

The Corporation of the City of Kawartha Lakes

Council Report

Report Number WM 2017-001

Date: Tuesday May 16, 2017

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier: All

Subject: Municipal Automotive Materials Services Agreement

Author/Title: Angela Porteous, BESc.
Regulatory Compliance Officer

Signature:



Recommendation(s):

RESOLVED THAT Report WM 2017-001, **Municipal Automotive Materials Services Agreement**, be received;

THAT staff be directed to enter into an agreement with 'Automotive Materials Stewardship (AMS)' for funding to the City for the management of end-of-life automotive materials associated with the City's Household Hazardous Waste Collection Program; and

THAT the Mayor and Clerk be authorized to execute any documents and agreements required by the approval of this agreement.


Department Head:



Corporate Services Director / Other:



Chief Administrative Officer:



Background:

Currently the City operates under the signed 'New Municipal Hazardous or Special Waste Service Agreement' effective January 1, 2015 with Stewardship Ontario (SO) to receive funding for designated hazardous waste materials including antifreeze (and associated empty containers), used oil containers and used oil filters.

As of April 1, 2017 Automotive Materials Stewardship (AMS) has been approved by the Minister to operate an industry stewardship plan (ISP) for the end-of-life management of used oil filters, used oil containers, used antifreeze and its containers. As a result, funding under the current SO agreement will discontinue for these materials and an agreement between the City and AMS is required to receive the same level of funding and services received in the past.

A copy of the new agreement between the City and AMS that is required is attached as Appendix A.

Rationale:

The new AMS agreement is intended to provide the same terms for the current operations and management of used oil filters, used oil containers, used antifreeze (and associated containers). If the materials are handled as per the specified terms in the agreement then AMS will provide funding for managing these materials. Under the legislation, the AMS funding is designed to cover 50% of the operational expenses municipalities incur for managing these items.

AMS will cover a portion of the depot operation at Fenelon and Lindsay, event days as well as a portion of the transportation and processing of these automotive materials. The previous agreement with SO was for the same level of funding and in 2016 provided approximately \$7,200 to the municipality for this service.

This agreement term will commence on the date of signing and will be effective for a three (3) year period. The length of this agreement will assist staff with the operational budgeting by relying on a consistent source of revenue associated with the collection of these designated household hazardous wastes.

Other Alternatives Considered:

If the City chooses not to enter into agreement with AMS, the City will not receive continued funding support for the designated automotive hazardous waste materials. Since the City cannot accept automotive materials for disposal at the municipal landfills, the City would have to pay the full cost for their management and disposal without the advantage of any outside funding source.

Financial Considerations:

In 2016, funding received for all household hazardous waste (including the AMS products) was approximately \$145,000. This was for HHW at the Lindsay Ops and Fenelon household hazardous waste depots and the City's event days. Total Funding is significant and covers approximately 65% of the City's actual annual expenditures. In 2016, funding received for used oil filters, used oil containers, used antifreeze and its containers represented approximately 5% of the total funding for all of the hazardous waste materials collected and managed by the City. The AMS agreement will maintain the current funding levels discussed above.

Relationship of Recommendation(s) to the 2016-2019 Strategic Plan:

Entering into an agreement with AMS aligns with our Strategic Goals, specifically "A Healthy Environment", Action 3.1.2 which is "Executing the Waste Management Strategy". The City's Household Hazardous Waste Program is listed in the Waste Management Strategy as a currently offered program. This agreement will ensure that the same level of service is provided to the public, preserve valuable landfill space and reduce environmental impacts by continuing to recycling these materials in an environmentally responsible manner.

Review of Accessibility Implications of Any Development or Policy:

None

Servicing Comments:

None

Consultations:

David Kerr, P. Geo, Manager of Environmental Services
Jolene Ramsey, Insurance Risk Management Coordinator
Automotive Materials Stewardship

Attachments:

Appendix A: AMS Agreement



AMS Agreement.pdf

Phone: 705-324-9411 ext. 2360

E-Mail: aporteous@city.kawarthalakes.on.ca

Department Head: Bryan Robinson, Director

Department File:

Appendix # A

to

Report # WM2017-001

MUNICIPAL AUTOMOTIVE MATERIALS SERVICES AGREEMENT

THIS AGREEMENT is made as of the 1st day of April, 2017 (the "**Effective Date**").

BETWEEN:

AUTOMOTIVE MATERIALS STEWARDSHIP INC. ("AMS")

- and -

CORPORATION OF THE CITY OF KAWARTHA LAKES ("MUNICIPALITY")

collectively, the "Parties"

Reporting Contract #: _____

WHEREAS:

- A. By letter received by Waste Diversion Ontario December 12, 2006, the Minister of the Environment for the Province of Ontario required Waste Diversion Ontario ("WDO") to develop a waste diversion program for municipal hazardous or special waste ("MHSW") and that Stewardship Ontario ("SO") act as the Industry Funding Organization ("IFO") for the program;
- B. SO, at the direction of and in cooperation with Waste Diversion Ontario, developed a municipal hazardous or special waste program plan for 9 materials (the Phase 1 materials), which was approved for implementation by the Minister of the Environment by letter dated February 19, 2008;
- C. SO and the Municipality entered into an agreement concerning the provision of certain services by the Municipality to SO concerning the Phase 1 materials.
- D. On May 31, 2016, in accordance with Section 34 of the *Waste Diversion Transition Act, 2016*, AMS submitted an Industry Stewardship Plan ("ISP") for Automotive Materials (as defined in Section 1.2)
- E. On August 10, 2016, WDO approved the AMS ISP for Automotive Materials pursuant to the provisions of Section 34 of the *Waste Diversion Act, 2002*.
- F. On November 30, 2016, the *Waste-Free Ontario Act, 2016* was proclaimed and replaced the *Waste Diversion Act, 2002*

- G. On November 30, 2016, the Resource Productivity and Recovery Authority (the "Authority") was proclaimed as part of the new Waste-Free Ontario Act, 2016, replacing the WDO.
- H. On December 20, 2016, the Authority designated April 1, 2017 as the effective date of the ISP for Automotive Materials.
- I. AMS and the Municipality wish to enter into a new agreement concerning the provision of certain services by the Municipality to AMS concerning Automotive Materials.

NOW THEREFORE in consideration of the premises, the parties hereto agree as follows:

1.0 Definitions and Interpretation

- 1.1. Terms beginning with capital letters and used herein without definition shall have the meanings given to them in either the *Waste Diversion Transition Act, 2016* (Ontario) or the *Municipal Act, 2001* (Ontario), as the case may be unless otherwise specified.
- 1.2. In this Agreement:
- (a) **“Agreement”** means this Agreement and includes all schedules and amendments thereto;
 - (b) **“Automotive Materials”** means the following designated waste materials designated as Phase 1 in the Minister’s program request letter to Waste Diversion Ontario received on October 25, 2010 and as may be further defined by the Minister from time to time:
 - Antifreeze, and the containers in which it is contained
 - Containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil
 - Oil filters – after they have been used for their intended purpose
 - (c) **“Business Day”** means Monday through Friday, excluding statutory holidays and any other day that the Government of Ontario has elected to be closed for business;
 - (d) **“Claims Submission”** means submission to AMS of data required to validate claim for payment;
 - (e) **“Collection Services”** means all the activities, including those conducted at Events and Depots operated by or on behalf of the Municipality, for the purpose of receiving, classifying, packing, storing and transferring Automotive Materials onto transportation vehicles, including the manifesting of the Automotive Materials prior to transportation away from the Event or Depot;
 - (f) **“Depot”** means a collection and transfer facility/location operated by or on behalf of the Municipality for receiving Automotive Materials from the public and/or Exempt Small Quantity IC&I Generators and transferring same to transporters for processing or recycling;
 - (g) **“Diversion Report”** means invoices, Automotive Material tonnage reports, or other such documents as may reasonably be required by AMS from time to time for the validation of Claims Submissions;
 - (h) **“End Processor”** means a Service Provider that processes collected Automotive Materials;
 - (i) **“Event”** means a one-day or other collection event, operated by or on behalf of a municipality to collect, pack, transport, weigh, and process Automotive Materials from the public and/or Exempt Small Quantity IC&I Generators;

- (j) **“Exempt Small Quantity IC&I Generator”** means a business that is not required to submit a Generator Registration Report with respect to Automotive Materials under subsection 18 (1) of Regulation 347, made under the *Environmental Protection Act* (Ontario), as amended from time to time;
- (k) **“FOB”** means free on board;
- (l) **“Generator”** means the final user who generates waste which will be reused, recycled or disposed;
- (m) **“Manifesting”** means those activities associated with preparing a manifest for Post-Collection Services in accordance with Regulation 347 made under the *Environmental Protection Act* (Ontario);
- (n) **“Member Associations”** means representatives from the Regional Public Works Commissioners of Ontario, the Association of Municipalities of Ontario, and the Municipal Waste Association;
- (o) **“Minister”** means the Minister of the Environment for the Province of Ontario;
- (p) **“Municipal Services”** means the Collection Services and/or Post-Collection Services provided by the Service Provider;
- (q) **“Packing Standards”** means the Waste Packing Protocols listed in Schedule “D” as amended by AMS from time to time;
- (r) **“Post-Collection Services”** means the management of Automotive Materials after delivery of such Automotive Materials to a transportation Service Provider FOB the Event or Depot location, including but not limited to transportation of Automotive Materials from Events and Depots, consolidation, sorting, weighing, processing, recycling, and safe disposal of residual waste and other post-collection waste management activities;
- (s) **“Service Provider”** means the Municipality and/or a commercial party that provides Municipal Services to AMS or the Municipality as the case may be; and
- (t) **“WeRecycle Portal”** means AMS’s online system for uploading Claims Submissions.

2.0 Municipal Services

2.1. This Agreement is for three different service location types for the provision of Municipal Services by the Municipality to AMS. These are as follows:

- (a) **Depot**
 - (i) The Municipality or the Municipality’s Service Provider provides Depot Collection Services for Automotive Materials. AMS pays the Municipality an hourly rate for the Collection Services of Automotive Materials.

- (ii) Automotive Materials are to be separately sorted by material as per Packing Standards by the Municipality at its Depots and made ready for pick-up by approved Automotive Incentive Program ("AIP") transporters.

(b) Event

- (i) The Municipality or the Municipality's Service Provider provides Event Collection Services for Automotive Materials. The Municipality may combine Events with other activities, including collection of non-Automotive Materials. AMS pays the Municipality a cost per tonne of Automotive Materials as per Schedule "B" for the Collection and Post-Collection Services.

(c) Event (and transportation to Depot)

- (i) The Municipality or the Municipality's Service Provider provides Event Collection Services for Automotive Materials and transports the collected Automotive Materials to a Depot. AMS pays the Municipality a cost per tonne.
- (ii) Automotive Materials are to be separately sorted by material as per Packing Standards by the Municipality at its Depots and made ready for pick-up by AIP transporters.

For the purpose of this Agreement, AMS and the Municipality have agreed that the service location types marked with an "X" below will be the ones under which the Municipality will provide Municipal Services to AMS.

☒

Depot

☒

Event

☐

Event (and transportation to Depot)

- 2.2. AMS and Municipality may agree in writing at any time to change the service location type under which Municipality is providing Municipal Services to AMS herein to the other service location type listed or to add another service location type and this Agreement shall be deemed to have been amended accordingly.

3.0 Price and Payment

3.1. Price

- (a) Municipal Services – Depot. AMS will pay for Municipal Services provided by the Municipality as follows:
 - (i) AMS will pay the Municipality the hourly rate as set out in Schedule "B" for the Total Reimbursable Hours of Operation as specified in Schedule "A" for the Collection Services.
 - (ii) Post-Collection Services for Automotive Materials collected at Depots will be paid directly to Service Providers by AMS as part of the AIP.

- (b) Municipal Services - Event. AMS will pay for Municipal Services provided by the Municipality as follows:
 - (i) AMS will pay the Municipality an amount per tonne as set out in Schedule "B" for the Collection Services and Post-Collection Services for each of the approved Events that are submitted as outlined in Schedule "A". The actual weight of the Automotive Materials as determined by the Service Provider providing the Post-Collection Services will be used.
- (c) Municipal Services – Event (and transportation to Depot). AMS will pay for Municipal Services provided by the Municipality as follows:
 - (i) AMS will pay the Municipality an amount per tonne as set out in Schedule "B" for the Collection Services and transportation of Automotive Materials to a Depot for each of the approved Events that are submitted as outlined in Schedule "A". The actual weight of the Automotive Materials as determined by the Service Provider providing the Post-Collection Services will be used.
 - (ii) Post-Collection Services for Automotive Materials collected at Events and transported to Depots will be paid directly to Service Providers by AMS as part of AIP.

3.2. Payment

- (a) Municipal Services – Depot.
 - (i) For Depot Collection Services payable pursuant to Section 3.1(a)(i), AMS will pay the Municipality pursuant to this Agreement within thirty (30) days of the end of each calendar month.
- (b) Municipal Services - Event.
 - (i) To receive payment for Event Collection Services and Post-Collection Services, the Municipality must upload a Claims Submission via the WeRecycle Portal and send AMS a copy of the shipping manifest(s) and Diversion Report(s) from the End Processor with respect to the Automotive Materials. The Claims Submission is to be submitted by Municipality to AMS within thirty (30) days of Municipality receiving the related Diversion Report(s) but no later than the end of the following calendar quarter. AMS will validate the Claims Submission with the Diversion Report(s) received from Municipality within thirty (30) days of receipt and AMS will pay the Municipality pursuant to this Agreement within thirty (30) days of the date on which AMS determines the claim to be correct and accurate. If any errors or omissions are found, AMS will issue a payment adjustment and AMS may require a corrected Claims Submission from the Municipality.
- (c) Municipal Services – Event (and transportation to Depot).
 - (i) To receive payment for Event Collection Services and transportation of Automotive Materials to a Depot, the Municipality must upload a Claims Submission via the WeRecycle Portal and send AMS a copy of the shipping

manifest(s) with respect to the Automotive Materials. The Claims Submission is to be submitted by Municipality to AMS within thirty (30) days of Municipality receiving the related manifest(s) but no later than the end of the following calendar quarter. AMS will validate the Claims Submission with the manifest(s) received from Municipality within thirty (30) days of receipt and AMS will pay the Municipality pursuant to this Agreement within thirty (30) days of the date on which AMS determines the claim to be correct and accurate. If any errors or omissions are found, AMS will issue a payment adjustment and AMS may require a corrected Claims Submission from the Municipality.

- 3.3. Municipality will provide any additional back-up/supporting information reasonably requested by AMS to verify the accuracy of the Claims Submissions from time to time.
- 3.4. The Municipality will not charge residential Generators of Automotive Materials for collection of Automotive Materials at its Depots or Events.
- 3.5. Late Submission Penalties
 - (a) AMS may reduce amounts payable under Claims Submissions which are not submitted to AMS within the time periods set out in section 3.2 (b) and (c) by five (5%) per cent per month.
 - (b) AMS will have no responsibility to pay and Municipality will forfeit the right to claim for, any Claim Submission in respect of a calendar year which is not received by AMS by January 31 of the following calendar year.

4.0 Term

- 4.1. This Agreement will commence on the Effective Date and its initial term will continue until the expiry of a three (3) year period following the Effective Date. The initial term and any such additional term or terms are herein referred to as the "Term".

5.0 Title and Compliance with Laws

- 5.1. Title to all Automotive Materials collected by Municipality at Events and Depots will belong to Municipality from the time of collection until transfer of the collected Automotive Materials to an approved AIP transporter. At no time will AMS have title to Automotive Materials unless handled directly by AMS employees. Any contract entered into between Municipality and a transporter or an End Processor for Automotive Materials must provide that title transfers in accordance with the Transporter and Processor Standards found on the AMS website at www.automotivematerialsstewardship.ca, as amended from time to time.
 - (a) Notwithstanding the foregoing, if the Municipality operates a reuse program for any Automotive Materials, title to the Automotive Materials being reused shall transfer to municipality one (1) second prior to being given to the person or entity requesting it for reuse purposes.

- 5.2. In performing the Municipal Services hereunder, Municipality represents and warrants that it will at all times, and will require its service providers to, have all Certificates of Approval (also known as an Environmental Compliance Approval), and any other approvals required and that it will otherwise comply at all times and require its service providers to comply, with all applicable laws, regulations and requirements of any governmental authority having jurisdiction, including without limitation the Ontario Ministry of the Environment and the Ontario Ministry of Labour.

6.0 AMS Policies, Standards and Guidelines

- 6.1. AMS may develop or propose amendments, from time to time, to policies, standards and guidelines relative to the provision of Municipal Services. AMS will endeavour to provide the Member Associations sufficient time to comment on the proposed amendments for the purposes of reaching consensus in support of implementing the proposed amendments, and for clarifying potential impacts to the Municipality.
- 6.2. The AMS Collection Site Standards in effect at the time of entering into this Agreement are included in Schedule "D" for convenience.
- 6.3. Municipality will use best efforts to comply with, and will require that any of its contractors supplying Municipal Services use best efforts to comply with, the provisions of all such policies, standards and guidelines as they pertain to the provision of the Municipal Services. AMS will communicate any new or amended such policies, standards and guidelines to Municipality via email and will post copies of such new or amended policies, standards and guidelines on AMS's website as they are developed.
- 6.4. Municipality may provide written notice within thirty (30) days of receiving such communication that it does not wish to comply with a new or amended policy, standard or guideline, and in the event that the Municipality provides such written notice either Party may exercise the termination provisions of 19.4(b).

7.0 Promotion and Education

- 7.1. Proper education and promotion of the proper end of life management of Automotive Materials is essential to the ISP's success. The Municipality will work cooperatively with AMS in undertaking such promotion and education activities with respect to the ISP for Automotive Materials and collection of the Automotive Materials as set out in Schedule "C" and as may otherwise be reasonably requested by AMS from time to time.

8.0 Indemnity and Insurance

- 8.1. Each party (the "Indemnifying Party") hereby indemnifies and saves harmless the other party (the "Indemnified Party") on its behalf and as trustee for, its respective directors, officers, contractors, employees and agent, from and against any and all manner of actions or causes of actions, damages (but not including consequential damages), costs, loss or expenses of whatever kind (including related legal fees on a full indemnity basis) which the Indemnified Party, its directors, officers, contractors, employees and agents may sustain, incur or be put to by reason of or directly or indirectly arising out of any breach of this Agreement by the other party or any wilful misconduct or negligence of the Indemnifying Party or any person for whom the Indemnifying Party is, at law, responsible, in relation to matters arising out of this Agreement.

- 8.2. The Municipality will, during the Term of the Agreement, self-insure, maintain at its expense and/or require any Service Provider to maintain at either the Municipality's or Service Provider's expense Comprehensive General Liability coverage with limits of not less than \$5,000,000 (five million dollars) per occurrence. For clarity, only the Municipality can self-insure.
- 8.3. The Comprehensive General Liability policy of insurance referred to in this section will include AMS as an additional insured.
- 8.4. Unless the Municipality wholly self-insures, the Municipality will deliver a copy of Certificate(s) of Insurance maintained by the Municipality or a Service Provider pursuant to this Agreement, upon the effective date of this Agreement, and annually upon renewal of the Municipality or Service Provider's insurance, naming AMS as an additional insured with the following language:
- "Automotive Materials Stewardship and its affiliated entities, officers, partners, directors, employees, representatives and agents are included as Additional Insureds for Comprehensive General Liability. Such coverage is primary and non-contributing."
- If the Municipality wholly self-insures, the Municipality will deliver a letter stating such self-insurance to AMS upon the effective date of this Agreement, and annually upon each automatic renewal of this Agreement.
- 8.5. The Certificate(s) of Insurance, referred to in subsection 8.4, must also provide that AMS will be provided with thirty (30) days advance written notice of cancellation, termination, non-renewal or material change.

9.0 Assignment

- 9.1. The Municipality may not subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of AMS.
- 9.2. Notwithstanding subsection 9.1, the Municipality may assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of, but with written notice to, AMS:
- (a) from a Lower-tier Municipality to an Upper-tier Municipality or vice versa;
 - (b) to a municipal service board pursuant to sections 194 to 202 of the Municipal Act, 2001, as amended; or
 - (c) to a municipal business corporation pursuant to section 203 of the Municipal Act, 2001, as amended

10.0 Notices

Any notice, request, demand or other instrument or communication herein provide, permitted or required to be given by either AMS or the Municipality will be in writing and sufficiently given if delivered personally, by facsimile transmission or other electronic means of written communication tested prior to transmission to the extent such testing is

available (unless otherwise expressly provided herein) or if sent by registered mail to the following respective address hereinafter set out, namely:

Notices to AMS will be delivered to:

Operations Officer
Automotive Materials Stewardship
1 St. Clair Avenue West, Suite 701
Toronto, ON M4V 1K6

Email: operations@autostewardship.ca

Notices to The Municipality will be delivered to:

Heather Dzurko, Waste Management Operations Supervisor
City of Kawartha Lakes
12 Peel Street
Lindsay, ON K9V 3L8

Email: hdzurko@city.kawarthalakes.on.ca

Any such notice if delivered personally, by facsimile transmission or by other electronic means will be conclusively deemed to have been given on the day of personal delivery, or facsimile transmission or electronic communication (and if after 5 p.m. E.T. the next following Business Day), or if mailed as aforesaid, will be conclusively deemed to have been received on the fifth (5th) business day following the day on which such notice is mailed as aforesaid (except during a postal strike in which case such notice shall be delivered via courier). Either party may, at any time, give written notice to the other of any change of address (postal and/or email) of the party giving such notice and from and after the giving of such notice the address therein specified shall (in the absence of knowledge to the contrary) be deemed to be the address of such party for the giving of notices thereafter.

11.0 No Partnership or Joint Venture

- 11.1. This Agreement does not create and will not in any circumstances create or be deemed to create a partnership or joint venture between the parties. For all purposes Municipality will be an independent contractor.

12.0 Severability

- 12.1. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. To the extent that any such provision is found to be invalid, illegal or unenforceable, the parties hereto will act in good faith to substitute for such provision, to the extent possible, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

13.0 Amendment and Waivers

- 13.1. No amendment or waiver of any provision of this Agreement will be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement will constitute a waiver of any other provision, and no waiver will constitute a continuing waiver unless otherwise provided.

14.0 Further Acts

- 14.1. Each party will execute all such documents and do all such other acts and things as may be necessary or desirable from time to time in order effectively to carry out the provisions of this Agreement and will not to take any action, or omit to take any action, that would constitute a breach of this Agreement.

15.0 No Third Party Beneficiaries

- 15.1. No person or entity which is not a party hereto will have any rights or obligations pursuant to this Agreement or be permitted to place any reliance on anything in this Agreement or on the continuation of this Agreement.

16.0 Counterparts and Facsimile

- 16.1. This Agreement may be executed in counterparts, and may be transmitted by facsimile or secure electronic document (PDF) each of which will constitute an original and all of which taken together will constitute one and the same instrument.

17.0 Force Majeure

- 17.1. In the event that either party hereto is delayed or hindered in the performance of any act required herein by reason of Acts of God, riots, insurrection, war or other reasons of a like nature not the fault of such party (an "Event of Force Majeure"), then the performance of such act will be excused for the period of the delay and the period for performance of any such act will be extended for a period equivalent to the period of such delay. The party whose performance of this Agreement is or may reasonably be expected to be affected by an Event of Force Majeure will promptly notify the other party of the existence of such circumstances and will use its best efforts to resume and complete performance. Whenever a party is reasonably certain that such an Event of Force Majeure is likely to occur, it will notify and consult with the other party as soon as practicable. All time periods for the performance of obligations hereunder will be extended by a period corresponding to the time period of any delay caused by the occurrence of an Event of Force Majeure.

18.0 Dispute Resolution

- 18.1. All disputes arising out of in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, that cannot be resolved within thirty (30) days by a senior representative of each party, will upon written notice by any party to the others be arbitrated and finally resolved by one (1) arbitrator qualified by education, experience or training to render a decision upon the issues in dispute and who has not previously been employed by any party or any of their affiliates, and does not have a direct or indirect interest in any party or the subject matter of the arbitration.

Such arbitrator will either be mutually agreed upon by the parties within thirty (30) days after written notice from any party requesting arbitration or, failing agreement, the Resource Productivity and Recovery Authority may appoint the arbitrator on behalf of the Parties after receiving written submission from both.

19.0 Termination

- 19.1. If, in the reasonable opinion of either party, there has been a breach of this Agreement by the other party (the "defaulting party"), the Municipality or AMS (the "party giving notice") may give the defaulting party written notice to remedy the breach or default within sixty (60) days, failing which the Agreement may be terminated. In the event that the remedy of such breach reasonably requires more than sixty (60) days, the defaulting party will so advise the party giving notice forthwith and provide a revised timetable for remedying the breach. The party giving notice will notify the defaulting party in writing as to whether the revised time line is acceptable and, if it is, the revised time line to remedy such breach will apply.
- 19.2. On the date of termination neither party shall have any obligations, financial or otherwise, hereunder save and except for matters and payment obligations arising prior to the date of termination.
- 19.3. Either Party may terminate this Agreement for any reason whatsoever save and except for matters arising from sections 19.1 & 19.4, without cause, cost or penalty, save and except for matters arising prior to termination, upon providing the other Party with ninety (90) days prior written notice of its intention to terminate this Agreement.
- 19.4. Either Party may terminate this agreement immediately upon written notice to the other Party, except as expressly stated, if:
- (a) Either Party assigns or subcontracts any of its rights or obligations under this Agreement or any part thereof except as expressly provided for herein; or
 - (b) the Municipality provides written notice that it will not comply with any new or amended policies, standards and guidelines developed by AMS as per section 6.1; or
 - (c) the Municipality fails to keep the terms of this Agreement confidential as per section 26.1, in such instances only AMS may terminate this agreement; or
 - (d) a receiver or trustee is appointed for any part of the assets of AMS; or
 - (e) the Industry Stewardship Plan Agreement between AMS and the Authority is terminated.

20.0 Survival

- 20.1. Articles 8, 19.2 and 26 of this Agreement will survive termination or expiry and continue in full force and effect.

21.0 Additional Conditions

- 21.1. The parties shall execute such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, 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.

22.0 Entire Agreement

- 22.1. This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and supersedes and replaces all previous agreements, whether oral or written, concerning the same or similar subject matter.

23.0 Headings for Convenience Only

- 23.1. The division of this Agreement into articles and sections is for convenience of reference only and will not affect the interpretation or construction of this Agreement.

24.0 Governing Law

- 24.1. This Agreement will 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 conform to the non-exclusive jurisdiction of the Courts of such Province.

25.0 Legislation References

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

26.0 Confidentiality

- 26.1. Subject to any legal requirements, including those included in the *Municipal Act, 2001* and the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), Municipality will at all times treat Schedule "B" and the financial terms contained therein as private and confidential information. Notwithstanding the foregoing, Municipality may provide Schedule "B" and the financial terms contained therein to the Member Associations solely for the purpose of discussion with AMS as set out in section 4.3 of this Agreement.

To the extent permitted under MFIPPA, Municipality will inform AMS of any request made of Municipality under MFIPPA for any records related to this Agreement that may reveal a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by AMS to Municipality so that AMS will have an opportunity to make representations to Municipality with respect to the proposed disclosure.

27.0 Rights and Remedies

27.1. The rights, remedies and privileges in this Agreement given to the Parties:

- (a) are cumulative and any one or more may be exercised;
- (b) are without prejudice to and are in addition to and apply notwithstanding any other provisions in this Agreement; and
- (c) are not dependent or conditional upon, or in any way lessened, restricted or affected by any other provisions of this Agreement.

28.0 Schedules

28.1. Schedules "A" through "D" are attached hereto and incorporated in and form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first set out above.

AUTOMOTIVE MATERIALS STEWARDSHIP

by: _____

Name: David Pearce

Title: Operations Officer

CORPORATION OF THE CITY OF KAWARTHA LAKES

by: _____

Name:

Title:

SCHEDULE "A" – COLLECTION ACCESSIBILITY SCHEDULES

Municipality will collect all Automotive Materials from its residents according to the following Collection Accessibility Schedules.

Depots

Depot Name	Address	Days & Hours of Operation	Operating Season	Operating Hours	Reimbursable Hours
Lindsay Ops Landfill Depot	51 Wilson Road Lindsay, ON K9V 4R3	Monday, Tuesday, Thursday, Friday 8:00am - 5:00pm Saturday 8:00am - 3:00pm	Year Round	2,236	1,984
Fenelon Landfill Site	341 Mark Road Fenelon Falls, ON K0N 1G0	Monday, Wednesday, Saturday 9:00am - 5:00pm	Year Round	1,248	1,133
TOTAL REIMBURSABLE HOURS					3,117

Events

Municipality will use commercially reasonable efforts to submit Event Collection Accessibility Schedules in the format below to AMS for approval by March 31st of the calendar year in which the Events will be held, and in all cases will submit Event Collection Accessibility Schedules not less than sixty (60) days prior to the next planned Event. Once approved by AMS, the updated information on Event Schedules will be deemed to be incorporated into this Agreement.

Event Collection Accessibility Schedule - Example

Event #	Municipality	Date	Location	Address	Collection Hours	Service Provider
1	<i>Municipality name</i>	<i>Event date</i>	<i>Location name</i>	<i>Full address</i>	<i>ex. 9am - 2pm</i>	<i>SP Name</i>

INITIALLED BY MUNICIPALITY: _____

#	Waste Class / UN#	Examples of Inclusions	Examples of Exclusions	Eligible Generators
3	Oil Filters - 252	<ul style="list-style-type: none"> • Spin-on or element style filters that are used in hydraulic, transmission or internal combustion engine applications; • Diesel fuel filters; • Household furnace fuel filters; • Coolant filters; • Storage tank diesel fuel filters; • Plastic & paper element style filters; • Diesel fuel filters used at retail commercial pump islands 	<ul style="list-style-type: none"> • Gasoline fuel filters; • Air filters (automotive or non-automotive); • Household furnace air filters; • Sock-type filters 	<ul style="list-style-type: none"> • Residential • All IC&I

Appendix A – Waste Packing Standards

Please note: Automotive Materials Stewardship requires that waste materials in each individual row (as numbered in the first column on the left) be packed separately (even though they may be packed under the same waste class)

#	Waste Class / UN#	Examples of Inclusions	Examples of Exclusions	Eligible Generators
1	Antifreeze Bulked – 212 Or Antifreeze Lab Pack – 212	<ul style="list-style-type: none"> • Antifreeze returned in containers with a volume of 30 litres or less. • Antifreeze recovered from vehicles at automotive service centres. 	<ul style="list-style-type: none"> • Plumbing antifreeze; • Vehicle windshield antifreeze; • Product marketed as industrial heat transfer fluid; • Fuel (gasoline & diesel) antifreeze; Lock de-icer; • Air brake antifreeze; • Antifreeze which does not contain ethylene or propylene glycol; • Containers used to deliver Antifreeze with a capacity greater than 30 litres. 	<ul style="list-style-type: none"> • Residential • All IC&I
2	Empty Auto Containers Or Empty Auto Containers - Shredded	<ul style="list-style-type: none"> • Antifreeze containers that are 30 litres or less; • Containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil. • Note: Lubricating oil includes: Synthetic crankcase or engine oil; Hydraulic fluid; Polyester fluids; Circulating oil or turbine oil; Paper machine oil; Transmission fluid; Power steering fluid; Gear oil; Vegetable oil for lubrication; Re-refined oil; Electrical insulating oil; Refrigeration system oil; Compressor oil; Mineral heat transfer fluid; Marine engine oil for vessels operating domestically; Metal working oil; Form release oil; Textile oil; Chain oil; Rock drill oil; 2-cycle engine oil; Gasoline / 2-cycle engine oil mixes; Saw guide oil; Drawing, stamping and shaping oil; Process oil; Deducting oil; Marine cylinder oil; Machine tool and sideway lubricant; Natural gas compressor oil; Conveyor lube; Dripless lube; Quenching oil; Pneumatic system oil; Rustproof oil; Food grade white mineral oil. 	<p>Containers from any of the following: Oil treatment; Diesel fuel treatment; Cleaning/flushing fluids for motors/equipment; Winter start fluid; Brake fluid; Undercoating; Penetrating oil; Hydraulic jack oil; 3-in-1 household oil; Aerosol propelled lubricant; Gun oil; Kerosene; Urethane coating; Sewing machine oil; Cooking oil; Windshield washer fluid; Emulsified oil.</p>	<ul style="list-style-type: none"> • Residential • All IC&I

- Contamination levels in transport containers (mis-packed Automotive Materials, non-program wastes as identified in Appendix A) will be monitored by AMS through random sampling. Collection site operators will be required to take corrective action if contamination allowances are exceeded. AMS reserves the right to revoke the collection site's approval status if corrective action is not taken as requested by AMS.

4.0 Waste Packing Protocols

All collection site operators shall:

- 4.1 Pack waste according to the Ministry of the Environment and Climate Change waste classes and AMS Waste Packing Standards as outlined in Appendix A.
- 4.2 Ensure that Automotive Materials are handled and stored as follows:
 - In accordance with the conditions laid out in their respective Environmental Compliance Approval and all applicable laws and regulations.
 - Have the ability to receive wastes from the public in a controlled manner (direct supervision or monitored) in a customer drop-off area, as applicable;
 - Have adequate infrastructure to shelter material from inclement weather in a consolidation storage area;
 - Have sufficient space to receive, sort, store and prepare transportation containers for shipment;
 - As applicable, have material-handling equipment with the ability to move containers onto transport vehicles;
 - Be accessible to transport vehicles for pick-up of Automotive Materials; and
 - Have adequate security measures in place to prevent Automotive Materials from being tampered with by anyone at the site or using the collection facility at unauthorized times.
- 4.3 All waste must be packed in an approved UN container and all materials transported must be contained in accordance with TDGA requirements.
- 4.4 Bulky items must be stored in an upright position in a secure area, and in accordance with Technical Standards & Safety Authority (TSSA) requirements.
- 4.5 Transportation containers must be filled to capacity, except if this practice contravenes either a ministry order or the Collection Site Operator's Environmental Compliance Approval Storage Requirements. Waste material collected at event days is an exception since it may not always be possible to fill a transport container of a given waste class to capacity.
- 4.6 Make use of vermiculite in sufficient quantity to cover and protect the waste material from breakage when there is a potential for spillage or breakage of containers in a lab pack during transport:
- 4.7 Place large pails (20 litres or more) on skids and shrink wrap to prevent shifting of waste during transport. Alternatively, gaylord boxes may be used.
- 4.8 Contamination allowances:
 - Reasonable efforts must be taken to minimize contamination.
 - The maximum contamination allowance is 5%. This is a weight-based allowance assessed on individual transport containers for a given waste class.

- 1.5 Implement and maintain an emergency response plan to prepare for and respond to emergency situations including fires, spills and medical events.
- 1.6 Maintain all records for a minimum of two years or longer as required by law, including manifests, bills of lading and waste records.
- 1.7 Provide notice to AMS of any fines or regulatory orders in the previous five years and, going forward, within 60 days of any new fine or regulatory order as it relates to the ISP.

2.0 Occupational Health and Safety

All collection site operators shall:

- 2.1 Identify and comply with all applicable health and safety legislation, including but not limited to:
 - Employment Standards Act, 2000;
 - Occupational Health and Safety Act, 1990;
 - Workplace Safety and Insurance Act, 1997;
 - Canada Labour Code.
- 2.2 Possess workers' compensation coverage through either a provincial (WSIB) program or a private insurance policy.
- 2.3 Be compliant with the Workplace Hazardous Materials Information System (WHMIS), including training requirements.
- 2.4 Maintain an occupational health program that includes processes to safeguard the health and safety of employees by:
 - Providing regular documented health and safety training;
 - Providing and enforcing the correct use of personal protection equipment; and
 - Safeguarding hazardous mechanical processes.

3.0 Staff Training

All Collection Site Operators shall:

- 3.1 Train staff on their emergency response plan.
- 3.2 Train staff to identify and pack Automotive Materials in its appropriate waste class according to Waste Packing Standards (refer to Appendix A).
- 3.3 Train staff to differentiate between Automotive Materials that are eligible for collection services under the ISP and other materials that are not (refer to Appendix A).
- 3.4 Update staff training based on any changes made to the Collection Site Standards.
- 3.5 Document and maintain records of staff training.

Who this applies to:

For the purposes of these standards, a Collection Site Operator means the operator of a location at which Automotive Materials are received from the public and/or a small quantity or IC&I generator, or via the site's internal operations from which a transporter will pick up Automotive Materials and transport it to an approved processor.

Enforcement of these Standards:

Collection site operators shall:

- Provide AMS with all reasonable information relating to these standards or any matter that relates to the ISP or procedures of AMS;
- Acknowledge that AMS has a right of access to any and all such information during normal business hours and on 24 hours' notice.

Moreover, AMS may verify compliance information provided by collection site operators, either directly or through a third party acting on its behalf. Please note that all parties acting on behalf of AMS are bound by strict confidentiality agreements.

1.0 General Requirements

All collection site operators shall:

- 1.1 Possess a valid business licence if they are a commercial operation.
- 1.2 Either self-insure, or possess comprehensive or commercial general liability insurance, including coverage for bodily injury, property damage, complete operations and contractual liability.
- 1.3 Identify and comply with all applicable legislation and approvals, including but not limited to be:
 - In possession of and in compliance with all terms in their MOE Environmental Compliance Approval (ECA);
 - In compliance with the Ontario Environmental Protection Act, 1990 (including R.R.O. 1990, O. Reg. 347, General – Waste Management);
 - In compliance with the federal Transportation of Dangerous Goods Act (TDGA);
 - In compliance with applicable municipal zoning bylaws or other bylaws, such as fire codes, parking and hours of operation.
- 1.4 Maintain a documented process to identify, assess and ensure compliance with this standard and all applicable legislative and regulatory requirements, including but not limited to:
 - Environmental regulations, including permits or certifications for operating, air emissions, or other discharges;
 - Occupational health and safety regulations;
 - Hazardous waste management regulations (storage, handling).

Collection Site Standards

Version: April, 2017



**Automotive
Materials
Stewardship**

To the extent that there is any conflict between these Collection Site Standards and the requirements of applicable laws and regulations, the requirements of applicable laws and regulations apply. The collection site operator is required to comply with the requirements of the applicable laws and regulations and inform Automotive Materials Stewardship ("AMS") of such discrepancies. For greater certainty, in the event that the Collection Site Standards impose requirements that are more stringent or additional to the requirements of applicable laws and regulations but do not conflict with such laws and regulations, the collection site operator is required to comply with the Collection Site Standards as well as with applicable laws and regulations.

Background:

Automotive Materials Stewardship submitted an Industry Stewardship Plan for Automotive Materials to ensure certain hazardous and special wastes are collected and recycled or otherwise safely disposed of in an environmentally appropriate way (the "ISP").

The Resource Productivity and Recovery Authority approved the ISP submitted by AMS for the following materials ("Automotive Materials"):

- Antifreeze, and containers in which they are contained
- Oil containers that have a capacity of 30 litres or less and that were manufactured for the purpose of containing lubricating oil
- Oil Filters – after they have been used for their intended purpose

The ISP, rules and material definitions can all be viewed in the ISP, posted on the AMS website at www.automotivematerialsstewardship.ca.

Purpose:

These Collection Site Standards define the minimum operating requirements to qualify as a collection site for Automotive Materials. All locations wishing to act as a collection site on behalf of AMS must be approved by AMS or by an approved AMS transporter that has been granted authorization to approve collection sites.

These Collection Site Standards do not absolve collection sites from any federal, provincial and/or municipal legislation and regulations applicable to their operation. It is the collection site's responsibility to be aware of, and abide by, all such legislation and regulations.

AMS reserves the right to review and revise these standards on an ongoing basis. The most current version will be posted on the AMS website. AMS will, as a courtesy, provide notification of changes to active collection sites for which it has current email addresses; however, it is the collection site's responsibility to regularly check the AMS website for revisions.

SCHEDULE “D” – AMS COLLECTION SITE STANDARDS

The following are AMS's Collection Site Standards applicable to this Agreement as of the date of this Agreement. Revisions to these standards will be posted on www.automotivematerialsstewardship.ca.

SCHEDULE "C" – PROMOTION & EDUCATION

The Municipality will actively promote the collection of Automotive Materials through municipal publications, events and activities that support the Municipality's waste management strategy. The Municipality will not charge AMS for any promotion or education activities unless AMS has agreed to such charges in advance in writing. AMS's decision not to pay for specific promotion and education activities does not discharge the Municipality from its obligation to inform the Municipality's residents of its Collection Accessibility Schedules (see Schedule "A").

The Municipality must submit to AMS draft copies of all publications using AMS trademarks and logos for approval, which AMS may withhold for any reason.

The Municipality, its employees and Service Providers will not engage in any activity that may cause or perceive to cause harm to Automotive Materials Stewardship or any brand owned or used under license by AMS, such as Orange Drop.

SCHEDULE "B" – PAYMENT FOR COLLECTION SERVICES

AMS will pay the Municipality for Automotive Materials Collection Services as follows:

For Municipal Services – Depot, AMS will pay the Municipality the rate of **\$2.32** per hour plus applicable taxes for the Total Reimbursable Hours set out in Schedule "A", to be paid in twelve (12) equal monthly instalments. For greater clarity, the monthly instalment will be calculated as Total Reimbursable Hours divided by twelve (12) and multiplied by the Hourly Rate.

For Municipal Services – Event, AMS will pay the Municipality a rate of **\$1,100.00** per tonne of Automotive Materials plus applicable taxes.

For Municipal Services – Event (and transportation to Depot), AMS will pay the Municipality a rate of **\$0.00** per tonne of Automotive Materials plus applicable taxes.

INITIALLED BY MUNICIPALITY: _____