WASTE TRANSPORTATION AND DISPOSAL AGREEMENT

BETWEEN

THE CORPORATION OF THE CITY OF GUELPH

- and-

[INSERT NAME]

[Insert] 2013
WASTE TRANSPORTATION AND DISPOSAL AGREEMENT

THIS AGREEMENT is made as of the [insert] day of [insert], 2013 ("Agreement Start Date"), between THE CORPORATION OF THE CITY OF GUELPH ("City"), with an office located at 110 Dunlop Drive, City of Guelph, and [Insert name], with an office located at [insert] (the "Contractor") (each separately a "party" and together the "parties").

WHEREAS the City wishes to procure cost-effective and environmentally appropriate transportation and disposal services for certain waste, in accordance with the requirements of the request for proposals ("RFP");

AND WHEREAS the Contractor has submitted a proposal in response to the Request for Proposals for the haulage and disposal of solid waste, issued January [insert], 2013, and was identified as the highest-ranked proponent;

AND WHEREAS the Contractor is authorized to enter into this Agreement, in accordance with the provisions of section 6.1 (Representations and Warranties of Contractor) of this Agreement;

AND WHEREAS City Council has authorized the execution of this Agreement;

NOW THEREFORE in consideration of the premises and the terms and provisions set forth in this Agreement, the parties agree as follows:

ARTICLE 1. INTERPRETATION

1.1 Definitions

In this Agreement:

"Agreement" means the combination of the following:

(a) the main body of the Agreement (articles 1 to 23);

(b) the Schedules to the Agreement; and

(c) any and all appendices, attachments or amendments to the foregoing, as may be agreed to by the parties in the manner described in the Agreement.

"Agreement Start Date" means the day that this Agreement is made, as noted in the recitals to the Agreement;

"Applicable Law" or "Applicable Laws" includes any Permit as defined herein, and includes all applicable statutes, guidelines and policies; regulations; bylaws; and ordinances of Canada, the Province of Ontario, the City or other governmental entities or agencies having jurisdiction over the Project that applies to the Project;
"City Representative" has the meaning ascribed thereto in section 5.3;

"Commencement Date" means [insert date], when the Contractor begins the haulage and/or disposal of waste from the Transfer Station;

"Confidential Business Records" means all trade secrets, proprietary plans, and financial data reasonably designated by the City, and the ideas and information contained therein that the Contractor makes available to the City for purposes of this Agreement;

"Consumer Price Index" or "CPI" means the Consumer Price Index for Ontario. All items, as published by Statistics Canada or a comparable successor to such price index should be the Consumer Price Index for Ontario. All items, be discontinued in its present form;

"Contingency Disposal Site" means the [insert name of site], or such alternative disposal site(s) as the Contractor may propose and the City may approve, which approval shall not be unreasonably withheld;

"Contract Year" means the period starting from the Commencement Date and the subsequent 12 month period, and each and every subsequent 12 month period until the expiry of the Term;

"Contractor" means [insert];

"Contractor Representative" has the meaning ascribed thereto in section 5.2;

"Disposal Site" means the site at [insert address];

"Dispose" or "Disposal" means all work, services or operations performed by the Contractor and its contractors, subcontractors and agents pursuant to this Agreement to receive and properly dispose of Waste at the Disposal Site;

"Dispute" shall have the meaning ascribed to such term in section 17.3;

"Extension Period" shall have the meaning attributed to such term in Article 20;

"Facilities" or "Facility" means the Trailers, the Trucks, the Disposal Site and associated equipment that is leased, operated or used by the Contractor, its contractors, subcontractors and agents to carry out the provisions of this Agreement, but shall not include any property owned by the City, including, without limitation, the Transfer Station or any portion them;

"Harmonized Sales Tax" or "HST" means the tax imposed under Part IX of the Excise Tax Act, R.S.O. 1985, R.S.O. c. E15, as amended;

"Hazardous Waste" shall have the meaning attributed to such term in Ontario Regulation 347 R.R.O. 1990, as amended;

"Indemnitee" and "Indemnities" has the meaning ascribed thereto in sections 13.1 and 13.2;

"Municipal Waste" means municipal waste as defined in Ontario Regulation 347, R.R.O. 1990, as amended, and waste specifically listed on Schedule 1.2 (subject to the terms and conditions in Schedule 1.2), but does not include any Unacceptable Waste;

"Payment Terms" means any payment made to the Contractor by the City pursuant to this Agreement;
"Permits" means any temporary and/or permanent permits, approvals, licences, notices, customs documents, certificates, inspection fees, surcharges or other approvals required under Applicable Law;

"Person" or "Persons" means, without limitation, any individual, firm, corporation, association, partnership, consortium, joint venture, entity, government, government agency or unit of local government;

"Project" means any and all matters and things that this Agreement requires to be done, kept, performed and furnished by the Contractor, and includes the Services;

"Records" means all documents, reports, tables, financial records including scale tickets, landfill ticket registers, customer billing summaries, copies of invoices, cheques, cheque registers, letters or other written material, including electronic material or computer entries, prepared by or in the possession of the Contractor, its contractors, subcontractors or agents, that relates to any of the Facilities or Services;

"Regulatory Action" means any proceeding or action taken, or order or directive made, by a Regulatory Authority pursuant to Applicable Law;

"Regulatory Authority" means any agency or other governmental authority or instrumentality, including federal, provincial, local authorities and any court having jurisdiction or authority over the Project or the Facilities, including, without limitation, the Ontario Ministry of the Environment;

"Representative" means, depending on the context, the authorized representative of the City or the Contractor designated Article 5;

"Services" means the services required to be provided by the Contractor in accordance with the requirements of this Agreement;

"Service Fee" means the amount the City pays the Contractor in consideration for the performance by the Contractor of the Services under this Agreement, as more particularly set out in Article 10;

"Specifications" means the specifications, standards and other requirements issued by the City for the Project attached as Schedule 1.1 and incorporated herein by this reference;

"Term" means the time duration of this Agreement determined in accordance with Article 20, and includes any Renewal Period;

“Tractor” means any tractor used for the Transportation of Transfer Station Waste;

"Trailer" or "Trailers" means any transfer trailer used for the Transportation of Transfer Station Waste;

"Transfer Station" means the transfer station operated by the City at 110 Dunlop Drive, Guelph, or such other transfer station as the City and the Contractor agree to substitute;

"Transfer Station Waste" means any Municipal Waste which the City collects directly or indirectly from residences and businesses and any waste material collected by the City or otherwise delivered to the Transfer Station, but does not include Unacceptable Waste;

"Transport", "Transporting" or "Transportation" means the handling, hauling and unloading of Waste, using the Trailers, Trucks and other equipment for the transport of the Transfer Station Waste under this Agreement;
Draft Jan 7, 2013

"Truck" or "Trucks" means any truck used for the Transportation of Transfer Station Waste;

"Uncontrollable Circumstances" means any event or condition beyond the reasonable control of the parties including, without limitation: riots, wars, civil disturbances, civil disobedience, insurrections, acts of terrorism, interference by third parties, epidemics, landslides, volcanic eruptions, tornadoes, earthquakes, explosion, floods, fire, collapse, underground damage or lightning, but does not include the adoption or change, including a change in interpretation or enforcement that has the effect of a change of law of any provincial, federal, or local law, rule, permit or regulation, and the date of this Agreement, adversely affecting a party's obligations hereunder; the institution of a legal or administrative action, or similar proceeding, by any Person; closure of any transportation route that materially restricts the Transport of Waste as required under the Agreement; Canadian federal law or Ontario law relating to the Transport of Waste to the Disposal Site; for certainty, the occurrence of a strike or similar work stoppage does not constitute an "Uncontrollable Circumstance".

"Unacceptable Waste" means highly flammable substances, Hazardous Waste, liquid waste, pathological and biological waste, explosives, radioactive materials, and materials not permitted for disposal under Applicable Laws, and excludes waste acceptable under Applicable Law at the Transfer Station;

"Vehicles" or “Vehicle” means Trucks, Tractors and Trailers; and

"Waste" means the Transfer Station Waste.

1.2 General

(a) Words importing one gender shall include the other gender.

(b) Words in the singular shall include the plural and vice versa.

(c) Headings are for ease of reference only and shall not affect the construction of the Agreement or be deemed to be part of the Agreement.

(d) In this Agreement, the word ‘persons’ includes corporations, limited liability companies, partnerships, joint ventures, trusts, associations, individuals, unincorporated organizations, or governmental agencies; references to statutes, Sections, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statute, Section, or regulation referred to.

(e) The words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; and words importing only the singular include the plural and vice versa when the context requires.

(f) Each party to this Agreement has participated in the drafting of the Agreement and, in the event of any dispute over its meaning or application, it shall be interpreted fairly and reasonably, and neither more strongly for or against either party.

(g) Unless otherwise specified in the Agreement, words describing material or work having a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by solid waste professionals, transportation professionals, engineers and trades.
(h) References to the personnel, staff and managers of the Contractor shall include references to all persons engaged by the Contractor in the performance of the Contractor's obligations and shall (if the context so permits) include references to the personnel and managers of any sub-contractor of the Contractor.

(i) References to the personnel, staff and managers of the City shall include references to all persons engaged by the City and shall (if the context so permits) include references to the elected representatives of the City.

(j) References to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order regulation or instrument.

(k) The Agreement was drafted based on the Request for Proposals, the proposal submitted by the Contractor in response thereto, and upon the negotiations that took place between the parties to settle upon the final language of the Agreement. The parties agree that any claim to apply the rule interpretation known as *contra proferentum* in respect of any dispute arising or interpretation required in relation to the Agreement shall be decided based on a full consideration of the process used to arrive at the Agreement.

(l) Unless expressly stated otherwise in the Agreement, the cost of performing the services described in this Agreement, including all of the related requirements and obligations set out in the Agreement, and including performance by the Contractor in accordance with any direction, instruction or request from the City Representative, shall be the responsibility of the Contractor.

(m) Under the Agreement, the City shall be authorized to subcontract any of its responsibilities, as the City may determine, provided the City will make reasonable efforts to avoid retaining a third-party competitor to the Contractor.

(n) Where, under the Agreement, the City is required to, or choses, to make a decision, at all times, it shall be the case the such decision shall be within the entire discretion of the City, unless otherwise expressly indicated.

(o) Where under the Agreement the Contractor is required to perform any obligation, the Contractor shall at all times comply with the requirements of the Certificates of Approval applicable in the circumstances.

(p) Where the parties are required to apply any judgment or otherwise make any determination in respect of their rights and obligations under the Agreement, either separately or jointly, each party hereby agrees to act reasonably in the circumstances.

**ARTICLE 2. GENERAL PROVISIONS**

2.1. **Governing Law**

This Agreement is made in, and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to Article 17 herein, each party hereby irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of Ontario with respect to any matter arising hereunder and related hereto.

2.2. **Severability**
If any provision in this Agreement or part thereof is void, invalid or unenforceable under any Applicable Law, the remaining provisions of the Agreement shall remain in effect and bind the parties; however, the parties shall negotiate in good faith to amend the Agreement to give effect to the intent of any void, invalid or unenforceable provision, if permissible under Applicable Law.

2.3. Article Section and Subsection References

Any Article, section or subsection mentioned in this Agreement by number only, without reference to another document, refers to such Article, section or subsection contained in this Agreement.

2.4. Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian currency.

2.5. Time of the Essence: Waiver

Time is of the essence of this Agreement. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term, but such waiver shall be effective only if it is in a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided in this Agreement, no delay or omission on the part of any party in exercising any right or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver of the part of any party of any right or privilege under this Agreement operate as a waiver of any other right or privilege under this Agreement nor shall any single or partial exercise of any right or privilege preclude any other or further exercise thereof or the exercise of any other right or privilege under this Agreement.

2.8. Accessibility for Ontarians with Disabilities Act, 2005

The Contactor shall comply with all Applicable Laws, including the Accessibility for Ontarians with Disabilities Act, 2005, and regulations thereto, and the Contractor shall ensure that its officers, employees, subcontractors and agents receiving adequate training in accordance with the requirements of section 56 of Ontario Regulation 429/07.

2.9. Access

The City shall have the right, upon reasonable notice, to inspect the Facilities and upon 30 calendar day’s prior written notice to inspect the Records related to this Agreement; however, the City's access to Records under this section shall be subject to the confidentiality provisions of section 8.1. The City shall have access to the Contractor and its subcontractors' operations and Records related to this Agreement at any and all times, upon reasonable notice during normal business hours or, when there is activity of any kind, at those Operations or Facilities related to this Agreement.

2.10. No Third Party Beneficiaries

This Agreement is entered into by the City in its capacity and is not intended to nor does it create any third party beneficiary or rights in any private Person except as otherwise expressly set out herein.

2.11. Personal Liability
This Agreement is not intended to create or result in any personal liability for any elected or public official, or City employee, agent, employee, or representative of the City nor any liability for any officer, director, agent, employee, or representative of the Contractor, nor shall the Agreement be construed to create any such liability, as described in this provision.

2.12. Subsidiary Contracts

No agreement, expressed or implied, between the Contractor and its subcontractors, officers, employees or agents, including all contracts relating to the use, lease, operation or ownership of the Facilities, shall prevent the Contractor from performing its obligations under this Agreement.

2.13. Amendment or Waiver

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written document signed by the parties.

2.14. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by any party hereto or its directors, officers, employees or agents, to any other party hereto or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any such warranty, representation, opinion, advice or assertion of fact, except to the extent aforesaid.

2.15. Notices

(a) Except as may otherwise be expressly provided herein, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a party to the other party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally, by facsimile, by email or by means of registered or certified mail, postage prepaid, to the City Representative or the Contractor Representative, as the case may be, at their respective; addresses as set forth below.

(b) For all purposes of this Agreement, any such approval, request, report, notice, communication or other material or information which is delivered by certified mail, return receipt requested, in accordance with this section shall be deemed to have been delivered when signed by recipient, or if delivered by facsimile shall be deemed to be delivered as of the next business day following the date of transmission that is confirmed by a facsimile transmission report; or if delivered by email, shall be deemed to be delivered on received a delivery message confirmed receipt by the other party.

(c) All notices, requests and other formal communications to either party under this Agreement shall be in writing and shall be given to the parties at the following addresses, or such other addresses as any party may hereafter designate, by 30 calendar days written notice to the other party:

If to the City:

The Corporation of the City of Guelph
ARTICLE 3. INDEPENDENT CONTRACTOR

3.1. Contractor as Independent Contractor

The Contractor shall perform all work under this Agreement as an independent contractor. The Contractor is not and shall not be considered an employee, agent, subagent or servant of the City under this Agreement or otherwise. The Contractor's subcontractors, employees or agents are not and shall not be considered employees, agents, subagents or servants of the City under this Agreement or otherwise.

3.2. Contractor Control of Project

The Contractor shall have the exclusive right, and shall be obliged, to control the Services and the Persons performing the Services. The Contractor shall be solely responsible for the acts and omissions of its directors, officers, agents, employees, contractors and subcontractors. Nothing in the Agreement shall be construed as creating a partnership or joint venture between the City and the Contractor; or giving the City a duty to supervise or control the acts or omissions of any Person performing services or work under the Agreement, except as expressly required in this Agreement.

ARTICLE 4. SUBCONTRACTORS

4.1. Use of Subcontractors

The Contractor may subcontract any of its obligations under this Agreement, with the prior written consent of the City, which shall not be unreasonably withheld, and which may be given on such reasonable conditions, including with respect to subcontractor insurance, as the City reasonably deems appropriate. Any use of subcontractors hereunder shall not limit the Contractor obligations to perform under this Agreement or in any way relieve the Contractor of its obligations under this Agreement.

4.2. Assignment of Subcontracts

Except as is provided in this section, all contracts between the Contractor and its subcontractors for services and work under this Agreement shall contain a clause that provides that if the Contractor defaults in the performance of its obligations under the Agreement, the subcontract may be assigned to the City, at the City's option, and, if the City accepts assignment of the subcontract, the subcontractor shall recognize and accept such assignment.

ARTICLE 5 CONTRACTOR AND CITY REPRESENTATIVES

5.1. Representatives
The Contractor and the City shall, respectively, designate and provide for the Tern the services of a competent representative for each party.

5.2. **Contractor Representative**

The Representative of the Contractor shall be either of [insert], the [insert job title] or [insert], the [insert] ("the Contractor Representative") who shall represent the Contractor for all purposes of this Agreement. The Contractor Representative shall have authority to act on behalf of the Contractor. The Contractor Representative's statements, representations, actions and commitments shall fully bind the Contractor, subject to the requirements of this Agreement.

5.3. **City Representative**

Unless the City notifies the Contractor in writing of a replacement representative, the City's representative shall be the General Manager, Solid Waste Resources or the Directors designated in writing (the "City Representative") for all purposes of this Agreement. The City Representative's statements, representations, actions and commitments shall fully bind the City to the extent permitted by Applicable Law including, without limitation, all City Council resolutions, subject to the requirements of this Agreement.

Any reference in this Agreement to a consent, approval, request, designation, waiver or specification of the City or to the exercise of any judgment or discretion in favour of the City shall be deemed to be sufficiently given or exercised if given by or exercised by the City Representative in accordance with the terms of this Agreement.

5.4. **Change in Representative**

A party may change its respective representative upon 10 calendar day's written notice to the other party given in accordance with section 2.15.

**ARTICLE 6. REPRESENTATIONS AND WARRANTIES**

6.1. **Representations and Warranties of Contractor**

The Contractor hereby makes the following representations and warranties to and for the benefit of the City:

(i) **Duly Organized and Qualified to do Business:** The Contractor exists as a corporation under the laws of the Province of Ontario, and it is duly qualified to carry out its obligations hereunder.

(ii) **Authorization to Perform:** The Contractor has the full legal right, power and authority to execute and deliver, and perform its obligations under this Agreement, and execution and delivery of this Agreement has been duly authorized by all necessary action, corporate or otherwise. This Agreement has been duly executed and delivered by the Contractor and constitutes a valid and binding obligation of the Contractor enforceable against the Contractor: in accordance with its terms, subject to bankruptcy and other laws of general application and equitable principles.

(iii) **Skill and Ability:** The Contractor has the skill, ability and experience to perform its obligations pursuant to this Agreement.
6.2. Representations and Warranties of City

The City hereby makes the following representations and warranties to and for the benefit of the Contractor:

(a) **Duly Organized:** The City has full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) **Execution of Agreement Authorized:** The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

(c) **No Conflict with Applicable Law:** Neither the execution and delivery by the City of this Agreement, the City’s performance of its obligations hereunder nor its fulfillment of the terms and
conditions hereof conflicts with, violates or results in a breach of any Applicable Law, or conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound or constitutes a default there under, and no action by the Contractor related to the negotiation, execution or delivery of the Agreement has in any way induced any such breach or default by the City.

(d) **Necessary Approvals Obtained:** The City has obtained or made application for or will make application for all approvals, authorizations, licenses, permits, orders or consents of; or declarations, registrations or filings with, any governmental or administrative authority, commission, board, agency or instrumentality required for the valid execution and delivery of this Agreement by the City.

(e) **No Litigation:** There is no action, suit, proceeding or, to the best of the City's knowledge, investigation, at law or in equity, before or by any court or governmental or administrative authority, commission, board, agency or instrumentality pending or, to the best of the City's knowledge, threatened, against the City, in which an unfavourable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance of the City's obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or any instrument entered into by the City in connection with the transactions contemplated herein.

(f) **Skill and Ability:** The City has the skill, ability and experience to perform its obligations hereunder.

**ARTICLE 7. CONTRACTOR RESPONSIBILITIES**

**7.1. General**

Without limiting any other provision of this Agreement, the Contractor's responsibilities pursuant to this Agreement, and in particular the Specifications, include the following:

a) the Transportation of the Transfer Station Waste from the Transfer Station to the Disposal Site, and;

b) the disposal of the Transfer Station Waste at the Disposal Site.

**7.2. Commencement of Services**

(a) From the Commencement Date, the Contractor shall ensure the Transportation and Disposal of the Transfer Station Waste delivered to the Contractor at the Transfer Station, pursuant to this Agreement. Except as provided in Sections 9.3(d), 9.3(e) and 9.3(1), there shall be no restriction or limitation on the volume of Waste which the Contractor shall accept for Transportation and Disposal pursuant to this Agreement.

(b) The Contractor shall be responsible for all costs that may be associated with any legislative or regulatory changes that may affect the Contractor responsibilities under this Agreement, including all costs that may be associated with any necessary modifications to any Facilities, including any aspect of the Transportation or Disposal of the Waste.
7.3 Disposal Site

(a) **Standard of Performance:** The Contractor shall operate the Disposal Site and perform its obligations hereunder (i) in accordance with Applicable Law and all Permits and (ii) in a professional and competent manner in accordance with the best practices of the waste management industry.

(b) **Maintain:** The Contractor at its sole expense shall maintain the Disposal Site in good and accessible condition, and accept Transfer Station Waste for disposal therein during the hours of 6:00 a.m. and 5:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 p.m. Saturday and such other times as may be agreed in writing between the parties. It is acknowledged that for operational reasons the Contractor will schedule the transportation of Waste to ensure that the last daily loads arrive at the Disposal Site at a suitable time prior to the 5:00 p.m. and 12:00 p.m. times mentioned above.

(c) **Liens:** The Contractor shall pay or ensure payment of any lien or encumbrance filed against the Disposal Site or any real or personal property used by the Contractor including, without limitation, any federal or provincial or local tax or environmental liens, workers' compensation assessments, creditors' liens, construction or mechanics' liens, or charges, the existence of which would materially impair its Disposal obligations under this Agreement.

7.4 Permits, Licences, Fines and Orders

(a) **Permits and Licences:** The Contractor shall obtain, maintain and pay for, at its sole expense, all Permits required by Applicable Laws for Transportation and Disposal, operations and activities under this Agreement at the Disposal Site. Within 30 calendar days of the date of execution of this Agreement, the Contractor shall provide to the City a list of all Permits required for operation of the Disposal Site, designating the issuing agency and the dates of issuance and expiration of those Permits, a copy of all current permits and the Contractor's schedule for obtaining or renewing all Permits required during the Term of the Agreement.

(b) **Responsibility for Fines, Penalties, and Orders:** The Contractor shall be solely liable for all fines or civil penalties and any other orders, directives, requirements and the like that may be imposed by any court or Regulatory Authority for any violations of or pursuant to Permits or any Applicable Laws resulting from the Transportation and/or Disposal by the Contractor pursuant to this Agreement.

7.5 Financial Assurance and Closure and Post-Closure

(a) **Closure and Post-Closure Costs:** The Contractor shall be responsible for all closure and post closure costs relating to the Disposal Site.

(b) **Closure and Post-Closure:** The Contractor shall provide and assure proper closure and post-closure maintenance of the Disposal Site in accordance with the laws of the Province of Ontario, and applicable Permits, and other Applicable Law.

(c) **Financial Assurance:** The Contractor shall at all times maintain all financial assurance required by the Ontario Ministry of the Environment and any other Regulatory Authority.

7.6 Right to Inspect
Notwithstanding section 2.9, the Contractor shall permit the City and its representatives to inspect the Disposal Site at any time during regular business hours, and with 24 hours advance notice. The Contractor shall further permit the City, at mutually agreed times, to bring groups of up to 20 individuals per group to the Disposal Site, on a minimum 7 calendar days advance notice.

7.7 Environmental Management System

The Contractor shall develop, document and implement an environmental management system consistent with good standards of the waste disposal industry prior to the Commencement Date, or as soon thereafter as possible. Such environmental management system shall include, without limitation:

(i) a formal environmental policy statement;
(ii) a clear specification of staff responsibilities and accountabilities;
(iii) a formal training program for staff;
(iv) appropriate written procedures;
(v) objectives and targets to improve environmental performance;
(vi) monitoring programs to document and measure performance;
(vii) an annual audit of the Facility performance;
(viii) ongoing senior management review of conformance to regulatory requirements; and
(ix) associated response to the issues and commitment to continuous improvement.

7.8. Performance Bond/Letter of Credit

(a) The Contractor shall provide to the City and maintain for the duration of the Term a performance bond in the total amount of One Million Dollars ($1,000,000.00) from a bonding company licensed to sell bonds in Ontario, satisfactory to the City (See Form 7.8(a)). The performance shall be provided within 10 calendar days from the Agreement Start Date.

(b) In the event that the Contractor does not provide the performance bond as stipulated in the above provision, the City shall be entitled to terminate the Agreement forthwith, and for this purpose the Contractor shall not be entitled to avail itself of any of the remedies prescribed in this Agreement or of any other as might be available at law or in equity.

(c) In lieu of providing a performance bond, the Contractor may provide an irrevocable letter of credit in the amount of one million dollars ($1,000,000), drawn on a Schedule A Canadian Chartered Bank, made payable to the "Corporation of the City of Guelph". Such Irrevocable Letter of Credit shall clearly state that the bank agrees it will not notify its customer of any demand until after payment is made to the City.

7.9. Taxes and Fees

Payment of Taxes and Fees: The Contractor shall be responsible and liable for payment of all applicable federal, provincial, and local taxes and fees (including the Harmonized Sales Tax and surcharges, but excluding taxes and fees payable to or imposed by the City that are taxes specific to waste management
and not of general application), that now or hereafter apply to any and all Persons, property, include, equipment materials, supplies, structures or activities that are involved in the performance or Transportation and Disposal services pursuant to this Agreement (excluding properly owned by the City) including but not limited to, any increases in same and any income taxes, workers' compensation charges, real property taxes, excise, sales and use taxes and fees, that arise from the Transportation and Disposal services in connection with this Agreement.

7.10 Scheduling: Management: Quality of Performance

(a) Schedule of Work: The Contractor shall co-ordinate, schedule in an orderly manner and manage all work done by its officers, employees, subcontractors and agents under this Agreement.

(b) Waste Haul Routes: The City shall designate waste haul routes for Trucks travelling to and from the Transfer Station, within its geographic boundaries, the Contractor shall ensure that all Trucks used pursuant to this Agreement use those waste haul routes and no other roads, except with prior written approval of the City's Representative.

(c) Standard of Performance: The Contractor shall perform its obligations under this Agreement (i) in compliance with all Applicable Laws and Permits and (ii) in a skilful and competent manner in accordance with the usual practices of the waste management industry.

7.11 Records Monthly Report

(a) Record-Keeping: The Contractor shall keep, during the Term and for seven years following termination or expiration of this Agreement, all documents related to Transportation and Disposal under this Agreement and accurate records of all Transportation and Disposal transactions connected with this Agreement including, but not limited to, all correspondence and invoices, transaction tickets or receipts issued at the Transfer Stations and the Disposal Site, the Contractor shall at all times maintain its accounts for all of the Transportation and Disposal services in accordance with any applicable generally accepted accounting principles consistently applied.

(b) Monthly Reporting: The Contractor shall provide to the City, by the [insert] day of each month, a written report for the preceding calendar month summarizing the following information:

   (i) any complaints submitted to the Contractor by third parties including, without limitation, any written notice from any Regulatory Authority regarding the Disposal Site or Transportation or Disposal of the Waste hereunder and the summary response, if any;

   (ii) any extraordinary occurrence affecting the Contractor performance of its Transportation and Disposal services under this Agreement including but not limited to occurrences affecting either;

   (iii) documentation regarding Unacceptable Waste, if any, gathered and/or returned as required in Article 12; and

   (iv) a detailed list of any and all material safety and environmental violations at the Disposal Site or in Transporting the Waste hereunder.

(c) Annual Reporting: The Contractor shall provide to the City, by [insert] in each calendar year during the term of this Agreement, or as soon thereafter as possible, an annual report, including the following information:
(i) for the Disposal Site, an annual report on the performance of the environmental management system and on the Disposal Site's environmental performance;

(ii) a copy of the minutes for the Disposal Site's Public Liaison Committee for the previous year;

(iii) a calculation of the Disposal Site remaining capacity, and a description of the implications of the remaining capacity to the Disposal Site's closure and post closure care programs;

(iv) all information required by Articles 8.4 and 8.5 that is necessary to provide the City with the annual updates of the Alternative Operations Plan (Contingency Plan) and the Emergency Operations Plan; and

(v) any other information required by this Agreement to be provided on an annual basis. the Contractor shall also make available for inspection by the City within 120 calendar days after its fiscal year end all annual financial statement prepared in accordance with generally accepted accounting principles.

ARTICLE 8. OTHER RESPONSIBILITIES OF CONTRACTOR

8.1. Regulatory Correspondence Confidential Business Records: Applicability

(a) The City shall have the right to inspect copies of all correspondence or any other documents received by the Contractor or its subcontractors from a Regulatory Authority related to the Contractor or its subcontractors' compliance with any Applicable Law under this Agreement.

(b) Confidential Business Records: Designation Procedure

(i) The Contractor may designate documents as Confidential Business Records; documents reasonably designated as such shall remain the exclusive property of the Contractor or its subcontractors.

(ii) If documents are designated as Confidential Business Records, and the Contractor is not willing to provide such documents to the City, they shall be inspected by an independent accountant or other third party designated by the City and approved by [insert], acting reasonably. The third party selected shall determine whether the documents are relevant to the Contractor or its subcontractors' compliance with this Agreement, or with Applicable Law or Permits. If the third party determines that the documents are relevant, then the City may inspect the documents. For documents that contain both relevant and irrelevant information, the third party may delete any irrelevant information.

(iii) Except as required by law or as otherwise authorized by [insert], the City shall not disclose the information contained in documents or knowingly permit any Person to examine documents designated as Confidential Business Records unless that Person is an employee, consultant, lawyer or other agent of the City examining those documents for purposes of this Agreement or unless disclosure is made to City councillors on a confidential basis in any report to the City Council or Standing Committees. If required by law to disclose documents designated as Confidential Business Records, the City shall, if practical, notify the Contractors before that disclosure.
(iv) Nothing in this section 8.1 shall be interpreted to require the City to resist the disclosure of any documentation where the City believes that such disclosure is required by law.

(c) **Public Release of Agreement:** Notwithstanding any other section of this Agreement, the Contractor and the City agree that this Agreement is not a Confidential Business Record and, subject to Applicable Laws, may be disclosed to the public, as may be determined by the City.

**8.2. Payment of Subcontractors and Agents**

Unless a reasonable dispute exists concerning payment, the Contractor shall promptly pay all subcontractors, suppliers or labourers engaged for purposes of this Agreement in accordance with the agreement between that Person and the Contractor. Notwithstanding Article 11, a reasonable dispute concerning payment to such Person shall be no excuse for a delay by the Contractor in performing its obligations hereunder and shall in no way absolve the Contractor of its obligations under this Agreement.

**8.3. Workers' Right**

(a) The Contractor shall be solely responsible for all of its employees, agents, subcontractors or others working on the Project with respect to any and all obligations pursuant to the Occupational Health and Safety Act, R.S.O. 1990, c. O. 1, as amended.

(b) Within 30 calendar days of the Agreement Start Date and thereafter on an annual basis and on completion of the Term, the Contractor shall provide to the City a current "Certificate of Clearance" from the Workplace Safety and Insurance Board that there are no outstanding assessments against the Contractor under the Workplace Safety and Insurance Act S.O. 1997, c. 16, Schedule A, or successor legislation. In the event that the Contractor fails to provide such Certificate of Clearance, as required herein, the City shall be entitled to terminate the Agreement forthwith, on a date to be determined by the City.

(c) The Contractor shall not discriminate against any of its employees or any applicants for employment because of race, religion, creed, colour, sex, marital status, family status, receipt or public assistance, sexual orientation, gender identity, political ideology or affiliation, ancestry, place of origin, ethnic origin, citizenship, or the presence of any sensory, mental or physical handicap, age or level of literacy, unless based upon a bona fide occupational qualification.

**8.4. Contingency Plan**

(a) No later than 30 calendar days from the Agreement Start Date, the Contractor shall provide to the City a comprehensive Contingency Plan designed to mitigate and correct hazards that may arise due to accident or disruption of the Transportation and Disposal of Waste under this Agreement, including: damage to property, the interruption of traffic along Transportation routes, release of hazardous or dangerous materials and the release or any Waste.

(b) The Contingency Plan shall also include:

(i) procedures and a schedule for identifying the City and the appropriate federal, provincial or local authorities of emergency conditions;

(ii) a description of the actions that the Contractor's operating personnel shall take in response to the emergency conditions;
(iii) a description of the location of any alternative disposal site, and the amount of capacity available to the City;

(iv) evidence acceptable to the City of the existence of a plan setting forth the services that will be rendered by each local emergency response agency in the event of an emergency; and;

(v) a description of the potential and/or perceived risks to the City and to the services contracted for that may relate to any aspect of the Contingency Plan.

(c) The Contingency Plan shall be updated by the Contractor and submitted for the City's review on an annual basis, on or before the anniversary date of the Agreement. If no changes have occurred since the last plan was submitted that affect any part of the plan, a report stating that fact and signed by the Contractor Representative shall be sufficient to satisfy the annual update required under this provision.

(d) Nothing in this Agreement, including the City's review or acceptance or the Contingency Plan, shall diminish the Contractor's responsibility for complying with all Applicable Laws and Permits for Transporting, Disposing and otherwise handling the Waste in the event of an emergency.

(e) The Contractor shall implement all or part of the Contingency Plan, as it deems necessary, to ensure its obligations under this Agreement are met on a timely basis.

ARTICLE 9. RESPONSIBILITIES OF THE CITY

9.1. Commencement of Services

From the Commencement Date, the City shall deliver or cause to be delivered to the Contractor the Waste pursuant to sections 9.3(a) and 9.3(b);

9.2. Scheduling; Management; Performance

(a) Schedule of Work. The City shall co-ordinate, schedule in an orderly manner and manage all work done by its officers, employees, subcontractors and agents under this Agreement.

(b) Standard of Performance. The City shall perform its obligations under this Agreement in a manner that least intervenes with the obligations applicable to the Contractor under this Agreement, and in accordance with all Applicable Laws and Permits.

9.3. Tonnage

(a) Projected Tonnage and Composition of Waste: The City currently projects average tonnage per Contract Year and composition of Waste to be hauled and disposed by the Contractor as outlined in the following table:

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<tr>
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<th>Residential Solid Waste</th>
<th>Dry Recyclable and Composter Waste</th>
<th>Industrial Commercial &amp; Institutional</th>
<th>Total</th>
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(b) No Guarantee: Subject to section 9.3(b), the City does not guarantee that the composition, quality or quantity of Waste will not change over the Term, as seasonal fluctuations may come into play, among other factors. This is not a "put or pay contract". All references to "year" in the table above mean "Contract Year"

(c) Minimum Tonnage: The City shall deliver to the Contractor at the Transfer Station a minimum of 20,000 tonnes of Transfer Station Waste per each Contract Year.

(d) Reduction in Minimum Tonnage: In the event that the City uses other methods or Persons to dispose of Waste pursuant to section 11.3, the number of tonnes so disposed shall be deducted from the minimum number of tonnes that the City is required to provide pursuant to section 9.3(b),

(e) Additional Tonnage:

(i) In the event that the City wishes to increase the rate or quantity of delivery or Waste to be Transported and Disposed pursuant to this Agreement beyond the projected total of 107,500 tonnes per Contract Year, the City shall prepare and deliver to the Contractor, in advance, a written request to that effect; and

(ii) The Contractor may agree to accept to Transport and Dispose such requested additional tonnage or part thereof, under this Agreement, and shall provide the City with a written confirmation of acceptance or refusal; however, nothing in this Agreement shall be construed as to require the Contractor to accept such additional tonnage at any time under this Agreement.

(f) Origin of Transfer Station Waste:

(i) Acknowledgment: The Contractor acknowledges that the City may accept waste from other municipalities.

(ii) Annual Report: Commencing from [insert], the City shall provide the Contractor with an annual report by [insert] that documents the City's compliance with sections 9.3(e)(i) and 9.3(e)(ii) during the preceding Contract Year. These annual reports shall include all necessary information to allow for the Contractor to independently verify that there has been compliance with these two sections. It is agreed that the City's actual experience with residue rates for similar but different waste streams shall be an acceptable basis for determining compliance. The Contractor hereby agrees that any information received from the City or its agents in any such annual report, including but not limited to personal information, shall be treated as confidential and that the Contractor shall ensure; that such information is not disclosed except to the extent as may be required to an employee, consultant, or other agent for the sole purpose of determining compliance with clauses 9.3(c)(i) and 9.3(e)(ii) of this Agreement, or unless such disclosure is ordered by a court of competent jurisdiction. The Contractor shall ensure that any information from such annual reports is disclosed to any employee, consultant or other agent in accordance with this clause, that all reasonable steps are taken to ensure that the employee, consultant or other agent uses the information only for the purpose of determining compliance with this clause and does not disclose the information to any other party except in accordance with the order of a court of competent jurisdiction. In the event that the Contractor is not satisfied that the information included in any annual report is sufficient to determine compliance, as set out here in, the Contractor may advise the City in writing within 60 calendar days of receipt of any such annual report that it requires certain
additional specified information in order to be so satisfied. In that event, the City agrees that it shall either provide the Contractor with such requested information (which shall also be subject to the above confidentiality restrictions) or, alternatively if the City prefers, the City may engage an independent auditor to review the necessary information and to certify to the City and to the Contractor whether there has been compliance with sections 9.3(e)(i) and 9.3(c)(ii) and to certify the extent of non-compliance, if any, and the conclusions of the auditor in this regard shall be final and binding on both parties.

9.4. Cooperation

The City and the Contractor shall use reasonable efforts to cooperate with each other and to respond to each other’s reasonable requests for information and assistance, consistent with the provisions of this Agreement.

9.5 Permits and Licences

(a) Permits and Licences. The City shall obtain, maintain and pay for, at its sole expense, all Permits for the operation of the Transfer Station and any others necessary for the City to comply with its obligations under this Agreement.

(b) Responsibility for Fines, Penalties and Orders. The City shall be solely liable for all fines or civil penalties and any other orders, directives, requirements and the like that may be imposed on the City by any court or Regulatory Authority for any violations of or pursuant to Permits or any Applicable Laws resulting from the City’s operation of the Transfer Station.

ARTICLE 10. SERVICE FEE

10.1. Calculation of Service Fee Paid to the Contractor by the City

The City shall pay to the Contractor in accordance with the procedures set forth in this Article, a Service Fee for the Contractor's performance of its obligations under this Agreement. The Service Fee (exclusive of HST) shall be calculated as follows: (i) the total of the number of tonnes of Transfer Station Waste Transported and Disposed of under this Agreement during the prior month times $______(the Service Fee of $_____ is comprised of $_______ per tonne for Disposal and $_______ per tonne for Transportation), adjusted for CPI as set out in section 10.2; and (ii) such other Service Fee adjustments or changes as provided in Article 10.4.

10.2. CPI Price Adjustment

(a) The Service Fee payable for Transfer Station Waste shall be fixed from the Commencement Date for the duration of the first Contract Year. Thereafter, on each year thereafter, the Service Fee payable for these Waste (initially $_____ per tonne for Transfer Station Waste shall be adjusted effective [insert] of each year.

(b) The Service Fee per tonne for Transportation and Disposal, in subsequent years after the first Contract Year, shall be increased by an amount equal to 80% of the Consumer Price Index (CPI) % change, Ontario All Items Excluding Energy as issued by Statistics Canada.

(c) The Contractor shall notify the City in writing indicating the proposed Service Fee per tonne and the calculation showing how such proposed new Service Fee was derived, 60 calendar days prior
(d) Any Service Fee increase, if any, shall be applied annually at each anniversary date from the Commencement Date. The formula to calculate any Service Fee adjustment shall be as follows:

\[
\text{Current Year Price} = \text{Previous Year Price} \times \left\{1 + \left[80\% \times (\text{Curr. Yr. CPI} - \text{Prev. Yr. CPI})\right]\right\} / \text{Previous Year CPI}
\]

(e) An additional annual adjustment to the cost of diesel fuel utilized in Vehicles for the haulage of Waste may also be applied. Such additional adjustment shall be based on 20% of the CPI % change, Diesel Fuel Ontario, as issued by Statistics Canada, and the Contractor shall comply with the procedure set forth in (c), above. The formula to calculate any adjustment in the cost of diesel fuel shall be as follows:

\[
\text{Current Year. Haulage Price} = \text{Previous Year. Haulage Price} \times \left[1 + (20\% \times \text{CPI Diesel Fuel Ontario} \text{ % change Prev. Year to Current Year})\right]
\]

(f) Any fluctuation between the value of the Canadian dollar and the United States dollar during the term of the contract shall be the responsibility of the Contractor.

10.3. Invoicing

(a) On a monthly basis, commencing one month after the Commencement Date, the Contractor shall provide the City with an invoice for the Service Fee as set forth in this Article.

(b) The Contractor’s invoice shall be based on the tonnage of Waste hauled and disposed during the calendar month. The actual tonnage of Waste shall be determined by the City’s computerized weigh scales. The City shall record the weight of each empty Vehicle entering the Transfer Station and each loaded Vehicle leaving the Transfer Station. A weigh ticket shall be provided to the Vehicle driver to be forwarded to the Contractor’s accounting office. The City may provide a monthly summary of Waste tonnage for use by the Contractor. The Contractor shall record the weight of each loaded Vehicle entering the Disposal Site and each empty Vehicle leaving the Disposal Site. A weigh ticket shall be provided to the Vehicle driver to be forwarded to the City as determined. The Contractor shall provide a monthly summary of Waste tonnage for use by the City.

(c) Copies of the weigh tickets shall form the basis of, and be attached to, the Contractor’s monthly invoice.

(d) The cost for Waste Transportation and for Disposal shall be shown separately, by location, on each invoice.

(e) The Canadian HST shall be shown as a separate line item on each invoice submitted by the Contractor.
(f) The City shall pay the respective portions of the Service Fee and any other amounts payable to
the Contractor by electronic funds transfer, cheque or banker's draw within 30 calendar days of
receipt of the invoice.

10.4. Failure to Satisfy Guaranteed Minimum

If during any Contract Year, the City fails to deliver to the Contractor a minimum of 20,000 tonnes of
Transfer Station Waste, the Contractor may make a written request for payment from the City of the
difference between the Service Fee the Contractor would have received under this Agreement if the
minimum tonnage of 20,000 tonnes of Transfer Station Waste had been delivered and the Service Fee the
Contractor actually received. The City shall pay the Contractor within 30 calendar days of the date of a
valid request.

ARTICLE 11. UNCONTROLLABLE CIRCUMSTANCES

11.1. Uncontrollable Circumstances

In the event the City or the Contractor is prevented or rendered unable, wholly or substantially, by
Uncontrollable Circumstances to carry out any of its obligations under this Agreement, then such
obligations of the City or the Contractor may be suspended during the continuation of any inability so
causd by the Uncontrollable Circumstances, but for no longer period. If any party intends to rely upon
Uncontrollable Circumstances to suspend obligations as provided in this section, such party shall notify
the other party in writing forthwith, describing in reasonable detail the Uncontrollable Circumstances and
a plan of resolution. The party relying upon Uncontrollable Circumstances shall have the onus and
obligation to use all reasonable commercial efforts to promptly cure or eliminate such Uncontrollable
Circumstance.

11.2. Insurable Uncontrollable Circumstances

If the Disposal Site is damaged or destroyed due to explosion, floods, fire, tornado or other events for
which the Contractor is obligated to carry insurance, the Contractor shall act diligently to collect and
apply insurance proceeds to the correction or reconstruction of the Disposal Site. If the Trucks and/or the
Trailers are damaged or destroyed by events for which the Contractor is obligated carry insurance, the
Contractor shall act diligently to collect and apply insurance proceeds to the repair or replacement of the
Trailers.

11.3 Failure of Transportation or Disposal as a Result of Uncontrollable Circumstances

In the event Waste is not Transported or Disposed as required under this Agreement for more than 24
consecutive hours as a result of an Uncontrollable Circumstance, the City may use its own or third party
resources to Transport or Dispose of the Waste, but only until such time as the Transportation and
Disposal of Waste has recommenced.

In the event that such failure of Transportation or Disposal continues for more than three consecutive
days, the City may, upon a minimum of 7 calendar days’ notice to the Contractor, and provided that such
failure of Transportation and/or Disposal has not been remedied within those 7 calendar days, contract for
a period of up to six months with any other person for the Transportation and/or Disposal of the Waste,
during which period the obligations or the parties shall be suspended, except as otherwise provided in
section 11.4 or 11.5. Upon the end of such contract for the Transportation and/or Disposal of the Waste,
the obligations of the parties pursuant to this Agreement shall be reinstated unless otherwise terminated in
accordance with this Agreement.
11.4. **Suspension of Disposal Due to Uncontrollable Circumstance**

In the event that the obligation of the Contractor to Dispose of Waste is suspended as a result of an Uncontrollable Circumstance unrelated to the City, but the obligation for the Transportation of Waste is not so suspended, the City may contract separately for the disposal of Waste in accordance with section 11.3. In such event, the Contractor shall continue the Transport of the Waste to any other disposal site identified by the City on the same terms and conditions as set out in this Agreement. In such circumstance, the Contractor shall re-imburse the City for the costs incurred by the City to dispose of the Waste.

11.5 **Suspension of Transport Due to Uncontrollable Circumstance**

In the event that the obligation of the Contractor to Transport Waste is suspended as a result of an Uncontrollable Circumstance unrelated to the City, but the obligation for the Disposal of Waste is not suspended, the City may contract separately for the Transportation of Waste in accordance with section 11.3. In such event, the Contractor shall continue the Disposal of the Waste working along with any new transportation provider identified by the City, on the same Disposal terms and conditions as set out in this Agreement. In such circumstance, the Contractor shall re-imburse the City for the costs incurred by the City to Transport the Waste.

**ARTICLE 12. OWNERSHIP; INSPECTION; UNACCEPTABLE WASTE**

12.1 **Transfer of Ownership of Waste**

The title and ownership of the Waste shall pass to the Contractor at such time as the Trailers leave the Transfer Station. The City shall have no further liability or responsibility regarding such Waste, subject to section 12.3 in connection with Unacceptable Waste.

12.2. **Inspection of Waste Loading**

The Contractor may, but is not obligated to, inspect, monitor or observe the loading of Waste at the Transfer Station, at its own cost and expense.

12.3 **Waste Inspection at Disposal Site**

The Contractor may, but is not obligated to, at any time inspect the contents of any loaded Trailers or vehicles Transporting or delivering Waste from the Transfer Station to the Disposal Site. The Contractor shall perform such inspection of Waste at the time of unloading such Waste at the Disposal Site as is customary in the waste management industry. If the Contractor discovers Unacceptable Waste, the Contractor shall:

(a) notify the City of the discovery of the Unacceptable Waste within 4 hours of that discovery, unless that discovery occurs after 1 p.m. (Guelph time) in which event notification shall be given by 9 a.m. (Guelph time) of the next day that the City's Environment and Transportation Group is open for business;

(b) gather, preserve, maintain and make available to the City all evidence demonstrating that the Unacceptable Waste was Transported or delivered to the Disposal Site, including the identification number of the Trailer, Trucks or vehicle if known, any photographs taken of the Unacceptable Waste, any samples of the waste that may demonstrate that the waste was Unacceptable Waste, laboratory results (if any), any statements or documentation provided by federal, provincial or local
authorities and any other material the Contractor has collected to substantiate the presence of Unacceptable Waste and that it originated from the City;

(i) reject such Unacceptable Waste and coordinate the removal and return in the City, or delivery, of Unacceptable Waste by a carrier licensed to transport the type of waste in question to a licensed disposal site acceptable to the City, and shall be reimbursed by the City for all reasonable direct costs. In the event the City is unavailable or incapable or properly managing, or arranging for the management of, the Unacceptable Waste the Contractor may, at their option, manage the removal, remediation, Transportation and proper Disposal of the Unacceptable Waste in accordance with all Applicable Laws and shall be reimbursed by the City for all reasonable costs related thereto.

12.4. Changes to the Definition of Waste

In the event that Ontario Regulation 347, R.R.O. 1990, is amended, or in the event that the Certificate of Approval for the Transfer Station is amended such that Waste that currently cannot be accepted at the Transfer Station may be accepted under the amended Certificate of Approval or Regulation, the Contractor shall accept such new Waste for Transportation and Disposal pursuant to the terms of this Agreement, unless such new Waste does not conform to requirements for disposal at the Disposal Site under Applicable Laws (unless such Waste is listed in Schedule 1.2 hereto).

ARTICLE 13. INDEMNIFICATION

13.1. Contractor Indemnification of the City

The Contractor shall indemnify and save harmless the City and its directors, officers, employees, agents, representatives, City councillors, successors and permitted assigns, (collectively, for the purposes of this Article, the "Indemnitees") from and against all claims, demands, actions, suits, losses, costs (including investigation and remediation costs), damages, expenses and liabilities, including reasonable legal fees (collectively "Claims"), directly or indirectly suffered by the City as a result of:

a) any of the representations and warranties made by the Contractor under this Agreement or under any other agreement or instrument executed and delivered by the Contractor pursuant to this Agreement being incorrect in any material respect:

b) any breach of any covenant, provision or agreement on the part of the Contractor under this Agreement or any other agreement or instrument executed and delivered by the Contractor pursuant to this Agreement; and

c) the Transportation or Disposal of the City's Waste by the Contractor or the failure by the Contractor for whatever cause (other than an Uncontrollable Circumstances) to Transport or Dispose of the Waste, provided that this indemnity shall not extend to any Claims resulting from the wilful default or negligence of the City or any breach of the City's obligations provided for under this Agreement unless contributed to by the negligence or default of the Contractor and then only to the extent of such proportionate contribution.

In addition to the foregoing, and without limitation, the Contractor shall indemnify and save harmless the City from and against all Claims brought by any Person arising under or related to any Applicable Laws, including, without limitation, the Ontario Environmental Protection Act, as amended, and any other legislation that relates to the Transportation or Disposal of Waste pursuant to this Agreement, including without limitation, at any Disposal Site at which such Waste has been Disposed of by the Contractor, or at which the Contractor has arranged for the Disposal of such Waste, whether in accordance with the requirements of this Agreement or not.
13.2. City's Indemnification of Contractor

The City shall indemnify and save harmless the Contractor and its directors, officers, employees, agents, representatives, successors and permitted assigns (collectively, for the purposes of this Article, the "Indemnities") from and against all claims, demands, actions, suits, losses, costs (including investigation and remediation costs), damages, expenses and liabilities, including reasonable legal fees (collectively "Claims"), directly or indirectly suffered by the Contractor as a result of:

(a) any of the representations and warranties made by the City under this Agreement or under any other agreement or instrument executed and delivered by the City pursuant to this Agreement being incorrect in any material respect;

(b) any breach of any covenant, provision or agreement on the part of the City under this Agreement or any other agreement or instrument executed and delivered by the City pursuant to this Agreement; and

provided that this indemnity shall not extend to any Claims resulting from the wilful default or negligence of the Contractor or any breach of the Contractor obligations provided for under this Agreement unless contributed to by the negligence or default of the City and then only to the extent of such proportionate contribution.

13.4. No Waiver by the Parties

No delay on the part of either party in the exercise of any right, power or remedy hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise, by either party of any right, power or remedy shall preclude other or further exercise thereof or the exercise of any other right, power or remedy.

13.5. Procedure

(a) Notice of Claims: A party entitled to indemnification hereunder (the "Notifying Party") shall notify the indemnifying party (the "Responding Party") within 10 calendar days of the Notifying Party's receipt of written notice from any third party of any act, omission or occurrence with respect to which the Notifying Party intends to seek indemnification in accordance with this Agreement and, if requested by the Responding Party, shall also supply to the Responding Party all records, data, contracts and documents reasonably related to such third party claims to enable the Responding Party to evaluate for purposes hereof. If the Responding Party replies in writing to the Notifying Party within 20 calendar days from the date of such notice that it will undertake the defence of the Notifying Party and will hold the Notifying Party harmless with respect to such claims, then no additional lawyers' fees incurred by the Notifying Party in its own defence shall he compensable as a claim entitled to indemnity, unless (I) the Responding Party has agreed to pay such fees and expenses, (2) the Responding Party shall have failed to assume the defence of such claim or has failed to employ counsel reasonably satisfactory to the Notifying Party, or (3) the named parties in any action or proceeding relating to such claim (including any impleaded parties) include both the Responding party and the Notifying Party, and such Notifying Party has been advised by its counsel that the Notifying Party has a conflicting interest from the Responding Party or that there may be one or more legal defences available to the Notifying Party which are different from or additional to those available to the Responding Party. The Notifying Party will reasonably cooperate in providing information and testimony to assist in the defence of the mater, but all out of pocket costs thereof shall be a part of the indemnified amounts, for which the Responding Party shall hold the Notifying Party harmless. Control of the defence of the claims shall be the right and responsibility in this case
of the Responding Party, which shall have authority to contest, compromise or settle the matter in its sole discretion. In the event that a Notifying Party notifies a Responding Party of any claim for which insurance coverage is available, the Responding Party shall notify its insurer of the claim without delay, in accordance with the applicable insurance notices or contract.

(b) Defence Acknowledging Responsibility: In the event the Responding Party replies in writing within the said 20 calendar days that it accepts responsibility for the indemnified claim regarding the matter in question but does not desire to take an active role in the defence of said matter, then alternatively, the Responding Party may consent to the Notifying Party's selecting a lawyer to defend the matter who is satisfactory to the Responding Party, such consent and such satisfaction with the selection of such lawyer to be evidenced in writing. In such case, however, no matter will be settled or compromised without the written consent of the Responding Party; further, at any time the Responding Party may elect to assume the active control or the matter, including the replacement of the selected counsel by other counsel satisfactory solely to it, and thereafter may consent, settle or compromise the case in its sole discretion.

(c) Defence Denying Responsibility: If, on the other hand, the Responding Party replies to the Notifying Party within 20 calendar days from the date of such notice, but denies its responsibility to indemnify and hold the Notifying Party harmless with respect to such claim, both parties shall attempt to agree upon a mutually satisfactory lawyer to represent then and agree upon who shall control the defence or the claim and has the authority to approve and proposal, settlement or compromise. If no such agreement can be reached, or if the Responding Party does not reply to the Notifying Party within 20 calendar days from the date of such notice, each party may designate its own lawyer, whose reasonable fees shall be compensable as an indemnified claim to the Notifying Party, whether or not any such agreement can be reached or the Responding Party does or does not reply, each party shall reasonably cooperate in providing information and testimony to assist in the defence of the matter, and the costs thereof (including out-of-pocket expenses) shall be a part of the claims which shall be paid by the party who is later deemed to be responsible therefore under the assumptions of liability and other provisions for indemnification under this Agreement.


The foregoing indemnification and hold harmless provisions are for the sole and exclusive benefit and protection of the parties and their respective councillors, directors, officers, agents, employees, representatives, successors and permitted assigns and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than the parties and their respective councillors, directors, officers, agents, employees, representatives, successors and permitted assigns.

13.7. No Waiver

Except as otherwise expressly stated herein, the parties do not under this Article waive or surrender any indemnity available under any federal or provincial law, or under any City or local law that is not inconsistent with this Agreement.

ARTICLE 14. CONTRACTOR LIABILITY INSURANCE

14.1. Comprehensive Insurance

The Contractor shall obtain, maintain and pay for or cause to be obtained, maintained and paid for, the insurance coverage designated in this Article from a responsible insurance company or companies of recognized standing that are approved by the City, and not otherwise excluded by the City’s Procurement and Risk Manager. Such insurance shall fully protect the City from any and all claims, risks and losses in
Draft Jan 7, 2013

connection with any activity performed by the Contractor under this Agreement. Each policy shall provide for 60 calendar days prior written notice, and the Contractor shall give the City 30 calendar day’s prior written notice, of any cancellation, reduction, modification or change in coverage or deductibles required under this Article shall be given by the insurer to the City.

14.2. Replacement Insurance

In the event that the Contractor breaches any provision of this Article, the Contractor shall notify the City of such breach immediately and the Contractor shall, as soon as possible, procure and maintain insurance which cures the breach and notify the City of such cure. If the breach is not cured to the satisfaction of the City, the City may procure and maintain, at the Contractor’s sole expense, insurance to the extent the City reasonably deems proper, but the obtaining of such insurance shall not relieve the Contractor of its obligation to maintain such insurance. The Contractor shall reimburse the City for the cost of that insurance within 15 calendar days of receiving written notice from the City to do so.

14.3. Required Coverage

The Contractor, at its sole expense, shall as required by section 14.6, provide the City with a Certificate of Insurance that includes the coverage required under this Article, which coverage shall take effect on the Agreement Start Date. All insurance shall be subject to the City's approval of the company, including the terms and coverage, provided that such approval shall not be reasonably withheld. The insurance policies must provide in one or more policies the following:

(a) Coverage

- General Liability to an aggregate limit of $5,000,000.00;
- Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles to an aggregate limit of $2,000,000.00;
- Environmental Impairment Liability to a limit of $2,000,000.00

(b) Deductible: The Contractor shall forthwith, from the Agreement Start Date, disclose to the City the deductible or self-insured retention for each such policy, which shall not in any event exceed a cumulative total or $100,000.00.

(c) Additional Insured: The City shall be an additional insured for all coverage provided by the insurer for, and to the extent of the Contractor obligations under this Agreement, and shall be fully and completely protected from all claims and risks by this policy and for any and every injury, death, damage and/or loss of any sort whatsoever, including consequential damages, sustained by any person, organization or corporation in connection with any activity performed by the Contractor under this Agreement.

(d) Separation of Insured: The insurance shall be endorsed to include a "cross liability", "severability of interests" or "separation of insured" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured and separately to each insured against whom claim is made or suit is brought".

(e) Change in Coverage: All policies shall provide that the policy shall not be terminated, reduced or otherwise modified in any respect without providing at least 60 calendar days prior written notice to the City.
14.4. Minimum Insurance

Maintenance of insurance by the Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of the Contractor under this Agreement. The Contractor may carry, at its own expense, any additional insurance it deems necessary.

14.5. Increased Coverage Required

The Contractor immediately shall increase, or cause to be increased, the amounts of insurance required to reflect any changes in provincial or federal law or other Applicable Law to ensure that the insurance provided complies, at a minimum and in addition to the designated insurance requirements listed in this Article, with any minimum limits under any Applicable Laws or Permits.

14.6. Delivery of Certificate(s)

The Contractor shall deliver to the City, as soon as possible following the Agreement Start Date, and in any event within 10 calendar days thereof, a Certificate of Insurance, in a form satisfactory to the City, for all insurance required under this Article. The Contractor shall thereafter deliver such a Certificate of Insurance to the City on or prior to the date of renewal of the policy during each Contract Year of the Term.

14.7. Failure by Contractor

Failure by the Contractor either to provide the Certificate(s) of Insurance prescribed in section 14.6, above, or to otherwise comply with the materials requirements of this Article 14 shall entitle the City to terminate the Agreement forthwith.

ARTICLE 15. COORDINATION MEETINGS AND CHANGES

15.1. Initial Coordination Meeting

Within 30 calendar days of the Agreement Start Date, the City, the Contractor and its principal subcontractors and, other persons requested by either party, shall meet to discuss scheduling, processes, materials, change orders, personnel and any other matters the parties deem appropriate. The Specifications will be amended in writing as required to reflect any matters agreed upon at such meeting(s).

15.2. Evolving Technology

The parties acknowledge that waste-related technologies evolve and will continue to do so during the Term, and that the City may wish to apply or make use of such new technologies for the handling of the Waste. Accordingly, the Contractor acknowledges and accepts that, with the exception of the City's commitment in section 9.3(b), the City's application or use of any new technology shall not constitute a breach of any term of the Agreement. Further, in such circumstances, the Contractor shall make commercially reasonable efforts to work with the City to make any adjustment to any aspects of the Services, as may be required.

15.3. Change to the Services
At any time during the Term, the City may require changes to the manner in which the Services are provided by Contractor. Where the City requires such a change be made to the Services and such change results in the Contractor having to incur additional expenses above the current costs of providing the Services, the City shall compensate the Contractor for such extra expenses. On the other hand, where the City requires a change be made to the Services and such change results in a cost reduction to the Contractor for providing the Services, the Contractor's Service Fee shall be reduced upon terms agreed to by the parties.

15.4. Periodic Coordination Meetings and Reports

At either party's request, and at times, places and dates agreed to by the parties, the City and the Contractor shall hold periodic coordination meetings to discuss operations, problems, issues and/or complaints made by either party.

ARTICLE 16. DEFAULT AND TERMINATION OF THE AGREEMENT

16.1. Failure of Transportation or Disposal or Other Default by Contractor

(a) If the Contractor fails to Transport or Dispose the Waste in accordance with its obligations under this Agreement for more than 24 consecutive hours, for any reason other than an Uncontrollable Circumstance, the City may arrange for the necessary work to be undertaken using its own or third party resources, as it may determine. The Contractor shall be responsible for all additional costs incurred by the City above and beyond the Service fee that would have been paid to the Contractor for such Services, including any administration costs incurred by the City. The Contractor shall pay such costs to the City within 30 calendar days of receiving an invoice for such costs, failing which the City may set off against any amount owing by the City to the Contractor, or pursue any remedy set out in subparagraph (b).

(b) In the event that the Contractor fails to Transport or Dispose the Waste in accordance with its obligations under this Agreement for more than 24 consecutive hours for any reason other than an Uncontrollable Circumstance, or is otherwise in default of any provision of this Agreement, the City may:

(i) claim under the performance bond or other financial guarantee provided under section 7.8 as damages and without prejudice to any other damage claim it may have; and/or

(ii) pursue any other remedy provided at law and/or under this Agreement.

(c) Notwithstanding the foregoing, the City shall not be entitled to collect more than once for the same loss.

16.2. Termination Due to Default by Contractor

(a) In addition to any rights the City may have against the Contractor to claim damages or seek other remedies (other than, but including termination), whether in law, in equity or under any provision or this Agreement, the City may, upon the occurrence of any of the following circumstances and such written notice as is provided in this section or, where no notice is so provided in this section, notice as required under section 16.5, which may be given wholly or partly concurrently with the time periods set out in this section, terminate this Agreement in the event of:
(i) a material change in the physical structure or operation of the Disposal Site that constitutes a breach of Applicable Laws, and is not remedied to the satisfaction of the Regulatory Authority within

(A) 30 calendar days, if such remedy is reasonably possible; or

(B) if such remedy is not reasonably possible within 30 calendar days, and such remedy has not commenced within 30 calendar days, and been pursued diligently and been completed within 90 calendar days or such longer period as a Regulatory Authority may expressly permit in writing;

(ii) a material Regulatory Action against any of the Contractor or its approved subcontractors with respect to the Disposal Site that is not resolved to the satisfaction of the Regulatory Authority responsible for the Regulatory Action within:

(A) 30 calendar days if reasonably possible; and

(B) if a resolution is not possible within 30 calendar days, and resolution has not been commenced within 30 calendar days, been pursued diligently, and been resolved within 90 calendar days or such longer period as the Regulatory Authority or Applicable Law may expressly permit;

(iii) the failure by the Contractor to perform the Transportation or Disposal services required under this Agreement, other than as a result of an Uncontrollable Circumstance, for a period of 10 consecutive calendar days, provided that the City has given the Contractor 10 calendar days written notice of its intention to terminate, which may be given prior to the expiry of the 10 calendar day failure period;

(iv) the failure by the Contractor to maintain insurance in accordance with the requirements of Article 14 herein; or

(v) the repeated or frequent failure by the Contractor, as may be determined by the City in its sole discretion, to provide the Services in accordance with the standard of performance set forth in this Agreement, in which case the City shall be entitled to terminate the Agreement on a date to be determined by the City, without any requirement on the City to provide the Contractor an opportunity the cure.

16.3. Default by City

(a) In addition to any other rights the Contractor may have against the City as a result of any breach by the City of this Agreement, whether in law, in equity or under any other provision or this Agreement, the Contractor may upon such notice as is required in section 16.5 terminate this Agreement for cause in the event of:

a. the failure by the City to pay the Service Fee when due, provided that in such event the City shall be provided with an extra 30 calendar days to pay, and the right of the Contractor to issue a notice of termination shall not arise until the expiry of such 30 calendar day period; or

b. the failure by the City to make Payment with respect to guaranteed minimums pursuant to section 10.4(a) when due, unless such default is cured prior to the expiry of the notice period.
16.4. **Liquidated Damages**

a) The City and the Contractor agree that, in addition to any other rights and remedies available to the City pursuant to this Agreement, the sum of Five Thousand Dollars ($5,000.00) per occurrence per calendar day shall be payable by the Contractor to the City as liquidated damages, and not as a penalty, where any of the following circumstances occur, unless arising from and Uncontrollable Circumstance:

i) failure by the Contractor to haul the Waste from the Transfer Station as scheduled;

ii) failure by the Contractor to follow the Waste haul routes as specified in writing by the City from time to time;

iii) use of an unauthorized driver or vehicle for the Transportation of the Waste; or

iv) Transportation of the Waste to a disposal site that is not authorized under this Agreement or by other prior written authorization from the City, pursuant to this Agreement.

b) Any applicable liquidated damages may be invoiced by the City to the Contractor monthly during the Term, or upon the termination of this Agreement, and may be set off by the City from any amount owing to the Contractor for providing the Services.

16.5. **Termination Procedure.**

Except as otherwise provided in this Article, to terminate this Agreement for default under this Article, the City's Representative or the Contractor Representative, as the case may be, shall give the other party's Representative 30 calendar days written notice in accordance with section 2.15 of the party's intention to declare the other party in default and terminate the Agreement.

In addition, on the termination of the Agreement, for any reason and at any time, the Contractor shall fully co-operate with the City to ensure an orderly transfer of the Services, at no additional cost to the City. The Contractor shall provide such services prior to, and where necessary, as may be determined by the City, for a fixed period after the termination of the Agreement.

16.6. **Adequate Assurance of Future Performance Required in Certain Events.**

The Contractor acknowledges that if it becomes insolvent, is dissolved, files a petition under any bankruptcy statute, is the debtor in any involuntary bankruptcy case that is not dismissed within 60 calendar days after the petition commencing that case is filed, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of it of creditors or on account of its insolvency, such event could impair or frustrate the Contractor performance of this Agreement.

Accordingly, it is agreed that on the occurrence of anyone or more of the above-noted events, the City shall be entitled to request the Contractor or any successor-in-interest to provide assurance satisfactory to the City of future performance in accordance with the requirements of this Agreement. Failure to comply with such request, to the City's satisfaction, within 10 calendar days of the request shall entitle the City to terminate the Agreement as against the applicable party, without prejudice to any other rights or remedies available to the City at law, in equity or under this Agreement.

16.7. **Termination due to Uncontrollable Circumstances**
(a) Subject to sections 11.4 and 11.5, in the event that either party is unable to perform its obligations under this Agreement for a period of [insert] consecutive calendar days as a result of an Uncontrollable Circumstance, the other party shall be entitled to terminate this Agreement upon [insert] calendar days written notice, with such termination to take effect only if the party has continued to be unable to perform its obligation as a result of the Uncontrollable Circumstance during the [insert] calendar day notice period, otherwise the notice or termination shall be of no effect.

(b) Notwithstanding any provision in this Agreement to the contrary, in the event of a termination by the City pursuant to subsection 16.7(a), where the City has incurred incremental costs as a result of the Contractor’s inability to perform, the Contractor shall reimburse the City the City’s incremental costs, which the City may set off against any amount owing to the Contractor.

(c) Notwithstanding any provision in this Agreement to the contrary, in the event of a termination by the Contractor pursuant to subsection 16.7(a), the City shall have no further liability to the Contractor, except as provided in Article 21.

16.8. Termination by City for Convenience

The City may, without liability, cost or penalty, without prejudice to any other right or remedy available to the City under this Agreement or at law or in equity, terminate this Agreement any time, without reason and without any obligation to provide reasons, upon giving the Contractor 30 calendar days’ notice.

ARTICLE 17. DISPUTE RESOLUTION

17.1. Meeting of the Parties

In the event of any dispute, controversy or claim arising under and in connection with this Agreement, the parties agree that, upon written notice from either party, the City Representative and the Contractor Representative, or their delegates, will meet as soon as is reasonably practicable to resolve any such dispute, controversy or claim. The parties acknowledge that in the event of by the City to terminate this Agreement, the City’s decision to so terminate shall be subject to this Article.

17.2. Expert Opinion

If any such dispute, controversy or claim for which notice of a meeting of the parties has been given pursuant to section 17.1 remains unresolved for a period of 7 calendar days following such meeting date, either party may by further written notice require that the matter be referred to an independent expert for an opinion. Such opinion shall be provided to the parties as soon as possible. The parties each agree to provide good faith consideration to any such opinion as a basis for resolving the matter. Such independent expert shall be mutually agreed upon by the Contractor Representative and the City Representative, or their delegates, acting reasonably and in good faith, based on that person's expertise and experience within the particular field in which the dispute has arisen. The cost of obtaining such expert opinion shall be borne equally by the parties, unless the matter proceeds to arbitration pursuant to section 17.3 of this Agreement and the Board, as defined below, determines otherwise.

17.3. Arbitration

Any dispute, controversy or claim arising under or in connection with this Agreement, or the breach, termination, validity or enforceability of any provision of this Agreement (a "Dispute") that is not settled
by the procedures described in section 17.1 and 17.2 of this Agreement will be settled by final and binding arbitration conducted by a board of arbitration (the "Board") in accordance with Schedule 17 of this Agreement. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction (hereof, or application may be made to such court for a judicial acceptance or the award and an enforcement, as the law of such jurisdiction may require or allow.

17.4. Exceptions

The parties acknowledge and agree that in respect of a claim for injunctive relief, a party may refer such matter to arbitration in accordance with section 17.3 or apply to the appropriate Court for such relief. Nothing in the Article 17 prevents the parties from exercising their rights to termination of this Agreement in accordance with Article 16.

17.5. Exclusive Remedy

Other than any action necessary to enforce the award of the Board and subject to section 17.4, the parties agree that the provisions of this Article 17 are a complete defence to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with this Agreement.

17.6. Continued Performance

The Contractor and the City shall continue to fulfill their obligations under this Agreement during any proceedings pursuant to this Article.

ARTICLE 18. SUCCESSORS: ASSIGNMENT

18.1 Assignment

Except as otherwise provided in this Agreement, neither party shall assign any right or obligation under or arising from this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

18.2 Change in Control or Ownership

Any transfer of a controlling interest in the beneficial ownership of the Contractor or the Disposal Site shall constitute a default under the terms of this Agreement, unless the City consents to that transfer, such consent not to be unreasonably withheld. "The transfer of a controlling interest" shall include, but is not limited to, the transfer or assignment of more than fifty percent (50%) of the beneficial voting ownership of the Contractor to or from a single entity. No transfer of shares in the Contractor from either current principal shareholder of the Contractor either to the other current principal shareholder or to their respective heirs through inheritance shall constitute the transfer of a controlling interest.

18.3 Binding Effect

This Agreement shall be binding on any and all successors and permitted assigns in accordance with this Article.

ARTICLE 19. DISSOLUTION OF CITY AND SUCCESSOR TO CITY

In the event that the City is dissolved or its solid waste functions and powers relative to this Agreement are taken from the City by legislative act or by agreement, all of the duties, rights and remedies of the
City under the Agreement, including, but not limited to, all bonds, letters of credit or other financial guarantees executed for this Agreement, shall remain in full force and effect and shall be transferred to the successor to the City as specified by the legislative act or agreement by which the City is dissolved or its solid waste functions and powers are taken from the City.

ARTICLE 20. TERM

20.1. Commencement Date and Term

For the purposes related to the Transportation and Disposal of Waste, the relevant date shall be the Commencement Date. Notwithstanding the deemed anniversary date established for the purposes of Article 10, the Term shall be 10 years from the Commencement Date, unless terminated earlier in accordance with the provisions of this Agreement, or renewed and extended at the option of the City in accordance with section 20.2.

20.2. Extension of Agreement

The City may, at its option, elect to extend the Term for up to 2 successive 5 year periods (each an "Extension Period") by the City by providing written notice to the Contractor of such extension(s) no later than 30 calendar days prior to the last day of the Term, or, if extended 30 calendar days prior to the end of the then-current extension. The fee payable by the City during any such Extension Period(s) shall be adjusted in accordance with section 10.2 of this Agreement. Where the City elects to extend the Term, as described herein, the Contractor shall be obligated to continue to provide the Services on the same terms as described in this Agreement.

ARTICLE 21. SURVIVAL

Notwithstanding any other provision in this Agreement, the obligations contained in Articles 13, 16, 19, 21 and sections 7.4(b), 7.5, 7.12(a), (b) and (c) and 9.5(b) shall survive any termination or expiry of this Agreement until the discharge of the obligation or until parties mutually agree in writing to a release of the obligation therein.

ARTICLE 22. FURTHER ASSURANCES AND COUNTERPARTS

22.1. Further Assurances

Each party shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

22.2. Counterparts

This Agreement may be signed in counterparts and by facsimile and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

ARTICLE 23. SCHEDULES

23.1 Schedules
The following Schedules attached hereto form an integral part of this Agreement:

Schedule 1.1 Specifications
Schedule 7.8 (a): Performance Bond
Schedule 7.8 (c): Sample Letter of Credit
Schedule 17: Arbitration Procedures

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE CORPORATION OF THE CITY OF GUELPH

Per:

Per:

Per:

[insert name]

Per:

I have authority to bind both the Corporation

SCHEDULE 1.1
SPECIFICATIONS

(a) The Contractor shall supply all equipment, Vehicles, Facilities and personnel in sufficient quantity and of sufficient quality, capability and experience to perform all of its obligations and responsibilities to appropriate standards under this Agreement.

(b) All Vehicles utilized to Transport and unload Waste must have a proven record of performance and be guaranteed by the manufacture as capable of operating at the capacities required. Tractors and Trailers used to Transport Waste pursuant to this Agreement shall not be more than seven years old, irrespective or the odometer reading. All Tractors, Trucks and/or transfer units hauling Waste shall be capable of operating fully loaded in on-and-off highway conditions. All Trailers shall be compatible with the loading equipment installed at the Transfer Station, as applicable, and the Tractors shall have sufficient horsepower to operate on-and off-highway conditions. All Trailers shall be uniquely identified by numbers at least 6" high and clearly visible to the weigh
scale operators so that the Trailer number can be entered on each weigh scale ticket, into the City's records.

(c) All Trailers to be used to receive Waste at the Transfer Station shall be capable of loading from both top and rear.

(d) The inspection, servicing, maintenance, and/or repair of all of the Vehicles utilized to Transport and unload Waste shall be performed in a manner and in accordance with the schedule that ensures no disruption to the removal of Waste from the Transfer Station in accordance with the City's schedule. Vehicle emissions must be tested and environmental performance is in compliance with the Provincial Drive Clean Program as it is proposed to apply to heavy duty trucks.

(e) Special attention shall be given to the appearance of the Vehicles and Trailers used to Transport Waste and all such equipment must be kept clean and well maintained. The inside of Trailers/transfer containers must be cleaned at least weekly to prevent odours.

(f) The highways, arterials, streets and/or roads employed ill the Transport or Waste must be designated and otherwise suitable for use by types of vehicles utilized to Transport Waste. Within City boundaries, the Contractor shall use the haulage routes specified in writing by the City and shall at all times comply with the provisions of any Applicable Law regulating the use of highways by its vehicles.

(g) The Contractor shall comply with all applicable Transportation/vehicle laws and regulations, relating to the use and operation of its tractors and Trailers.

(h) The Contractor shall use the weigh scales at the Transfer Station where the Vehicle is loaded. The appropriate vehicle and load information shall be recorded. The City shall make reasonable efforts to ensure all pre-load weighing is completed in a timely fashion. If that weigh scale is out of service, weigh scale records from the Disposal Site will be used for payment purposes.

(i) From time to time for the purpose of checking weigh scale accuracy, the City may require one or more of the Contractor loaded Tractor-trailers to be weighed on both the inbound scale and the outbound scale.

(j) The hours of operation for the Transfer Station are specified below, and the Contractor shall conduct its operations within these hours of operations; however some flexibility may be permitted, provided the City does not incur any additional costs. The Contractor shall meet the individual performance requirements for the Certificates of Approval for the Transfer Station.

(k) Hours of Operation for Transfer Station (subject to MOE Certificates of Approved):

- Monday to Friday: 6:00 a.m. to 5:00 p.m.
- Saturdays: 6:00 a.m. to 12:00 p.m.

(l) To reduce the risk of odour occurrences, the Contractor shall provide sufficient Vehicles to permit the clearing of the Transfer Station nom twice per week, on non-consecutive days of the week, or as dictated by the Transfer Station's Certificate of Approval. One of these times must occur on the last day of the working week. This level of service must be provided during the normal operating hours of the Transfer Station.
Draft Jan 7, 2013

(m) Tractor-trailers shall wait in regular queues at the weigh scales for outbound traffic. The Contractor shall not have privileges over other customers when queues develop. The Contractor shall schedule its Tractors and Trailers for arrival at the Transfer Station in consultation with the City to avoid unnecessary delays.

(n) The Contractor equipment may only be parked in designated areas at the Transfer Station such that their equipment does not interfere with the safe and efficient operation of the Transfer Station.

(o) The Contractor shall maintain a safe operation and meet all safety requirements including any established by the Director of Environment and Transportation Group and Applicable Laws and Permits. The Contractor shall familiarize itself with the rules and regulations at the Transfer Station, and conform to same. All employees of the Contractor shall wear CSA approved safety boots and hard-hats and comply with all applicable occupational health and safety requirements.

(p) No scavenging shall be permitted.

(q) Trailers shall be equipped to stand alone safely without a Tractor during the loading operation. Dolly wheels shall be capable of supporting the Trailer fully loaded. The operation of dolly wheels must be ergonomically designed to minimize possible injuries to staff during the raising and lowering of the dolly wheels.

(r) The Contractor shall assume responsibility for the cleanup of any oil or other fluid leaks or other spills or escape of Waste from its Trucks or Trailers that may occur, either inside or outside the Transfer Station.

(s) The maximum time a pre-loaded Trailer shall remain on City property is 24 hours, unless longer time is required for operational needs. The Contractor shall provide a sufficient number of Tractors to ensure that all pre-loaded Trailers are removed within 24 hours at the discretion of the City Representative.

(t) The City or its contractor(s) shall be responsible for the loading of the Trailers in accordance with all Applicable Laws and all relevant requirements of the Ministry of Transportation, including axle weight. Once the City has loaded the Vehicles, the Contractor shall ensure that its drivers cover or enclose their Vehicles before exiting the Transfer Station. The Contractor shall also be responsible for ensuring that its drivers inspect their Vehicles for any loose waste and remove and deposit any such waste at the appropriate location inside the Transfer Station. The Contractor shall be responsible to ensure that its drivers weigh out before leaving the Transfer Station. The City shall be responsible for directing any overloaded Vehicle back into the Transfer Station to correct any such overloading. The Contractor shall be responsible for any consequences resulting from a driver of an overloaded vehicle not following these procedures and leaving in an overloaded condition.

(u) The Contractor shall ensure that its Trailers are weighed at the Transfer Station.

(v) The City will normally "live load" all Trailers. If the City determines that shunting of Trailers is required, the Contractor shall provide shunting services.
SCHEDULE 7.8(a)
PERFORMANCE BOND

BOND NO. ____________________________

KNOW THEREFORE all men by these presents that (hereinafter called the "Principal") and ____________________________ a corporation created and existing under the laws of ____________________________and whose principal office for Canada is located in the ____________________________ (hereinafter called the "Surety") are held and firmly bound unto The Corporation of the City of Guelph (hereinafter called the "Obligee") in the amount of $ ____________________________ lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves and their respective heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a contract with the Obligee dated the _____________, day of _______________, 20___ for Contract No. ____________________________ which by reference hereto is made it part hereof as fully to all intents and purposes as though recited in full herein and which contract as amended, supplemented or modified from time to time is hereinafter called the "Contract",

NOW THEREFORE, the condition of the foregoing obligation is such that, if the Principal shall well and truly observe and perform all the obligations of the Contract on the part of the Principal to be observed and performed, then this obligation shall be void but otherwise shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Obligee. Whenever the Principal shall be, and declared by the Obligee to be in default under the Contract, the Surety shall:

(a) if the work is not taken out of the Principal's hands, remedy the default of the Principal;

(b) if the work is taken out of the Principal's hands and the Obligee directs the Surety to undertake the completion of the work, complete the work in accordance with the Contract provided that if a contract is entered into for the Completion of the work:

(i) such contract shall be between the Surety and the completing contractor and subject to the terms and conditions of this Bond; and

(ii) the selection of the completing contractor shall be subject to the approval of the Obligee; and

(iii) the Surety shall be entitled to the monies representing the balance of the contract price in discharging its obligation. The term "balance of the contract price", as used in (his paragraph, shall mean the total amount payable by the Obligee to the Principal under the Contract, less the amount properly paid tile Obligee to the Principal.

(c) Recognize that time is of absolute essence in rectifying such default and shall, in addition to its other obligations hereunder, meet with the Obligee within twenty-four (24) hours to explore methods of completing the Work under the Contract, such 24 hours to begin upon receipt of notice to the Surety by facsimile or hand delivery or registered or certified mail. If requested to do so by the Obligee, the Surety shall appoint an emergency contractor satisfactory to the Obligee for the purposes of ensuring to whatever extent possible that the work shall proceed with minimal...
interruption. Such emergency replacement contractor shall remain in place for a period to be determined between the Obligee and the Surety, during which time a permanent solution under paragraph (a) or (b) shall be implemented. If the Surety fails to respond in accordance with its obligation under this bond, the Obligee may proceed to make arrangements to complete the Contract and the Surety shall assume financial responsibility for the cost of completion in excess of the balance of the contract price as defined in paragraph (b) (iii) above.

This bond is for a term beginning ___________________________ and ending ___________________________ and may be extended at the option of the Surety for the remaining term of the contract by Endorsement. Failure to renew this bond shall not constitute grounds for a claim against the Surety under this bond.

No action shall be instituted by the Obligee herein against the Surety pursuant to these presents after the expiration of two (2) years from the date upon which final payment under the Contract is made.

In no event shall the Surety be liable for it greater sum than the specified penalty of this bond.

The Surety shall be liable as Principal and nothing of any kind or matter whatsoever shall operate as a discharge or release of the liability of the Surety notwithstanding any law or usage relating to the liability of sureties to the contrary, until all obligations of the Contract have been observed and performed.

IN WITNESS WHEREOF, the Principal and Surety have hereunto affixed their corporate seals and caused their presents to be signed by their duly authorized officers.

DATED THIS ______ day of____________________________, 2013.

cis
__________________________
Name - Surety

cis
__________________________
Signature and Signing Authority
Name - Principal

cis
__________________________
Signature and Signing Authority
SCHEDULE 7.8(c)
SAMPLE LETTER OF CREDIT

DATE
BANK/ADDRESS

IRREVOCABLE LETTER OF CREDIT #________________________________
AMOUNT $ ___________________________________

APPLICANT/ADDRESS

BENEFICIARY: The Corporation of the City of Guelph; hereinafter referred to as the City of Guelph

We hereby authorize the City of Guelph to draw on BANK NAME, hereby established and give to the City of Guelph an irrevocable standby letter of credit in the City’s favour in the: above total amount, which may be drawn on by the City of Guelph at anytime and from time to time upon written demand for payment made upon BANK NAME, LOCATIONS OF BRANCH IN THE CITY OF GUELPH by the City of Guelph which demand we shall honour without enquiring whether the City of Guelph has a right as between the City and the said applicant to make such demand, and without recognizing any claim of the said applicant.

Provided, however, that the City of Guelph are to deliver to BANK NAME, LOCATION OF BRANCH IN THE CITY OF GUELPH for same day credit, at such time as a written demand for payment is made upon us, a certificate signed by the City of Guelph by reference to an agreement between the City of Guelph and the applicant agreement dated DATE OF AGREEMENT.

The amount of this standby letter of credit may only be reduced by the amount of any drawings paid and or by notice in writing given to BANK NAME by the Corporation of the City of Guelph.

It is a condition of this standby letter of credit that it shall be deemed to be in effect as of ----------------------- -------(date) and will remain irrevocable until such time that the City of Guelph provides notice in writing of cancellation of this letter of credit, unless 30 days prior to any such date we BANK NAME shall notify the City of Guelph in writing by registered mail or courier that we elect not to consider this standby letter of credit renewed for any such additional period. Upon receipt by the City of Guelph of such notice, the City of Guelph may draw hereunder by means of the City's demand accompanied by the City's written certification that the amounts drawn will be retained and used by the City of Guelph to meet obligations incurred or to be incurred in connection with the above agreement; further, that the City of Guelph will release any amount(s) not required by the City of Guelph to the applicant.

Partial drawings are permitted

We hereby agree that drawing under this standby letter of credit will be duly honoured upon presentation provided that all terms and conditions of the standby letter of credit have been complied with.

____________________________
Authorized Bank Signature
SCHEDULE 17
ARBITRATION PROCEDURE

All Disputes will be referred to the Board to be settled in accordance with the provisions of Arbitration Act (Ontario) and any amendments thereto, based upon the following procedures:

A. Subject to paragraph 13, the Board will be composed of one person appointed by the party requesting a Board (the "Applicant"), one person appointed by the other party (the "Respondent") and a third person to act as chairperson chosen by the other two members of the Board, or, if both parties agree, the Board will consist of a sole arbitrator.

B. The Applicant shall deliver to the Respondent written notice of its intent to refer the Dispute to the Board within sixty days after the circumstances given rise to the Dispute originated or occurred and shall at the same time name its appointee to the Board. The Respondent shall within fifteen business days of receipt of such notice advise the Applicant, in writing, of the name of its appointee to the Board. If the Respondent fails to notify the Applicant of its appointee, the Respondent shall be deemed to have concurred in the appointment of the arbitrator appointed by the Applicant, and such arbitrator shall constitute the Board.

C. If the Respondent appoints an arbitrator pursuant to paragraph B above, then, within five business days of the appointment of such additional arbitrator, the two appointed arbitrators shall agree on the appointment of an additional arbitrator to act as chairperson (the "Chairperson"). If the appointed arbitrators cannot agree on the additional arbitrator, the Applicant or Respondent may apply to the Ontario Court General Division to appoint an impartial third member to act as Chairperson or promptly take such other action to appoint a Chairperson as the parties may agree.

D. No person may be appointed as an arbitrator unless, he or she is independent of the Applicant and Respondent, is skilled in the subject matter of the Dispute and is not directly or indirectly carrying on or involved in a business being carried on in competition with the businesses of the parties.

E. The Board shall allow such discovery as is appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost effective resolution of disputes.

F. The decision of the Board shall be made by a majority vote or by the sole arbitrator, as the case may be. In the event of the failure of the Board to reach a majority decision, the decision of the Chairperson shall constitute the decision of the Board.

G. The decision of the Board with respect to the Dispute shall be made in writing within the sixty (60) days following the appointment of the last member of the Board, shall be final and binding on the parties, not subject to any appeal and shall deal with the question of costs of arbitration and all related matters, including interest.

H. The arbitration shall take place in Guelph, Ontario.

I. The time limits referred to in this Schedule may be extended by mutual agreement of the parties.