

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 659/16

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AN AGREEMENT WITH MANITOBA ASSOCIATION FOR RESOURCE RECOVERY CORP., THE RURAL MUNICIPALITY OF REYNOLDS AND THE NORTH WHITESHELL PROVINCIAL PARK.

WHEREAS Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (d) enter into agreements with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

AND WHEREAS it is deemed expedient and in the best interests of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into an agreement with Manitoba Association for Resource Recovery Corp., The Rural Municipality of Reynolds and the North Whiteshell Provincial Park;


AND WHEREAS the terms of the agreement have been settled and are contained in the agreement attached hereto as Schedule "A";

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED that the Council of The Rural Municipality of Whitemouth, duly assembled, enact as follows:

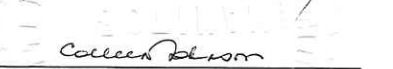
1. **THAT** the entering into the proposed Agreement attached hereto as Schedule "A" is hereby approved and authorized.
2. **THAT** the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth are hereby authorized and instructed to execute the agreement, as set out in Schedule "A" attached hereto, for and on behalf of the Municipality.

DONE AND PASSED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 24th day of August, AD., 2016.

For: Against:
All None



Reeve



Chief Administrative Officer

Read a first time this 10th day of August, AD., 2016
Read a second time this 10th day of August, AD., 2016
Read a third time this 24th day of August, AD., 2016

THIS AGREEMENT is made the 1st day of August 2016.

BETWEEN:

MANITOBA ASSOCIATION FOR RESOURCE RECOVERY CORP.,
a non-profit corporation incorporated in accordance
with the laws of the Province of Manitoba
and having an address of
35-1313 Border Street, Winnipeg, Manitoba, R3H 0X4
("MARRC"),

OF THE FIRST PART,

- and -

**THE RURAL MUNICIPALITY OF WHITEMOUTH,
THE RURAL MUNICIPALITY OF REYNOLDS, and
NORTH WHITESHELL PROVINCIAL PARK**
and having for the purposes of this agreement an address of
P.O. Box 158, Whitemouth, Manitoba, R0E 2G0
("Owner/Operator"),

OF THE SECOND PART.

WHEREAS MARRC is a non-profit corporation incorporated under the laws of the Province of Manitoba for the purposes of, among other things, establishing, developing, implementing and maintaining an Automotive Antifreeze Stewardship Program and an Used Oil Products and Material Stewardship Program (collectively, the "**Program**") in accordance with the requirements of the *Used Oil, Oil Filters and Containers Stewardship Regulation* and the *Household Hazardous Material and Prescribed Material Stewardship Regulation of The Waste Reduction and Preventions Act* of the Province of Manitoba;

AND WHEREAS the Owner/Operator has constructed and operates an eco-centre for the collection of Applicable Material (as hereinafter defined) with the assistance and support of the Program;

AND WHEREAS by agreement dated August 1, 2014, MARRC and the Owner/Operator entered into an agreement respecting the terms and conditions of the operation of the Program, which agreement expired on the 31st day of July 2016 (the "**Original Agreement**");

AND WHEREAS the parties are desirous of entering into this Agreement which shall replace and supersede the Original Agreement for the purposes of extending the term of the Original Agreement and amending and restating the terms and conditions of the Original Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the premises, and the terms and conditions set forth hereinafter, the parties hereto covenant and agree as follows:

1. **DEFINITIONS**

In this Agreement:

- (a) “**Act**” means *The Waste Reduction and Prevention Act (Manitoba)*, as the same may be amended from time to time, and including any act of the legislature enacted in replacement thereof;
- (b) “**Applicable Laws**” means, with respect to any person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such person, property, transaction or event;
- (c) “**Applicable Material**” means Automotive Antifreeze, Automotive Antifreeze Containers, Used Oil, Used Oil Filters and Used Oil Containers;
- (d) “**Applicable Year**” means the 12 month period commencing August 1 and ending July 31;
- (e) “**Automotive Antifreeze**” shall have the same meaning as for the purposes of the Regulations from time to time;
- (f) “**Automotive Antifreeze Container**” means a container that is manufactured for the purposes of holding household hazardous material or prescribed material or in which household hazardous material or prescribed material is supplied in respect of Automotive Antifreeze;
- (g) “**Agreement**” means this agreement and all preambles, recitals and schedules hereto, along with any amendments hereto or thereto;
- (h) “**EcoCentre**” means the collection depot described in Schedule “A” hereto and includes the building and equipment described in such Schedule “A”;
- (i) “**EcoCentre Location**” means the location for the EcoCentre as described in Schedule “A” attached hereto;
- (j) “**Environmental Laws**” means all Applicable Laws concerning pollution or protection of the natural environment or otherwise relating to the environment and the health and safety of people, animals and vegetation, including Applicable Laws pertaining to (i) reporting, licensing, permitting, investigating and remediating the presence of Applicable Material or other Hazardous Substances, and/or (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Applicable Material and/or other Hazardous Substances;
- (a) “**Environmental Liability**” means any claim, legal proceeding, fine, cost, assessment of damages or liability whatsoever arising out of, relating to, or resulting from: (i) any breach of Environmental Laws by the Owner/Operator or any of its employees, agents or representatives; (ii) the presence or release of any Hazardous Substances in, on, at, under, to or from the EcoCentre Location

or the lands or waters adjacent to, or in the vicinity of the EcoCentre Location; or (iii) any other circumstance, condition, matter, occurrence, issue, event or requirement relating to the environment, environmental assessment, health, occupational health and safety, transportation of dangerous goods or the existence or presence of Hazardous Substances that arises from, is caused (directly or indirectly) by, or relates to, the ownership, use, misuse or operation of the EcoCentre or the collection, storing or otherwise dealing with of Applicable Material or other Hazardous Substances by the Owner/Operator or by any other person on its behalf;

- (k) **“Governmental Authority”** means, the government of Canada, the government of Manitoba and each ministry, department, commission, board, bureau or other agency of, or municipality, regional district or other local governing body established by, any such government, or other political subdivision thereof, and includes any person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government;
- (l) **“Hazardous Substances”** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Laws, including contaminants, pollutants, dangerous substances, dangerous goods, liquid wastes, industrial wastes, hauled liquid wastes, radioactive wastes, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in any Environmental Laws and including specifically Applicable Material;
- (m) **“Oil”** means any petroleum or synthetic crank case oil, engine oil, hydraulic fluid, transmission fluid, gear oil, heat transfer fluid, or other fluid capable of use for lubricating purposes in machinery and equipment;
- (n) **“Oil Container”** means a container with a capacity of 30 litres or less that is manufactured for the purposes of holding Oil or in which Oil is supplied;
- (o) **“Oil Filter”** means any spin-on or element style oil filter that is used in hydraulic transmission or internal combustion engine applications and includes a diesel fuel filter, but does not include a gasoline fuel filter;
- (p) **“Original Agreement”** has the meaning ascribed to it in the preamble hereto;
- (q) **“Regulations”** means the *Regulations* passed pursuant to the Act, as same may be amended from time to time, and including any successor or supplemental regulations enacted under the Act in replacement thereof;
- (r) **“Term”** means the period commencing August 1, 2016 and ending on July 31, 2018, subject to early termination pursuant to Section 12 hereof and renewal pursuant to Section 5;
- (s) **“Used Oil”** means Oil that through use, storage, handling, defect, damage, expiry of shelf life or other similar circumstances can no longer be used for its original purpose;
- (t) **“Used Oil Container”** means an Oil Container that through use can no longer be used for its original purpose; and

- (u) **“Used Oil Filter”** means an Oil Filter that through use, storage, handling, defect, damage or other similar circumstances can no longer be used for its original purpose.

2. **HEADINGS**

All headings employed herein are inserted for conveniences of reference only and shall not affect the construction or interpretation of this Agreement.

3. **EXTENDED MEANINGS**

Words importing the singular number shall include the plural and vice versa, and words importing the masculine or neuter gender shall include the masculine, feminine, and neuter genders, and words importing persons shall include companies, corporations, partnerships, syndicates, trusts, first nations and any number or aggregate of persons, wherever the factor context so requires.

4. **FINANCIAL ASSISTANCE**

Subject to compliance by the Owner/Operator of its covenants and agreements herein, MARRC agrees to provide the following financial assistance to the Owner/Operator:

- (a) an annual contribution, for each full Applicable Year during the Term, equal to the lesser of: (i) the Owner/Operator’s actual costs of insuring the EcoCentre; the actual costs of advertising the availability of the EcoCentre for the collection of Applicable Material, and the Owner/Operator’s actual staff costs to operate the EcoCentre during the Applicable Year; and (ii) the maximum contribution set out in Schedule “B” hereto for each of such respective operating cost categories*. The said annual contribution (which, for greater certainty, shall never exceed the total set out in Schedule “B”) shall be paid within 60 days of the Owner/Operator having provided to MARRC its completed operating statements for the operation of the EcoCentre in respect of the Applicable Year, together with an itemized list of its operating costs in a form and content acceptable to MARRC in its sole discretion; and
- (b) if beyond 10 years a fixed annual contribution of NIL in respect of each full Applicable Year, payable at the same time as the annual contribution referenced in 4(a) above is paid.

* It is acknowledged and agreed that MARRC may, in its discretion, reduce the maximum operating support set out in (a)(ii) above at any time, and from time to time, provided that it gives written notice of such reduction to the Owner/Operator on or before May 31 for any such reduction to commence in, or apply to, the next ensuing Applicable Year (i.e. for the reduction to take effect 60 days later on August 1).

It is acknowledged and agreed that the foregoing constitutes the entire financial commitment of MARRC in respect of the EcoCentre, its operation or otherwise and that this section constitutes the entire and only obligation of MARRC under this Agreement.

5. RELOCATION AND RENEWAL

The Owner/Operator may, at its sole cost and expense, relocate the EcoCentre from the current EcoCentre Location to a new location during the Term, but only with the prior written approval of MARRC, which approval shall not be unreasonably withheld, together with such other approvals as may be necessary in compliance with all Applicable Laws. In such a case, all references herein to "EcoCentre Location" shall be deemed to mean both the new location and all prior locations of the EcoCentre.

This Agreement will automatically renew for successive two (2) year terms unless either party gives the other party notice that it wishes to terminate the Agreement and not renew, at least thirty (30) days prior the end of the then current Term. Each such 2 year renewal terms shall be deemed to be the then current "Term" hereunder and shall be on the same terms and conditions as set out in this Agreement provided always that:

- (a) MARRC may, in its discretion, reduce the maximum operating support set out in (a)(ii) above at any time, and from time to time, provided that it gives written notice of such reduction to the Owner/Operator on or before May 31 for any such reduction to commence in, or apply to, the next ensuing Applicable Year; and
- (b) The fixed annual contribution to be provided by MARRC pursuant to paragraph 4(b) (if applicable) may be cancelled by MARRC for and in respect of each and any term subsequent to the initial Term ending July 31, 2018. It is acknowledged in particular that in no event shall such a fixed annual contribution be paid to the Owner/Operator (or its predecessor) for more than ten (10) years in total, inclusive of all years prior to this Agreement (including years prior to the Original Agreement) that MARRC has made such fixed annual contributions (previously referred to as ROI payments) to the Owner/Operator or its predecessors.

6. PUBLIC AWARENESS

Notwithstanding that both MARRC and the Owner/Operator agree to discuss and cooperate on any public awareness and/or advertising campaigns or initiatives in respect of the EcoCentre and its availability, any public awareness or advertising campaign developed or implemented by MARRC will be at the sole cost and expense and developed in the sole discretion of MARRC and any public awareness or advertising campaign developed or implemented by the Owner/Operator will be at the sole cost and expense and developed in the sole discretion of the Owner/Operator. MARRC may from time to time however provide generic brochures for the Owner/Operator to distribute and generic signs for the Owner/Operator to post at the EcoCentre Location and in the surrounding community.

7. OBLIGATIONS OF THE OWNER/OPERATOR

The Owner/Operator shall at all times:

- (a) safely and effectively operate the EcoCentre in a safe, secure and courteous manner during the regular business hours established by the Owner/Operator from time to time, in compliance with all Applicable Laws including, without limitation, Environmental Laws;

- (b) abide by and follow all operating procedures, responsibilities and directions as more particularly described in the MARRC Used Oil Material Collection Training Manual provided separately, as same may be revised from time to time, and the terms and conditions of the license issued to the Owner/Operator by Manitoba Conservation in connection with the operation of the EcoCentre (the "License");
- (c) promote the availability of the EcoCentre for the collection of Applicable Material and make and keep the EcoCentre accessible to the public, free of charge, to drop off Applicable Material during regular hours established by the Owner/Operator from time;
- (d) ensure that the collection, storage and handling of Applicable Material is properly supervised and conducted by trained staff and in a safe and efficient manner and to ensure that Applicable Material is collected in a timely manner so as to ensure continued collection capacity;
- (e) without limiting the generality of the foregoing, to call a MARRC registered collector (the "Collector") prior to the collection tank reaching 80% of its maximum level, and to perform such acts which are necessary or desirable to facilitate the removal of the Applicable Material by the Collector;
- (f) obtain, keep in force and comply with, all licenses, permits and consents required under Applicable Laws or by/from any Governmental Authorities in connection with the ownership, use or operation of the EcoCentre and/or for the collection or disposal of Applicable Material including, without limitation, the License;
- (g) not charge or impose any fee or levy of any nature or kind, directly or indirectly, to persons for the collection of Applicable Materials;
- (h) hire, train, employ, pay and remain responsible for, all required staff for the operation of the EcoCentre and the collection of Applicable Material;
- (i) receive acceptable Applicable Material;
- (j) receive acceptable Used Oil from oil drums using a drum pump and deposit all Used Oil in the collection tank;
- (k) conduct inventory control checks daily;
- (l) visually inspect Applicable Material and ensure it meets standards as may be prescribed by any and all Applicable Laws for the collection and recycling of same including, without limitation, the standards prescribed by the License, the Act and Regulations;
- (m) receive and supervise proper deposit of Applicable Material in equipment designated by MARRC or applicable regulation from time to time;
- (n) ensure that any person who is providing Applicable Material at the EcoCentre signs a log book in the form prescribed by MARRC for tracking purposes;
- (o) maintain the EcoCentre in a neat and tidy condition at all times and in a manner as may be prescribed by any Applicable Laws including, but not limited to, the standards prescribed by the License, the Act and Regulations and ensure the EcoCentre is locked and secure when the EcoCentre is unattended;

- (p) decommission the EcoCentre when appropriate or required; and
- (q) comply with its other obligations hereunder.

8. RESPONSIBILITY / LIABILITY

The Owner/Operator shall be solely responsible for all aspects of the ownership, use, maintenance and operation of the EcoCentre, the management of the EcoCentre Location, and the handling, collection, storage and transfer/disposal of Applicable Material thereat, or otherwise pursuant to this Agreement, until such point as the Applicable Material has been released to the Collector.

The Owner/Operator acknowledges and agrees that MARRC shall not be liable to the Owner/Operator nor to any other person for any matter, thing or event whatsoever relating to the establishment, operation, maintenance and decommissioning of the EcoCentre or for any of the matters referenced in the preceding paragraph or in section 7 as being the responsibility of the Owner/Operator, it being understood that MARRC is only providing financial assistance to the Owner/Operator to assist it in carrying out its plan for the responsible collection or Applicable Material at the EcoCentre Location, and its sole liability is to make the contributions pursuant to section 4 hereof, as and when due. The Owner/Operator hereby releases MARRC and each of its directors, officers, employees and agents from any and all liability, and from and against any claim, suit or demand the Owner/Operator has or may hereafter have against MARRC, for anything whatsoever arising pursuant to, or as a result of this Agreement and/or from any assistance MARRC may provide in respect of the EcoCentre or the Owner/Operator's collection, handling, storage and/or disposal of Applicable Material, except only that such release shall not extend to release MARRC from making the financial contributions it has agreed to make pursuant to section 4 hereof.

No partnership, joint venture or relationship of agency is created by this Agreement.

9. ENVIRONMENTAL MATTERS

Without limiting the generality of the Owner/Operator's responsibilities as set out in sections 7 and 8 above, the Owner/Operator shall at all times comply with all Environmental Laws and remain responsible, as between it and MARRC, for all Environmental Liabilities. The Owner/Operator shall indemnify and save MARRC and its directors, officers, employees and agents harmless from and against any Environmental Liability incurred by it or brought or assessed against MARRC or any of them.

The Owner/Operator shall practice due diligence in exercising its responsibilities and obligations as described herein. The Owner/Operator agrees to dispose of Applicable Material which has been contaminated by other materials wherein the contaminants are within reasonable human detection limits such as colour, odour and viscosity consistent with used oil ("**Contaminated Material**"). The Owner/Operator will contact a specialized waste management company to facilitate the removal of the Contaminated Material at Owner/Operator's sole cost and expense

10. **INSURANCE**

The Owner/Operator shall be solely responsible to obtain and maintain such property, liability and environmental impact liability insurance in respect of the EcoCentre and its operation thereof as a prudent owner/operator would obtain in similar circumstances and as may be required under Applicable Laws and, in any event, with limits of no less than \$50,000.00 for property, \$5,000,000 per loss for commercial general liability and \$250,000 per loss for environmental impairment liability. Such insurance shall contain a "limited environmental liability coverage" endorsement and shall include MARRC as an additional insured with a "cross-liability" or "severability of interests" endorsement.

11. **GENERAL INDEMNIFICATION**

The Owner/Operator agrees to indemnify and save harmless MARRC and each of its directors, officers, employees and agents from and against all claims, demands, suits or proceedings made against them, and all costs, expenses, damages or liabilities suffered or incurred by them (or any of them) in any way in connection with this Agreement or the provision of assistance to the Owner/Operator in connection with the EcoCentre or the collection, storage and transfer/disposal of Applicable Material by the Owner/Operator including, without limitation any claims, demands, suits, proceedings, costs, expenses, damages or liabilities arising out of or in connection with:

- (a) Any failure of the Owner/Operator to comply with the terms of this Agreement or to carry out its responsibilities hereunder;
- (b) Any injury (including death) to persons, or damage or loss to property, in any way brought about by the ownership, use, misuse or operation of the EcoCentre by the Owner/Operator or the handling or mis-handling, storage or improper storage, or the release of Applicable Material by the Owner/Operator or by any other person on the Owner/Operator's behalf; and
- (c) any Environmental Liability.

This indemnification, as well as the provisions of sections 7, 8 and 9 above, shall survive the termination of this Agreement and the expiry/earlier termination of the Term.

12. **EARLY TERMINATION**

MARRC may terminate the Term (thereby terminating its obligation to provide any further financial assistance hereunder) upon providing the Owner/Operator with seven (7) days' written notice in the event that the Owner/Operator does not comply with the terms of this Agreement, any Applicable Laws or directives of Governmental Authorities. In the event of such an early termination due to the Owner/Operator's default as aforesaid, all monies paid to the Owner/Operator or any supplier on its behalf by MARRC pursuant to this Agreement shall be refunded to MARRC within fifteen (15) days from MARRC having provided notice of termination. Interest shall accrue and be payable on all such amounts then unpaid at the expiration of the aforesaid fifteen (15) day period at the rate of ten (10%) percent per annum.

MARRC may also terminate this Agreement by providing written notice to the Owner/Operator in such instance where MARRC's operating license for the Program is terminated or fails to be renewed by the Province of Manitoba. The Owner/Operator confirms having been advised that the operating license for the Program will be up for renewal on December 15, 2017. If the extension of the Program is not approved by the Province of Manitoba, it is acknowledged that MARRC would have no choice but to thereupon terminate this Agreement, which termination shall be without liability to MARRC.

In the event of termination of this Agreement for any reason, MARRC shall be relieved of any obligation to provide support or financial assistance to the Owner/Operator.

13. **ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the parties hereto in respect of the subject matter hereof and supercedes any and all prior agreements (including the Original Agreement) which may have been made between the parties. Neither party is relying on a representation, promise or assurance given by the other party which is not fully set out in this Agreement, in entering into this Agreement.

14. **SEVERABILITY**

If any covenant, obligation or agreement contained in this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement shall be separately valid and enforceable to the full extent permitted by law.

15. **NON-WAIVER**

No provision of this Agreement shall be deemed to be waived unless such waiver is in writing. Any waiver of any default committed by any of the parties hereto in the observance or the performance of any part of this Agreement shall not extend to or be taken in any manner to affect any other default.

16. **APPLICABLE LAW**

This Agreement shall be governed and construed in all respects by the laws of the Province of Manitoba.

17. **COUNTERPARTS**

This instrument may be executed by the parties via facsimile or electronically delivered (pdf) counterpart and each of such counterparts shall be deemed to be an original, and all such counterparts when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year above written by their authorized officers.

MANITOBA ASSOCIATION FOR RESOURCE RECOVERY CORP.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

THE RURAL MUNICIPALITY OF WHITEMOUTH

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

NORTH WHITESHELL PROVINCIAL PARK

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RURAL MUNICIPALITY OF REYNOLDS

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Schedule "A"

SITE LOCATION AND DESCRIPTION OF ECOCENTRE

WHITEMOUTH-REYNOLDS-NORTH WHITESHELL WASTE MANAGEMENT FACILITY

NW 21-11-12 EPM, IN THE R.M. OF WHITEMOUTH

SCHEDULE "B"

FINANCIAL ASSISTANCE FOR OPERATING COSTS PER CATEGORY

	Year 1 maximum contribution per category	Year 2* maximum contribution per category
• Advertising:	\$2,000	\$2,000
• Supplies:	300	300
• Insurance:	200	200
• Labour:	<u>1,500</u>	<u>1,500</u>
TOTAL MAXIMUM:	\$ 4,000	\$ 4,000

Invoices are to be provided to MARRC in evidence of proof of payment for reimbursement purposes. MARRC shall be responsible to a maximum of the above budgeted amounts. Any amounts expended over and above the budgeted amount will be for the account of the Owner/Operator. Budgeted figures are by category and represent the maximum amount MARRC will reimburse the Owner/Operator for in each category. Any budgeted amount not expended in one category cannot be made up or added to another category except with the consent of MARRC in its discretion.

* MARRC in its discretion may revise its financial operating costs set out above so long as it provides written notice to the Owner/Operator on or before May 31st for the second year of this Agreement commencing August 1st.

The EcoCentre Owner/Operator shall provide to MARRC, within 60 days following the EcoCentre's fiscal year-end, an itemized account of its actual costs within each of the foregoing categories for the past year. The itemized account shall be in form and content acceptable to MARRC.

Within 30 days after receipt of the aforementioned itemized account together with evidence of payment as provided above, MARRC shall pay to the EcoCentre Owner/Operator the lesser of the amounts stated above per category for such year and the actual operating costs incurred by the EcoCentre in such category, and provided that MARRC shall not compensate the EcoCentre Owner/Operator for any costs other than those of the nature and type specifically described above.