

## **PETTIS COUNTY HOST AGREEMENT**

THIS HOST AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2022, between the COUNTY OF PETTIS, MISSOURI, a political subdivision of the State of Missouri ("County"), and PETTIS COUNTY DEVELOPMENT COMPANY, LLC, a Missouri limited liability company (together with its successors or assigns, "PCDC"). PCDC and County may each be referred to as a "Party" or , together, the "Parties."

### **RECITALS:**

**WHEREAS**, PCDC has the right to purchase and intends on acquiring title and ownership of certain real estate (the "Property"), which is legally described on Exhibit "A" attached hereto and made a part hereof, which Property is situated in Pettis County, Missouri;

**WHEREAS**, PCDC plans to submit an application to the Missouri Department of Natural Resources ("MDNR") for a Solid Waste Disposal Area Operating and Construction Permit (the "Operating Permit") to construct and operate a Solid Waste Materials Repository on the Property (the "Materials Repository"), which Materials Repository will be located within the unincorporated limits of the County;

**WHEREAS**, PCDC intends on operating the Materials Repository until all of its permitted capacity has been utilized;

**WHEREAS**, applicable law permits County to impose, levy, and/or collect taxes, charges, surcharges, levies, assessments, fees, special fees, and other charges and impositions on an account of the collection and disposal of Solid Waste (collectively, "Additional Charges");

**WHEREAS**, County and PCDC recognize the long-term benefits of a cooperative working relationship that will benefit both County and PCDC; and

**WHEREAS**, PCDC desires to be a good corporate citizen of Pettis County and will operate the Materials Repository in a manner that is in compliance with the State and Federal standards so that the health, safety, and welfare of the residents of the County are fully protected.

**WHEREAS**, the Parties desire the certainty afforded by the income resulting from the payment of a host fee (the "Host Fee") in lieu of the potential for payment resulting from the payment or imposition of any Additional Charges;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and the foregoing recitals (which are incorporated into the Agreement), as well as other good and valuable consideration, the sufficiency, adequacy, and receipt of which are hereby acknowledged, the Parties agree and covenant as follows:

## AGREEMENT

### I. ASSURANCES TO AND FROM PCDC

- A. Host Fee. PCDC shall pay to County per year \$2,000 Permit Fee. PCDC shall pay to County a Host Fee of One Dollar and No Cents (\$1.00) per ton of “Eligible Loads” (as such term if defined in Section X below) delivered for disposal at the Materials Repository. The Host Fee and or Permit Fee shall be due and payable by PCDC to County of Pettis. The Permit Fee shall be paid yearly, and the Host Fee shall be paid quarterly, so long as the Materials Repository continues to accept Solid Waste for disposal.

Payment of the Host Fee will be made quarterly; with the first Host Fee payment shall be paid to County within one hundred twenty (120) days after the Materials Repository commences accepting Solid Waste. Following the first payment of the Host Fee, the Host Fee shall be paid by PCDC to County, by check, on or by thirty (30) days following the last date of the last month in a calendar quarter.

In the event that PCDC fails to pay the Permit Fee or Host Fee to County, PCDC shall have thirty (30) days from the deadline to pay County the respective fees (“Default Period”). In the event of the failure of PCDC to pay the Permit Fee or Host Fee within the Default Period, County may demand and shall be entitled to receive from PCDC, liquidated damages in the amount of One Hundred Dollars (\$100.00) per day for each additional day PCDC fails to cure the non-payment. The Parties agree that the County’s actual damages as a result of PCDC’s non-payment are difficult to predict and that the amount set forth herein as liquidated damages is a reasonable amount in light of all the circumstances surrounding this Agreement.

- B. Recordkeeping. PCDC shall weigh and keep contemporaneous, accurate and complete records of all quantities of Solid Waste accepted, processed or disposed of at the Materials Repository, including, but not limited to, the classification of all loads of Solid Waste as Eligible Loads or not meeting such Eligible Loads requirement. PCDC shall retain such records for a period of two (2) years following the payment of the Host Fee for each quarter. PCDC shall provide the County with tonnage reports of the Eligible Loads delivered and disposed of at the Materials Repository for each quarter that this Agreement remains in effect. Upon reasonable advance written notice to PCDC, no more often than twice in any fiscal year, PCDC shall permit County access, subject to prior written notice, to PCDC’s books and records relating to PCDC’s determination of the weight of all loads of Solid Waste, the classification of Eligible Loads and the amount of the Host Fee owed to County hereunder, for inspection and photocopying by County during the Materials Repository’s normal business hours. PCDC shall also provide County with a suitable space for a County representative to monitor trucks entering the Materials Repository and County shall have the

right to observe the weighing operations at the Materials Repository. County shall be responsible for all costs and expenses it incurs in connection with its audits and inspections of the Materials Repository. If County disputes PCDC's calculation of the Host Fee for one or more quarters, County shall notify PCDC in writing of such dispute and set forth in detail the factual basis for the dispute.

C. Design Standards. PCDC shall comply with the following design standards when excavating, constructing, and/or operating the Materials Repository:

(1) No Materials Repository shall be located closer than on quarter (1/4) mile of any occupied residential dwelling.

(2) No Materials Repository shall be located or constructed in conflict with requirements of MDNR.

(3) No Materials Repository shall be located closer than two hundred (200) feet to the property line of the Property.

(4) For the purposes of this Section, all distances shall be measured from the center of the Materials Repository to the nearest property line or nearest point on the foundation of any residence.

(5) The setback distances set forth in this Section, may be modified through existing or future written leases, easements, or other agreements between PCDC and the affected residence or adjoining landowner, as the case requires.

(6) The location of the Material Repository shall be consistent with the location depicted on Exhibit C attached hereto. Any change, alteration, and/or expansion in the location of the Material Repository, must be first approved by County.

(7) No Materials Repository shall be operated or vertically expanded to an elevation greater than twenty-five (25) feet above the elevation of the Access Road.

## **II.**

### **ASSURANCES TO AND FROM COUNTY**

A. Insurance. PCDC shall maintain in full force and effect all insurance, bonds, letters of credit or deposits required to be maintained by the Operating Permit and applicable state and federal law in order to assure completion, closure, and post-closure care and maintenance of the Materials Repository. PCDC shall also provide the County with copies, upon request, of all insurance policies, bonds, letters of credit, and any other financial assurance instruments and documents covering the Materials Repository.

- B. Operating Plan. PCDC, as part of its application for the Operating Permit, shall submit an Operating Plan for the Materials Repository to MDNR. As a condition of the Permit, PCDC shall be obligated to operate the Materials Repository in conformance with the Operating Plan and in compliance with applicable state and federal laws in effect from time to time. The Operating Plan, among other things, will provide for safety procedures at the Materials Repository, procedures to protect the environment, and procedures for minimizing and controlling dust, mud, litter, odor and noise in order to minimize the impact of Materials Repository operations on other properties and roadways. PCDC shall provide a copy of PCDC's Operating Plan to County. County shall have the right to assess liquidated damages against PCDC up to One Hundred Dollars (\$100.00) per day for PCDC's continuing violation of any procedures involving environmental concerns, safety, dust, mud, litter, odor, or noise violation of the Operating Plan, if any such violation is not reasonably corrected or cured by PCDC within a reasonable amount of time.
- C. Renewal or Extension. County shall not unreasonably withhold its consent or certification for any renewal or extension of the Operating Permit, provided PCDC has complied with the terms of this Agreement at the time of the provision of such consent or certification from the County. During the term hereof, County will encourage its residents and businesses located in Pettis County to use the Materials Repository for the disposal of their Solid Waste. Furthermore, County agrees that if a request is made by PCDC for a vertical or horizontal expansion of the Materials Repository, County shall not unreasonably withhold its consent or certification while this Agreement remains in effect. The Parties agree that if PCDC plans to request a vertical or horizontal expansion of the Materials Repository with MDNR, this Agreement may be amended to include the vertical or horizontal expansion and any other changes necessary at that time.
- D. So long as the County is not in default of this Agreement and the Materials Repository is accepting Solid Waste, the Materials Repository will continue to accept Solid Waste from the County, provided that all of the Materials Repository's customers which are procured by, are associated with or are under the control of the County are not in default of any agreements they have with PCDC.
- E. PCDC agrees that the Materials Repository shall only accept non-hazardous Solid Waste and Special Waste for disposal and shall at no time accept any Hazardous Waste.
- F. Clean-up Day. Twice a year, on a date to be mutually agreed upon by PCDC and County (the "Clean-up Days"), during normal hours of operation of the Materials Repository, each individual resident of the County providing documentation demonstrating they are a current Pettis County resident shall be allowed disposal privileges at the Materials Repository, without charge, for household Solid Waste, provided that no such disposal load is larger than an area that is eight feet (8') in length and six feet (6') in height and further provided that the weight of each such load does not exceed one (1) ton. All larger or heavier loads will be billed at the prevailing rates charged by PCDC. In addition, on each Clean-up Day, County and the

City of Sedalia shall have disposal privileges at the Materials Repository for Solid Waste generated by their facilities and related governmental activities for the disposal, without charge, of up to twenty (20) tons of Solid Waste each. All loads which are brought to the Materials Repository for disposal on a Clean-up Day must be tarped. Any un-tarped or non-compliant loads will be rejected. Notwithstanding the foregoing, the Materials Repository will not accept burn barrels, batteries, wet goods, or items which are otherwise deemed by PCDC to be unacceptable waste.

- G. Fire Prevention. PCDC shall be responsible for fire prevention and control at the Materials Repository. No open burning shall be allowed at the Materials Repository. PCDC shall keep and maintain adequate firefighting equipment, including fire extinguishers, at the Materials Repository. PCDC shall develop and implement an on-site plan for fighting fires at the Materials Repository. In the event of fire, PCDC shall immediately notify local firefighting agencies and shall diligently work to extinguish the fire. Fire breaks shall be constructed and maintained by PCDC as required by the Operating Permit.
- H. Complaint. Once the Materials Repository commences accepting Solid Waste for disposal, PCDC agrees to assign and designate a telephone number and representative who shall be responsible for receipt of complaints or inquiries which may arise from the public relating to the operation of the Materials Repository. All such complaints and inquiries shall be responded to promptly and, further, shall be addressed in a reasonably practicable manner under the applicable circumstances. PCDC shall keep a record of all such complaints and inquiries along with the response by PCDC. Such records shall be maintained by PCDC for two (2) years following each complaint or inquiry. PCDC shall permit the County's designated representatives access to such records for inspection and photocopying, upon prior written notice from County, during normal business hours of the Materials Repository and at the County's sole cost and expense, as further agreed upon in Section I (B).
- I. Access Road. County agrees that PCDC shall have the right, at its cost and expense, to make any improvements, modifications, enhancements or other changes to the access road to the Materials Repository, which access road area is shown on Exhibit "B-1" and the improvements, modifications, enhancements and other changes thereto, as presently contemplated (but which may be further modified as necessary for the operation of the Materials Repository) that are shown on Exhibit B-2 attached hereto (the "Access Road"), subject to (i) the prior written approval by County, which approval shall not be unreasonably withheld, and (ii) PCDC's compliance with all applicable ordinances, rules and regulations of the County.

PCDC shall have the right and responsibility, to undertake any road maintenance or repairs necessary so that all vehicles that use the Access Road will be able to do so on a road which is unobstructed and graded to ensure that driving on the Access Road will not damage those vehicles. The cost of maintenance or repairs performed on the Access Road by PCDC shall be borne by PCDC and shall not be deducted from the Host Fee payable hereunder. At no

point shall PCDC improve, modify, enhance, or make any other change to the Access Road that would raise the elevation of the Access Road higher than the elevation of the Access Road on the Effective Date of this Agreement. PCDC shall notify County in writing following any maintenance or repairs on the Access Road performed by PCDC.

PCDC shall require any contractor or subcontractor used for the performance of work or excavation work on the Access Road to be properly licensed pursuant to the laws of the state of Missouri and each contractor shall have the same obligations with respect to its work as if the work were performed by PCDC.

It is understood that PCDC's obligation to perform maintenance and repairs on the Access Road, is not abandonment of the Access Road by the County.

- J. Rail Line. In addition to the rights and responsibilities with respect to the Access Road as provided in Section II.I above, (i) County agrees consent to any authorization and/or approval sought by PCDC for the lowering or any other required modification of the rail line that intersects the Access Road, including, but not limited to, the submission of all applications, plans and any other documentation required therefor by the Missouri Department Transportation and any other governmental authority having jurisdiction over such rail line and (ii) PCDC agrees to bear all costs and expenses associated with the lowering (or any other required modification) of the rail line that intersects the Access Road.
- K. As partial consideration for PCDC's performance of the terms of this Agreement, including, but not limited to, the payment of the Host Fee to County, County agrees, for the term of this Agreement and so long as PCDC is not in default hereunder and is accepting Solid Waste at the Materials Repository, not to construct, own, or operate a sanitary landfill, co-generation plant, transfer station, or incinerator for the disposal of Solid Waste.

### **III.** **CONDITIONS PRECEDENT**

Notwithstanding any provision in this Agreement to the contrary, the obligations of PCDC contained in this Agreement, including payment of the Host Fee to County, are contingent upon and subject to satisfaction or waiver of each of the following conditions:

- A. County (i) granting and issuing all conforming approvals, permits and consents, if any, and executing all documents, consents, permits, plans and permit applications that are required or otherwise necessary to enable PCDC to own, seek permits for and operate the Materials Repository and (ii) not adopting, enacting or otherwise implementing any ordinance, rule, regulation or other form of law that would prevent or otherwise materially impair the ability of PCDC to obtain the Operating Permit, construct the Materials Repository, own and/or operate the Materials Repository on the Property or accept Solid Waste for disposal at the Materials Repository;

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- B. PCDC obtaining all permits, consents, approvals and licenses necessary to operate a Solid Waste disposal area and facility on the Property, including, without limitation, operating and construction permits from MDNR, any NPDES permit, or such other permits, licenses, approvals or consents as are necessary to operate the Materials Repository on the Property;
  - C. PCDC's commencement of the Materials Repository operations on the Property, which shall mean PCDC's acceptance of Solid Waste at the Materials Repository;
  - D. The representations and warranties of County contained throughout this Agreement shall be true and complete as of the date hereof, and shall continue to be true and complete from and after the date when PCDC ceases Materials Repository operations at the Materials Repository, with the same effect as though such representations and warranties had been made on and as of such date; each and all of the agreements and covenants of County to be performed pursuant to the terms hereof shall have been fully performed;
  - E. All necessary consents of and filing with any governmental authority or agency relating to the consummation of the transactions contemplated in this Agreement shall have been obtained or accomplished and no action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the development of the Property for use as a sanitary Materials Repository for the disposal of Solid Waste and from the commencement of operations of the Materials Repository and no governmental agency or body shall have taken any other action or have made any request of PCDC as a result of which the management of PCDC deems it inadvisable to proceed with the commencement or continued operation of the Materials Repository on the Property;
  - F. The Materials Repository, if permitted as a sanitary landfill for the disposal of Solid Waste, shall have an adequate Access Road with a legal duration in time at least equal to the anticipated life of the Materials Repository, together with closure and post-closure periods;
  - G. PCDC's determination that commencement of Materials Repository operations on the Property is economically and operationally feasible.

All of the foregoing conditions are solely for the benefit of PCDC. Should any of these conditions fail to be satisfied, unless any such failure has been waived by PCDC, this Agreement shall be null and void. PCDC's obligation to pay the Host Fee is conditioned upon satisfaction or waiver of all of the foregoing conditions and, until such time as PCDC commences accepting Solid Waste at the Materials Repository, PCDC shall not be obligated to make any payment or do any act which is otherwise required hereunder.

#### **IV. TERM**

The term of this Agreement shall commence on the date hereof (“Effective Date”). Subject to the Early Termination provisions set forth in Section V of this Agreement, the term of this Agreement shall be ten (10) years from the Effective Date. The Agreement shall not renew automatically

**V.**  
**EARLY TERMINATION**

This Agreement shall terminate, and PCDC and County shall have no further obligations hereunder, if any of the following events (each a “Termination Event”) occurs:

- A. This Agreement or any part of it is declared to be invalid or unenforceable in a final order or judgment entered by a court of competent jurisdiction, provided however that at the election of either Party, with written notice given to the other Party, this Agreement shall not terminate unless and until either (1) the time to file an appeal of the final order or judgment expires without an appeal or (2) the final order or judgment is affirmed on appeal.
- B. County imposes, levies, or collects, or attempts to impose, levy, or collect any Additional Charges from or through PCDC, in which event the Agreement shall be deemed terminated on the effective date of the ordinance or other method by which County imposed, levied, or collected or attempted to impose, levy, or collect any Additional Charges from or through PCDC.
- C. County enacts any rules, regulations or ordinances which would (1) prevent PCDC from operating the Materials Repository from at its current location; (2) limit the volume of waste that may be accepted at the Materials Repository below the amounts allowed in the Operating Permit; (3) regulates PCDC’s setting of rates it charges for disposal of Solid Waste at the Materials Repository; and/or (4) impose any charge, fee, tax, levy, or surcharge not contemplated under this Agreement against PCDC.
- D. The Materials Repository closes or discontinues accepting Solid Waste for any reason including, but not limited to, the time as the Materials Repository reaches its fully permitted capacity of Solid Waste.

**VI.**  
**CONSEQUENCE OF EARLY TERMINATION**

The occurrence of a Termination Event shall serve to terminate this Agreement on the date of the occurrence of a Termination Event without any further action or obligation by either Party. Termination as the consequence of a Termination Event relieves PCDC of its obligation to pay the Host Fee on and after the date of the happening of the Termination Event; it does not, however, entitle PCDC to receive Host Fee payments made or incurred prior to the Termination Event. Termination as the consequence of a Termination Event relieves County of its obligations under this Agreement, including the Assurances contained in Section II of this Agreement.



**VII.**  
**BOOKS AND RECORDS**

PCDC shall keep complete and accurate books and records relating to its determination of the amount of the Host Fee. PCDC shall permit the County's designated representatives access to such books and records for inspection and photocopying, upon prior written notice from County, during normal business hours of the Materials Repository and at the County's sole cost and expense, as further agreed upon in Section I (B).

**VIII.**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF COUNTY**

County hereby makes the following representations, warranties and covenants to PCDC, all of which shall survive for the term of this Agreement and any examination or inquiry by PCDC in connection herewith:

- A. County has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action on the part of County, including obtaining all necessary consents or waivers. This Agreement has been duly executed and delivered by County and constitutes a legally valid and binding obligation of County, enforceable in accordance with its terms.
- B. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions provided for herein will conflict with or result in any breach of any governing documents of County or any of the terms, conditions, or provisions of any agreement or instrument to which County is a party or by which it is bound or will result in a violation of any applicable law, ordinance, regulation, permit, authorization, decree, or order of any court or other governmental agency.
- C. County acknowledges that PCDC's obligation to perform hereunder is conditioned upon the County's covenant not to enact or modify any laws, establish any rules, regulations or ordinances which would: (i) prevent PCDC from operating the Materials Repository; (ii) limit the amount of volume of Solid Waste that can be accepted at the Materials Repository; (iii) prevent or otherwise restrict PCDC from setting the rates it charges for Solid Waste disposal at the Materials; or (iv) impose any charge, fee, assessment, tax, levy or other financial or operational obligation on PCDC or any person or entity providing or transporting solid waste or other materials for disposal at the Materials Repository.

**IX.**

**REPRESENTATIONS, WARRANTIES AND COVENANTS OF PCDC**

PCDC hereby makes the following representations, warranties and covenants to County, all of which shall survive the consummation of this transaction:

- A. PCDC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri.
- B. PCDC has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate and other action on the part of PCDC, including obtaining all necessary consents or waivers. This Agreement constitutes a valid and binding obligation of PCDC, enforceable in accordance with its terms.
- C. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions provided for herein will conflict with or result in any breach of the organizational or governance documents of PCDC or any of the terms, conditions or provisions of any Agreement or instrument to which PCDC is a party or by which it is bound or will result in a violation of any applicable law, ordinance, regulation, permit, authorization or decree or order of any court or other governmental agency. None of PCDC's statements, representations, warranties and covenants in this Agreement contain any untrue statement of any material fact or omit to state any material fact required to be stated to make such statements, representations and warranties, in light of the circumstances in which they are made, and not misleading.
- D. PCDC shall excavate, construct, and operate the Materials Repository,, in accordance with the Operating Permit and all applicable laws and shall be responsible for any closure, post-closure, financial or maintenance responsibilities in connection with the operations of the Materials Repository.
- E. PCDC agrees to provide access to the Materials Repository, during normal operating hours, to County's designated compliance officer and the County Sheriff to conduct inspections of the Materials Repository for purposes of confirming PCDC's compliance with applicable County ordinances, rules and regulations and the terms of this Agreement; provided, however, County and the County Sheriff shall not conduct such inspections more than once per month other than in the event of any emergency or material non-compliance violation by PCDC. PCDC further agrees to hold meetings with the County's designated compliance officer and the County Sheriff to address any purported compliance issues or other County considerations relating to the operation of the Materials Repository as requested, but not more frequently than once per quarter.

**X.**

**PCDC'S INDEMNITY**

PCDC agrees to hold harmless and indemnify County and its officers, officials, employees and authorized agents and representatives from and against any liabilities, costs, expenses (including reasonable attorneys' fees), claims and damages which County or its officers, officials, employees and authorized agents and representatives may, at any time, suffer or sustain or become liable by reason of any accidents, damages or injuries (including injuries resulting in death either to the persons or property or both) of PCDC or County or the employees of either party, or to any other parties, in any manner caused by, or resulting from, the negligence, willful misconduct or unlawful acts of, or breach of this Agreement by PCDC, its employees and agents. PCDC also agrees to hold harmless and indemnify County and its officers, officials, employees and authorized agents and representatives from and against any liabilities, costs and expenses (including reasonable attorneys' fees), claims and damages which County or its officers, officials, employees and authorized agents and representatives may, at any time, suffer or sustain or become liable for by reason of PCDC's operation of, expansion of, and closure and post-closure activities at the Materials Repository. In no event, however, shall PCDC be liable to County for any liabilities, costs, expenses, claims or damages in any manner caused by, or resulting from the negligence, willful misconduct or unlawful act of or breach of this Agreement by County or its employees or agents.

**XI.**

**DEFAULT CLAUSE**

- A. If County shall default in the performance of any of its obligations hereunder, or if County shall be in breach of its warranties, representations or covenants made herein to PCDC, and if such default shall continue for a period of thirty (30) days after County's receipt of PCDC's written notice thereof, a default shall be deemed to have occurred hereunder.
- B. If PCDC shall be in default in payment of any sums due hereunder as the same become due on the dates provided for in this Agreement, and if such default shall continue for a period of thirty (30) or, except as otherwise provided for in this Agreement, in the event that a non-monetary failure of performance arises, and such failure of performance shall not have been cured within thirty (30) days, then PCDC shall be deemed to be in default of this Agreement. In the event PCDC is in default of this Agreement, County shall have the right to recover its actual damages incurred and its court costs, and in the event the County elects to seek injunctive relief to enforce the provisions of this Agreement, the County shall be entitled to such injunctive relief, including, without limitation, the right of specific performance, and in addition to the relief sought shall be entitled to recover its court costs in prosecuting any such equitable action.

**XII.**  
**DEFINITIONS**

- A. "County" shall mean the County of Pettis, Missouri, and shall include all land encompassed by the corporate limits of the County of Pettis, Missouri, together with its successors and assigns.
- B. "Eligible Loads" shall mean Solid Waste volume delivered for disposal at the Materials Repository in fully and properly tarped trailers or substantially comparable vehicles used for the transportation of Solid Waste tonnage for disposal at a permitted sanitary landfill,
- C. "Hazardous Waste" shall mean (i) all waste defined or characterized as hazardous waste by the SWDA or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous waste by MDNR and/or other agencies of the State of Missouri having jurisdiction over hazardous waste generated within such State, provided that the term "Hazardous Waste":
- (1) is intended to mean and include those substances which are not normally expected to be disposed of by Solid Waste disposal sites employing generally accepted waste disposal methods; and
  - (2) shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste generated within the State of Missouri.
- D. "Materials Repository" shall mean the portion and parcels of the Property to be acquired by PCDC for the operation of a Solid Waste disposal site, as more particularly described on Exhibit "A" attached hereto.
- E. "MDNR" shall mean the Missouri Department of Natural Resources, or any successor regulatory authority with jurisdiction over the operation of the Materials Repository.
- F. "PCDC" shall mean Pettis County Development Company, LLC, a Missouri limited liability company, together with its successors and assigns.
- G. "Additional Charges" shall mean any and all charges imposed upon PCDC and/or the Materials Repository by County for taxes, charges, surcharges, levies, assessments, fees, special fees and other charges and impositions on an account of the collection and disposal of Solid Waste. Additional Charges does not include personal or real property taxes assessed to PCDC.

- H. "SWDA" shall mean the Solid Waste Disposal Act (42 USC 3251), as amended, including the Resource Conservation and Recovery Act of 1976 (42 USC 6901) and all amendments thereto.
- I. "Solid Waste" shall mean (i) all waste defined as solid waste by the SWDA or regulations promulgated thereunder and (ii) all waste defined as solid waste by MDNR and/or other agencies of the State of Missouri having jurisdiction over solid waste generated within the State. Moreover, the term "Solid Waste":
- (1) is intended to mean and include only those substances which are normally expected to be disposed of by employing generally accepted sanitary landfill disposal methods;
  - (2) shall exclude Hazardous Waste;
  - (3) shall exclude Special Wastes and sewage sludges, except for those Special Wastes and sewage sludges which are permitted to be accepted at the Materials Repository, and which Special Wastes and sewage sludges PCDC elects, in its discretion, to accept at the Materials Repository;
  - (4) shall exclude radioactive wastes or other residue from wastewater treatment facilities; and
  - (5) shall be construed to have the narrower, less expansive definition where there exists a conflict in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over Solid Waste generated within the State of Missouri.
- J. "Special Waste" shall mean any waste permitted to be disposed of at the Materials Repository which requires special or exceptional handling from an operational or equipment standpoint in PCDC's sole and absolute discretion. For purposes of this definition, Special Waste shall include, without limitation, sludges, asbestos, powders, ashes and other manufacturing or industrial by-products.

### **XIII.** **GENERAL**

- A. Notices. Any notice, demand, direction, request or other instrument authorized or required by this Agreement shall be deemed sufficiently given or filed if and when sent by United States certified or registered mail, postage prepaid, addressed to the respective parties as follows:

To County:                   Pettis County Commission  
  Courthouse  
  
  Attention: Presiding Commissioner

With Copies to:           Pettis County Clerk  
  Courthouse

To PCDC:                    Pettis County Development Company, LLC  
  Cliffside Centre  
  2140 Bagnell Dam Blvd., Suite 302B  
  Lake Ozark, MO 65049

Upon written notice to all parties entitled to notice hereunder, any such party may, from time to time, change its address or the person(s) to whom any notice hereunder shall be sent.

- B. No Waiver. No failure by either party to demand or insist upon the performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such covenant, agreement, term or condition. Under no circumstance shall waiver of a particular default constitute waiver of other or future defaults, whether or not of the same type.
- C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Should PCDC assign its interest herein to a successor, such successor shall be obligated by and to fully perform the terms, conditions and covenants applicable to PCDC hereunder, and by becoming so obligated, PCDC shall no longer be bound by the terms hereof and shall be released fully from all of its obligations as set forth in this Agreement.
- D. Mutual Drafting. This Agreement has been drafted and negotiated mutually by the parties, both of which have been represented by legal counsel, and any ambiguity herein shall not be construed in favor of one party over the other on the basis that one party drafted all or any part of this Agreement.
- E. Severability. If any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions set forth in this Agreement shall continue to remain in full force and effect.

- F. Amendment. This Agreement may be amended from time to time only by a written instrument signed by the authorized representatives of County and PCDC at the time of such amendment.
- G. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but each of such counterpart shall be deemed to be one and the same Agreement.
- H. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Missouri.
- I. Entire Agreement. This Agreement, together with the exhibits attached hereto, constitute the entire agreement of the parties hereto as to the subject matter hereof.
- J. Recitals. The Recitals are incorporated and made a part of this Agreement by reference as though recited in full herein.
- K. Force Majeure Clause. Neither County nor PCDC shall be in breach of its obligations hereunder or liable to the other for its failure or delay in performance hereunder due to the contingencies, events or other circumstances beyond its reasonable control, including, without limitation, strikes, riots, compliance with laws or governmental orders (other than orders of the County), declared emergencies, pandemics or public health emergencies or environmental crises, fires, or acts of God, and any such failure shall not cause an event of default under this Agreement.
- L. Arbitration. Any other dispute arising out of or relating to this Agreement or the breach, termination or validity hereof (collectively, a “Dispute”) shall be adjudicated and resolved by binding arbitration in the County of Pettis, Missouri, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association. The parties hereto consent to the jurisdiction of the Federal and state courts having jurisdiction in the State of Missouri for any injunctive, specific enforcement or other relief in aid of the arbitration proceedings of any Dispute or to enforce the award in such arbitration proceeding, but not otherwise. The award entered by the arbitrator(s) in connection with any Dispute shall be final and binding on all parties to the arbitration. Each party shall bear its respective arbitration expenses and shall each pay its pro rata portion of the arbitrator’s(s’) charges and expenses. The arbitrator(s) shall not award punitive, exemplary or special damages.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first above written.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION**

**WHICH MAY BE ENFORCED BY THE PARTIES.**

[The Remainder of this page is intentionally left blank].

IT IS SO AGREED:

"COUNTY"  
PETTIS COUNTY, MISSOURI

\_\_\_\_\_, 2022  
Date

By: \_\_\_\_\_  
Mr. David Dick  
Presiding Commissioner

\_\_\_\_\_, 2022  
Date

By: \_\_\_\_\_  
Mr. Jim Marcum  
Western Commissioner

\_\_\_\_\_, 2022  
Date

By: \_\_\_\_\_  
Mr. Israel Baeza  
Eastern Commissioner



|

ATTEST:

\_\_\_\_\_, 2022  
Date

By: \_\_\_\_\_  
\_\_\_\_\_, County Clerk

"PCDC"

PETTIS COUNTY  
DEVELOPMENT COMPANY, LLC

\_\_\_\_\_, 2022  
Date

By: \_\_\_\_\_  
Derrick Standley, President

DRAFT

|

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

[TO BE INSERTED]

DRAFT

|

EXHIBIT "B"

PUBLIC ACCESS ROAD TO MATERIALS REPOSITORY

**[TO BE INSERTED]**

DRAFT

|

EXHIBIT "C"

MATERIALS REPOSITORY LOCATION MAP

[TO BE INSERTED]

