

TRI-CITY RUBBLE SITE AGREEMENT

December 2022 – December 2027

This contract made and entered into this 21st Day of November 2022, by and between the City of Deadwood, a political subdivision of the State of South Dakota, the City of Lead, a political subdivision of the State of South Dakota, and Central City, a political subdivision of the State of South Dakota (hereinafter referred to as "CITIES") and Adams Salvage Recycling & Recovery, LLC (hereinafter referred to as "ADAMS").

1. BASE TERMS:

- a. For the purposes of operating a Type 11B Solid Waste Disposal Site (hereinafter "Rubble Site") on behalf of CITIES.
- b. The term of this contract shall be for a period of five years from the date set forth above and shall expire on December 31, 2027. CITIES do hereby grant to ADAMS an option to renew the contract for an additional three-year period, upon ADAMS giving 180 days written notice prior to the end of the contract term. The annual renewal rate for each renewal term will be determined, changed, or adjusted by mutual agreement, in writing, of the parties. If the parties cannot agree on appropriate terms for the renewal term within 15 days of the expiration of the original term, the option to renew will be rescinded. The other terms and conditions of this contract will continue in effect unless changed in writing by agreement of the parties.
- c. The annual rate to be paid to ADAMS during the term of the agreement will be determined, changed, or adjusted by mutual agreement, in writing, of the parties on an annual basis. If the parties cannot agree to the annual rate prior the end of each year of the contract the annual rate to be paid to ADAMS shall remain the same for the next year of the contract. The other terms and conditions of this contract will continue in effect unless modified in writing by agreement of the parties.

2. CITIES' OBLIGATIONS:

- a. CITIES shall approve any fee rates charged by ADAMS. Once set, the fee schedule may not be modified without the consent of CITIES.
- b. CITIES shall reimburse ADAMS for liability insurance for uses of the rubble site facility related to this contract upon proof and submittal of ADAMS for said insurance and shall maintain the CITIES insurance to cover the CITIES liabilities.
- c. ADAMS may place buildings on the Rubble Site for its use and operation of the Rubble Site at ADAMS' expense upon CITIES written approval. In the event of termination of this Agreement, CITIES agree to reimburse ADAMS the sum of \$50,000.00 for improvements and buildings consisting of the Well, Well House and Office if maintained and in good working order. These improvements will remain on the Rubble Site property following termination of this Agreement. If the buildings were not approved or do not meet the necessary codes ADAMS shall cause said buildings to be removed or brought up to necessary codes at ADAMS expense following termination of this Agreement.

3. ADAMS' OBLIGATIONS:

- a. To operate the Rubble Site in accordance with the terms set forth herein;
- b. To abide by all applicable laws and permit requirements of the operation of a Type IIB Solid Waste Disposal Site and ensure that all operations are in compliance with all local, state, and federal laws, rules, regulations, and permits or leases covering the same.
- c. ADAMS shall be available for any inspections by federal, state, or local authorities.
- d. ADAMS shall be responsible for disposing or removal of personal property, equipment, scrap metal, vehicles, and all salvage materials at required intervals and at the end of the contract.
- e. ADAMS shall be responsible for disposing of tires including costs of disposal on an annual basis. No tires shall become a permanent part of the Rubble Site.
- f. ADAMS shall maintain a complete record keeping system, including but not limited to income statements, accounts receivable and daily usage logs. ADAMS shall provide a written quarterly report to the managing entity representing the CITIES on usage, quantity waste disposal, income, and expenses. These records shall also be made available to CITIES at CITIES request for review.
- g. ADAMS shall provide all necessary equipment for operation and maintenance of the Rubble Site. ADAMS is responsible for the year-round maintenance of all roads within the Rubble Site as well as access to and from the Rubble Site from Yellow Creek Road.

4. MECHANIC'S OR CONSTRUCTION LIENS:

- a. ADAMS shall not subject the Rubble Site to any mechanic's, materialmen or construction liens of any kind unless specifically approved in writing by CITIES.

5. INDEMNIFICATION:

- a. During the entire term of the contract, ADAMS shall indemnify and hold harmless CITIES against any and all claims, debts, demands, or obligations which may be made against ADAMS or against ADAMS' title in the Rubble Site arising out of, or in connection with, any alleged act or admission of ADAMS or any person claiming under, by or through ADAMS.
- b. If it becomes necessary for ADAMS to defend any action seeking and imposing liability, ADAMS will pay CITIES all costs of court and attorney fees incurred by CITIES in effecting such defense in addition to any other sums which CITIES may be called upon to pay by reason of the entry of a judgment against ADAMS.
- c. This indemnification is applicable only to ADAMS' operation and management of its rubble site, according to all federal, state, and local laws and regulations. ADAMS shall obtain comprehensive general liability insurance to cover the activities of ADAMS undertaken herein with the general limits of said coverage being Two Million and no/100s Dollars (\$2,000,000.00), or a combination of general liability policies totaling Two Million and no/100s Dollars (\$2,000,000.00). CITIES shall be added as an additional insured on said policy(ies) and ADAMS shall present proof of such insurance to the CITIES.

6. DEFAULT:

- a. If at any time a default shall be made by ADAMS in the performance of any obligation of ADAMS herein set forth, then it shall be lawful for CITIES to declare the contract term ended and to reenter upon the Rubble Site and take possession of the same under the terms and conditions herein provided.
- b. If the default occurs, and if CITIES shall so elect, they may declare this contract term ended by giving ADAMS thirty (30) days written notice specifying the event causing the default and ADAMS shall have thirty (30) days, after the date of receiving the notice, to cure such default.
- c. If not timely cured, this contract shall terminate; if timely cured, this contract shall continue.

7. HOURS OF OPERATION:

- a. The Rubble Site shall be open for use by the public Mondays through Saturdays during regular business hours (8:00 AM to 4:00 PM). ADAMS shall annually present CITIES the holiday schedule in conjunction with the Free Dump schedule.
- b. In the event of inclement weather (high winds, heavy rain, or snow), ADAMS may decide to close the Rubble Site for public safety and notify CITIES.

8. FREE DUMPING:

- a. Residents of CITIES and of Lawrence County shall be allowed free dumping four times per year, generally:
 - i. Near the end of March (free dump weekend);
 - ii. Mid-May (spring clean-up week);
 - iii. Late September (free dump weekend); and
 - iv. Early November (free dump weekend).

9. FEES:

- a. Fees shall be established by contract addendum and agreed to by both CITIES and ADAMS. Tipping fees may be adjusted pursuant to mutual agreements with CITIES and ADAMS, exclusive of these contract terms. CITIES will approve the rate of the fees.

10. SITE USAGE:

- a. CITIES have exclusive rights to harvesting timber, minerals, and other Rubble Site natural resources. ADAMS shall coordinate with CITIES to facilitate these operations as deemed necessary by CITIES.
- b. ADAMS may, with the approval of CITIES, engage in other appropriate, lawful, and permitted activities for income generation at the Rubble Site.
- c. ADAMS shall ensure the operations of the Rubble Site are conducted in a safe, efficient, and professional manner.

11. TERMINATION:

- a. At the termination of this contract, ADAMS will peaceably and quietly deliver possession of the Rubble Site within 180 days to CITIES.

12. QUIET ENJOYMENT:

- a. CITIES covenant and agree with ADAMS that so long as ADAMS keeps and performs all of the covenants and conditions by ADAMS to be kept and performed hereunder, ADAMS and his successors in interest shall have quiet and undisturbed and continued possession of the Rubble Site, free from any claims by CITIES or any persons or entities claiming thereunder.

13. FORCE-MAJEURE:

- a. In the event that CITIES or ADAMS shall be delayed, hindered in or prevented from the performance or any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, the act or failure to act of either party for said reason shall be excused for the period of delay necessitated by the above without either party being held accountable for the same.

14. WRITTEN MODIFICATIONS:

- a. No modifications, release, discharge, amendment, or waiver of any provisions hereof shall be of a force or effect unless reduced to writing and executed by all parties.

15. LAWS:

- a. The laws of the state of South Dakota in force and effect at the date of the execution of this contract shall govern and control the interpretation and application of this contract except where new laws or regulations mandate a modification to this contract in order to continue to perform the duties and obligations of either party hereunder, which the parties shall not unreasonably withhold consent to such modification pursuant to any new law or regulation mandating the modification hereto.

SIGNATURE PAGES

IN WITNESS WHEREOF, both parties have hereunto set their hands and seals the day and year first above written:

CITY OF LEAD

Dated this ____ day of _____, 2020.

By: _____
Ron Everett, Mayor

ATTEST:

John Wainman Jr
City Administrator

CITY OF DEADWOOD

Dated this ____ day of _____, 2022.

By: _____
David R. Ruth, Jr., Mayor

ATTEST:

Jessica McKeown
City Finance Officer

CITY OF CENTRAL CITY

Dated this ____ day of _____, 2022.

By: _____
Donovan Renner, President of Board of Trustees

ATTEST:

Print Name: _____
Title: _____

ADAMS SALVAGE RECYCLING AND RECOVERY

By: _____
Heather Anderson
Owner

State of South Dakota)
) SS
County of _____)

On this ____ day of _____, 2022, before me, the undersigned officer, personally appeared Heather, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

(SEAL)

My Commission Expires: _____

Notary Public