

APPENDIX A1 – Agreement of Purchase and Sale

PURCHASE AGREEMENT

5030 MONTROSE RD, NIAGARA FALLS, ONTARIO

THIS AGREEMENT is dated as of the ____ day of **[Month]**, 2022.

B E T W E E N:

[SUCCESSFUL PROPONENT]

(the “**Purchaser**”)

- and -

THE REGIONAL MUNICIPALITY OF NIAGARA

(the “**Vendor**”)

WHEREAS:

A. The Vendor has agreed to sell, transfer and assign the Purchased Assets to the Purchaser and the Purchaser has agreed to purchase, acquire and assume the Purchased Assets from the Vendor on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions.

In this Agreement, the following terms shall have the meaning set out below unless the context otherwise requires:

“**Agreement**” means this Agreement and the attached Schedules, as amended from time to time, and “**Article**”, “**Section**” and “**Schedule**” mean the specified article, section or schedule, as the case may be, of this Agreement;

“**Applicable Law**” means, with respect to any person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgement, decree, treaty or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter;

“**General Assignment and Assumption of Contracts**” means an assignment by the Vendor to the Purchaser and assumption by the Purchaser of the Contracts, including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under

the Contracts for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Contracts for matters occurring prior to the Closing Date.

“Assignment and Assumption of the Haldimand Contract” means an assignment by the Vendor to the Purchaser and assumption by the Purchaser of the Haldimand Contract including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Haldimand Contract for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Haldimand Contract for matters occurring prior to the Closing Date.

“Assignment and Assumption of Permitted Encumbrances” means an assignment by the Vendor and assumption by the Purchaser of the Permitted Encumbrances, including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Permitted Encumbrances for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to claims under the Permitted Encumbrances for matters occurring prior to the Closing Date.

“Assignment and Assumption of the Waterloo Contract” means an assignment by the Vendor to the Purchaser and assumption by the Purchaser of the Waterloo Contract including an indemnity given by the Purchaser in favour of the Vendor with respect to Claims under the Waterloo Contract for matters occurring on or after the Closing Date and an indemnity given by the Vendor in favour of the Purchaser with respect to Claims under the Waterloo Contract for matters occurring prior to the Closing Date.

“Building” means, collectively, the buildings, structures, erections, improvements and appurtenances located on, in or under the Lands and any fixtures owned by the Vendor located on, in or under the Lands.

“Business Day” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“Claims” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, extra judicial legal fees, and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever.

“Chattels” means the chattels, furniture, furnishings, equipment and machinery identified in the Documents for Inspection.

“Closing” means the closing and consummation of the transaction of purchase and sale contemplated by this Agreement including, without limitation, the payment of the Purchase Price, as herein provided, and the delivery of the Closing Documents.

“Closing Date” means **January 6, 2023** or such other date as the parties may agree in writing.

“Closing Documents” means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser or the Purchaser’s Solicitors pursuant to Section 6.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor or the Vendor’s Solicitors pursuant to Section 6.2.

“Contracts” means (i) the Warranties, (ii) all existing contracts and agreements with third parties entered into by the Vendor or by which the Vendor is bound in connection with the ownership, development, maintenance, repair, operation, cleaning, security, fire protection, servicing or any other aspect of the Property, and (iii) all existing contracts and agreements with third parties relating to any assets leased by the Vendor as lessee or by which the Vendor is bound as lessee and located on the Property, in each case as amended, extended, renewed or otherwise modified to the date hereof, together with any such Warranties, contracts and agreements entered into during the Interim Period, in each case to the extent the same are assignable, but excluding Permitted Encumbrances, the Niagara Recycling Contract and any property management contract or asset management contract with respect to the Property.

“Deposit” means the sum or sums paid by the Purchaser pursuant to Sections 2.3(a).

“Documents for Inspection” means the documents and materials that have been delivered or made available to the Purchaser for review and examination pursuant to the RFP process, and such other documents and materials of a similar nature that may come into the possession or control of the Vendor and be provided to the Purchaser together with any Contracts entered into pursuant to Section 5.2.

“Due Diligence Date” means 5:00 p.m. (Eastern Standard Time) the day that is 30 days following the Execution Date.

“Encumbrance” means any mortgage, hypothec, lien, charge, encumbrance, restriction, security interest, conditional sale agreement, lease, restriction, covenant, easement, right-of-way encroachment and any other similar claim or interest.

“Execution Date” means the date the Vendor and Purchaser have executed and delivered this Agreement;

“Haldimand Contract” means the Blue Box Recyclable Processing and Marketing Contract RFP-ES-SW-02-2010 entered into between The Corporation of Haldimand County and The Regional Municipality of Niagara dated October 4th 2010 as amended, pursuant to which The Regional Municipality of Niagara purchases and processes recyclable material from The Corporation of Haldimand County.

“HST” means the harmonized sales tax payable pursuant to the *Excise Tax Act* (Canada).

“Interim Period” means the period between the Execution Date and the Closing Date.

“Lands” means the lands in Niagara Falls, in the Province of Ontario, together with all easements, rights-of-way and interests appurtenant thereto, more particularly described in *Schedule A*.

“Niagara Recycling Contract” means the agreement entered into between Niagara Employment Agency Inc. (operating as Niagara Recycling) and The Regional Municipality of Niagara dated April 5, 2014, as amended pursuant to which Niagara Recycling currently operates the material recycling facility on behalf of Niagara Region.

“Notice” has the meaning set out in Section 7.3(1).

“Notice of Loss” has the meaning set out in Section 5.5(1).

“Parties” means the Vendor and the Purchaser, collectively; and **“Party”** means either of them as the context may require;

“Permitted Encumbrances” means those Encumbrances listed in *Schedule B*.

“Person” means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

“Processing Contract” means the material processing contract dated [REDACTED] between the Vendor and Purchaser (referred to as the ‘Contractor’ thereunder) wherein the Purchaser provides the Vendor with certain recyclable material processing services, as is more particularly set out therein;

“Property” means, collectively, the Lands and the Building.

“Purchaser” means [REDACTED] and its successors and permitted assigns

“Purchase Price” has the meaning set out in Section 2.2, as adjusted pursuant to Section 2.5.

“Purchased Assets” means (a) the Lands, (b) the Building, (c) the Chattels, (d) the Vendor’s interest in the Contracts in each case together with all income, benefits and other advantages to be derived therefrom.

“Purchaser’s Solicitors” means [REDACTED] or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and notice of which is provided to the Vendor.

“RFP Process” means the negotiated RFP process (2021-RFP-209) pursuant to which the Purchaser participated as a proponent and was selected as the ‘top-ranked’ proponent thereof to enter into this Agreement.

“Review Period” has the meaning set out in Section 4.2(a)

“Threshold Amount” has the meaning set out in Section 5.5(2).

“Vendor” means The Regional Municipality of Niagara and its successors and permitted assigns.

“Vendor’s Solicitors” means the Vendor’s in-house legal counsel and such other Person or law firm as the Purchaser may designate from time to time by notice in writing to the Vendor.

“Waterloo Contract” means the material purchase agreement P2013-41 entered into between The Region of Waterloo and The Regional Municipality of Niagara dated May 30th, 2014, as amended pursuant to which The Regional Municipality of Niagara purchases, transports and processes mixed fibre and plastic film and bags from Cambridge and Waterloo Waste Management Sites.

“Warranties” means all warranties, guarantees or contractual obligations, if any, that entitle the Vendor to any rights against a contractor or supplier engaged in the construction or maintenance of the Property or any part of the Property.

1.2 Extended Meanings.

Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders. If there is more than one Person comprising the Purchaser, the obligations of such Persons pursuant to this Agreement and pursuant to any Closing Documents delivered pursuant hereto shall be joint and several and not several.

1.3 Headings.

The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. This Agreement supersedes all prior negotiations or agreements between the Parties, whether written or verbal, with respect to the subject matter of this Agreement.

1.5 Currency.

Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.

1.6 Severability.

If any provision contained in this Agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is

held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.7 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province where the Property is located and the applicable laws of Canada. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement, unless otherwise provided.

1.8 Time.

Time shall be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the Parties or by their respective solicitors.

1.9 Drafting.

Each party has had its counsel review this Agreement and, accordingly, any rule of construction to the effect that ambiguities shall be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale.

The Vendor hereby agrees to sell, transfer, assign, set over and convey the Purchased Assets to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume the Purchased Assets from the Vendor for the Purchase Price, on the terms and subject to the conditions contained in this Agreement.

2.2 Purchase Price.

The purchase price (the “**Purchase Price**”) for the Purchased Assets shall be \$[•], exclusive of any applicable HST.

2.3 Payment of Purchase Price.

Subject to adjustment in accordance with Section 2.5, the Purchase Price shall be paid to the Vendor as follows:

- (a) as to the sum of **\$200,000.00**, by certified cheque, bank draft or wire transfer payable to the Vendor, within two (2) Business Days following the date of execution and delivery of this Agreement by both parties;
- (b) as to the balance of the Purchase Price, by certified cheque, bank draft or wire transfer payable to the Vendor or as it may direct on the Closing Date.

2.4 Deposit.

The Deposit shall be held by the Vendor as a deposit pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price. Prior to the Closing Date, the Deposit shall be held by the Vendor in a non-interest bearing account. If this Agreement is not completed due to the default of the Purchaser, the Deposit shall be paid to the Vendor without limitation to the Vendor's Claims for further and other damages.

2.5 Adjustments.

(1) General. Adjustments shall be made as of the Closing Date for realty taxes, local improvement rates and charges, water and assessment rates, deposit payments under Contracts, utilities, fuel, licences necessary for the operation of the Property and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Property. In addition, the Adjustments shall include the other matters referred to in this Agreement stated to be the subject of adjustment and, notwithstanding the foregoing, shall exclude the other matters referred to in this Agreement stated not to be the subject of adjustment.

(2) Statement of Adjustments. A statement of adjustments shall be delivered to the Purchaser by the Vendor prior to the Closing Date and shall have attached thereto details of the calculations used by the Vendor to compute all credits and debits.

(3) Day of Closing. The Purchaser shall receive all income and pay all expenses in respect of the Property for the day of Closing itself.

(4) Insurance. Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

(5) Access. Until all the adjustments have been completed in accordance with the terms hereof, the Purchaser shall provide to the Vendor access to and copies of excerpts from the original books and records of the Purchaser (or the then current owner and/or property manager of the Property) reasonably required from time to time by the Vendor to verify the adjustments provided for herein.

(6) Readjustment. If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Parties, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will

be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Parties shall make a final adjustment as of the Closing Date for the item in question. All readjustments shall be requested in a detailed manner on or before one year following the Closing Date, after which time neither party shall have any right to request readjustments.

2.6 Allocation of Purchase Price

The Purchase Price shall be allocated among the various classes of assets comprising the Purchase Assets in the manner set out in Schedule C.

ARTICLE 3 COVENANTS, REPRESENTATIONS AND WARRANTIES

3.1 Representations of the Vendor.

The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement and as of the Closing Date, unless otherwise specified in this Section:

- (a) Corporate Status. The Vendor is a corporation duly incorporated and subsisting under the laws of its incorporating jurisdiction and has the corporate power, authority, right and capacity to own its property and assets and to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
- (b) Corporate Authorization. The transactions contemplated by this Agreement will by the Closing Date have been duly and validly authorized by all requisite corporate or other proceedings;
- (c) No Default under Other Agreements. Neither the execution of this Agreement nor its performance by the Vendor will result in a breach of any term or provision or constitute a default under the constating documents or by-laws of the Vendor; or any indenture, mortgage, deed of trust or any other agreement to which the Vendor is a party or by which it is bound; and
- (d) Residence. The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada) and it is receiving the Purchase Price on its own account and not as agent for any party.

3.2 Representations of the Purchaser.

The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement and as of the Closing Date or such other date as may be specified:

- (a) Status. The Purchaser is a corporation duly incorporated and subsisting under the laws of the jurisdiction of its incorporation and has the corporate power, authority, right and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
- (b) Authorization. The transactions contemplated by this Agreement will by the Closing Date have been duly and validly authorized by all requisite corporate or other proceedings; and
- (c) HST Registration. On Closing the Purchaser shall be a registrant for purposes of HST under the Excise Tax Act (Canada) (the “Act”) and shall receive title to the Property on Closing on its own account and not as agent for any other Person

3.3 Survival of Representations.

The covenants, representations and warranties contained in Sections 3.1 and 3.2 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Purchaser and the Vendor for a period of 180 days after the Closing Date so that a claim for any breach of any representation or warranty must be made on or before the date which is 180 days after the Closing Date.

3.4 Purchase on an as “As Is/Where Is Basis”.

(1) The Purchaser acknowledges and confirms that it is buying the Purchased Assets on an “as is, where is” basis and solely relying upon its own due diligence, searches, investigations and inspections and, without any express or implied representation, warranty, covenant or undertaking by the Vendor as to the state of title, the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Purchased Assets or any other matter respect the Purchased Assets whatsoever, including without limitation, compliance with all laws, the existence of any hazardous substances, or the use to which the Purchased Assets may be put and its zoning.

(2) The Purchaser acknowledges and agrees that the Documents for Inspection and any third party reports, budgets or other material are provided by the Vendor to the Purchaser in order that the Purchaser may conduct its own due diligence investigations as it deems necessary without any warranty or representation as to the correctness, validity or accuracy thereof.

(3) The Vendor shall have no obligation to remediate any matter respecting the Purchased Assets whether occurring prior to or after Closing and, in particular, shall have no obligation to clear or carry out any work orders, notices of violation, deficiency notices, open permits and other matters of non-compliance with respect to the Property or work performed at the Property. For greater certainty, the Purchaser acknowledges and agrees that from and including the Closing Date, the Purchased Assets shall be entirely at the risk of the Purchaser and the Purchaser shall accept and assume any and all responsibilities and liabilities arising out of or in any way connected with the Purchased Assets whether they arose before, on or after the Closing Date and, without being limited by the foregoing, any state, nature, quality or condition in, on, under or near the Purchased Assets existing as of the Closing Date, whenever and however arising, whether known or unknown and whether environmental or otherwise, and

whether such responsibilities and liabilities are imposed by law, equity or any governing authority.

- (4) The provisions of this section 3.4 shall survive and not merge on Closing.

ARTICLE 4 CONDITIONS

4.1 Conditions of the Vendor.

The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Vendor:

- (a) Council Approval. On or before the date which is 30 days after the Execution Date, the Vendor shall have received approval of the transaction of purchase and sale of the Purchased Assets pursuant to this Agreement and shall have provided Notice thereof to the Purchaser;
- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.2 shall be true and accurate in all material respects;
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Vendor pursuant to this Agreement shall have been so executed and delivered;
- (d) Performance of Terms, Conditions and Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed in all material respects; and
- (e) Performance under Processing Contract. The Purchaser having completed all of the Transition Activities (as defined in the Processing Contract) as required by the Processing Contract and is not otherwise in Default thereunder.

The conditions set out in this Section 4.1 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor, in its sole discretion, by written notice to the Purchaser.

4.2 Conditions of the Purchaser.

The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to fulfilment of each of the following conditions on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Purchaser:

- (a) Due Diligence. On or prior to 5:00 p.m. (Eastern Standard Time) on the Due Diligence Date (the "Review Period") the Purchaser shall have determined in its sole discretion to proceed with the transactions contemplated by this Agreement

(and, without limiting the generality of the foregoing, the Purchaser shall be satisfied in its sole discretion with respect to all aspects of the Purchased Assets including, without limitation, the physical condition of the Property, title to the Lands, the Contracts, the Permitted Encumbrances, zoning, development potential, feasibility of development, development status of the Lands, availability of building permits for construction of improvements on the Lands, development approvals including, without limitation, approved developable area of the Lands, and any other matters of interest to the Purchaser with respect to the Lands)

- (b) Representations and Warranties. The covenants, representations and warranties set out in Section 3.1 shall be true and accurate in all material respects.
- (c) Delivery of Documents. All documents or copies of documents required to be executed and delivered to the Purchaser pursuant to this Agreement shall have been so executed and delivered.
- (d) Performance of Terms, Covenants and Conditions. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed in all material respects.

The conditions set out in this Section 4.2 are for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser, in its sole discretion, by written notice to the Vendor.

4.3 Satisfaction of Conditions.

Each party agrees to proceed in good faith and with promptness and diligence to attempt to satisfy those conditions in Sections 4.1 and 4.2 that are within its reasonable control.

4.4 Fulfillment of Conditions.

(1) Due Diligence Date Condition for the Benefit of the Purchaser. If by the Due Diligence Date, the Purchaser has not given Notice to the Vendor that the condition contained in Section 4.2(a) has been satisfied or waived, such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be terminated and each Party shall be released from all of its liabilities and obligations under this Agreement other than those set out in Sections 5.1, 5.4 and 5.5 and the Deposit, shall be returned to the Purchaser subject to Section 5.5.

(2) Conditions for the Benefit of the Vendor. If by the date set therefor the Vendor has not provided Notice to the Purchaser of the satisfaction or waiver of the condition set forth in Section 4.1(a), such condition shall be deemed not to have been satisfied or waived, in which event this Agreement shall be terminated, each Party shall be released from all of its liabilities and obligations under this Agreement other than those set out in Sections 5.1, 5.4 and 5.5 and the Deposit, together with all interest accrued thereon, shall be returned to the Purchaser subject to Section 5.5. If any of the other conditions set out in Section 4.1 is not satisfied or waived on or prior to the Closing Date, the Vendor may terminate this Agreement by Notice to the Purchaser

given on or prior to the Closing Date, in which event this Agreement shall be terminated, the Vendor shall be released from all of its liabilities and obligations under this Agreement and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Purchaser, the Purchaser shall also be released from all of its liabilities and obligations under this Agreement other than those set out in Sections **Error! Reference source not found.**, 5.4 and 5.5 and the Deposit, shall be returned to the Purchaser subject to Section 5.5. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 in whole or in part.

(3) Closing Conditions for the Benefit of the Purchaser. If any of the conditions set out in Sections 4.2(b), 4.2(c) and 4.2(d) are not satisfied or waived on or prior to the Closing Date or other date specified therefor, the Purchaser may terminate this Agreement by Notice to the Vendor given on or prior to the Closing Date or other date specified therefor, in which event this Agreement shall be terminated and the Purchaser shall be released from all of its liabilities and obligations under this Agreement other than those set out in Sections 5.1, 5.4 and 5.5 and, unless the condition or conditions that have not been satisfied or waived were not satisfied as a result of the default of the Vendor, the Vendor shall also be released from all of its liabilities and obligations under this Agreement and the Deposit, shall be returned to the Purchaser subject to Section 5.5. However, the Purchaser may waive compliance with any of the conditions set out in Sections, 4.2(b), 4.2(c), and 4.2(d) in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Sections 4.2(b), 4.2(c) and 4.2(d) in whole or in part.

4.5 Not Conditions Precedent.

The conditions set out in Sections 4.1 and 4.2 are conditions to certain of the obligations of the Parties and are not conditions precedent to the existence or enforceability of this Agreement.

4.6 Title.

The Purchaser shall have until 10 days prior to the Due Diligence Date to investigate title to the Lands at its own cost and expense and to submit valid objections to title to the Vendor. If, on or prior to such date, any valid objection to title is made in writing to the Vendor, which the Vendor is unable or unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate act or negotiations with respect to such objections, be terminated, each Party shall be released from all of its liabilities and obligations under this Agreement other than those set out in Sections 5.1 , 5.4 and 5.5, and the Deposit shall be returned to the Purchaser forthwith without deduction subject to Section 5.5. The Purchaser shall accept title to the Property subject to the Permitted Encumbrances and if the Purchaser gives notice of satisfaction or waiver of its conditions set out in Section 4.2(a), it shall be deemed to have fully approved of title to the Lands and all Permitted Encumbrances. The Purchaser is not to request production of any title deeds, abstracts of title or other evidence of title to the Lands other than such as are in the Vendor's possession and control.

ARTICLE 5 INTERIM PERIOD

5.1 Access by Purchaser.

During the Review Period, the Purchaser shall be entitled to conduct non-intrusive investigations and inspections in respect of the Property during normal business hours, upon reasonable prior notice to the Vendor and in accordance with the Vendor's requirements. Any such investigations or inspections by the Purchaser shall be commenced and completed during the Review Period. All inspections, investigations and tests carried out by the Purchaser or its representatives shall be carried out as expeditiously as possible at the Purchaser's sole cost, expense and risk, and in compliance with the inspection rights and other provisions contained in any Contracts. The Purchaser covenants that all such investigations and inspections will be conducted at times and in such manner so as to not interfere with the operation of the Property. The Vendor will be entitled to have a representative present during all tests and inspections. Any damage caused to the Purchased Assets by the Purchaser's entry upon the Property or any activities carried out by the Purchaser and/or its representatives in respect of the Property shall be forthwith repaired by the Purchaser and if the Agreement is terminated, any costs to repair any such damage shall be deducted from the Deposit before being returned to the Purchaser. The Purchaser shall indemnify, protect and save harmless the Vendor, both before and after Closing or other termination of this Agreement, from and against any and all Claims arising directly or indirectly from the Purchaser's entry and the activities carried out by the Purchaser and/or its representatives. The Purchaser shall not correspond with or discuss the Property with any personnel on site.

5.2 Changes and Improvements.

Except in an emergency, as determined by the Vendor in its sole discretion, the Vendor shall not enter into any new obligation to construct and shall refrain from making any capital improvements or material alterations to the Property not required pursuant to this Agreement or any of the Permitted Encumbrances from the date hereof until Closing without first obtaining the consent in writing of the Purchaser, which consent shall not be unreasonably withheld or delayed, and any such obligation, improvement or alteration entered into or made by the Vendor without the consent of the Purchaser, whether or not done in an emergency, shall be at the Vendor's sole risk and shall be completed by the Vendor by Closing at its sole cost.

5.3 Governmental Authorizations.

(1) General. During the Interim Period, at the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or its solicitors authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Property provided that no inspections by such authorities shall be requested or facilitated by the Purchaser.

(2) Permits, Licences and Approvals. The Vendor shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the

Purchaser may request and as the Vendor may reasonably be able to provide, and shall execute such applications and documents to enable the Purchaser to obtain, maintain or renew any permits, licences and approvals in respect of the, provided that the Vendor shall not be responsible for obtaining or for any delay in obtaining or for the failure of the Purchaser to obtain any such permits, licences and approvals.

5.4 Confidentiality.

Except as may be required to perform its obligations in accordance with this Agreement, the Purchaser, its representatives and advisors shall keep in strict confidence all information obtained with respect to the Purchased Assets pursuant to this Agreement, including all Documents for Inspection, until such time as the transaction contemplated by this Agreement is completed. If the transaction contemplated by this Agreement is not completed for any reason, the Purchaser shall, upon the request of the Vendor, promptly return to the Vendor all documents delivered to the Purchaser pursuant to this Agreement including, without limitation, the Documents for Inspection. Notwithstanding the foregoing, the Purchaser may disclose any information obtained with respect to the Purchased Assets: (i) to its directors, shareholders, advisors, lenders and solicitors; (ii) to the extent such information is in the public domain or is obtained from third parties other than the Vendor and its consultants; and (iii) if required by law.

5.5 Risk.

(1) General. The Property shall be at the risk of the Vendor until completion of the transaction contemplated by this Agreement. If any loss or damage to the Property or any part thereof occurs on or before the Closing Date, the Vendor shall deliver a notice (the “**Notice of Loss**”) to the Purchaser specifying the nature and extent of the loss or damage.

(2) Damage Not Permitting Termination. If the extent of all losses and damage to the Property will not cost in excess of \$2,000,000.00 (the “**Threshold Amount**”) to repair (as certified by a third party engineer selected by the Vendor), the Purchaser shall have no right to terminate this Agreement pursuant to this Section and the Purchaser shall complete this Agreement on the Closing Date, the Purchaser shall receive the insurance proceeds in respect of such losses or damage (including the proceeds of rental interruption insurance, but only in respect of the period and the Vendor shall release its interest in any such insurance proceeds.

(3) Damage Permitting Termination. If the extent of all losses and damage to the Property will cost in excess of the Threshold Amount to repair (as certified by a third party engineer selected by the Vendor), the Purchaser may, on or before the seventh Business Day following delivery of the Notice of Loss, at its option, by notice in writing to the Vendor elect to terminate this Agreement and the Deposit (or such portion of the Deposit as has been delivered) shall be returned to the Purchaser. If the Vendor fails to deliver a Notice of Loss within sufficient time to enable the Purchaser to have seven Business Days within which to respond prior to the Closing Date, the Closing Date shall be extended accordingly. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date, the Purchaser shall receive the insurance proceeds in respect of such losses or damage and the Vendor shall release its interest in any such insurance proceeds.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Documents of the Vendor.

The Vendor shall deliver to the Purchaser the following documents on the Closing Date or on such other date as may be specified:

- (a) Registrable duly executed transfer/deed in fee simple, transferring the Lands to the Purchaser;
- (b) Assignment and Assumption of Contracts;
- (c) Assignment and Assumption of Permitted Encumbrances;
- (d) Assignment and Assumption of the Haldimand Contract;
- (e) Assignment and Assumption of the Waterloo Contract;
- (f) Such notice or notices as the Purchaser may reasonably require to be given to other parties under the Contracts of the assignment and assumption of the Contracts;
- (g) A bill of sale for the Chattels;
- (h) A certificate of the Vendor certifying that the Vendor is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (i) A statement of adjustments;
- (j) An undertaking to readjust.
- (k) All keys and entry devices with respect to the Property and the combinations to any locks or vaults, if applicable;
- (l) A certificate of an officer of the Vendor confirming that all of the representations and warranties of the Vendor set out in Section 3.1 hereof remain true and correct in all material respects with effect as of the Closing Date;
- (m) A direction regarding payment of funds; and
- (n) Such further documentation relating to the completion of this Agreement as the Purchaser may reasonably require.

6.2 Documents of the Purchaser.

The Purchaser shall deliver to the Vendor the following documents on the Closing Date or such other date as may be specified:

- (a) A certified cheque, bank draft or wire transfer payable to the Vendor or as the Vendor may in writing direct in the amount of the balance of the Purchase Price determined in accordance with Section 2.3(b);
- (b) Assignment and Assumption of Contracts, duly executed by the Purchaser;
- (c) Assignment and Assumption of Permitted Encumbrances duly executed by the Purchaser and any agreement to be bound or other compliance matters as may be required or desirable pursuant to the terms of the Permitted Encumbrances duly executed or completed by the Purchaser;
- (d) Assignment and Assumption of the Haldimand Contract;
- (e) Assignment and Assumption of the Waterloo Contract;
- (f) An undertaking to readjust;
- (g) a certificate of the Purchaser executed by an officer of the Purchaser (i) confirming that the Purchaser is a registrant for HST purposes under the *Excise Tax Act* (Canada) as at the Closing Date and setting out the registration number of the Purchaser for HST purposes, (ii) an undertaking of the Purchaser to self-assess and remit to the Receiver General for Canada on a timely basis all applicable HST to the extent required under the *Excise Tax Act* (Canada); and (iii) an indemnity acceptable to the Vendor for all costs incurred by the Vendor in defending or otherwise settling any matter arising from the Purchaser's failure or delay in compliance with its HST obligations hereunder;
- (h) A certificate of an officer of the Purchaser confirming that all of the representations and warranties of the Purchaser set out in Section 3.2 hereof remain true and correct in all material respects with effect as of the Closing Date;
- (i) An Environmental Compliance Approval certificate issued by the Ministry of the Environment, Conservation and Parks, or successor approval body, in accordance with the *Environmental Protection Act* (Ontario) as from time to time, in the Vendor's name for the operation of a Waste Disposal Site (Processing); and
- (j) Such further documentation relating to the completion of this Agreement as the Vendor may reasonably require.

6.3 Registration and Other Costs.

The Vendor and the Purchaser shall each be responsible for the cost of their respective solicitors. The Purchaser shall be responsible for registration fees payable in connection with the registration of the transfer referred to in Section 6.1(a). The Vendor shall be responsible for registration fees payable in connection with the registration of discharges of any Encumbrances or other claims or interests that are not Permitted Encumbrances.

6.4 Escrow Closing Procedure.

This transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, as amended. The Vendor and the Purchaser agree to cause their respective solicitors to execute and be bound by the Document Registration Agreement which is recommended from time to time by the Law Society of Upper Canada. The Vendor and the Purchaser acknowledge and agree that the delivery of documents and the release thereof will: (i) not occur at the same time as the registration of the transfer/deed (and other documents intended to be registered in connection with the completion of this transaction); and (ii) be subject to conditions whereby the solicitor(s) receiving documents and/or money will be required to hold them in escrow and not release them except in accordance with the terms of the Document Registration Agreement.

ARTICLE 7 MISCELLANEOUS

7.1 Tender.

Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, bank draft or wire transfer.

7.2 Relationship of the Parties.

Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Purchased Assets for any purpose until the Closing Date.

7.3 Notices.

(1) Addresses for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a “**Notice**”) shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery if it is delivered by a recognized courier service or sent by PDF in email form to the parties at the applicable address set forth below:

- (a) in the case of the Vendor, addressed to it at:

Regional Municipality of Niagara
1815 Sir Isaac Brock Way, PO Box 1042 Thorold, ON L2V 4T7

Attention: Catherine Habermehl, Director Waste Management
Email: catherine.habermehl@niagararegion.ca

with a copy to:

Attention: Brian Wilson, Legal Counsel
Email: brian.wilson@niagararegion.ca

(b) in the case of the Purchaser addressed to it at:

[insert address]

Attention: [•]

Email: [•]

(2) Change of Address for Notice. By giving to the other party at least seven days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 7.3.

7.4 Commissions.

The Vendor and Purchaser each represents and warrants to the other that it has not dealt with any real estate agent or incurred any liability to any real estate agent in connection with the purchase and sale of the Property.

7.5 Further Assurances.

Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Agreement.

7.6 Lawyers as Agents.

Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given or delivered by the parties or by their respective solicitors on their behalf.

7.7 Assignment.

The Purchaser may not transfer or assign this Agreement or any rights hereunder without the prior written consent of the Vendor which consent may be arbitrarily withheld.

7.8 Successors and Assigns.

This Agreement shall enure to the benefit of and shall be binding upon the parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Agreement.

7.9 Planning Act.

This Agreement is subject to compliance with the provisions of the *Planning Act* (Ontario), as amended, or any relevant provincial legislation applicable in the province where the Property is located.

7.10 No Registration.

No party shall register this Agreement or notice thereof on title to the Property.

7.11 No Merger.

All covenants, representations and warranties contained in this Agreement on the part of both the Vendor and the Purchaser shall not merge upon the completion of this transaction.

7.12 Entire Agreement

The Vendor and the Purchaser acknowledge that this Agreement constitutes the entire Agreement between the Vendor and the Purchaser and there are no representations, warranties, collateral agreements or conditions affecting this Agreement or the Property other than as expressed herein in writing.

7.13 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or PDF emailed form and the parties adopt any signatures received in that manner as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

[PURCHASER]

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

SCHEDULE A

LANDS

5030 Montrose Rd, Niagara Falls, Ontario

ALL OF PIN 64417-0086 (LT):

LTS 49, 51, 52, 53, 54 & 55, BLK B, PT LT 50, KENT AV (CLOSED BY BYLAW RO382263) PL 160; PT BLKS E & F PL 5; PT STAMFORD TWP LT 115 PTS 1, 2, 3, 4, 5, 6, 7, & 8, 59R14311; EXCEPT PT 1 59R15812; SUBJECT TO AN EASEMENT OVER PT 2, 59R14311 IN FAVOUR OF THE CORPORATION OF THE CITY OF NIAGARA FALLS AS IN RO182832; SUBJECT TO AN EASEMENT OVER PTS 4 & 5 ON 59R14311 IN FAVOUR OF THE CORPORATION OF THE CITY OF NIAGARA FALLS AS IN RO382266; SUBJECT TO AN EASEMENT OVER PTS 5, 6 & 7 ON 59R14311 IN FAVOUR OF BELL CANADA & NIAGARA FALLS HYDRO-ELECTRIC COMMISSION AS IN RO382264; SUBJECT TO AN EASEMENT OVER PT 7, 59R14311 IN FAVOUR OF THE CORPORATION OF THE CITY OF NIAGARA FALLS AS IN RO382266; SUBJECT TO AN EASEMENT AS IN RO182711; CITY OF NIAGARA FALLS

SCHEDULE B

PERMITTED ENCUMBRANCES

The Property is being sold subject to the following encumbrance(s):

1. Restrictive Covenants registered on August 2, 1966, as Instrument Number RO49350Z.
2. Transfer Easement in favour of Bell Canada and Niagara Falls Hydro-Electric Commission registered on December 17, 1981, as Instrument Number RO382264.
3. Transfer Easement in favour of The Corporation of the City of Niagara Falls registered on December 17, 1981, as Instrument Number RO382266E.
4. Restrictive Covenants registered on December 17, 1981, as Instrument Number RO382266Z.
5. A right-of-way over Part 8 on 59R-14311 reserved by Instrument Number RO182711.
6. An easement in favour of The Corporation of the City of Niagara Falls described in Instrument Number RO199354 (as originally reserved by RO182832).
7. Notice of Claim in favour of The Corporation of the City of Niagara Falls registered on August 19, 1996, as Instrument Number RO710990, relating to Instrument Number RO182832 and RO382266.
8. Normal utility easements serving the Property and/or other properties.
9. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements and building restrictions, provided they are complied with.
10. Any easements, rights-of-way, licences and restrictions that run with the land, and, other minor encumbrances which do not materially interfere with the existing use of the Property.
11. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown and any statutory exceptions to title.
12. Any claims, leases, charges, encumbrances, easements or interests in or to the Property not disclosed by registered title.
13. Errors, omissions and defects, if any, in surveys and surveying matters

generally, and irregularities, easements, encroachments, rights-of-way or other defects and discrepancies in title or possession which are or would be disclosed by an up-to-date survey of the Property, or any minor discrepancies in the legal description contained in any registered deed or other instrument.

14. Minor title defects which in the aggregate do not materially affect the marketability of the Property.
15. Any rights of expropriation, access or user, or any other similar right conferred or reserved by or in any statute of Canada or Ontario.
16. Any statutory liens or levies not disclosed by registered title.
17. Inchoate liens for taxes or assessments by public authorities.
18. Any buildings, fixtures, structures, infrastructure, equipment, improvements, installations or inclusions of any kind, whether below-grade or above-grade, and whether apparent on a visual inspection of the Property or otherwise, and whether or not within the knowledge or imputed knowledge of the Vendor, its officers, employees, agents, representatives, contractors or elected and appointed officials.

SCHEDULE C

ALLOCATION OF PURCHASE PRICE

[NTD: to be completed by the Parties]