

**Community Recycling Centre
Agreement for Use**

This Agreement made the _____ day of _____, 2021

BETWEEN:

CORPORATION OF THE CITY OF ST. THOMAS
hereinafter referred to as the "City"

OF THE FIRST PART

- and -

**CORPORATION OF THE MUNICIPALITY
OF WEST ELGIN**
hereinafter referred to as the "Partner
Municipality"

OF THE SECOND PART

Whereas the City owns the Community Recycling Centre, the purpose of which is to collect, waste materials that can not be disposed at the curb;

And Whereas the Partner Municipality wishes to purchase for the benefit of its ratepayers certain depot collection services from the City and the City has agreed to provide these services on the terms and conditions set forth herein;

Now Therefore Witnesseth that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the parties agree as follows:

1. Definitions

As used in this Agreement, the following definitions shall apply unless otherwise indicated:

- 1.1 "Acceptable Materials" means those categories of Materials as described hazardous under O.Reg 347 and further designated on Schedule "A" as being acceptable for the purposes of this Agreement.
- 1.2 "Annual Fees" means the fees payable by the Partner Municipality for the provision of services under this agreement to the City and does not include the fees paid by individual users for tipping fees for certain materials as listed in Schedule "B".
- 1.3 "City" means the Corporation of the City of St. Thomas
- 1.4 "Commencement Date" means the start date of this contract after it is executed, which shall be June 1, 2021.
- 1.5 "Facility" means the building, equipment and machinery located at 330 South Edgeware Road, St. Thomas, Ontario, to be used for the receipt, and storage of Acceptable Materials in accordance with the terms of this Agreement.
- 1.6 "Non-Acceptable Materials" means materials not listed in Schedule "A".
- 1.7 "Operating Costs" the costs to run the facility including but not limited to the operating contract, building maintenance and overhead, handling fees for designated material streams, City staff costs, and administrative costs.
- 1.8 "Partner Municipality" means the Corporation of the Municipality of West Elgin.

2. Provision of Services by the City

- 2.1 Provide Depot Collection Services to the Partner Municipality over the course of the Term, for the fees and in accordance with the terms and conditions set out in this agreement.
- 2.2 Shall set the schedule of fees for each material stream payable by each individual user of the facility.
- 2.3 Maintain and deliver upon request detailed occurrence reports including date, time complainant, details, and particulars of any investigations related to site operations, to the Partner Municipality

- 2.4 Will provide the Partner Municipality access to all promotion and educational material produced related to the Community Recycling Centre noting all promotion or advertising by the Partner Municipalities will be at their costs.
- 2.5 On a quarterly basis render an invoice to Partner Municipality, for one fourth of the annual user fee
- 2.6 Provide upon request to the Partner Municipality an annual report identified the volume of material disposed of and specific material type by the residents of the Partner Municipality which may be helpful for their annual reviews and reporting.
- 2.7 Shall retain the sole and exclusive right to reject loads and/or refuse service to specific individuals for repeated violations of site rules.
- 2.8 In providing Collection Services hereunder, the City shall retain the sole and exclusive right to redefine and revise, in its sole discretion and exercisable from time to time, the materials included as Acceptable Materials provided at least ninety (90) day's notice of its intention to revise or redefine is delivered to the Partner Municipality, together with a copy of all such proposed revisions or redefinitions. The City will consult with the Partner Municipality prior issuing the notice of intention to redefine or revise the list of acceptable materials.
- 2.9 The City will not be responsible for any costs incurred by the Partner Municipality for any temporary or permanent suspension of service.
- 2.10 Save and hold the Partner Municipality and its officers, agents, or servants from all loss, damage, liability, cost, charge, or expense which it, they, or any of them may suffer, incur, or be put to by reason of any action, default or failure on the part of the City in respect of the performance of waste depot services as described under this Agreement.

3. Obligations of the Partner Municipality

- 3.1 Within thirty (30) days of receipt of the invoice, pay the monthly invoice for services rendered as delivered by the City.
- 3.2 Residents may be required to provide proof of residency at the Facility.
- 3.3 Save and hold the City and its officers, agents, or servants from all loss, damage, liability, cost, charge, or expense which it, they, or any of them may suffer, incur, or be put to by reason of any action, default or failure on the part of the Partner Municipality in respect to waste depot services offered by the City as described under this Agreement.

4. Annual Adjustment

- 4.1 Effective the first day of January 2022 and for each subsequent year the agreement exists the annual fee will be adjusted based changes to operating costs and CPI for the Province of Ontario for the previous twelve months, all items seasonally adjusted January over January. Additionally, any change in population in St. Thomas or the partner municipalities will also be prorated into the adjustment.

5. Public Liaison Committee

- 5.1 A Public Liaison Committee has been established as a condition of the site's ECA comprised of representatives from the City, adjacent properties, members of the public and representatives of each Partner Municipality. The purpose of the Public Liaison Committee is to provide input and transparency to the management and operation of the Facility.
- 5.2 As the contracting authority, the City will retain responsibility for all final decisions related to the management and operation of the facility.

6. Term of Agreement

- 6.1 This agreement shall continue from the Commencement Date until terminated in accordance with Section 7.

7. Default and Termination

- 7.1 This agreement may be terminated by either party effective midnight 120 days after providing written notice setting out the intention to so terminate.
- 7.2 Failure by either party to pay any sum due under this Agreement on the day or dates appointed for the payment thereof, or to perform or observe any other provision of this Agreement to be observed or performed by it, shall entitle the other party to terminate this Agreement in the event that such default has continued for a period of thirty (30) days after the defaulting party has been advised of such default in writing.

8. Dispute Resolution

- 8.1 All disputes, claims, controversies or questions arising out of, under, or in connection with, or in relation to this Agreement or its interpretation, performance or non-performance, or any breach of it, shall be submitted to binding arbitration as follows:
- A. the Partner Municipality and the City may agree to appoint a single arbitrator whose decision shall be final and binding; or
 - B. in the event that the Partner Municipality and the City cannot agree upon a single arbitrator, then the Partner Municipality shall select one individual and the City shall select one individual and the resulting two individuals shall select a third individual who shall be the sole arbitrator. If either the Partner Municipality or the City fails to appoint a nominee within fifteen (15) days after receipt of a written notice from the other of them requiring that such appointment be made, then the individual chosen by either the Partner Municipality or the City, as the case may be, shall be the sole arbitrator.
- 8.2 In all other respects, the rules and procedures to be used by the arbitrator shall be as set out in the *Arbitrations Act*, R.S.O. 1990, c. A.24 and every statutory provision that may be substituted for it or for any provision in it. The parties agree that the decision of the arbitrator shall be final and binding and that there shall be no appeal from it; that the arbitrator shall have the discretion to award the non-offending party his or its costs and expenses incurred in connection with or as a result of such arbitration and on a solicitor and his client basis; and, further, that the decision and award of the arbitrator may be entered and enforced in the relevant courts having jurisdiction.

9. Governing Law

- 9.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

10. Notices

- 10.1 Any written notice given pursuant to this agreement must be addressed to:

In the case of the Partner Municipality, at:

Corporation of the Municipality of West Elgin
22413 Hoskins Line
Rodney, Ontario
N0L 2C0
Attention: Clerk

In the case of the City, at:

City of St. Thomas
545 Talbot Street
P.O. Box 520
St. Thomas, Ontario
N5P 3V7
Attention: Manager of Development and Compliance, Environmental Services

- 10.2 If hand delivered, the notice is effective on the date of delivery; if faxed, the notice is effective on the date and time the fax is sent; if sent by registered mail, the notice is deemed to be effective on the fifth business day following the day of mailing.

11. Entire Agreement

- 11.1 The parties agree that this Agreement and any Schedules attached hereto constitutes the entire agreement between the parties with respect to the subject-matter hereof, and that this Agreement supersedes all proposals, oral or written, all previous negotiations and all other communications between the parties with respect to the subject-matter hereof.
- 11.2 No amendment to this agreement shall be effective unless it is made in writing with the mutual consent of both parties.

12. Binding Effect

12.1 This agreement will ensure to the benefit of, and be binding upon, the parties and their respective successors, administrators and assigns.

IN WITNESS WHEREOF the parties have caused this agreement, which shall ensure to the benefit of and be binding upon the successors of the respective parties, to be signed and entered as of the date first mentioned above.

SIGNED, SEALED AND DELIVERED

in the presence of:

The Corporation of the City of St. Thomas
Per:

Mayor – Joe Preston

City Clerk – Maria Konefal

**The Corporation of the Municipality of West
Elgin**
Per:

Mayor – Duncan McPhail

Clerk – Jana Nethercott

Schedule “A”
Acceptable Materials

For the purposes of this agreement the following are Acceptable Materials and accepted by the Facility

MATERIAL	DEFINITION IF ANY
Household hazardous waste	Paints, thinners, solvents, pesticides, cleaners etc

Schedule “B”
Partner Municipality Fee Schedule

Cost for HHW per Household	West Elgin Households*	Annual Cost
\$3.00	2,102	\$6,306.00

*Households based on Statistics Canada 2016 Census

*Partner Municipality Annual Cost subject to adjustment as outlined in Section 4