

PROJECT AGREEMENT

Continuous Improvement Fund Project #XXX

THIS AGREEMENT made as of the ■ day of ■ 2008.

AMONG:

Waste Diversion Ontario,

a corporation without share capital incorporated under the laws of the Province of Ontario, having its place of business at:
45 Sheppard Ave East, Suite 920, Toronto, Ontario, M2N 5W9

(hereinafter referred to as the "WDO")

- and -

Municipality XXXXXXXXX

a corporation incorporated under the laws of the Province of Ontario, having its place of business located at:

address

(hereinafter referred to as the "Municipal Partner")

- and -

Stewardship Ontario,

a corporation without share capital incorporated under the laws of the Province of Ontario, having its place of business located at:
26 Wellington Street, East, Suite 601, Toronto, Ontario, M5E 1S2

(hereinafter referred to as "Stewardship Ontario")

(Collectively referred to as "the Parties")

WHEREAS a waste diversion program plan for blue box wastes has been established through WDO (the **Blue Box Program Plan**) in accordance with all the legislative requirements of the *Waste Diversion Act 2002* (Ontario) (the "**WDA**");

AND WHEREAS a fund known as the "Continuous Improvement Fund" (occasionally herein referred to as the "CIF") has been established through an agreement dated as of September 6, 2007 among the Association of Municipalities of Ontario, The City of Toronto, Stewardship Ontario and WDO under the Blue Box Program Plan;

AND WHEREAS WDO is desirous of partnering with the Municipal Partner to undertake a project in connection with certain aspects of the waste diversion program for blue box wastes;

AND WHEREAS Stewardship Ontario has been designated under the WDA as the industry funding organization for blue box waste and is responsible for the execution of the Blue Box Program Plan;

AND WHEREAS the Municipal Partner has applied to and is desirous of receiving funding from the Continuous Improvement Fund for the Project for the Project on the terms and subject to the conditions herein set out;

AND WHEREAS Stewardship Ontario, as custodian of the Continuous Improvement Fund, is to provide funding from the Continuous Improvement Fund for the Project; and

AND WHEREAS the day to day management of the Continuous Improvement Fund is being carried out under the supervision of the director of the Continuous Improvement Fund (the "**Director CIF**").

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the respective covenants and agreements of the Parties contained herein, it is agreed as follows:

ARTICLE I – ENGAGEMENT

1.1 Retainer. WDO hereby retains the Municipal Partner to undertake the project **XXX** (the "**Project**") as outlined in the following documents (hereinafter referred to as the "**Terms of Reference**"):

- (a) *Application titled **XXX** (attached as Appendix A),*
- (b) *Budget (attached as Appendix B).*
- (c) *Payment Schedule (attached as Appendix C).*

The Municipal Partner will provide staff to oversee the Project and to ensure that the final Project report document is practical and usable. The Municipal Partner shall scrutinize and review the progress of the Project and the completion of Project deliverables on an on-going basis and will provide written status reports to WDO as required from time to time, such reports to be in form and substance satisfactory to WDO, acting reasonably. The Municipal Partner shall provide these services without cost to either WDO or Stewardship Ontario.

1.2 Term of Agreement. This Agreement shall remain in full force and effect from the date hereof *until all deliverables are completed and the final report is accepted and approved by the Director CIF*, subject to earlier termination as hereinafter provided (see Section 4.1), with the said term being capable of extension by mutual written agreement of the Parties hereto.

1.3 Provision of Services. The Project shall be carried out by the Municipal Partner in consultation with the Director CIF. The Municipal Partner shall devote a sufficient amount of staff time and other resources to carry out the Project in accordance with the timelines, budget and other parameters set out in the appendices hereto.

1.4 Sub-Contractors. The Municipal Partner may, from time to time, sub-contract the performance of the services required to carry out the Project to other persons, firms and associations as detailed in Appendix A. It is agreed and acknowledged that any sub-contracting

provided to the Municipal Partner will be at the cost of the Municipal Partner, except as detailed in Appendix A, and the Municipal Partner will be fully responsible for the performance of the obligations hereunder and its obligations in relation to the Project whether or not such obligations have been sub-contracted to a third party.

1.5 Board Policy. The Municipal Partner shall act in accordance with any policy established by WDO and/or Stewardship Ontario.

1.6 Remuneration. In consideration of the services to be rendered by the Municipal Partner in relation to the Project hereunder, Stewardship Ontario shall pay to the Municipal Partner up to the sum of **\$YYY plus GST**. Payments to the Municipal Partner shall be made according to the payment schedule detailed in Appendix C, linked to the Project deliverables within 30 days of receiving fully documented labour and expense invoices. Stewardship Ontario may withhold 25% of the total contract amount pending the submission of a final Project report that is acceptable to WDO.

Invoices are to include a reference to the Project title (“XXX”) and the percentage of task completed (e.g. Component 1 is 25% complete) and are to be directed to:

*Waste Diversion Ontario
Continuous Improvement Fund Office
92 Caplan Avenue, Suite 511
Barrie, ON L4N 0Z7
Attention: Accounts Payable*

1.7 Expenses. Expenses include travel costs actually and properly incurred by the Municipal Partner in connection with undertaking the Project hereunder and as outlined in the Terms of Reference. The Municipal Partner shall include original statements and vouchers with invoices to support expense claims. Notwithstanding the foregoing, the Municipal Partner will not be entitled to obtain reimbursement for travel costs in excess of [\$1,000] unless prior approval of the Director CIF has been obtained for such travel.

ARTICLE II- COVENANTS

2.1 No Delegation of Services. The Municipal Partner shall not delegate or sub-contract the performance of the Project to anyone without the prior written consent of the WDO, except as set out in Appendix A.

ARTICLE III- CONFIDENTIALITY

3.1 Confidential Information. The Municipal Partner shall, and shall require each sub-contractor, to covenant and agree in writing, not to disclose to anyone any confidential information with respect to any material provided by and about the business or affairs of the WDO or Stewardship Ontario except as may be necessary or desirable to further the interest of the Project, but only as approved, in writing, by WDO and Stewardship Ontario. The Municipal Partner and its sub-contractors will sign confidentiality agreements with WDO and Stewardship Ontario as required relating to data supplied by WDO and/or Stewardship Ontario. This obligation shall survive the expiry or termination of this Agreement.

3.2 Return of Property. Upon expiry or termination of this Agreement, the Municipal Partner and its sub-contractors shall return to WDO any property, documentation, or confidential information which is the property of WDO.

ARTICLE IV– TERMINATION

4.1 Termination of Agreement. Either WDO or the Municipal Partner may terminate this Agreement by giving the other thirty (30) days notice. If this Agreement is so terminated, the liability of Stewardship Ontario for any unpaid portion of the Project Cost shall be limited to an amount that, in the opinion of Stewardship Ontario and WDO, is a reasonable payment for the Municipal Partner's partial performance of the Project to the date of termination. The Municipal Partner shall provide a written report to WDO summarizing all of the work undertaken in relation to the Project and the results achieved up to the date of termination, such report to be in form and substance satisfactory to WDO acting reasonably. If the Project is terminated and Stewardship Ontario has made a partial payment towards the Project Cost, WDO and Stewardship Ontario reserves the right to make public the deliverable(s) for which the Municipal Partner has been paid.

4.2 Survival. With the exception of the provisions of this Agreement concerning payment in Article One, confidentiality in Article Three, communications in Section 6.17 and any other provisions specifically stated to survive the termination of this Agreement, the obligations of the Parties under this Agreement shall terminate upon the termination of this Agreement.

ARTICLE V– RELATIONSHIP OF PARTIES

5.1 Relationship of Parties. It is acknowledged by the Parties hereto that the Municipal Partner is being funded by Stewardship Ontario in the capacity of Project funder. The Municipal Partner, WDO and Stewardship Ontario acknowledge that this Agreement does not create a partnership, agency or joint venture relationship between them and none of the Parties shall have any right to bind any of the other Parties hereto to any contractual obligations.

5.2 Indemnity. The Municipal Partner agrees to indemnify and hold harmless WDO and Stewardship Ontario in respect of any losses, costs, claims, damages or expenses incurred by either of them as a result of any act or omission of the Municipal Partner in carrying out its obligations under this Agreement or its obligations in relation to the Project.

ARTICLE VI– GENERAL CONTRACT PROVISIONS

6.1 Data and Publications

- (a) WDO and Stewardship Ontario shall be the owners of the copyright pertaining to the reports or other documents or data prepared under the terms of this Agreement or of the Project and the owners of all other intellectual property rights arising as a result of the Project. WDO and Stewardship Ontario retain the full capacity, free of all royalties or other charges, to publish or use, at any time, or times, any reports, data, or related documents or information, in whole or in part, produced under this Agreement in relation to the Project.

- (b) The Municipal Partner shall include the following copyright notice in at least one prominent place in the reports and other documents related to the Project, in the following manner:

© 200X Waste Diversion Ontario and Stewardship Ontario

All rights reserved. No part of this publication may be reproduced, recorded or transmitted in any form or by any means, electronic, mechanical, photographic, sound, magnetic or other, without advance written permission from the owner.

- (c) The Municipal Partner shall recognize and state in an appropriate manner, as approved by WDO and Stewardship Ontario, the support offered by WDO and Stewardship Ontario concerning the Project. Unless the Municipal Partner has received written notice to the contrary from WDO, the following shall be incorporated into the reports and other documents produced by the Municipal Partner or sub-contractor in connection with the Project:

This Project has been delivered with the assistance of Waste Diversion Ontario's Continuous Improvement Fund, a fund financed by Ontario municipalities and stewards of blue box waste in Ontario. Notwithstanding this support, the views expressed are the views of the author(s), and Waste Diversion Ontario and Stewardship Ontario accept no responsibility for these views.

- (d) The provisions of Section 6.16 shall survive the termination of the Agreement.

6.2 Communications

- (a) The Parties recognize the importance of making information about the Project available for public use. The Municipal Partner shall cooperate in providing reasonable information on the Project to the public as directed by the Director CIF. WDO may separately contract for communications in addition to communications activities outlined in Appendix A. ***The Municipal Partner shall be responsible for replying to public and media inquiries regarding the Project for a period of 12 months after the final report has been approved by the Director CIF.***
- (b) The Municipal Partner shall assist WDO and Stewardship Ontario in developing a communications strategy for publicizing the findings of the Project ***for a period of 12 months after the final report has been accepted and approved by the Director CIF.*** WDO and/or Stewardship Ontario may separately contract for communications in addition to communications activities outlined in Appendix A.

6.3 Dispute Resolution

- (a) If any dispute arises between or among any of the parties hereto as to their respective rights and obligations under this Agreement, the parties shall use the following dispute resolution procedures to resolve such dispute:

- (b) The parties shall attempt to resolve disputes in the spirit of mutual cooperation through discussion and negotiations between the designated representatives of the parties within thirty (30) days of the date upon which notice of the dispute was first given by one party to the other(s) or as otherwise agreed upon;
- (c) If the parties are unable to resolve the dispute in the manner aforesaid, each of the parties to the dispute shall have the right, on notice in writing to the other parties to the dispute, to require that such dispute be submitted to the senior executive officers of the parties to the dispute for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
- (d) In the event that the senior executive officers of the parties are unable to resolve such dispute, each of the parties to the dispute shall have the right, on notice in writing to the other parties to the dispute, to require that such dispute be submitted to the chairs of the Board of Stewardship Ontario and WDO and an individual designated by the Municipal Partner for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
- (e) If the representatives of the parties are unable to resolve the dispute, the Parties shall have the right to refer the matter to binding arbitration in accordance with the provisions of the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended. Each of the parties to the dispute shall bear the cost of its own counsel and witnesses but the costs of the arbitration including the fees of the arbitrator(s), the cost of the court reporters and transcripts and the cost of the arbitration facility shall be borne equally by the Parties to the dispute. The arbitration shall take place in Toronto, Ontario, Canada, before a single arbitrator to be chosen jointly by the parties to the dispute. If the parties cannot agree on the choice of an arbitrator within thirty (30) days of the notice requiring such dispute to be submitted to arbitration, then any of the parties shall be entitled to apply to the Court for the appointment of an arbitrator; and
- (f) The parties may determine the procedure to be followed by the arbitrator in conducting the proceedings, or may request the arbitrator to do so. The arbitrator shall issue a written award within thirty (30) days of completion of the hearing.

6.4 Notices. All notices, requests, demands or other communications (collectively “Notices”) by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or registered mail (postage prepaid), by facsimile transmission, or by email to such other party as follows:

to WDO at:

Waste Diversion Ontario
 45 Sheppard Ave. East, Suite 920
 Toronto, Ontario,
 M2N 5W9
 Attention: Glenda Gies

Email: glendagies@wdo.ca
Tel: (416) 226-5113 Fax: (416) 226-1368

with a copy to:

Continuous Improvement Fund Office
92 Caplan Avenue, Suite 511
Barrie, Ontario
L4N 0Z7
Attention: Mr. Andy Campbell, Director CIF
Phone: 705.719.7913 Fax: 866.472.0107
Email: andycampbell@wdo.ca

to the Municipal Partner at:

XXXXXXXXXXXXX
City, Ontario, YYYYYYY
Attention: XXXXXXXX
Email: XXXXXXXX
Phone: XXXXXXXX Fax: XXXXXXXX

to Stewardship Ontario at:

Stewardship Ontario
26 Wellington Street East, Suite 601
Toronto, Ontario
M5E 5W9
Attention: John Dixie, Technical Services
Email: jdixie@stewardshipontario.ca
Tel: 647-777-3366 Fax: 416-594-3463

or at such other address as may be given by any such person to the other Parties hereto in writing from time to time.

All such Notices shall be deemed to have been received on the day when delivered, transmitted or e-mailed, or, if mailed, 72 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 72 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery, facsimile transmission or e-mail.

6.5 Additional Conditions. The Parties shall execute such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

6.6 Counterparts. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

6.7 Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

6.8 Entire Agreement. This Agreement constitutes the entire Agreement of the Parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the Parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the Parties hereto. Any schedules referred to herein are incorporated herein by reference and form part of the Agreement.

6.9 Enurement. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

6.10 Assignment. None of the Parties shall assign any of its rights or obligations hereunder without the prior written consent of the other Parties.

6.11 Currency. Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

6.12 Headings for Convenience Only. The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

6.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties hereto agrees irrevocably to attorn to the non-exclusive jurisdiction of the Courts of such Province.

6.14 Gender. In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders and the word "person shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.

6.15 Calculation of Time. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a business day, i.e a day on which banks are open for business in the Province of Ontario, then the time period in question shall end on the first business day following such non-business day.

6.16 Legislation References. Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

6.17 Severability. If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.

6.18 Transmission by Facsimile or E-mail. The Parties hereto agree that this Agreement may be transmitted by facsimile, e-mail or such similar device and that the reproduction of signatures by facsimile, e-mail or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the Parties have executed this Agreement effective the date first stated above.

By: _____

I have authority to bind the corporation.

Waste Diversion Ontario

By: _____

I have authority to bind the corporation.

Corporation of XXXXXXXXXXXX

By: _____

I have authority to bind the corporation.

Stewardship Ontario

Appendices

Appendix A – Detailed Application

Appendix B – Detailed Budget

Appendix C – Payment Schedule