

**REGIONAL BIOSOLIDS COMPOSTING FACILITY  
JOINT OPERATING AGREEMENT**

THIS AGREEMENT dated for reference November 1, 2011

BETWEEN:

**CITY OF KELOWNA**

City Hall  
1435 Water Street  
Kelowna, BC V1Y1J4  
("Kelowna")

AND:

**CITY OF VERNON**

City Hall  
3400 - 30th Street  
Vernon, BC V1T5E6  
("Vernon")

WHEREAS:

- A. Kelowna and Vernon are both local governments pursuant to the *Local Government Act, R.S.B.C. 1996 c 323* (the "*Local Government Act*");
- B. Both Kelowna and Vernon (referred to hereafter collectively as the "Municipalities" or individually as a "Municipality") are responsible for wastewater treatment and management within their respective corporate boundaries as well as limited areas outside of their corporate boundaries;
- C. The parties have cooperated to establish a regional biosolids composting facility (hereinafter called the "Facility") which will serve the long term needs of both Municipalities in dealing with biosolids from their respective wastewater treatment facilities; the Vernon Water Reclamation Centre ("VWRC") and the Kelowna Wastewater Treatment Plant ("KWWTP");
- D. The Facility is generally described as an aerated static pile biosolids composting facility designed to produce a Class A biosolids compost suitable for unrestricted distribution;
- E. The Facility, as constructed, has processing capacity until and including the 2018 year for dewatered biosolids production from the KWWTP and VWRC;

F. The Facility has been designed to accommodate projected dewatered biosolids production in the 10 year horizon from the KWWTP and VWRC and incremental expansion of the aeration capacity at the Facility will be required;

G. Kelowna and Vernon have entered into a Regional Biosolids Composting Facility Joint Operating Agreement made the 1st day of June 2007, which outlines the obligations and commitments of each of them with respect to the Facility (the "Original Operating Agreement"), and now wish to enter into this agreement to modify and replace the Original Operating Agreement.

IN CONSIDERATION of the mutual premises and assurances set out herein, the Municipalities AGREE AS FOLLOWS:

## **1. NATURE OF AGREEMENT AND SCHEDULES**

a. Vernon and Kelowna agree that this agreement sets out the mutual understanding of the two Municipalities with respect to the operation and future expansion of the Facility, and the future acquisition of the property on which a portion of the Facility has been constructed and other property to enable such expansion.

b. Each Municipality acknowledges and agrees that future expansion of the Facility or the future acquisition of the property on which a portion of the Facility has been constructed and certain other property for further Facility expansion may necessitate further approvals or consents of each Municipality and that this agreement does not in any way fetter or limit the discretion of the City Council of each Municipality to approve the need for further expenditures, borrowing or the need for third party consents with respect to such future expansion and acquisitions.

c. The following schedules shall form part of, and be incorporated into, the terms of this agreement:

Schedule A: Commonage Compost Site Equipment Allocation

Schedule B: Vernon Fees and Charges Bylaw No. 3909

Schedule C: Criteria Agreement

## **2. TERMS**

a. Both Kelowna and Vernon agree to participate in the operation of the Facility and be bound by this agreement until at least December 31, 2018 and continuing after that date unless either Municipality withdraws in accordance with section 3 or this agreement is terminated in accordance with section 2.c. or section 21 below.

b. The effective date of this agreement is November 1, 2011.

c. This agreement will remain in effect until terminated by mutual agreement or until either Kelowna or Vernon wish to withdraw from the Facility as detailed in section 3 below.

d. Kelowna and Vernon agree to enter into negotiations to renew or extend this agreement at least one year in advance of December 31, 2018.

e. Vernon agrees and acknowledges that Kelowna is the day to day "Operator" of the Facility.

### **3. WITHDRAWAL FROM FACILITY**

a. A Municipality may elect to withdraw from this agreement (hereinafter referred to as the "Withdrawing Municipality") after December 31, 2018 provided that the Withdrawing Municipality provides at least one year's written notice to the other Municipality (hereinafter referred to as the "Remaining Municipality") and upon doing so, the Withdrawing Municipality's obligations under this agreement will cease at the conclusion of the one year's notice, save as expressly provided herein.

b. The Withdrawing Municipality will have no claim for compensation of any kind from the Remaining Municipality for any capital contributions, unless otherwise agreed to in writing by the Municipalities. With respect to any parcels of land upon which the Facility is located at the time of withdrawal that are jointly owned by the Municipalities, the Withdrawing Municipality will continue to have whatever ownership interest it has in such land pursuant to the Land Acquisition Agreement between the Municipalities dated for reference July 31, 2012 (the "Land Acquisition Agreement"), however, the Remaining Municipality will be permitted to continue to use such parcels of land for the purposes of the Facility.

c. The Remaining Municipality shall retain the Lease, the Option/RFR and the RFR (as per terms defined in section 5 below) to the extent they are still in force. The withdrawal by the Withdrawing Municipality shall operate as an assignment of all of its rights under those agreements to the Remaining Municipality. The Withdrawing Municipality shall execute and deliver to the Remaining Municipality any documents, deeds, instruments and do and perform such acts as may be reasonably necessary to permit the Remaining Municipality to exercise the rights given to it under those agreements. The Withdrawing Municipality shall have no claim for compensation of any kind from the Remaining Municipality with regards to these rights.

d. If, at any time, both Municipalities elect to no longer participate in the Facility, all costs associated with the demobilization of the Facility and restoration of the site will be shared as if they were a capital cost under section 14.d below and any revenue generated from the disposition of the assets of the Facility will be divided between the Municipalities in the same manner, except with respect to any parcels of land upon which the Facility is located, if such parcels are sold, the revenue generated from such sale will be shared in accordance with each Municipality's ownership interest as determined under the Land Acquisition Agreement.

### **4. FACILITY LOCATION**

a. The Facility is located within the Regional District of North Okanagan ("RDNO") approximately 3.4 km southwest of the intersection of Bench Row Road and Commonage Road.

b. The Facility is located on two parcels legally described as follows:

i. Parcel Identifier: 005-037-506, Lot A, Section 7, Township 9, Osoyoos Division Yale District,

Plan 26702, except Plan KAP 64450 ("Lot A-1"); and  
ii. Parcel Identifier: 026-463-971, Lot A, Section 7 and 8, Township 9 Osoyoos Division  
Yale District, Plan KAP 79361 ("Lot A-2").

## **5. LEASE AND LAND OWNERSHIP**

- a. Kelowna and Vernon are the registered owners in fee simple of Lot A-1.
- b. Kelowna and Vernon acknowledge and agree that they are both party to a right of first refusal agreement dated for reference September 23, 2005 for lands legally described as: Parcel Identifier: 006-518-656, Lot 1, Sections 7, 8 and 17, Township 9, Osoyoos Division, Yale District, Plan 23286 except plans 26702, KAP63396 and KAP79361 ("Lot 1") which is registered against title to Lot 1 as charge no. KX149499 (the "RFR").
- c. Vernon and Kelowna acknowledge and agree that they are both party to a lease agreement for Lot A-2 dated for reference September 23, 2005 and registered against title to Lot A-2 as charge no. KX149502 (the "Lease")
- d. Vernon and Kelowna acknowledge and agree that they are also both parties to an option to purchase and right of first refusal agreement dated for reference September 23, 2005 and registered against title to Lot A-2 as charge no. KX149500 (the "Option/RFR").

## **6. OPERATION OF THE FACILITY**

- a. The Facility will be managed and operated by Kelowna. Where this agreement provides that "the Facility" may do something, Kelowna shall have authority to do such thing on behalf of the Facility.
- b. Kelowna will establish account numbers to track Facility operating costs including, but not limited to, wages, utilities, equipment, materials, laboratory analysis, etc.
- c. Kelowna will be responsible for ensuring that all bills associated with the operation of the Facility are paid in a timely fashion.
- d. Kelowna will be responsible for the preparation of the annual operating budget for the Facility.
- e. A common services allocation to cover costs borne by Kelowna's administration and finance divisions associated with operating the Facility will be included as part of the annual operating budget for the Facility.
- f. An appropriate amount will be included in the Facility annual operating budget allocation for equipment replacement, maintenance and overhead for those pieces of equipment that were acquired as part of the capital component of the Facility as set out in Schedule A attached to this agreement. Vernon will be informed of the amount of the equipment allocation through the annual operating budget. Kelowna will provide on an annual basis, a summary of the amount of funds in reserve to replace the Schedule A equipment.
- g. Other equipment required in the future either as a change in operations, as a required component due to "contracting in" or as a result of expansion will be deemed Facility operational requirements and be purchased and maintained by Kelowna. The Facility will pay either an annual equipment fee for

equipment reserve and maintenance to Kelowna or actual operating costs depending on the mutual agreement of both parties prior to the purchase. The three loaders currently used at the Facility will continue to be charged out at actual cost and their debt repayment will be provided for in the operating budget of the facility. A copy of the annual operating budget for the Facility will be provided for review and approval by Vernon at least 30 days prior to submission to Kelowna City Council. Should Vernon have questions regarding the annual operating budget for the Facility, Vernon may request that the Kelowna Utilities Services Manager or designate, present the annual operating budget for the Facility to Vernon and be available to answer questions.

- i. The annual operating budget for the Facility will be subject to Kelowna and Vernon Council approvals.
- j. If either Council fails to approve the annual Facility operating budget for a given year by January 31st of that year, the parties agree to resolve the matter via dispute resolution as described in section 25.
- k. Vernon will provide reclaimed water from the VWRC to the Facility for the term of this agreement. The annual fee for the supply of reclaimed water to the Facility will be as per the Vernon Fees and Charges Bylaw No. 3909, a copy of which is attached to this agreement as Schedule B. For billing purposes, the Facility will be classified as a commercial operation with an equivalent irrigated area of 2.0 Ha.
- l. Kelowna may use contractors or Kelowna staff to operate the Facility.
- m. Kelowna will be responsible for the procurement, management and administration of all contract services. Vernon will not be a party to such contracts.
- n. Kelowna will inform Vernon at least 30 days prior to the issuance of any tender, request for proposals, request for quotations or request for statement of qualifications related to the operation of the Facility.
- o. Vernon and Kelowna management staff will meet at least every three months to review Facility operations and finances and each Municipality shall provide full disclosure and unfettered access to the other Municipality of all financial, operational and other records for the Facility.

## **7. DECISION MAKING**

a. Unless otherwise indicated in this agreement, and without fettering the discretion of either Municipality's councils, the parties shall co-operate and agree on all major decisions and significant matters for the Facility including any matters relating to the lease, the RFR, the Option/RFR, land acquisition, any contracts or expenditures exceeding \$10,000, and any borrowing or any agreements where a liability is incurred for more than 5 years.

## **8. TERMS AND CONDITIONS UNDER WHICH DEWATERED BIOSOILDS WILL BE ACCEPTED AT THE FACILITY**

a. Kelowna and Vernon acknowledge that the Facility operates independently of both the KWWTP and the VWRC and that the KWWTP and the VWRC are customers of the facility.

b. The Facility will set the terms and conditions upon which the Facility will accept dewatered biosolids from the KWWTP and the VWRC. The Facility may specify the following terms and conditions;

- i. The days and times during which dewatered biosolids may be discharged at the Facility;
- ii. The location at the Facility where dewatered biosolids must be discharged;
- iii. The minimum and maximum moisture content of dewatered biosolids that may be discharged at the Facility;
- iv. Requirements for analysis of dewatered biosolids including the frequency of analysis and analysis parameters; and
- v. Maximum metals content that may be present in the dewatered biosolids discharged at the Facility to ensure that Class A biosolids compost criteria are met in the end product.

c. The Facility will direct that Kelowna and Vernon are to weigh loads of dewatered biosolids from the KWWTP or the VWR, using a Certified Scale and that copies of the scale tape be provided to the Facility.

d. The Criteria for material acceptance and processing is set out in a separate "Criteria Agreement" between the Facility and the VWRC and WWTP attached to this agreement as Schedule C.

e. Kelowna and Vernon acknowledge that the Facility may impose surcharges for the discharge of dewatered biosolids or for criteria exceptions which do not meet the terms and conditions set by the Criteria Agreement. Any surcharges will reflect the additional cost of handling and processing such material in order to produce Class A Biosolids Compost.

## **9. ALLOCATION OF NET OPERATING COSTS**

a. The operating costs for the Facility will be allocated between Vernon and Kelowna as follows:

i. Vernon's operating cost allocation shall be the fraction determined by the following: Total mass (in tonnes) of dewatered biosolids from the VWRC discharged at the Facility / Total mass (in tonnes) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility.

ii. Kelowna's operating cost allocation shall be the fraction determined by the following: Total mass (in tonnes) of dewatered biosolids from the KWWTP discharged at the Facility / Total mass (in tonnes) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility.

b. The Parties acknowledge and agree that since entering into the Original Operating Agreement, the share of net operating costs allocated to Kelowna and Vernon have been amended every six months with the share of net operating costs for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of each calendar year based on the actual mass of dewatered biosolids discharged at the Facility for processing during the 3<sup>rd</sup> and 4<sup>th</sup> quarters of the preceding year and the share of net operating costs for 3<sup>rd</sup> and 4<sup>th</sup> quarters of each year based on the actual mass of dewatered biosolids discharged at the Facility for processing during the 1<sup>st</sup> and 2<sup>nd</sup> quarters of the same year. The Parties agree that they will continue this arrangement for the duration of this agreement.

c. Kelowna will provide Vernon with details of the calculation of the allocation of Facility operating costs within 45 days of the end of the 2<sup>nd</sup> quarter and the 4<sup>th</sup> quarter of each year during the term of this agreement.

## **10. ALLOCATION OF REVENUE FROM PRODUCT SALES**

a. The Kelowna Finance Department will establish account numbers to track revenue generated from the sale of Class A biosolids compost produced at the Facility (the "Compost").

b. All revenue generated from the sale of the Compost will be applied to cover Facility operating costs during the quarter in which the revenue was received.

c. Kelowna will provide Vernon with details of the revenues generated from the sale of the Compost within 45 days at the end of the 2<sup>nd</sup> and 4<sup>th</sup> quarter each year during the term of this agreement.

d. All costs related to the marketing of the Compost will be included as an operating cost of the Facility.

e. If at the end of the calendar year, revenue for the year exceeds Facility operating costs for the year (including any amounts required to be set aside under this agreement for future expenditures), such excess revenue shall be allocated to each Party as follows:

i. Vernon's allocation of net revenues shall be the fraction determined by the following: Total mass (in tonnes) of dewatered biosolids from the VWRC discharged at the Facility for the

calendar year/ Total mass (in tonnes) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility for the calendar year; and

ii. Kelowna's allocation of net revenues shall be the fraction determined by the following:  
Total mass (in tonnes) of dewatered biosolids from the KWWTP discharged at the Facility for the calendar year/ Total mass (in tones) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility for the calendar year.

## **11. DETERMINATION AND PAYMENT OF NET OPERATING COSTS**

a. Vernon will pay to Kelowna, on a quarterly basis, its share of the annual net Facility operating costs allocated to it in accordance with section 9 above.

b. Kelowna will invoice Vernon prior to the end of each quarter during the term of this agreement for Vernon's quarterly share of the budgeted annual net operating costs of the Facility and Vernon shall pay the invoiced amount to Kelowna within 30 days of receipt of the invoice.

c. Within 45 days of each year during the term of this agreement or, if applicable, within 45 days of the termination of this agreement, Kelowna shall determine the actual net operating costs for the Facility during the previous year, or portion thereof in the event of termination, by subtracting all revenues generated from the sale of Compost and sales of service from total actual Facility operating costs expended during the same time period and shall provide written documentation to Vernon confirming the calculation of the actual operating costs during that time period.

d. Within 45 days of determining the actual net operating costs of the Facility in accordance with section 11.c. Kelowna and Vernon shall ensure that all necessary adjustments have been made to ensure that Vernon has paid the correct amounts for its allocation of actual annual net Facility operating costs. If it is determined that Vernon has paid an amount that is greater than required, any such overpayment will be applied to the first quarterly payment by Vernon during the following year. Or, if the agreement is terminated, Kelowna shall pay to Vernon the amount of the overpayment within 45 days of determining the amount of the adjustment. If it is determined that Vernon has paid an amount that is less than required, Kelowna will invoice Vernon for the amount owing, with payment to Kelowna by Vernon to be made within 45 days of receipt of the invoice.

## **12. OTHER CUSTOMERS**

a. Local governments agencies located within the Regional District of North Okanagan ("RDNO") or the Central Okanagan Regional District ("CORD") may be permitted to discharge dewatered biosolids from municipal wastewater treatment facilities at the Facility with the mutual agreement of the Municipalities.

b. Acceptance of dewatered biosolids from other local government agencies located within the RDNO or the CORD at the Facility will be considered on a case by case basis. The Facility is under no obligation to accept dewatered biosolids from any other local government agencies but may accept biosolids from other jurisdictions with the mutual agreement of the



Municipalities if it benefits the Facility.

c. Should the Municipalities agree that the Facility accept dewatered biosolids from other local government agencies located within the RDNO or the CORD, a per tonne fee will be levied for all dewatered biosolids discharged at the Facility and those fees shall be considered as revenues in the same manner as those detailed in section 10 above. The per tonne fee will be determined by Kelowna and Vernon and may be reviewed and/or amended from time to time.

### **13. OTHER FACILITY PARTNERS**

a. Kelowna and Vernon acknowledge that in the future, other local government agencies located within the RDNO or the CORD may have an interest in becoming partners in the Facility.

b. Kelowna and Vernon agree to consider allowing other local government agencies to become partners in the Facility on a case by case basis.

c. Specific terms and conditions under which other local government agencies would be allowed to become partners in the Facility will be compiled and subject to approval by the Councils of both Kelowna and Vernon.

d. Should other local government agencies become partners in the Facility, this agreement will be amended to include the new partners(s).

### **14. FACILITY EXPANSION. CONSULTING SERVICES AND LAND ACQUISITION**

a. Kelowna and Vernon acknowledge that incremental expansion(s) of the Facility will be required in the future in order to accommodate increases in dewatered biosolids production at the KWWTP and the VWRC and that it is the desire of both Vernon and Kelowna to exercise the Option/RFR to purchase Lot A-2 once the Option/RFR can be exercised.

b. Vernon will be notified, in writing, by Kelowna of any requirements to undertake capital works to increase Facility capacity in advance of the additional works being required. The notification shall include justification for the works, a description of the required works and an order of magnitude cost estimate for the works. Unless otherwise agreed by the Municipalities, approval for the proposed capital works and any commitment of funds or expenditure for the capital works shall be subject to the approval of each of the Councils of Kelowna and Vernon in accordance with the provisions of the *Community Charter, S.B.C. 2003, c. 26* as amended from time to time (the "*Community Charter*") and the *Local Government Act*.

c. Kelowna and Vernon agree that from time to time, engineering consulting services will be required to review Facility operations and to assess needs for capital works. Costs for consulting services will be allocated between the Municipalities in the same manner as detailed in section 14.d. below.

d. Costs for capital works required under section 14.b. shall be allocated between Kelowna and Vernon using the same ratio determined under section 9 above provided that the calculation of the ratios will be based on the period from the date of this agreement until the end of the most recent quarter ending before the capital works are approved by both parties. For greater certainty, these ratios shall be as follows:

i. Vernon's capital cost allocation shall be the fraction determined by the following: Total mass (in tonnes) of dewatered biosolids from the VWRC discharged at the Facility for the period from the date of this agreement to the date that the capital works are agreed to/ Total mass (in tonnes) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility from the date of this agreement until the end of the most recent quarter ending before the capital works are approved by both parties; and

ii. Kelowna's capital cost allocation shall be the fraction determined by the following: Total mass (in tonnes) of dewatered biosolids from the KWWTP discharged at the Facility for the period from the date of this agreement to the date that the capital works are agreed to / Total mass (in tonnes) of dewatered biosolids from the KWWTP and the VWRC discharged at the Facility for the period from the date of this agreement until the end of the most recent quarter ending before the capital works are approved by both parties.

e. Kelowna and Vernon will each be responsible for their portion of future capital works and property acquisition costs and will make their own arrangements for funding, independent of the other regarding borrowing or other financing obligations necessary to fund future capital works and property acquisition.

f. Any further capital commitments in relation to the Facility will also be subject to approval by the Municipal councils of Kelowna and Vernon.

## **15. COMMUNICATIONS PROTOCOL**

a. Kelowna staff will be responsible for dealing with inquiries/complaints received from the general public regarding the operation of the Facility.

b. Kelowna will coordinate public announcements or media releases in connection with the Facility and Vernon will be notified and reasonably consulted at least 7 days in advance of any such public announcement or media release.

## **16. COMPLIANCE WITH REGULATORY REQUIREMENTS**

a. Kelowna and Vernon agree that the Facility will be operated so as to comply with all regulatory requirements and that both Municipalities will exercise all reasonable due diligence to comply with all regulatory requirements.

b. Kelowna and Vernon will work cooperatively to ensure that all necessary regulatory approvals are obtained and that both Kelowna and Vernon will be named in any regulatory approvals.

## **17. CONFIDENTIALITY**

a. Kelowna and Vernon will at all times treat as confidential, all information or material supplied or obtained by either Municipality or its subcontractors as a result of this agreement and will not permit

the publication, release or disclosure of the same without the prior written consent of the other Municipality, subject always to the *Freedom of Information and Protection of Privacy Act, R.S.B.C., 1996, c. 165*.

#### **18. CONFLICT OF INTEREST**

a. Neither Kelowna nor Vernon will, during the term of this agreement, perform a service for or provide advice to any person, firm or corporation where the performance of the service or provision of the advice may, in the reasonable opinion of the other Municipality, give rise to a conflict of interest.

#### **19. INDEMNIFICATION**

a. Kelowna and Vernon will indemnify and save harmless the other Municipality and officials, employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that such Municipality may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the other Municipality or of any agent, employee, officer, director or subcontractor of the other Municipality pursuant to this agreement.

#### **20. INSURANCE**

a. Both parties will obtain, maintain and pay for during the term of this agreement the following insurance:

- i. Comprehensive Public Liability and Property Damage in the amount of \$5,000,000;
- ii. Automobile Insurance (owned and non-owned) in the amount of \$5,000,000;
- iii. Professional Liability in the amount of \$5,000,000.

b. In order to minimize costs, the parties shall co-operate with each other to seek mutual or joint insurance in respect of the Facility, including construction and operation of same.

#### **21. TERMINATION**

a. Notwithstanding any other provision of this agreement, either Municipality may terminate the agreement at any time upon one years' written notice delivered to the parties at the addresses shown in Section 25 of this agreement, or at such shorter time and in such a manner as may be mutually agreed upon by the parties provided that the parties shall act reasonably in negotiating any termination provision, including capital repayments.

## **22. NON-WAIVER**

a. A waiver of any provision or breach by the parties of this agreement will be effective only if it is in writing and signed by the other Municipality and will not be deemed to be a waiver of any subsequent breach of the same or any other provision of this agreement.

## **23. FIRE PROTECTION**

a. Vernon's Fire Rescue Services will provide emergency response-services to the Facility site. The level of service will be consistent with the Vernon Fire Rescue Services Emergency response policy. The cost of this service will be based on the assessed value of the site and invoiced annually to the Facility.

## **24. NOTICES**

a. Any notice that either Municipality may be required or may desire to provide to the other Municipality will be deemed to have been delivered and received, if delivered personally on the date of such personal delivery or if mailed, on the third business day after mailing in British Columbia by pre-paid post addressed to either Municipality at its City Hall address, and to the attention of the following persons or their successors:

Don Degen  
Utilities Services Manager  
Kelowna

Shirley Koenig  
Operation Services Manager  
Vernon

## **25. DISPUTE RESOLUTION /ARBITRATION**

a. Disputes arising out of or in connection with this agreement, or in respect of any defined legal relationship associated therewith or derived there from, may be referred to and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre ("BCICAC"). If either Kelowna or Vernon desires to have the dispute resolved by arbitration, they may submit the dispute to the BCIAC to appoint an arbitrator and the case will be administered by the BCICAC in accordance with its procedures and rules. Notwithstanding the foregoing, the parties may choose to submit to mediation prior to any arbitration proceedings as an initial step to resolving any such dispute. {00188168; 2}13

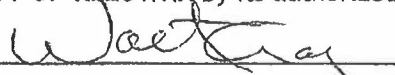
## 26. GENERAL TERMS

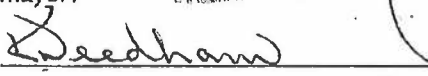
- a. Nothing contained or implied herein shall derogate from the obligations of the Municipalities or prejudice or affect the Municipalities' rights, powers, duties or obligations in the exercise of their functions pursuant to the *Community Charter* and the *Local Government Act* and the rights, powers, duties and obligations of the Municipalities under all public and private statutes, by-laws, orders and regulations.
- b. No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by the Municipalities to this Agreement at the time of the amendment, supplement, restatement or termination.
- c. In the event of any strike, walkout or other labour dispute directly or indirectly involving the Municipalities that adversely affects the operation of the Facility, the Municipalities will seek such orders or relief as may be required to prevent the continuance of the strike, walkout or other labour dispute from adversely affecting the operation of the Facility.
- d. Notwithstanding anything to the contrary contained in this agreement, if either Municipality is delayed or hindered in or prevented from the performance of any term, covenant or act required under this agreement, by reason of an act of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or statutory authorities, power failures, or any event or circumstance which is beyond the reasonable control of a Municipality, which does not arise from the neglect or default of a Municipality, and which results in material delay, interruption or failure by a Municipality in carrying out its duties, covenants or obligation under this agreement, the said Municipality will be relieved from the fulfillment of such term, covenant or act during the period of such interruption and the period for the performance of any such term, covenant or act will be extended for a period equivalent to the period of such delay.
- e. The Municipalities will promptly execute and deliver all further documents and take all other action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.
- f. The rights and remedies under this agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Municipality of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Municipality may be entitled.
- g. The Municipalities acknowledge and agree that they are entering into a long-term relationship and, from time to time, opportunities and issues will arise that are not contemplated in this agreement. The Municipalities covenant and agree to discuss and consider these matters in the spirit of cooperation and good faith.
- h. This agreement shall be interpreted by the laws of British Columbia and Canada applicable therein.

i. This agreement shall binding upon and enure to the benefit of the Municipalities and their agents, assigns, and successors.

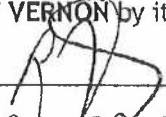
IN WITNESS WHEREOF, each of the Municipalities hereto has hereunto affixed its corporate seals on the presence of its duly authorized officers as of the day and year first written above. The Corporate Seal of the City of Vernon was hereunto affixed in the presence of:


CITY OF KELOWNA by its authorized signatories:

  
\_\_\_\_\_  
Mayor: Walter Gray, MAYOR

  
\_\_\_\_\_  
Corporate Officer: Karen Needham,  
Deputy City Clerk

CITY OF VERNON by its authorized signatories:

  
\_\_\_\_\_  
Mayor: Rob SAWATZKY

  
\_\_\_\_\_  
Corporate Officer: Patricia BRIDAK

**Schedule A Equipment**

<u>Vehicle #</u>	<u>Description</u>		<u>Original Cost</u>
V6384	2007 McCloskey Trommel Screen	(Trommel)	418,170
V6481	2009 Supreme 900ST Enviroprocessor	(Mixer)	236,000
V6511	Supreme EnvirorProcessor 900 ST Compost Mixer	(Mixer)	209,000