rule 110-4-3-.05(7)(c)(5), along with the additional requirements in subsections (7)(c)(6) & (7), namely: that if it is determined in the Regional Commission's Findings and Recommendations that a proposed plan amendment negatively affects four of the five core planning elements for any of the other local governments included in the plan, *i.e.*, ten-year collection capacity, ten-year disposal capacity, strategy for achieving a twenty-five-percent reduction goal, identification of land areas unsuitable for solid waste facilities, or negatively affects any solid waste facilities requiring EPD permits, the other affected local government will be notified by the Regional Commission of the need to amend its own plan—and if those or other conflicts arise during the plan amendment review process the affected local governments must make every effort to resolve the conflict(s) informally; otherwise, formal mediation, as provided for in the procedures for Mediation of Interjurisdictional Conflicts may be

conflicts in this situation, especially given the "air pollution" fears associated with a waste-to-energy incinerator, is not imaginary.

77.

Nor is this the first time that Elbert County, with the assistance of Attorney Norman, has successfully and "unlawfully" sought to avoid reckoning with such interjurisdictional conflicts.

78.

As part of the mandatory developments of regional impact ("DRI") review process for any local government actions to approve a new solid waste handling facility, Elbert County previously submitted the proposed Plant Granite waste-to-energy facility to the Northeast Georgia Regional Commission as DRI Application #2081. In that connection, numerous affection jurisdictions and organizations weighed in with their objections, including the City

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initiated by any affected local government. See subsection (7)(c)(11).

As for the solid waste plan review procedures applicable to the process of reviewing solid waste plan amendments, the responsible Regional Commission shall review the proposal "for internal inconsistencies and potential interjurisdictional conflicts or conflicts with other local government plans in the region, including but not limited to a local government's Comprehensive Plan." DCA SWM Rule 110-4-3-.03(5)(c)(4). Where inconsistencies or conflicts are identified, the Regional Commission "shall coordinate mediation or other forms of resolving conflicts relating to solid waste management plans among local governments within its jurisdiction, pursuant to the procedures of Mediation of Interjurisdictional Conflicts adopted by the Board of Directors of the [DCA] . . . and as amended." See subsection (5)(c)(5).

Where any of the participating governments in a multi-jurisdictional plan fail "to adopt . . . an amendment to such," then the relevant Regional Commission shall assess the affect of that failure "on the ability of the other jurisdictions to successfully implement the plan" and shall "make recommendations to the [DCA] . . . regarding plan acceptance and permit eligibility." See subsection (5)(c)(7). In that connection, subsection (5)(c)(8) provides that each relevant Regional Commission "shall manage the Development of Regional Impact process according to the

of Carlton, which voiced its concern that "[t]he incinerator will have a negative impact on Carlton's air quality, which lies downwind "less than 5 miles 'as the crow flies' from this project." See Item I, pp. 1-3.

79.

Because proposed new solid waste handling facilities like the Plant Granite garbage-to-energy incinerator project are considered to be Developments of Regional Impact pursuant to applicable DCA threshold criteria, even the DCA SWM Rules—as referenced in footnote 4 above—go out of their way to reaffirm that in the context of the duties of a Regional Commission to review solid waste management plans and amendments for interjurisdictional conflicts or conflicts with other local government plans, including but not limited to local Comprehensive Plans, the Regional Commission "shall" also be sure to "manage the Development of Regional Impact process according to the procedures and guidelines promulgated by [DCA] . . .." See DCA SWM Rule 110-4-3-.03(5)(c)(8).

80.

The DRI Review Process for DRI Application #2081, Plant Granite LLC, Elbert County, was begun on December 22, 2009; and as of January 14, 2010, the Northeast Georgia Regional Commission—per its Executive Director, James R. Dove—purported to terminate the review prior to completion with no finding or recommendations and with the result that the host government was authorized to proceed only with incidental actions "related to the proposed project with the exception of . . . [any] final approval of the project."

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procedures and guidelines promulgated by the [DCA] . . .."

81.

The official Regional Review Notification document, dated January 14, 2010, and signed by Executive Director Dove, indicated that the DRI Review Process had been terminated prior to completion and went on to explain as follows:

> [Prohibited f]inal approval would include local government actions such as "building permits; septic tank permits; land disturbance permits; hookup to a water or sewer system; master or site plan approval; and entering into any contract associated with the proposed project. Each of these actions is considered a trigger for the DRI review process and official approval will need to be withheld on said actions until the review process is complete.

See Item I, p. 11.

82.

Five days thereafter Attorney Norman wrote a letter to Mr. Dove and to Mr. Moneyhun, DRI Project Administrator for the NEGRC, and—without objecting to the decision by the Northeast Georgia Regional Commission DRI committee on January 12, 2010, to "terminate" without completing its review of DRI Application #2081—went ahead to argue that the Elbert County Board of Commissioners should still be entitled under Georgia law to take actions that might be deemed a "final approval" of the Plant Granite project, including "entering into any contract associated with the proposed project." See Item I, pp. 13-15.

83.

Mr. Norman also indicated to the NEGRC that Elbert County and the Elbert County Attorney—while not disputing or contesting the decision by the DRI Committee to

"terminate" its review of DRI Application #2081 without rendering the requisite DRI finding and recommendations in light of any and all concerns raised by other affected local governments—agreed that Elbert County should nonetheless be free to proceed with final approval of the Plant Granite Project as if the DRI Review Process had been completed and that they joined in Mr. Norman's "request for clarification of the Regional Review Notification" in the form of a letter from Mr. Dove to Mr. Bob Thomas, County Administrator for Elbert County.

84.

That remarkable *ultra vires* letter was sent by Mr. Dove to Mr. Thomas on January 21, 2010. See Item I, p. 16.

85.

Despite acknowledging that the Northeast Georgia Regional Commission terminated its review of DRI Application #2081 prior to completion—and did so without protest or objection by either Plant Granite LLC, or Elbert County—Mr. Dove indicated that it was his newly-revised opinion that Elbert County could go ahead and amend its local solid waste management plan to include the proposed Plant Granite facility, could issue a "consistency" letter, and could enter into a "host agreement between the local government and the project developer"! Id.

86.

It is clear that the whole purpose of the DRI Review Process is captured in DCA DRI Rule 110-12-3-.06(4), wherein it is provided that "[l]ocal governments must not take any

official action approving a project until the DRI review process **is completed** and the local government has adequate time **to consider the Regional Commission's finding and recommendations**."

87.

After all, the required DRI "finding and recommendations" are designed to address and mediate possible interjurisdictional conflicts; and the Rule goes on to provide that the term "any official action" does not include community participation meetings and hearings and site visits or preliminary planning commission meetings to discuss the project—but that any actual "vote" necessary to advance the proposed project must be preceded by the "completion" of the DRI Review Process.

88.

The fallacy in Mr. Norman's letter to Mr. Dove and in Mr. Dove's *post hoc* and *ultra vires* attempt to amend the DCA DRI Rules derives from the fact that the NEGRC DRI "finding [as to whether or not the proposed project is in the 'best interest of the region'] and recommendations" are non-binding and merely recommendatory upon the local government in question.

89.

As a result, Mr. Norman successfully suggested to Executive Director Dove that NEGRC and Elbert County were free to simply terminate and abandon the state-mandated DRI Review Process. That is an abomination.

90.

Such collusion denies the other affected jurisdictions in the region—who have raised concerns about potential interjurisdictional conflicts as part of the DRI Review Process, like the City of Carlton—the benefit of the moral suasion and political impact of a potential finding by the NEGRC that the proposed project "is not in the best interest of the region" and/or of their associated recommendations for mitigation of interjurisdictional impacts.

91.

In short, like the federal National Environmental Policy Act ("NEPA"), the Georgia DRI Review Process is a non-binding "information forcing" procedure. Even though affected local governments may ignore the negative conclusions of a federally-mandated environmental impact statement, since its conclusions are merely recommendatory, they cannot take any action prior to receiving the non-binding results of that process, since the results may carry critical political weight in mobilizing public opinion.

92.

Similarly, local governments in Georgia—by collusion with their local Regional Commission—are not free to dispense with the requisite DRI "finding and recommendations" for fear that they may galvanize public opinion at the local and/or regional level and increase the political barriers to achieving their pet DRI project.

93.

As has also been said of the NEPA process, the Georgia DRI Review Process—albeit merely recommendatory—is intended to ensure that if a mistake is made by the local

government in approving a proposed DRI project, it will be a "knowledgeable blunder" made in the full light of day.

94.

As Elbert County and Plant Granite are both acutely aware, the DRI Review Process for DRI Application #2081 was never completed and the Northeast Georgia Regional Commission's "finding and recommendations" in that regard were never promulgated—with no protest (and apparent active collusion) by Elbert County and Plant Granite, LLC; and, as a result, it is clear that Elbert County had no authority to vote on the proposed Plan Amendment on February 8, even if its intention had been merely to comply with the DCA SWM Rules and transmit a "proposed" or "draft" solid waste plan amendment to the Northeast Georgia Regional Commission and DCA for review.

95.

As a result, it is also clear that Elbert County had no authority on February 8, 2010, to make a "siting decision" and enter into the Host Agreement with Plant Granite LLC, granting it the exclusive right to operate a solid waste handling facility in the County.

96.

The purported Host Amendment provides in Section II thereof that on and after February 8, 2010, "the County agrees that . . ., unless otherwise required by applicable law, the County will not authorize, or enter into any agreement with any other person or entity with respect to, the development, construction, or operation of a solid waste disposal facility in the County for disposal of Solid Waste generated in or outside of the County, if such Solid

Waste is required or authorized by the terms of this Agreement and the Permits to be delivered to the [Plant Granite] Energy-from-Waste Facility"—with "Permits" being defined as the necessary EPD permits "authorizing the development, construction, and operation of the [Plant Granite] Energy-from-Waste Facility on the Facility Site." See Item VII, pp. 13 & 11.

97.

Pursuant to Section 10, the term of the Host Agreement is specified to be thirty years after February 8, 2010, with a provision for automatic extension for an additional fifteen years at the option of Plant Granite. See Item VII, pp. 39-40.

COUNT ONE

Invalidation of Contested BOC Decisions

98.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 97 above as if each of said paragraphs was restated and realleged in its entirety.

99.

The Contested BOC Decisions are *ultra vires* and null and void.

100.

The historic rule in Georgia is that locally-adopted notice and hearing provisions will be strictly construed as a "due process" matter to invalidate land use type decisions that ignore them. See, e.g., Grove v. Sugar Hill Investment Associates, Inc., 219 Ga.App. 781, 785, 466 S.E.2d 901, 905 (1996); McClure v. Davidson, supra, 258 Ga. at 710, 373 S.E.2d

at 620 (1988); Brand v. Wilson, 252 Ga. 416, 314 S.E.2d 192 (1984).

101.

The Disputed BOC Decisions are *ultra vires* and null and void in that *inter alia* their adoption or enactment violated the DRI Review Process, the DCA Review Process, the Open Meetings Act, and the terms of required local hearing notices, and Art. I, Sec. I, Para. I, of the Georgia Constitution of 1983, As Amended.

COUNT TWO

Invalidation of Host Agreement

102.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 101 above as if each of said paragraphs was restated and realleged in its entirety.

103.

The purported Host Agreement entered into by the BOC and Plant Granite is *ultra vires* and null and void as a violation of O.C.G.A. §§36-30-3 & 36-60-13 and a prohibited creation of a monopoly and grant of an exclusive franchise. See, e. g., Cable Holdings of Battlefield, Inc. v. Lookout Cable Services, Inc., 178 Ga.App. 456, 456-459, 343 S.E.2d 737, 738-740 (1986).

COUNT THREE

Declaratory Judgment

104.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 103 above as if each of said paragraphs was restated and realleged in its entirety.

105.

There is an actual, justiciable controversy between Plaintiff Sweet City and Defendants concerning the enforceability of the monopoly or exclusive franchise over solid waste disposal in Elbert County granted by the Host Agreement to Plant Granite for up to forty-five years, effective immediately.

106.

This controversy over the validity of the Host Agreement and the exclusive franchise purportedly conferred thereby on Plant Granite has put Sweet City in a position of intolerable economic uncertainty, effectively preventing it from utilizing its existing Site and Lease/Purchase Option and jeopardizing its economic interest by making it unsure as to whether to pursue or abandon its plans for its Landfill Project in Elbert County, given the unreasonable and unnecessary financial risks associated with either course of action.

107.

Plaintiffs show that a Declaratory Judgment should issue pursuant to O.C.G.A. §§9-4-1 *et seq.*, declaring that the Host Agreement is null and void as a prohibited monopoly and exclusive franchise, as a violation of O.C.G.A. §§36-30-3 & 36-60-13, and as a violation of

Sweet City's substantive and procedural due process and equal protection rights under Art. I, Sec. I, Para. I, and Art. I, Sec. I, Para. II, of the Georgia Constitution of 1983, As Amended.

COUNT FOUR

Preliminary and Permanent Prohibitory & Mandatory Injunction

108.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 107 above as if each of said paragraphs was restated and realleged in its entirety.

109.

Any past and future actions by the governmental Defendants to assist GreenFirst and/or Plant Granite in getting the proposed W2E Facility permitted by the Georgia EPD and built on the basis of the Contested BOC Decisions threaten to cause Plaintiff Sweet City irreparable harm for which there is no adequate remedy at law.

110.

Plaintiff seek a preliminary and permanent prohibitory and mandatory injunction, enjoining the governmental Defendants from taking any further actions to issue any permits, letters, or certifications to or for the benefit of GreenFirst and/or Plant Granite predicated on the validity of the Contested BOC Decision and requiring them to send letter(s) to EPD rescinding Chairman Lyon's previous "siting decision," "land use compliance," and "waste plan consistency" letters.

COUNT FIVE

Violation of the Civil Rights Act, 42 U.S.C. §1983

111.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 110 above as if each of said paragraphs was restated and realleged in its entirety.

112.

42 U.S.C. §1983 provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

113.

At all times relevant hereto, the governmental Defendants were acting "under color of law" within the meaning of 42 U.S.C. §1983.

114.

The intended blanket exclusion of private landfills from Elbert County embodied in the Host Agreement was motivated by the desire of the Defendants to limit, restrict and deny the flow of "foreign" garbage into landfills in Elbert County from without the County and without the State.

115.

Defendants' collusive actions to limit, restrict, and deny the flow of commerce have been taken under color of law.

116.

Defendants' actions have deprived Plaintiff Sweet City of its right, secured by the Commerce Clause, to engage in interstate commerce. U.S. Const. Art. I, §8, cl. 3.

117.

Plaintiff Sweet City is authorized to bring this Count under 42 U.S.C. §1983 and the laws of the United States, and to recover its damages from Defendants including costs, expenses, and reasonable attorneys' fees under 42 U.S.C. §1988.

COUNT SIX

Reservation of Additional Federal Claims

118.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 117 above as if each of said paragraphs was restated and realleged in its entirety.

119.

Plaintiff Sweet City expressly reserves the right to file an action in the United States District Court for the Middle District of Georgia, Athens Division, for all additional federal claims against Defendants arising from the facts stated herein under the Constitution and laws of the United States, including (but not limited to) the fact that Defendants' acts constitute a contract, combination, and conspiracy in restraint of trade in violation of the

Sherman Act, 15 U.S.C. §1; Defendants' actions to date constitute a conspiracy and attempt to monopolize the solid waste market in the Elbert County region, in violation of Section 2 of the Sherman Act, 15 U.S.C. §2; and the threatened and attempted group boycott of Plaintiff Sweet City's waste disposal services by Defendants constitutes a *per se* violation of the Sherman Act, 15 U.S.C. §1.

WHEREFORE, Plaintiffs pray as follows:

a. That process issue as provided by law;

b. That a jury be impaneled to resolve any factual issues;

c. That the Contested BOC Decisions be invalidated and declared null and void, as requested;

d. That the Host Agreement be invalidated and declared null and void, as requested;

e. That the Court enter a Declaratory Judgment in favor of Plaintiff Sweet City, as requested in Count Three;

f. That a Preliminary and Permanent Prohibitory & Mandatory Injunction issue against Defendants, as requested in Count IV;

g. That Plaintiff be awarded actual damages, as well as reasonable attorney's fees and litigation costs, pursuant to 42 U.S.C. §§1983 & 1988, as requested in Count Five;

h. That all costs of this action be taxed against Defendants; and

i. That Plaintiffs be granted such further and additional relief as this Court may deem just and proper.

Respectfully submitted this 10th day of March, 2010.

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