

## AMENDING AGREEMENT

THIS AMENDMENT TO THE SOURCE SEPARATED ORGANICS SERVICES AGREEMENT (the "Amendment") is effective as of the 1st day of April, 2009.

BETWEEN

CITY OF OTTAWA  
(the "City")

- and -

ORGAWORLD CANADA LTD.  
(the "Contractor")

### WHEREAS:

- (i) The Parties entered into a Source Separated Organics Services Agreement dated the 27<sup>th</sup> day of March 2008 (the "SSO Agreement");
- (ii) Pursuant to Section 7.5 of the SSO Agreement, the Contractor expected that the Facility would be located on the Stagecoach Facility Site. The Stagecoach Facility Site required re-zoning and the Contractor anticipated an appeal to oppose the re-zoning application by a coalition of concerned property owners;
- (iii) In anticipation of the appeal to the re-zoning application, and the resulting time delays in bringing the Source Separated Organics program on stream, the Contractor submitted a contingency plan to the City, as contemplated by Section 20.6 of the SSO Agreement;
- (iv) The contingency plan contemplated the construction and installation of the Facility at a new location and a request for a limited increase in the Base Processing Fee as a result of this move;
- (v) The Contractor believed that there was a high degree of certainty of opposition to the re-zoning of the Stagecoach Facility Site and resulting unpredictable delays in program start-up and requested that the City deem the opposition from the property owners to be an Uncontrollable Circumstance (despite the re-zoning application not being submitted nor appealed) and that in accordance with Section 20.6 of the SSO Agreement, the Contractor's contingency plan to move the Facility to a new location, the Hawthorne Facility Site, be accepted by the City;
- (vi) The City, after due consideration, agreed that there was a high degree of certainty that opposition from the property owners would adversely affect the timing of bringing the Source Separated Organics program on stream, and, accordingly, has agreed to deem the opposition to be an Uncontrollable Circumstance;

- (vii) Subsequently, the OMB received an appeal to the City's comprehensive zoning by-law related to the Hawthorne Facility Site, which was filed by residents in the Hawthorne Road area;
- (viii) On October 23, 2008, the OMB dismissed that appeal;
- (ix) City Council approved on December 10, 2008 a delay in the implementation of the City's SSO program;
- (x) The Contractor was delayed in obtaining approvals and has requested certain time extensions; and
- (xi) The Parties have agreed to amend the SSO Agreement on the following terms and conditions.

**NOW THEREFORE**, in consideration of the respective covenants and agreements hereinafter contained, the Parties hereto covenant and agree as follows:

# **1. SSO AGREEMENT AMENDMENTS**

The SSO Agreement is amended as follows:

- 1.1 Subsection 3.4(a) up to and including subparagraph 3.4(a)(v) is deleted and replaced with the following:
  - "(a) The Parties acknowledge and agree that if the Contractor is unable to Commence the Work by April 1, 2010, the City will incur costs, expenses and damages. In order to compensate the City for these costs, expenses and damages for the period between April 1, 2010 and the date the Contractor Commences the Work, which date shall not be later than the Drop Dead Date, the City shall invoice the Contractor on a weekly basis and the Contractor shall pay to the City the following delay payments, within thirty (30) Business Days of receipt of the invoice, commencing April 8, 2010:
    - (i) the positive difference between the per tonne cost of the contingency management measures the City was required to implement to manage the SSO that the Facility was not able to process and the per tonne Base Processing Fee multiplied by the number of tonnes of the SSO managed through the City's contingency measures;
    - (ii) all incremental hauling fees, hauling penalties and incremental processing costs incurred by the City to transport and process or dispose of the SSO, diverted by the City to another facility;
    - (iii) all incremental communication costs incurred by the City to convey to residents any changes to the SSO program that result from the Contractor's failure to meet the April 1, 2010 date in respect of SSO to be delivered as of the Commencement Date;"

- 1.2 Subsection 3.4(b) is amended by replacing the date "January 1, 2010" with the date "April 1, 2010".
- 1.3 Subsection 3.5(a) is amended by adding a comma and the words "but is not obliged to do so." to the end of the sentence.
- 1.4 The following is added as Subsection 6.1(t):

"The Hawthorne Facility Site is located on property leased by the Contractor for a term which coincides with the Term of this Agreement, as the Term may be extended by Section 2.2. The ground rent being paid by the Contractor to the landlord under the lease for the Hawthorne Facility Site is at least \$350,000.00 per annum, plus consumer price index escalations, (the "**Tenant's Ground Rent**"). The Tenant's Ground Rent is payable as of the operations commencement date (as defined in the said lease). The landlord of the Hawthorne Facility Site is not an affiliate of the Contractor. The Hawthorne Facility Site is zoned to permit the Work."

- 1.5 The following is added as Subsection 6.1(u):

"The Facility's odour control management systems will be fully operational by the earlier of the Commissioning Date or the date at which SSO is first received for processing, but in no event later than the Commencement Date."

- 1.6 Subsection 7.5(a) is amended by deleting the second sentence thereof and inserting the following in its place:

"The Contractor's Facility shall be located on lands legally described as Part of the West-half of Lot 27, Concession 6 (RF) which is Part of Parcel 26-1, Section GL-6RF, and part of Part 1 on 4R-11834, formerly Gloucester, now City of Ottawa, (part of PIN 04326-0266), as more particularly shown on the map attached as Schedule 3 (the "**Hawthorne Facility Site**")."

1.7 Section 9.1 is amended by replacing the word "Commissioning" with the word "Commencement" in Subsections 9.1(d) and 9.1(e).

1.8 Subsection 11.2(c) is deleted and the following is inserted in its place:

"All Permits, including the Certificates of Approval for the Facility, and other regulatory approvals and inspections referenced herein shall be submitted and secured, as the case may be, by the Contractor and be in effect in order to permit:

By January 27, 2010 - System and facility commissioning with functional operating capacity of up to 100 tonnes/day

By April 1, 2010 - Process commissioning complete with functional operating capacity of 400 tonnes/day."

1.9 Section 13.2 is amended by adding the following Subsection:

"(c) Provided the Hawthorne Facility Site is the Facility which is used by the Contractor to perform the Work, including processing the SSO, and provided the Contractor is leasing the Hawthorne Facility Site, is not affiliated to the landlord and paying the Tenant's Ground Rent to the landlord, the City agrees to increase the Base Processing Fee ~~S. 10(a), (b), (c), 11(a), (b), (c), (d)~~ ~~per tonne on the first eighty thousand (80,000) tonnes of SSO per year. For the sake of clarity, the Base Processing Fee for SSO applicable to scenario 1 of Schedule 2 will be \$\* all tonnes up to and including the 80,000th tonne, provided the Contractor is leasing the Hawthorne Facility Site, is not affiliated to the landlord and paying the Tenant's Ground Rent to the landlord, and \$\* on all tonnes from and including 80,001 tonnes to 100,000 tonnes; similarly the Base Processing Fee for SSO applicable to scenario 2 of the Schedule 2 will be \$\* on all tonnes up to and including the 80,000th tonne, provided the Contractor is leasing the Hawthorne Facility Site, is not affiliated to the landlord and paying the Tenant's Ground Rent to the landlord, and \$\* on all tonnes from and including 80,001 tonnes to and including 100,000 tonnes; similarly the Base Processing Fee for SSO applicable to scenario 3 of the Schedule 2 will be \$\* on all tonnes up to and including the 80,000th tonne, provided the Contractor is leasing the Hawthorne Facility Site, is not affiliated to the landlord and paying the Tenant's Ground Rent to the landlord, and \$\* on all tonnes from and including 80,001 tonnes to and including 100,000 tonnes."~~



- 1.10 Section 16.3 is amended by deleting the words "during the period from the Commissioning Date to" and replacing them with the words "for a three (3) month period from".
- 1.11 Section 20.1 is amended by deleting words "Subject to Sections 20.6 and 20.7" at the beginning of the Section.
- 1.12 Sections 20.6, 20.7 and 23.5 are deleted.
- 1.13 Section 30.5 is amended by adding the following facsimile number for Orgaworld Canada Ltd "(519) 649-7757" and the following facsimile number for Orgaworld International B.V. "31 (0)73 68 72 609".
- 1.14 The words "Hawthorne Facility Site" will be substituted throughout the SSO Agreement, including the Schedules, in the place of the words "Stagecoach Facility Site". Further, Appendix 1 attached hereto replaces the Schedule 3.
- 1.15 The definition of "Uncontrollable Circumstances" in "Schedule 1 – Definitions" is amended by deleting the following:
- "or any appeal to the re-zoning application for the property where the Facility is to be located, by third parties to the Ontario Municipal Board or other court or public authority having jurisdiction".
- 1.16 The following amendments are made to the definitions in "Schedule 1 – Definitions":
- (a) "Commencement Date" is amended by replacing the date "January 1, 2010" with the date "April 1, 2010";
  - (b) "Commissioning Date" is amended by replacing the date "October 1, 2009" with the date "January 27, 2010"; and
  - (c) "Drop Dead Date" is amended by replacing the date "March 31, 2010" with the date "June 1, 2010".
- 1.17 The following definitions are added to the definitions in "Schedule 1 – Definitions":
- "affiliate" has the meaning given to "affiliated bodies corporate" in the *Canada Business Corporations Act*;
- "Tenant's Ground Rent" has the meaning given in Section 6.1(t).
- 1.18 Table 1 of Schedule 2 is amended by adding the words "up to" before the three instances of the phrase "100 tonnes/day".

## 2. GENERAL

- 2.1 Except as expressly amended by this Amending Agreement or as provided in Section 2.2, none of the terms, covenants and conditions contained in the SSO Agreement are amended or waived, and the SSO Agreement and all its terms, covenants and conditions continue to be, and remain, in full force and effect and un-amended. Sections 30.9 "Counterparts" and 30.10 "Delivery by Fax" from the SSO Agreement shall apply to this Amending Agreement.
- 2.2 Any consequential amendments to other terms in the SSO Agreement to give effect to this Amending Agreement shall be deemed to have been made and the SSO Agreement shall be read accordingly.
- 2.3 Capitalized terms in this Amending Agreement, including the recitals, not otherwise defined shall have the meaning ascribed to them in the SSO Agreement.
- 2.4 The provisions of this Amending Agreement shall enure to and be binding upon the respective successors and permitted assigns of each Party.

*(the balance of this page has been intentionally left blank)*

IN WITNESS WHEREOF the Contractor and the City have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers in that behalf duly authorized.

APPROVED: \_\_\_\_\_

H.N.M.  
CITY OF OTTAWA

CITY OF OTTAWA

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have the authority to bind the City

ORGAWORLD CANADA LTD.

Per: \_\_\_\_\_

Name: Henk Kaskens

Title: President

Per: \_\_\_\_\_

Name: Bart Raedts

Title: Treasurer

Per: \_\_\_\_\_

Name: Ward Janssens

Title: Director

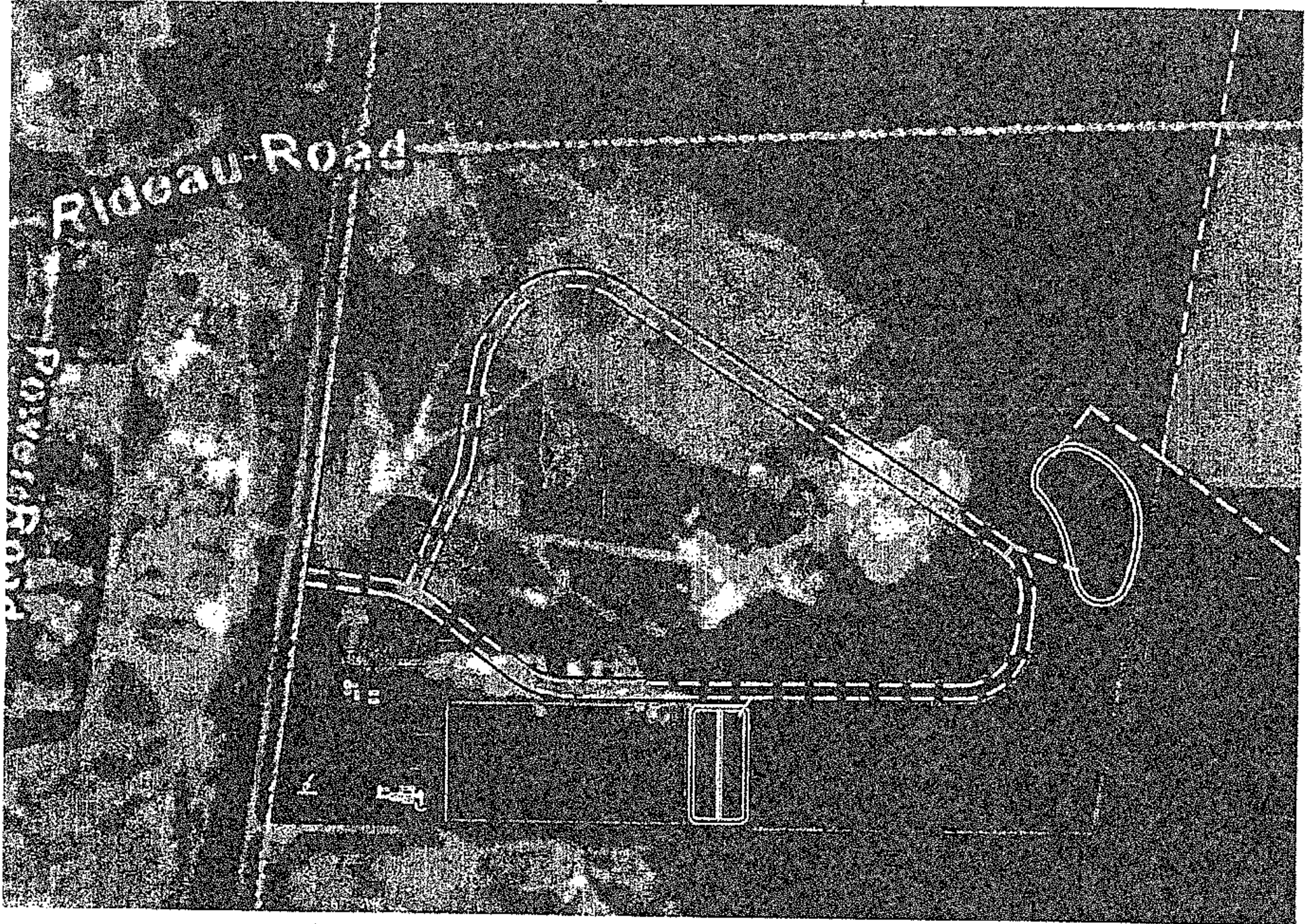
We have the authority to bind the Contractor



APPENDIX 1

SCHEDULE 3-  
HAWTHORNE FACILITY SITE

The Hawthorne Facility Site is shown as the "Proposed Site" on this map.





# **SOURCE SEPARATED ORGANICS SERVICES AGREEMENT**

**CITY OF OTTAWA**  
(the "City")

- and -

**ORGAWORLD CANADA LTD.**  
(the "Contractor")

**Dated March 27, 2008**

## TABLE OF CONTENTS

<b>ARTICLE 1 – INTERPRETATION.....</b>	<b>1</b>
1.1 Definitions .....	1
1.2 Construction and Interpretation .....	1
1.3 Severability .....	2
1.4 Governing Law .....	3
1.5 Construction of Terms .....	3
1.6 Review, Approval, Inspection or Audit by the City .....	3
1.7 Personal Liability .....	3
1.8 Time of Essence.....	4
1.9 Entire Agreement.....	4
1.10 Paramountcy .....	4
1.11 Schedules .....	4
<b>ARTICLE 2 – TERM.....</b>	<b>5</b>
2.1 Term.....	5
2.2 Extension of Term .....	5
<b>ARTICLE 3 – COMMENCEMENT DATE .....</b>	<b>6</b>
3.1 Commencement Date and Permits .....	6
3.2 Failure to Meet Commencement Date.....	6
3.3 Failure to Meet Drop Dead Date .....	6
3.4 Delay Payment.....	7
3.5 Delivery of SSO Prior to the Commencement Date .....	8
<b>ARTICLE 4 – REPRESENTATIVES .....</b>	<b>8</b>
<b>ARTICLE 5 – SSO PROGRAM SCENARIOS.....</b>	<b>9</b>
5.1 Scenario 1 Default Position .....	9
5.2 Replacement of Scenarios .....	9
<b>ARTICLE 6 – REPRESENTATIONS, WARRANTIES AND COVENANTS .....</b>	<b>9</b>
6.1 Representations and Warranties .....	9
6.2 Continuing Covenants, Representations and Warranties .....	13
6.3 Liability for Disclosed Data .....	14
6.4 Contractor Investigation and Assumption of Risk .....	14
<b>ARTICLE 7 – EXECUTION OF WORK BY CONTRACTOR.....</b>	<b>15</b>
7.1 Contractor’s General Responsibility to Operate.....	15
7.2 Standards of Service .....	16
7.3 Processing Capacity Availability Date Guarantee.....	16
7.4 Minimum Processing Rate Guarantee .....	16
7.5 Facility Site Location.....	17
7.6 Scheduling Risk.....	17
7.7 Scheduled Shutdown of Facility.....	18
7.8 Unscheduled Shutdowns or Work Interruptions .....	18
7.9 Regular Receiving Hours.....	19
7.10 Access and Monitoring.....	19
7.11 Inspection, Demonstration and Testing .....	20

7.12	Production of an Unrestricted Use Product .....	21
7.13	Marketing.....	21
7.14	UUP Reserved for City.....	21
7.15	Contractor as Independent Contractor.....	22
7.16	Use of Subcontractors.....	22
7.17	Collateral Agreements .....	22
7.18	Accounts and Audit .....	22
<b>ARTICLE 8 – MATERIAL SUPPLY AND QUANTITIES.....</b>		<b>23</b>
8.1	Base Tonnage Ranges.....	23
8.2	Variation in Composition and Amounts.....	23
8.3	Receiving Facilities .....	23
8.4	Minimum Annual Tonnage Guarantee .....	24
8.5	Contingency SSO .....	25
<b>ARTICLE 9 – RESPONSIBILITY FOR MATERIALS .....</b>		<b>25</b>
9.1	SSO and Contingency SSO Hauling, Receipt and Acceptance.....	25
9.2	Residual Waste and Recyclables .....	26
9.3	Restriction on Disposal.....	27
<b>ARTICLE 10 – WEIGHING RECORDS .....</b>		<b>27</b>
10.1	Weigh Scales .....	27
10.2	Weighing .....	27
10.3	Recording Requirements .....	27
<b>ARTICLE 11 – FACILITY APPROVALS.....</b>		<b>29</b>
11.1	Processing Facility Approvals.....	29
11.2	Certificates of Approval and Regulatory Requirements.....	29
11.3	Compliance with Laws .....	30
11.4	QA/QC Program Requirements.....	31
<b>ARTICLE 12 – CITY’S RESPONSIBILITIES.....</b>		<b>31</b>
12.1	The City’s Responsibility .....	31
<b>ARTICLE 13 – PAYMENT.....</b>		<b>31</b>
13.1	Payment for Facility Operation .....	31
13.2	Base Processing Fee .....	32
13.3	Contamination Surcharge .....	32
13.4	Minimum Annual Tonnage Guarantee Fee Payment .....	33
13.5	CPI Annual Adjustment of Fees.....	34
13.6	Rebate for Low Rate of Contamination.....	35
13.7	Contingency Amount Processing Fees .....	35
<b>ARTICLE 14 – INVOICES .....</b>		<b>35</b>
14.1	Payment of Invoices .....	35
14.2	Supporting Documentation.....	36
14.3	Set-Off .....	36
<b>ARTICLE 15 – LANDFILL AND TIPPING RATES.....</b>		<b>36</b>
15.1	Landfill and Tipping Rates .....	36
<b>ARTICLE 16 – COMMUNITY COMPLAINTS &amp; LIASON.....</b>		<b>37</b>



16.1	Public Complaint and Liaison Officer.....	37
16.2	Single Point of Contact System .....	37
16.3	Public Liaison Committee .....	37
<b>ARTICLE 17 – SECURITY .....</b>		<b>38</b>
17.1	Performance Security .....	38
17.2	City Rights to Draw Upon Performance Security .....	39
<b>ARTICLE 18 – INSURANCE .....</b>		<b>40</b>
18.1	Insurance.....	40
18.2	Terms and Conditions of Policies.....	40
18.3	Notification of Changes.....	40
18.4	Payment of Premiums.....	41
18.5	Evidence of Insurance .....	41
<b>ARTICLE 19 – INDEMNITY AND CLAIMS.....</b>		<b>41</b>
19.1	Indemnity.....	41
19.2	No Limitation .....	42
19.3	Conduct of Claims.....	42
<b>ARTICLE 20 – UNCONTROLLABLE CIRCUMSTANCES.....</b>		<b>43</b>
20.1	Occurrence.....	43
20.2	Alternative Delivery .....	44
20.3	Mitigation .....	44
20.4	Effect of an Uncontrollable Circumstances.....	44
20.5	Disputes .....	44
20.6	Zoning Uncontrollable Circumstances .....	45
20.7	Failure Regarding Zoning.....	45
<b>ARTICLE 21 – CONTRACTOR DEFAULT.....</b>		<b>45</b>
21.1	Contractor Default .....	45
21.2	Notification.....	47
21.3	Rights of City if Contractor Defaults .....	47
21.4	Program Proposed by Contractor .....	48
21.5	Alternative Remedies .....	48
21.6	City Costs .....	49
21.7	Uncontrollable Circumstances.....	49
21.8	Defaults and Effect of Dispute Resolution Procedure.....	49
<b>ARTICLE 22 – CITY DEFAULT.....</b>		<b>50</b>
22.1	City Default .....	50
22.2	Rights of Contractor if City Defaults .....	50
22.3	Service Provider Costs.....	50
22.4	Uncontrollable Circumstances.....	50
<b>ARTICLE 23 -TERMINATION RIGHTS OF CITY.....</b>		<b>50</b>
23.1	Termination During Second Extended Term.....	50
23.2	Termination for Contractor Default.....	51
23.3	Immediate Termination for Contractor Default.....	51
23.4	Termination for Convenience .....	51

23.5	Failure Regarding Zoning.....	52
23.6	Exercise of Termination Rights.....	52
<b>ARTICLE 24 - EFFECT OF TERMINATION.....</b>		<b>52</b>
24.1	Continued Effect - No Waiver.....	52
24.2	Continued Performance.....	52
<b>ARTICLE 25 – DISPUTE RESOLUTION.....</b>		<b>52</b>
25.1	Procedure.....	52
25.2	Complete Defence.....	54
25.3	Continuing Obligations.....	54
<b>ARTICLE 26 – SURVIVAL.....</b>		<b>54</b>
26.1	Survival.....	54
<b>ARTICLE 27 – SUCCESSORS AND ASSIGNS.....</b>		<b>54</b>
27.1	Assignment by the City.....	54
27.2	Dispositions by the Contractor.....	55
<b>ARTICLE 28 – CONFIDENTIALITY.....</b>		<b>57</b>
28.1	Confidential Information.....	57
28.2	Use and Disclosure of Confidential Information.....	57
28.3	Exceptions.....	57
28.4	Announcements.....	58
<b>ARTICLE 29 - EXCLUSIVITY.....</b>		<b>58</b>
29.1	Exclusive Arrangement.....	58
29.2	City Out-Sourcing.....	58
29.3	Non-City SSO.....	58
29.4	Preferred Customer Rates.....	59
29.5	Right of First Offer.....	60
<b>ARTICLE 30 GENERAL.....</b>		<b>60</b>
30.1	<i>Municipal Freedom of Information and Protection of Privacy Act (Ontario)</i> .....	60
30.2	Enurement.....	60
30.3	No Partnership or Agency.....	61
30.4	City as Planning Authority.....	61
30.5	Notices.....	61
30.6	Waivers.....	62
30.7	Further Assurances.....	63
30.8	Remedies Cumulative.....	63
30.9	Counterparts.....	63
30.10	Delivery by Fax.....	63
30.11	Amendments.....	63
30.12	Submission to Jurisdiction.....	63
30.13	Construction.....	64
<b>SCHEDULE 1 – DEFINITIONS.....</b>		<b>1</b>
<b>SCHEDULE 2 – CAPACITIES, FEES AND CONTAMINATION RATES.....</b>		<b>1</b>
<b>SCHEDULE 3 – STAGECOACH FACILITY SITE.....</b>		<b>1</b>

SCHEDULE 4 – MINIMUM PRODUCT QUALITY STANDARDS.....	1
SCHEDULE 5 – AUDIT METHODOLOGY .....	1
SCHEDULE 6 – ORGANIC MATERIALS.....	1
SCHEDULE 7 – INSURANCE .....	1
SCHEDULE 8 – FORM OF PERFORMANCE SECURITY .....	1
SCHEDULE 9 – REQUIRED SUBMISSIONS .....	1
SCHEDULE 10 – TERMINATION FOR CONVENIENCE PAYMENTS.....	1
SCHEDULE 11 – OPERATIONAL FLEXIBILITY OF FACILITY.....	1
SCHEDULE 12 – OPERATING PLAN .....	1
SCHEDULE 13 - ADDITIONAL PROVISIONS FROM PROPOSAL.....	1



# SOURCE SEPARATED ORGANICS SERVICES AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 2008.

BETWEEN:

**CITY OF OTTAWA**  
(the "City")

- and -

**ORGAWORLD CANADA LTD.**  
(the "Contractor")

## WHEREAS:

- (i) The establishment of a city-wide Source Separated Organics program is one of the goals and objectives of the existing strategies and plans of the City and will, among other things, help the City to meet its waste diversion target and improve the quality of life and create other social, economic and administrative benefits for both citizens of the City and the City itself;
- (ii) To assist in the achievement of the foregoing, the City, issued the RFP to seek an external service provider for the processing of SSO collected by the City and Marketing the resulting product; and
- (iii) The Contractor responded to the RFP by the Response and represented to the City that the Contractor is capable of processing SSO collected by the City and Marketing the resulting product;

IN CONSIDERATION of the respective covenants and agreements hereinafter contained, the Parties hereto covenant and agree as follows:

## ARTICLE 1 – INTERPRETATION

### 1.1 Definitions

In this Agreement, including the recitals and Schedules hereto, capitalized terms not otherwise defined shall have the meaning ascribed thereto as set out in Schedule 1.

### 1.2 Construction and Interpretation

In this Agreement, including the recitals and Schedules hereto, except where expressly stated to the contrary or the context otherwise requires:

- (a) the headings to Articles, Sections, Subsections, Schedules and Appendices are for convenience only and will not affect the construction or interpretation of this Agreement;

- (b) each reference in this Agreement to "Section", "Schedule" and "Appendix" is to a Section of, a Schedule to or Appendix to this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a ministry, office, agency or similar body of any Relevant Authority is deemed to be a reference to any successor or replacement of such ministry, officer, agency or similar body;
- (e) words importing the singular include the plural and vice versa, and words importing gender include all genders;
- (f) in the event that any time period referred to in this Agreement shall fall upon a day which is not a Business Day, such time period shall be deemed to expire on the first Business Day thereafter;
- (g) references to time of day or date mean the local time or date in Ottawa, Ontario;
- (h) all references to amounts of money mean lawful currency of Canada;
- (i) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian generally accepted accounting principles consistently applied;
- (j) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning; and
- (k) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation".

### 1.3 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Agreement or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- (a) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- (b) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of such determination or this Section 1.3, the basic intentions of the Parties in this Agreement are entirely frustrated,

the Parties will use reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

#### **1.4 Governing Law**

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which will be deemed to be the proper law of this Agreement.

#### **1.5 Construction of Terms**

Unless otherwise specified in this Agreement, words describing material or terms that have a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by Canadian solid waste management professionals and engineers.

#### **1.6 Review, Approval, Inspection or Audit by the City**

If any review, approval, inspection, examination, audit, determination or acceptance is provided, performed or made by or on behalf of the City under, pursuant to or in respect of this Agreement, and not, for clarity, in the City's capacity as a planning authority, then:

- (a) such review, approval, inspection, examination, audit, determination or acceptance is for general compliance only; and
- (b) no such review, approval, inspection, examination, audit, determination or acceptance now or in the future, and whether or not negligent on the part of the City (including the City Indemnified Parties):
  - (i) shall relieve or exempt the Contractor from any of its obligations under this Agreement or at law or in equity;
  - (ii) shall constitute a waiver or release by the City or any other Person of any duty or liability owed by the Contractor to the City and others under this Agreement or of any indemnity given by the Contractor to the City and others under this Agreement;
  - (iii) shall constitute an approval by the City of any plans or specifications; or
  - (iv) shall create or impose any requirement, liability, covenant, agreement or obligation on the City or any other Person.

#### **1.7 Personal Liability**

This Agreement is not intended to create or result in any personal liability for any public official, employee or agent of the City or the City Representative and this Agreement shall not be construed to create such liability.



### **1.8 Time of Essence**

Time shall be of the essence of this Agreement.

### **1.9 Entire Agreement**

This Agreement and any other agreements herein contemplated to be entered into among, by or with the Parties hereto, constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto, including, without limitation, the RFP and Response, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof. Without limiting the generality of the foregoing, the Disclosed Data and the RFP and the information contained in the foregoing shall not constitute a representation or warranty of any of the material or statements contained therein or referred to therein by the City.

### **1.10 Paramountcy**

In the event of a conflict between this Agreement (which for the purposes of this Section 1.10 only, means this Agreement excluding the Schedules hereto) and the Schedules, or a conflict amongst any of the Schedules, the following shall apply:

- (a) where any of the Schedules are inconsistent with the provisions of this Agreement, this Agreement and the intent of the Parties contained in this Agreement shall govern the Schedules hereto; and
- (b) provisions contained in any of the Schedules which are more detailed than the provisions of this Agreement (and are not in conflict with this Agreement) or any of the other Schedules, shall govern.

### **1.11 Schedules**

The following schedules are attached to this Agreement and form an integral part hereof:

Schedule 1	Definitions
Schedule 2	Capacities, Fees and Contamination Rates
Schedule 3	Stagecoach Facility Site
Schedule 4	Minimum Product Quality Standards
Schedule 5	Audit Methodology
Schedule 6	Organics Materials
Schedule 7	Insurance

- Schedule 8 Form of Performance Security (Letter of Credit and Performance Bond)
- Schedule 9 Required Submissions
- Schedule 10 Termination for Convenience Payments
- Schedule 11 Operational Flexibility of Facility
- Schedule 12 Operating Plan
- Schedule 13 Additional Provisions from Proposal

## ARTICLE 2 – TERM

### 2.1 Term

Subject to any early right of termination contained herein and Section 2.2 regarding extensions, this Agreement shall be for a term of twenty (20) years commencing on the Commencement Date or such other earlier time as mutually agreed to in writing by the Parties (the “**Term**”) for the processing of the Awarded Amount of SSO in accordance with the provisions of this Agreement.

### 2.2 Extension of Term

- (a) At the City’s sole option and Discretion, the City may, upon no less than one (1) year written Notice to the Contractor prior to expiry of the initial Term, extend the Term for one further period of twelve (12) months (the “**First Extended Term**”) upon the same terms and conditions contained herein, save and except that this right of extension set out in Section 2.2(a) shall be replaced with the right of extension set out in Section 2.2(b) and the Parties shall execute an extension agreement prepared by the City to reflect the terms of the First Extended Term.
- (b) At the City’s sole option and Discretion, the City may, upon no less than three (3) months written Notice to the Contractor prior to expiry of the First Extended Term, extend the Term, as extended by the First Extended Term, by an additional period not to exceed twelve (12) months (the “**Second Extended Term**”) upon the same terms and conditions contained herein, save and except that:
  - (i) the total duration of all extensions shall not exceed twenty-four (24) months beyond the initial twenty (20) year Term; and
  - (ii) at the City’s sole option and Discretion, the City may, upon no less than three (3) months written Notice to the Contractor terminate this Agreement at any time during the Second Extended Term, without any cost, obligation or liability or other Claim against the City.

## ARTICLE 3 – COMMENCEMENT DATE

### 3.1 Commencement Date and Permits

The Contractor shall obtain the applicable Permits by December 1, 2008 in order to be able to Commence the Work by the initial Commencement Date.

### 3.2 Failure to Meet Commencement Date

(a) If the Contractor will not be able to obtain the applicable Permits in order to Commence the Work by the initial Commencement Date, then the Contractor shall provide Notice in writing to the City to this effect on or before the earlier of:

- (i) the date on which the Contractor becomes aware that it will not be able to obtain the applicable Permits in order to Commence the Work by the initial Commencement Date; or
- (ii) December 31, 2008,

and in such Notice propose a new date on which the Commencement Date shall occur (the “**Proposed Date**”), which Proposed Date shall be as soon as possible following the Commencement Date but in no event later than the Drop Dead Date.

- (b) A failure by the Contractor to provide a Notice pursuant to Section 3.2(a) on or before December 31, 2008 shall be deemed to be notice that the initial Commencement Date will be achieved.
- (c) If the Contractor will be unable to Commence the Work by the Proposed Date, then, the City may, at its option and Discretion permit the procedure set out in Section 3.2(a) respecting the resetting of a Commencement Date to be repeated (and such procedure shall continue to be repeated, if permitted by the City under this Section 3.2(c)), provided that in no event shall the Commencement Date be later than the Drop Dead Date.

### 3.3 Failure to Meet Drop Dead Date

(a) If the Contractor will not be able to obtain the applicable Permits in order to be able to Commence the Work by the Drop Dead Date, then the Contractor shall provide Notice in writing to the City to this effect on or before the earlier of:

- (i) the date on which the Contractor becomes aware that it will not be able to obtain the applicable Permits; or
- (ii) January 31, 2009,

and then the City may, at its option and Discretion:

- (iii) draw upon the Performance Security in full; and
- (iv) terminate this Agreement;



all without any cost, obligation or liability or other Claim against the City.

- (b) In no event shall the Commencement Date or the Proposed Date be later than the Drop Dead Date notwithstanding anything herein contained.

### 3.4 Delay Payment

- (a) The Parties acknowledge and agree that if the Contractor is unable to (i) accept SSO for processing by October 1, 2009 in respect of SSO to be delivered prior to the Commencement Date and (ii) Commence the Work by January 1, 2010, the City will incur costs, expenses and damages. In order to compensate the City for these costs, expenses and damages for the periods between:

- (i) October 1, 2009 and the actual Commissioning Date; and
- (ii) January 1, 2010 and the actual Commencement Date, as may be extended in accordance with Section 3.2(a).

the City shall invoice the Contractor on a weekly basis and the Contractor shall pay to the City the following delay payments, within thirty (30) Business Days of receipt of the invoice, commencing January 8, 2010:

- (iii) the positive difference between the per tonne cost of the contingency management measures the City was required to implement to manage the SSO that the Facility was not able to process and the per tonne Base Processing Fee multiplied by the number of tonnes of the SSO managed through the City's contingency measures;
- (iv) all incremental hauling fees, hauling penalties and incremental processing costs incurred by the City to transport and process or dispose of the SSO, diverted by the City to another facility;
- (v) all incremental communication costs incurred by the City to convey to residents any changes to the SSO program that result from the Contractor's failure to meet the October 1, 2009 date in respect of SSO to be delivered prior to the Commencement Date and the January 1, 2010 date in respect of SSO to be delivered as of the Commencement Date;

as delay payments and not as a penalty until all outstanding amounts have been paid, such payments to be by way of certified cheque, wire transfer or bank draft, failing which the City may draw upon the Performance Security delivered to the City under Article 17 for payment or partial payment, as the case may be, of the aforesaid amounts and the Contractor shall immediately thereafter replenish the Performance Security to the extent that such Performance Security has been drawn upon by the City.

- (b) The amount of SSO that would have been delivered to the Contractor had it been able to Commence the Work as of January 1, 2010 shall be applied, at the City's sole option and Discretion, as a credit to the percentage of the City's Minimum Annual Tonnage Guarantee or a reimbursement payment to the City and the City shall not be required to

## ARTICLE 5 – SSO PROGRAM SCENARIOS

### 5.1 Scenario 1 Default Position

The Parties acknowledge that the City expects that its collection program at the Commencement Date will provide for regular weekly garbage and weekly SSO and Contingency SSO collection. Scenario 1 of Schedule 2 describes the applicable fees, tonnages, Performance Guarantees and other criteria applicable to this collection program. The Parties further acknowledge that scenario 1 of Schedule 2 is the applicable scenario for this Agreement unless otherwise replaced by the City in accordance with Section 5.2 below. Scenarios 2 and 3 of Schedule 2 describe the variations of scenarios based on whether plastic bags or plastic bin liners and diapers or other sanitary waste are to be included in the collection of SSO and Contingency SSO.

### 5.2 Replacement of Scenarios

At the City's sole option and Discretion, the City may at any time prior to the commencement of the Term, or during the Term, and more than one time, upon no less than twelve (12) months Notice to the Contractor, replace the scenario currently in place at the time of such Notice with any one of scenario 1, 2 or 3 of Schedule 2. The Contractor acknowledges that the replacement of any of the scenarios in Schedule 2 will have an impact on the Parties' obligations under this Agreement and that upon the expiration of the twelve (12) month notice period set out in the said Notice, the Parties shall immediately govern their actions accordingly to accommodate such replacement, all in accordance with the terms and conditions of this Agreement. Any consequential amendments to other terms of the Agreement to give effect to the foregoing shall be deemed to have been made and the Agreement shall be read accordingly. All other terms of the Agreement continue in full force and unamended.

## ARTICLE 6 – REPRESENTATIONS, WARRANTIES AND COVENANTS

### 6.1 Representations and Warranties

The Contractor represents and warrants to the City that at the date of this Agreement and continuing thereafter and throughout the Term:

- (a) the Contractor is a corporation duly incorporated and validly existing under the laws of Canada and has the requisite corporate power and authority to enter into and carry out the transactions contemplated by and duly observe and perform all of its obligations contained in this Agreement, and to carry on its business as now being conducted;
- (b) the Contractor is duly qualified or licensed to do business and is in good standing in the Province of Ontario and is a registrant for the Goods and Services Tax under the *Excise Tax Act* (Canada);
- (c) the copy of the constating documents of the Contractor certified by appropriate officers of the Contractor and delivered to the City immediately prior to entering into this

Agreement is true and accurate and there are, as of the date of such delivery, no outstanding proposals to amend such documents;

- (d) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Contractor pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the Contractor, and this Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court;
- (e) the Contractor and each Subcontractor and all employees of the Contractor and Subcontractor possesses the necessary assets, skills and relevant professional knowledge, competence, capabilities, qualifications, experience, expertise, ability, Permits, rights and resources including financial resources, and have or will make same available, to perform the Work in an efficient, professional and timely manner and to carry out and/or satisfy the obligations contained or referred to herein, all in accordance with the terms of this Agreement;
- (f) the Contractor shall ensure that the Work and the operation of the Facility shall be performed in a diligent, efficient, competent, professional and workmanlike manner in full conformity with any manufacturer specifications which meets or exceeds the standards for such Work as are generally acceptable in its industry and shall supply everything necessary for the performance of the Work;
- (g) the Contractor shall perform the Work in accordance with all Applicable Laws, including those applicable to environmental, health, safety, employment and labour matters, including without limitation, all legal requirements of any applicable government or governmental agency that regulate odour, waste water discharges, noise, discharges or releases to air, water or land, and the handling, transport, storage and disposal of Non-Hazardous Waste, Hazardous Waste, Hazardous Substance, Residual Waste, Effluent, Emissions and other regulated substances;
- (h) all Permits required by the Contractor to execute and deliver this Agreement and/or to perform its obligations under this Agreement have been received by the Contractor or will be so received forthwith and, in any event, prior to the Commencement Date;
- (i) the Contractor shall observe and abide by and shall cause its Subcontractors to observe and abide by all Applicable Laws which prohibit discrimination and specifically the Contractor shall not and shall not permit its Subcontractors to perform any act or issue any statement which is intended to insult or denigrate any person by reason of their sex, colour, religion or sexual orientation;



- (j) the Contractor shall ensure that the performance of the Work shall not violate any contracts with third parties or any third party rights in any patent, trade mark, copyright, trade secret or other proprietary right and shall pay all royalties and licence fees required in order to perform the Work and the use of Intellectual Property by the Contractor or any Subcontractor for the purposes of this Agreement, does not infringe, and is not a misappropriation of, any third Person's Intellectual Property rights, and as of the date of this Agreement to the extent that the Contractor Has Knowledge, no allegations of infringement or notices of misappropriation have been issued by any Person regarding the Intellectual Property. The use of all services, techniques, products, deliverables, specifications and instructions, together with all the Contractor software, including any new release developed by the Contractor pursuant to this Agreement, provided or used by the Contractor in the operation of the Facility and the performance of the Work do not and shall not infringe upon the Intellectual Property rights of any third party;
- (k) the Contractor shall or will, prior to the Commencement Date, own or lease, licence, sub-licence or otherwise have the right to use, free and clear of all liens and encumbrances, save and except for security interests held by the Contractor's related entities or its related financial institutions, all tangible property and technology and the like that the Contractor needs to perform the Work, fully operate the Facility in order to receive, accept and process the amounts of SSO and the Contingency SSO delivered to the Facility by the City in accordance with Tables 1 and 2 of Schedule 2;
- (l) the Contractor is fully responsible for the actions and omissions of its employees, agents, Subcontractors and employees of its Subcontractors supplied or used by it for the performance of the Work, and the Contractor shall be solely responsible for the payment of all salaries and expenses of its employees and fees owed to its Subcontractors as well as making any employer deductions and contributions required by law;
- (m) the Contractor shall furnish the City with a valid Workplace Safety Insurance Board clearance certificates prior to performing its obligations under this Agreement and upon presentation of the final invoice in respect of the Work at the end of the Term and, in the intervening period, shall maintain its Workplace Safety Insurance Board account in good standing;
- (n) the Facility shall be operated and maintained:
  - (i) in a good operating condition and in an acceptable state of repair in compliance with relevant building codes and Applicable Laws;
  - (ii) to ensure proper access and egress routes, adequate parking and vehicular movement in compliance with site plan approval and Applicable Laws;
  - (iii) in a safe and secure, and environmentally sound, diligent and efficient manner;
  - (iv) with all operational capabilities necessary, including without limitation, manpower and equipment to be able to receive, handle and process the amounts of SSO and the Contingency SSO as set forth in Tables 1 and 2 of Schedule 2 within the interior of the Facility until such SSO and Contingency SSO has been



screened for Residual Waste at least one (1) time prior to being deposited on the exterior site of the Facility in accordance with the Facility Certificate of Approval;

- (v) to be capable of physical processing to effectively expose and separate organic materials from Contaminant Materials and to remove and divert Contaminant Materials to a Residual Waste stream;
- (vi) to be capable of opening plastic bags and to compost the organic material component of diapers and other sanitary waste in the case of scenarios 2 or 3 of Schedule 2;
- (vii) to be able to receive and process:
  - A. the SSO and the Contingency SSO at the rate specified as the Minimum Processing Rate Guarantee; and
  - B. any Peak Amounts of SSO and Contingency SSO due to the variation in amounts described in Section 8.2
- (viii) including Contaminant Material, and have and maintain the ability to process such amounts of SSO and Contingency SSO;
- (ix) to promptly process the organic material component of the SSO and the Contingency SSO using a proven combination of physical, biological or chemical operations where the key conversion of the organic material is achieved through biological means, to produce an Unrestricted Use Product;
- (x) by competent and skilled personnel who shall always act in a respectful manner;
- (xi) in accordance with all Applicable Laws and good engineering and management principles, including without limitation, Environmental Laws, labour laws and municipal by-laws and the requirements imposed under the *Occupational Health and Safety Act* (Ontario), with the Contractor acknowledging that it is an "employer" thereunder, and by the Workplace Safety and Insurance Board/Commission;
- (xii) to process the SSO and Contingency SSO, in a manner that minimizes Residual Waste and Effluent consistent with the provisions of this Agreement;
- (xiii) to ensure the proper handling, treatment and disposal of all Emissions, Residual Waste and Effluent resulting from SSO and Contingency SSO processing, in accordance with all Applicable Laws and in particular Section 9.3;
- (xiv) to manage the environmental impacts of processing operations in order to prevent off-site nuisances including odour, noise, dust, litter and pests, and to create and manage a public complaint and education committee;

- (xv) to Market the Unrestricted Use Product for Beneficial Use in accordance with the requirements of this Agreement and with Applicable Laws;
  - (xvi) to meet or exceed the Contractor's Performance Guarantees and be fully operational on or before the Commencement Date; and
  - (xvii) by the Contractor which shall be solely responsible for all aspects thereof including any defects to the Facility;
- (o) the Contractor has satisfied itself as to the purposes of this Agreement and the nature and extent of the risks assumed by it in relation to this Agreement;
  - (p) there are no current, and, to the Knowledge of the Contractor, there are no actual, pending or threatened Claims of, by, against, or relating to, the Contractor which could have an adverse effect on the ability of the Contractor to perform the Work or its obligations under this Agreement and the Contractor does not Have Knowledge of any basis for any such Claim and hereafter, if such Claim is actually made by or against the Contractor, the Contractor shall forthwith disclose same to the City within five (5) Business Days;
  - (q) there is no adverse change in any of the financial or other information pertaining to the Contractor provided by the Contractor to the City in the Response and no such adverse change pertaining to the Contractor shall occur hereafter that will, or would be reasonably likely in the opinion of the City, acting reasonably, to impair or adversely affect the ability of the Contractor to perform its obligations under this Agreement;
  - (r) there is no misrepresentation or material omission of any nature or kind whatsoever contained in the Response; and
  - (s) upon the exercise of the City's option set out in Section 8.5, the Facility shall accept the Contingency SSO, including Contaminant Material, and have and maintain the ability to process such amounts of Contingency SSO.

## **6.2 Continuing Covenants, Representations and Warranties**

- (a) The agreements, covenants, representations and warranties of the Contractor contained in this Agreement shall be continuing agreements, covenants, representations and warranties during the entire Term and shall survive to the extent necessary with respect to any Claim made prior to the expiration of the Term pertaining to an event or occurrence that occurred prior to the expiration or termination of this Agreement.
- (b) If there shall be any actual or proposed change to any agreement, covenant, representation or warranty given by the Contractor at any time prior to the expiration or termination of this Agreement, then the Contractor shall forthwith provide information, certified by an officer of such Contractor, to the City describing such change, with respect thereto in connection therewith; provided however that doing so shall not in any way derogate from the rights of the City hereunder or relieve the Contractor from its obligations and liabilities including any liability arising as a result of such change.

### **6.3 Liability for Disclosed Data**

The City:

- (a) gives no agreement, covenant, representation or warranty whatsoever and shall have no liability with respect to or arising from information contained in or omitted from opinions or other matters in the Disclosed Data, and specifically (but without limitation) the City does not warrant that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the procurement process for SSO processing services or at the time of execution of this Agreement) relevant or material to or in connection with the obligations of the Contractor under this Agreement;
- (b) shall not be liable to the Contractor or any other Person in respect of any failure to disclose or make available to the Contractor (whether before, on or after the execution of this Agreement) any information, documents or data, nor any failure to review or to update the Disclosed Data, nor any failure to inform the Contractor (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data; and
- (c) shall not be liable to the Contractor or any other Person for, and the Contractor shall not seek, assist or acquiesce in any other Person seeking to recover from the City or any City Indemnified Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use, reliance on or application of the Disclosed Data by or on behalf of the Contractor or any such other Person.

### **6.4 Contractor Investigation and Assumption of Risk**

The Contractor acknowledges and confirms that:

- (a) it has conducted its own analysis and review of the rights and obligations with respect to this Agreement and has, before the execution of this Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data upon which it places reliance and has assessed all risks related to this Agreement; and
- (b) it shall not be entitled to and shall not make (and shall ensure that no Subcontractor, but solely in connection with a Subcontract, or other Person claiming a right through the Contractor makes) any Claim against the City or any City Indemnified Party (whether in contract, tort or otherwise) including any Claim in damages or for additional payments under this Agreement on the grounds:
  - (i) of any misunderstanding or misapprehension in respect of the Disclosed Data; or
  - (ii) that incorrect or insufficient information relating to the Disclosed Data was given to it by any Person,

nor will the Contractor be relieved from any obligation imposed on, or undertaken by, it under this Agreement on any such ground.



## ARTICLE 7 – EXECUTION OF WORK BY CONTRACTOR

### 7.1 Contractor's General Responsibility to Operate

The Contractor shall perform its duties and satisfy its obligations under this Agreement at its own cost and risk without recourse to the City, except for any payments required to be paid by the City under this Agreement. Without limiting any other obligation or provision of this Agreement, the Contractor shall have the obligation, at its cost, to:

- (a) do and fulfil everything specified or provided for in this Agreement, including without limitation, receive the SSO and the Contingency SSO and process it into an Unrestricted Use Product;
- (b) diligently perform the Work;
- (c) promptly pay for all labour, materials, tools, supplies, equipment, maintenance, repair and services necessary to perform the Work in all respects;
- (d) satisfy all Performance Guarantees. For the sake of clarity, the Performance Guarantees shall relate only to the City's SSO and the City's Contingency SSO and shall not relate to any Non-City SSO material received by the Contractor from any other sources;
- (e) provide suitable services, to the satisfaction of the City, to properly receive the SSO and the Contingency SSO at the Facility in order to accommodate the Regular Receiving Hours for the Facility;
- (f) provide extended hours of operation which may involve the need for services on Saturday afternoons or Legal Holidays to accommodate the variation of the Annual Average Daily Tonnage described in Section 8.2 and peak loads at certain times during each Operating Year;
- (g) assume ownership and responsibility of the SSO and the Contingency SSO transfers upon receipt and acceptance at the Facility;
- (h) maintain and operate weigh scales certified by Corporate and Consumer Affairs Weights and Measures Canada to be used for all inbound loads of SSO and Contingency SSO and all outbound loads of Residual Waste and UUP, and data management systems equal to and compatible with those used by the City as set out in this Agreement;
- (i) maintain and operate the Facility to function as a Transfer Station, if required under the contingency plans;
- (j) process the SSO and the Contingency SSO and manage all Emissions, including Residual Waste and Effluent;
- (k) convert the SSO and the Contingency SSO into an Unrestricted Use Product;



- (l) Market UUP for Beneficial Use in accordance with the requirements of this Agreement and with Applicable Laws;
- (m) to minimize stockpiling of the UUP in accordance with the Facility Certificate of Approval and ship the UUP off-site from the Facility site as soon as reasonably possible in order to minimize off-site nuisances, including odour, dust, noise, litter and pests;
- (n) manage environmental issues to prevent off-site nuisances including odour, noise, dust, litter and pests, including the creation and management of a public complaint and education committee and the single point of contact system as set out in Article 16; and
- (o) deliver all of the Required Submissions within the timeframes set out herein and, including without limitation, deliver the Required Submissions as more particularly set out in Schedule 9 attached hereto.

## **7.2 Standards of Service**

In performing the Work, the Contractor shall provide a standard of service to the City consistent with the terms of this Agreement, with the City's Representative or such other employee or delegate of the City as appointed by the City's Representative to be the judge as to the adequacy of such service. The City's Representative may require such changes or alterations to the standard of service as the City's Representative may deem desirable if the Contractor has not complied with any of its obligations under this Agreement. At no time shall the standard of service be less than the level of service identified in Schedule 11 attached hereto containing sections 4.2.1-4.2.4 (*Operational Flexibility of Facility*) from the Response and Schedule 12 attached hereto containing section 6.0 (*Operating Plan*) from the Response.

## **7.3 Processing Capacity Availability Date Guarantee**

The Contractor warrants that SSO processing services shall at all times be sufficient to meet the requirements of the Processing Capacity Availability Date Guarantee.

## **7.4 Minimum Processing Rate Guarantee**

- (a) The Contractor shall receive and process the SSO and Contingency SSO throughout the Term at the rate specified as the Minimum Processing Rate Guarantee as well as any Peak Amounts of SSO and Contingency SSO due to the variation of the Annual Average Daily Tonnage described in Section 8.2.
- (b) The Contractor shall monitor compliance with the Minimum Processing Rate Guarantee throughout the Term. For this purpose, the Contractor shall maintain a five (5) consecutive processing day rolling average of the amount of SSO received and processed in tonnes, reported as an average processing rate expressed in units of tonnes per day. The Contractor shall immediately notify the City if the average processing rate falls below the rate specified in the Minimum Processing Rate Guarantee.
- (c) SSO and Contingency SSO properly rejected by the Contractor pursuant to Section 9.1 shall not be considered in the calculation of the average processing rate.

- (d) In addition to any of the City's rights and remedies under this Agreement, if the Contractor notifies the City that it is not able to process the SSO at the rate specified in the Minimum Processing Rate Guarantee, and the City is required to implement contingency measures to manage the Awarded Amount of SSO but which the Facility is not able to process, the Contractor shall pay to the City the positive difference between the per tonne cost of the contingency management measures and the per tonne Base Processing Fee multiplied by the number of tonnes of the SSO managed through the City's contingency measures.

## **7.5 Facility Site Location**

- (a) The Facility shall be located on property owned, leased or otherwise under the control of the Contractor. The Contractor expect that the Facility shall be located on the lands municipally known as 2260 Stagecoach Road, RR.1 Osgoode, Ottawa, Ontario, K0A 2W0 and legally described as Part Lots 16 and 17, Concession 3, in the City of Ottawa (formerly in the Township of Osgoode) designated as Parts 1 and 3 on Plan 5R-7231 and Parts 1, 2, 5, 6, 7, 8 and 9 on Plan 5R-4017 and as more particularly shown on the map attached as Schedule 3 and currently identified as property identification numbers 04315-0508 (LT) and 04315-0507 (LT) (the "Stagecoach Facility Site")
- (b) In the event that the Contractor is unable to secure the Stagecoach Facility Site or is unable to obtain all of the required Permits and approvals to operate the Facility at the Stagecoach Facility Site, or the Contractor redirects SSO or Contingency SSO to be processed at another Facility other than the Stagecoach Facility Site for any reason whatsoever, then:
- (i) any such Facility shall possess all Permits necessary to receive and process SSO or Contingency SSO;
  - (ii) the prior written approval of the City shall be obtained;
  - (iii) such Facility shall be located no greater than one hundred (100) kilometres from any of the five City's population centroids; and
  - (iv) the Contractor will be subject to a transfer cost fee in the event that the Facility is located greater than fifty (50) kilometres from any of the five City's population centroids. The transfer cost fee will be applied to all tonnes of SSO and Contingency SSO collected within a zone having a population centroid greater than fifty (50) kilometres from the Facility. The transfer cost fee shall be equivalent to the charge imposed in that zone by the hauler in accordance with the City's collections contract. Transfer cost fees shall be deducted from each invoice submitted by the Contractor.

## **7.6 Scheduling Risk**

For clarity, the Contractor acknowledges and agrees that the cost of all delays, interruptions, postponements or changes to the Work shall be borne solely by the Contractor, except as expressly provided otherwise in this Agreement.

## **7.7 Scheduled Shutdown of Facility**

- (a) The Contractor shall make its best effort to minimize scheduled shutdowns of the Facility that impede the City's delivery of SSO and Contingency SSO and shall assist the City in making contingency arrangements in the event of such Facility scheduled shutdown. Notwithstanding that part or parts of the Facility may be shutdown and cannot receive SSO and Contingency SSO, the Contractor shall continue to process SSO and Contingency SSO to the extent possible given the circumstances of the scheduled shutdown.
- (b) The Contractor shall give the City's Representative a minimum of twenty (20) Business Days prior written Notice of any scheduled shutdown of the Facility. Each notice shall contain information regarding the time, duration and reasons for any scheduled shutdown. The City shall have seven (7) Business Days from receipt of the Notice within which to notify the Contractor that the City, acting reasonably, does not accept the time and duration of the scheduled shutdown, failing which the City will be deemed to have accepted the scheduled time and duration of the scheduled shutdown. Where the City notifies the Contractor that it does not accept the scheduled time and duration of the scheduled shutdown, the Parties will use reasonable commercial efforts within the following five (5) Business Days to agree to any necessary amendments to the scheduled time and duration. In the absence of agreement within such five (5) Business Days, the question of the scheduled time and duration of the scheduled shutdown may be referred by either Party for resolution in accordance with the Dispute Resolution Procedure. Notwithstanding the foregoing, any scheduled shutdown shall not be longer than three (3) Business Days and not more than one (1) time in an Operating Year.
- (c) In the event of a scheduled shutdown, the Contractor shall follow its contingency plans to ensure the prompt and proper handling of the SSO and the Contingency SSO and other material. As part of its contingency plans, the Contractor shall be allowed to include landfilling the SSO and the Contingency SSO for the first two (2) Operating Years of the Term during scheduled shutdowns.
- (d) The amount of SSO and/or Contingency SSO that would have been delivered to the Contractor had there been no scheduled shutdown shall be applied as a credit to the percentage of the City's Minimum Annual Tonnage Guarantee and the City shall not be required to pay to the Contractor any of the applicable fees set out in Article 13 that otherwise would be payable had no credit been applied. Any scheduled shutdown arrangements shall not result in any additional cost, including transportation, processing or disposal costs to the City.

## **7.8 Unscheduled Shutdowns or Work Interruptions**

- (a) The Contractor shall make its best effort to minimize unscheduled shutdowns or work interruptions at the Facility, which are not due to Uncontrollable Circumstances, that impede the City's delivery of SSO and Contingency SSO and shall assist the City in making contingency arrangements in the event of such Facility unscheduled shutdown or work interruption. Notwithstanding that the Facility may be shutdown and cannot



receive SSO and Contingency SSO, the Contractor shall continue to process SSO and Contingency SSO to the extent possible given the circumstances of the unscheduled shutdown or work interruption.

- (b) In the event of unscheduled shutdowns or work interruptions, which are not due to Uncontrollable Circumstances, the Contractor shall follow its contingency plans to ensure the prompt and proper handling of the SSO, the Contingency SSO and other material. As part of its contingency plans, the Contractor shall be allowed to include landfilling the SSO and the Contingency SSO for the first two (2) Operating Years of the Term during unscheduled shutdowns.
- (c) The amount of SSO and/or Contingency SSO that would have been delivered to the Contractor had there been no unscheduled shutdown or work interruption shall be applied as a credit to the percentage of the City's Minimum Annual Tonnage Guarantee and the City shall not be required to pay to the Contractor any of the applicable fees set out in Article 13 that otherwise would be payable had no credit been applied. Any unscheduled shutdown arrangements shall not result in any additional cost, including transportation, processing or disposal costs, to the City.

#### **7.9 Regular Receiving Hours**

- (a) The Facility shall be open and operational during Regular Receiving Hours to receive SSO and Contingency SSO from the City to accommodate its collection and transfer schedules.
- (b) The Facility need not be open on any day recognized as Legal Holidays by the City, provided that the Facility shall be open such additional hours as may be reasonably required to accommodate the collection practices in any week which contains a Legal Holiday or for such additional hours as may be reasonably required to accommodate collection schedule changes and operational problems. Deliveries will normally occur during the Facility's Regular Receiving Hours. The City may need to deliver SSO to the Facility at other times to accommodate collection schedule changes and operational problems. The Facility must be open all Saturdays that follow a Legal Holiday. The City may wish to haul SSO and Contingency SSO on Saturdays or Legal Holidays to accommodate peak loads at certain times of the year. The Contractor is required to provide additional receiving hours upon two (2) Business Days prior Notice from the City.
- (c) On short term and on an occasional basis only, access to the Facility or to the site of the Facility shall be made available for the City to deliver loads of SSO and Contingency SSO twenty-four (24) hours per day, seven (7) days per week upon reasonable terms to be agreed between the Parties. Notwithstanding the foregoing, the deliveries will primarily occur during Regular Receiving Hours.

#### **7.10 Access and Monitoring**

- (a) The City, and Persons so designated by the City, shall have the right to enter and view the Facility at any time during Regular Receiving Hours. The City shall also have access to



the Facility outside of Regular Receiving Hours where reasonable prior Notice is provided to the Contractor.

- (b) The City shall have the right to station the City's Representative or a City employee or designate at the Facility or at any site utilized by the Contractor in respect of this Agreement at any time to carry out any and all inspections and monitoring of the Work in accordance with this Agreement. The Contractor shall provide a suitable furnished office for the sole use of this Person with a desk, chair, lockable filing cabinet, telephone, telephone lines, computer lines and a lockable door within the Facility or other site utilized by the Contractor.

#### **7.11 Inspection, Demonstration and Testing**

- (a) In performing the Work, the Contractor shall be responsible for conducting all material audits, tests and inspections, including the performance of chemical, physical or biological testing necessary to create a mass balance of material movement through the Facility in order to convert the SSO and Contingency SSO into UUP, including without limitation, determining the:
  - (i) composition and characteristics of the incoming SSO, including Contingency SSO;
  - (ii) composition of the Residual Waste;
  - (iii) characteristics of the Effluent;
  - (iv) characteristics of the Unrestricted Use Product;
  - (v) composition and characteristics of any other material input, product or Emissions;
  - (vi) quantities of materials on site;

and as necessary to satisfy market and regulatory requirements or to establish compliance with the Performance Guarantees, the terms of this Agreement or with the Facility's Certificates of Approval. All such audits, inspections and tests shall be conducted in the manner consistent with ISO 9001:2000 standards and as prescribed by this Agreement in general accordance with the procedure set forth in Schedule 5 attached hereto. The Contractor shall provide copies of the proposed audit, inspection and testing procedures to the City ten (10) Business Days in advance of the Commencement Date. The Contractor shall provide a mass balance of material movement through the Facility to the City semi-annually including provision of an anticipated mass balance at the commencement of the Term.

- (b) The cost of all inspections, demonstrations or testing shall be borne by the Contractor. All results or reports arising from the audit inspections, demonstrations or testing will be provided, in both electronic and paper format, to the City at a minimum on a quarterly basis for each Operating Year. Upon reasonable prior Notice being provided by Contractor to the City, the City reserves the right to accompany the Contractor in the

course of conducting any and all audits, inspections and tests and the Contractor agrees to assist and cooperate with the City's Representative during such audits, inspections and tests.

#### **7.12 Production of an Unrestricted Use Product**

- (a) The SSO and the Contingency SSO received at the Facility shall be processed and converted into an Unrestricted Use Product in a diligent and timely manner. The UUP shall be in a state suitable for direct delivery to the intended market when it leaves the Facility. The UUP may be transferred by the Contractor to another Contractor-owned/controlled and operated Facility for secondary processing provided that any such Facility possesses all Permits necessary to receive and process such material and that the prior written approval of the City has been obtained. The Contractor shall remain liable for the UUP moved off the Facility site until the UUP has been sold.
- (b) All UUP shall meet all the minimum quality standards, including without limitation, standards dealing with maturity, foreign matter, trace elements and pathogens required by all Applicable Laws and, including without limitation, the minimum product quality standards set out in Schedule 4 attached hereto.
- (c) The Contractor acknowledges that it is aware of the minimum regulatory market requirements for products derived from organic waste and intended for use in Ontario and Quebec. It is the Contractor's sole responsibility to ensure that the Facility is capable of, and is operated for, the purpose of producing a product that is not subject to regulation as a waste by the MOE or other Relevant Authority, or equivalent regulatory authorities outside of the Province of Ontario where the product will be Marketed, used or sold.

#### **7.13 Marketing**

The UUP shall be Marketed for Beneficial Use by the Contractor. The Contractor shall be responsible for and shall bear all costs and retain all revenues associated with Marketing the UUP and any other marketable products resulting from the processing of the SSO and Contingency SSO. All UUP and other Marketed material must be reported through the City's Solid Waste Database web interface weekly in accordance with the reporting requirements set out in Section 10.3.

#### **7.14 UUP Reserved for City**

- (a) Commencing in the second Operating Year, the Contractor shall provide the City, during the months of May and June of each Operating Year of the Term, up to a maximum of five (5%) percent of the mass balance of UUP generated annually from the previous Operating year of the City's SSO and the City's Contingency SSO at no additional cost to the City.
- (b) Upon no less than ten (10) Business Days prior Notice by the City to the Contractor, the Contractor shall load the UUP referred to in Section 7.14(a) onto transfer vehicles provided by the City. The City will provide the UUP haulage trucks and shall assume all costs for hauling the UUP from the Facility.

#### **7.15 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 and the Contractor's employees, Subcontractors or agents are not and shall not be considered employees, agents, subagents or servants of the City under this Agreement or otherwise.

#### **7.16 Use of Subcontractors**

- (a) The Contractor shall not subcontract or permit the subcontracting of any portion of this Agreement or replace an approved Subcontractor or add a new Subcontractor without the prior written consent of the City which consent shall not be unreasonably withheld. Such written consent, if granted, shall not relieve the Contractor from its liabilities and obligations under the Agreement. Should the City consent to subcontracting, then the Contractor shall preserve and protect the rights of the Parties under this Agreement with respect to any work to be performed under Subcontract and shall:
  - (i) enter into contracts or written agreements with Subcontractors to require them to perform any work in accordance with this Agreement;
  - (ii) be fully responsible to the City for costs or damages arising from acts and omissions of the Subcontractors or any of them;
  - (iii) be solely responsible for the payment of any Subcontractors employed, engaged or retained by it for the purpose of assisting it in the performance of its obligations under this Agreement; and
  - (iv) co-ordinate the services of all Subcontractors employed, engaged or retained by it for the purpose of this Agreement, and shall ensure that the Subcontractors comply with all of the relevant requirements of this Agreement.
- (b) In no event will the Contract Price be increased as a result of any subcontracting by the Contractor.

#### **7.17 Collateral Agreements**

The Contractor acknowledges and agrees that any contract or obligation that it enters into with any other Person, including any Subcontractor, pertaining to this Agreement shall not derogate from the obligation of the Contractor to ensure compliance with its obligations hereunder nor derogate from the right of the City to require the Contractor or any such other contracting party to comply with obligations contained in any such collateral agreement and enforce its remedies pursuant to this Agreement or any such collateral agreements.

#### **7.18 Accounts and Audit**

- (a) The Contractor shall keep proper accounts and records of transactions and activities, in addition to all expenditures or commitments made by the Contractor in connection with



its obligations under this Agreement and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the Term be open to audit, inspection and examination by the City.

- (b) Copies of said records shall be provided to the City upon request so that such records can be maintained in accordance with the City's Records Management Policy and Records Retention and Disposition By-law 2003-527.

## **ARTICLE 8 – MATERIAL SUPPLY AND QUANTITIES**

### **8.1 Base Tonnage Ranges**

Tables 1 and 2 of Schedule 2 establish the minimum daily and yearly base amounts of SSO that the Facility must be able to receive. The City may deliver to the Facility the amounts of SSO set out in Tables 1 and 2 of Schedule 2 as well as any Peak Amounts of SSO due to the variation of the Annual Average Daily Tonnage as described in Section 8.2. Any Contingency SSO tonnage will be subject to the terms of Section 8.5.

### **8.2 Variation in Composition and Amounts**

- (a) Except as explicitly provided for in this Agreement, including the right to reject loads, in whole or in part, as set forth in Section 9.1, the Contractor shall accept any variations in the organic composition of the SSO and Contingency SSO and process that material. The City makes no representation or warranty with respect to the organic composition, moisture content or other properties of the SSO and Contingency SSO delivered to the Facility falling under the definition of SSO and properly accepted by the Contractor in accordance with Article 9. The Contractor acknowledges that quantities and quality of SSO and Contingency SSO subject to this Agreement, howsoever defined, are variable.
- (b) Notwithstanding the minimum daily and yearly base amounts of SSO requirements set out in Tables 1 and 2 of Schedule 2, the daily tonnage of SSO delivered by the City may vary by plus or minus thirty-five percent ( $\pm 35\%$ ) of the Annual Average Daily Tonnage. This variation may be attributable to collection schedule changes resulting from frequency of pick up from households, Legal Holidays and/or natural variation in SSO generation rates. The Contractor must be able to accommodate this variability. The Contractor shall reimburse the City for any costs incurred by the City resulting from the Contractor's inability to receive the minimum daily and annual tonnage of SSO as set out in Tables 1 and 2 of Schedule 2 and any Peak Amounts of SSO due to the variation of the Annual Average Daily Tonnage described in this Section 8.2.

### **8.3 Receiving Facilities**

- (a) The Contractor shall provide suitable unloading facilities in the interior of the Facility to allow for unloading of SSO delivery vehicles with the Facility door closed, ensure that the SSO delivery vehicles are not delayed and not interfere with off-site traffic movement. The Facility shall allow for at least twenty-five (25) meters of on-site



roadway per twenty-five thousand (25,000) tonnes of SSO to be received at the Facility, not including the weighscale and ramps for SSO delivery truck queuing. For example, the Facility shall allow for two hundred (200) meters of on-site roadway for a one hundred thousand (100,000) tonne Facility. The maximum delivery time for vehicles including weighing, entering and exiting the Facility and unloading, should not exceed an average of twenty (20) minutes (in the case of curbside collection vehicles) and an average of thirty (30) minutes (in the case of transfer vehicles) based on the weekly averages for delivery times. Delivery time commences upon arrival of the vehicle at the queue to the gates of the Facility and ends when the vehicle departs the gates and includes scaling in and out of the Facility, any queuing time, entry to the unloading area, unloading and departure from the unloading area.

- (b) The receiving area of the Facility shall be suitably sized and provide for a suitable inside clear height to allow trucks to unload inside with their box at full extension and the doors fully closed. Receiving bay doors shall also have a suitable clearance height when fully open to allow vehicle entry or exit without damaging the doors.

#### **8.4 Minimum Annual Tonnage Guarantee**

- (a) Unless the Minimum Annual Tonnage Guarantee is adjusted for in a particular Operating Year as described in Section 8.4(c) and commencing as of the Commencement Date, the City guarantees to “put or pay” for eighty (80%) percent of the total annual tonnage of SSO and Contingency SSO awarded to the Contractor in effect for each Operating Year and shall be a minimum of eighty (80%) percent of the Awarded Amount for each Operating Year.
- (b) The minimum annual tonnage of SSO required to be made available to the Contractor for processing at the Facility shall be calculated by multiplying the Contractor’s Minimum Processing Rate Guarantee (based on tonnes/year) in effect in any given Operating Year by eighty (80%) percent. For the sake of clarity, the City’s “put or pay” obligation for the first Operating Year is eighty thousand (80,000) tonnes of SSO (calculated as follows: 100,000 tonnes x 80% = 80,000). In the event the City has requested to deliver twenty-five thousand (25,000) tonnes of Contingency SSO in addition to SSO in an Operating Year, then the City’s “put or pay” obligations for that Operating Year would be one hundred thousand (100,000) tonnes of SSO (calculated as follows: 125,000 x 80% = 100,000).
- (c) The Minimum Annual Tonnage Guarantee assumes that normal operations of the Facility, including scheduled shutdowns and unscheduled shutdowns, enable the Facility to accept and process the minimum required tonnage of SSO as per Tables 1 and 2 of Schedule 2. The City reserves the right to reduce the Minimum Annual Tonnage Guarantee in any Operating Year of the Term in the event that extended or recurring periods of Facility down time make it impossible for the Facility to accept the minimum annual tonnage of SSO tonnage within an Operating Year at the normal rate of material supply. In this case, the Minimum Annual Tonnage Guarantee shall be reduced by an amount proportional to the duration of the extended or recurring period of down time.

Any Minimum Annual Tonnage Guarantee that relates to a period of time that is less than twelve (12) months shall be pro-rated accordingly.

- (d) The percentage of the Minimum Annual Tonnage Guarantee shall be confirmed by the City at the end of each Operating Year of the Term.

#### **8.5 Contingency SSO**

- (a) At any time during the Term and upon one (1) year prior Notice from the City to the Contractor, the City shall, at its sole option and Discretion, be entitled to deliver and the Contractor shall ensure that the Facility is able to receive, handle and process, in addition to the SSO delivered in accordance with this Agreement, Contingency SSO. The Contractor's daily Minimum Processing Rate Guarantee set out in Table 2 of Schedule 2 shall also apply to Contingency SSO and the Facility must be able to receive any Peak Amounts of Contingency SSO due to the variation of the Annual Average Daily Tonnage as described in Section 8.2.
- (b) The City shall be entitled to exercise its option set out in Section 8.5(a) to deliver the Contingency SSO in increments of either ten thousand (10,000) tonnes per Operating Year, fifteen thousand (15,000) tonnes per Operating Year or twenty five thousand (25,000) tonnes per Operation year, or any combination thereof, provided that in no event shall the Contingency SSO taken as a whole be more than fifty (50,000) tonnes per Operating Year during the Term. The aforementioned Notice shall contain, *inter alia*, details regarding the amount of Contingency SSO and the date on which the City shall be entitled to deliver the Contingency SSO.
- (c) The City shall be entitled to deliver Contingency SSO in consideration of the Contingency Amount Processing Fees described in Section 13.2.

### **ARTICLE 9 – RESPONSIBILITY FOR MATERIALS**

#### **9.1 SSO and Contingency SSO Hauling, Receipt and Acceptance**

- (a) Transfer of ownership and responsibility for SSO and Contingency SSO from the City to the Contractor takes effect upon delivery of such SSO and Contingency SSO to the Facility and acceptance thereof by the Contractor in accordance with this Section 9.1.
- (b) Prior to accepting the SSO and Contingency SSO, the Contractor is required to inspect the SSO and Contingency SSO in the tipping area using suitably trained employees to ensure that it complies with the terms of this Agreement.
- (c) The Contractor has the right to refuse to accept loads of SSO and Contingency SSO in whole or in part, where it can be demonstrated that:
  - (i) the composition of the material differs so greatly from that of SSO, such that the material cannot reasonably be considered to be SSO; or

- (ii) where it is found that the SSO and Contingency SSO contains items that present an unusual and unacceptable risk to health and safety or to the integrity of the Facility or process.

The Contractor shall be deemed to have accepted the SSO and Contingency SSO if, after inspection, the Contractor has not refused to accept the load of SSO or Contingency SSO, in whole or in part, in accordance with the provisions of this Agreement.

- (d) If a load of SSO or Contingency SSO, in whole or in part, is determined to be unacceptable in accordance with Section 9.1(c)(i) and/or 9.1(c)(ii) and is not accepted by the Contractor, the Contractor shall take digital colour photos to verify the presence of such unacceptable material and promptly thereafter within one (1) hour, but in no case later than the same Business Day after inspecting the material, complete and submit a report, complete with digital colour photos, to the City in a form acceptable to the City, acting reasonably. If a load is rejected after Regular Receiving Hours, then the Contractor shall contact the City's Facility supervisor (who is to be identified by the City twenty (20) Business Days prior to the Commissioning Date). The City reserves the right to verify, within the same Business Day, that the Contractor's refusal to accept a load is appropriate prior to any further action being taken by the Contractor.
- (e) After the unacceptable load has been verified by the City as being unacceptable, the Contractor shall load it onto a vehicle provided by the City. Once loaded onto that vehicle, ownership of and responsibility for the management of the unacceptable load shall be assumed by the City. A detailed procedural programme for unacceptable loads shall be developed and mutually agreed upon by the Parties at least twenty (20) Business Days prior to the Commissioning Date.
- (f) No fees will be paid to the Contractor for properly rejected whole or partial loads. Rejected whole or partial loads will not be included in the calculation of any additional payments due to the Contractor to satisfy the City's Minimum Annual Tonnage Guarantee.

## **9.2 Residual Waste and Recyclables**

- (a) The Contractor is responsible for, and shall bear all costs associated with, the disposal and management of all Residual Waste and the marketing of all recyclable material, if any, captured or generated during the processing of SSO and Contingency SSO at the Facility. All Residual Waste must be reported through the City's Solid Waste Database web interface weekly in accordance with the reporting requirements set out in Section 10.3.
- (b) In the event that the Contractor processes Non-City SSO material or other material at the Facility other than the SSO and Contingency SSO provided by the City, the Contractor shall, as part of its reporting requirement, be required to differentiate between Residual Waste from the City's SSO and City's Contingency SSO and Residual Waste derived from the other sources.



### **9.3 Restriction on Disposal**

The Contractor shall not dispose of any Residual Waste from the Facility to any location except to a properly licensed waste disposal facility approved and properly authorized for the receipt or management of such waste by the MOE or Relevant Authority or an equivalent agency in Canada or the United States.

## **ARTICLE 10 – WEIGHING RECORDS**

### **10.1 Weigh Scales**

- (a) The Contractor shall maintain and operate vehicle weigh scales and shall be responsible for all costs associated with their management and operation. All vehicles delivering SSO and Contingency SSO to the Facility shall be weighed and processed at a weigh scale by the Contractor.
- (b) All weigh scales shall comply with all Applicable Laws and be certified by, and be in compliance with Corporate and Consumer Affairs Weights and Measures Canada or such successor agency. All weigh scales shall be re-certified at the Contractor's expense in accordance with the requirements set by Corporate and Consumer Affairs Weights and Measures Canada or such successor agency. The Contractor shall provide records of such re-certification to the City within five (5) Business Days of re-certification. The City may request proof of all weigh scale accuracy at any time.
- (c) Notwithstanding the stated requirement for re-certification every six (6) months for weigh scales, all vehicles must be tared or re-tared at a minimum of once a month.

### **10.2 Weighing**

- (a) The Contractor shall weigh all vehicles upon entry and exit of the Facility. The Contractor shall provide to the driver of the SSO delivery vehicle a weigh ticket or weigh stub showing the recorded weight of the SSO delivery vehicle each time a SSO delivery vehicle is weighed.
- (b) Should the weigh scale be out of order, the Contractor shall make alternate arrangements to record weights that are satisfactory to the City. The City shall be notified immediately of any scale malfunctions.

### **10.3 Recording Requirements**

- (a) All weigh scale data must be reported through the City's Solid Waste Database web interface weekly. The Contractor shall follow the appropriate data input instructions in the Contractor Data Provision Guide, as amended from time to time, and use software that is compatible with and capable of exporting files to Microsoft Excel. All Subcontractors, including any future Transfer Station operator, if applicable, must provide data and provide daily input records.



(b) The Contractor shall record all of the information required by the Data Provision Guide, including without limitation, the following information in respect of weighing as part of the weight record:

- (i) Date
- (ii) Entry Time
- (iii) Departure Time
- (iv) Facility Name
- (v) Customer Name
- (vi) Transaction Number
- (vii) Account Number
- (viii) Vehicle Identification and License
- (ix) Material Source
- (x) Material Type
- (xi) Gross Weight (kilograms)
- (xii) Tare Weight (kilograms)
- (xiii) Net Weight (kilograms)
- (xiv) Weighmaster Identification
- (xv) Price per tonne

(c) The Contractor shall maintain a weight record. The City shall be entitled to observe, verify and have reasonable access to the processes involved in the development and formulation of the weight record, within the operating hours of the weigh scales and in the presence of the Contractor's Representative. The Contractor shall also provide the City with weight record information tabulated on a daily, weekly monthly and annual basis, to allow for proper administration of this Agreement by the City.

(d) Unless the City should direct otherwise, the Contractor shall be required to utilize software compatible with and capable of exporting files to Microsoft Excel to the City. Where the material weight data is collected by the Contractor, the data shall be stored and be available for retrieval by the City during the Term plus three (3) years. All data resulting from the hauling, if any, receipt, processing and shipment of SSO and Contingency SSO materials shall be accessible to the City on a daily basis and in a monthly summary in an agreed upon report format and to accompany the first invoice of the subsequent month.

## ARTICLE 11- FACILITY APPROVALS

### 11.1 Processing Facility Approvals

- (a) The Facility must be operated and maintained by the Contractor at its expense, in accordance with Applicable Laws, including without limitation, provincial environmental statutes, regulations and guidelines, labour laws and municipal by-law requirements, and with good engineering and management principles.
- (b) Without limiting the generality of Section 11.1(a), the Facility must have valid Permits, including without limitation, permits issued by the MOE under the *Environmental Protection Act* (or equivalent for facilities outside of Ontario); specifically, a waste processing site Certificate of Approval and a Certificate of Approval for Emissions to the atmosphere. The waste processing site Certificate of Approval must allow the Facility to receive and process the maximum amount of SSO and any Contingency SSO, as applicable, required in accordance with the Contractor's Performance Guarantees.

### 11.2 Certificates of Approval and Regulatory Requirements

- (a) The Contractor shall forthwith proceed, at its expense, to obtain all Permits required: i) by the terms of this Agreement, and amendments thereto; ii) in accordance with Applicable Laws; and iii) as may be required by all Relevant Authorities necessary to operate and maintain the Facility to the standards required under this Agreement in order to perform all of its obligations by the Commencement Date and throughout the Term.
- (b) Up until the Commencement Date, the Contractor shall provide bi-weekly status reports to the City with respect to the status of all Permits and all milestone dates set out in Section 11.2(c). The City will reasonably assist the Contractor in obtaining the necessary approvals or amendments to existing approvals by providing information on the SSO program necessary to support the application, but shall not be obligated to incur any costs related to such assistance.
- (c) All Permits, including the Certificates of Approval for the Facility, and other regulatory approvals and inspections referenced herein shall be submitted and secured, as the case may be, by the Contractor and be in effect prior to the milestone dates specified below but in any event no later than the Commencement Date.

March 31, 2008:	Submission of application to rezone
	Submission of application for site plan approval
April 30 2008:	Submission of all applications for Certificates of Approval
June 30, 2008:	Submission of building permit application
August 1, 2008:	Commence excavations and earth work for construction of Facility
October 31, 2008:	Obtain rezoning.

October 31, 2008: Obtain site plan approval

October 31, 2008: Obtain building permit

December 1, 2008: Obtain Certificates of Approval

November 1, 2008: Commence structural work of the Facility

July 1, 2009: Commence process equipment installations

September 1, 2009: Construction of Facility complete

October 1, 2009: Equipment commissioning complete with functional operating capacity of 100 tonnes/day

January 1, 2010: Process commissioning complete with functional operating capacity of 400 tonnes/day.

### 11.3 Compliance with Laws

- (a) The Contractor shall at all times operate the Facility in accordance with and strictly comply with all Applicable Laws, including without limitation, the conditions of any Certificates of Approval for the Facility, as amended from time to time, and any other required Permits, Environmental Laws and all laws relating to the protection of human health and safety.
- (b) Without limiting the generality of the foregoing,
  - (i) the Contractor shall strictly comply with the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act 1997* and regulations made thereunder as they may be amended from time to time, and for greater clarity, the Contractor shall be the "employer" and, in the event that this Agreement results in a "Construction Project" as defined in the *Occupational Health and Safety Act*, the Contractor shall be considered the "constructor"
  - (ii) the operating labour conditions at the Facility shall strictly conform to the Industrial Standards Act, the Employment Standards Act, Workplace Safety and Insurance Act, Pay Equity Act, Human Rights Code, Labour Relations Act, and regulations made thereunder as they may be amended from time to time;
  - (iii) the operation of the Facility shall strictly conform to the Ontario *Environmental Protection Act* and regulations made thereunder as they may be amended from time to time, and the *Ontario Water Resources Act* and regulations made thereunder as they may be amended from time to time, or in the case of facilities located outside of Ontario must conform to applicable similar legal, legislative, statutory and regulatory requirements.

#### **11.4 QA/QC Program Requirements**

The Contractor shall be responsible for undertaking all testing, including performance testing, and quality assurance/quality control ("QA/QC") activities required, together with the associated costs:

- (a) to ensure that the operation of the Facility is in compliance with the requirements of this Agreement; and
- (b) to provide the level of QA/QC necessary to meet the requirements and conditions placed on the Facility and its operation by all markets, including the receivers or purchasers of UUP.

### **ARTICLE 12 – CITY’S RESPONSIBILITIES**

#### **12.1 The City’s Responsibility**

Subject to and in accordance with the provisions of this Agreement, the City shall:

- (a) “put or pay” to the Contractor the amount guaranteed as the minimum annual tonnage of SSO for each Operating Year pursuant to the City’s Minimum Annual Tonnage Guarantee;
- (b) deliver the SSO, and the Contingency SSO if applicable, to the Facility;
- (c) make the payments as provided for in Article 13, as applicable; and
- (d) take possession of the SSO and the Contingency SSO that is not accepted pursuant to Section 9.1.

### **ARTICLE 13– PAYMENT**

#### **13.1 Payment for Facility Operation**

Subject to the provisions of this Agreement and during the Term of this Agreement, the City shall pay to the Contractor:

- (a) the Base Processing Fee, and the Contingency Amount Processing Fees if applicable, based on the actual amount of SSO and Contingency SSO delivered to the Facility and accepted for processing by the Contractor;
- (a) the Contamination Surcharge, if applicable; and



- (b) any additional payments in respect of the "put or pay" fees related to the City's Minimum Annual Tonnage Guarantee if the City fails to meet the City's Minimum Annual Tonnage Guarantee.

### **13.2 Base Processing Fee**

- (a) The Base Processing Fee shall be calculated, on a weekly basis, by multiplying the actual amount of SSO accepted for processing at the Facility based on weigh scale records by the fee per tonne (plus GST) set out in Tables 1 and 2 of Schedule 2 and shall be adjusted thereafter in accordance with Section 13.5 for the duration of the Term of this Agreement. For the sake of clarity, the Base Processing Fee for SSO applicable to scenario 1 of Schedule 2 is \$89.40.
- (b) Whole or partial loads of SSO not accepted by Contractor shall not be included in the calculation of the Base Processing Fee.

### **13.3 Contamination Surcharge**

- (a) The Contractor is entitled to receive a per tonne Contamination Surcharge should composition audits of the incoming SSO and Contingency SSO conducted pursuant to Section 7.11 and this Section 13.3 reveal that Contaminant Materials comprise more than the Maximum Contamination Rate set out Tables 1 and 2 of Schedule 2 by weight of SSO or Contingency SSO received by the Facility and accepted for processing.
- (b) The Contractor is required to conduct composition audits of SSO and Contingency SSO received at the Facility, in the presence of the City, at least once per three (3) month period. The City may conduct additional audits in the City's Discretion. Composition audits are to be conducted in the manner as the audit methodology specified in Schedule 5.
- (c) At the end of each six (6) month period, the Contractor shall calculate a weighted average of the results of the composition audits completed in the previous six (6) months yielding an average contaminant composition result for the six (6) month period. To calculate the average composition result for a six (6) month period, individual audit results shall be weighted by a factor that is the quotient of the amount of SSO and/or Contingency SSO received in the period between the subject audit and the previous audit divided by the total amount of SSO and/or Contingency SSO received in the six (6) month period (i.e. tonnage weighted averaging).

#### For Example:

The Contractor conducts a single audit during the three (3) month period, January to March. The audit results indicate the contaminant composition to be 18%. During the three (3) month period, January to March, a total of 22,500 tonnes of SSO are processed.

The Contractor conducts a single audit during the next three (3) month period, April to June. The audit results indicate the contaminant composition to be 8%. During the three (3) month period, April to June, a total of 27,500 tonnes of SSO are processed.

The weighted average of the contaminant composition for the six (6) month period January to June, during which a total of 50,000 tonnes of SSO are processed, is calculated as follows:

Weighted average (6-month period) =  $[18\% \times 22500 / 50000] + [8\% \times 27500 / 50000]$

Weighted average (6-month period) =  $[18\% \times 0.45] + [8\% \times 0.55]$

Weighted average (6-month period) =  $[8.1\%] + [4.4\%]$

Weighted average (6-month period) = 12.5%

- (d) Should the average composition result indicate that Contaminant Materials exceeded the applicable Maximum Contamination Rate percentage set out Tables 1 and 2 of Schedule 2 by weight of SSO and Contingency SSO received, the Contractor shall be entitled to receive a Contamination Surcharge calculated by multiplying the fee amount for the per tonne Contamination Surcharge (plus GST) as set out Tables 1 and 2 of Schedule 2 by the tonnage of SSO and Contingency SSO received and accepted for processing during the six (6) month period. For the sake of clarity, the Contamination Surcharge applicable to scenario 1 of Schedule 2 is \$5.00 per tonne and the Maximum Contamination Rate applicable to scenario 1 of Schedule 2 is 15%.
- (e) SSO and Contingency SSO delivered to the Facility but not accepted for processing, in whole or in part, shall not be included in the Contamination Surcharge calculation.
- (f) If the Contractor is entitled to a Contamination Surcharge payment in accordance with this Section 13.3, the amount of the payment is to be specified in the next invoice following the six (6) month period in question.

#### **13.4 Minimum Annual Tonnage Guarantee Fee Payment**

- (a) The amount of any payment due to the Contractor to satisfy the Minimum Annual Tonnage Guarantee shall be calculated by the City and the Contractor within twenty (20) Business Days of the end of each Operating Year of the Term.
- (b) If the actual amount of SSO received at the Facility for an Operating Year is less than the minimum annual tonnage amount required by the City's Minimum Annual Tonnage Guarantee as calculated in accordance with Section 8.4, a minimum amount equal to the "put or pay" requirements to satisfy the minimum annual tonnage amount will be invoiced to the City in the Contractor's next invoice.

For example: The City's "put or pay" obligation for the first Operating Year is eighty thousand (80,000) tonnes of SSO. If the City only delivers seventy thousand (70,000) tonnes of SSO in the first Operating Year, then the City shall be required to pay an amount equal to the shortfall of SSO not delivered to the Facility (10,000 tonnes of SSO) multiplied by the Base Processing Fee (\$89.40).

- (c) The amount of the shortfall of SSO not delivered to the Facility shall be multiplied by the applicable fee, whether it be the Base Processing Fee, the Contingency Amount

Processing Fee A or Contingency Amount Processing Fee B, based on the volume of SSO and Contingency SSO in effect in any given Operating Year.

For example: If the City has requested Contingency SSO such that the total amount of SSO and Contingency SSO for an Operating Year is one hundred fifty thousand (150,000) tonnes of SSO and Contingency SSO, then the City's "put or pay" obligation for that Operating year is one hundred twenty thousand (120,000) tonnes of SSO and Contingency SSO. If the City only delivers one hundred ten thousand (110,000) tonnes of SSO and Contingency SSO in that Operating Year, then the City shall be required to pay amount equal to the shortfall of SSO and Contingency SSO not delivered to the Facility (10,000 tonnes of SSO) multiplied by the Contingency Amount Processing Fee A (\$85.00).

- (d) Should composition audits of the incoming SSO and Contingency SSO conducted pursuant to Section 7.11 and Section 13.3 reveal that on an annual basis, Contaminant Materials comprise less than five (5%) percent by weight of SSO and Contingency SSO received by the Facility and accepted for processing in accordance with Section 13.6 and the City is required to pay under its "put or pay" obligation, then the City shall be entitled to pay the Base Processing Fee less the rebate set out in Section 13.6 on the balance owed to the Contractor to satisfy the City's "put or pay" requirements.

### **13.5 CPI Annual Adjustment of Fees**

- (a) The Contract Price shall apply until the end of December 31, 2008.
- (b) The Contract Price for each subsequent Operating Year of the Term, will be adjusted on the first of any calendar year, commencing January 1, 2009, if and when there should be an increase or decrease for the applicable period in the Statistics Canada Consumer Price Index, All-items Consumer Price Index (not seasonally adjusted) Ottawa area - Catalogue 62-001. For greater certainty, the CPI will be adjusted on the first of each calendar year throughout the Term irrespective of the Operating Year.
- (c) The Statistics Canada Consumers Price Index, All-items Consumer Price Index (not seasonally adjusted) Ottawa area - Catalogue 62-001 for September will be used at the basis for calculation of the unit costs changes.
- (d) The basis of any adjustment of the Contract Price to be paid is to be one hundred (100%) percent of the variation in the Statistics Canada Consumers Price Index, All-items Consumer Price Index (not seasonally adjusted) Ottawa area - Catalogue 62-001.
- (e) Notwithstanding this Section 13.5, the adjustment for CPI as described herein shall only ever be applied one time to the applicable fees set out in Article 13 with respect to any amount of SSO delivered to the Contractor prior to the Commencement Date.
- (f) Within forty (40) Business Days of the end of each Operating Year, the Contractor and the City shall undertake any readjustments necessary in order to balance all fees and rebate payments owed by the City to the Contractor or owed by the Contractor to the City



based on the actual amount of SSO and Contingency SSO provided to the Facility by the City during the previous Operating Year.

### **13.6 Rebate for Low Rate of Contamination**

- (a) Should composition audits of the incoming SSO and Contingency SSO conducted pursuant to Section 7.11 and Section 13.3 reveal that on a quarterly basis, Contaminant Materials comprise less than five (5%) percent by weight of SSO and Contingency SSO received by the Facility and accepted for processing, then the City shall be entitled to a rebate of \$1.50 per tonne for up to a maximum of one hundred thousand (100,000) tonnes of SSO and Contingency SSO delivered to the Facility. If applicable, this rebate shall be calculated and applied within thirty (30) Business Days of the end of each Operating Year and be shown as a credit on the next invoice issued by the Contractor.
- (b) The rebate amount in this Section 13.6 shall be adjusted for CPI in accordance with Section 13.5.

### **13.7 Contingency Amount Processing Fees**

- (a) The Contingency Amount Processing Fees shall be calculated, on a weekly basis, by multiplying the actual amount of Contingency SSO accepted for processing at the Facility based on weigh scale records by the fees per tonne (plus GST) set out in Table 2 of Schedule 2 and shall be adjusted thereafter in accordance with Section 13.5 for the duration of the Term of this Agreement. For the sake of clarity, the Contingency Amount Processing Fees applicable to scenario 1 of Schedule 2 is:
  - (i) \$85.00 per tonne for the tonnage from one hundred thousand and one (100,001) tonnes to one hundred and twenty five thousand (125,000) tonnes of SSO and Contingency SSO delivered to the Facility; and
  - (ii) \$82.50 per tonne for the tonnage from one hundred twenty five thousand one (125,001) tonnes to one hundred and fifty thousand tonnes (150,000) tonnes of SSO or Contingency SSO delivered to the Facility.
- (b) The pricing in this Section 13.7 does not apply to the first one hundred thousand (100,000) tonnes of SSO delivered to the Facility.
- (c) Whole or partial loads of Contingency SSO not accepted by Contractor shall not be included in the calculation of the Contingency Amount Processing Fees.

## **ARTICLE 14— INVOICES**

### **14.1 Payment of Invoices**

- (a) The Contractor shall generate invoices on a weekly basis for SSO and Contingency SSO received from the City in the previous week. Invoices for the weekly fees shall be paid



by the City within thirty (30) Business Days of receipt of the invoice provided that such invoices are proper, accurate, correct and not in dispute. The Contractor shall be entitled to receive interest at a rate equivalent to the Default Interest Rate on any overdue accounts. The Contractor shall not be entitled, however, to any interest upon any invoice on account of a delay in its approval by the City resulting from any defect in the invoice, or for any invoice that is inaccurate, incorrect, or in dispute.

- (b) Each invoice shall specify the payment type requested, e.g., the Base Processing Fee, and the amount requested for each payment type shall be specified. The amount of the GST included in each requested payment type shall be shown separately.
- (c) The invoice shall also provide a total amount of payment requested, equal to the sum of the individual payment types inclusive of all taxes, and shall also provide a total of the GST included in all payment types.

#### **14.2 Supporting Documentation**

Invoices shall have sufficient supporting documentation including a weekly summary of weigh tickets, with all information required by Article 10 and Article 13. The first invoice of each month shall also be accompanied by all of the applicable Required Submissions as more particularly set out in Schedule 9 attached hereto.

#### **14.3 Set-Off**

The City may deduct from any payment due to the Contractor under any invoice, any fees, charges, costs or other amounts due and owing to the City from the Contractor under this Agreement. If there is a Dispute as to an amount deducted by the City under this Section 14.3, then such matter shall be resolved pursuant to the Dispute Resolution Procedure.

### **ARTICLE 15 – LANDFILL AND TIPPING RATES**

#### **15.1 Landfill and Tipping Rates**

- (a) During the Term of this Agreement, should the Contractor dispose of Residual Waste at the City owned and operated waste facility known as Trail Waste Facility located at 4475 Trail Road, Ottawa, Ontario, then the City shall charge the Contractor a set fee of \$40.00 per tonne of Residual Waste on all Residual Waste disposed at the Trail Waste Facility resulting from the SSO and the Contingency SSO that is processed at the Facility (the “Residual Waste Tipping Fee”).
- (b) The per tonne Residual Waste Tipping Fee shall apply until the end of December 31, 2009. The Residual Waste Tipping Fee for each subsequent Operating Year of the Term will be adjusted on the CPI adjustment formula set out in Section 13.5.
- (c) The Residual Waste Tipping Fee does not include any future sales, use, consumption, goods and services, value-added or other similar taxes, levies or other surcharges or other

taxes that may be imposed by the Government of Canada or any provincial or local government upon the City or the Contractor in respect of the disposal of Residual Waste at the Trail Waste Facility. Should any such future taxes be imposed that adversely affect the operating costs of the Facility, the Parties agree to adjust the Residual Waste Tipping Fee if and when such taxes are imposed.

## **ARTICLE 16 – COMMUNITY COMPLAINTS & LIASON**

### **16.1 Public Complaint and Liaison Officer**

The Contractor shall appoint an employee or officer of the Contractor who possesses the appropriate knowledge and skill (the “**Public Liaison Officer**”) to manage a Public Liaison Committee and public complaint system. The Public Liaison Officer shall deal with community complaints and education related to off-site nuisances including odour, noise, dust, litter and pests.

### **16.2 Single Point of Contact System**

- (a) The City shall communicate to the Complaint Officer complaints received by the City in relation to the Work and the Complaint Officer shall communicate to the City the Complaint Officer's responses to such complaints. This single point of contact system shall be designed to ensure that all complaints, whether made to the Contractor or to the City are responded to and tracked by the Contractor and the Contractor shall maintain a record of all complaints. The Contractor shall submit all reports arising from complaints, whether made to the Contractor or to the City, in both electronic and paper format, to the City at a minimum on a quarterly basis for each Operating Year.
- (b) The Contractor shall ensure that the Complaint Officer responds promptly to complaints from community members whether received from a community member directly or from the City. When requested by the City, the Contractor shall provide feedback to the City regarding the treatment of a community member's complaint received from the City.

### **16.3 Public Liaison Committee**

The Contractor shall establish the Public Liaison Committee that includes membership from the host community, the City, and the Contractor. The purpose of the Public Liaison Committee will be to provide for regular communication between the major stakeholders, to identify and remedy issues in a timely and cooperative manner, to enable development of goodwill initiatives with the community, and to establish networks and relationships that will help to sustain the Facility. The Public Liaison Committee shall be established at least twenty (20) Business Days prior to the Commissioning Date and shall meet at a minimum of once a month during the period from the Commissioning Date to the Commencement Date, and thereafter quarterly during the first Operating Year. Commencing as of the second Operating Year, the Public Liaison Committee may determine an appropriate meeting frequency, which may be adjusted over the course of the Term, but in any event shall be no less than once per Operating Year. The Contractor shall

provide for the meeting venue, arrange for the timely preparation and distribution of meeting agenda and meeting notes, and make such available to others upon request.

## ARTICLE 17 – SECURITY

### 17.1 Performance Security

- (a) As security for the performance by the Contractor of the Contractor's obligations to the City with respect to the operating phase requirements under this Agreement, the Contractor shall submit the Performance Security to the City within fourteen (14) Business Days after the execution of this Agreement by both Parties. The value of the Performance Security shall be equal a total of fifty (50%) percent of eighty (80%) percent of the annual gross value of one hundred thousand (100,000) tonne capacity (the "Performance Security").
- (b) During the first and second Operating Years, sixty-five (65%) percent of the Performance Security may, in the Contractor's Discretion, be in a form of:
  - (i) cash, cheque certified by the bank upon which it is drawn, a bank draft, a money order, an irrevocable bank letter of credit with an automatic renewal clause; or
  - (ii) a performance bond signed and sealed by the Contractor's Surety Company authorized by law to carry out business in the Province of Ontario and approved by the City;
  - (iii) and thirty-five (35%) percent of the Performance Security must be provided in the form of an irrevocable bank letter of credit with an automatic renewal clause.
- (c) During the third, fourth and fifth Operating Years, seventy (70%) percent of the Performance Security may, in the Contractor's Discretion, be in a form of:
  - (i) cash, cheque certified by the bank upon which it is drawn, a bank draft, a money order, an irrevocable bank letter of credit with an automatic renewal clause; or
  - (ii) a performance bond signed and sealed by the Contractor's Surety Company authorized by law to carry out business in the Province of Ontario and approved by the City;and thirty (30%) percent of the Performance Security must be provided in the form of an irrevocable bank letter of credit with an automatic renewal clause.
- (d) Commencing as of the sixth Operating Year and for the remainder of the Term, eighty (80%) percent of the Performance Security may, in the Contractor's Discretion, be in a form of:



- (i) cash, cheque certified by the bank upon which it is drawn, a bank draft, a money order, an irrevocable bank letter of credit with an automatic renewal clause; or
- (ii) a performance bond signed and sealed by the Contractor's Surety Company authorized by law to carry out business in the Province of Ontario and approved by the City;

and twenty (20%) percent of the Performance Security must be provided in the form of an irrevocable bank letter of credit with an automatic renewal clause.

- (e) The Contractor shall provide the City with the Performance Security annually on the anniversary of the Term. The annual value of the Performance Security will be adjusted on the anniversary of the Term thereafter to equate to fifty (50%) percent of eighty (80%) percent of the annual gross value of one hundred thousand (100,000) tonne capacity as adjusted for CPI in accordance with Section 13.5.
- (f) The Contractor shall maintain and replenish such Performance Security (or replacement Performance Security acceptable to the City) throughout the Term and shall execute such other replacement Performance Security and take such steps as may be reasonably requested by the City, from time to time, with respect to such Performance Security or any replacement thereof.
- (g) In the event that the Contractor posts an irrevocable bank letter of credit or a performance bond, then such irrevocable bank letter of credit shall be in the form set out in Schedule 8 attached hereto and such performance bond shall be in a form satisfactory to the City and substantially similar to the form set out in Schedule 8 attached hereto.
- (h) Failure of the Contractor to submit the requisite Performance Security within fourteen (20) Business Days after being requested to do so in accordance with Section 17.1(a) shall be considered sufficient grounds for City to terminate this Agreement, without any cost, obligation or liability or other Claim against the City.
- (i) The City shall, within fifteen (15) Business Days of execution of this Agreement by both Parties, either return the bid security in the same form as was delivered by the Contractor in its Response or issue a refund cheque to the Contractor in the same amount as the bid security amount if such bid security has been drawn upon by the City.

## **17.2 City Rights to Draw Upon Performance Security**

- (a) The City may, at its sole option and Discretion, draw upon the Performance Security, without prejudice to any other rights or remedies with respect to this Agreement that are available to it at law, if:
  - (i) the Contractor's bank notifies the City that within thirty (30) days it will not renew the Performance Security at any time during the Term and the Contractor does not make arrangements acceptable to the City, and within seven (7) Business Days of the receipt of such Notice by the City, to replace such Performance Security upon its expiry; or



- (ii) the City determines that the Contractor has defaulted on its obligations under this Agreement, after Notice thereof has been given as required by this Agreement and the applicable cure period has expired without rectification of the default or defaults to the City's satisfaction; or
- (iii) the Contractor has not obtained the applicable Permits to be able to Commence the Work by the Drop Dead Date in accordance with Section 3.3; or
- (iv) the Contractor has not paid the delay payments under Section 3.4; or
- (v) the Contractor fails to make a payment or partial payment, as the case may be, due to the City under this Agreement, including, without limitation, in respect of any of the indemnifications from the Contractor set out in Section 19.1.

## **ARTICLE 18 – INSURANCE**

### **18.1 Insurance**

The Contractor shall maintain throughout the Term insurance as required by and in a form and content as provided for in Schedule 7.

### **18.2 Terms and Conditions of Policies**

The policies of insurance shall contain or shall be subject to the following terms and conditions:

- (a) each policy shall contain an endorsement requiring the insurers to notify the City in writing, by registered mail, at least thirty (30) days prior to any material change that restricts, reduces or cancels the insurance required under this Article 18, or cancellation thereof;
- (b) the Parties agree that insurance policies may be subject to reasonable deductible amounts, of which the deductible amounts shall be borne by the Contractor;
- (c) the insurance policies required pursuant to Article 18 shall be primary and shall not call into contribution any insurance available to the City; and
- (d) the Contractor shall cause the limits of its insurance on its physical assets located in and at the Facility to be adjusted for inflation from time to time, as directed by the City.

### **18.3 Notification of Changes**

The Contractor shall promptly advise the City of any cancellation, material alteration or lapse of any policies of insurance required under this Article 18.

#### **18.4 Payment of Premiums**

The Contractor shall duly pay all premiums under the policies required under Article 18 as they become due and payable.

#### **18.5 Evidence of Insurance**

- (a) The Contractor shall provide proof of insurance upon execution of this Agreement or no later than seven (7) Business Days prior to the Commencement Date. Evidence of insurance shall be in the form of certificates of insurance, in form and detail satisfactory to the City acting reasonably, signed by an authorized representative of the insurer. The Contractor shall make available the complete original copies of all applicable policies for examination if required by the City upon request.
- (b) Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the City twenty (20) Business Days prior to the expiration of the current policies, without demand by the City.

### **ARTICLE 19 – INDEMNITY AND CLAIMS**

#### **19.1 Indemnity**

The Contractor shall indemnify and hold harmless and keep the City Indemnified Parties indemnified at all times from and against all losses, costs or Claims that any of them may sustain in connection with any Claim at any time suffered, incurred by, brought or made against the City Indemnified Parties or any of them that arise directly or indirectly out of or in the course of or in connection with the obligations of the Contractor with respect to or arising out of this Agreement including:

- (a) the Contractor's or any Subcontractor's performance or non-performance of its obligations, including payment obligations, under this Agreement;
- (b) any Claim(s) for, or in respect of the death of or personal injury to any person or any damage to or loss of any property whether real or personal as a result of any act or omission by the Contractor, by any Person for whom the Contractor is responsible at law or by any Subcontractor or by any Person for whom any such Subcontractor is responsible at law which occurred during the Term;
- (c) any Claim(s) in connection with any patent, copyright, moral right, trademark or industrial design or the use or misuse in connection with this Agreement;
- (d) as a result of or in connection with the release, as a result of any act or omission, by the Contractor, by any Person for whom the Contractor is responsible at law or by any Subcontractor or by any Person for whom the Subcontractor is responsible at law, of Hazardous Substances in, on or under the Real Property Interests or property adjacent to any Real Property Interest; and

- (e) without limiting the generality of the provisions set out in Sections 19.1(a), (b), (c) and (d) arising out of or in connection with:
  - (i) the activities of the Contractor or any Subcontractor, or those for whom the Contractor or any Subcontractor is responsible at law, in undertaking the Work;
  - (ii) any non-compliance by the Contractor or any Subcontractor with any of its obligations under any Applicable Laws, this Agreement or any agreement pertaining to the Facility;
  - (iii) the occurrence of any Contractor Default; and
  - (iv) any misrepresentation, inaccuracy or incorrectness or any representation by the Contractor in or under this Agreement or in or under any document, certificate, instrument or agreement delivered pursuant to this Agreement.

## **19.2 No Limitation**

- (a) Notwithstanding anything contained herein to the contrary, the indemnification by the Contractor to the City and the City Indemnified Parties with respect to both any one Claim and/or all such Claims shall not be limited.

## **19.3 Conduct of Claims**

- (a) If the City receives any notice, demand, letter or other document concerning any Claim for which it appears that the City is, or may become entitled to, indemnification under this Agreement, the City will give notice in writing to the Contractor as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt thereof.
- (b) If it appears that the City is or may be entitled to indemnification from the Contractor in respect of all (but not less than all) of the liability arising out of the Claim, the Contractor will (subject to providing the City with a secured indemnity against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the City at the Contractor's own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The City will give the Contractor all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim.
- (c) In defending any Claim in which there is a conflict of interest between the Contractor and the City, the City may appoint independent legal counsel in respect of such Claim and all reasonable costs and expenses incurred by the City in so doing will be included in the indemnity from the Contractor.
- (d) With respect to any Claim conducted by the Contractor:
  - (i) the Contractor will keep the City fully informed and consult with it about material elements of the conduct of the Claim;

- (ii) the Contractor will make no admission of liability or fault on the City's part, without the prior written consent of the City;
  - (iii) the Contractor will not bring the name of the City into disrepute; and
  - (iv) the Contractor will not pay or settle such Claims without the prior consent of the City;
- (e) The City, in its Discretion, may take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations and may pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement;
- (f) If the Contractor pays to the City an amount in respect of any indemnity and the City subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the City will forthwith repay to the Contractor the lesser of:
- (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the City in recovering such sum; and
  - (ii) the amount paid to the City by the Contractor in respect of the Claim under the relevant indemnity,
- provided that there will be no obligation on the City to pursue such recovery and that the Contractor is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Contractor exceeds any loss sustained by the City.
- (g) Any Person taking any of the steps contemplated in this Section 19.3 will comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

## ARTICLE 20 – UNCONTROLLABLE CIRCUMSTANCES

### 20.1 Occurrence

Subject to Sections 20.6 and 20.7, if Uncontrollable Circumstances occur, the Contractor shall notify the City as soon as possible and in any event within five (5) Business Days following the date upon which the Contractor first becomes aware (or should have been aware, using all reasonable due diligence) of such Uncontrollable Circumstances so that the City may verify same and keep the City informed throughout the continuance of such Uncontrollable Circumstances including as to when the Uncontrollable Circumstances or the consequences of the Uncontrollable Circumstances have ceased and as to when the performance of the Contractor's affected obligations will be resumed.



## **20.2 Alternative Delivery**

Notwithstanding any other provision of the Agreement, should any Uncontrollable Circumstances prevent or interrupt the Facility's operation, the City may deliver SSO or Contingency SSO or have SSO or Contingency SSO delivered to any other facility for processing or storage or to be dealt with in any manner in which the City sees fit, and, so long as the Facility continues not to operate as a result of Uncontrollable Circumstances, the City shall not be liable to the Contractor for its "put or pay" obligation, any fees, lost or reduced revenues or any other moneys as a result of any such action, and the Contractor shall not make any Claim with respect to the a reduction in SSO or Contingency SSO delivered to the Facility with respect to the time the Facility was not in operation due to such Uncontrollable Circumstances.

## **20.3 Mitigation**

The Contractor shall use its best efforts to mitigate the consequences of any Uncontrollable Circumstances.

## **20.4 Effect of an Uncontrollable Circumstances**

Delays in or failure in the performance of either Party under this Agreement shall not constitute default or give rise to any Claim for damages if and to the extent caused by Uncontrollable Circumstances. Despite any Uncontrollable Circumstances, the Contractor, unless otherwise agreed upon by the City, in its Discretion, shall nevertheless:

- (a) continue to perform the Work, to the extent that the Uncontrollable Circumstances do not prevent the performance of such Work and be paid the applicable fees in accordance with Article 13;
- (b) not surrender possession of the Facility;
- (c) not be entitled to terminate this Agreement;
- (d) not demand any increase in any amounts payable to the Contractor under this Agreement with respect to the Facility and/or the performance of the Contractor's obligations under this Agreement, notwithstanding any Applicable Law now or in the future to the contrary.

## **20.5 Disputes**

If there is a Dispute as to the occurrence or the effect of Uncontrollable Circumstances, then such matter shall be resolved pursuant to the Dispute Resolution Procedure. Pending the resolution of the Dispute by the Dispute Resolution Procedure, the Parties shall continue to fulfill their obligations under this Agreement as required except as may be prevented by the Uncontrollable Circumstances.

- (b) revocation of any Permit, including any Certificates of Approval, required for the performance of the Work unless such Permit is forthwith replaced, or an alternate means to perform the Work or to provide the same services is devised and implemented by the Contractor without any interruption or impairment of the provision of the services in accordance with this Agreement;
- (c) the Contractor abandoning the Work, the term "abandoning" in this context meaning failing to perform, without valid cause under this Agreement, a substantial portion of its obligations capable of being, and reasonably required to be for a continuous period of not less than two (2) weeks except where the Parties have agreed otherwise and excludes scheduled shutdowns, and unscheduled shutdowns due to Uncontrollable Circumstances;
- (d) the Contractor failing to comply with the Performance Guarantees;
- (e) the Contractor failing to Commence the Work by the Commencement Date, as may be extended in accordance with Section 3.1;
- (f) the Contractor failing to Commence the Work by the Drop Dead Date;
- (g) any of the covenants, representations or warranties of the Contractor contained in this Agreement or any certificate or other document or agreement delivered pursuant to this Agreement (not otherwise expressly referred to in this Section 21.1) no longer being true in all material respects;
- (h) any change in the Contractor's ownership or management structure up to and including the Commencement Date, that is, in the City's sole Discretion, material or if there is evidence of misleading or false information having been given by the Contractor, save and except for the purchase of the Contractor's shares owned by <sup>10(a)(6)(C), 11(a), (b), (d)</sup> ~~10(a)(6)(C), 11(a)(C), (d)~~ the Contractor's related company, Orgaworld International B.V.;
- (i) the occurrence of any of the following events in respect of the Contractor:
  - (i) any arrangement or composition with or for the benefit of creditors being entered into by or in relation to the Contractor;
  - (ii) any proceedings with respect to the Contractor being commenced under the Companies' Creditors Arrangement Act that are not dismissed, stayed or settled within twenty (20) Business Days from the commencement of such proceedings;
  - (iii) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Contractor;
  - (iv) the Contractor ceasing to carry on business;
  - (v) the Contractor making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the

Bankruptcy and Insolvency Act or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Contractor under the Bankruptcy and Insolvency Act or otherwise and, if commenced against the Contractor, not stayed within twenty (20) Business Days of its commencement; or

- (vi) a petition being filed (and not being contested in good faith using all reasonable efforts for a period not exceeding twenty (20) Business Days), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of the Contractor;
- (j) the occurrence of a Disposition not permitted in accordance with Section 27.2;
- (k) the Contractor failing to make a payment with respect to any other payment due to the City pursuant to this Agreement within the time specified therefor and failing to remedy such failure within twenty (20) Business Days of receipt of Notice thereof from the City;
- (l) the Contractor failing to submit the requisite Performance Security within twenty (20) Business Days in accordance with Section 17.1(a); or
- (m) the Contractor failing to comply with all Applicable Laws.

## **21.2 Notification**

The Contractor shall notify the City of the occurrence, and details, of any Contractor Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Contractor Default, in either case promptly on the Contractor becoming aware of its occurrence. However, a failure to provide such notice shall not derogate from the rights of the City as provided in this Agreement.

## **21.3 Rights of City if Contractor Defaults**

On the occurrence of a Contractor Default, or any time thereafter while it is subsisting, the City may:

- (a) serve notice of default on the Contractor requiring the Contractor:
  - (i) (A) to remedy the Contractor Default referred to in such notice of default (if it is continuing) within fifteen (15) Business Days of such notice of default (the "Notice Period"), except as hereinafter provided in Section 21.3(a)(i)(B) and Section 21.3(a)(i)(C) below;
  - (B) notwithstanding anything contained in Section 21.3(a)(i)(A), the Notice Period may be extended by the City, at its sole option and Discretion, to a greater period than fifteen (15) Business Days; or
  - (C) notwithstanding anything contained in Section 21.3(a)(i)(A), the Notice Period may be shortened but in no event to less than five (5) Business



Days by the City in the event that the City determines that the Contractor Default will have a material detrimental effect on the community or the City's collection program, in which event the City shall so notify the Contractor;

- (ii) and upon receipt of such notice of default given in Section 21.3(a)(i), the Contractor may notify the City in writing during the Notice Period that it proposes to put forward, within five (5) Business Days of the Notice Period given in Sections 21.3(a)(i)(A) or 21.3(a)(i)(B), or within two (2) Business Days of the Notice Period given in 21.3(a)(i)(C), a reasonable program (set out, if appropriate, in stages) for remedying the Contractor Default. The program will specify in reasonable detail the manner in, and the latest date by which such Contractor Default is proposed to be remedied;
- (b) in the case of a Contractor Default pursuant to Sections 21.1(b), 21.1(c), 21.1(f), 21.1(h), 21.1(i), 21.1(j) and 21.1(l), terminate this Agreement in its entirety by notice having immediate effect, without any cost, obligation or liability or other Claim against the City;
- (c) immediately redirect and deliver any SSO and/or Contingency SSO to another facility for processing or dispose of same as the City sees fit without breaching any exclusivity rights set out in Section 29.1;
- (d) exercise any other rights or be entitled to any damages or compensation as expressly provided for in this Agreement, without derogating from the other elections provided for in favour of the City in this Section 21.3.

#### **21.4 Program Proposed by Contractor**

Where the Contractor puts forward a program in accordance with Section 21.3(a)(ii), the City will have ten (10) Business Days from receipt of the program within which to notify the Contractor that the City, acting reasonably, does not accept the program, failing which the City will be deemed to have accepted the program. Where the City notifies the Contractor that it does not accept the program as being reasonable, the Parties will use reasonable commercial efforts within the following five (5) Business Days to agree to any necessary amendments to the program put forward. In the absence of agreement within such five (5) Business Days, the question of whether the program (as it may have been amended by agreement or proposed to be amended) will remedy the Contractor Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either Party for resolution in accordance with the Dispute Resolution Procedure. In the event that a program has been agreed upon, the provisions therein shall be deemed to be obligations of the Contractor, with respect to which a default which is not cured in ten (10) Business Days of the occurrence thereof shall be deemed to be a Contractor Default.

#### **21.5 Alternative Remedies**

All of the rights and remedies of the City under this Agreement are cumulative and not alternative. In addition to the City's right to terminate as a result of the Contractor Default set out in Section 23.2 and any other rights pursuant to this Agreement or any Applicable Laws, at



10.(a)(b), (c)  
11.(a)(c)(d)

any time after the Default Date while the Contractor Default is in existence, the City may exercise, either separately or simultaneously, any of the following remedies:

- (a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Parties that damages at law may be an inadequate remedy for a default or breach of this Agreement; or
- (b) bring any action at law as may be necessary or advisable in order to recover damages.

#### **21.6 City Costs**

Upon a Contractor Default, the Contractor shall reimburse the City for all reasonable, direct, actual out-of-pocket costs including external professional fees and expenses (excluding legal fees and expenses), together with all reasonable internal costs and all such personnel costs shall be calculated at rates not to exceed \$~~100~~ per hour per person plus any actual legal fees and expenses incurred by the City under this Article 21 in exercising any of its rights under this Article 21. The City will take reasonable steps to mitigate such costs.

#### **21.7 Uncontrollable Circumstances**

For the purposes of Section 21.1, if the Contractor's performance is adversely affected by the occurrence of Uncontrollable Circumstances then, subject to the Contractor complying with the mitigation and other requirements in this Agreement concerning any such Uncontrollable Circumstances, the time for performance of the relevant obligations of the Contractor or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such event which is determined in accordance with Article 20.

#### **21.8 Defaults and Effect of Dispute Resolution Procedure**

- (a) In the event that there shall be an alleged Contractor Default or an alleged City Default, the City or the Contractor, as the case may be, shall not be entitled to exercise any remedies contained in this Agreement in the event that such Contractor Default or City Default is the subject matter of a Dispute Resolution Procedure unless the City, acting reasonably, considers that the Contractor Default is an emergency which will have a material detrimental effect on the community and has provided notice to the Contractor to that effect.
- (b) If an alleged Contractor Default is determined by the Dispute Resolution Procedure to be a Contractor Default and the City had redirected and delivered any SSO and/or Contingency SSO to another facility for processing in accordance with Section 21.3(c), then any SSO and/or Contingency SSO that would have been delivered to the Contractor had there been no Contractor Default shall be applied as a credit to the percentage of the City's Minimum Annual Tonnage Guarantee and the City shall not be required to pay to the Contractor any of the applicable fees set out in Article 13 that otherwise would be payable had no credit been applied. If an alleged Contractor Default is determined by the Dispute Resolution Procedure not to be a Contractor Default and the City had redirected and delivered any SSO and/or Contingency SSO to another facility for processing in

accordance with Section 21.3(c), then the City shall pay to the Contractor all of the applicable fees set out in Article 13 with interest at the Default Interest Rate.

## ARTICLE 22 – CITY DEFAULT

### 22.1 City Default

For the purposes of this Agreement, a City Default means the City failing to pay the Contractor an amount due and payable pursuant to this Agreement and such payment is not the subject of an unresolved Dispute pursuant to the Dispute Resolution Procedure, which default is not remedied within twenty (20) Business Days following notice that such payment is overdue given by the Contractor to the City.

### 22.2 Rights of Contractor if City Defaults

On the occurrence of the City Default and while it is still subsisting, the Contractor is entitled with respect to payment by the City to the Contractor of amounts then actually due and owing to the Contractor under this Agreement, to interest on the amount in default at the Default Interest Rate.

### 22.3 Service Provider Costs

Upon a City Default, the City will reimburse the Contractor for all reasonable, direct, actual out-of-pocket costs including external professional fees and expenses (excluding legal fees and expenses), together with all reasonable internal costs and all such personnel costs shall be calculated at rates not to exceed ~~10~~ <sup>10.00</sup> per hour per person, plus any actual legal fees and expenses, incurred by the Contractor in exercising any of its rights under this Article 22. The Contractor will take reasonable steps to mitigate such costs.

### 22.4 Uncontrollable Circumstances

For the purposes of Section 22.1, if the City's performance is adversely affected by the occurrence of Uncontrollable Circumstances, then, subject to the City complying with an obligation to mitigate, the time for performance will be deemed to be extended for a period equal to the delay caused by such event as mutually agreed between the Parties or as determined by the Dispute Resolution Procedure.

## ARTICLE 23-TERMINATION RIGHTS OF CITY

### 23.1 Termination During Second Extended Term

At the City's sole option and Discretion, the City may, upon no less than three (3) months written Notice to the Contractor terminate this Agreement at any time during the Second Extended Term, without any cost, obligation or liability or other Claim against the City.

### 23.2 Termination for Contractor Default

If:

- (a) a Contractor Default notified in a notice of default served under Section 21.3(a)(i) is not remedied before the expiry of the period referred to in Section 21.3(a)(i) unless otherwise agreed upon by the City, in its Discretion; or
- (b) the Contractor puts forward a program pursuant to Section 21.3(a)(ii) which has been accepted by the City or has been determined by the Dispute Resolution Procedure to be reasonable and the Contractor fails to fully comply with all material elements of the program by the end date for the program; or
- (c) any program put forward by the Contractor pursuant to Section 21.3(a)(ii) together with any amendments proposed by the Contractor, is rejected by the City as not being reasonable, and the Dispute Resolution Procedure upholds that rejection;

(each of such expiry or notification date being herein called, the "**Default Date**"), then at any time after the Default Date while the Contractor Default is in existence the City may terminate this Agreement in its entirety by notice to the Contractor with immediate effect, without any cost, obligation or liability or other claim against the City.

### 23.3 Immediate Termination for Contractor Default

In the case of a Contractor Default pursuant to Sections 21.1(b), 21.1(c), 21.1(f), 21.1(h), 21.1(i), 21.1(j) and 21.1(l), the City may, at its sole option and Discretion, terminate this Agreement in its entirety by notice having immediate effect, without any cost, obligation or liability or other Claim against the City.

### 23.4 Termination for Convenience

- (a) Notwithstanding anything to the contrary contained in the Agreement, the City may, at any time terminate this Agreement by giving written Notice to the Contractor. Upon receipt of a termination notice pursuant to this Section 23.4, the Contractor shall cease operations in accordance with the notice, but shall proceed to complete such part or parts of the operations that are not affected by the termination notice.
- (b) In the event of a termination notice being given pursuant to Section 23.4(a) above, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for the purposes of performing this Agreement and to the extent that the Contractor has not already been so paid or reimbursed by the City, for all Work completed, inspected and accepted in accordance with this Agreement.
- (c) Notwithstanding Sections 23.4(a) and 23.4(b), the Parties agree that the exercise of this termination for convenience right will be exercised in the manner set out in Schedule 10.
- (d) Other than the payments described in Schedule 10, the Contractor shall have no Claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or



indirectly arising out of, any action taken or termination notice given by the City under this Section 23.4.

#### **23.5 Failure Regarding Zoning**

If the Contractor is unable to propose a suitable contingency plan or if the Contractor and the City are unable to agree upon a contingency plan as set out in Section 20.6, then the City may, at its option and Discretion, terminate this Agreement all without any cost, obligation or liability or other Claim against the City.

#### **23.6 Exercise of Termination Rights**

The rights of the City to terminate or otherwise under this Article 23 are in addition, and without prejudice, to any other right which the City may have under this Agreement or any Applicable Laws to claim the amount of loss or damage suffered by the City on account of the acts or omissions of the Contractor or to take any action under this Agreement other than termination of this Agreement.

### **ARTICLE 24- EFFECT OF TERMINATION**

#### **24.1 Continued Effect - No Waiver**

Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it including the rights of the City with respect to Performance Security under Article 17, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages under this Agreement, will not be deemed a waiver of such right for any continuing or subsequent breach.

#### **24.2 Continued Performance**

The Parties will, to the extent reasonably practicable, continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective in accordance with the provisions of this Agreement.

### **ARTICLE 25- DISPUTE RESOLUTION**

#### **25.1 Procedure**

Except as otherwise provided in this Agreement, any Dispute arising out of or in connection with this Agreement will be resolved as follows:



- (a) the Contractor and the City shall make all reasonable efforts to promptly resolve amicably any Dispute, controversy or Claim by negotiations, which shall be initiated by either of them giving to the other written notice (the "Dispute Notice") containing details of the Dispute and the other shall provide its written reply thereto within ten (10) Business Days. The Parties shall provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations;
- (b) if, for any reason, the Dispute has not been resolved as aforesaid within a further ten (10) Business Days after receipt of both the Dispute Notice and the reply thereto, then either Party may provide a written request to the other Party that the Dispute be elevated to the Deputy City Manager, Public Works & Services or his designate on behalf of the City and to the Contractor's designate (who is to be identified by the Contractor at least twenty (20) Business Days prior to the Commissioning Date) on behalf of the Contractor for senior-level resolution within ten (10) Business Days of receipt of such request;
- (c) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Day period, then either Party may provide a written request to the other Party that a mediator be appointed to assist in resolving the Dispute and if the Parties cannot agree on such a mediator within fifteen (15) Business Days of receipt of such request, either may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to have such a mediator appointed. The mediator's fees, costs and expenses shall be borne equally by the Parties. Such mediator and the Parties shall attempt to resolve the Dispute within ten (10) Business Days of the mediator's appointment;
- (d) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Days, then either Party may provide a written request to the other Party that the Dispute be referred to final and binding resolution by arbitration pursuant to the *Arbitration Act* (Ontario) as from time to time in effect by a single arbitrator, which arbitrator shall be agreed upon by the Parties and if the Parties cannot agree on such an arbitrator within ten (10) Business Days of receipt of such request, either may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to have such an arbitrator appointed. The arbitration shall be held in Ottawa, Ontario at a facility agreed upon by the Parties or, in the event that an agreement on the facility cannot be reached, at a facility selected by the arbitrator. Notwithstanding the foregoing, no person may be appointed as an arbitrator unless he or she is independent of the Contractor and the City, is knowledgeable in the subject matter of the Dispute and is not directly or indirectly carrying on or involved in a business that is in competition with the business of the Parties. The arbitrator shall allow or require such exchange of information as is consistent with the purposes of arbitration in accomplishing fair, speedy and cost-effective resolution of Disputes. The decision of the arbitrator with respect to the Dispute shall be made in writing within the forty-five (45) Business Days following the appointment of the arbitrator. The decision, including as to costs, of the arbitrator shall be final and binding on the Parties and there shall be no appeal therefrom; and
- (e) the time limits referred to in this Article 25 may be extended by mutual agreement of the Parties.

## **25.2 Complete Defence**

If the Parties have agreed, under Section 25.1(d) to arbitrate their Dispute, except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of either of the Parties, and subject to the provision of Section 25.1(d), the provisions of this Article 25 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 the Agreement.

## **25.3 Continuing Obligations**

The Contractor and the City shall continue to fulfil their obligations in respect of the Agreement during the any arbitration proceedings initiated pursuant to Section 25.1(d).

# **ARTICLE 26-- SURVIVAL**

## **26.1 Survival**

In addition to monies owing from one Party to the other at the effective date of termination, the obligations contained in Article 14 (Invoices), Article 21 (Contractor Default), Article 22 (City Default), Article 25 (Dispute Resolution), Article 18 (Insurance) and Article 19 (Indemnities) shall survive any termination of this Agreement until the discharge of the obligation or until the Parties mutually agree to a release of the obligation therein.

# **ARTICLE 27 – SUCCESSORS AND ASSIGNS**

## **27.1 Assignment by the City**

- (a) The City may, upon the prior consent of the Contractor, which consent shall not be unreasonably withheld, assign all or a portion of this Agreement. Notwithstanding any consent to such an assignment by the Contractor, the obligations of the City herein and/or in any agreement or document relating hereto shall continue in full force and effect as if such assignment shall not have occurred and all without relieving the City from continued liability, unless otherwise agreed to in writing by the Contractor. Upon such an assignment by the City, the City shall deliver to the Contractor an undertaking by a transferee/assignee to observe and perform all of the City's obligations hereunder.
- (b) Notwithstanding the provisions of subparagraph (a), the City may without the prior consent of the Contractor assign all or any portion of this Agreement to a corporation, all of the shares of which are owned by the City. The obligations of the City herein and/or in any agreement or document relating hereto shall continue in effect.

## 27.2 Dispositions by the Contractor

- (a) The Contractor shall not make or permit any Disposition without the prior consent of the City, which consent shall not be unreasonably withheld and any purported Disposition made without the consent of the City shall be void and of no effect. Notwithstanding any consent to such a Disposition by the City, the obligations of the Contractor herein and/or in any agreement or document relating hereto shall continue in full force and effect as if such a Disposition shall not have occurred and all without relieving the Contractor from continued liability, unless otherwise agreed to in writing by the City.
- (b) The City will not be considered to be unreasonably withholding its consent to a Disposition, and may, whether or not it would otherwise be considered unreasonable, refuse to give its consent to a Disposition if its reason or reasons for doing so is or are based upon all or any of the following factors:
  - (i) any factor which a court of law would consider to be reasonable;
  - (ii) if the proposed Disposition would occur during the first three (3) years of the Term;
  - (iii) if the Contractor is in default under this Agreement;
  - (iv) in the City's opinion, the effect of the proposed Disposition on the business operated at the Facility may be adverse; and
  - (v) whether the proposed transferee has a good credit rating, is of substantial means, is capable of financing its acquisition of the Contractor's business without a material risk of defaulting under this Agreement and in a manner that will enable the proposed transferee to carry on business successfully at the Facility throughout the Term and this Agreement on terms and conditions at least as favourable as those originally obtained by the Contractor and whether the proposed transferee has a history of successful business operations in the business conducted pursuant to this Agreement; and
  - (vi) whether the proposed transferee or any partnership of which the transferee was a member at the time or a corporation of which the Contractor at the time was a shareholder, has become bankrupt or insolvent or has defaulted (other than by a minor technical default) under the terms of any SSO agreement contracted with other parties.
- (c) All requests to the City for any consent to any Disposition shall be made to the City in writing together with a copy of the agreement pursuant to which the Disposition will be made, accompanied by such information in writing as the City might reasonably require respecting a proposed transferee including, without limitation, name, business and home addresses and telephone numbers, business experience, credit information and rating, financial position and banking and personal references, description of business to be proposed to be conducted by the transferee. The Contractor shall promptly pay all costs incurred by the City in considering and processing the request for consent including



reasonable legal costs and all costs of completing any documentation to implement any Disposition which shall be prepared by the City or its solicitor if required by the City.

- (d) If the City withholds, delays or refuses to give consent to any Disposition, whether or not the City is entitled to do so, the City shall not be liable for any Claims in any way resulting therefrom and the Contractor shall not be entitled to terminate this Agreement or to exercise any other remedy whatever in respect thereof except to seek the order of a court of competent jurisdiction compelling the City to grant any such consent which the City is obliged to grant pursuant to the terms of this Agreement.
- (e) No acceptance by the City of any payments by a proposed transferee will be construed as a waiver of any right of the City, or the acceptance of the proposed transferee or a release of the Contractor from the performance of its obligations under this Agreement. Any document effecting the Disposition of this Agreement and every document consenting to the Disposition will be prepared by the City or its solicitors and the legal costs and other expenses in connection with the document will be paid to the City by the Contractor upon demand. Any consent by the City will be subject to the following conditions:
  - (i) the proposed transferee will promptly execute an agreement agreeing with the City:
    - A. to be bound by all the Contractor's obligations under this Agreement as if the proposed transferee had originally executed this Agreement as contractor;
    - B. the Contractor will execute an indemnity agreement in a form satisfactory to the City, in respect of the performance of the Contractor's and the proposed transferee's obligations under this Agreement and whether the indemnity agreement is executed or not, the Contractor will remain jointly and severally liable with the proposed transferee on this Agreement and will not be released from any obligations under this Agreement as amended from time to time; and
    - C. if the proposed transferee agrees to pay to the Contractor or party other than the City in respect of a Disposition any amount or any benefit, then it will pay to the City, on demand, an amount equal to the value of the amount or benefit.
- (f) No consent of the City to a Disposition shall be effective unless given in writing and executed by the City and no such consent shall be presumed by any act or omission of the City or by the City failing to respond to any request for consent or by the City accepting any payment of any amount payable hereunder from any party other than the Contractor. No Disposition and no consent by the City to any Disposition shall constitute a waiver of the necessity to obtain the City's consent to any subsequent or other Disposition.
- (g) Every transferee shall be obliged to comply with all of the obligations of the Contractor under this Agreement and any default of any transferee shall also constitute a default of the Contractor hereunder. If this Agreement is ever terminated by the City as a result of



any act or default of any transferee, the Contractor shall nevertheless remain responsible for the fulfilment of all obligations of the Contractor hereunder for what would have been the balance of the Term but for such termination, and shall upon the City's request enter into a new Agreement for the provision of the Work for such balance of the Term and otherwise on the same terms and conditions as in this Agreement.

## ARTICLE 28 – CONFIDENTIALITY

### 28.1 Confidential Information

In this section, "Confidential Information" means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party. "Confidential Information" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information and includes, in the case of Confidential Information of the Contractor, the Response.

### 28.2 Use and Disclosure of Confidential Information

Each Party will hold in confidence any Confidential Information, provided that the provisions of this section will not restrict either Party from passing such information to its professional advisors, provided such advisors are subject to similar confidentiality obligations, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Contractor may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement, provide to the Subcontractors documents and other information which are necessary for the Contractor's performance of this Agreement.

### 28.3 Exceptions

The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the other Party confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) to the extent any Person is required to disclose such Confidential Information by Applicable Laws, including the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) or any other Applicable Laws (provided that such Person shall take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information);

- (d) to the extent consistent with any City policy the details of which have been provided to the Contractor in writing prior to the disclosure; or
- (e) as the City may require for the exercise or enforcement of its rights under the Performance Security delivered under Article 17 or otherwise under this Agreement, or following the termination of this Agreement (provided that such Person shall take all reasonable steps to limit such disclosure and any subsequent disclosure of such Confidential Information).

#### **28.4 Announcements**

Unless otherwise required by any Applicable Laws or any Relevant Authority (but only to that extent), the Contractor will not make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, as all public announcements and disclosures shall be made by the City.

### **ARTICLE 29 - EXCLUSIVITY**

#### **29.1 Exclusive Arrangement**

The Parties agree that the provision of services for the processing of SSO to be converted into UUP by or on behalf of the Contractor to the City as set out in this Agreement is an exclusive arrangement for a combined maximum of one hundred twenty five thousand (125,000) tonnes of SSO and Contingency SSO. Notwithstanding the foregoing, the City may, at its sole option and Discretion, purchase or contract similar services from other service providers during the Term of this Agreement for any SSO in excess of the one hundred twenty five thousand (125,000) tonnes of combined SSO and Contingency SSO.

#### **29.2 City Out-Sourcing**

The City shall, at its sole option and Discretion, be entitled to obtain SSO and Contingency SSO from other sources, other than the residential sector of the City, including sources outside the City limits, without the consent of the Contractor, throughout the Term. All such SSO shall be considered to be the City's SSO and shall be invoiced in accordance with Article 13 and Article 14. The City acknowledges that it shall remain responsible for the quality of such SSO delivered to the Contractor pursuant to this Section 29.2 and the Contamination Surcharge, if applicable, set out in Section 13.3.

#### **29.3 Non-City SSO**

- (a) Subject to 29.5, the Contractor may, with the prior written consent of the City, be entitled to process SSO material at the Facility other than the City's SSO and the City's Contingency SSO (the "Non-City SSO") throughout the Term, provided that:

- (i) all Non-City SSO material accepted for processing by the Contractor from other sources meets the same quality standards as the City's SSO and the City's Contingency SSO;
  - (ii) all Non-City SSO material accepted for processing by the Contractor from other sources meets the same percentage requirements of Contaminant Materials as the City's SSO and the City's Contingency SSO as set forth in Section 13.3(a); and
  - (iii) the Contractor meets or exceeds its Performance Guarantees, meets peak processing requirements due to variation in the Annual Average Daily Tonnage described in Section 8.2, fulfils the Marketing requirements set out in Section 7.13 and fulfils all of its obligations under this Agreement.
- (b) The Contractor shall provide the City with a certificate at the end of each Operating Year from one of the Contractor's officers confirming the Contractor's compliance with this Section 29.3 together with a report of the analysis in support of such certificate.
  - (c) If the Parties are unable to agree that the Contractor has complied with the conditions set out in Section 29.3, then, the matter of compliance by the Contractor with respect to Section 29.3 shall be determined pursuant to the Dispute Resolution Procedure.

#### **29.4 Preferred Customer Rates**

- (a) The Contractor represents and warrants that, as at the date of this Agreement, it has not entered into an agreement with any other customer (the "**Other Customer**") for the delivery and processing of Non-City SSO at the Facility on terms and conditions, when taken as a whole, the net effect of which has more favourable pricing than the same terms and conditions set out in this Agreement. During the Term of this Agreement, if the Contractor enters into an agreement with any Other Customer for the delivery and processing of Non-City SSO at the Facility on terms and conditions, when taken as a whole, the net effect of which has more favourable pricing than the same terms and conditions set out in this Agreement, then the City shall have the right to incorporate, or substitute, as the case may be, such term or terms into this Agreement effective as of the date such term or terms were accorded to the Other Customer. The terms and conditions to be evaluated for their net effect shall include, without limitation, the price for the Non-City SSO processing services, any discount structure, including hauling discounts, marketing allowance, covenants, warranties and benefits.
- (b) The Contractor shall provide the City with a certificate at the end of each Operating Year from one of the Contractor's officers confirming the Contractor's compliance with this Section 29.4(a) together with a report of the analysis in support of such certificate. In the event the certificate indicates non-compliance with respect to monetary terms, the Contractor will repay to the City, within forty (40) Business Days of the City's receipt of the certificate, the difference between such more favourable pricing terms and the amounts paid by the City hereunder.



- (c) If the Parties are unable to agree that the Contractor has complied with the conditions set out in Section 29.4(a), then, the matter of compliance by the Contractor with respect to Section 29.4(a) shall be determined pursuant to the Dispute Resolution Procedure.

#### **29.5 Right of First Offer**

- (a) The Contractor hereby unconditionally and irrevocably grants to the City a continuous right of first offer (the "Right of First Offer") during the Term to purchase additional capacity for the processing of SSO at the Facility beyond the City's SSO and Contingency SSO.
- (b) The Contractor shall provide Notice to the City if the Contractor will expand or expands the Facility to add additional capacity for the processing of SSO at the Facility. Then, the City may, at its sole option and Discretion, have sixty (60) Business Days in which to elect to purchase up to the maximum amount of additional capacity for the processing of SSO at the Facility on the same terms and conditions as specified in this Agreement. The City's election shall constitute a binding agreement for additional capacity for the processing of SSO at the Facility.
- (c) If the City fails to exercise its right, the Contractor may offer such additional capacity for the processing of SSO at the Facility to other bona fide third parties without further liability or notice to the City. However, this Right of First Offer shall remain in full force and effect during the balance of the Term for any subsequent expansions to the Facility to add additional capacity for the processing of SSO at the Facility.
- (d) The Parties shall execute an amending agreement prepared by the City to reflect the terms of the Right of First Offer as exercised by the City.

### **ARTICLE 30 GENERAL**

#### **30.1 *Municipal Freedom of Information and Protection of Privacy Act (Ontario)***

Contractor acknowledges that information provided to the City is subject to disclosure under the Municipal Freedom of Information and Protection of Privacy Act (Ontario) and that any confidential, proprietary, commercial, scientific or similar information, the disclosure of which would reasonably cause Contractor injury, should be identified as such when provided to the City. In respect of such information, the Contractor shall also provide the City with the rationale setting forth reasons why such information should not be released under this legislation or successor legislation.

#### **30.2 Enurement**

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

### 30.3 No Partnership or Agency

Notwithstanding the cooperation of the Parties, from time to time, as more particularly described herein, the Parties expressly disclaim any intention to create a partnership or joint venture or to constitute the other Party as its agent. Nothing in this Agreement shall constitute the Parties, as partners or joint venturers, nor shall it constitute one Party as the agent of the other Party. The Parties acknowledge and agree that the Contractor is an independent contractor of the City.

### 30.4 City as Planning Authority

The Contractor acknowledges that although the City is a Party to this Agreement, the City is and shall remain an independent planning authority with all requisite powers and Discretion provided under Applicable Laws including the Planning Act and the Municipal Act and nothing contained herein shall derogate from the obligations of the Contractor to obtain all requisite Permits or the City's Discretion, obligations and liabilities with respect thereto.

### 30.5 Notices

Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement (each, a "Notice") to a Party must be given in writing. A Notice may be given by delivery to an individual or electronically by fax or electronic mail, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following Party:

If to the City:

City of Ottawa  
110 Laurier Avenue West  
Ottawa, Ontario, K1P 1J1

Attention: Deputy City Manager  
Fax: 613-580-4768

with a copy to:

City Legal Department  
110 Laurier Avenue West  
Ottawa, Ontario, K1P 1J1

Attention: Manager, Corporate  
Development and  
Environmental Law  
Fax: 613-560-1383

with a copy to:

City of Ottawa  
110 Laurier Avenue West  
Ottawa, Ontario, K1P 1J1

Attention: Director Solid Waste Services  
Fax: 613-560-4768

If to the Contractor:

Orgaworld Canada Ltd.  
4675 Wellington Road South  
London, Ontario, N6E 3W7

Attention: Ward Janssens  
Fax: (519) 649-7757  
E-mail: wjanssens@orgaworld.nl

with a copy to:

Orgaworld Canada Ltd.  
2260 Stagecoach Road and 2308 Stagecoach  
Road, RR.1 Osgoode, Ottawa, Ontario, K0A  
2W0

Attention: Senior Operations Manager  
Fax: to be provided \_\_\_\_\_

with a copy to:

10. (a), (b), (c)

11. (a), (c), (d)

Attention:  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

or to any other address, fax number, e-mail address or individual that the Party designates.  
Any Notice:

- (a) if validly delivered or if validly transmitted electronically, before 5:00 p.m. (Ottawa time) on a Business Day, will be deemed to have been given on the Business Day; and
- (b) if validly delivered, or if validly transmitted electronically, after 5:00 p.m. (Ottawa time) on a Business Day will be deemed to have been given on the Business Day after the date of transmission.

### 30.6 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement except that any provision which does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed waiver to all other Parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.



### **30.7 Further Assurances**

Each Party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

### **30.8 Remedies Cumulative**

Except as otherwise set out in this Agreement, the rights and remedies under this Agreement are cumulative but are neither in addition to nor in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

### **30.9 Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

### **30.10 Delivery by Fax**

Any Party may deliver an executed copy of this Agreement by fax or by e-mail in PDF format but that Party will immediately dispatch by delivery in Person to the other Party an originally executed copy of this Agreement.

### **30.11 Amendments**

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each Party to this Agreement at the time of the amendment, supplement, restatement or termination.

### **30.12 Submission to Jurisdiction**

Except where the Parties utilize the Dispute Resolution Procedure set out in this Agreement, the courts of the Province of Ontario (collectively, the "**Court**") shall have the exclusive jurisdiction to entertain and determine all Disputes, claims, suits, actions and other proceedings of any nature or kind arising out of or in connection with this Agreement including, without limitation, specific performance, injunction, declaration of damages or otherwise, both at law and in equity (collectively, an "**Action**"), and each of the Parties (and each of the Subcontractors pursuant to any related or collateral agreement) do and shall irrevocably submit to the exclusive jurisdiction of the Court and hereby waives, and will not assert by way of motion, as a defence, or otherwise, in any Action, any Claim that: (i) that Party (or Subcontractor) is not subject to the jurisdiction of the Court; (ii) the Action is brought in an inconvenient form; (iii) the venue of the Action is improper; or (iv) any subject matter of the Action may not be enforced in or by the Court.

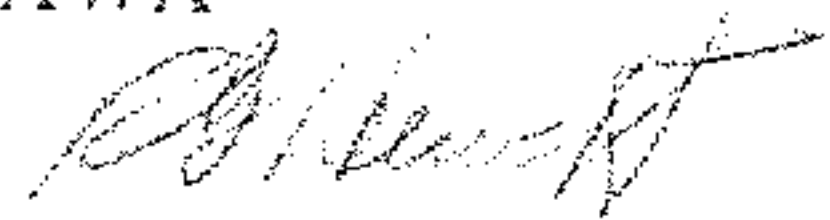
In any suit, action or proceeding brought to obtain a judgment for the recognition or enforcement of any judgment rendered in any Action, no Party (or any Subcontractor) will seek any review with respect to the merits of any Action, whether or not that Party (or Subcontractor) appears in or defends that Action.

### 30.13 Construction

This Agreement and all of the other agreements or documents relating hereto have been drafted and negotiated by the Parties with the benefit of legal representation and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not apply to the construction or interpretation of this Agreement or any of the other agreements or documents relating hereto.

IN WITNESS WHEREOF the Contractor and the City have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers in that behalf duly authorized.

**CITY OF OTTAWA**

Per: 

Name: R.G. Hewitt

Title: Deputy City Manager, Public  
Works and Services


I have the authority to bind the City

**ORGAWORLD CANADA LTD.**

Per: 

Name: Henk Kaskens

Title: President

Per: 

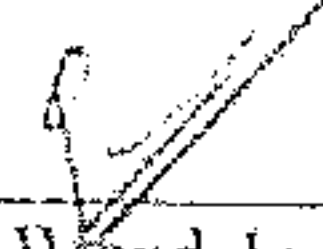
Name: Bart Raedts

Title: Treasurer

Per: 

Name: W. Besselink

Title: CEO Shanks Nederland B.V.

Per: 

Name: Ward Janssens

Title: Director

We have the authority to bind the Contractor





IN WITNESS WHEREOF the Contractor and the City have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers in that behalf duly authorized.

**CITY OF OTTAWA**

Per: \_\_\_\_\_

Name: R.G. Hewitt

Title: Deputy City Manager, Public  
Works and Services

I have the authority to bind the City

**ORGAWORLD CANADA LTD.**

Per: \_\_\_\_\_

Name: Henk Kaskens

Title: President

Per: \_\_\_\_\_

Name: Bart Raedts

Title: Treasurer

Per: \_\_\_\_\_

Name: W. Besselink

Title: CFO Shanks Nederland B.V.

Per: \_\_\_\_\_

Name: Ward Janssens

Title: Director

We have the authority to bind the Contractor

## SCHEDULE 1 – DEFINITIONS

Capitalized terms in this Agreement, including the recitals and Schedules thereto, not otherwise defined shall have the meaning ascribed thereto as follows:

**“Action”** has the meaning given in Section 30.12;

**“Agreement”** means this agreement to which this Schedule 1 is attached between the City and the Contractor in respect of SSO and Contingency SSO processing services to be provided to the City, including any Recitals, Schedules, Exhibits, and Appendices attached to this agreement, all as amended, supplemented or restated in writing from time to time as mutually agreed to in writing by the Parties;

**“Annual Average Daily Tonnage”** means an average processing capacity of 400 tonnes per operating day;

**“Applicable Laws”** means all present and future laws, statutes, regulations, treaties, judgments, decrees and, binding judgments of relevant courts of law having the force of law, all present and future official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Relevant Authority including any applicable, from time to time, to the provision of the services provided by the Contractor the performance of the Work and the maintenance and operation of the Facility, under this Agreement;

**“Awarded Amount”** means the amount of one hundred thousand (100,000) tonnes of SSO that was awarded to the Contractor under the RFP to be processed by the Contractor in accordance with this Agreement;

**“Base Processing Fee”** means the 2008 per tonne fee for the processing and Marketing of up to one hundred thousand (100,000) tonnes of SSO as set out in Tables 1 and 2 in Schedule 2;

**“Beneficial Use”** means the use of a fertilizer, compost or other soil amendment product to improve the characteristics of a soil or growing medium for plant growth, or for remediation or rehabilitation of depleted or contaminated soil, provided that the use of the product is not subject to regulation by the MOE as a waste management activity, and does not include use in landfill operations;

**“Business Day”** means a day other than a Saturday, Sunday or Legal Holidays in Ontario;

**“Certificate of Approval”** or **“C of A”** means any certificate of approval or provisional certificate of approval issued by the MOE to the Contractor or any parent, affiliated or subsidiary Contractor of the Contractor in respect of the Work, as amended, restated or replaced;

**“Change of Control”** means:

- (a) in the case of the Contractor, the issue of additional treasury shares of the Contractor, its Holding Company or another corporation (collectively, the “corporation”), the sale, transfer, assignment, transmission on death, charge or other disposition of the outstanding

shares of such corporation, the redemption or cancellation of the outstanding shares of such corporation, the amalgamation or merger of such corporation with any other corporate entity, the entering into of an agreement or arrangement, which results in a change in the Person or Persons who presently Control such corporation in fact or in law; and

- (b) in the case of any such corporation, the sale, transfer, assignment or other disposition of all or substantially all property, assets, undertaking or business of such, or the entering into of an agreement or arrangement respecting any of the foregoing;

for the purposes hereof a Change of Control (as defined in subparagraph (a) above) of any corporation which controls the Contractor shall be deemed to be a Change of Control of the Contractor, save and except for a public corporation whose shares are traded and listed on any recognized stock exchange in the United Kingdom, Canada or the United States;

“City” means the City of Ottawa;

“City Default” has the meaning given in Section 22.1;

“City Indemnified Parties” or “City Indemnified Party” means the City and any director, officer, employee, agent, or advisor of the City in his/her capacity as same, including the City’s Representative and any delegate of the City’s Representative;

“City’s Representative” means the Person appointed by the City under Article 4;

“Claim” means any claim, demand, action, proceeding or liability;

“Commencement Date” means January 1, 2010 or as otherwise extended in accordance with Article 3;

“Commence the Work” means the Contractor being able to commence, in a bona fide manner, the Work, including, without limitation, operating the Facility and receiving, accepting and processing the Awarded Amount of SSO;

“Commissioning Date” means October 1, 2009;

“Confidential Information” has the meaning given in Section 28.1;

“Consumer Price Index” or “CPI” has the meaning given in Section 13.5;

“Contaminant Material(s)” means one of the following, as applicable:

- (i) in respect of scenario 1 of Schedule 2, a component of SSO and Contingency SSO, other than the organic materials, that cannot be converted by the composting process into Unrestricted Use Product and that must be separated from the SSO and Contingency SSO and managed as Residual Waste by the Facility processing operations processes, including without limitation, bin liners, rigid and film plastics,

glass, ceramics, metal, rubber, textiles, clothing, small appliances and electronic devices and diapers;

- (ii) in respect of scenario 2 of Schedule 2, a component of SSO and Contingency SSO, other than the organic materials, compostable bin liners, plastic bin liners and plastic bags used as bin liners, that cannot be converted by the composting process into Unrestricted Use Product and that must be separated from the SSO and Contingency SSO and managed as Residual Waste by the Facility processing operations processes, including without limitation, rigid and film plastics (other than those set out above), glass, ceramics, metal, rubber, textiles, clothing, small appliances and electronic devices and diapers;
- (iii) in respect of scenario 3 of Schedule 2, a component of SSO and Contingency SSO, other than the organic materials, plastic bags used as bin liners, compostable bin liners and plastic bin liners, diapers and other sanitary waste, that cannot be converted by the composting process into Unrestricted Use Product and that must be separated from the SSO and Contingency SSO and managed as Residual Waste by the Facility processing operations processes, including, without limitation, rigid and film plastics (other than those set out above), glass, ceramics, metal, rubber, textiles, clothing, small appliances and electronic devices;

**“Contamination Surcharge”** means the 2008 per tonne fee imposed on all tonnes of SSO and Contingency SSO processed within an Operating Year where the average contamination percentage rate for that year exceeds the Maximum Contamination Rate, as set out in Tables 1 and 2 in Schedule 2 as calculated in accordance with Sections 7.11 and 13.3;

**“Contingency Amount Processing Fees”** means the 2008 per tonne fees for the processing and Marketing of up to an additional fifty thousand (50,000) tonnes of Contingency SSO, as set out in Table 2 in Schedule 2;

**“Contingency SSO”** means additional amounts of SSO of up to a total maximum of fifty thousand (50,000) tonnes during each Operating Year that is subject to the Contingency Amount Processing Fees in excess of the Awarded Amount that is subject to the Base Processing Fee;

**“Contract Price”** means the Base Processing Fee, the Contingency Amount Processing Fees if applicable, and such other fees set forth in Article 13, as applicable;

**“Contractor”** means Orgaworld Canada Ltd.;

**“Contractor Default”** has the meaning given in Section 21.1;

**“Contractor’s Representative”** means the Person appointed by the Contractor under Article 4;

**“Control”** means with respect to the Contractor or any Holding Company thereof or any other entity:

- (a) ownership or control of more than 50% of the beneficial interest in voting securities thereof; or



- (b) a Person whose vote is required for the making of decisions on behalf thereof or in respect thereto; or
- (c) a Person having the right to vote or determine the voting of interests thereof or in respect thereto which are sufficient, if exercised, to make, or being a person whose approval is required to make, major decisions or significant decisions on behalf thereof or in respect thereto;

**"Court"** has the meaning given in Section 30.12;

**"Data Provision Guide"** means the City's Data Provision Guide established by the City, as amended from time to time;

**"Default Date"** has the meaning given in Section 23.2;

**"Default Interest Rate"** means 1% over the Prime Rate calculated and compounded daily;

**"Disclosed Data"** means any information, data and documents made available or issued to the Contractor in connection with this Agreement by or on behalf of the City;

**"Discretion"** means, with respect to any consent, approval or decision required to be made by a Party, that any such approval, consent or decision may be made in the sole and absolute Discretion of the relevant Party;

**"Disposition"** means the assignment, in whole or in part and/or directly or indirectly, whether by a Change of Control or otherwise, of all or any portion of this Agreement or the Contractor's obligations or right, title and interest in this Agreement, the assignment or granting of a Subcontract as security to a lender or the granting of any charge, or other security in or with respect to this Agreement to any lender or any Change of Control of the Contractor or the transfer directly or indirectly of all or any portion of the shares or other voting securities of the Contractor or the Holding Company at any time during the Term of this Agreement;

**"Dispute"** means any disagreement, failure to agree or other dispute between the City and the Contractor arising out of or in connection with this Agreement;

**"Dispute Notice"** has the meaning given in Section 25.1(a);

**"Dispute Resolution Procedure"** means the procedure set out in Article 25;

**"Drop Dead Date"** means March 31, 2010;

**"Effluent"** means a type of Emission comprised of wastewater generated from the processing of SSO and Contingency SSO;

**"Emissions"** refers to all solid, liquid and gaseous discharges resulting from SSO and Contingency SSO processing and includes Residual Waste and Effluent, but does not include UUP;

**"Environmental Laws"** means all Applicable Laws relating to the protection of the environment or the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling or remediation of any Hazardous Substances;

**"Facility"** refers to any building or structure, equipment, services, utilities, site works and components necessary to meet the requirements of this Agreement that are directly involved in SSO and Contingency SSO and/or Residual Waste management or in the treatment of Emissions from SSO and Contingency SSO processing and/or where the context requires or where applicable, refers to a Transfer Station;

**"First Extended Term"** has the meaning given in Section 2.2;

**"Has Knowledge" or "Have Knowledge"** means:

- (a) a natural person knows or has knowledge when information is received or acquired by that person under the circumstances in which a reasonable person would take cognizance of it;
- (b) the Contractor or other entity knows or has knowledge when information has been received or has come to the attention of:
  - (ii) a director or officer of that Contractor or other entity; or
  - (iii) a senior employee of that Contractor or other entity with responsibility for matters to which the information relates; and
- (c) the City knows or has knowledge when information has been received or has come to the attention of a senior employee of the City with responsibility for matters to which the information relates;

under circumstances in which a reasonable person would take cognizance of it and, in the case of the Contractor, shall include matters referred to in subparagraph (a) or (b) above with respect to any Subcontractor, and "Knowledge" has a corresponding meaning;

**"Hazardous Substance"** means any contaminant, chemical, toxic substance, deleterious substance, special waste, dangerous good, pollutant, waste, reportable substance, and any other substance the storage, manufacture, handling, disposal, treatment, generation, use, transport or remediation of which or the release into or presence in the environment is now or hereafter prohibited, controlled or regulated under Environmental Laws;

**"Hazardous Waste"** means any material defined as hazardous waste under R.R.O. 1990, Regulation 347 General - Waste Management, as amended from time to time;

**"Holding Company"** has the meaning given to "holding body corporate" in the *Canada Business Corporations Act*;

**"Intellectual Property"** means any or all of the following and all rights, arising out of or associated therewith: (a) all national, international and foreign patents, utility models, mask

works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, product formulations and specifications, and all documentation of the foregoing throughout the world; (c) all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world; (f) all moral and economic rights of authors and inventors, however denominated, throughout the world; and (g) any similar or equivalent rights to any of the foregoing anywhere in the world;

**"Legal Holiday(s)"** means the list of holidays, which days are subject to change by City, as follows:

New Year's Day (January)

Family Day (February)

Good Friday (March/April)

Victoria Day (May)

Canada Day (July)

Civic Day (August)

Labour Day (September)

Thanksgiving Day (October)

Christmas Day (December);

**"Market"** or **"Marketing"** means Persons willing to purchase, or accept for a fee, the UUP resulting from the processing of SSO and Contingency SSO, or the act of selling the UUP;

**"Maximum Contamination Rate"** means the maximum contamination percentage rate of Contaminant Materials by weight within the SSO or Contingency SSO as set out in Tables 1 and 2 of Schedule 2;

**"Minimum Annual Tonnage Guarantee"** means the City's guarantee with respect to the minimum annual tonnage of SSO and Contingency SSO required to be made available to the Contractor for processing at the Facility expressed as a percentage of the total annual tonnage of SSO and Contingency SSO in effect in any given Operating Year and calculated and adjusted in accordance with Section 8.4;

**"Minimum Processing Rate Guarantee"** means the guarantee provided by the Contractor in respect of a minimum number of tonnes of SSO that the Facility will be able to receive and process in any period spanning five (5) consecutive processing days and expressed as an average of tonnes per day processed over the five (5) consecutive processing days as more particularly set out in Tables 1 and 2 of Schedule 2;

**"MOE"** means the Ontario Ministry of the Environment or successor Ministry;

**"Non-City SSO"** has the meaning given in Section 29.3;



**"Non-Hazardous Waste"** means waste that is not Hazardous Waste;

**"Notice"** has the meaning given in Section 30.5;

**"Notice Period"** has the meaning given in Section 21.3;

**"Operating Year"** means twelve (12) consecutive calendar months immediately following the Commencement Date, or the anniversary of the Commencement Date set forth or established by Section 2.1;

**"Outside Zoning Date"** has the meaning given in Section 20.6;

**"Party"** means either the City or the Contractor and **"Parties"** means both the City and the Contractor;

**"Peak Amounts"** means up to an additional thirty-five percent (+ 35%) of the Annual Average Daily Tonnage of SSO and Contingency SSO which the City is entitled to deliver to the Facility on a daily basis due to the variation of the Annual Average Daily Tonnage as described in Section 8.2;

**"Peak Processing Capacity"** means the Contractor's obligation to have the capacity to process the Peak Amounts of SSO and Contingency SSO daily as set out in Table 2 of Schedule 2;

**"Performance Guarantees"** means the Minimum Processing Rate Guarantee and the Processing Capacity Availability Date Guarantee;

**"Performance Security"** has the meaning given in Section 17.1;

**"Permits"** means all permissions, consents, approvals, certificates, permits, leases, licences, statutory agreements and authorizations required by Applicable Laws and/or from any Relevant Authority or other Person and all necessary consents and agreements from any third parties or otherwise to operate and maintain and repair the Facility and provide the services in accordance with this Agreement;

**"Person"** means an individual, legal personal representative, Corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization or Relevant Authority;

**"Prime Rate"** on any day means the annual rate of interest announced by Royal Bank of Canada (or its successor), or any other Canadian chartered bank agreed by the Parties, from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

**"Processing Capacity Availability Date Guarantee"** means the guarantee provided by the Contractor regarding the date(s) that processing capacity at the Facility will be available as more particularly set out in Section 7.3;

**"Proposed Date"** has the meaning given in Section 3.1;



**SCHEDULE 8 –  
FORM OF PERFORMANCE SECURITY**

**PERFORMANCE BOND**

Source Separate Organics Services Agreement      Bond Amount \$ \_\_\_\_\_

Orgaworld Canada Ltd., as Principal (hereinafter called the "**Principal**"), and (Name of Insurance Company) both duly authorized to transact the business of suretyship in Canada (hereinafter called the "**Surety**"), are held and firmly bound unto the City of Ottawa as Obligee (hereinafter called the "**Obligee**"), in the amount of (insert amount) Dollars (\$ \_\_\_\_\_) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract entitled Source Separated Organics Services Agreement between the City of Ottawa and Orgaworld Canada Ltd. dated as of the \_\_\_\_ day of February, 2008 (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition, omissions or other modification, and including all of its terms and provisions without limitation, is hereinafter called the "**SSO Contract**" and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the SSO Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform its obligations to the Obligee under the SSO Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations to the Obligee under the SSO Contract, the Obligee having performed the Obligee's obligations under the SSO Contract, the Surety shall promptly select and carry out one of the four following options:

1.      remedy any default, or;
2.      complete the SSO Contract in accordance with its terms and conditions, or;
3.      obtain a bid or bids for submission to the Obligee for completing the SSO Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee or such other party as the Obligee directs, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the SSO Contract, less the balance of Contract Price and to pay those expenses incurred by the Obligee as a result of the Principal's default but not exceeding the Bond Amount; or

Except so far as otherwise expressly stated this Standby Letter of Credit is subject to the Uniform and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publications No. 500.

DATED at \_\_\_\_\_, Ontario, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

COUNTERSIGNED BY:

(Name of Bank)

Per:

\_\_\_\_\_  
\_\_\_\_\_

## SCHEDULE 11 – OPERATIONAL FLEXIBILITY OF FACILITY

### 4.2 OPERATIONAL FLEXIBILITY OF FACILITY

#### 6.2.1 OPERATING SCHEDULE

The Proposed Facility will be in operation 24 hours per day processing the waste in the tunnels. The hours for receipt of waste, as stipulated in City's RFP, will occur from 7:00 a.m. to 7:00 p.m. Monday through Friday inclusive, and Saturday from 7:00 a.m. to 7:00 p.m. Additional receiving hours can be arranged in advance and billed accordingly. During the hours where the facility is receiving SSO, supervisory personnel will be on duty at the facility. Operational personnel at the facility will work during daily hours, and with a single operating shift.

A sequence of activities that will take place at the Proposed Facility is presented in Section 4.1.5 which is attached at Schedule 13 hereto.

#### 4.2.2 OPERATING CONTINGENCY PLAN

##### 4.2.2.1 OPERATIONAL CONTINGENCIES

The processing capabilities for the Proposed Facility have been designed for reliability, flexibility, and, where necessary, on the basis of redundancy. Thus, the facility is capable of complying with all emission regulations and delivering compost products meeting the highest quality standards that can be sold to farmers and the potting soil industry.

A contingency plan for the Site will be created prior to commissioning of the facility and will include:

- List of persons responsible for the Site, including contact information;
- List of emergency phone numbers for applicable emergency bodies;
- Description of fire protection, control systems, and emergency procedures;
- Description of safety devices and maintenance procedures;
- Training of Site personnel; and
- Site layout plan including location of all emergency equipment.

The developed contingency plan will be kept in a central location on Site at all times. Training will be provided for Site personnel in all applicable contingency procedures.

The Proposed Facility will be equipped with ample storage and processing capability to overcome downtime in the bag ripper/shredder or the tunnels and to meet peak processing requirements. In terms of process equipment and technology, the facility is designed as such that an extended downtime of the entire process is extremely unlikely.

The contingency plan for the Proposed Facility consists of specific procedures to be conducted to facilitate the implementation of the respective contingency measures. A four step process will be used to respond to the situation and implement the required procedure to address the situation.

Operating Year 15:

S. 10(a)(6)(c) 11(a)(6)(d)



## 6. Example Calculation of Termination Payment

To demonstrate the calculations of payments described in Sections 4 and 5 above, the following are examples of payments that would be made for termination pursuant to Section 23.4 during Operating Years 1 to 10, and Operating Year 15.

Operating Years 1 to 10:

$$5.10 (a)(b)(c)$$
$$5.11 (a)(c)(d)$$

NB: CPI = sample  
tonnes=sample

SCHEDULE 8 –  
FORM OF PERFORMANCE SECURITY

CITY OF OTTAWA STANDARD FORM - IRREVOCABLE LETTER OF CREDIT  
(to be put on Bank Letterhead)

LETTER OF CREDIT NO.: \_\_\_\_\_ AMOUNT: \$ \_\_\_\_\_  
INITIAL EXPIRY DATE: \_\_\_\_\_

**Beneficiary:**

CITY OF OTTAWA  
110 Laurier Avenue West, Ottawa, ON, K1P 1J1

**Applicant:**

ORGAWORLD CANADA LTD.  
651 Colby Drive, Waterloo, ON, N2V 1C2

WE HEREBY AUTHORIZE YOU TO DRAW ON THE (Name of Bank) for the account of Orgaworld Canada Ltd. UP TO AN AGGREGATE AMOUNT OF •, (\$•) **DOLLARS** available on demand.

PURSUANT TO THE REQUEST OF our customer, Orgaworld Canada Ltd., we the (Name of Bank) hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount which may be drawn on by you at any time and from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have the right as between yourself and the said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

THE LETTER OF CREDIT we understand relates to services to be performed pursuant to an Agreement between Orgaworld Canada Ltd. and the City of Ottawa, which Agreement is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2008, for the provision of source separated organics processing services by Orgaworld Canada Ltd. to the City of Ottawa (City of Ottawa File No. \_\_\_\_\_).

THE AMOUNT of this Letter of Credit may be reduced from time to time as advised by notice in writing to the undersigned from time to time by the City of Ottawa.

THIS LETTER OF CREDIT will continue in force for a period of one year, but shall be subject to the condition hereinafter set forth:

IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any expiration date hereof, unless at least 30 days prior to the present or any such future expiration date, we notify you in writing by registered mail, that we elect not to consider this Letter of Credit to be renewable for any additional period.

SCHEDULE 7 –  
INSURANCE

- (a) The Contractor shall provide and maintain Commercial General Liability insurance acceptable to the City and subject to limits of not less than FIVE MILLION (\$5,000,000) DOLLARS per occurrence for bodily injury, death and damage to property including loss of use thereof. The Commercial General Liability insurance shall include coverage for:
- (i) premises and operations liability;
  - (ii) products and completed operations liability;
  - (iii) blanket contractual liability;
  - (iv) cross liability;
  - (v) severability of interest clause;
  - (vi) contingent employers liability;
  - (vii) personal injury liability;
  - (viii) owner's and contractor's protective coverage;
  - (ix) liability with respect to non-owned licensed motor vehicles;
  - (x) If applicable to the Agreement, Tenant's Legal Liability; and
  - (xi) business loss and interruption.
- 
- (b) Such insurance shall be in the name of the proponent and shall name the City of Ottawa as an additional insured thereunder. Such insurance policy shall also contain an endorsement to provide the City with thirty (30) days written notice of cancellation or of a material change that would diminish coverage.
- (c) The Contractor shall provide and maintain **Environmental Impairment Liability** insurance with a limit of not less than \$2,000,00.00 per incident. Coverage shall include Third Party Bodily Injury and Property Damage including on-site and off-site clean-up. Such insurance shall be maintained for a period of two years subsequent to conclusion of services provided under this Contract.
- (d) If applicable to the operation of this Agreement, the Proponent shall provide and maintain insurance in respect to owned or leased licensed Motor Vehicles subject to a limit not less than TWO MILLION (\$2,000,000.00) DOLLARS inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.
- (e) The Proponent shall provide the City with a Certificate of Insurance evidencing such insurance coverage. If requested by the City, the Proponent shall provide, Certified Copies of the referenced insurance policy.
- (f) As determined by the City, the Proponent may be required to provide and maintain additional insurance coverage(s), which are related to the operation of this Agreement.
- (g) All deductible under the Proponent insurance policies applicable are at the sole expense of the Proponent.

The list set out in Table 1 above may be amended from time to time by adding or deleting items as mutually agreed upon by the Parties.

(b) Plastic Bin Liners

Residential generators are permitted to line their kitchen and curbside containers with any plastic bags. As a result most of the SSO and Contingency SSO delivered to the processing facility will be enclosed in plastic bags, whether non-compostable, biodegradable or non-biodegradable.

(c) Contaminant Materials

It shall be expected that, as with any waste diversion program, generators will occasionally include items in the SSO stream other than those permitted. Some of these materials may be compatible with the SSO processing system and others may need to be removed as contaminants. Typical Contaminant Materials found in SSO and Contingency SSO from residential sources include; bin liners, rigid and film plastics, glass and other ceramics, metal items, rubber, textiles, articles of clothing, items of household special wastes, small appliances and electronic devices, and a variety of other items.

4. It is not possible for the City to eliminate Contaminant Materials or to guarantee a maximum quantity of Contaminant Materials in the SSO and Contingency SSO.



(c) Contaminant Materials

It shall be expected that, as with any waste diversion program, generators will occasionally include items in the SSO stream other than those permitted. Some of these materials may be compatible with the SSO processing system and others may need to be removed as contaminants. Typical Contaminant Materials found in SSO and Contingency SSO from residential sources include: bin liners, rigid and film plastics, glass and other ceramics, metal items, rubber, textiles, articles of clothing, items of household special wastes, small appliances and electronic devices, and a variety of other items.

3. Scenario 3 of Schedule 2: The SSO and Contingency SSO material stream for scenario 3 of Schedule 2 is characterized as being comprised of three intermingled components: (a) organic materials (see Table 1 below), (b) plastic bin liners and (c) Contaminant Materials.

(a) Organic Materials

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Table 1: SSO includes the following:

- meat/fish/scrap/bones
- dairy products
- bread/cereals
- coffee grounds/filters
- tea bags
- egg shells
- food leftovers
- leaves
- grass
- hedge trimmings
- branches/twigs
- plants
- wind-fallen fruit
- pumpkins
- weeds
- paper towels
- tissues
- soiled pizza boxes
- sugar and potato paper bags
- fireplace ash (cold)
- kitty litter
- wood chips/sawdust
- diapers, pet feces and other sanitary and incontinence products

glass and other ceramics, metal items, rubber, textiles, articles of clothing, items of household special wastes, small appliances and electronic devices, and a variety of other items.

2. Scenario 2 of Schedule 2: The SSO and Contingency SSO material stream for scenario 2 of Schedule 2 is characterized as being comprised of three intermingled components: (a) organic materials (see Table 1 below), (b) plastic bin liners and (c) Contaminant Materials.

(a) Organic Materials

Table 1: SSO includes the following:

- meat/fish/scraps/bones
- dairy products
- bread/cereals
- coffee grounds/filters
- tea bags
- egg shells
- food leftovers
- leaves
- grass
- hedge trimmings
- branches/twigs
- plants
- wind-fallen fruit
- pumpkins
- weeds
- paper towels
- tissues
- soiled pizza boxes
- sugar and potato paper bags
- fireplace ash (cold)
- kitty litter
- wood chips/sawdust

The list set out in Table 1 above may be amended from time to time by adding or deleting items as mutually agreed upon by the Parties.

(b) Plastic Bin Liners

Residential generators are permitted to line their kitchen and curbside containers with plastic bags. As a result most of the SSO and Contingency SSO delivered to the processing facility will be enclosed in plastic bags, whether non-compostable, biodegradable or non-biodegradable.

**SCHEDULE 6 –  
ORGANIC MATERIALS**

1. Scenario 1 of Schedule 2: The SSO and Contingency SSO material stream for scenario 1 of Schedule 2 is characterized as being comprised of two intermingled components: (a) organic materials (see Table 1 below) and (b) Contaminant Materials.

(a) Organic Materials

Table 1: SSO includes the following:

- meat/fish/scrap/bones
- dairy products
- bread/cereals
- coffee grounds/filters
- tea bags
- egg shells
- food leftovers
- leaves
- grass
- hedge trimmings
- branches/twigs
- plants
- wind-fallen fruit
- pumpkins
- weeds
- paper towels
- tissues
- soiled pizza boxes
- sugar and potato paper bags
- fireplace ash (cold)
- kitty litter
- wood chips/sawdust

The list set out in Table 1 above may be amended from time to time by adding or deleting items as mutually agreed upon by the Parties.

(b) Contaminant Materials

It shall be expected that, as with any waste diversion program, generators will occasionally include items in the SSO stream other than those permitted. Some of these materials may be compatible with the SSO processing system and others may need to be removed as contaminants. Typical Contaminant Materials found in SSO and Contingency SSO from residential sources include: bin liners, rigid and film plastics,

- .11 The sample shall be manually sorted into the constituent materials listed in Table 1.

**Table 1: SSO Constituent Materials**

Material Category	Examples of material types
Processible Organic Material	Food waste including bones, shells, etc., diapers and sanitary products, animal waste and bedding
Contaminant Materials, including:	
Film Plastic	plastic bags, wrapping
Other Plastic	straws, tubs, tubes, cutlery
Glass	bottles, jars
Metal	cans, cutlery
Household Special Waste	cleaners, medicines, non-empty aerosol cans
Other Non-Processible Materials	rubber, textiles, wood, ceramics

- .12 The sample shall be sorted by manually removing the Contaminant Materials listed in Table 1 from the SSO sample and separating them on the basis of material type into the material categories listed in Table 1.
- .13 SSO is a difficult material to partition and therefore diligence is required during the sorting process. Generally, the sorting process should ensure that:
- i) sorting occurs on an impermeable, bounded surface to prevent loss of liquid;
  - ii) separate, clean, leak proof containers are provided for all constituent material types;
  - iii) the tare weights of constituent material containers is measured before sorting; and
  - iv) all containers are opened and separated from the contents.
- .14 The portion of the original sample of SSO remaining after sorting is processible organic material.
- .15 The weights of the processible organic material and separated categories of Contaminant Materials are to be measured and recorded.
- .16 The sample is to be rejected if the combined weights of the processible organic material and Contaminant Material categories differs from the weight of the unsorted sample by more than 1.5%.
- .17 The separated film plastic is to be rinsed to remove organic or other materials that may be adhering to the surface. The rinsate can be discharged to a sanitary sewer or other suitable receptacle. The rinsed film plastic is to be dried to a constant weight.
- .18 A similar procedure is to be applied to any of the Contaminant Material categories where it is apparent that the results may be biased by the adhesion or entrainment of significant amounts of organic or other materials.
- .19 The quality of Contaminant Material in the sample is the sum of the weight of the air dried rinsed film plastic material category, and the weights of the other Contaminant Material categories, either weight as is or rinsed and air dried as required.
- .20 The percent Contaminant Material is the quotient of the combined weights of the corresponding material categories divided by the unsorted sample weight.



## SCHEDULE 5— AUDIT METHODOLOGY

### 10.5 AUDITING PROCEDURES

- .1 This procedure is applicable to the determination of the Contamination Surcharge. A Contamination Surcharge is due when the amount of the Contaminant Material is the SSO accepted for processing exceeds 15 per cent by weight when determined in accordance with the main body of the RFP (Section 5.5.7 - Contamination Surcharge Payment) and the methodology described herein.
- .2 The purpose of this procedure is to describe the apparatus and methods required to determine the composition of unprocessed SSO.
- .3 This procedure describes methods to collect random samples of SSO received at the Facility of a size and in a number sufficient to produce an acceptably precise measurement of the quantity of Contaminant Material. The methods include manual sorting to separate Contaminant Materials from the SSO sample and to calculate the percent content of Contaminant Material.
- .4 The minimum sample size shall be 100 kg.
- .5 The minimum number of samples shall be determined in the manner described in ASTM D 5231 for the determination of the required number of waste samples, as summarized below.

Calculation of the number of 100 kg samples required:

$$n = \frac{t^* \times S}{(e \times X)^2}$$

where: n = number of samples required

t\* = student t statistic corresponding to the desired level of confidence

S = estimated standard deviation

e = desired level of precision, expressed as a decimal fraction

- .6 The estimated mean and standard deviation shall correspond to the constituent material type of the Contaminant Materials that comprises the largest weight based material fraction of the SSO. The value of t\* shall correspond to a 90% confidence level.
- .7 Unless determined otherwise, a minimum of 9 samples is required.
- .8 A random sampling method is to be used to collect samples from truckloads of SSO delivered to the Facility. During the course of the audit, a randomization procedure, such as a random number generator, is to be used to determine the ordinal ranking of the trucks to be sampled.
- .9 Selected loads of SSO deposited on the tipping floor are to be coned and quartered, first using a front-end loader or some other machine, and then manually once the sample has been reduced to a manageable size. The coning and quartering procedure is to continue until a sample of at least 100 kg remains.
- .10 The unsorted sample weight is to be measured and recorded.

#### Foreign Matter Content

The current CCME Guidelines set out the following foreign matter parameters that are more specific than Ontario requirements:

##### a) Sharp Foreign Matter

*Category A* – Compost shall not contain any sharp foreign matter of dimension greater than 3 mm per 500 ml.

*Category B* – Compost shall have a sharp foreign matter content less than or equal to three (3) pieces of sharp foreign matter per 500 ml, and maximum dimension of the sharp foreign matter shall be 12.5 mm. However, this compost shall not be used in pastures, parks or for residential purposes.

##### b) Other Foreign Matter

*Category A* – Compost shall contain no more than one (1) piece of foreign matter greater than 25 mm in any dimension per 500 ml.

*Category B* – Compost shall contain no more than two (2) pieces of foreign matter greater than 25mm in any dimension per 500ml.

#### **Definition of Unrestricted Use Product – Category A Submissions**

Proponents for Category A Submissions, with facilities located in Ontario, must be able to generate a compost product for Unrestricted Use in accordance with the Interim Guideline for the Production and Use of Aerobic Compost in Ontario, November 2004, Guideline 1749e01. The compost product must be able to meet the requirements for Maximum Concentrations of Trace Elements, Organic Chemical content, non-biodegradable particulate matter and stability.

Proponents for Category A Submissions, with facilities located outside of Ontario, must meet the applicable equivalent guidelines and/or regulations in their jurisdiction that govern the generation and marketing of compost, and should generate a class of compost that is relatively equivalent to the Ontario Unrestricted Use compost (for example, CCME Category A Compost).

- Particle Size
- Soluble Salts (Sodium Adsorption Ratio – SAR)
- % Na (Sodium)

The *Compost Quality Alliance (CQA)*, a voluntary initiative, has targeted various compost categories according to the above parameters and their ranges for specific products produced. These are identified in Table 2-2 below. The end markets and their ability to use the compost to grow/be aesthetically appropriate are the number one drivers to dictate market potential. The CQA program has been developed to reflect this input and the market reality to-date.

**End Market Requirements**

USE	pH	C/N Ratio	Molsture	Particle Size	Sodium Adsorption Ratio	% Na
Remediation	5.8 - 8.5	10-40	NA	< 2 inch	< 20	< 3%
Soil Amendment	5.8 - 8.5	10-30	NA	< 1/2 inch	< 6	< 1%
Landscaping	5.8 - 8.5	12-22	< 50%	< 1/2 inches	< 5	< 1%
Planting Media	5.5 - 7.8	12-22	< 50%	< 1/2 inch	< 4	< 2%
Turf Topdressing & Establishment	5.8 - 7.8	12-22	< 50%	< 3/8 inch	< 3	< 1%
Potting Soil	5.5 - 7.2	12-22	< 50%	< 1/4 inch	< 2	< 1%

Other agronomic characteristics are also considered when determining the suitability of a compost product for specific applications such as:

- Organic matter content;
- Total salts (expressed in conductivity units);
- The presence of micronutrients; and
- The microbiological profile of the material, including the presence of beneficial organisms.

- Oxygen uptake rates
- Toxin production
- Carbon to Nitrogen ratio
- Seed germination and growth test; and
- Redox potential

If no determination of stability is made then compost must be cured for a period of 6 months.

#### **Additional Compost Quality Parameters (CCME, BNQ, Compost Quality Alliance)**

##### Compost Maturity

Under the BNQ Standard, the three tests to be used as compost maturity indicators are C/N ratio, oxygen uptake and germination and growth rates of plants. The interpretation of the combined and quantifiable results obtained with these methods provides sufficient indicators to determine compost stability levels and to evaluate the qualitative risk factors of using the compost on plants.

According to the BNQ standard compost will be deemed mature if it meets two of the following requirements:

- C/N ratio < 25;
- Oxygen uptake rate , 150 mg O<sub>2</sub>/kg volatile solids per hour; and
- Germination of cress (*Lepidium sativum*) seeds and of radish (*Raphanus sativus*) seeds in compost must be greater than 90 percent of the germination rate of the control sample, and the growth rate of plants grown in a mixtures of compost and solid must not differ more than 50 percent in comparison with the control sample.

##### Agronomic Characteristics

Agronomic characteristics are not regulatory requirements, but reflect the general quality of the material in terms of its ability to support soil health and growth of beneficial organisms and plants.

Although compost often contains N-P-K (nitrogen, phosphorus, potassium) elements, they are at such low levels that it would be inappropriate to refer to it as a fertilizer or to consider it directly competitive with chemical fertilizers (which have higher N-P-K levels). However, the compost marketer may sometimes wish to state the fertilizer content of their product (e.g. agricultural users might need to know this as part of their nutrient management planning).

Additional agronomic characteristics that can impact the market direction of the finished compost include:

- pH
- C/N ratio
- Moisture content



Maximum Concentrations of Trace Elements in Compost for Unrestricted Use

Trace Element	Ontario Interim Guidelines (required in Ontario) (mg/kg dry wt)	CCME (Category A) (mg/kg dry weight)	CCME (Category B) (mg/kg dry weight)
Arsenic	13	13	75
Cadmium	3	3	20
Chromium	210	210	*
Cobalt	34	34	150
Copper	100	400	*
Lead	150	150	500
Mercury	0.8	0.8	5
Molybdenum	5	5	20
Nickel	62	62	180
Selenium	2	2	14
Zinc	500	700	1850

\* Limits for copper and chromium are not established in the Trade Memorandum, "Guidelines for Compost Quality", Canadian Council of Ministers of the Environment, 2005.

- Organic chemical content (PCBs); the organic chemical content shall not exceed 0.5 mg/kg dry weight.
- Non-biodegradable particulate matter; the compost must not contain any material that is of a shape or size that reasonably can cause human or animal injury or damage to equipment; particulate content of the compost greater than 8 mesh screen size shall not exceed:
  - 1% concentration (dry weight) for plastic; and
  - 2% other (foreign matter) (total dry weight).
- Stability; various means can be used to determine relative stability either alone or in combination. Relative stability can be determined by using indicators such as:
  - Volatile solids destruction
  - Spontaneous heating

## SCHEDULE 4 – MINIMUM PRODUCT QUALITY STANDARDS

### MINIMUM PRODUCT QUALITY STANDARDS

Overview of the Interim Guideline for the Production and Use of Aerobic Compost in Ontario, November 2004, Guideline 1749e01

Guidance on the requirements for the production and use of aerobic compost are set out in the "Interim Guideline for the Production and Use of Aerobic Compost in Ontario (November 2004)". In the preamble to the guidelines, it is noted that:

- The guidelines should be used along with good judgement and past practical experience; and
- They are not intended to restrict process or equipment development and that for highly modified composting techniques the proponent should demonstrate that the technology is consistent with the overall intent of the guidelines.

The requirements of the Guideline are given force when included in the CoFA for a waste processing site issued by the MOE under Part V of the EPA. The Guideline includes requirements for the composting process and compost quality and also includes recommendations for good composting practice and for the characteristics of high quality compost.

#### Compost Quality

The guidelines regulate compost quality and use several different criteria that must be met in order to ensure unrestricted use and the ability to market the product. Materials in their final form that fail to meet the criteria are not exempt from waste management regulation and must be managed by approved waste management sites and systems.

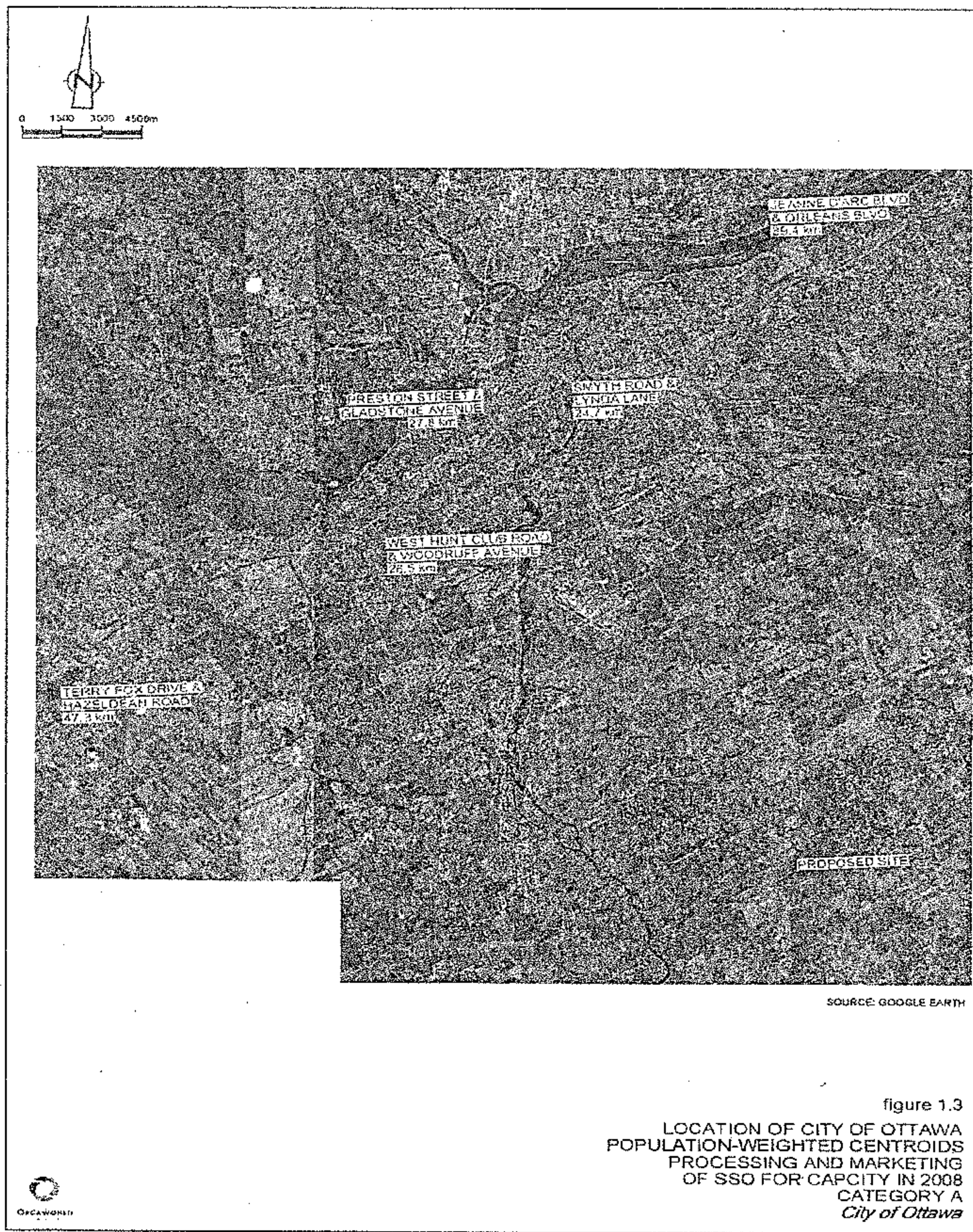
#### Required Parameters:

- Metal content; metal content of the incoming compost feedstock materials and of the finished compost must not exceed the following concentrations as calculated on a dry weight basis, shown in Table 2-1 below. *In addition, to prevent dilution of contaminated feed materials no individual waste source, additive or inoculant may exceed the metal concentration limits.*
- The Canadian Council of Ministers of the Environment (CCME) standard for Category A and Category B compost are also noted. CCME Category B compost standard represents the applicable limits for the Federal Fertilizer Act.



### SCHEDULE 3 – STAGECOACH FACILITY SITE

The Stagecoach Facility Site is shown as the “Proposed Site” on this map.





**SCHEDULE 2 –  
CAPACITIES, FEES AND CONTAMINATION RATES**

\* = 10, (a), (b), (c), (d), (e), (f)

**Table 1: Starting the Commissioning Date**

Item	Scenario 1 No plastics or sanitary products	Scenario 2 Plastics permitted; no sanitary products	Scenario 3 Plastics and sanitary products permitted
1. Minimum Processing Rate Guarantee (daily)	100 tonnes/day	100 tonnes/day	100 tonnes/day
2. Base Processing Fee	\$ 10. (a), (b), (f)	\$ 11. (a), (c), (d)	
3. Maximum Contamination Rate	15%	22%	22%
4. Contamination Surcharge	\$5.00	\$5.00	\$5.00
5. Minimum Annual Tonnage Guarantee	Not applicable	Not applicable	Not applicable
6. CPI	Commencing January 1, 2009 but shall only be applied one time	Commencing January 1, 2009 but shall only be applied one time	Commencing January 1, 2009 but shall only be applied one time

**Table 2: Starting the Commencement Date**

Item	Scenario 1 No plastics or sanitary products	Scenario 2 Plastics permitted; no sanitary products	Scenario 3 Plastics and sanitary products permitted
1. Minimum Processing Rate Guarantee (daily)	400 tonnes/day	400 tonnes/day	400 tonnes/day
2. Peak Processing Capacity (daily) (135%)	540 tonnes/day	540 tonnes/day	540 tonnes/day
3. Minimum Processing Rate Guarantee (annually)	100,000 tonnes/year	100,000 tonnes/year	100,000 tonnes/year
4. Base Processing Fee (all tonnes up to and including the 100,000 tonne)	*	*	*
5. Contingency Amount Processing Fee A (applied to the 101,000-125,000 tonnes)	*	*	*
6. Contingency Amount Processing Fee B (applied to the 125,001-150,000 tonnes)	*	*	*
7. Maximum Contamination Rate	15%	22%	22%
8. Contamination Surcharge	\$5.00	\$5.00	\$5.00
9. Minimum Annual Tonnage Guarantee	80% of the total annual tonnage of SSO and Contingency SSO in effect for each Operating Year, with a minimum of 80% of 100,000 tonnes	80% of the total annual tonnage of SSO and Contingency SSO in effect for each Operating Year, with a minimum of 80% of 100,000 tonnes	80% of the total annual tonnage of SSO and Contingency SSO in effect for each Operating Year, with a minimum of 80% of 100,000 tonnes
10. CPI	Commencing January 1, 2009 and applied annually	Commencing January 1, 2009 and applied annually	Commencing January 1, 2009 and applied annually



**"Transfer Station"** means a provincially certified facility owned and operated by the Contractor at the Contractor's expense for the purpose of transferring waste, in accordance with local and provincial regulatory requirements;

**"Uncontrollable Circumstances"** means any circumstance or act beyond the reasonable control of a Party to this Agreement claiming Uncontrollable Circumstances, including an intervening act of God or public enemy, war, blockade, strike, walkout, labour dispute, civil commotion, fire, flood, tidal wave, earthquake, epidemic, quarantine restriction, a stop-work order or injunction, issued by a court or public authority having jurisdiction, governmental embargo, or any appeal to the re-zoning application for the property where the Facility is to be located by third parties to the Ontario Municipal Board or other court or public authority having jurisdiction, which delays the performance of any obligation created by this Agreement beyond its scheduled time, provided such circumstance or act is not expressly dealt with under this Agreement or does not arise by reason of:

- (a) the negligence or willful misconduct of the Party claiming Uncontrollable Circumstances or those for whom it is responsible at law;
- (b) any act or omission by the Party claiming Uncontrollable Circumstances (or those for whom it is responsible at law) in breach of the provisions of this Agreement;
- (c) lack or insufficiency of funds or failure to make payment of monies or provide required security;

**"Unrestricted Use Product" and "UUP"** means fertilizer, compost or other soil amendment material suitable for unrestricted use in accordance with applicable federal and provincial regulations and guidelines and with the requirements for Beneficial Use specified in this Agreement and does not include material that shall be managed by systems subject to regulation by the MOE as a waste management activity, and does not include material suitable only for disposal, which includes incineration, or for use in landfill operations; and

**"Work" or "Works"** means everything to be done, supplied or provided by Contractor under this Agreement as applicable, including all extra or additional work or material, matters or things which may be ordered by the City pursuant to the provisions of this Agreement.

**"Solid Waste Database"** means the solid waste database which can be accessed through the following link: <http://moeapps/tupw/solidwaste/Home/Login.aspx> or as it may be replaced from time to time;

**"Source Separated Organics"** and **"SSO"** mean one of the following, as applicable:

- (i) in respect of scenario 1 of Schedule 2, City waste that is separated by residential households, into an organic waste fraction that is separately collected. The SSO fraction of the waste stream generally includes any organic material that is compostable, including but not limited to: fruit and vegetable peelings, food scraps, meat, bones, eggs and shells, vegetable oil and fat, paper towels and napkins, soiled newspaper, paper bags, waxed and/or soiled corrugated containers, wood shavings, and yard waste (twigs, weeds, grass clippings etc.), including the material listed in Schedule 6. SSO does NOT include non-compostable plastic bin liners, diapers, pet feces or other sanitary waste;
- (ii) in respect of scenario 2 of Schedule 2, City waste that is separated by residential households, into an organic waste fraction that is separately collected. The SSO fraction of the waste stream generally includes any organic material that is compostable, including but not limited to: fruit and vegetable peelings, food scraps, meat, bones, eggs and shells, vegetable oil and fat, paper towels and napkins, soiled newspaper, paper bags, waxed and/or soiled corrugated containers, wood shavings, and yard waste (twigs, weeds, grass clippings etc.), compostable bin liners and non-compostable bin-liners, including the material listed in Schedule 6. SSO does NOT include diapers, pet feces or other sanitary waste;
- (iii) in respect of scenario 3 of Schedule 2, City waste that is separated by residential households, into an organic waste fraction that is separately collected. The SSO fraction of the waste stream generally includes any organic material that is compostable, including but not limited to: fruit and vegetable peelings, food scraps, meat, bones, eggs and shells, vegetable oil and fat, paper towels and napkins, soiled newspaper, paper bags, waxed and/or soiled corrugated containers, wood shavings, and yard waste (twigs, weeds, grass clippings etc.), including the material listed in Schedule 6 and all compostable bin liners and non-compostable bin liners, diapers, pet feces and other sanitary waste;

**"Stagecoach Facility Site"** has the meaning given in Section 7.5;

**"Subcontract"** means any contract entered into by the Contractor with one or more third parties in relation to the carrying out part of the Work or any of the Contractor's other obligations under this Agreement, together with any contract entered into by any such third party;

**"Subcontractor"** means any third Person having a direct Subcontract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Subcontract, but does not include one who merely supplies products not so worked;

**"Term"** has the meaning given in Section 2.1, as extended pursuant to Section 2.2;

**"Public Liaison Committee"** has the meaning given in Section 16.3;

**"Public Liaison Officer"** has the meaning given in Section 16.1;

**"put or pay"** means delivery by the City of the minimum annual tonnage of SSO to the Contractor pursuant to the City's Minimum Annual Tonnage Guarantee (i.e. "put") or payment by the City to the Contractor of the Base Processing Fee for the difference between i) the amount of tonnage of SSO that was actually delivered to the Contractor in an Operating Year and ii) the amount guaranteed as the minimum annual tonnage of SSO required to be delivered for an Operating Year due under the City's Minimum Annual Tonnage Guarantee;

**"QA/QC"** has the meaning given in Section 11.4;

**"Real Property Interests"** means all titles, leases, licences, rights-of-way, under-surface rights, easements or other interests in land required for all permanent structures and fixtures that are part of the Facility;

**"Relevant Authority"** means any Canadian government, including any federal, provincial or municipal government (including the City), and any government agency, tribunal, commission or other authority including any regulated or other utility exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

**"Regular Receiving Hours"** means 7:00 a.m. to 7:00 p.m. Monday to Friday inclusive and Saturdays between 7:00 a.m. to 7:00 p.m. if there is a Legal Holiday during the preceding week;

**"Required Submissions"** means all of the required submissions required under this Agreement, including without limitation, the required submissions as more particularly set out in Schedule 9;

**"Residual Waste"** means a type of Emission comprised of Non-Hazardous Waste resulting from the processing of SSO and Contingency SSO and requiring disposal that shall not exceed twenty-five (25%) percent of organic material by dry weight, or such other percentage as determined by the Parties, acting reasonably, based on audited results during the system testing period of the Facility prior to the Commencement Date;

**"Residual Waste Tipping Fee"** has the meaning given in Section 15.1(a);

**"Response"** means the response by the Contractor to the RFP dated June 18, 2007;

**"RFP"** means the Request for Proposal issued by the City on March 9, 2007, as updated by Addendum No. 1 dated April 16, 2007, Addendum No. 2 dated April 24, 2007, Addendum No. 3 dated May 8, 2007, Addendum No. 4 dated May 9, 2007, Addendum No. 5 dated May 15, 2007, Addendum No. 6 dated May 17, 2007, Addendum No. 7 dated May 29, 2007, Addendum No. 8 dated June 4, 2007, Addendum No. 9 dated June 8, 2007, Addendum No. 10 dated June 8, 2007, Addendum No. 11 dated June 12, 2007 and Addendum No. 12 dated June 14, 2007;

**"Right of First of Offer"** has the meaning given in Section 29.5;

**"Second Extended Term"** has the meaning set out in Section 2.2(b) of this Agreement;



4. pay the Obligees the lesser of (1) the Bond Amount or (2) the Obligees' proposed cost to complete the SSO Contract in accordance with its terms and conditions less the balance of the Contract Price.

The Surety shall not be discharged or released from liability hereunder and that such liability shall not be in any way affected by any such changes, alterations, additions, omissions, or variations, taking or receiving of security, or extension of time, or other modification of the SSO Contract or by the exercise by the Obligees of any of the rights or powers reserved to it under the SSO Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the SSO Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligees.

The Surety agrees that for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the SSO Contract, that are binding on the Principal and the Obligees shall also bind the Surety. The Surety further agrees that its liability under this Bond includes any "Delay Payments" under Section 3.4 of the SSO Contract.

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the expiration of the Term as defined in the SSO Contract, or (2) the date on which the Principal is declared in default by the Obligees.

The Surety shall not be liable for a greater sum than the Bond Amount.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligees named herein, or the heirs, executors, administrators, successors or assigns of the Obligees.

**IN WITNESS WHEREOF** the Principal and Obligees have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers in that behalf duly authorized.

**ORGAWORLD CANADA LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have the authority to bind the Principal.



(NAME OF INSURANCE COMPANY)

Per:

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the Surety.

**SCHEDULE 9 –  
REQUIRED SUBMISSIONS**

The required submissions include, but are not limited to, the following:

- (1) All Certificates of Approvals, including all conditions;
- (2) All reports, annual or otherwise, submitted to the MOE;
- (3) All directives and other orders received from the MOE;
- (4) All approvals received in accordance with the milestone dates set out in Section 11.2;
- (5) All of the notices required regarding the Commencement Date and the delivery of SSO set out in Article 3;
- (6) Workplace Safety Insurance Board clearance certificates in accordance with Section 6.1(m);
- (7) Disclosure of any Claims in accordance with Section 6.1(p);
- (8) Information regarding any actual or proposed change to any agreement, covenant, representation or warranty given by the Contractor in accordance with Section 6.2(b), as applicable;
- (9) Five-day moving average of quantities received/processed (to support processing rate guarantees) in accordance with Section 7.4 and 7.4(b);
- (10) Weighscale data (SSO, residue, other materials) reported through City's Solid Waste Database in accordance with sections 7.13, 9.2 and 10.3;
- (11) Notice of a scheduled shutdown in accordance with Section 7.7;
- (12) Inspection, demonstration and testing reports in accordance with Section 7.11;
- (13) Request approval for transfer of UUP in accordance with Section 7.12;
- (14) Material Marketing reports in accordance with Section 7.13;
- (15) Request for consent regarding Subcontractors in accordance with Section 7.16;
- (16) Accounting and audit reports in accordance with Section 7.18;
- (17) Weighscale recertification report every six (6) months in accordance with Section 10.1;
- (18) Notice of weighscale malfunctions in accordance with Section 10.2(b);
- (19) Bi-weekly status reports in accordance with Section 11.2;
- (20) SSO audits every three (3) months in accordance with Section 13.3;
- (21) Compliant reports in accordance with Section 16.2(a);
- (22) Performance Security in accordance with Article 17;

- (23) Evidence of Insurance in accordance with Section 18.5.
- (24) Request consent in the conduct of Claims as required in accordance with Article 19;
- (25) Notice with respect to an Uncontrollable Circumstances in accordance with Section 20.1;
- (26) Notice with respect to a Contractor Default in accordance with Section 21.2;
- (27) All notices required in accordance with the Dispute Resolution Procedure in Article 25;
- (28) The designate required in Section 25.1(b);
- (29) Request consent for Dispositions as required in accordance with Section 27.2
- (30) Certificate as required under Sections 29.3 and 29.4;
- (31) Notice regarding expansions to the Facility to add additional capacity for the processing of SSO in accordance with Section 29.5.

**SCHEDULE 10 –  
TERMINATION FOR CONVENIENCE PAYMENTS**

**1. General**

- (a) Annex B, clause 11 of the RFP contained a "Termination for Convenience" clause which permits the City to terminate the Agreement at any time and the Contractor would be entitled to be paid, to the extent that costs have been reasonably and properly incurred for the purposes of performing the Agreement and to the extent that the Contractor has not already been so paid or reimbursed by the City, for all Work completed, inspected and accepted in accordance with the Agreement;
- (b) Taking into account the costs that will be incurred by the Contractor in developing the infrastructure and the facilities necessary to perform the Work, and following extensive good faith negotiations, the Parties agree that the termination for convenience provision set out in Section 23.4 will not be exercised by the City except in accordance with this Schedule 10.
- (c) The Parties acknowledge and agree that this Schedule and the payments described herein only apply if a termination occurs pursuant to Section 23.4 and will not apply in the event of a termination pursuant to any other Section of this Agreement.

**2. Notice Period**

- (a) Notwithstanding anything to the contrary contained in the Agreement, the City may not terminate this Agreement pursuant to Section 23.4 prior to the Commencement Date.
- (b) In the event the City exercises its right to terminate under Section 23.4 and this Schedule 10, then the applicable notice period for such termination notice shall be a minimum of one (1) year.

**3. CPI**

- (a) The termination payment will be calculated using the CPI adjusted Base Processing Fee, as adjusted in accordance with Section 13.5, for each Operating Year.
- (b) CPI adjustments to the Base Processing Fee will be based on actual CPI at the time of termination for Operating Year(s) completed (including the notice year), and a CPI projection of two (2%) percent for future Operating Years.

**4. Termination Prior to Ten Operating Years**

- (a) The termination payment for termination prior to the tenth (10<sup>th</sup>) Operating Year will be the difference between:



- (i) what the City has paid for completed Operating Years of service, including the notice year, plus what the City would pay for the remaining Operating Years up to the tenth (10<sup>th</sup>) Operating Year calculated using a CPI adjusted Base Processing Fee for a twenty (20) year contract term; and
- (ii) what the City would have paid for those Operating Years in a ten (10) year contract term calculated using the CPI adjusted Base Processing Fee for a ten (10) year contract term;

plus an interest amount of nine (9%) percent compounded annually on the amount of the difference between (i) and (ii) above.

- (d) The calculations for the termination payment set out in Section 4(a) shall also be based on:
  - (i) actual tonnes of SSO received at the Facility for Operating Years completed, (including the notice year); and
  - (ii) eighty thousand (80,000) tonnes of SSO per Operating Year for future Operating Years.
- (e) For calculations under Section 4(a), the Base Processing Fee prior to CPI adjustments applied for termination prior to the tenth (10<sup>th</sup>) Operating Year of the Term will be \$97.40 with CPI adjustments to the Base Processing Fee calculated in accordance with the provisions of this Agreement.
- (f) For calculations under Section 4(a), the Base Processing Fee prior to CPI adjustments applied for the twenty (20) year contract term will be \$89.40 with CPI adjustments to the Base Processing Fees calculated in accordance with the provisions of this Agreement.

## **5. Termination After Ten Operating Years**

- (a) The termination payment for termination after the tenth (10<sup>th</sup>) Operating Year will be the difference between:
  - (i) what the City has paid for completed Operating Years of service, including the notice year, using a CPI adjusted Base Processing Fee for a twenty (20) year contract term; and
  - (ii) what the City would have paid for those Operating Years calculated using the CPI adjusted Base Processing Fees for the contract periods outlined in Table 1 below;

plus an interest amount, based on interest rates outlined in Table 1 below, compounded annually on the amount of the difference between (i) and (ii) above.

The following outlines the potential process upsets that may occur at the facility and the remedial actions that will be taken to correct the situation.

### Spill

The material intended for the Proposed Facility is generally comprised of solids, such as SSO or leaf and yard material, which do not constitute a significant spill issue. For every spill that occurs, the cause of the spill will be determined and appropriate action will be taken to prevent any reoccurrence in the future. A contingency plan will be developed for the following potential sources of spills:

- Percolate water;
- Organic materials from delivery trucks;
- Organic liquid wastes and sludges inside the facility;
- Organic liquid wastes and sludges outside the facility; and
- Non-organic spills.

### Process Upset

The Proposed Facility will be designed to be a robust and reliable operation. This implies that the amount of mechanical equipment that is sensitive to equipment malfunctioning is limited to essential process components. The process in the facility will be operated in such a way that failure of one individual unit will not impact overall operation of the facility. Most of the key operating equipment is comprised of front-end loaders, which are relatively simple to replace.

The malfunctioning of the following equipment components are possible sources of process upset:

- Ventilator system;
- Front-end loaders;
- Bag ripper/shredder; and
- Screening line.

Procedures will be developed to identify the source/type of malfunction and the consequences and procedures to repair the malfunctioning equipment.

### Power Failure

In the case of power interruption, a standby power supply (i.e., standby generator or uninterrupted power supply) will be used to provide continued power to the process monitoring system, gas emission monitoring sensors, and the emission control equipment. Procedures will be developed for power interruptions of less than 4 hours in duration and for power interruptions greater than 4 hours in duration.

It is noted that the vast majority of power interruptions will be less than 4 hours in duration and that for these types of interruptions, there is limited impact to the composting process.

## Fire

In terms of its structural features, the facility will consist of reinforced concrete applied in the foundations, tunnel walls, and tunnel deck. The general structure and design of the building is not conducive to the propagation of fire.

The receiving hall areas will be equipped with fire control measures in compliance with all municipal and relevant regulations. This specifically includes a dry-pipe sprinkler system that covers the receiving hall and traffic areas, with automatic thermal triggers of this system in the event of fire. Additionally a deluge wall system for the tunnel doors will be included in order to provide protection for the traffic hall in the event that temperatures increase above acceptable levels in the tunnels. The modular office on Site will also include a dry sprinkler fire protection system.

## Gas Emissions

The facility will be equipped with sensors for monitoring of ambient air concentrations of carbon monoxide and nitrogen dioxide. Although the front-end loaders will be equipped with catalytic devices for destruction of combustion products, these are potential combustion products emitted by equipment of this nature.

The Proposed Facility will be sized to purge any potential accumulation of the combustion compounds by establishing a minimum continuous air exchange rate. The monitoring sensors provided in the hall areas are an additional level of safety. These sensors continuously monitor carbon monoxide and nitrogen dioxide within the building and if these sensors raise an alarm, the front-end loaders will cease operation immediately and personnel will evacuate the building until such a time as concentrations are below limits. The monitoring sensors are equipped with an uninterrupted power supply that will allow for air quality monitoring during power interruptions. It is not expected that this situation will occur, but OCL will provide these protections as a safety measure that provides redundancy procedures for the ventilation and air exchange system.

## Odour Emissions from the Facility

There are several inherent contingency features that will be designed into the odour management system for control of emissions. The odour management system will be designed to be expandable and with an in-built level of redundancy. First, there will be a dual-stage odour management system in place, including biofilters and a bioscrubber unit. Rather than full reliance on the operation of a single emission control device, the facility will be equipped with in-series units for an added level of emission control (biofilters followed by bioscrubber, with final emission through the stack for added dispersion of any potential odour-causing compounds). Further, the odour treatment ability of the bioscrubber unit can be expanded by the installation of additional packing media to accommodate any potential concerns regarding odour control efficiency and to accommodate expansion of the Proposed Facility. Additional information on the emission control and treatment system is provided in Section 4.3.2 set out in Schedule 13 attached hereto.

A notification protocol will be developed for contacting the appropriate persons during different emergency response procedures.

#### **4.2.2.2 STAFF CONTINGENCY MEASURES**

In terms of operations, the staff at the Proposed Facility is crucial to the overall performance of the facility. Similar to the operations in The Netherlands, the management of the Proposed Facility will remain in close contact with daily operations. At all times, OCL management is aware of the core activity of its organization and the processes and personnel that are essential to it. Good, safe, and satisfying work conditions are ensured by OCL for all its personnel and, of equal importance, all personnel are paid fairly based on individual capacity and the local market. Personal development at the work floor is regarded by OCL as an important way to ensure high work motivation and satisfaction among personnel but also continuous improvement in process quality and efficiency.

In an organizational structure as described above, it is intended that staff and management will be able to deal with staff dissatisfaction or staff demands at an early stage, preventing a partial or complete halt in operations as a consequence from a strike among staff. However, in the very unlikely event this would occur, the processes initiated prior to the strike proceed without interruption. A strike would imply a downtime for the bag ripper/shredder, screens, and separators. Loading and emptying of the tunnels would come to a halt. While a strike results in increasing amounts of waste accumulating in the waste receiving hall, no dangerous or environmentally undesirable conditions will occur. The facility management would, in the event of a strike, take adequate action, finding mutual grounds with the staff to proceed with normal operations at the earliest stage while dealing with the underlying issues in a responsible and timely manner.

#### **4.2.3 SAFETY, HOUSEKEEPING, AND MAINTENANCE PROCEDURES**

##### **4.2.3.1 SAFETY POLICIES**

Overall, OCL will maintain high standards in the field of safety, health, and the environment. Based on these standards and all pertinent regulations, the Proposed Facility will comply with all workplace safety, worker protection, safety policies, and ergonomics, as required.

Some of the initiatives proposed for the Proposed Facility will include those listed below.

##### **Occupational Health**

- Prior to employment, the candidates will be required to pass a medical examination. This examination will require testing to assess any health conditions incompatible with the particular working environment; for instance, candidates with respiratory problems must not work in composting plants and pre-existing hearing problems worsen with exposure to the noise of industrial equipment;
- Any eating and drinking within the plant area will not be tolerated;
- The rest area will provide a disinfectant soap for hand washing;



- Regular hygienization of plant and equipment will be carried out with appropriate means ensuring a safe and healthy work environment and preventing possible cross contamination between input and output materials within the composting process; and
- Medical checks will be conducted periodically to verify health conditions of all operators.

#### Occupational Safety

- Training of the employees will include the discussion of the occupational hazards depending on the employee's position. This training will ensure the safety rules are known and understood;
- Regular inspections at the workspace will be carried out by the plant manager to validate a consistent compliance among employees with safety and health regulations;
- Annually, the effectiveness and efficiency of the facility's policies on safety, health, and environment will be audited;
- All employees will be provided with individual protection items, which will be immediately replaced when missing or deteriorated;
- The waste received will be inspected before shredding to be sure that it does not contain any hazardous components;
- All equipment will be maintained according to a determined maintenance schedule and no safety guards will be removed. Regular maintenance is the responsibility of operators, especially those that are working frequently with equipment. More specific maintenance and repair work will be carried out by the supplier of the equipment according to manufacturer specifications. The same maintenance terms apply to leased mobile equipment;
- All safety signs will be kept clean and any sign missing or deteriorated will promptly be replaced;
- All front-end loaders and cranes will be provided with P3-filters and operate with over-pressurized closed cabins, ensuring a dust and odour-free working environment for drivers;
- Safety rules will be strictly enforced and any violation will be discussed immediately;
- Any near-miss accident will be reported and discussed immediately;
- At least two employees will operate the plant at any given time;
- The use of alcohol and drugs will be strictly prohibited;
- Before having access to the facility, visitors will be provided with individual protection items, the risks of the visit will be explained, and a supervisor will guide the visitors at all times. School visits will be restricted to areas that do not have identified risks; and
- First aid packages will be available in specific areas and regularly checked and refilled.

#### Housekeeping Procedures

- Daily floor sweeping of the offices shall be undertaken;
- Flytraps will be installed and periodically maintained;
- Periodic treatment shall be done to control rodents and pests; and
- Process residuals will be promptly removed to avoid unnecessary accumulation.

#### 4.2.3.2 PREVENTATIVE MAINTENANCE SCHEDULES

Preventative maintenance is a critical aspect of the effective and efficient operation of the Proposed Facility. A proper maintenance program will ensure that equipment performs correctly and efficiently. Preventative maintenance will be planned up front and will occur either when appropriate or necessary and if possible during times when the equipment is not required. This allows the facility to fully function during peak receiving hours. The maintenance program will follow the recommended schedule stated by product manufacturers and as indicated in the equipment manuals. The equipment maintenance will occur depending on how the equipment functions and the use in the facility. An annual assessment of the equipment will be carried out to ensure proper maintenance is occurring and the maintenance schedule will be adjusted accordingly.

#### 4.2.3.3 SITE INSPECTION PROGRAM

A Site inspection program will be developed for the Proposed Facility which will include all aspects of the facility's operations and ensure conformity with the Site Cs of A.

Several Site inspections are to be undertaken on a daily basis by trained personnel in accordance with the inspection program to ensure all equipment and facilities at the Site are maintained in good working order at all times. Any deficiencies detected during the regular inspection will be promptly corrected.

The following form part of the Site Inspection and Monitoring Program:

- Incoming organics;
- Leaf and yard material storage pad;
- Parking lot and exiting vehicles;
- Curing pad and compost storage area;
- Facility building including:
  - Tunnels,
  - Ventilation system,
  - Biofilter,
  - Bioscrubber,
  - Stack, fire protection system,
  - Gas emission sensors,
  - Water holding tanks, and
  - Residual waste storage area;
- Stormwater management system; and
- Site property.

Required inspections will be recorded into a logbook. Records will include:

- Name and signature of inspector;
- Date and time of inspection;

- Deficiencies found;
- Recommended actions; and
- The date and description of actions taken.

Site inspections will be performed by trained personnel. Recommendations from the Site inspection program will be incorporated into the revised operations manual as required, and modifications will be communicated to Site personnel.

The City will be invited to inspect the facility at their convenience during normal working hours.

#### **4.2.4 ACCOMMODATION OF VARYING MATERIAL STREAMS**

The Proposed Facility will utilize a technology that is extremely robust and adaptable in terms of schedules and material types. Orgaworld is able to accommodate contaminant materials such as plastic bags by adapting and customizing its technology to deal with the characteristics of the incoming waste stream. As the technology is not equipment-intensive, there are limited issues with respect to expanding or reducing capacity as related to equipment. For example, as most of the material transit is accomplished through front-end loaders, it is relatively simple to add more of these units if necessary. As the overall technology is accomplished through several aerobic tunnels, the ability to modify composting schedules can easily deal with increased/reduced material volumes. Further, the facility can be expanded in short order to add tunnels in a modular fashion.

In The Netherlands, Orgaworld has processed a wide variety of materials in conjunction with SSO. Using keen attention to overall process control and employing a detailed knowledge of the biological processes at work, Orgaworld has been able to process materials ranging from SSO to food sludges with great success. OCL fully anticipates being able to handle changes in the municipal SSO stream from the City should such a situation arise and will tailor its technology to meet the needs of the City.

## SCHEDULE 12 – OPERATING PLAN

### 6.0 OPERATING PLAN

#### 6.1 OPERATING PLAN

A detailed Operations Manual will be developed for the Proposed Facility that will specify all operations. Upon award of a contract by the City and prior to commencing full-scale operation, OCL will provide the City with a copy of the detailed Operations Manual for the facility. A general description of the Operations Management Plan is provided in this section.

OCL is responsible for ongoing operations, compliance reporting, communication with the City, and day-to-day activities relating to the facility. All personnel at the facility will be employed by OCL.

The facility will receive organic material from the City based on a 5-day per week delivery schedule. Delivery will normally occur during normal receiving hours.

The facility will be operated by fully trained personnel during the daytime hours. The facility will be in operation and continuously monitored 24 hours per day, 7 days per week with a state-of-the-art computerized control system. This system maintains the process parameters within preset ranges that vary according to the stage of the process. Should a condition occur where the process is not meeting established criteria or when equipment malfunctions, built-in alarm systems will automatically alert facility personnel and senior management and action can be taken accordingly. Additionally, this system allows for support personnel from Orgaworld's facilities in The Netherlands to monitor the processing system and to provide input on a regular basis.

##### 6.1.1 STAFFING PLAN

The following provides a description of the different personnel that will be involved in the operation and management of the Proposed Facility.

##### Orgaworld Canada Ltd. Managing Officer

The Orgaworld Canada Ltd. Managing Officer is appointed by Orgaworld and CRA. The OCL Managing Officer is responsible for the following tasks:

- Daily operational execution of the contract with the City;
- Operational interaction with the City;
- Supervision of the facility;
- Supervision of facility personnel and contractors;
- Ensuring process compliance with health and safety regulations;
- Ensuring overall process quality and maintenance standards are met;



- Compost marketing; and
- Operational reporting to the project team.

#### Plant Manager

The Plant Manager will cooperate closely with the OCL Managing Officer. The Plant Manager is responsible for daily operations and management of the other plant employees.

#### Administrative/Accounting

The on-Site account clerk is responsible for the following tasks:

- Weigh scale, weigh scale database management, and reporting;
- Invoicing to the City and other customers;
- Preparation of operational reporting on: quantities, quality, monitoring aspects, and processing details;
- Organization of transport activities; and
- Other administrative duties as required.

#### Front-end Loader Operator

The loader operator is responsible for the following tasks:

- Unloading SSO from the tipping floor;
- Checking the load for acceptance;
- Feeding the shredder;
- Mixing SSO with yard waste and oversized recycled material;
- Loading and unloading tunnels;
- Feeding the screening lines;
- Storing the compost outside for maturization;
- Loading the City's vehicles with finished UUP (as per terms of the RFP, the City requires 10 percent of the total material for City use; it is understood that the City will provide vehicles for haulage of this material);
- Loading and unloading the biofilter compartments; and
- Carrying out daily maintenance and hygienization.

#### Crane Operator

All the front-end loader operators will be educated to operate as crane operators. This is to ensure flexibility during the operating process. The crane operator is responsible for the following tasks:

- Feeding the shredder with yard waste;
- Preparing the yard waste structure materials; and
- Carrying out daily maintenance and hygienization.

### 6.1.2 OUTSOURCED SERVICES

#### Accounting

OCL will arrange for an external company to perform accounting and financial reporting services for all international services.

#### Maintenance

Maintenance of the building and equipment will be outsourced to local companies.

#### Equipment

Front-end loaders and the crane will be bought, leased, or rented from local companies (primarily Volvo distributors in the London area).

### 6.2 OPERATIONAL RESPONSE TO FLUCTUATIONS IN MATERIAL

As previously discussed in Section 4.2.4, the Proposed Facility will utilize a technology that is extremely robust and adaptable in terms of schedules and material types. Orgaworld's tunnel composting technology is able to accommodate contaminant materials such as plastic bags by adapting and customizing the technology to deal with the characteristics of the incoming waste stream. The technology is not equipment-intensive and there are limited issues with respect to expanding or reducing capacity as related to equipment. The ability to modify composting schedules can easily deal with increased/reduced material volumes.

### 6.3 OPERATING SCHEDULE

As previously discussed in Section 4.2.1, the Proposed Facility will be in operation 24 hours per day processing the waste in the tunnels. The hours for receipt of waste, as stipulated in City's RFP, will occur from 7:00 a.m. to 7:00 p.m., Monday through Friday inclusive, and Saturday from 7:00 a.m. to 7:00 p.m. Additional receiving hours can be arranged in advance and billed accordingly. During the hours where the facility is receiving SSO, supervisory personnel will be on duty. Operational personnel will work during daily hours, and with a single operating shift.

A contingency plan will be developed for unscheduled facility downtime due to process upsets and power interruptions. Additional information on the operational contingency plan is provided in Section 4.2.2.

The Proposed Facility will be designed to handle maximum material peak volumes. The ventilation system will be sized to handle the required airflow for all processing tunnels to be performing at peak air requirements.

### 6.4 ANTICIPATED SCHEDULED SHUTDOWN FREQUENCY

The Proposed Facility will be in continuous operation and will not have any scheduled shutdowns.

The built-in redundancy of the Proposed Facility will prevent scheduled downtime from occurring. The modular approach allows each single tunnel units to be taken out of operation for any period without direct implications for the other tunnels. Additionally, the majority of the material transit activities occur via front-end loaders, which are readily available and can be replaced in short order. OCL notes that there is a local dealership for Volvo in the Ottawa area that can service and replace the loaders if necessary.

Similarly, the odour control system is based on redundancy and both the biofilter and bioscrubber are commonly used as stand-alone process air treatment units for waste processing installations. The facility will be designed such that the biofilter and bioscrubber can operate independently from one another.

Due to the high degree of automated process control and monitoring, the composting process continues non-stop, 24 hours a day, and even in case of strikes or understaffing, processing can continue. Facility downtime will only occur if there is a prolonged power outage.

Information on preventative maintenance schedules is provided in Section 4.2.3.2.

## **6.5 PROCESS MONITORING AND CONTROL PLAN**

As part of the biological processes used to convert the organic materials into an UUP, a process monitoring and control program will be put in place at the Proposed Facility. The monitoring program will allow facility operators to track the biological processes and prevent potential compost quality issues from arising.

### **6.5.1 METHOD OF PROCESS MONITORING AND CONTROL**

During the entire composting process, the air temperature, air pressure, oxygen content, and air humidity are continuously monitored. The temperature of the material in the tunnels is continuously measured by a number of temperature probes inserted into the organic mass. Based on these measurements, the process computer directs the variable frequency drive (VFD) controller of each ventilator to ensure that optimum airflow conditions are maintained for the specific stage of the composting operation.

Composting is a biological process that requires aerobic microorganisms to decompose organic materials under controlled conditions. To be successful, the composting process must ensure the right combination of ingredients. The key parameters important to the process are oxygen concentration, moisture content, and carbon to nitrogen (C:N) ratio. Material structure (particle size distribution, level of contaminants, texture, and porosity) and pH are also important material qualities in a tunnel composting system, such as the one described herein.

#### **Oxygen Content**

The blower systems will allow continuously variable airflow to the waste material in the tunnel to maintain optimal oxygen and moisture content. Properly structured waste material, developed through initial material additions (such as recirculated oversized materials and pre-composted leaf and yard materials from the biofilters), blending, and mixing will help to maintain a homogeneous oxygen concentration within the waste by allowing the aeration system to

distribute the process air equally through the waste material. Proper structure of the waste material in the tunnels will also allow proper water drainage and moisture distribution when water addition is necessary. Temperature, a key parameter in the composting process, will be monitored to ensure pathogen and weed seed kill. The intermittent operation of the tunnel fans will also help to ensure that oxygen consumption rates do not exceed oxygen supply where easily degradable materials are used in the material mixture.

#### Moisture Control

The moisture content of the compost will be maintained at a moisture content of 40 to 55 percent by weight to ensure optimum microbial activity. The aeration and sprinkler watering systems will facilitate proper control of the composting process, as they enable manipulation of the moisture content, temperature, and oxygen content of the waste material.

#### pH

The system maintains near-neutral pH conditions, thereby ensuring optimal biological activity. The near neutral pH of the system also prevents excessive nitrogen losses during the composting process.

#### C:N Ratio

The target C:N ratio of the compost mixture will be between 25:1 and 35:1 to optimize the compost process.

#### Temperature

Temperatures in the tunnels will be monitored and controlled to maintain thermophilic conditions. Temperatures will be maintained above 55 degrees Celsius for a minimum of 3 days, in accordance with Interim Guidelines for the Production and Use of Aerobic Compost (updated in 2004) and the CCME Guidelines for Compost Quality (CCME 106 E, March 1996) to obtain pathogen and weed seed kill. Temperatures will be controlled by maintaining proper C:N ratios, moisture content, pH, and airflow/oxygen content.

The temperature of each composting tunnel will be monitored with the use of temperature probes distributed over the length of each tunnel and at the inlet and outlet air ducts. The probes are inserted from the tunnel roof deck after the composting tunnel has been filled to capacity.

#### Plant Feedstock Requirements

The underlying technology is sufficiently robust that it can easily accommodate changing characteristics in the incoming SSO or SSO/yard waste ratio. The facility will be able to accommodate variations in incoming feedstock materials. The facility will be capable of processing incoming contaminants mixed with SSO up to approximately 20 percent (by weight) contaminant material. This is in large part due to the robust process employed with respect to the separation of contaminant materials.

#### Compost Temperature

Overall process control for the system is very detailed and involves control of moisture, airflow, and temperature to advance the decomposition process during the tunnel retention time. The basic intent of tunnel composting under controlled conditions is to accelerate decomposition in



order to improve overall processing times and to improve the quality of the final compost. As a result, the material that is transported to the outdoor storage area has undergone an aggressive decomposition process, and this stabilized material will not undergo any further significant degradation of organics. It is noted that quantity of airflow and even retention time are not the primary factors involved in assessing the effectiveness of composting; rather, the complete process must be monitored and all relevant factors controlled. The technology as proposed places a state-of-the-art emphasis on process control and attention to the basic biology of composting, and has been crafted through years of operational experience.

A separate monitoring and control sequence is specified for the outdoor storage of compost. If the temperature of the compost piles begins to increase, this is indicative of continuing biological activity and a sign that the organic material has not been completely stabilized. This can further be an indication of a potential odour source. In order to confirm that compost piles are maintained at a temperature below 50 degrees Celsius, a stability test will be performed on all compost piles in the outdoor storage area to monitor operational indicators of biological activity and potential odour generation from the composted material. The stability test will involve the monitoring of the temperature of the compost piles on a continuous basis for the duration of the curing period. The stability test will involve the insertion of temperature probes into the compost piles a minimum of 1 m below the surface.

#### **6.5.2 CROSS-CONTAMINATION PREVENTION PROCEDURES**

In order to prevent any possible cross-contamination of mature compost or material in the processing stage with incoming fresh material, a number of procedures have been incorporated into the overall process.

The processing plant is designed and built to prevent any cross-contamination which could affect the quality of the final compost product. Some material flows from downstream processes, such as the oversized and intermediate fraction from the sieving and separation stage, are partially diverted back to upstream processes for the purpose of inoculation and additional retention time through the composting process. These materials have already been through the tunnel composting stage. However, downstream processes are never contaminated with material originating from upstream process stages.

A physical separation is strictly maintained at all times between final compost products and incoming fresh materials. Incoming truck traffic transporting fresh organics do not travel over the compost storage area and outgoing trucks carrying finished product are not allowed within the receiving hall or other building areas. The receiving hall stores fresh organics, chipped leaf and yard material, inoculation materials, and oversized materials from the screening line. Compost is never stocked in the receiving hall or in any other part of the building and is restricted to the outdoor compost maturation area.

The undersized fraction of screened/separated material that is directed to the outdoor compost storage area is transported via a conveyor belt to maintain a physical barrier at all times between the processing building and the compost storage/maturation area. The front-end loader dedicated to movement of the finished compost materials in the outdoor storage area will not be

used for any in-building operations. This dedicated loader will additionally be used to load outgoing trucks transporting the final compost material from the Site.

All water used for wetting of the finished compost materials will be fresh water and not taken from any stage of the compost process. Water will be diverted from rooftop storage or stormwater detention ponds, as necessary. Further, proper housekeeping activities will be observed at all times and Site operations and supervision are focussed towards preventing cross-contamination as part of the Site Operations Plan.

### **6.5.3 QUALITY ASSURANCE/QUALITY CONTROL PLANS**

OCL has developed the following QA/QC plans for the Proposed Facility. It will work to conform to ISO 9001:2000 standards or higher. All Orgaworld facilities operate in conformity with ISO 9001:2000 standards and are presently preparing to obtain a certification for ISO 14001 standards. CRA is also an ISO 9001:2000 certified company.

OCL will develop QA/QC plans for determining:

- Composition and characteristics of the incoming SSO;
- Composition of the residual waste;
- Characteristics of the effluent; and
- Quality plans for processing activities.

### **6.5.4 COMPOSITION AND CHARACTERISTICS OF THE INCOMING SSO**

OCL will complete a composition audit of unprocessed SSO material at least once per 3-month period in the presence of the City. This composition audit will be in conformity with the audit protocol provided in Schedule 5 attached hereto.

In addition to verifying and periodically auditing SSO composition characteristics, the facility will also use a tracking system. The system can be used to track which SSO loads have been processed in a certain batch of compost. The date of filling and emptying of each individual tunnel can be tracked, enabling identification of the waste composition of a tunnel.

### **6.5.5 COMPOSITION OF THE RESIDUAL WASTE**

The residual waste will be tested for moisture content and organic matter once every 3 months. The composite samples are to be collected over a 24-hour period at 1-hour intervals. The composite will then be used to fill the sample containers, and samples will be analyzed according to the pertinent standards.

### **6.5.6 CHARACTERISTICS OF THE EFFLUENT**

The Proposed Facility will require a net intake of water as a result of the evaporation losses coming from the tunnels and biofilter units. Discharge of effluent from the composting process is therefore generally not required. As a contingency, should effluent be generated requiring

disposal, it will be analyzed prior to discharge. This effluent will be incorporated into the facility as process water for the composting tunnels or transported off Site for disposal.

#### **6.5.7 PROCESS MONITORING AND CONTROLS**

The composting process is closely monitored to ensure that the end product will meet all applicable guidelines, and to ensure that environmental problems associated with odour or on-Site runoff will be avoided. By controlling the climate in the composting tunnels, the composting process can be directed and accelerated, resulting in a faster delivery of the end product while at the same time producing more consistent and homogenous compost. The process control system allows for an efficient, clean, and economical operation of the facility while maintaining quality of the final compost product.

The processing control system consists of an individual processing unit for each composting tunnel, biofilter, and bioscrubber, directly communicating with the equipment, which includes the ventilators providing airflow. Process controllers are installed within each composting tunnel, biofilter, and bioscrubber to allow for continuous process monitoring for each tunnel. Since each tunnel is provided with an individual controller unit, tunnel control occurs independently from one another. The outputs of all processing units are integrated in the process monitoring system located in the monitoring room. The process monitoring system allows quick access to a database integrating the performance data for all equipment.

Each controller continuously verifies the status of the ventilator dedicated to the respective tunnel. The system is equipped with an alarm system that notifies Site operating personnel in the event of a fan failure, or temperatures below those required for the process in the mixed airflow going into a composting tunnel. Sensors used for the measurement of process parameters are located in the ductwork of the aeration system. For the inlet process parameters, sensors are placed in the ducts leading to the tunnel. The parameters related to the outlet are measured in the outgoing ducts.

After the tunnel door has been closed, probes for the compost temperature are inserted from the top of the tunnel deck into the organics pile. The probes are removed again prior to emptying of the tunnel. Based on the readings from the sensors and the actual process requirements of each process phase, the process system controls and regulates the climate of each tunnel to optimize the biological process and to ensure compliance with regulatory requirements for composting.

The server for the process monitoring system communicates directly with the system controllers, which provides the visualization displays, data storage, and alarm handling. The process visualization contains control windows, two alarm windows and several trending screens. These trending screens provide a graphical overview of the historical data.

Control of the overall process can be accomplished from the central monitoring room. From this location, the operator is able to change set-points and control the selected components in manual mode or set the system to an automatic run status. All alarms generated by the control system are registered in the monitoring room and a list of historical alarms is maintained for process tracking.



As composting is a biological process that requires aerobic microorganisms to decompose organic materials under controlled conditions, a successful system must ensure that the correct parameters are controlled. Key parameters that are important to the process include oxygen concentration, moisture content, carbon to nitrogen (C:N) ratio, material structure (i.e., particle size distribution, texture, and porosity), and pH. The measures taken to control these key parameters were previously described in Section 6.5.1.

A summary list of the process parameters that will be monitored by the monitoring and control system is provided in the following:

- Tunnel temperature;
- Compost temperature;
- Air inlet temperature;
- Relative humidity in the composting tunnel;
- Oxygen content in the air;
- Pressure;
- Airflow;
- Outside temperature; and
- Outside relative humidity.

#### **6.5.8 ODOUR CONTROL TECHNOLOGY MONITORING**

A monitoring program will be developed for the Proposed Facility to ensure proper maintenance and operation of the biofilters and bioscrubber at the level required to prevent adverse effects. Parameters measured in the monitoring program will include:

- Pressure drop across the biofilter and bioscrubber;
- Moisture content of biofilter bed media;
- Temperature of biofilters and bioscrubber;
- Temperature of influent air; and
- Relative humidity of influent air.

OCL has also outlined a thorough contingency plan to deal with any potential odour issues arising from the facility. However, it is noted that this is an aerobic composting facility generally not typified by the same level of odour emissions to be expected from anaerobic plants. It is further noted that Orgaworld's aerobic composting facilities in The Netherlands have an excellent track record with respect to odour emissions.

#### **6.5.9 PERCOLATE MONITORING**

Under typical operating conditions there will be no net generation of percolate by Site operations, as this liquid is recycled through the composting tunnels in order to address the net moisture deficit of the aerobic process. If excess percolate is generated, it will be transported off Site to a suitable disposal facility.



#### **6.5.10 SURFACE WATER MONITORING**

A surface water monitoring program will be developed to be consistent with the requirements of Section 53 of the Ontario Water Resources Act (OWRA) and the Proposed Facility's C of A (Industrial Sewage Works). This plan will be developed in close conjunction with the City and the MOE to fully protect against any potential issues resulting from stormwater impacts related to the outdoor storage of compost. The existing plan has been developed through consultation with the City of London and the MOE London District Office. The plan will essentially ensure that monitoring will occur prior to each pond discharge and during each bypass event. If stormwater quality is unsuitable for discharge as required by the discharge criteria in the C of A (Industrial Sewage Works), the water will be retained for further treatment or otherwise disposed in an approved manner. No stormwater will be released from the Site to the adjacent water body until it can be demonstrated that there will be no adverse impact on that body.

An Operations Manual will be prepared for the stormwater management system. The manual will include an inspection/maintenance program, a public complaint/agency notification procedure, record keeping, and a contingency plan.

Effluent parameter which will be monitored prior to release of stormwater from the ponds is detailed in Table 6.1.

#### **6.5.11 GROUNDWATER MONITORING**

As previously discussed, liquid wastes generated by the Proposed Facility are expected to be negligible, as the composting process is water-deficient and requires a net input of water. All outdoor Site surfaces are paved impermeable surfaces and all runoff from the outdoor areas is directed to the stormwater management ponds for treatment prior to discharge. As such, no groundwater impact is expected from the Site.

#### **6.5.12 INDOOR AIR QUALITY MONITORING**

The Proposed Facility will be operated under negative pressure, and a minimum air exchange rate is specified in order to continually change air volumes. As front-end loaders will be running indoors, monitoring equipment is included in the facility and in the front-end loaders for carbon monoxide and nitrogen dioxide. Any alarm associated with these gases triggers a contingency plan that includes temporarily increasing the air exchange rate, shutting down front-end loaders, and evacuating the facility if necessary.

### **6.6 EMISSIONS MONITORING PLAN**

The following are considered potential emissions that may result from the processes occurring within the Proposed Facility: odour, dust, percolate, runoff, noise, and litter. Section 4.3, describes in detail the emission control and treatment system including the monitoring, prevention, and management of emissions and potential nuisances which Section 4.3 is set out in Schedule 13 attached hereto.

## 6.7 CONTINGENCY PLAN

As previously discussed, the processing capabilities for the Proposed Facility have been designed for reliability, flexibility, and, where necessary, on the basis of redundancy. Thus, the facility is capable of complying with all emission regulations and delivering compost products meeting the highest quality standards that can be sold to farmers and the potting soil industry.

The facility will be equipped with ample storage and processing capability to overcome downtime in the bag ripper/shredder or the tunnels and to meet peak processing requirements. In terms of process equipment and technology, the facility will be designed as such that an extended downtime of the entire process is extremely unlikely.

The contingency plan for the facility consists of specific procedures to be conducted to facilitate the implementation of the respective contingency measures. A four step process will be used to respond to the situation and implement the required procedure to address the situation. The following outlines the potential process upsets that may occur at the facility and the remedial actions that will be taken to correct the situation.

Additional information on specific contingency plans for spills, process and equipment failures, power interruptions, and strikes by operational staff is provided in Section 4.2.2.1.

## 6.8 WORKPLACE SAFETY

Safety policies for the Proposed Facility have previously been discussed in Section 4.2.3.1.

## 6.9 ENVIRONMENTAL MANAGEMENT SYSTEM

The following environmental management systems will be put in place to monitor compliance with regulatory, environmental, quality, and health and safety requirements.

### Regulatory Compliance

Regulatory compliance will be monitored and achieved through acceptance and compliance with the Cs of A issued for the Proposed Facility. Specified within the Cs of A will be required inspection, monitoring, and product quality testing procedures that will be performed according to MOE-identified guidelines.

Site inspections will occur on a daily basis with preventative maintenance occurring within manufacturer-specified timeframes. Site personnel will record all inspections within the facility's logbook. The monitoring program will be incorporated into the inspection program. The following areas of the facility will be inspected and monitored as required:

- Leaf and yard waste storage pad;
- Parking lot and exiting vehicles;
- Curing pad and compost storage area;
- Stormwater management system;

- Facility building:
  - Processing tunnels,
  - Ventilation system,
  - Biofilter,
  - Bioscrubber,
  - Stack,
  - Fire protection system,
  - Gas emission sensors,
  - Water holding tanks,
  - Residual waste storage; and
- Site property:
  - Security fencing,
  - Litter control, and
  - Vector and vermin control.

Testing that will occur at the facility will include:

- Source testing of the stack;
- Fugitive emission testing of the compost piles;
- Product quality testing using the more stringent of the MOE Interim Guidelines and the CCME Guidelines; and
- Effluent quality testing of all stormwater prior to batch discharge of the stormwater ponds.

In addition to Site inspections and product quality testing, remedial action measures will be developed for all potential sources of emission from the facility due to process upset and spills.

#### Environmental Compliance

Environmental compliance will be achieved through compliance with the environmental permits issued to the Site. As previously discussed, compliance with all regulatory authorities will assist in maintaining environmental compliance.

#### Quality Standards

All compost produced at the facility will need to undergo quality testing prior to sale of the UUP. The more stringent of the MOE Interim Guidelines and the CCME Guidelines for compost quality will be specified in the Cs of A for the facility. This testing will be performed according to the BNQ testing procedures. All quality analysis results will be recorded in the Site logbook.

#### Health and Safety Requirements

All Workplace Safety and Insurance Board (WSIB) requirements will be followed on Site as well as compliance with the Occupational Health and Safety Act (OHSA).

**SCHEDULE 13 -  
ADDITIONAL PROVISIONS FROM PROPOSAL**

**4.1.5 FACILITY PROCESS OPERATIONS**

**4.1.5.1 PRELIMINARY LAYOUT OF FACILITY**

The following systems are illustrated on the layout drawings:

- Receiving and pre-processing areas; and
- Storage areas for all materials used on Site.

In brief, the composting process employed at the Proposed Facility can be summarized as follows:

- Incoming trucks carrying SSO and leaf and yard material are weighed;
- The incoming SSO is unloaded in the receiving hall. Incoming leaf and yard material that is not commingled with the SSO is unloaded outside the receiving hall in the outside yard waste storage area;
- The fresh SSO is put into the bag ripper/shredder in order to open plastic bags. Sorting of the waste takes place after the composting process in order to increase the efficiency of the separation processes and to avoid problems typically associated with shredding of incoming organics that contain contaminant materials;
- Leaf and yard material received separately is shredded and pre-composted in the biofilter compartments. After pre-composting, the yard material is sieved and the oversize fraction is mixed with SSO;
- The SSO is mixed with previously composted organics. Through mixing, the waste is given proper structural characteristics and provided with a high rate of initial biological activity;
- The material is transported into the tunnels with front-end loaders;
- After tunnel filling, the doors are closed and the tunnels are sealed;
- Air is blown into the material through the floor and recirculated inside the tunnel;
- Leachate is collected from a tunnel drainage system and then re-used to moisten the material through sprinklers located on the ceilings of the tunnels;
- The material advances through various process stages including heating, hygienization, stabilization, and cooling;
- A computer-controlled system monitors the process using sensors throughout each tunnel and ensures the water content, air temperature, oxygen content, air pressure, and airflow are in the preset ranges for all stages of the process. These parameters are continually monitored and adjusted to maximize biological activity;



- In addition to the biofilter compartments, a state-of-the-art bioscrubber controls and treats odours from the areas where the material is being processed. A 40 m high emission stack further ensures odours are controlled;
- The air constantly flows through the system, ensuring all indoor areas are under constant negative pressure throughout the facility;
- After the composting process (10 to 11 days average), tunnels will be unloaded and the composted materials will be screened through a screening process. A magnet in the screening line separates the residual ferrous metals (nails, staples, etc.) from the adequate screen material. The screening process will result in three flows:
  - oversized, high calorific materials to be screened out further,
  - oversized material to be composted again and used as structure material (inoculants), and
  - compost ready for storage and final maturization outside in open air (particle size <10 mm); and
- Compost that is of correct size is sent to an outdoor compost storage area where additional maturization occurs.

It is noted that the recirculation of oversized materials separated during the post-processing screening stage to the beginning of the process has numerous benefits. First, this material is biologically active, having already gone through the composting process, thus yielding a high initial rate of biological activity to the incoming organics. Second, this material provides structure to the incoming organics. Finally, recirculation of this material allows organics to have a greater retention time through the composting process (i.e., the materials that require longer durations of composting are allowed to pass multiple times through the process). This process is designed specifically to efficiently compost a wide range of incoming organics, which subsequently results in a reduction of residual waste produced by the facility; for example, organic materials that are not fully degraded during the first pass through the composting process are not discarded but are instead allowed additional time in the tunnels.

All composting and incoming organics handling activities take place indoors. The only component of the operation that takes place outdoors is the storage of final compost.

The following sections provide detailed descriptions of the various process stages and include a description of operating parameters and process control.

#### **4.3.2 EMISSION CONTROL AND TREATMENT SYSTEM**

##### **4.3.2.1 FACILITY EMISSIONS**

The environmental control system for the Proposed Facility relates to the following elements: odour control, dust control, percolate control, runoff control, noise control, and litter control.

The following locations are considered potential sources of emissions:

- Leaf and yard waste storage area;
- Receiving hall, traffic halls, pump room, and screening hall;
- Processing tunnels; and
- Outdoor curing pad and storage area.

### Odour

Odours that may arise during handling and processing of the waste in the receiving hall areas will be contained by maintaining continuous negative pressure in the hall areas. It is noted that all processing and storage activities take place within the confines of the facility, except for storage of leaf and yard material and compost curing. The air drawn from the receiving hall is used as process air for the composting tunnels. All air flows coming from the hall area and tunnels pass through a biofilter and a bioscrubber to remove odorous compounds before final discharge into the atmosphere through an exhaust stack. Another design feature that has been implemented for the facility is a 40-m stack for additional dispersion of any potentially odorous compounds produced within the building. This is a feature not commonly used for composting facilities in Ontario and yields an additional odour control measure.

Regarding the compost storage piles, a prescribed methodology and inspection program for dealing with any potential odour releases will be developed and filed with the MOE. This includes continuous temperature monitoring of compost piles to provide any early indication of reheating issues, as well as contingency measures in the event of potential odour emission. This includes moving the material inside the facility for mixing with incoming organics and re-processing. A full dispersion modeling summary for the facility will be prepared and submitted as part of the C of A (Air) application and will be provided to the City upon award of a contract.

### Dust

Dust control systems will be required in areas where the compost is mechanically moved by loaders, conveyors, and screens. These areas are located within the receiving hall area, and since the halls are kept at negative pressure conditions, dust release from the hall to the atmosphere is prevented. Areas with high dust emissions (e.g. the sieves and separators) are also provided with a dust suppressant system.

Potential dust emissions are entrapped in the composting tunnels, biofilter, and bioscrubber as all the air drawn from the receiving hall is used as process air for the composting tunnels.

Turning or handling of the processed compost on the storage pad is not considered a significant source of dust emissions since the compost piles are near saturation. During the summer months, a watering program will be in effect to maintain the water content of the piles in order to prevent dust emissions and to ensure the quality of the compost.

### Percolate

The composting process requires a net intake of water, therefore there is no permanent effluent discharge provision required. In the unlikely event that excess percolate is generated, it will be transported off Site to an approved facility for disposal.

### Runoff

The stormwater management system comprises Site drainage, volumetric/peak-flow runoff control, and runoff quality control. Runoff will be fully managed on the Site. Rainfall from storm events will be collected and routed to a central ponding area, detained for a period of time, then gradually released to an existing nearby municipal drain/ditch. A portion of the runoff is used in processing as the composting process requires a net intake of water. The stormwater system will be constructed to accommodate the appropriate design storm and will release water only if quality criteria are met. In the event that quality criteria in the stormwater ponds are not met, a contingency plan will be developed that would remove this water from the Site and have it sent to an approved disposal facility. This general procedure for stormwater management was developed in close conjunction with the City of London and the Ministry of the Environment and the appropriate consultations will occur with the equivalent bodies in the City in order to refine the design parameters and procedures.

### Noise

The primary sources of noise which are expected at the facility include:

- Incoming and outgoing truck traffic;
- Operation of the bag ripper/shredder; and
- The front-end loader working in the outdoor compost storage area.

The truck traffic goes directly into the facility's enclosed bays where the trucks are emptied. Truck traffic will be on Site for a minimum amount of time where possible, and with minimum truck idling. There is expected to be little truck queuing outside of the building at the ultimate design capacity.

### Litter

The primary source of litter at the Site will be from materials that may fall from the haulage vehicles. All vehicle unloading activities will take place within the receiving hall. Housekeeping procedures for the facility include regular monitoring for litter surrounding the perimeter of building, outside storage areas, and the perimeter of the Site. This inspection will be performed on a daily basis.

The ensuing sections describe the emissions, the control and treatments system, and prevention strategies in more detail.

#### 4.3.2 EMISSION CONTROL AND TREATMENT SYSTEM

The environmental control system for the Proposed Facility relates to the following elements: odour control, dust control, percolate control, runoff control, noise control, and litter control.

Any odours that may arise during handling and processing of the waste in the receiving hall areas will be contained by maintaining continuous negative pressure in the hall areas. All air flows coming from the hall area and tunnels pass through a biofilter and a bioscrubber to remove odorous compounds before final discharge into the atmosphere through an exhaust stack. The air drawn from the receiving hall is used as process air for the composting tunnels.

The bioscrubber will have sufficient capacity to treat all process air as a standalone odour treatment. Thus, even when the biofilter is not operational during emptying and loading, the bioscrubber provides more than adequate odour treatment capacity. This high level of operational backup ensures that odour emissions will be minimized.

Dust control systems will be required in areas where the compost is mechanically moved by loaders, conveyors, and screens. These areas are located within the receiving hall area, and since the halls are kept at negative pressure conditions, dust release from the hall to the atmosphere is prevented. Areas with high dust emissions (e.g., the sieves and separators) are also provided with a dust suppressant system.

The wastewater recycling system collects all wastewater generated within the facility and recirculates the wastewater over the waste in the composting tunnels. Since the composting process requires a net intake of water, there is no permanent effluent discharge provision required except for sanitary waters. The latter are directed to a septic bed.