

Haulage Agreement between Emterra and The Corporation of the Town of Fort Frances

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This Agreement is made as of the _____ day of _____ 2015,

Between:

Halton Recycling Ltd. dba Emterra Environmental.

Hereinafter referred to as the “**Contractor**”

And

The Corporation of the Town of Fort Frances in the Province of

Ontario. Hereinafter referred to as the “**Municipality**”

Whereas the Municipality wished to enter in an agreement to secure the services of the Contractor to transport Recyclable Materials from the Municipal Transfer Facility to the Emterra MRF; and

Whereas the Contractor intends to acquire and operate transport equipment designed for the haulage of Non-Hazardous Solid Waste/Recyclables; and

Whereas the Contractor wishes to enter into an agreement to supply haulage services to The Municipality subject to the terms herein set out;

Now Therefore, in consideration of the mutual promises, terms, conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

1.0 Definitions:

In this Agreement and any Schedules hereto, the following terms shall have the meanings described:

- (a) “Agreement” shall mean this Agreement and any schedules, attachments and amendments thereto;
- (b) “MRF” means the Emterra Recycling Facility located at 1029 Henry Ave, Winnipeg, Manitoba;
- (c) “Business Day” means 7:00 AM to 7:00 PM, Monday through Saturday, excluding statutory holidays identified in Schedule 1 – Statutory Holidays;
- (a) “Agreed Recyclable Materials” means materials included in Schedule 2 - Acceptable Materials Under This Agreement including Residual Materials (not acceptable materials outlined in schedule 2) collected in a curbside or depot collection program in the Municipality and transported to the MRF either by municipal transfer vehicles or by contract transfer vehicles.
- (d) “Transfer Facility” means the municipal solid waste transfer facility(ies) located at 533- 6th Street West, Fort Frances Ontario.
- (e) “Container” means the compactor roll off containers purchased by the Municipality for use with the Blue Box compactor unit or units installed at the Transfer Facility.
- (f) “Undertaking” means the work contemplated in Section 3.0.

2.0 Representations:

The Contractor hereby represents and warrants unto the Municipality that:

- (a) It has done all corporate acts necessary to enter into and carry out its obligations under this Agreement; and
- (b) It is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada).
- (c) It has done all due diligence necessary to understand and fully perform the scope of work required under this agreement and any amendments thereto.

3.0 Solid Waste Haulage:

The Contractor agrees to supply the haul trucks and transport full containers of Agreed Recyclable materials from the Compactor unit at the Municipality's Transfer Facility; install an empty container to replace the removed container, load the removed container onto a haulage vehicle provided by the Contractor; haul the removed container to the Contractor's MRF and return any empty containers to the Municipality's Transfer Facility as needed to insure adequate capacity is available at the Transfer Facility during operating hours.

4.0 Contractor's Obligations:

The Contractor shall at its own expense:

- (b) supply all labour, equipment and materials necessary to carry out its obligations hereunder, save and except for that labour, equipment and materials which this Agreement specifically provides are to be supplied by the Municipality;
- (c) monitor and report to the municipality on a monthly basis on tonnages of material delivered to the MRF and ensure that Containers are returned to the Transfer Facility in good condition suitable for installation and operation;
- (d) compensate the Municipality or repair any damage to the Municipality's equipment caused by the negligence or misconduct of the Contractor's employees or equipment, normal wear excluded. The Contractor shall immediately repair or replace defective equipment (in the sole discretion of the municipality) following notice in writing delivered to the contractor.;
- (e) use only such equipment and material as meets with the approval of the Municipality;
- (f) comply with all federal, provincial and municipal laws, and the Municipality's safety rules while carrying out its obligations under this Agreement;
- (g) designate a foreperson who shall be responsible for overseeing the operations of the Contractor's employees or servants in carrying out this Agreement and provide the Municipality with the foreperson's name, location, e-mail and telephone number(s) and provide the ability to leave a message 24 hours/day which shall be promptly answered by the foreperson or other person of authority capable of resolving any

urgent agreement operating issues.;

- (h) submit, on a form approved by the Municipality, regular monthly reports showing particulars of the work performed by the Contractor to a representative designated by the Municipality who shall, if satisfied that the report accurately sets out the work performed by the Contractor, approve and sign the report;
- (i) at all times enforce discipline and good order among its employees and not employ any incompetent person or person not skilled in the work assigned; and
- (j) provide the Municipality with independent certified monthly reports of fuel use data related to any haulage vehicles used under this Agreement.

5.0 Municipality's Obligations:

The Municipality agrees:

- (a) to promptly sign off on Contractor's reports, described in Subsection 4.0(g), if completed in a satisfactory manner;
- (b) to provide adequate supervision and direction at the Transfer Facility;
- (c) to provide the necessary labour, equipment and facilities to load Solid Waste/Agreed Recyclable Materials into the Roll-off Containers;
- (d) to compensate the Contractor or repair any damage to the equipment that occurs at the Transfer Facility caused by the negligence or misconduct of the Municipality's employees or equipment, normal wear and tear excluded;
- (e) to supply third party liability, fire, theft and vandalism insurance on the Municipality's equipment.

6.0 Term:

Absence a Change of Law as described in Section 14.0, this agreement shall be for a term of five (5) years from September 14, 2015 to September 13, 2020.

7.0 Payment For Work:

The Municipality shall, within 30 days of receipts and approval of invoices prepared by the Contractor, pay to the Contractor such sum as is determined to be payable to the Contractor pursuant to Section 8.0, less any amount which is owed by the Contractor to the Municipality.

8.0 Price:

The Municipality agrees to pay for the services set out in this agreement at the following rate:

- (a) Rate per trip for Agreed Recyclable Materials hauled from the Transfer Station \$1650 per trip plus HST; This rate shall include all regularly scheduled maintenance costs for the equipment in service.
- (b) Haulage of materials (not acceptable materials) not usually hauled as part of this

agreement shall be at such rates as are agreed upon from time to time by the parties;

- (c) The rate set out in Paragraph 8.0(a) hereof is based on use of Tandem Axle Roll Off Truck and Four Axle Trailer Combination with an allowable gross vehicle weight of 53,500 kilograms and manufactured prior to July 1, 2011. In the event that the allowable weight is increased or decreased by an appropriate government body, the payload shall be altered, but the rate per load shall remain the same;
- (d) The rate set out in Paragraph 8.0(a) is based on supply of Recyclables from the Transfer Station on an as needed basis (estimated thirty (30) trips per year). This volume will fluctuate from month to month and the Contractor must alter their hauling schedule to meet these fluctuations. There will be no adjustment in the price per load for any such alteration;

9.0 Escalation:

The Municipality agrees that the Rates herein will be subject to annual escalation or reduction as follows:

- (a) The parties agree that the rates provided for in this agreement shall be adjusted on each anniversary of this agreement, the first such adjustment to take place on July 1st, 2016 and thereafter on each July 1st during the term of the agreement, as follows:

- (i) by a factor to compensate for changes in the Consumer Price Index, as shown on CANSIM Table 326-0020, or successor table, for Winnipeg, Manitoba, All Items, and calculated as follows:

$$\text{CPI Factor} = \text{Average CPI for prior agreement year} \div \text{Average CPI for 12 months prior to start-up of Agreement}$$

$$\text{New Rate} = \text{Original Rate} \times \text{CPI Factor}$$

- (ii) by a Fuel Surcharge Factor per trip (FSF), based on fuel prices, reported for Thunder Bay on the Ontario Ministry of Energy Fuel Prices web page, equal to:

$$\text{FSF} = \text{Return distance in kilometres between facility and MRF} \times \text{litres per kilometer for truck determined from independent certified reports of fuel use data described in sub section 4.0(j)} \times \text{difference between average fuel price for 12 months prior to adjustment date and the Baseline Fuel Price described in section 9.0(b)}.$$

- (b) The Baseline Fuel Price for diesel, for this agreement, shall be set at 115.0 cents per litre (plus applicable taxes). The Baseline Fuel Price for compressed natural gas (CNG) price for this agreement shall be set at 85.0 cents per litre.

10.0 Protection of Life Property and Public Utilities:

The Contractor is responsible for taking appropriate safety precautions in carrying out its

obligations under this Agreement. The Contractor shall protect all property from damage or losses resulting from the performance of this Agreement and shall minimize the disturbance and inconvenience to the public. In the case of any emergency arising during the performance of this Agreement affecting or threatening the Municipality's facilities, or safety of life, or adjoining or other property, the Municipality may, unless directed to the contrary by emergency authorities, at their discretion, take such steps as deemed proper to prevent or lessen any such effect or threat, provided, however, that in case of such emergency, the Municipality shall forthwith notify the Contractor of any action taken.

11.0 Insurance:

- (a) The Contractor shall maintain such insurance, or pay such assessments, as will protect them and the Municipality from all claims:
 - (i) under the Workers Compensation Act;
 - (ii) minimum of \$5 million for damages for personal injury including death; and
 - (iii) minimum of \$2 million for property damage;which may arise as a consequence of Contractor performance or non-performance of obligations under this Agreement;
- (b) Such Policy shall name the Municipality as an additional insured thereunder and shall contain:
 - (a) The insurer's waiver of any rights of subrogation or indemnity or any other claim to which the insurer might otherwise be entitled as against the Municipality and any other corporation owned, operated, or controlled by or affiliated with the Municipality, together with a severability of interest clause and a cross liability clause;
 - and
 - (b) An undertaking by the insurer not to cancel, change, lapse or refuse to renew the insurance therein granted without first giving the parties notice of its intentions in writing of at least 60 days prior to the intended change, lapse, cancellation or termination.
- (c) Certificates of such insurance shall be furnished to the Municipality on an annual basis and shall be subject to its approval as to the adequacy of protection. Such insurance shall be maintained until the Municipality certifies that performance of this Agreement is complete.

12.0 Permits, Licenses:

The Contractor, its agents and assigns shall obtain, pay for and maintain all permits and licenses, whether of a permanent or temporary nature, necessary for it to carry out its obligations hereunder and to operate and do business in any province, municipality or other jurisdiction in which the parties carry out any part of this Agreement.

13.0 Assignment or Sub-Contract:

It is agreed that this Agreement and the rights and obligations of the Contractor may not be assigned or subcontracted without the express written consent of the parties, which consent will not be unreasonably withheld.

14.0 Change of Law

“Change of Law” means the coming into effect after the date of this Agreement changes to the Ontario Waste Diversion Act; Ontario Regulation 273/02; Ontario Regulation 101/94; the Blue Box Program Plan; or any applicable judgment of a relevant court of law which changes the interpretation of these statutes and is a binding precedent affecting the obligations of the Municipality to collect, transport, process or otherwise manage residential Blue Box materials.

If the obligations of the Municipality change as a result of a Change of Law, the Municipality may give notice of termination and the contractor shall not be entitled to any compensation following the termination date notwithstanding any time remaining on the original term of the or any extensions thereon agreed to by the parties.

If a Change of Law occurs, the Municipality and the Contractor are obliged to take reasonable steps to mitigate the adverse impact of such Change of Law upon the “Agreement.”

15.0 Liens:

The Contractor undertakes and agrees to take all necessary and proper steps to ensure that no claims for liens will be filed against the property of the Municipality. If, notwithstanding the foregoing undertaking, any claim for a lien shall be filed, and so often as the same shall happen, the Contractor agrees that they will, at their own expense, within ten (10) days of the Contractor receiving notice of the filing thereof, cause the same to be canceled and removed.

16.0 Contractor to Indemnify Municipality

The Contractor further agrees to indemnify the Municipality against all loss, costs, charges and expenses occasioned by, resulting from or in any way arising out of such claims.

17.0 Arbitration or Mediation:

All matters in dispute under this Agreement that are not resolved in a timely fashion shall be referred to mediation, or failing resolution at mediation, to arbitration by a single arbitrator, if the parties agree upon one, otherwise to an arbitrator appointed by the Superior Court of Justice of Ontario, pursuant to the Arbitration Act of Ontario.

18.0 Termination:

This agreement may be terminated by the Contractor or the Municipality in the event of a material change in circumstances on six (6) months notice.

19.0 Default:

In the event that the Contractor is in default of its obligation under this agreement, the Municipality may correct the default and charge the cost of the corrective action to the Contractor.

In the event that either party is in default of its obligations hereunder, and such default continues after six (6) months written notice, or in the event that either party becomes insolvent or bankrupt, then the other party may forthwith terminate this agreement.

20.0 Performance Bond:

For the first year term of the this haulage agreement, the Contractor shall supply the Municipality with an irrevocable letter of credit or other performance bond in the amount of \$25,000. It is understood by both the Municipality and the Contractor the requirement to maintain a letter credit for the full term of the agreement will be re-evaluated by the Municipality in July of 2016 with the understanding that it may not be required for the remainder of the term of the agreement.

21.0 Notice:

Any notice, direction or other instrument required or permitted to be given to the Contractor hereunder shall be in writing and may be given by mailing same, postage pre-paid, or delivering same to the Contractor at 1029 Henry Ave Winnipeg MB R3E 1V6. Any notice, direction or other instrument required or permitted to be given to the Municipality hereunder shall be in writing and may be given by mailing same, postage pre-paid, or delivering same to the Municipality at Attention Clerk, 320 Portage Avenue, Fort Frances, Ontario P9A 3P9. Notice will be deemed to having been given as of 3 business days after the post date of mailing.

22.0 Force Majeure:

Delays in or failure in the performance of either party under the Agreement shall not constitute default hereunder or give rise to any claim for damages if and to the extent caused by occurrences beyond the control of the party affected, including but not limited to decrees of Government, acts of God, fires, floods, explosions, riots, war, rebellion, sabotage and atomic or nuclear incidents, but lack of finances, strikes or other concerted acts by workers, delay or failure arising out of the nature of the Work to be done, or from the normal action of the elements or from any normal difficulties which may be encountered in the performance of the Work, having regard to the nature thereof, shall in no event be deemed to be a cause beyond a party's control. Normal difficulties include but are not limited to those related to quality of equipment or delay in delivery of equipment.

In the event that performance of this Agreement in the reasonable opinion of either party is made impossible by force majeure, then either party shall notify the other in writing and the

Municipality shall either;

- a. terminate this Agreement forthwith and without any further payments being made, or
- b. Authorize the Proponent to continue the performance of the Agreement with such adjustments as required by the existence of the force majeure and agreed upon by both parties. In the event that the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that this Agreement shall be terminated.

23.0 Contractor to Assume Custody of Agreed Solid Waste:

The Contractor shall assume custody and control of the Agreed Recyclable material once it has been loaded into the haulage vehicle and leaves the property of the Transfer Facility.

24.0 Waiver:

No provision of this Agreement will be deemed to be waived, and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by the party to be charged with such waiver or consent. A specific waiver of any provision of this Agreement or of any breach of any provision is not deemed or construed to be a change, amendment or modification of any provision of this Agreement or waiver of any other breach, whether of the same or of any other provision, nor shall any delay or omission on the part of any party to this Agreement to exercise or avail itself of any right it has or may have under this Agreement, operate as a waiver of any other breach or right, nor will any waiver or failure to enforce any of the provisions of this Agreement in any way affect the validity of the Agreement of any part of it.

25.0 Time Of The Essence:

Time shall be of the essence hereof.

26.0 Schedules

Schedules to this agreement may be added by the parties from time to time as required.

27.0 Entire Agreement:

This Agreement supersedes all prior negotiations and agreements including, without limitation, any previous agreement, with respect to the haulage of Recycle material and contains the entire understanding between the Parties.

28.0 Governing Law, Currency Headings and Interpretations

- (a) This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein;
- (b) All sums of money referred to herein are expressed in Canadian currency;
- (c) Headings appearing in this Agreement are for general information and reference only and this Agreement shall not be construed by reference to such headings;
- (d) Materials or work described in words which, so applied, have a well known technical or trade meaning shall be held to refer to such recognized standards;

- (e) In interpreting this Agreement, where the context so requires, the singular shall include the plural and the masculine and the feminine shall include the neuter and vice-versa.

In Witness Whereof the Contractor and the Municipality have signed this Agreement by their duly authorized officers as of the day and year first above mentioned.

Halton Recycling Ltd. dba Emterra Environmental

Per: _____ Date: _____

I have the authority to bind the Corporation

Per: _____ Date: _____

I have the authority to bind the Corporation

The Corporation of the Town of Fort Frances

Per: _____ Date: _____

I have the authority to bind the Corporation

Per: _____ Date: _____

I have the authority to bind the Corporation

Schedule 1 - Statutory Holidays

New Years Day	January 1 st
Family Day (Ontario)	3 rd Monday in February
Good Friday	varies
Victoria Day	Monday before May 25 th
Canada Day	July 1 st
Civic Holiday (Ontario)	First Monday in August
Labour Day	First Monday in September
Thanksgiving	2 nd Monday in October
Remembrance Day	November 11 th
Christmas day	December 25 th
Boxing Day (Ontario)	December 26 th
½ day December 24 th Open 7:30 am to 11:30 am PW office closed at 11:30	
½ day December 31 th Open 7:30 am to 11:30 am PW office closed at 11:30	

Schedule 2 - Acceptable Materials Under This Agreement

Emterra's Winnipeg Single Stream MRF can process the full spectrum of packaging and printed paper, including:

1. OCC
2. ONP
3. Flyers, writing paper, envelopes, magazines, junk mail, clean pizza boxes
4. Boxboard
5. Rigid food and beverage plastic #1-7 containers including clam shells
6. Aseptic and polycoated food and beverage containers
7. Aluminum food and beverage containers
8. Tin food and beverage containers
9. Glass bottles and jars

The following materials are **not acceptable** (Residual Materials) at this facility:

1. Laminated paper cups
2. expanded polystyrene
3. Film plastic
4. Aluminum foil, foil pie plates, foil food containers
5. Mirrors, window glass, broken glass
6. Light bulbs, drinking glasses, ceramics, cookware
7. Styrofoam packing & trays
8. Non-paper gift wrap eg – foil gift wrap
9. Cardboard boxes with wax coating
10. Paper towels, napkins or tissues
11. Used Motor oil containers & batteries
12. Bioplastic or compostable plastic
13. Liquid- absorbing pads e.g. in trays of meats, poultry, fish etc..
14. Plastic wrap and shrink wrap for meat, poultry, fish or cheese
15. Plastics that are not containers e.g. toys, laundry baskets, plastic cutlery
16. Ceramic plant pots
17. Plastic blister packs e.g. plastic/paper packing for batteries, toothbrushes, etc.. or plastic/foil protective packing for chewing gums and pills

Additional materials may be added for inclusion or exclusion from time to time during the term of this contract with the consent of both parties, in writing, following negotiated changes to prices and other contract terms as may be applicable.