

THORHILD WASTE MANAGEMENT FACILITY HOSTING AGREEMENT

Between

COUNTY OF THORHILD NO. 7

and

WASTE MANAGEMENT OF CANADA CORPORATION

Brownlee LLP  
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**SCHEDULES**

- Schedule "A" – Legal Descriptions of Lands
- Schedule "B" – County Boundary Map
- Schedule "C" – Voluntary Property Value Protection Plan Guidelines
- Schedule "D" – Impact Benefit Plan Guidelines
- Schedule "E" – Initial Transfer Station Legal Descriptions
- Schedule "F" – Guarantee
- Schedule "G" – Development Permit

**THORHILD WASTE MANAGEMENT FACILITY HOSTING AGREEMENT**

THIS AGREEMENT dated for reference the 11<sup>th</sup> day of September, 2012.

BETWEEN:

COUNTY OF THORHILD NO. 7

(hereinafter referred to as the "County")

and

WASTE MANAGEMENT OF CANADA CORPORATION,  
a corporation duly incorporated pursuant to the laws of the Province of Nova  
Scotia and registered to carry on business in the Province of Alberta

(hereinafter referred to as "WM")

WHEREAS WM has expressed an interest in constructing and operating a Class II Landfill within the boundaries of the County;

AND WHEREAS WM is the owner of the Lands;

AND WHEREAS WM has applied for and obtained a Development Permit from the County in respect of the Project;

AND WHEREAS WM has agreed to construct, operate, manage, maintain and repair the Project in accordance with the terms and conditions set out herein and the Development Permit;

THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and in consideration of the payment of Ten (\$10.00) dollars by each party to the other (the receipt and sufficiency of which is acknowledged by each party), the parties covenant and agree with each other as follows:

**ARTICLE 1- DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Agreement, unless there is something in the subject matter or context clearly inconsistent therewith, the following words and phrases shall have the respective meanings ascribed thereto:

- (a) "Alberta Environment" means the department or ministry, or departments or ministries of the government of the Province of Alberta having jurisdiction over landfills and environmental matters;
- (b) "Applicable Laws" means all statutes, laws, regulations, rules, orders, bylaws, standard guidelines, permits, licenses, consents, authorities and other requirements of any Governmental Authority having the force that apply to WM, its Subcontractors and any person for whom any of them is responsible at law and all or any portion of the Project;
- (c) "Approval" means the approval issued pursuant to the EPEA to WM to operate the Project as a Class II Landfill;

- (d) "Business Hours" means 7:00 a.m. to 7:00 p.m. from Monday thru Friday, and 8:00 a.m. to 5:00 p.m. Saturday, Sunday, and all statutory holidays, or such lesser hours as may be established in the Development Permit or as may be established from time to time;
- (e) "Class II Landfill" shall have the meaning ascribed to it in the *Waste Control Regulation*;
- (f) "Community Advisory Group" means the group of individuals constituted as set forth in Section 11.5 and formed for the purpose of receiving and addressing concerns of Users in relation to the operation of the Project as well as advising on the proposed distribution of Community Investment Fees, but, for greater certainty, without any legal power, authority or responsibility;
- (g) "Community Investment Fees" means such monies as have been and will be contributed by WM throughout the Term of this Agreement toward community and County sponsored programming, which fees, effective January 1, 2011, will be Fifty Five Thousand (\$55,000.00) Dollars per annum, subject to adjustment as provided for in Section 5.1;
- (h) "County" means the County of Thorhild No. 7, the boundaries of which are set out on Schedule "B" hereto;
- (i) "CPI" means the published "All Items" Consumer Price Index (not seasonally adjusted) for the Province of Alberta as published by Statistics Canada for the applicable period of time (calculated on a calendar year basis). If such "All Items" Consumer Price Index (not seasonally adjusted) for the Province of Alberta is calculated on a different basis or is no longer available, the appropriate conversion or substitution of the nearest comparable price index, shall be made with all appropriate adjustments;
- (j) "Development Permit" means the development permit for the Project issued by the County and initially in the form as attached as Schedule "G" hereto, as amended, supplemented, revised or replaced from time to time by the County and, where the context so requires, shall include any development agreement entered into between the parties to govern the obligations of WM to the County in relation to the construction and operation of the Project;
- (k) "Effective Date" means date of first acceptance of Waste into the Project at the commencement of commercial operations
- (l) "Encumbrance or Encumbrances" means any and all mortgages, charges, liens, pledges, restrictions, easements and all other charges, claims and title claims of any kind or nature whatsoever;
- (m) "EPEA" means the *Environmental Protection and Enforcement Act* (Alberta), including any Regulations or Regulatory Requirements relating thereto;
- (n) "Expiry Date" means date of last receipt of Waste into the Project at the termination of commercial operations;
- (o) "FOIP" means the *Freedom of Information and Protection of Privacy Act* (Alberta);
- (p) "Goods and Services Tax" means the Goods and Services Tax assessed under and pursuant to the *Excise Tax Act* (Canada) and shall include any other tax imposed supplementary thereto or in substitution therefore;
- (q) "Governmental Authority" means any federal, provincial or municipal government and any other body appointed by a government which has the ability to put into effect binding statutes, laws, regulations, rules, orders, bylaws, guidelines, permits and other requirements having the force of law;
- (r) "Hazardous Recyclables" shall have the meaning ascribed to it in the *Waste Control Regulation*;

- (s) "Hazardous Waste" shall have the meaning ascribed to it in the *Waste Control Regulation*;
- (t) "Hosting Fee" means the sum of Fifty Thousand (\$50,000.00) dollars, subject to adjustment as provided for in Section 5.2;
- (u) "Industry Standard Practice" means, as it relates to an industry, business or discipline, that standard of care and practice that a commercially reasonable and prudent Person carrying on business in such industry, business or discipline would be expected to adhere to in carrying on its affairs in the County;
- (v) "Initial Transfer Stations" means the transfer stations located as of the Effective Date near the Hamlet of Thorhild and the Hamlet of Long Lake established for the collection and storage of Waste for transportation to the Project and elsewhere and located upon the lands legally described on Schedule "E" hereto;
- (w) "Lands" means the lands located within the County and identified and legally described on Schedule "A" hereto;
- (x) "Losses" means all damages, losses, liabilities, costs, expenses (including, without limitation the full amount of all legal fees and expenses on a solicitor and his own client full indemnity basis and consultants' fees) and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;
- (y) "Municipal Property Taxes" means property taxes levied pursuant to Part 10 of the *Municipal Government Act* (Alberta), but exclusive of amounts attributable to education, seniors' housing and ambulance services;
- (z) "Operator Default" means any of the following events occurring after the Effective Date:
  - (i) a breach, violation or non-performance of any covenant, agreement or obligation set forth and contained in this Agreement on the part of WM to be fulfilled, kept or performed;
  - (ii) the inaccuracy of any representation or warranty given by WM in this Agreement in any material respect;
  - (iii) the failure of WM to comply with any provision contained within the Development Permit;
  - (iv) a breach, violation or non-performance of any Applicable Law or approval to operate issued by Alberta Environment, including without limitation, the issuance of an enforcement order pursuant to the *EPEA*;
  - (v) a court order is granted to wind up or dissolve WM and such order is not vacated or stayed pending appeal within the applicable period, or a director resolution for a voluntary winding-up of WM is passed;
  - (vi) if WM shall:
    - (A) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or all or a substantial part of its assets;
    - (B) be unable, or admit in writing its inability or failure, to pay its debts generally as they become due;
    - (C) make a general assignment for the benefit of creditors;

- (D) commit an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada); or
  - (E) commence any proceeding or other action under any existing or future law relating to bankruptcy, insolvency, reorganization or relief of debtors seeking to have an order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or an arrangement with creditors or file a defence admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding;
- (vii) if any petition, proceeding or other action shall be instituted in any court of competent jurisdiction against WM seeking an adjudication in bankruptcy, reorganization, dissolution or winding-up, liquidation, a composition or arrangement with creditors, the appointment of a trustee, receiver, liquidator or the like of WM or of all or any substantial part of its assets, or any other like relief in respect of WM under any bankruptcy or insolvency law, and such petition, proceeding or other action is not being actively contested by WM in good faith;
  - (viii) WM ceases to carry on its business;
  - (ix) an execution, sequestration or other process of any court becomes enforceable against WM or a distress or analogous process is levied upon the property of WM which has a material adverse effect on WM, its property, assets or its condition, financial or otherwise; or its ability to perform any of its duties or obligations under this Agreement, and such execution, sequestration or other process is not released, satisfied, discharged, vacated or stayed pending appeal within the applicable appeal period;
  - (x) if the holder of an Encumbrance or a lien unlawfully takes possession of any property of WM and such taking of possession is not being contested by WM in good faith and the holder of such Encumbrance or the lienor remains in possession of such property for a period of fifteen (15) consecutive days and such possession materially adversely affects the ability of WM to comply with its obligations under this Agreement;
  - (xi) any transaction contrary to the provisions of Section 17.1 including, without limitation, selling or entering into an agreement to sell any significant portion of the Project, the Lands or any other land which may be acquired by WM in the future for the operation of the Project, and which is not terminated or cancelled within fifteen (15) days after WM receives written notice to do so from the County;
  - (xii) any action or activity by WM which constitutes a material threat to the health, safety, convenience or general welfare of the citizens of the County or the environment;
- (aa) "Permitting" means the receipt by WM of all required permits, licenses, consents, authorities and approvals necessary for the management, operation, maintenance and repair of the Project from any Governmental Authority on terms and conditions acceptable to WM in its reasonable discretion, including, but without restricting the generality of the foregoing, the Development Permit and a permit to operate issued by Alberta Environment, but in each case only as and when such matters are not subject to any further statutory rights of appeal;
  - (bb) "Person or Persons" means and includes an individual, body corporate, corporation, partnership, trust, trustee, joint venture or unincorporated association;
  - (cc) "Prime Rate" means the rate of interest per annum which is established from time to time by a Schedule "1" Canadian Chartered Bank selected by the County in its sole discretion, as its reference point for establishing the interest rates chargeable on commercial loans generally. A statement or statements in writing made by a manager of the said bank indicating the Prime Rate



shall be final and conclusive as evidencing the Prime Rate during the operative time of the statement and shall not be open to dispute or challenge by the Parties unless manifestly incorrect. Any change in the said Prime Rate shall be effective on the banking day on which the said bank changes its Prime Rate and such rate of interest shall be changed automatically without notice to the Parties;

- (dd) "Project" means the Class II Landfill to be constructed and operated by WM upon the Lands and for certainty, excludes the processing, receipt, storage or disposal of Hazardous Waste or Hazardous Recyclables;
- (ee) "Recyclables" shall have the meaning ascribed to it in the *Waste Control Regulation*;
- (ff) "Regulatory Requirements" means any standards promulgated by any Governmental Authority and which may be applicable to the operation of the Project and which shall include, but shall not be restricted to, those requirements, guidelines and codes from time to time promulgated under, imposed by and expressed or contained within the Applicable Laws;
- (gg) "Services" means the services provided by WM to the Users hereunder including, but not restricted to:
  - (i) the management, operation, maintenance and repair of a Class II Landfill on the Lands;
  - (ii) the hauling of Waste from Transfer Stations to the Project and its disposal thereat;
  - (iii) the management, operation, maintenance and repair of a drop-off site or sites at the Project at which Users can deliver to and deposit Waste directly; and
  - (iv) such other disposal or recycling services as are offered by WM to Users at the Project;
- (hh) "Site Operations Manual" means the manual created and amended and updated from time to time by WM which sets forth the procedures to be followed by WM, in the management, operation, maintenance and repair of the Project and the hauling of Waste and Recyclables from the Transfer Stations;
- (ii) "Standard Operating Procedures" means those procedures to be followed by WM in the operation of the Project and the hauling of Waste from the Transfer Stations as set forth in the Development Permit, as such may be amended from time to time, subject to the terms of any Approval or any Regulatory Requirements;
- (jj) "Subcontractor or Subcontractors" means a person or persons having a contract with WM dealing with the performance of any obligations of WM under this Agreement or who has or have been hired by WM to perform any services on behalf of WM in relation to the Project, but for greater certainty, shall not include employees of WM;
- (kk) "Term" means the term of this Agreement commencing on the Effective Date and expiring on the Expiry Date;
- (ll) "Transfer Stations" means the Initial Transfer Stations and one other transfer station as may be created and located within the County from time to time during the Term;
- (mm) "User or Users" means any individual, body corporate, corporation, partnership, joint venture or unincorporated association residing in or doing business within the County and shall include the County and all municipalities located therein;
- (nn) "VAT" means any sum or sums as shall be levied by any applicable authority as a percentage of any payment by WM to the County hereunder either the Payment Amount or the payment by any

person for the supply of goods, services, and/or materials to all or any part of the Project (including, without limitation, Goods and Services Tax) and any similar tax, the payment or collection of which is, by the legislation imposing such tax, an obligation of the payee;

- (oo) "VPVPP" means the voluntary property value protection program developed by WM for residents of the County consistent with the general guidelines as set forth in Schedule "C" hereto;
- (pp) "Waste" mean any solid or liquid material or product or combination of them that is intended to be treated or disposed of or that is intended to be stored and then treated or disposed of at a Class II Landfill as permitted by Alberta Environment, and for certainty, but without restriction, shall include:
  - (i) residential, industrial, commercial and institutional municipal solid waste;
  - (ii) construction, renovation and demolition waste;
  - (iii) non-hazardous contaminated soils;
  - (iv) clean fill;
  - (v) Recyclables; and
- (qq) "*Waste Control Regulation*" means Alberta Regulation 196/96 pursuant to the *EPEA*, as amended from time to time.

#### 1.2 Preamble and Schedules

The Parties hereby confirm and ratify the matters contained and referred to in the preamble to this Agreement and agree that the same and the various Schedules hereto are expressly incorporated into and form part of this Agreement.

#### 1.3 Schedules

The following Schedules are expressly incorporated into and form an integral part of this Agreement:

Schedule "A" – Legal Descriptions of Lands  
Schedule "B" – County Boundary Map  
Schedule "C" – Voluntary Property Value Protection Plan Guidelines  
Schedule "D" – Impact Benefit Plan Guidelines  
Schedule "E" – Initial Transfer Station Legal Descriptions  
Schedule "G" – Development Permit  
Schedule "H" – Insurance

### ARTICLE 2- GENERAL INTENT

#### 2.1 General Scope and Intent

In the interpretation of WM's obligations under this Agreement, WM shall institute, utilize, adhere to and maintain standards, systems and procedures in the management, operation, maintenance and repair of the Project to a level that meets or exceeds Industry Standard Practice, provided, however, that under no circumstances whatsoever will any such standards, systems or procedures be less than those established by Alberta Environment or any other Governmental Authority having the force of law regarding the operation of the Project.

#### 2.2 Development Permit

WM shall comply with the terms of the Development Permit at all times throughout the Term. In

the event that the Development Permit contradicts a provision of this Agreement, the terms of the Development Permit shall apply.

2.3 Monitoring and Inspection

The County and its agents, servants and employees shall during Business Hours, on reasonable prior notice, be entitled to full and unrestricted access to all areas of the Project for purposes of monitoring and inspection of the operations of WM and compliance by WM with the provisions hereof, provided, however, that in so doing the County shall not prevent WM from fulfilling its obligations under this Agreement and shall not cause a breach of safety or security with respect to the operations of WM.

ARTICLE 3- TERM AND COMMENCEMENT

3.1 Term and Commencement

The Term of this Agreement shall commence at 12:01 a.m. on the Effective Date and unless terminated earlier as provided for within this Agreement, shall end at 12:00 a.m. midnight on the Expiry Date.

3.2 Termination by WM - Failure to Obtain Permitting

WM shall have the right to terminate this Agreement at any time by reason of its failure to obtain Permitting on terms and conditions acceptable to WM in its sole and unfettered discretion upon thirty (30) days' Notice to the County. Notwithstanding any such termination by WM, other than any monies held by the County pursuant to Section 5.7 at the time of termination, WM shall not be entitled to a refund or return of any monies previously paid by it to the County hereunder.

3.3 County Discretion

- (a) It is expressly understood and agreed that this Agreement is subject to the issuance such permits and/or approvals which may be required therefore by the County in its sole and unfettered discretion. The execution of this Agreement by the County shall in no way be considered or interpreted to be an approval, in whole or in part, of the Project for municipal planning purposes and WM acknowledges that the process to be followed by it in connection with any application for the issuance any permits or approvals as may be required by the County is a separate and distinct process. In determining whether to approve any such applications the County shall consider such issues, information or matters as it deems relevant and the negotiation or prior execution of this Agreement shall not be deemed in any way to mean the County is obliged to approve such applications.
- (b) WM acknowledges and confirms that the discretion of the County to consider or issue any planning approvals or determine whether any related requirements have been met has not been nor will in any way be fettered by the negotiation or execution of this Agreement.
- (c) Any work performed by WM in relation to the Project, whether upon the Lands or otherwise, prior to Permitting:
  - (i) shall be performed at the risk of WM and without any liability on the part of the County; and
  - (ii) is not evidence that WM has, should or may receive any relevant planning approvals.

## ARTICLE 4- REPRESENTATIONS AND WARRANTIES

### 4.1 WM's Representations and Warranties

WM represents and warrants to the County as follows and acknowledges that the County is relying upon such representations and warranties in entering into this Agreement that:

- (a) WM has the expertise, skill and judgment required to discharge its obligations pursuant to this Agreement;
- (b) WM has or will at the appropriate times, have all requisite skill, knowledge, expertise, equipment, facilities and resources, including qualified and competent personnel and Subcontractors, and all necessary agreements and other arrangements are, or will be, in place to enable WM to perform, or cause to be performed, all of its obligations hereunder;
- (c) WM is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (d) WM is familiar with the physical attributes and condition of the Lands and further, the County has made no representations or warranties of any nature or kind whatsoever as to the Lands or their suitability for the purpose intended,

### 4.2 Reliance

- (a) WM acknowledges and agrees:
  - (i) that its representations and warranties in this Article 4 are reasonable, irrevocable and unconditional; and
  - (ii) that the County would not have entered into this Agreement unless WM had made the representations and warranties set forth within this Article 4.
- (b) Further, it shall be deemed, without further action or notice, that all of WM's representations and warranties are given again effective as of Permitting with effect as, at and from Permitting and shall survive for a period of two (2) years from the expiry of the Term or earlier termination of this Agreement.

## ARTICLE 5- HOSTING FEES AND OTHER PAYMENTS

### 5.1 Community Investment Fees

- (a) WM has paid and will continue throughout the Term to pay directly to County community associations or organizations, the Community Investment Fees.
- (b) WM agrees to consult with the Community Advisory Group from time to time prior to determining which community associations or organizations are to receive the Community Investment Fees.
- (c) Should WM not obtain Permitting and elect to abandon the Project and terminate this Agreement pursuant to Section 3.2, the obligation of WM to continue paying the Community Investment Fees shall cease.
- (d) The Community Investment Fees for 2011 and for each year thereafter, will be escalated annually by the percentage increase in the CPI from the previous calendar year.
- (e) WM shall provide the County with an annual report advising as to the programs or associations to whom the Community Investment Fees have been donated and the amounts thereof.

- (f) Payments will be made throughout the calendar year to community associations and organizations, and shall be completed no later than March 30 of the following year.

5.2 Hosting Fee

- (a) The Hosting Fee for the first calendar year following the Effective Date, and for each year thereafter, will be escalated annually by the percentage increase in the CPI from the previous calendar year.
- (b) WM shall be entitled to reduce the amount of the Hosting Fee for any year by the amount of Municipal Property Taxes paid by it for that portion of the Lands used for operation of the Project in any year. In the event the Municipal Property Taxes for that portion of the Lands used for operation of the Project paid by WM in any year equal or exceed the sum of Fifty Thousand (\$50,000) dollars, or such greater amount as determined by Section 5.2(c) above, there shall be no obligation to pay the Hosting Fee for that year.
- (c) The obligation of WM to pay the Hosting Fee is only terminable in advance by WM if WM terminates this Agreement as provided for in Section 3.2 or if the agreement is otherwise terminated.
- (d) For the year during which the Effective Date falls, the Hosting Fee for the entire year shall be paid.
- (e) The Hosting Fee shall be paid annually, and shall be paid no later than March 30 for the preceding calendar year.

5.3 Waste Royalty

- (a) WM shall pay to the County a royalty fee of Two Dollars and 50 cents (\$2.50) for every metric tonne of Waste disposed of at the Project, other than Waste received within the county boundaries from its residents and businesses at no charge (the "Waste Royalty").
- (b) The royalty fee referred to in Section 5.3(a) will be increased at the beginning of the second calendar year following Effective Date, and thereafter annually, by the percentage increase in the CPI from the previous calendar year. For certainty, there will be no limit on the amounts payable by WM to the County pursuant to this Section 5.3.
- (c) For the purposes of verifying the amount of Waste received at the Project, the applicable books and records of WM shall be subject to audit and inspection by the County upon reasonable prior written notice, as provided for in Article 16, provided such audits or inspections shall not take place more frequently than twice per year. The County shall initially bear the cost of any such audit. If such audit discloses a shortfall of the amounts payable to the County in excess of five (5%) percent, WM shall pay any shortfall and interest at the Prime Rate plus five (5%) percent computed from the date of underpayment on the shortfall and shall reimburse the County for the entirety of its audit costs, including, without limitation, all auditors costs and expenses of any nature whatsoever and legal and other third party expenses on a full indemnity basis.
- (d) The royalty fee shall be paid monthly. The monthly payment shall be made no later than 60 days following the end of each month.

5.4 Payment for Closure of County's Existing Landfills

WM shall pay or provide to the County from time to time throughout the term of this agreement money or money's worth to contribute towards environmental cleanup projects within the County, whether by way of cash, disposal facilities or, at the County's reasonable discretion, other form of contribution, subject however to a