

THIS AGREEMENT made as of the ____ day of _____, 20__

BETWEEN:

BLUEWATER RECYCLING ASSOCIATION incorporated as a corporation without share capital in the Province of Ontario and having its Head Office in the Municipality of South Huron in the County of Huron, in the said Province,
(hereinafter called the "Association")

OF THE FIRST PART

-AND-

CORPORATION OF THE TOWN OF ST. MARYS incorporated as a special corporation without share capital in the Province of Ontario and having its Head Office in the Town of St. Marys in the County of Perth, in the said Province,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS by By-law the Municipality enacted that it become a member of the Association in order to provide for the collection of recyclables;

AND WHEREAS the Municipality wishes to provide its residents with an effective resource management program;

AND WHEREAS the Association has developed a Co-collection system allowing for the efficient collection of both waste and recyclables at the same time;

AND WHEREAS both the Association and the Municipality have common environmental objectives they wish to achieve through the operation of the Co-collection program such as:

cleaner collection through,

less fuel burnt thereby conserving nonrenewable resources;
less emissions produced thereby reducing atmospheric pollution;
less noise pollution; and
fewer impacts on our fragile transportation infrastructure
(while improving public safety by reducing the number of vehicles required to collect waste and recyclables);

and allowing for the development of safer disposal alternatives which will divert Solid Waste away from aged, less sophisticated disposal sites.

BOTH PARTIES hereby mutually covenant and agree that all services and supplies provided to the Municipality by the Association shall be on the following terms and conditions:

ARTICLE I - INTERPRETATION

DEFINITIONS

1.01 In this Agreement

(a) "Association" means the Bluewater Recycling Association and his, her, or its heirs, legal personal representatives, successors and assigns;

(b) "Agreement" means this agreement and all schedules annexed hereto, which are made a part thereof;

(c) "Base Co-collection Fee" means the fee chargeable by the Association for the added collection of Solid Waste in accordance with the terms of this Agreement. The Base Co-collection Fee is \$34.85 per unit per year, exclusive of all taxes payable at law and will be adjusted annually in accordance with the terms and conditions set out in Article 3 of this Agreement.

(d) "Co-collection" means the collection of all waste and recyclable materials from single unit dwellings, multi-unit dwellings, and designated IC&I (industrial/commercial/institutional) operations in the Municipality.

(e) "Disposal Site" means that site currently owned by the Town of St. Marys, governed by C of A #A150201 and more particularly described as follows:
Farm lot 24, Concession Thames, Town of St. Marys, County of Perth or other properly licensed site as mutually agreed upon.

(f) "Municipality" means the Corporation of the Town of St. Marys and his, her or its heirs, legal personal representatives, successors and permitted assigns;

(g) "Recyclable Materials" means those designated curbside collected materials, namely newspapers, boxboard, cardboard, fine paper, plastic, tin, glass and aluminum, as generated in the municipalities and includes all other materials which are deemed to be recyclable by agreement between the Association and the Municipality from time to time.

(h) "Solid Waste" means mixed household, institutional, commercial and industrial solid waste (including trash, refuse and garbage) that has the characteristics of non hazardous solid waste normally produced by residences, stores, other commercial and industrial buildings, schools and offices, provided that under no circumstances shall Solid Waste include waste which is not permitted to be disposed of at the Disposal Site

pursuant to applicable federal, provincial or local laws, regulations or orders, or the Provisional Certificate of Approval applicable to the Disposal Site. For the purpose of this Agreement, Solid Waste shall exclude any items that cannot be contained in the wheelie bins.

(i) "term" means the term hereby demised and, unless otherwise required by the context, any renewal or extension thereof, or such shorter periods as may be provided in this Agreement.

(j) "Unit" means every Wheelie Bin used in a single residential unit (e.g. a household or an apartment in a multi-unit dwelling complex) or any local Industrial, Commercial, or Institutional (IC&I) establishments for Solid Waste collection.

(k) "Wheelie Bin" means a two wheeled container with a capacity of approximately 35, 65, or 95 gallons provided by the Association, required for the provisions of collection services provided under this Agreement.

SEVERABILITY

1.02 If any one or more clauses or paragraphs or part or parts thereof in this Agreement be illegal or unenforceable it or they shall be considered separate and severable from the Agreement and the remaining provisions of the Agreement shall remain in full force and effect and shall be binding upon the parties hereto as though the said clause or clauses or part or parts of clauses had never been included.

NUMBER

1.03 Whenever a word importing the singular number only is used in this Agreement, such word shall include the plural and words importing gender shall include any other genders, where applicable.

HEADINGS

1.04 The headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or of any provisions thereof.

ENTIRE AGREEMENT

1.05 This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and cancels and supersedes all prior negotiations, representations and agreements, either written or oral. No change, alterations or modifications to this Agreement will be effective unless in writing and signed by the parties hereto.

SUCCESSORS

1.06 This Agreement, together with the Schedules annexed hereto and forming apart hereof, shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, legal personal representatives, successors and assigns (as limited by the provisions of this Agreement) and shall be interpreted in accordance with the laws of the Province of Ontario and the parties hereto attorn to the jurisdiction of the Province of Ontario.

REPRESENTATIONS

1.07 Each party represents that it is a legally organized and operating corporation, properly incorporated in the Province of Ontario having jurisdiction over its home office, is authorized to enter into and perform this Agreement in all respects, and to the best of its knowledge and belief is in full compliance with all applicable statutes, ordinances, rules, regulations, and orders.

ARTICLE II - SERVICES

CO-COLLECTION

2.01 The Association shall be responsible for providing trained labour and labour supervision for all Co-collection related activities.

2.02 **General Co-collection Duties** - The Association's general Co-collection duties will include, but not be limited to the following:

- Weekly collection of Solid Waste and Biweekly collection of Recyclable Materials from all residential units and IC&I units assigned with a Wheelie Bin.

2.03 **Receptacles for Materials** - The Association shall provide Wheelie Bins or other suitable containers for all Solid Waste and Recyclable Materials collection. No bags, boxes, or loose Recyclable Materials shall be accepted.

2.04 **Co-collection Procedures** - Wheelie Bins shall be placed as per the Association's driver instructions. Emptied Wheelie Bins shall be returned to the same location.

2.05 **Container Abuse** - Containers shall not be thrown or roughly handled by the Association.

2.06 **Co-collection Disputes** - In a case where a resident claims that his/her Solid Waste and/or Recyclable Materials were not collected, but a driver disputes this claim, the benefit will always be given to the resident.

2.07 **Co-collection Obstructions** - If the Association encounters any impassable obstructions including weather conditions, construction, etc. the Association will return at least once more to the obstructed area prior to 6:00 PM on the same day.

2.08 **Co-collection Routes** - Routes for Co-collection will be established at the Association's discretion.

2.09 **Scales** - The Association shall ensure that all drivers record gross, tare, and net weights upon every Co-collection related visit to the Disposal Site at the Municipality's cost, if any.

2.10 **Spills of Solid Waste and/or Recyclable Materials** - The Association shall immediately clean up any spills.

2.11 **Co-collection Hours** - Co-collection shall be completed Monday through Friday between 7:00 AM and 6:00 PM, except where holidays affect scheduling.

2.12 **Property Damage** - The Association shall repair any damage it causes to any residents' property immediately and at its own expense.

2.13 **Driver Experience** - The Association shall employ only properly licensed and experienced collection drivers.

2.14 **Driver Appearance** - Drivers shall be polite and well groomed at all times during daily operations.

2.15 **Uniforms** - The Association shall provide employees with a neat, clean, and distinctive work uniform including protective footwear, safety glasses, and gloves, which is to be worn at all times while on duty.

2.16 **Training** - The Association shall ensure that all drivers are properly trained in safe vehicle operation, circle checks, telecommunication and safe handling and clean up of all materials.

2.17 **Holidays** - There shall be no Co-collection on the following statutory holidays: New Year's Day and Christmas Day.

Collection shall be altered accordingly to avoid conflicts with holidays.

2.18 **Hazardous Material.** The material to be collected and processed by the Association pursuant to this Agreement is Solid Waste generated by the residents of the Municipality excluding radioactive, biomedical, volatile, highly flammable, explosive, toxic or hazardous material, and contaminants not acceptable as per Association specifications or Disposal Site licensing. The term "hazardous material" shall include, but not be limited to any amount of waste listed or characterized as hazardous by any federal or provincial law. Title to and liability for any waste shall remain with the

resident and/or the Municipality and the Municipality expressly agrees to defend, indemnify and hold harmless the Association from and against any and all damages, penalties, fines and liabilities resulting from or arising out of such waste.

PROCESSING AND DISPOSAL

2.19 The Municipality shall be responsible for the cost of disposal (i.e. landfill) and the Association the cost of transport to the designated Disposal Site.

2.20 **Material Segregation** - The Association shall segregate all recyclable materials and process the materials in accordance with market specifications.

PROMOTION

2.21 **Education and Promotion** - The Association shall from time to time throughout the term of this agreement conduct a promotional advertising campaign to promote the Co-collection program.

2.22 **Hotline** - The Association shall operate a manned information telephone service with a Watts line available throughout the Municipality during its regular business hours.

ARTICLE III - PAYMENT

COSTS AND REPAYMENTS

3.01 The Municipality agrees to pay the Association the Base Co-collection Fee, and all taxes payable at law for all Solid Waste Wheelie Bins in the Municipality. The Association agrees to remit all taxes payable at law by the Municipality to the appropriate governmental authority.

3.02 Any collection initiatives not covered in this agreement will be subject to negotiation between the Municipality and the Association and, upon successful completion of those negotiations, will be executed and considered to be addendum to this Agreement.

ADJUSTMENTS

3.03 The Municipality shall make a monthly adjustment to the Unit count, to compensate the Association for any additional Units being serviced in the Municipality's Co-collection area. This calculation will be based on the actual verified monthly Wheelie Bins count.

3.04 The Base Co-collection Fee will be adjusted on an annual basis commencing January 1, 2018 in accordance with the following:

a) the adjustment, expressed as a percentage, will be calculated to be Factor F% where CPI is the Consumer Price Index for Ontario, as calculated by Statistics Canada or its successor,

and

$$\text{Factor F\%} = \frac{\text{CPI for the September immediately preceeding the year to be adjusted}}{\text{CPI for the September in the second year preceeding the year to be adjusted}} \times 100\%$$

3.05 The Association reserves the right to make a fuel price adjustment on the monthly invoice of the Base Collection Fee if diesel prices exceed \$1.00 per litre. The adjustment would be calculated as follows:

$$\text{Adjustment\%} = (\text{Diesel}_c - \$1.00) \times 0.22\%$$

Diesel_c Current (most recent) monthly London retail Diesel price as published by MJ Ervin or its successor.

3.06 The Association reserves the right to adjust the rates hereunder based upon unusual changes in the market prices for recycled material, fuel and other operating costs including residue disposal fees.

INVOICING

3.07 The Association shall invoice the Municipality monthly in advance for the Co-collection service charges set out above, and the Municipality shall pay all invoices reasonably and properly submitted by the Association within thirty (30) days of date thereof. Interest may be charged by the Association at 1 1/2% per month (18% per annum) on any overdue accounts.

ARTICLE IV - TERM

4.01 This Agreement is for a term of five (5) years beginning the first day of November, 2017 and shall be renewed for successive terms without further action by the parties but may be terminated at the end of any term by either of the parties hereto by not less than one hundred and eighty (180) days prior written notice (registered mail).

4.02 The Association is providing Wheelie Bins for the provisions of the services hereto agreed in. Those containers are provided in this Agreement on the basis of their use for a full useful life estimated at 10 years. Should the Municipality terminate this Agreement and any subsequent renewals before the end of the Wheelie Bins' useful life, The Municipality shall have the following options:

(a) The Municipality shall gather and deliver the Wheelie Bins to the Association's Head Office in good working order ready for service elsewhere.

(b) The Municipality shall purchase the Wheelie Bins from the Association for the residual value based on a straight line depreciation method.

(c) The Municipality shall pay the Association to recover any Wheelie Bins from the residents at a cost of \$21.48 each subject to the same cost adjustments as this agreement, on the first attempt. Subsequent attempts at recovery to be charged at the normal recovery fee posted from time to time.

NON PERFORMANCE

4.03 (a) This Agreement shall immediately and automatically terminate without notice or other act:

(i) upon the attempted assignment by the Association of this Agreement or any of its rights or obligations hereunder without the previous written consent of the Municipality being given(pursuant to Article 9.01); or

(ii) upon the commencement or happening of any occurrence connected with insolvency, bankruptcy, dissolution or liquidation of the Association.

(b) Either party shall have the right to immediately terminate this Agreement at any time by notice in writing to the other party, if the other party shall commit a material breach of any of the obligations on its part to be performed or observed herein and fails as follows:

(i) where a remedy is possible within thirty (30) days, to remedy the breach within thirty (30) days of being required to do so by the first party; or

(ii) where a remedy is not reasonably possible within thirty (30) days, to propose a plan within thirty (30) days which is reasonably capable of providing a remedy and to diligently and continually execute the plan to remedy the breach.

(c) in the event that performance of this Agreement in the reasonable opinion of either party is made impossible by force majeure (pursuant to Article 8.01), then either party shall notify the other in writing and the Municipality shall either:

(i) terminate this Agreement forthwith and without any further payments being made; or

(ii) authorize the Association to continue the performance of the Agreement with such adjustments as required by the existence of the force majeure and agreed upon by both parties. In the event that the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that this Agreement shall be terminated.

d) The termination of this Agreement (howsoever occasioned) shall be without prejudice to any rights or obligations which shall have accrued prior to such termination and shall not destroy or diminish the binding force or effect of any of the provisions of this Agreement which are expressly or by implication provided to come into force after such termination.

e) Neither party shall be liable to the other for any compensation, loss or damage arising from termination of this Agreement provided such termination is reasonable.

ARTICLE V - COVENANTS

INSURANCE

5.01 The Association shall take out and keep in force a comprehensive policy of public liability and property damage insurance providing insurance coverage in respect of any one accident to the limit of at least five million dollars (\$5,000,000.00) exclusive of interest and costs, against loss or damage resulting from bodily injury to or death of one or more persons and loss or damage to property and such policy shall name the Municipality as an additional insured thereunder and shall protect the Municipality against all claims for damage or injury including death of any person or persons and for damage to any property of the Municipality or any other public or private property resulting from or arising out of any act or omission on the part of the Association and the Association shall forward a certified copy of the policy or certificate thereof, as the Municipality may direct.

MOTOR VEHICLE INSURANCE

5.02 The Association shall take out and keep in force an automobile and truck policy of insurance for public liability and property damage providing insurance coverage, including non-owned automobile coverage, in respect of any one accident to the limit of at least five million dollars (\$5,000,000.00) exclusive of interest and costs, against loss or damage arising in any way out of the operation by the Association, of any motor vehicle owned or operated by the Association and shall fully protect the Municipality against all claims for all damage or injury including death of any person or persons and for damage to any property of the Municipality or any other public or private property resulting from or arising out of the operation of any motor vehicle as aforesaid by the Association and the Association shall forward a certified copy of the policy or certificate thereof as the Municipality may direct.

ENVIRONMENTAL LIABILITY

5.03 The Association shall maintain or cause to be maintained environmental liability insurance which shall include, without limitation, loss or damage of whatsoever kind or nature against liability caused by Environmental Impairment arising out of the operations for claims because of bodily injury, property damage or Environmental Impairment arising from, but not limited to, such risks as the ownership and/or operation of; septic

systems, water systems, underground fuel tanks, unlicensed equipment. The environmental policy provides protection for expenses incurred to clean-up, or repair, the Insured's own property or property rented to the Insured; fines, penalties and punitive damages.

INDEMNITY

5.04 The Association shall indemnify and save harmless the Municipality from all losses, damages, expenses, action, causes of actions, suits, claims, demands and costs whatsoever which may arise either directly or indirectly by reason of any act, failure, neglect or refusal by the Association to comply with the Agreement, or arising out of the performance or nonperformance of the employees, servants, agents, of the Association, except that the Association shall not be liable where such failure, or neglect arises from the negligence of the Municipality and its employees or representatives.

LAWS AND REGULATIONS

5.05 The Association shall comply with all labour, police, health, sanitary and other laws and regulations imposed by public bodies having jurisdiction during the term of this Agreement.

All Federal, Provincial, and Local Laws and Regulations, as well as Policies established by the Municipality to govern operations of waste management, now or subsequently enacted, shall become a part of this contract and be complied with in the performance of all parts of the work. The Association shall enforce provisions of policies established by the Municipality, where such policies provide for such enforcement.

The Association shall be, or shall become, familiar with all such laws regulations and policies which in any manner affect those engaged or employed in the work, or affect facilities or equipment used in the work, or which in any way may affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof.

ARTICLE VI - COVENANTS

6.01 The Municipality covenants with the Association to pay all expenses hereby reserved in the manner herein provided.

6.02 The Municipality covenants with the Association to remain a full active member of the Association in good standing for the term of this agreement. The Municipality agrees to pay its respective share of the recycling costs, based on its applicable share count in the Association and posted operating share cost in effect at the time of billing, or other cost distribution in effect.

6.03 The Municipality agrees to maintain an acceptable volume based user pay system, for the Term of this Agreement.

ARTICLE VII - NOTICES

7.01 All notices or other documents required or which may be given under this agreement shall be in writing, duly signed by the party giving notice and delivered or transmitted by registered mail addressed as follows:

Association: Bluewater Recycling Association
P.O. Box 547
Huron Park, ON
N0M 1Y0

Municipality: Town of St. Marys
175 Queen Street East
St. Marys, ON
N4X 1B6

Any notice or document so given shall, unless hand delivered, be deemed to have been received on the second business day following the date of mailing, if sent by registered mail. In the event of interruption of the postal system by labor strike, such notice shall be hand delivered. Any party may from time to time by notice given as provided above change its address for service of notices.

ARTICLE VIII - FORCE MAJEURE

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

ARTICLE IX - ASSIGNING

9.01 (a) The Association will not assign, set over, transfer or sub-agreement, encumber or in any way deal with or part with the whole or any part of the agreement to anyone, for or during the whole or any part of the term, without written consent first being obtained from the Municipality, but such consent shall not be unreasonably withheld.

(b) Provided however, it is made a condition to the giving of such consent that:

(i) the proposed assignee of this Agreement shall agree with the Municipality in writing to assume and perform all of the terms, covenants, conditions and agreements by this Agreement imposed upon the Association herein in a form to be provided by the solicitor for the Municipality; and

(ii) in the event of an assignment consented to by the Municipality, the Association shall nonetheless remain responsible to the Municipality for the fulfillment of all obligations created by this Agreement.

ARTICLE X - ARBITRATION

10.01 (a) All matter in difference in relation to this Agreement shall be referred to the arbitration of a single arbitrator, if the parties hereto agree upon one; otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration.

(b) Each of the parties hereto will equally share the expenses of the arbitrator(s).

(c) The arbitrator(s) shall not have the right to alter or change any provisions in this Agreement, or substitute any new provision in lieu thereof or to give any decision inconsistent with the terms and provisions of this Agreement.

(d) The award and determination of such arbitrator or arbitrators, or any two of such three arbitrators, shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their respective proper officers duly authorized in that behalf.

BLUEWATER RECYCLING ASSOCIATION

By: _____

By: _____

CORPORATION OF THE TOWN OF ST. MARYS

By: _____

DRAFT

By: _____

Schedule A
Optional Services

The Association agrees to provide additional services from time to time as negotiated with the Municipality.

- 1) Manual Yard Waste collection shall be provided at a cost of \$805.49 per vehicle per day for the term of this agreement subject to the same adjustments outlined in this Agreement.
- 2) Collection of 65 gallon organic wheelie bins will be provided at a cost of \$80.55 per hour for the term of this agreement subject to the same adjustments outlined in this Agreement.

These optional services are available at the municipality's discretion.