



Hamilton

Public Works Department

AGREEMENT FOR ON-SITE COLLECTION OF MUNICIPAL SOLID WASTE

In consideration for the provision of *On-Site Collection Services* (as herein defined), the *Current Owner* (as herein defined) agrees as follows:

ARTICLE 1 – DEFINITIONS

Access Area is the lane, street, avenue or other means of ingress or egress available for the *City* and/or *Contractor* to access the *Collection Area* and includes adequate space for the *City* and/or *Contractor* to perform vehicle turnaround functions, as well as pick-up functions, safely.

Agreement means this Agreement for On-site Collection of Municipal Solid Waste and includes the *Application* and Schedule “A” hereto. In the event of conflict between the *Application*, Schedule “A” and the body of this *Agreement*, the body of this *Agreement* shall apply and prevail.

Application means an application in a form prescribed by the *City*, completed by the *Current Owner* with respect to each *Property* for the provision of *On-Site Collection Services* and approved by the *City*. Each approved *Application* shall form a part of this *Agreement*, even though it is not physically attached hereto.

Business Day means any day other than a Saturday, Sunday, public holiday or other day on which banks in Ontario are authorized or required by law to be closed or any other day where the administrative offices of the *City* are closed.

City means City of Hamilton.

Collectible Waste means waste, including organic waste and recyclable materials and any other solid waste materials acceptable for pick-up in accordance with the *Solid Waste By-Law*, and which are identified for pick-up in Schedule “A” attached hereto for each *Property*.

Collection Area means an area provided by the *Current Owner* where *Collectible Waste* will be placed for pick-up by the *City* and/or its *Contractor(s)* for each *Property*, as approved by the *City*.

Contractor means any individual or entity employed or contracted by the *City* to provide *On-site Collection Services*.

Current Owner means the individual(s) or entity(ies) that holds title to the *Property* or *Properties*; or in the case of a condominium, the condominium corporation responsible for the *Property* or *Properties*; as at the date of execution of this *Agreement*. Where there is more than one individual or entity that holds title to the *Property* or *Properties*, they shall be jointly and severally liable for the liabilities and obligations of the *Current Owner* under this *Agreement*.

Former Contracts and Indemnities means any contract(s) and/or indemnity(ies) entered into between an *Owner* and any of the *Former Municipalities*, or with the *City*, with respect to *On-Site Collection Services*, whether or not said contract(s) and/or indemnity(ies) was/were, or is/are, registered on title.

Former Municipalities means those municipalities that were dissolved pursuant to the *City of Hamilton Act, 1999, S.O. 1999, CHAPTER 14, Schedule C*, when the *City* was established.

On-Site Collection Services means the non-curbside/roadside collection of *Collectible Waste* by the *City* and/or a *Contractor* from the *Collection Area* of each *Property*, including ingress and egress to/from each *Property* via the *Access Area*.

Owner means any individual(s) or entity(ies) who had, has, or will have title to any property, or in the case of a condominium, the condominium corporation who had, has, or will have responsibility for a property, for which *On-Site Collection Services* was, is, or will be requested.

Property means a property owned by the *Current Owner* executing this *Agreement* for which the provision of *On-Site Collection Services* has been, or is being, requested, as set out in Schedule “A” attached hereto. All *Properties* requiring *On-Site Collection*

Services by the *Current Owner* shall be listed in Schedule "A" with the corresponding *Collectible Waste* requirements and *Application* number for each *Property*.

Solid Waste By-law means the City of Hamilton's Solid Waste Management By-law No. 09-067, as amended and as it exists from time to time, or any successor by-law.

ARTICLE 2 – CURRENT OWNER RESPONSIBILITIES

2.1 General

2.1.1 The *Current Owner* hereby agrees to provide an unobstructed *Collection Area* and *Access Area*, which shall be easily accessible to the *City* and/or its *Contractor(s)*, for the provision of *On-Site Collection Services* for each *Property*. This includes, but is not limited to, a safe, unobstructed *Access Area* and *Collection Area*, an adequate vehicle turning area, as well as reasonable snow and ice removal in the *Access Area* and *Collection Area*.

2.1.2 The *Current Owner* hereby agrees to provide waste containers approved by the *City* in accordance with the *Solid Waste By-Law* for each *Property*.

2.1.3 The *Current Owner* hereby agrees that the *Collectible Waste* to be collected through the provision of *On-Site Collection Services* by the *City* and/or its *Contractor(s)* for each *Property* is set out in Schedule "A" of this *Agreement*.

2.1.4 The *Current Owner* hereby undertakes to advise all tenants and unit owners for each *Property* of the existence of this *Agreement* and to provide a copy of this *Agreement* to a tenant or unit owner upon request.

2.2 Insurance

2.2.1 Throughout the term of this *Agreement* (including any renewal thereof), the *Current Owner* shall obtain and maintain at its own expense, including the cost of any applicable deductible, Commercial General Liability Insurance, covering the *Property* or *Properties* identified in Schedule "A" of this *Agreement* and written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, and premises liability coverage, having a minimum, inclusive limit of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 in the aggregate. The policy shall be endorsed to include the City of Hamilton and its *Contractors* as additional insureds, but only with respect to liability arising out of this *Agreement*.

2.2.2 The *Current Owner* shall deposit with the *City* a Certificate of Insurance originally signed by an authorized insurance representative and confirming thereon relevant coverage information at the time of execution of this *Agreement* and thereafter during the term of this *Agreement*, at the request of the *City*. The certificates of insurance shall contain a provision that the insurer shall not cancel, or materially change coverage as would affect this *Agreement* without providing the *City* at least thirty days prior written notice. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attention: Policy/Program Analyst, Recycling and Waste Disposal, Environmental Services Division, Public Works Department. All certificates, cancellation, nonrenewal or adverse change notices are to be mailed to this address. All insurers shall be licensed to do business in Ontario and such insurance policy wording and terms shall be acceptable to the *City*. All insurance coverage to be provided by the *Current Owner* in this *Agreement* shall be primary and not call into contribution any other insurance coverage available to the *City*. The *Current Owner* shall not do or omit to do anything that would impair or invalidate the insurance policies. The required insurance described herein may be altered or increased by the *City*, acting reasonably.

2.3 Indemnity

The *Current Owner* hereby agrees to defend, release and forever indemnify and save harmless the *City*, its officers, directors, employees, officials, agents and its *Contractor(s)* (collectively the "Indemnitees"), of and from any claims, demands and/or causes of action that may arise by reason of, or in connection with, the operation of collection vehicles, or personnel, or the work of the Indemnitees on any *Property*, *Collection Area* or *Access Area*, or any combination of the foregoing, resulting, directly or indirectly, in damages (including special or consequential damages), loss, costs, fines, penalties, and/or injury to person(s)

(including death) or to real or personal property, except to the extent that such damage, loss, costs, fines, penalties and/or injury to person(s) (including death) or to real or personal property arises from the negligence or willful misconduct of the Indemnitees. This indemnity shall survive the early termination or expiration of this *Agreement*.

2.4 Change of Ownership

- 2.4.1** The *Current Owner* hereby agrees to notify the *City* in writing of any proposed change of ownership with respect to any *Property* no less than five *Business Days* prior to said change of ownership. Should the *Current Owner* fail to provide said notice, this *Agreement* shall automatically terminate on the date of change of ownership at no cost, liability or penalty to the *City* whatsoever. Should the *Current Owner* fail to provide said notice and the *City* or its *Contractor* unwittingly continues to provide *On-Site Collection Services* after the termination of this *Agreement*, the *Current Owner* shall be deemed to have fully indemnified and released the *City* and its *Contractor* from any and all cost, liability or penalty directly or indirectly related to the provision of said services. This provision shall survive the early termination or expiration of this *Agreement*.
- 2.4.2** The *Current Owner* acknowledges and agrees that this *Agreement* automatically terminates when there is a change of ownership with respect to a *Property*. However, if the *Current Owner* properly notifies the *City*, as outlined in section 2.4.1, and the *Current Owner* has more than one *Property* listed on Schedule "A" of this *Agreement*, the *Current Owner* may include with this notification a request for an amendment to Schedule "A" of this *Agreement* to delete the *Property* from Schedule "A" due to the change in ownership. The *City* may grant said request in its sole and unfettered discretion and if granted, Schedule "A" will be amended accordingly.
- 2.4.3** The *Current Owner* agrees that prior to the transfer of ownership of any *Property*, the *Current Owner* will provide any new *Owner* of the *Property* written notice as to the existence of this *Agreement* and that this *Agreement* will automatically terminate with respect to that *Property* upon the change of ownership. The *City* shall be copied on this written correspondence.
- 2.4.4** If at any time the *Current Owner* wishes to add a *Property* to Schedule "A" of this *Agreement*, the *Current Owner* shall submit a written request to the *City* to amend Schedule "A" accordingly. The *City* may grant said request in its sole and unfettered discretion and if granted, will require the *Current Owner* to complete an *Application* with respect to same and Schedule "A" will be amended accordingly.

ARTICLE 3 – GENERAL TERMS AND CONDITIONS

3.1 City Rights of Suspension and/or Termination

The *Current Owner* hereby acknowledges and agrees that the *City* expressly reserves the unfettered right to discontinue any or all of the *On-Site Collection Services* for any or all *Properties* contemplated by this *Agreement* for any reason, with or without cause, upon ten *Business Days* written notice to the *Current Owner*, or to change any aspect of these services, without cost or penalty of any kind whatsoever to the *City*. In addition, this *Agreement* shall automatically terminate upon any change of ownership as of the date of said change of ownership, except as otherwise provided in this *Agreement*. Further, and without limiting any rights of the *City*, the *Current Owner* hereby acknowledges and agrees that should he/she/it fail to comply with the provisions of this *Agreement* in any way, the *City* reserves the right to suspend or terminate any or all of the *On-Site Collection Services* for any or all of the *Properties* immediately, at its sole discretion, until such time as the requirements are remedied to the satisfaction of the *City*. The *Current Owner* hereby acknowledges and agrees that should the *City* decide to terminate or suspend any or all of the *On-Site Collection Services* for any reason, the *Current Owner* shall have no right to any costs, penalties, damages, expenses, fines, or any other compensation of any kind whatsoever, including any claim, action or other legal proceeding, with respect to said suspension or termination.

3.2 Term of Agreement

This *Agreement* shall come into effect as of the date of execution by the *Current Owner* and shall remain in force until,

- (a) it is terminated by the *Current Owner* by providing no less than 10 *Business Days* prior written notice to the *City*, or
- (b) the *City* discontinues the *On-Site Collection Services* for a *Property*, or
- (c) this *Agreement* is otherwise terminated in accordance with the provisions of this *Agreement*.

No amendments to this *Agreement* shall be effective without the prior written consent of the *City*.

3.3 Nature of Agreement

The *Current Owner* acknowledges and agrees that this *Agreement* is the *City's* standard agreement for *On-Site Collection Services* and shall govern the entire relationship between the *City* and the *Current Owner*. This *Agreement* shall supercede and replace any and all *Former Contracts and Indemnities*. Should the *City* change the form of this *Agreement*, the *Current Owner* agrees to execute any new agreement provided by the *City* for the provision of *On-Site Collection Services* ("New Agreement"). Should the *Current Owner* fail to execute the New Agreement within 15 *Business Days* of receipt of the New Agreement, *On-Site Collection Services* shall terminate at no cost, liability or penalty to the *City* whatsoever. Upon execution of the New Agreement, or upon the failure of the *Current Owner* to execute the New Agreement within the stipulated timeframe, this *Agreement* shall terminate at no cost, liability or penalty of any kind whatsoever to the *City*.

3.4 Successors and Assigns

This *Agreement* shall be binding on the executors, heirs, and legal representatives of the *Current Owner*. The *Current Owner* shall not assign this *Agreement*. Any attempt to assign this *Agreement* or any of the *Current Owner's* rights, duties, liabilities or obligations under this *Agreement* is void.

3.5 Fees

The *Current Owner* acknowledges and agrees that the *City* is providing *On-Site Collection Services* in consideration for the insurance and indemnities provided in this *Agreement*. As a result, the *Current Owner* understands and agrees that there are no fees and charges payable by the *Current Owner* to the *City* with respect to the provision of *On-Site Collection Services* by the *City* and/or its *Contractor(s)* pursuant to this *Agreement*.

3.6 Laws

- (a) This *Agreement* shall be governed by the laws of the Province of Ontario and the laws of Canada as applicable therein. The *Current Owner* irrevocably submits and attorns to the exclusive jurisdiction of the court of the Province of Ontario. Any action or proceeding relating to this *Agreement* shall be brought in a court of competent jurisdiction in Hamilton, Ontario.
- (b) All provisions in the *Solid Waste By-law* governing *Collectible Waste* collection shall apply, with necessary modifications to *On-Site Collection Services*, including but not limited to provisions governing when and how *Collectible Waste* can be set out for collection. In the event of a conflict between the provisions of this *Agreement* and the provisions of the *Solid Waste By-law*, the provisions of this *Agreement* prevail.

3.7 Notice

Any notice under this *Agreement* shall be sufficiently given if given by:

- (a) personal delivery; or
- (b) registered letter, postage prepaid, and mailed in a Canadian post office; or
- (c) fax;

If to the <i>City</i>	If to the <i>Current Owner</i>
Policy/Program Analyst, Environmental Services Division Public Works Department, City of Hamilton City Hall, 71 Main Street West Hamilton, Ontario L8P 4Y5 Fax No. 905-546-4473	

or to any address as may be designated in writing by the *City* or the *Current Owner* in accordance with this provision. The date of receipt of any notice shall be deemed conclusively given on the day it was received by personal delivery, at the beginning of business on the third *Business Day* after it was mailed by registered mail or on the day sent by fax if sent on or before 4:30 p.m. on a *Business Day* of the receiving party and on the next *Business Day* of the receiving party if sent by fax after 4:30 p.m.

3.8 Independent Legal Advice

The *Current Owner* hereby acknowledges and agrees that the *City* has provided him/her/it with a reasonable opportunity to seek independent legal advice with respect to this *Agreement* and has encouraged him/her/it to do so. The *Current Owner* hereby acknowledges and agrees that he/she/it either has sought said advice or has declined to do so.

INSERT NAME OF CURRENT OWNER

WITNESS

Signature of Current Owner

Signature of Witness

Name (please print)

Name of Witness (please print)

Title (please print)

Address of Witness (please print)

Date

Date

Signature of Current Owner

Signature of Witness

Name (please print)

Name of Witness (please print)

Title (please print)

Address of Witness (please print)

Date

Date

I/We have the authority to bind the *Current Owner*

SCHEDULE "A"

LIST OF PROPERTIES AND COLLECTIBLE WASTE

Property (Address)	PIN No.	Collectible Waste	Application No.	Effective Date
		Services defined in Solid Waste Management By-Law 09-067		