

FACILITIES OPERATING AGREEMENT

THIS AGREEMENT entered into this _____ day of _____ 2019.

BETWEEN:

COUNTY OF ST. PAUL NO. 19 & TOWN OF ST. PAUL

(the "OPERATOR")

AND

EVERGREEN REGIONAL WASTE MANAGEMENT SERVICES COMMISSION

(the "COMMISSION")

WHEREAS:

- A. Evergreen Regional Waste Management Commission is a regional services commission established pursuant to Part 16.1 of the *Municipal Government Act* (Alberta) and the Evergreen Regional Waste Management Services Commission Regulation for the purpose of providing solid waste management services;
- B. The Operator is a municipality incorporated pursuant to the *Municipal Government Act* and a member of the Commission;
- C. The Commission leases lands (the "Lands") legally described as:
 - Rural Legal: PSE 16-58-9-W4th
 - Urban Legal: 10259772 2A(the "Lands");

upon which certain facilities, as defined herein and set out in Schedule "A" to this Agreement (the "Facilities") are located;
- D. The Commission desires to engage the Operator to operate the Facilities, upon and subject to the further terms and provisions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES and the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS AND SCHEDULES

1.1 Definitions

Capitalized words used in this Agreement shall have the meanings set forth below:

- a. "Agreement" means this Facilities Operating Agreement between the Commission and the Operator, including all terms, conditions and recitals contained herein and all Schedules attached hereto.
- b. "AEPEA" means the *Alberta Environmental Protection and Enhancement Act* (Alberta) and regulations enacted thereunder as amended or replaced from time to time.
- c. "Approval" means the lawful permission(s) granted to the Commission to operate the Facilities.
- d. "Good Solid Waste Landfill Operating Practices" means the standard of practice attained by exercising that degree of knowledge, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and which is expected to accomplish the desired result consistent with governing laws and regulations, reliability, safety of the public, safety of personnel and expediency, but is not restricted to the optimum practice or course of action to the exclusion of all others but rather to the spectrum of reasonable practices, methods or acts;
- e. "Initial Term" has the meaning given to it in section 5.1.
- f. "Operations" means those operations more particularly identified in the Operations Manual.
- g. "Operations Manual" means the operations manual prepared for the Commission, as amended from time to time by the Commission acting reasonably after consultation with the Operator, the most recent version of which is attached hereto as Schedule "B".
- h. "Permits" means all permits and authorizations that are or may be required to operate the Facilities.
- i. "Facilities" means facilities used to gather, collect, hold, store, remove or transfer Waste and includes any system used to move waste from one area to another so that it can be disposed of or temporarily moving and storing Waste until it is eventually disposed of. For further certainty, Facilities includes those waste transfer and landfill (if any) facilities described and referred to in the Operations Manual attached hereto as Schedule "B".

- j. “Waste” means any solid or liquid material or product or combination of them that is intended to be treated or disposed of or that is intended to be stored and then treated or disposing of including refuse, garbage and includes anything that is useless, unwanted or discarded materials which results from society’s normal activities and which may be of a household, domestic, agricultural, commercial or industrial nature, excluding sewage and non-household hazardous waste.

1.2 Schedules

The following Schedules are attached hereto and incorporated into this Agreement.

Schedule “A” – Lands and Facilities
Schedule “B” – Operations Manual

ARTICLE 2 OPERATIONS

2.1 Engagement of Operator

The Commission hereby engages the Operator to operate, and the Operator agrees to operate the Facilities for and on behalf of the Commission, upon and subject to the terms and provisions of this Agreement. The Facilities will be located on the Lands. Unless otherwise agreed in writing between the parties, the Commission shall not have any rights of ownership in the Lands.

2.2 Scope of Operations

The scope of Operations to be conducted by the Operator as contract operator of the Facilities are generally described in the Operations Manual. Notwithstanding the foregoing, in carrying out Operations hereunder, the Operator shall be responsible for conducting all operations necessary to operate the Facilities at the standards set out herein, whether or not such operations are described in the Operations Manual, other than those operations or activities which the Commission has expressly agreed to be responsible for pursuant to this Agreement. Any standards which apply to the Operation of the Facilities must be reasonable. Any change in such standards made by the Commission after this Agreement is executed shall only come into effect after notification to the Operator.

2.3 Conduct of Operations

- a. Subject to Section 2.4, Operator shall conduct the Operations in accordance with Good Solid Waste Operating Practices, in compliance with governing laws and regulations, including applicable Approvals and Permits and, to the extent not inconsistent with the foregoing, in accordance with the policies and procedures set forth in the Operations Manual, as amended from time to time.
- b. In performing or causing the performance of its obligations under this Agreement the Operator:
 - i. subject to Section 2.6 herein, shall not be entitled to use sub-contractors in the performance of the Operations without the prior written approval of the Commission which approval may be withheld by the Commission in its sole discretion;
 - ii. shall employ the quantity and quality of personnel necessary for the effective and efficient performance of Operations;
 - iii. shall at all times be responsible for its employees; and
 - iv. shall ensure that its employees are trained, competent and certified in performing the Operations and shall use reasonable care in performance of the Operations.

2.4 Modifications to the Operations Manual

The Operator recognizes that the Operations Manual will be subject to review by the Commission and that changes or modifications to the Operations Manual may be made by the Commission, in its full discretion. The Commission will give notice to the Operator of any changes or modifications to the Operations Manual within THIRTY (30) DAYS from the date the change or modification was approved by the Commission and the Operator will carry out the Operations in accordance with the modified Operations Manual.

2.5 Permits and Governmental Reporting Obligations

The Commission shall be responsible for obtaining and maintaining all necessary Approvals and Permits associated with the Facilities and for complying with all necessary regulatory reporting requirements imposed by the Approvals and Permits and governing laws including but not limited to the AEPEA. Nothing from the foregoing relieves the Operator of its obligation to conduct the Operations in accordance with the requirements of this Agreement including those set out in Section 2.3 of this Agreement.

2.6 Subcontractors

- a. Notwithstanding Section 2.3(b)(1) of this Agreement the Operator may use sub-contractors to provide materials and services which are not operational and in nature and which relate solely to routine and ordinary maintenance of the Lands or Facilities, including: the supply and placement of gravel and similar materials, road maintenance, fence repair, and repairs to and maintenance of attendant structures. In addition to the foregoing, the Operator may use sub-contractors when responding to releases of substances in which case the Operator shall at its sole cost and expense retain such sub-contractors and take such steps as are required to respond to the release of the substance and remediate the area of the release in accordance with all applicable legislative, regulatory and operational requirements.
- b. The Operator may only use sub-contractors for services related to the transfer of materials from the Lands (including metals, electronic waste, oil, tires, propane bottles, household hazardous waste, pesticide and herbicide containers, cardboard, batteries, florescent tubes and Freon) and monitoring the wells located in the proximity of the Facilities if the services are provided by the Commission or its designated sub-contractor. If refunds, commissions or fees are paid to the Commission as a result of services provided to the Operator by the Commission's designated sub-contractor, the refunds, commissions or fees in question shall be distributed to the Operator and any other municipality that is a member of the Commission and received such services based on the municipality's on a proportionate basis as determined by the Commission in its sole discretion from time to time.

2.7 Operator's Employees

The Operator acknowledges that with respect to its employees, that it is responsible for all aspects arising out of the employer-employee relations between it, and each such employee, including, without limitation, the provision of supervision, responsibility for hiring, dismissal, discipline, direction and control, the payment of salary, the withholding and remittance of taxes, pension plan contributions, unemployment insurance, health care, worker's compensation and any other premiums and amounts generally payable by an employer in respect of an employee.

2.8 Alterations to Facilities

The Operator may at its sole cost and expense take all steps necessary to maintain and operate the Facilities upon the Lands make such modifications or alterations to the Lands as are required for the maintenance and operation of the Facilities. The Operator shall not alter or remove any building, equipment, fixture, improvement or structure which has been funded or placed on the Lands by the Commission without written permission from the Commission.

ARTICLE 3
OPERATOR EXPENSES, FEES AND GST

3.1 Operator Expenses

The Commission may, in its sole discretion, from time to time agree to pay certain expenses of the Operator, under this Agreement. The Commission shall only be responsible for the payment of those expenses of the Operator which the Commission has approved in writing. Unless otherwise agreed in writing any monies collected at the Facilities are to be retained by the Operator of the Facilities.

3.2 Interest Payable on Outstanding Amounts

All fees and other expenses payable by a party pursuant to this Agreement shall be invoiced by the party owed such fees or expenses, and such fees or other expenses come due as of the invoice date and shall be paid within THIRTY (30) DAYS of such date. All fees and other expenses which are not paid when due shall be subject to interest at the (bank) prime rate for commercial loans plus ONE (1%) PERCENT calculated from the date such fees or other expenses become due, to the date such fees or other expenses are paid.

3.3 GST

All amounts paid by the Commission to the Operator shall be subject to goods and services taxes, sales taxes, value added taxes, and other taxes imposed on the Operator with respect to the provision of services invoiced under this Agreement.

ARTICLE 4
INSPECTION & INFORMATION

4.1 Access and Inspection of the Facilities

The Commission retains all rights with respect to the Facilities not expressly granted to the Operator. For greater certainty, but not to restrict the generality of the foregoing, the Commission shall have the right for its representatives to have unimpeded access to the Facilities at any time and the Commission has the right to inspect the Operator's operation of the Facilities for any purpose, including the Operator's compliance with this Agreement.

4.2 Duty to Provide Information

When requested to do so, each party shall use reasonable efforts to provide the other with information in sufficient quantity and quality so to facilitate discharge of their respective duties and functions under this Agreement.

4.3 Monthly Site Operations Report

The Operator will prepare and maintain in its records monthly site operations reports in a form and with contents satisfactory to the Commission, which shall at a minimum include a list of recyclables and inventory for the Facilities. The Operator will provide its monthly site operation reports, and any other information that the Commission may request in relation to said reports, as requested by the Commission from time to time.

4.4 Annual Compliance Audit

Without limiting the generality of any other provision of this Agreement, in every year that the Agreement exists between the parties, the Commission shall complete an Annual Compliance Audit of the Facilities on a date to be determined in the full discretion of the Commission. The Operator will answer any inquiries and will provide any information requested by the Commission which is required to complete the Annual Compliance Audit.

4.5 Maintenance of Records

The Operator shall maintain accurate records of operating and technical information for a period of seven (7) years relating to the matters contemplated under the Agreement in such a manner that any data required to verify any payment obligations or operating information shall be available to the Commission for the purposes of conducting an audit pursuant to section 4.6.

4.6 Right to Audit Books and Records

The Commission shall have the right, on reasonable written notice to the Operator, not more than once a year, at its sole expense, during the normal business hours, during the term of this Agreement and for a period of TWO (2) YEARS following termination of this Agreement, to have access to and inspect the books and records of the Operator to audit any amounts invoiced by the Operator to the Commission under this Agreement. If, as a result of such audit, monies are found to be owing by one party to the other party, the party owing such amounts shall promptly pay such amounts to other party.

**ARTICLE 5
TERM AND TERMINATION**

5.1 Initial Term and Renewal Terms

Subject to earlier termination, as provided herein, this Agreement shall commence on the Effective Date and shall continue for a period of TEN (10) YEARS (the "Initial Term"). Thereafter, this Agreement shall be automatically renewed for TWO (2) successive TEN (10) year terms (each one a "Renewal Term") unless, not less than THREE (3) MONTHS prior to the expiry of the Initial or Renewal Term, either party gives notice to the other party of its intent to terminate this agreement.

5.2 Early Termination

This Agreement may be terminated prior to the expiry of the Initial Term or the Renewal Term without penalty or payment:

- a. by the Commission, without cause, on providing ONE (1) YEAR written notice of its intent to terminate this Agreement;
- b. by the Operator, without cause, on providing ONE (1) YEAR written notice of its intent to terminate this Agreement which notice period may be waived or shortened by the Commission in its sole discretion;
- c. by either party:
 - i. if the Defaulting party is in breach of any of its obligations under this Agreement, which breach is not cured within TEN (10) DAYS after delivery of written notice by the non-defaulting party to the Defaulting party, specifying such breach; provided that, if the breach is such that TEN (10) DAYS is not sufficient to rectify the breach, this Agreement may not be terminated by the non-defaulting party if the Defaulting party is then diligently rectifying such breach, and continues to do so until the default is cured;
 - ii. if either party takes the benefit of or become subject to bankruptcy or insolvency legislation, or if a receiver, receiver-manager, trustee or other official shall take control of any of such party's business or assets, or upon the dissolution of either party pursuant to the provision of the *Municipal Government Act* (Alberta) or other relevant legislation than either party may, in its sole discretion, upon written notice, terminate this Agreement forthwith.

5.3 Post Termination Obligations

Upon notice of termination of this Agreement being given pursuant to section 5.2, the parties shall meet to discuss a plan for the orderly and efficient transition of operatorship of the Facilities back to the Commission or to any person designated by the Commission. Each party shall use all reasonable commercial efforts to effect the termination of this Agreement in an orderly and efficient manner. Upon termination, all fees which have accrued or which are due and owing by a party to the other party shall immediately become due and payable.

5.4 Return of Facilities

At the termination of this Agreement the Operator shall relinquish and surrender, in good condition, any improvements, structures, or buildings caused to be made to or at the Facilities by the Operator, the Commission, or others.

ARTICLE 6 INSURANCE

6.1 Operator's Insurance Coverage

Without in any way limiting the liability of the Operator under this Agreement, the Operator shall obtain and maintain in force during the Term the following insurance, all satisfactory to the Commission, acting reasonably;

- a. standard automobile, bodily injury and property damage insurance providing coverage of at least Five Million (\$5,000,000.00) Dollars inclusive and in respect of any one claim for the injury to or death of one or more persons or damage to or destruction of property;
- b. a comprehensive general liability insurance policy providing coverage of at least Five Million (\$5,000,000.00) Dollars inclusive and in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:
 - i. non-owned automobiles;
 - ii. contractual liability including this Agreement;
 - iii. broad form property damage endorsement; and
 - iv. sudden and accidental environmental liability.
- c. Workers' Compensation coverage for all employees engaged by the Operator in accordance with the laws of the Province of Alberta;

- d. In cases where Workers' Compensation coverage is unavailable employer's liability insurance respecting employees of the Operator with limits of liability of not less than Five Million (\$5,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee engaged by the Operator; and
- e. such other insurance as the Commission may from time to time reasonably require.

6.2 Insurance Certificate

- a. The Operator shall upon request provide to the Commission evidence of renewal of the insurance policies required in section 6.1 within thirty (30) days following the date upon which the applicable policy must be renewed which insurance policy shall name the Commission as an additional insured and not be capable of cancellation or substantial modifications without a minimum of THIRTY (30) DAYS prior written notice to the Commission.
- b. Upon a request by the Commission, the Operator shall provide to the Commission certificates of insurance evidencing compliance with section 6.1 of this Agreement and such certificates shall be provided within FIVE (5) DAYS from the date that the request is made; and the Operator shall deliver to the Commission, with in FIVE (5) DAYS upon request, its certificate number from the appropriate Worker's Compensation Board or Commission, showing the Operator has registered and is in good standing with such Board or Commission.

6.3 Notice of Claim

The Operator shall notify the Commission of any claim or potential claim of which it becomes aware against the Operator's insurance policies. The Commission shall notify the operator of any claim or potential claim which it becomes aware which arises from the Operator operating the Facilities or from the Commission overseeing the operation of the Facilities.

ARTICLE 7 FORCE MAJEURE

7.1 Meaning of Force Majeure

For the purposes of this Agreement, the term "Force Majeure" means any act of God, major storms, civil disturbance or any similar major event or occurrence not within the control of a party and which by the exercise of due diligence by such party could not have been prevented, but lack of funds on the part of such party shall be deemed not to be a Force Majeure.

7.2 Consequences of Force Majeure

Should either party become unable to fulfill its obligations under this Agreement due to an event of Force Majeure, the following shall apply:

- a. the affected party shall notify the other party in writing, of the occurrence of the Force Majeure as soon as practicable;
- b. the affected party shall not be required to fulfill its obligation under this Agreement while the event of Force Majeure continues;
- c. the affected party shall use all reasonable commercial means to reduce the consequences of the event of Force Majeure; and
- d. neither party shall be responsible for, nor liable to the other party for, any loss or damage which the other may suffer or incur as a result of the inability of the Affected party to perform its obligations under this Agreement due to an event of Force Majeure.

ARTICLE 8 LIABILITY AND INDEMNITY

- 8.1 Neither party shall have liability of any nature whatsoever to the other party for any losses or damages suffered or sustained, either directly or indirectly, by the other party including without limitation, loss of profit, as a result of the termination of this Agreement, whether the termination was with or without cause.
- 8.2 The Operator shall be liable to and shall indemnify and hold harmless the Commission, its employees and agents, from any demands, losses, costs, damages, actions, claims, proceedings, penalties and expenses, including legal costs on a full indemnity solicitor and own client basis, whatsoever that may arise, directly, or indirectly, out of any act or omission of the Operator, the Operator's agents, employees, subcontractors or representatives, in the performance of this Agreement.
- 8.3 The Commission shall not be liable for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Operator, its employees, representatives or subcontractors in the performance of this Agreement.

ARTICLE 9 DISPUTE RESOLUTION

9.1 Negotiations

The parties shall first attempt to resolve any dispute relating to this Agreement by good faith negotiations. If, after TWENTY (20) DAYS, it becomes apparent to the parties that the dispute will not be resolved by such negotiations, then either party may request that the dispute be submitted to final and binding arbitration.

9.2 Submission of Dispute to Arbitration

If a dispute is submitted to arbitration pursuant to Section 11.1, such arbitration shall be conducted pursuant to the provisions of the *Arbitration Act* (Alberta), and the following shall apply:

- a. the party desiring arbitration shall nominate one arbitrator and shall notify the other party in writing of the nomination. The notice shall set forth a brief description of the matter submitted for arbitration. The other party shall, within TEN (10) DAYS after receiving such notice, nominate an arbitrator and the two arbitrators shall select a chairman of the arbitration tribunal to act jointly with them. The parties will act reasonably and in good faith to select arbitrators who are objective and who are suitably qualified by education or professional experience to deal with the matters, which are the subject of the arbitration. If the nominated arbitrators are unable to agree on the selection of a chairman within ten days after the second arbitrator is nominated, the parties or either one of them may apply to the Alberta Court of Queen's Bench to have the chairman appointed;
- b. if the party receiving the notice of the nomination of an arbitrator by the party desiring arbitration fails within ten days to nominate an arbitrator, then the arbitrator nominated by the party desiring arbitration may proceed alone to determine the dispute in such manner and at such time as he shall think fit and his decision shall, subject to the provisions of this Agreement, be binding upon the parties;
- c. subject to the provisions of this Agreement, the written decision of the arbitrators and chairman, or any of two of them, shall be binding upon the parties both in respect of procedure and the conduct of the parties during the proceedings and final determination of the issues. Any written award or decision of the arbitrators shall not repeat or recite any evidence which is proprietary or confidential to either party;
- d. notwithstanding the foregoing, any arbitration may be carried out by a single arbitrator if the parties so agree, in which event the provisions of this Section shall apply, mutatis mutandis; and
- e. the costs of arbitration shall be borne by the parties as may be specified in the arbitrator's decision.

ARTICLE 10 NOTICES

10.1 Notice

Notices shall be in writing and shall be delivered personally or sent by fax or email to the addresses set out in section 11.2. Any notice given by fax or email delivery shall be deemed to be given at the commencement of the next business day. Either party may change its address for notice and shall immediately advise the other in writing of the new address.

10.2 Addresses for Notice

- a. The address for service of notice to the Operator is:

County of St. Paul No. 19
5015 – 49 Avenue
St. Paul, AB T0A 3A4
Chief Administrative Officer
(780) 645-3301
(780) 645-3104
countysp@county.stpaul.ab.ca

- b. The address for service of notice to the Operator is:

Town of St. Paul
Box 1480
St. Paul, AB T0A 3A0
Chief Administrative Officer
(780) 645-4481
(780) 645-5076
townhall@town.stpaul.ab.ca

- c. The address for service of notice to the Commission is:

Evergreen Regional Waste Management Services Commission
Box 3
Lafond, AB T0A 2J0
Manager
(780) 646-6125
evergreenwaste@mscnet.ca

ARTICLE 11

INTERPRETATION

11.1 Headings

The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and shall not affect or be considered in the construction or interpretation of this Agreement.

11.2 Articles and Sections

References in this Agreement to articles, sections or subsections mean a reference to an article, section or subsection of this Agreement.

11.3 Statutes

A reference in this Agreement to all or any part of any statute shall be deemed to include all regulations, orders and guidelines prescribed or published pursuant to such statute, all as amended from time to time.

11.4 Derivative Terms

Words importing the singular shall include the plural and vice versa and words importing gender shall include all genders. Capitalized words used herein shall be deemed to include all derivatives of such words.

ARTICLE 12 GENERAL

12.1 Relationship of parties

No party shall, by virtue of this Agreement, in any way or for any purpose, be or be deemed to become a partner or agent of the other party in the conduct of any business, or otherwise be or be deemed to become a member of a joint venture or joint enterprise with the other party. Nothing in this Agreement confers on a party any agency or attorney status to act on behalf of or bind the other party. No party shall, by virtue of this Agreement, in any way or for any purpose, incur fiduciary obligations to the other party.

12.1 Confidential Information

Each party shall keep in the strictest of confidence any information or records which is provided to it by the other party. Any such information or records shall not be disclosed to any third party without written consent of the party who provided the information, unless required by law.

12.2 Assignment of Agreement

This agreement shall not be assigned or sub-contracted in whole or in part without the prior written consent of the Commission and such consent remains in the sole discretion of the Commission.

12.3 Waiver

A waiver by a party of a breach of this Agreement shall not operate as a waiver of any future breach, whether of a like or different nature, except to the extent specifically provided in such earlier waiver. No failure on the part of either party to this Agreement to exercise any right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof, or of any other right or remedy in law or in equity or by statute, except as otherwise expressly set out in this Agreement.

12.4 Amendments

Except as otherwise provided herein, this Agreement may only be amended by the mutual consent of the parties, expressed in writing.

12.5 Entire Agreement

This Agreement represents the entire agreement of the parties in relation to the subject matter hereof and supercedes and replaces any and all prior agreements, written or oral, between them.

12.6 Severance

If any provision or provisions of this Agreement, shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.7 Survival

Any obligations and duties which by their nature extend beyond the lapse, expiry or termination of this Agreement shall survive any lapse, expiry or termination of this Agreement and remain in effect. For greater certainty but not so as to restrict the generality of the foregoing, the confidentiality, warranty and indemnity provisions contained herein shall survive the lapse, expiry or termination of this Agreement.

12.8 Governing Law

This Agreement shall be governed by the local domestic law of the Province of Alberta and each party hereto attorns to the jurisdiction of the courts of the Province of Alberta.

12.9 Further Assurances

The parties agree to do such things, and execute and deliver such agreements, documents and instruments, for no additional consideration, at the request of the other party, as may be necessary to carry out and give full effect to the terms and provisions of this Agreement.

12.10 Enurement

This Agreement shall enure to the benefit of and be binding upon the heirs, assigns and successors of the parties hereto.

IN WITNESS WHEREOF the parties have entered into this Agreement on the date first written above.

**EVERGREEN REGIONAL WASTE
MANAGEMENT SERVICES
COMMISSION**

Per: _____

Per: _____

COUNTY OF ST. PAUL NO. 19

Per: _____

Per: _____

TOWN OF ST. PAUL

Per: _____

Per: _____

SCHEDULE "A"
Lands and Facilities

St. Paul Waste Transfer Facility PSE 16-58-9-W4th/10259772 2A Parcel B 58213 Rge Rd 93A

SCHEDULE "B"
Operations Manual