

LAKERIDGE CITIZENS FOR CLEAN WATER

## Model Fill Agreement

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# Report to the Members of Council for the Township of Scugog

**Prepared by: LCCW Executive Staff with support from technical reviewers**

**12/15/2014**

This report contains the following documents:

A one page document detailing some of the proposed major changes to the Greenbank Airways Agreement,

A one page summary of some of the major Greenbank Airways Agreement changes is also included as well as some information detailing major changes that have taken place since the original Agreement was drafted in 2012,

The proposed new Greenbank Agreement,

The DRAFT Model Agreement for large fill sites and a Model Fill Management Plan - These documents are currently being reviewed by qualified consultants and will be reviewed by legal counsel in preparation for their presentation to municipalities and conservation authorities across southern Ontario in the New Year.

## Proposed Greenbank Airfield Agreement Changes

What	Current Agreement Requirements	Proposed New Agreement Requirements
1. Permitted Volume	No volume indicated	Specify volume - 2.5 million cubic metres based on approved site-plan? (Determine how much there is now and how much more to go.)
2. Fill Protocol	Some specific items: -screening of every truck is not required -minimal audit testing requirements	Note: Amendments to be approved by Council and reviewed by Township Consultant -Protocol to reconcile to MOE BMP Some specific Items: -every incoming truck is to be screened -increased audit testing of fill materials
3. Hours of Operation/Noise Protocol	7am-7pm and Saturdays	8:30am-4:30pm No Saturdays
4. Permitted Volume/day	200 to go up to 400 (MTO approval)	100 –option to increase to 200 max.or decrease
5. Source Site Approval by Township	3 days	No time limit for review
6. Right of Entry	24 hours notice and see Section 16 in current agreement	-daily-no notice-reasonable time
7. Security on site	No gate	-requirement for gated (controlled) access
8. Default/Breaches	Write letters, meetings/ mediator	draw on securities, penalties, stop work orders
9. Security/Letter of Credit	\$250,000	\$2.5 million (\$1/m <sup>3</sup> proposed for project)
10. Sediment/Erosion/Drainage Plan	No Plan included-no requirements-End of project only	Pre-construction and interim plan required
11. Costs	\$1/m <sup>3</sup>	\$2/m <sup>3</sup> <b>PLUS</b> costs for all Township testing, peer review consultants etc.
12. Township testing/sampling	No frequency specified -reality is that Township has tested twice in 2 years	Daily Township sampling and testing of imported fill

## What has changed since the original 2012 Greenbank Airways/Township of Scugog Agreement was signed?

- 1) Release of finalized **MOE BMP Ministry of the Environment's, Management of Excess Soils- A Guide for Best Management Practices January 2014** – although not legislation, this should impact minimum requirements in Greenbanks "Fill Protocol"
- 2) **2 court cases** that declare municipal jurisdiction over fill operations at aerodromes, November 13, 2013 and June 11, 2014
- 3) Release of **Advisory Circular from Transport Canada**, December 2013
- 4) The Ministry of the Environment received an **EBR review application on November 25, 2013** requesting the province assess the need to establish a "*new comprehensive, province-wide policy to address the problem of compromised soil and to ensure that fill being dumped on to sites is safe*".
- 5) **Review of several other large fill site Agreements** in neighbouring municipalities indicating more conservative requirements in several areas-**Uxbridge**, July 2014, **East Gwillimbury (EG)**, July 2014 **Whitchurch Stouffville (WS)**, September 2014 (see comparison of Greenbank Agreement with these Agreements-understand WS and EG looking at fill as a source of revenue and Uxbridge is not)
- 6) Various **investigations** and **court challenges** in neighbouring municipalities regarding issues with other large fill sites—Taylor's Rd. (City of Kawartha Lakes) investigation, Peterborough County charges against the same company (GFL) dumping the majority of fill at the Greenbank site—stop work orders and court cases in Whitchurch Stouffville
- 7) **Various Breaches of the Current 2012 Agreement**
  - Run off and sediment loading onto adjacent properties
  - Filling on unpermitted property for 6 months
  - Significant discrepancies re: approved loads versus received loads for some source sites
  - Issues involving review of source site reports and inadequate documentation as per requirements in fill protocol
  - Multiple days of operating before or after approved working hours
  - Quantities of unacceptable fill coming in from the same source site on multiple occasions
  - Waste materials such as asphalt, rebar, wood and plastic have been observed
- 8) The approval of a **weakened fill protocol** that **no longer reconciles** to key requirements in the **MOE BMP** and that has **not been reviewed by the Township's consultant**.

### Excerpts from Transport Canada's Advisory Circular

...The Aeronautics Act does not grant immunity to an aerodrome operator/developer from compliance with all other valid applicable provincial legislation or municipal bylaws....

Transport Canada's position with respect to the applicability of provincial or municipal laws has been consistent with the Scugog decision in that the jurisdiction of the federal government over aerodromes and their operation does not necessarily exclude the application of provincial or municipal laws.

For those structures or activities that are determined not to be integral to aviation, it is expected that the proponent of an aerodrome comply with all applicable provincial legislation and municipal by-laws.

### Excerpt from Burlington Court Case

**Burlington, Ont., Nov. 14, 2013** – On Nov. 13, 2013 a Milton Superior Court ruled the City of Burlington's site alteration bylaw applies to the Burlington Airpark.

In his [decision](#) the Honourable Justice J. Murray also ruled that:

- As the city's bylaw is valid and binding on the Burlington Airpark.
- The city is able to enforce its bylaw
- The Airpark's [application](#) against the city is dismissed
- The City of Burlington is entitled to its legal costs.

In arriving at his decision, Justice Murray found that the city's site alteration bylaw made pursuant to the *Municipal Act, 2001* was a "valid exercise of property and civil rights under section 92(13) of the *Constitution Act, 1867*". Justice Murray further found that the city's bylaw did "not impair the federal aeronautics power or create an operational conflict between the provisions of the by-laws and the federal aeronautics power." In determining that the city's bylaw did not intrude on the core federal power to regulate aeronautics, Justice Murray concluded that the city's site alteration bylaw "was designed to regulate the use of landfill for the protection of the environment and for the safety, health and welfare of municipal residents" and "was not enacted for the purpose of regulating federal undertakings."

"The bylaw is not an attempt by the municipality to regulate slopes or surfaces of runways, runway shoulders or the slopes and strength of runway shoulders. While regulating the quality of fill may have an impact on the manner of carrying out a decision to build airport facilities in accordance with federal specifications, such regulation will not have any direct effect upon the operational qualities or suitability of the finished product which will be used for purposes of aeronautics. As a result, the by-law does not impact or intrude on the core of the federal power which, as noted above, is the authority absolutely necessary to enable Parliament "to achieve the purpose for which exclusive legislative jurisdiction was conferred."

# PROPOSED Greenbank Airways Fill Agreement- DRAFT

THIS AGREEMENT made this (date here) BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF SCUGOG, (the “Township”) OF THE FIRST PART

and

2307880 ONTARIO INC. (the “Owner”) OF THE SECOND PART

WHEREAS the Owner is the owner of the lands located at 1140 Highway 47 East in the Township of Scugog, known as the Greenbank Airport (the “ Receiving Site”);

AND WHEREAS Section 142 of the Municipal Act, 2001 S.O. 2001, c.25, authorizes a Township to prohibit or regulate the placing or dumping of fill;

AND WHEREAS the Site is a registered aerodrome under the Aeronautics Act, over which the federal government has principal jurisdictional control;

AND WHEREAS on April 10, 2012 the Owner applied for a Site Alteration Permit (the “Permit”) from the Township:

AND WHEREAS section 6.01 of By-law Number 52-10 (the By-law) allows the Township to enter into an Agreement with the Owner.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained the parties hereto hereby covenant and agree as follows:

## **1. Term**

- (a) This Agreement shall be in place for a term of one (1) year from the date of signing;
- (b) A full review of the Agreement will be conducted no later than six (6) months after the signing date, at which time the Township, acting reasonably, may amend, remove or add terms to the Agreement or revoke the Agreement in its entirety, at their sole discretion;
- (c) Notwithstanding section 1(b), the Parties may agree to extend this Agreement at the end of one (1) year for a period of no more than six (6) months for each extension; and
- (d) The Parties agree that the Township, at its sole discretion and at any time, may amend, remove or add terms to the Agreement as it deems necessary.

## 2. Definitions

- (a) The definitions found in s. 1.02 of the By-law shall apply to those defined terms contained in this Agreement.
- (b) The following words or phrases have the following meaning:

**Comment [WU1]:** Definitions Section to be inserted here

## 3. Qualified Person

The Owner shall retain the services of a qualified person (QP). The QP must be approved by the Director of Public Works and Parks for the Township (Director) and any change in the QP must also be approved by the Director.

## 4. Fill Management Plan

- (a) The Owner shall at all times comply with the Fill Management Plan for the Site, which is attached to this Agreement as Appendix A;
- (b) The Fill Management Plan will, at a minimum, contain requirements approved by Council, the Director and the Township's Consultant and that reconcile to the document released by the Ministry of the Environment and Climate Change (MOECC) in January 2014 entitled, "Soil Management – A Guide for Best Management Practices", January 2014 or as amended.

## 5. Conformity with the Grading Plan

- (a) The Owner shall at all times comply with the Grading Plan which is attached to this Agreement as Appendix B;
- (b) The Owner shall retain the services of an Ontario Land Surveyor, registered with the Association of Ontario Land Surveyors, to prepare pre-fill and post-fill topographic plans for the Receiving Site;
- (c) The Parties agree the Grading Plan indicates a maximum fill volume of 2.5 million cubic metres;
- (d) No deviance from the approved Grading Plan is authorized without amendment to this Agreement;
- (e) The owner agrees to provide quarterly topographic surveys, prepared by a QP to indicate that the filling operations are consistent with the Grading Plan.
- (f) The Grading Plan shall contain such reasonable conditions to guarantee that the Site is operated in accordance with this Agreement and Municipal By-Laws;
- (g) Conditions of the Grading Plan may include details such as:
  - a. Limiting quantity of fill to be received and or managed at the Site;
  - b. Final contours and compaction;
  - c. Reconciliation of volumes; and
  - d. Reporting timeframes.

**Comment [WU2]:** The approving authority must include a volume limit in the Agreement or supporting Permit. *Is this the correct number according to the Grading Plan?*

**Comment [WU3]:** Periodically, the Owner should be required to reconcile volumes onsite by engaging an expert to calculate how much soil has been received and how much capacity is remaining under the terms of the Agreement.

## 6. Noise and Dust Control

- (a) The Owner shall at all times comply with the Noise and Dust Control Plan attached to this Agreement as Appendix C;
- (b) Notwithstanding the conditions of Appendix C, the Owner agrees to control dust, arising from the operation of the Site on the Site, on adjacent lands and on construction access roads to the satisfaction of the Director; and
- (c) The Owner may conduct site grading and general maintenance works on Saturdays so long as it complies with the Township Noise By-law 54-07.

## 7. Hours of Operation and Noise Mitigation

- (a) The Owner shall at all times comply with the Township Noise By-law 54-07 for both onsite and offsite activities related to Site operations;
- (b) This may include providing instruction to staff and haulers or imposing requirements regarding minimizing excessive noise such as:
  - a. tailgate banging;
  - b. the use of engine brakes along the haul routes; and
  - c. controlling excessive vehicle idling;
- (c) Notwithstanding section 7(a), the permitted Hours of Operation for Site activities including receipt and deposition of fill shall be only during the period Monday to Friday 8:30 am - 4:30 pm.
- (d) There shall be no fill received outside these hours or on Saturdays, Sundays or Statutory Holidays;
- (e) Hours of operation will be further restricted during any period in which a severe wind warning for the area has been issued by Environment Canada and during any time where weather, traffic and unusual events would compromise the ability of the Receiving Site activities to be conducted in a safe and environmentally sound manner with due consideration of the public; and
- (f) The Owner may conduct site grading, levelling and contouring and general maintenance works on Saturdays so long as the activities comply with the Township Noise By-law 54-07.

**Comment [WU4]:** The Township must decide if onsite operations such as grading can occur outside these hours and should so specify in the permit and/or this Agreement.

## 8. Truck Traffic and Approved Haul Routes

- (a) The Owner shall at all times comply with the Region of Durham Entrance Permit requirements and the Ministry of Transportation Building and Land Use Permit requirements as set out and attached to this Agreement as Appendix E;
- (b) Notwithstanding Section 8(a), the maximum number of trucks per day will be 100 which may be amended up to a maximum of 200 hundred trucks per day with the approval of Council, or down to a specified number determined by the Director should the Director, for any reason, so decide;

- (c) The Owner shall at all times comply with the Hauling Routes as set out and attached to this Agreement as Appendix D;
- (d) In the event that a Truck Driver fails to use and/or comply with the approved Haul Routes, and such failure is confirmed by the Owner or the Director or his/her Designate:
  - a. The Owner shall refuse to allow the Truck Driver to dump or place Fill at the Site for a pre-determined period of time approved by the Director;
  - b. In the event that the Truck Driver has already dumped or placed the fill at the Receiving Site and fails to use and or/comply with the approved Haul Routes when exiting the Receiving Site, the Owner shall refuse to accept any subsequent loads from such Truck Driver for a pre-determined period of time approved by the Director;
  - c. The Owner shall forthwith report such incident to the Contractor from whence the fill originated and advise the Contractor that the Truck Driver has been instructed to return the Fill to the original source location, unless the fill has already been deposited at the Receiving Site, in which case the notification to the Contractor will be sufficient;
  - d. In the event that one or more Truck Drivers from a single hauling company are non-compliant with the use of the Haul Routes, then that company shall be prohibited from bringing fill to the Receiving Site for a period of not less than three (3) months from the date of the 3<sup>rd</sup> infraction;
  - e. The Owner shall record such incident(s) in a log book. The log shall include the following information as a minimum:
    - i. The date and time of the occurrence;
    - ii. The licence plate of the vehicle denied access;
    - iii. The name of the Truck Driver and company, if known;
    - iv. The source location of the fill; and
    - v. The name of the Contractor who obtained the tickets to dump or place the fill;
- b) To further ensure that Contractors and Truck Drivers use and or /comply with the Haul Routes, the Owner agrees as follows:
  - i. To distribute and to have available to all Truck Drivers an illustrative map identifying the Haul Routes;
  - ii. To post Signage identifying the Haul Routes at both the entrance and exit to the Receiving Site; and
- c) Provide a copy of the log book at the Director's request; .and
- d) The Parties agree there shall be no queuing of trucks permitted on any roads leading to or from the Receiving Site

**Comment [WU5]:** If three trucks from one company do not comply with the Haul Route requirements, that will be deemed to be three infractions

## 9. Compliance with Legislation

- (a) The Owner shall at all times comply with such federal, provincial or municipal legislation, regulations, rules and requirements as may be applicable;



## 10. Source Site Approval

- (a) The Owner shall post on the Greenbank Airport Online Portal ([www.greenbankairways.net/eportal](http://www.greenbankairways.net/eportal)) the following documentation with respect to any source site used in connection with the Site:
  - a. The test results relied upon by the QP in its determination of the acceptability of Fill from the source site;
  - b. A copy of the QP's approval of the Source Site which shall include the volume of fill approved based on the QP's review of the Source Site soil test results; and
  - c. The test results from any audit samples taken at the Receiving Site by the QP or designate in accordance with the Fill Management Plan in Appendix A; and
- (b) The Owner acknowledges and agrees that the Owner shall not import fill or topsoil onto the Site unless prior written approval is obtained from the Director and/or Township Consultant for each Source Site; and
- (c) The QP's approval of the source site shall be conditional upon acceptance, by the Director, as follows:
  - a. The QP will provide notice to the Director upon conditional approval of a new source site and provide the Director with any of the documents in s. 10 which have not already been posted on the Greenbank Airport Online Portal ([www.greenbankairways.net/eportal](http://www.greenbankairways.net/eportal)) as well as any other information such as, but not limited to, environmental assessments and soil management plans for all source sites as determined and requested by the Director and/or Township Consultant;

## 11. Ground Water Monitoring

- (a) The Owner shall at all times comply with the Ground Water Monitoring Plan attached to this Agreement as Appendix \_\_\_\_\_.
- (b) The parties agree and acknowledge that upon completion of the filling operations alteration as per Agreement, groundwater monitoring will be maintained and reported by the Owner for a minimum of two years. At the discretion of the Townships' consultant, acting reasonably, groundwater monitoring may be extended beyond the two year period to a maximum of three additional years or such longer time as may be required to assess or mitigate issues arising as a result of the fill activities at the Site. In the event that the groundwater monitoring indicates any impact on the groundwater, including any impact on nearby private wells, attributable to the filling operations, the Owner shall take all reasonable measures necessary to remediate any such impacts and take all reasonable measures necessary to prevent further impacts. The Site QP and /or Township Consultant, or appropriate experts, such as hydrogeologists, which may be retained by the QP or Township Consultant, shall determine the impact and the appropriate remediation referred to above.
- (c) Notwithstanding any other conditions in this Agreement, the Township may retain the Securities until such time as the completion of the Ground Water Monitoring Program as described above.

**12. Imported Fill/Topsoil**

- a) All Fill deposited at the Site shall meet the soil standards for an industrial, commercial or institutional property use set out in Table 2 of the Soil, Ground Water and Sediment Standards for use Under Part XV.1 of the Environmental Protection Act, dated April 15, 2011;
- b) The sampling requirements as noted in Section 55 and Schedule E in Ontario Regulation 153/04, as amended, shall be met regardless of whether the Receiving Site Owner or designate is filing a Record of Site Condition or not:
  - a. Specifically, for all soil to be brought to the Receiving Site, at least one soil sample shall be analyzed for each 160 cubic metres of soil for the first 5,000 cubic metres at each Source Site, following which at least one sample for each additional 300 cubic metres of soil which is to remain on, in or under the Receiving Site shall be analyzed;
- c) Soils brought from offsite Soil Remediation Facilities may have more stringent testing requirements as required in their Environmental Compliance approvals. In such instances, the more stringent testing requirements will apply with regards to testing at the Source Site;
- d) The SAR (Sodium Absorption Ratio) and Electrical Conductivity (EC) of the fill may not exceed Table 2 Standards for all imported soils;
- e) The QP of the Receiving Site shall ensure that all fill imported to the Receiving Site does not contain any putrescible material or rock, brick, or concrete, or other construction/demolition debris that contains cement fines, exposed rebar, metal paint or coatings, decomposable materials, plastic, asphalt, petroleum products, hydrocarbon materials and any putrescible organic materials;

**13. Fill Relocation**

- (a) Immediately upon issuance of this Agreement, and prior to the importation of further fill, the Owner shall relocate the excess fill deposited on the Hill Property, both spatially and in volume, in accordance with the approved Grading Plan for the Site.

**14. Security on Site**

- (a) The Owner shall keep and maintain a gated entrance to the Receiving Site at all times;
- (b) At all times, when the Receiving Site is closed or during times outside the approved hours of operation, the gate shall be closed to incoming loads of fill as per the Hours of Operation stipulated in this Agreement, under Section 7, supra.

## 15. Meetings

- (a) The Owner and the Township agree to hold project meetings, which will be attended by at least one (1) representative from each of the Parties;
- (b) The meetings will take place at the following intervals:
  - a. First meeting within 30 days of the effective date of this Agreement;
  - b. Second meeting within 90 days of the effective date of this Agreement;
  - c. Third meeting within 180 days of the effective date of this Agreement; and
  - d. Subsequent meetings, which may be called at the request of either party, and in any event the Parties shall meet no less than once in any six ~~(12)~~ (6) month period.

## 16. Right of Entry

- a) The Owner shall permit the Township and its Director and inspectors, agents or contractors to enter and attend at the site for the purposes of conducting an inspection at any reasonable time including but not limited to inspections during approved Hours of Operation;
- b) In the course of any such inspection, the Township or its agents or contractors may carry out any activity necessary to determine compliance with this Agreement and the requirements of the By-law, including but not limited to:
  - 1. Soil and groundwater sampling and testing, at the sole discretion of the Director and/or the \Township consultant
  - 2. Reviewing and making copies of on-site records;
  - 3. Inspection of equipment and vehicles on the Site;
  - 4. Taking of photographs or video of the Site;
  - 5. Such further and other activities as may reasonably be necessary to determine compliance with the By-law or the requirements of the Agreement or any applicable laws.
- c) In addition, the Township may carry out inspections without notice as permitted by law under the Municipal Act, 2001 or a Township by-law;

## 17. Reporting

- (a) The Owner shall direct the QP to report in writing quarterly to the Director during the Term of this Agreement, within seven (7) days of the end of each September, December, March and June, to verify that the site alteration proceeded in accordance with the By-law, the site alteration permit and this Agreement in the preceding ~~month~~ quarter. The report will include, but is not limited to, the following information:
  - a. A list of all of the sources for fill received at the Site during the ~~month~~ quarter including the owner and municipal address for the Source Site;
  - b. The total volume of fill received at the site for quarter ~~the month~~ including the load counts and volumes for each Source Site by month.

- c. A list of all complaints received including a brief description of the complaint, contact information of the complainant (where permitted by law), the time and date the complaint was received and the full name of the person who received the complaint and how the complaint was addressed along with any mitigation measures taken to rectify the complaint;
  - d. The results of any testing conducting in connection with the fill operation including but not limited to any soil and groundwater testing on and off site and any confirmatory sampling conducted;
  - e. A list of any incidents involving a breach of this Agreement or the Appendices, the By-law or permit including the date, time, brief description and the persons involved and any mitigative actions taken; and
- (b) the Director may, at any time, require such other information to be included in the quarterly reports as deemed necessary by the Director; and
- (c) In the event of a serious single breach or a number of breaches of any requirement of this Agreement or the By-Law, more frequent reporting by the Owner may be required by the Director, including any further information deemed appropriate by the Director.

#### **18. Environmental Impacts**

- (a) The Owner shall ensure that the Site Alteration, authorized under this Agreement, proceeds in accordance with sound environmental practices, the Application for this Site Alteration, the Site Alteration Permit, and the plans submitted with the Application and Appendices attached to this Agreement;
- (b) The Owner agrees the environmental requirements of Section 4.05 of the By-law shall be met including, but not limited to, ensuring that all fill used is material that does not contain any putrescible material or rock, brick or concrete that contains cement fines, exposed rebar, paint or coatings, decomposable materials, plastic, asphalt, petroleum products, hydrocarbon materials or any putrescible organic materials; and
- (c) The Owner shall ensure that the natural environment is not contaminated as a result of the Receiving Site activities related to the deposition or movement of fill at the Receiving Site; The Owner shall ensure that adjacent property owners and bystanders are not subjected to Adverse Effects as defined in section 1. (1) of Ontario's Environmental Protection Act, R.S.O. 1990, Chapter E. 19, as amended, as a result of operations at the Receiving Site.

#### **19. Default**

- a) In the event of any default by the Owner pursuant to any of the terms of this Agreement, and in addition to any other remedies available to the Township, the Director may:
  - a. Draw on the Security Deposit referenced in Section 24 of this Agreement in whole or in part;
  - b. Undertake or complete any obligation of the Owner hereunder;
  - c. Enter upon the Receiving Site through its servants or agents for any purpose whatsoever;

- d. Issue a stop work order with respect to any further dumping operations or dumping related work upon the Receiving Site; and
  - e. Recover from the Owner all costs and expenses incurred by the Township whether directly or indirectly, with respect to the default or the remedy thereof and collect such costs and expenses in like manner as municipal taxes; and
- b) If the Owner is in breach of the Agreement and the Township cannot address such breach with its own forces or contractors, then the draw on the Securities shall be limited to \$10,000 on the first occurrence in each calendar year, and \$15,000 per each subsequent occurrence in the same calendar year. In such case, there shall be no recompense to the Owner.
- c) In the event that the Agreement is expired, cancelled or revoked after work has commenced but prior to completion of the fill operations in accordance with the Agreement, the Owner, at his/her cost shall forthwith stabilize the Site, including but not limited to adding topsoil, grading and sodding, to the satisfaction of the Director.

## 20. Erosion and Sediment Control

- a) The Owner shall at all times comply with the Sediment and Erosion Control Plan as documented in Appendix \_\_\_\_\_.
- b) The Owner shall not take or cause any work to be done that will adversely affect drainage from or onto neighbouring properties in the vicinity of the Receiving Site, and the Owner shall with the prior approval of the Township, at the Owner's expense, construct such drainage works as may be required. Notwithstanding the aforesaid, the Owner shall indemnify and save harmless the Township with respect to drainage from or onto lands adjoining the Receiving Site as a result of the operations hereby contemplated and the construction of any works, facilities or structures on the Receiving Site, whether approved by the Township or not;
- c) The Owner shall construct and install temporary or permanent erosion and siltation control devices required by the Township or as deemed necessary by industrial best management practices, prior to importing any fill to the Receiving Site and shall maintain these facilities in good working order;
- d) The Owner shall provide additional erosion and siltation control devices/measures as may be required by the Township during construction of this project, and as may be required by the Township thereafter from time to time;
- e) The Owner shall ensure Erosion and Sediment control plans are consistent with the latest guidelines for erosion measures of the local Conservation Authority. The owner shall complete Table 2 and 3 from the Erosion and Sediment Control Guideline for Urban Development, dated December 2006, and forward these for inspection and approval by the Director or his agent prior to undertaking fill operations. Municipal review and approval of such reports shall be at the cost of the owner;
- f) As a minimum:
  - a. The Owner shall ensure that an adequate Erosion and Sediment Control Plan is in place for the Receiving Site at all times and that a QP, Certified as an Inspector of Erosion and Sediment Control (CISEC), oversees the implementation and administration of the Erosion and Sediment Control Plan at the Receiving Site;
  - b. The Owner shall report to the Township regarding sedimentation and erosion control inspections as detailed in the Erosion and Sediment Control Plan.

**Comment [WU6]:** Examples of this type of breach might include the acceptance of Fill on a non-business day or outside or permitted business hours, or if the limit of truck deliveries is exceeded

**Comment [WU7]:** Checklist for an effective Erosion and Sediment Control Plan (ESC):

- Check condition of temporary and permanent stabilization measures, including vegetative filler strips (e.g., hydroseeding, mulch, growth media mats and blankets, compost, netting, plastic sheets or vegetation) to ensure they have been properly installed and are working effectively.
- Where vegetative cover has been planted, is seed well-established, with good coverage (>80%)? Are there any areas where wash-out or erosion has occurred?
- Ensure construction vehicles have not exposed soils or removed vegetation.
- Ensure that stabilization measures have been implemented at critical areas, such as steep slopes and inactive disturbed areas within 30 days of the date the area became inactive. Check for any disturbed areas that are acting as a source of wind-blown dust. Install measures to control dust as needed.
- Permanent stabilization
- Stabilization of smaller parcels of the site is encouraged where stabilization of the entire site cannot be completed within 30 days. Stabilization must be initiated on all areas at final grade within 30 days.
- Ensure accepted methods are used. These include:
  - Seeding by broadcast, hydroseeding, mechanical or blower truck application of media and seed methods
  - Planting/sodding/riprap

**Comment [WU8]:** These were additional recommendations from CLOCA. Multi-barrier sediment controls should be included for any Fill in proximity to environmental features and property lines. This redundancy is a positive safeguard to have in place to provide backup protection proximal to natural features and neighboring properties. This technique involves the use of a variety of controls in series from source to stream, beginning with erosion prevention. "Proximal" will have to be defined (e.g. a minimum of 30m to a feature or property boundary).

Max slopes – Any slope greater than 3:1 would have a significant risk of slope failures and sediment and erosion.

Progressive stabilization – To ensure effective sediment and erosion control, fill sites should be completed in phases. On ...

- c. The Owner shall inspect the Receiving Site regularly regarding erosion control. The inspection should include the following elements as a minimum:
  - i. A 'walk-through' inspection of the construction site must be undertaken in anticipation of rain, extended wet weather periods, snow melt events, or any conditions that could potentially yield significant runoff volumes;
  - ii. Regular and adequate inspections should occur during all construction stages; and
  - iii. The minimum frequency of inspection must be:
    - 1. On a weekly basis;
    - 2. Before and after every rainfall event;
    - 3. After significant snowmelt events;
    - 4. Monthly during inactive periods (> 30 days);
    - 5. Daily during extended rain or snowmelt periods; and
    - 6. More frequent inspections may be specified by the Director.

## 21. Complaint Protocol

- a) The Owner shall at all times comply with the Complaint Protocol which is attached to this Agreement as Appendix\_\_\_\_\_;
- b) Upon receiving a complaint in accordance with the Complaint Protocol, the Owner shall:
  - a. Acknowledge the complaint within 24hrs;
  - b. Complete a public complaint form;
  - c. Investigate the complaint immediately upon notification;
  - d. Notify the Director within 24 hours of the complaint and the proposed measures to address/mitigate the complaint;
  - e. Respond to the complainant with clear direction;
  - f. Implement measures to address the complaint to the satisfaction of the Township;
  - g. Follow up on complaint reconciliation measures; and
  - h. Subject to Condition 17(a) of this Agreement, prepare and maintain a record of the complaints received in any quarter and provide this summary to the Director in a timely manner.

## 21. Costs

- a) The Owner agrees to pay all costs incurred by the Township, whether directly or indirectly, in connection with this Agreement including but not limited to any inspection, monitoring and auditing of the site alteration and fill activities. Without limiting the generality of the foregoing, such costs and expenses shall include a charge for the review of any plans, reports or applications, review of all legal, surveying, geoscience and engineering costs and the costs of any consultants retained by the Township incurred in connection with this Agreement, the supervision of all of the works undertaken in connection therewith or in ensuring compliance with this agreement and the registration thereof on title to the lands (Receiving Site);
- b) The Owner agrees that the Township reserves the right to randomly test the soil on a daily basis. The Owner shall reimburse the Township for all costs associated with the testing. The Township may take, at a minimum, one (1) soil sample from a location of its

choosing on a daily basis. The Township may complete additional soil testing at their discretion;

- c) The Owner agrees that the Township, at its discretion, may conduct other such monitoring and inspections in order to ensure compliance with this Agreement and ensure the objectives of the Site Alteration By-Law are maintained. These activities may include, but are not limited to, monitoring and testing ground water elevation levels and quality, monitoring the hours of operation and truck traffic to and from the Receiving Site, inspecting Erosion and Sediment control measures, and review of all documentation associated with the operations of the Receiving Site; and
- d) The Owner agrees to reimburse all such costs associated with Township monitoring and compliance audits within 30 days of receipt of any such invoices from the Township.
- e) The Owner agrees to reimburse the Township of all legal costs associated with the drafting and executing of this Agreement prior to commencing filling operations.

**Comment [WU9]:** An alternative method of ensuring payment and compensation is for the Township to adopt this option:

The Owner will provide the Township with a Cash Deposit of \$100,000, to be topped up within 30 days if Township draws from it. In the event that the Cash Deposit is not replenished within 30 days, a Stop Work Order will be issued until such time as the Cash deposit is replenished.

**Use of Cash Deposit**

The Cash Deposit will provide the Township the resources to retain appropriately qualified Peer Review Consultants to oversee all aspects of the Site Alteration including:

- Source Site Assessment;
- Report, manifest, and document review;
- Site Inspections;
- Site topographic survey, to confirm contours and volumes;
- Drilling and test pitting to confirm sub-surface conditions; and
- Collection and analysis of samples for soil, surface water, groundwater and air quality.

The Peer Review Consultant would assist the Director, and By-law Officer with inspections and make recommendations to the Director.

The Peer Review Consultant could provide the expertise to review the completion of the site alteration and make recommendations for terminating the Permit and/or Agreement and/or Orders to allow the return of the unused portions of the Cash Deposit and Security Deposit.

**Comment [WU10]:** The formula for calculating the amount payable is based on: \$2/cu.m x 10 cu.m/truck x 100 trucks per day x 20 working days/month. This should increase if load limits increase

## 22. Tipping Fee

- a) The Owner shall provide the Township with payments equal to:
  - a. \$2.00 per cubic metre for all fill materials brought to this Receiving Site under this Agreement in accordance with the current Municipal Fees and Charges By-Law (insert correct name of document if different than this); and
  - b. The amount of \$40,000 payable at the first of every month of this Agreement for all fill anticipated to be accepted at the Receiving Site during the following month;
- b) On a quarterly basis the amount of fill accepted at the Receiving Site will be reconciled against monies provided to the Township using the quarterly reports to determine the volume of fill received at the Receiving Site;
- c) Every six (6) months, on the semi-annual anniversary of Agreement, contour mapping/topographic surveys must be undertaken to validate the amount of fill received at the Receiving Site during the Term of this Agreement and any monies owing shall be paid in full forthwith;
- d) Should the contour mapping/topographic surveys show that monies in excess of those required have been paid by the Owner, these monies shall be carried forward and applied to future payments owing to the Township; and
- e) The amounts owing based on these assessments will be reconciled within sixty days thereafter.

## 23. Public Liaison Committee

- a) Depending on the size and nature of the Site Alteration project and the public interest expressed by the community, the Owner, at the discretion of the Council of the Township, may be required to host a Public Liaison Committee (PLC) which shall meet, at a minimum, quarterly during the year;

- b) The Committee approved minutes shall be provided to Council within 30 days after the meeting date;
- c) The Terms of Reference for the PLC shall form part of the Agreement and are set out in Appendix \_\_\_\_\_; and
- d) The Director may become involved in the development of the Terms of Reference, at their sole discretion, with respect to any matter including, but not limited to, membership and representation, timing and frequency of meetings, mandate and scope of the committee, and reporting.

#### 24. **Securities**

- a) The Owner will provide security to the Township in the amount of 2.5 million dollars and acknowledges that the Township may use the Security to remedy any breach of this Agreement;
- b) The Security may be provided in the form of cash or an Irrevocable Letter of Credit in a form acceptable to the Township;
- c) Insurance policies may not be used as a form of Security;
- d) Provided that the Township has confirmed that no drawings on the Security are required, the Township will return the Security, or the amount thereof then remaining, to the Owner within ninety 90 days of the date that the Permit expires and subject to the Site having been stabilized and revegetated according to the approved Grading Plan;
- e) If the Town draws upon the Security Deposit, the Owner will top up the Security within 30 days of a request being received from the Township;
- f) Should the costs referenced in this Agreement be incurred by the Township in excess of the amount of the Security Deposit, the Township shall place a lien on the Receiving Site for such amount necessary and the amount shall be deemed to be municipal taxes and may be collected in the same manner and with the same priorities as municipal taxes.

**Comment [CM11]:** The Security Deposit is designed to be used in situations when the owner/operator is unwilling or unable (due to financial, business, personal or other reasons) to comply with the terms of this Agreement or Orders issued by the Township. The Security Deposit must be able to survive the demise of the owner/operator's financial and business resources;

**Comment [WU12]:** \$1.00 for every cubic metre authorized under the Site Alteration Permit

**Comment [CM13]:** This timeline may not be long enough in order to determine adverse effect and potential draw on Securities. For example, Groundwater monitoring should carry on for at least 2 years after fill operations cease and a draw on the Securities may be required if there are any issues discovered.

#### 25. **Indemnity**

- (a) The Owner hereby indemnifies and holds the Township harmless for any liability, costs, damages or losses caused directly or indirectly by the issuance of the Agreement or Site Alteration permit;

#### 26. **Liability Insurance**

- (a) The Owner shall at all times maintain Insurance during the term of this Agreement and shall provide a Certificate of Insurance as proof of same:
  - a) Commercial General Liability insurance subject to limits of not less than Five Million (\$5, 000, 000) inclusive per occurrence. To achieve the desired limit, umbrella or excess liability insurance may be used. Coverage shall include but is not limited to bodily injury including death, personal injury, damage to property including loss of use thereof, blanket contractual liability, owner's and contractor's protective, non-owned automobile, and contain a cross liability, severability of insured clause. The



Township is to be added as an additional insured but only with respect to liability arising out of the operations of the Name Insured;

- b) Pollution Liability Insurance subject to limits of not less than Five Million (\$5,000,000) inclusive per claim and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or disposal of soil, fill, surface water, groundwater or other contamination. The policy shall remain in force for a minimum of two (2) years following termination of this Agreement for whatsoever reason. Notwithstanding the aforementioned, the Pollution Liability insurance shall remain in effect until the Ground Water Monitoring Program as described in the same section is complete. The Town shall be named as an additional insured; and
- c) All policies shall be with the insurers licensed to underwrite insurance in the Province of Ontario.

**27. Registration on Title**

- a) The Owner hereby consents to the registration of this Agreement on the title of the lands at the Owner's expense.

**28. Application to the Court**

Nothing in this Agreement shall be construed to prevent:

- (a) the Township or the Owner from applying to the Court for an Order of injunctive relief; or
- (b) the Township from acting under the provision of the by-law or Municipal Act.

**29. Invalidity**

- (a) If a court of competent jurisdiction should declare any section or part of a section of this Agreement to be invalid or unenforceable, such section or part of a section shall not be construed as being an integral part of the Agreement or having persuaded or influenced a party to this Agreement to execute the same, and it is hereby agreed that the remainder of the Agreement shall be valid and in full force and effect.

**30. Interpretation**

- (a) In construing this Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and the neutral and vice versa, and words importing persons shall include corporations and vice versa;
- (b) In the event of inconsistencies between the Site Alteration By-Law and this Agreement, the Parties agree the provisions in this Agreement shall prevail;
- (c) In the event of inconsistencies between the terms of this Agreement and the Appendices, the Director shall provide clarity and the decision of the Director shall be final;
- (d) The Parties acknowledge and agree that this Agreement shall be binding upon and shall ensure to the benefit of the Parties hereto, and each of their respective representatives, successors, heirs and assigns; and
- (e) This Agreement may not be assigned by the Owner without the express written consent of the Township, such consent to be at the sole discretion of the Township.

**31. Record Retention**

- a) The Owner shall retain all records associated with the filling operations for a minimum of seven (7) years after completion of the filling operations.
32. The parties acknowledge and agree that this Agreement shall be binding upon and shall ensure to the benefit of the parties hereto, and each of their respective representatives, successors, heirs and assigns.
33. This Agreement may not be assigned by the Owner without the express written consent of the Township, such consent to be at the sole discretion of the Township.
34. Where notice is required under this Agreement it may be personally delivered, sent via fax, or sent via mail and shall be addressed as follows:

(a) Township:  
Director of Public Works and Parks  
Township of Scugog  
181 Perry Street  
Port Perry, Ontario L9L 1A7  
Fax: 905-985-9914  
Email: [iroger@scugog.ca](mailto:iroger@scugog.ca)

(b) Owner:  
Airport Manager  
Greenbank Airways  
1140 Highway 47 East

Uxbridge, Ontario L9P 1 R3  
Fax: 905-985-4771  
Email: [johnp@greenbankairways.com](mailto:johnp@greenbankairways.com)

(c) Notice sent via fax is effective on the date of transmittal, notice personally delivered is effective on the date it is delivered, notice sent via email is effective on the date it is acknowledged as received by reply email from the recipient, and notice sent by mail is effective 5 days after mailing.

IN WITNESS THEREOF the Corporation has caused its Corporate Seal to be affixed as attested to by the hands of its proper Officers in that behalf and the Owner has hereunto set his hand and seal.

**SIGNED, SEALED AND DELIVERED**  
**THE CORPORATION TOWNSHIP OF SCUGOG**  
**PER:**

\_\_\_\_\_  
I have the authority to bind the Corporation etc.

## Draft Model Agreement for Presentation all Across Southern Ontario in the New Year

THIS **AGREEMENT** made this (date here) BETWEEN:

THE Municipality of \_\_\_\_\_

and

\_\_\_\_\_ (the Owner)

WHEREAS the Owner is the owner of the lands located at \_\_\_\_\_ (address) (the Receiving Site);

AND WHEREAS Section 142 of the Municipal Act, 2001 S.O. 2001, c.25, authorizes a municipality to prohibit or regulate the placing or dumping of fill;

AND WHEREAS section (\_\_\_\_) of By-law Number (\_\_\_\_) (the By-law) allows the Municipality to enter into an Agreement with the Owner.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained the Parties hereto hereby covenant and agree as follows:

The following Appendices shall form part of the Agreement:

Appendix A - Fill Management Plan

Appendix B - Ground Water Monitoring Plan

Appendix C - Grading Plan/Site Plan

Appendix D - Mud and Dust Control Plan

Appendix E - Sediment and Erosion Control Plan

Appendix F- Hauling Routes

Appendix G - MTO/Region or County Permits (as applicable)

Appendix H - Complaint Protocol

Appendix I - Proof of Insurance

Appendix J - Terms of Reference for the Public Liaison Committee (PLC)

**Comment [WU14]:** This Model Agreement was prepared drawing inclusions and concepts from various existing agreements and Provincial Guidelines such as but not limited to the Ministry of the Environment and Climate Change document entitled, "Soil Management – A Guide for Best Management Practices January 2014" (MOECC BMP), the Dagmar Agreement with the Twp. of Uxbridge, the Uxbridge Site-alteration By-law, the MAP Agreement with East Gwillimbury, the East Gwillimbury By-law, The USM Agreement with Whitchurch-Stouffville and Whitchurch-Stouffville Site-alteration By-law, the Greenbank Agreement with Scugog/Twp. and Scugog Site-alteration By-law, and the Halton Hills Site-alteration By-law.

## 1. Term

4. This Agreement shall be in place for a term of one (1) year from the date of signing;
5. A full review of the Agreement will be conducted no later than six (6) months after the signing date, at which time the Municipality, acting reasonably, may amend, remove or add terms to the Agreement or revoke the Agreement in its entirety, at their sole discretion;
6. Notwithstanding section 1(b), the Parties may agree to extend this Agreement at the end of one (1) year for a period of no more than six (6) months for each extension; and
7. The Parties agree that the Municipality, at its sole discretion and at any time, may amend, remove or add terms to the Agreement as it deems necessary

**Comment [CM15]:** The Municipality shall be defined to be a political unit such as a town, village, or any other entity incorporated for local self-government.

## 2. Definitions

The following words or phrases have the following meaning:

**Comment [WU16]:** Definitions Section to be inserted here

## 3. Qualified Person

- (d) The Owner shall retain the services of a Qualified Person (QP) as defined in section 5 of Ontario Regulation 153/04, as amended. The QP must be approved by the Director of Public Works and Parks for the Municipality (Director) prior to any fill being received at the Receiving Site;
- (e) Any change in the QP responsible for the Receiving Site must also be pre-approved by the Director;
- (f) The Owner shall ensure that the Site Alteration, authorized under this Agreement, proceeds in accordance with sound environmental practices, the Application for this Site Alteration, the Site Alteration Permit, and the plans submitted with the Application and Appendices attached to this Agreement; and
- (g) The Owner shall ensure that the natural environment is not contaminated as a result of the Receiving Site activities related to the deposition or movement of fill at the Receiving Site; The Owner shall ensure that adjacent property owners and bystanders are not subjected to Adverse Effects as defined in section 1. (1) of Ontario's Environmental Protection Act, R.S.O. 1990, Chapter E. 19, as amended, as a result of operations at the Receiving Site.

**Comment [WU17]:** Insert correct title if different than this. The Director shall include any person authorized by the Director to carry out any of the powers or duties of the Director pursuant to this Agreement.

**Comment [WU18]:** Where a municipality issues both an Agreement and a Site Alteration Permit, references should be included throughout to ensure that both documents are referenced where applicable. So in this section, one might add "and the Site Alteration Permit".

**Comment [CM19]:** This comment will not form part of the Agreement document. It is a reminder to the writers that we have to move sections (c) and (d) somewhere else as it does not fit well here. Also formatting of subsections is not consistent and needs attention.

## 4. Fill Management Plan

- b) The Owner shall at all times comply with the Fill Management Plan for the Receiving Site, which is attached to this Agreement as Appendix A;
- c) Notwithstanding section 4(c) of this Agreement, the Fill Management Plan will, at a minimum, contain requirements approved by the Municipal Council, the Director or their designate and that reconcile to the document released by the Ministry of the Environment and Climate Change (MOECC) in January 2014 entitled, Soil Management – A Guide for Best Management Practices, January 2014 or as amended;
- d) The Fill Management Plan shall contain the following requirements, as a minimum:

- (a) No fill may be received from a Source Site unless there is a comprehensive Soil Management Plan for that Source Site, which has been reviewed and approved by the QP of the Source Site and the QP for the Receiving Site and the QP retained by the Municipality;
  - (b) All loads received at the Receiving Site must be segregated as per the Fill Management Plan until such time that it has been confirmed by sampling or other acceptable means that the soil is acceptable for receipt at the Receiving Site;
  - (c) No "polluting up" of the native, uncontaminated soil at the Receiving Site is permitted;
  - (d) Every load received at the Receiving Site must be screened such that it is confirmed that each load meets the requirements of the Fill Management Plan; and
  - (e) Audit testing must be done on an ongoing basis and based on the volume of Fill received from each Source Site, to confirm the acceptability and quality of the Fill; and
- e) Amendments to the Fill Management Plan will require the advance written approval of Council and the Director.

## 5. Ground Water Monitoring

- a) The Owner Shall at all times comply with the Ground Water Monitoring Plan which is attached to this Agreement as Appendix B;
- b) The Owner shall retain the services of a professional geoscientist or engineer licensed to provide hydrogeological services to prepare the Ground Water Monitoring Plan;
- c) The Parties agree and acknowledge that upon completion of the fill operations, as authorized under this Agreement, a ground water monitoring program, as approved by the Director, will be implemented and maintained by the Owner for a period consistent with the geological/hydrogeological setting (minimum of two (2) years) after fill operations and all associated grading ceases at the Receiving Site;
- d) The results of the sampling shall be reported to the Director in a manner and timeframe specified by the Director;
- e) At the discretion of the Municipality or its agents, acting reasonably, ground water monitoring may be extended beyond the two year period for such time as may be required to assess or mitigate issues arising as a result of the fill activities at the Receiving Site;
- f) In the event that the ground water monitoring results indicate any negative impact on the quality of ground water at or in the vicinity the Receiving Site, including any impact on neighbouring private potable water supply wells, attributable to the filling operations at the Receiving Site, the Owner shall take all reasonable measures necessary to remediate any such impacts and to prevent further impacts arising;
- g) In such cases, additional monitoring parameters and/or increased frequency of monitoring may be required;
- h) The Owner may be directed to engage any experts necessary, such as hydrogeologists, which may be required to determine the impact and the appropriate remediation referred to above; and

**Comment [CM20]:** This is a term used by the Canadian Council of Ministers of the Environment to mean that no new contaminants may be brought to a site, nor should the concentration of any onsite contaminant be increased.

**Comment [WU21]:** As a minimum, the following specific requirements should form part of the Groundwater Monitoring Plan:

- Characterization of the site using relevant geological reports, maps, water well records, hydraulic data, test/bore hole data and constructed wells as necessary which are needed to inform the monitoring locations and Plan
- Provide at least 2 hydrogeologic cross sections of the Receiving Site, indicating the interpreted subsurface geological units encountered in the wells (private and on-site) drilled within the 1 km of the site
- Conduct a door to door survey of adjacent landowners within 250 metres of the Receiving Site with background water quality samples from all wells prior to the commencement of filling/grading operations (with landowner's permission)
- Installation of test wells at the Receiving Site at upstream, downstream and cross gradient locations to confirm flow paths in the shallow water table and any other aquifer zones that may reasonably be impacted
- Undertake 2 test well sampling events prior to filling and grading at the Receiving Site. At a minimum, the samples collected will be analysed for general major ions, nutrients, metals and an agreed to suite of potential organic parameters.
- 4 x annual groundwater monitoring for life of filling operations in order to reflect seasonal variations in groundwater elevations
- Annual groundwater monitoring of the test wells for a time to be determined by the Municipality following the completion of filling operations (this may be anywhere from 2 to 10+years)
- Identification of potential impacts to local wells and recommendations for contingency plans
- Pre-fill and post-fill water balance
- A discussion of the potential impacts to any nearby surface water resources and proposed mitigation measures to prevent/mitigate these impacts
- Need to do study and prove there will be no impact prior to any approvals for fill importation

- i) Notwithstanding any other conditions in this Agreement, the Municipality may retain the Security Deposit as defined in Section 23 of this Agreement until such time that the Ground Water Monitoring Program has been completed to the satisfaction of the Director.
- j) The Owner shall be responsible for the future (or as necessary) decommissioning of any or all boreholes in accordance with Regulation 903 under the Ontario Water Resources Act (OWRA).
- k) The Owner agrees that more advanced characterization of geological and hydraulic properties and monitoring may be required if the Receiving Site is an identified area of significance such as but not limited to an Area of Natural and Scientific Interest (AINSI), a Wellhead Protection Area (WHPA), a High Aquifer Vulnerability Area (HAV), a Significant Ground Water Recharge Area (SGRA) or Ecologically Significant Ground Water Recharge Area (ESGRA)

## 6. Grading Plan/Site Plan

- (h) The Owner shall at all times comply with the Grading Plan/Site Plan which is attached to this Agreement as Appendix C;
- (i) The Owner shall retain an Ontario Land Surveyor registered with the Association of Ontario Land Surveyors to prepare pre-fill and post-fill topographic plans for the Receiving Site;
- (j) The Parties agree that the Grading Plan/Site Plan will specify a maximum volume of fill to be received at the Receiving Site under this Agreement;
- (k) No deviance from the approved Grading Plan/Site Plan is authorized without amendment to this Agreement;
- (l) The Grading Plan/Site Plan shall contain such reasonable conditions to guarantee that the Receiving Site is operated in accordance with this Agreement and Municipal By-Laws;
- (m) Conditions of the Grading Plan/Site Plan may include details such as:
  - a. Limiting quantity of fill to be received and or managed at the Receiving Site;
  - b. Final contours and compaction;
  - c. Reconciliation of volumes; and
  - d. Reporting timeframes.

## 7. Mud and Dust Control

- a) The Owner shall at all times comply with the Mud and Dust Control Plan attached to this Agreement as Appendix D; and
- b) Notwithstanding the conditions of Appendix D, the Owner agrees to control dust, arising from the operation of the Receiving Site on the Receiving Site, on adjacent lands and on construction access roads to the satisfaction of the Director.

## 8. Erosion and Sediment Control

- g) The Owner shall at all times comply with the Sediment and Erosion Control Plan as documented in Appendix E.

**Comment [WU22]:** The Grading Plan may be named at the discretion of the municipality and is variously known as Grading Plan, Site Plan or Grading/Site Plan.

**Comment [WU23]:** The approving authority must include a volume limit in the Agreement or supporting Permit.

**Comment [WU24]:** Periodically, the Owner should be required to reconcile volumes onsite by engaging an expert to calculate how much soil has been received and how much capacity is remaining under the terms of the Agreement.

**Comment [WU25]:** This may require a paved entrance, wheel washing station and mud mats depending on the size and nature of the operations proposed. Installation of such dust and mud control measures will take place prior to Fill being imported to the site and after inspections and approval by the Director.

**Comment [WU26]:** The following checklist provides a guide for effective erosion control measures, which should be part of any Erosion and Sediment Control Plan (ESC):

- Check condition of temporary and permanent stabilization measures, including vegetative filler strips (e.g., hydroseeding, mulch, growth media mats and blankets, compost, netting, plastic sheets or vegetation) to ensure they have been properly installed and are working effectively.
  - Where vegetative cover has been planted, is seed well-established, with good coverage (>80%)? Are there any areas where wash-out or erosion has occurred?
  - Ensure construction vehicles have not exposed soils or removed vegetation.
  - Ensure that stabilization measures have been implemented at critical areas, such as steep slopes and inactive disturbed areas within 30 days of the date the area became inactive. Check for any disturbed areas that are acting as a source of wind-blown dust. Install measures to control dust as needed.
  - Permanent stabilization
  - Stabilization of smaller parcels of the site is encouraged where stabilization of the entire site cannot be completed within 30 days. Stabilization must be initiated on all areas at final grade within 30 days.
  - Ensure accepted methods are used.
- These include:
- Seeding by broadcast, hydroseeding, mechanical or blower truck application of media and seed methods
  - Planting
  - Sodding

- h) The Owner shall not take or cause any work to be done that will adversely affect drainage from or onto neighbouring properties in the vicinity of the Receiving Site, and the Owner shall with the prior approval of the Municipality, at the Owner's expense, construct such drainage works as may be required. Notwithstanding the aforesaid, the Owner shall indemnify and save harmless the Municipality with respect to drainage from or onto lands adjoining the Receiving Site as a result of the operations hereby contemplated and the construction of any works, facilities or structures on the Receiving Site, whether approved by the Municipality or not;
- i) The Owner shall construct and install temporary or permanent erosion and siltation control devices required by the Municipality or as deemed necessary by industrial best management practices, prior to importing any fill to the Receiving Site and shall maintain these facilities in good working order;
- j) The Owner shall provide additional erosion and siltation control devices/measures as may be required by the Municipality during construction of this project, and as may be required by the Municipality thereafter from time to time;
- k) The Owner shall ensure Erosion and Sediment control plans are consistent with the latest guidelines for erosion measures of the local Conservation Authority. The owner shall complete Table 2 and 3 from the [Erosion and Sediment Control Guideline for Urban Development, dated December 2006](#), and forward these for inspection and approval by the Director or his agent prior to undertaking fill operations. Municipal review and approval of such reports shall be at the cost of the owner;
- l) As a [minimum](#):
- a. The Owner shall ensure that an adequate Erosion and Sediment Control Plan is in place for the Receiving Site at all times and that a QP, Certified as an Inspector of Erosion and Sediment Control (CISEC), oversees the implementation and administration of the Erosion and Sediment Control Plan at the Receiving Site;
  - b. The Owner shall report to the Municipality regarding sedimentation and erosion control inspections as detailed in the Erosion and Sediment Control Plan.
  - c. The Owner shall inspect the Receiving Site regularly regarding erosion control. The inspection should include the following elements as a minimum:
    - i. A 'walk-through' inspection of the construction site must be undertaken in anticipation of rain, extended wet weather periods, snow melt events, or any conditions that could potentially yield significant runoff volumes;
    - ii. Regular and adequate inspections should occur during all construction stages; and
    - iii. The minimum frequency of inspection must be:
      1. On a weekly basis;
      2. Before and after every rainfall event;
      3. After significant snowmelt events;
      4. Monthly during inactive periods (> 30 days);

**Comment [WU27]:** This Guideline was prepared for common usage in an effort to coordinate the response of various municipalities and agencies involved in land development, construction and water management.

**Comment [WU28]:** Municipalities are strongly recommend to incorporate the following provisions in their permits and Agreements.

Multi-barrier sediment controls should be included for any Fill in proximity to environmental features and property lines. This redundancy is a positive safeguard to have in place to provide backup protection proximal to natural features and neighboring properties. This technique involves the use of a variety of controls in series from source to stream, beginning with erosion prevention. "Proximal" will have to be defined (e.g. a minimum of 30m to a feature or property boundary).

Max slopes – Any slope greater than 3:1 would have a significant risk of slope failures and sediment and erosion.

Progressive stabilization – To ensure effective sediment and erosion control, fill sites should be completed in phases. Once filling is completed for a phase, documentation that the phase has been stabilized through appropriate vegetation should be demonstrated prior to approval to proceed with subsequent phase.



5. Daily during extended rain or snowmelt periods; and
6. More frequent inspections may be specified by the Director.

## 9. Hours of Operation and Noise Mitigation

- (g) The Owner shall at all times comply with the Municipality's Noise By-Law Number xxxxx for both onsite and offsite activities related to Receiving Site operations;
- (h) This may include providing instruction to staff and haulers or imposing requirements regarding minimizing excessive noise such as:
  - a. tailgate banging;
  - b. the use of engine brakes along the haul routes; and
  - c. controlling excessive vehicle idling;
- c) Notwithstanding section 9(a), the permitted Hours of Operation for all Receiving Site activities including receipt and deposition of fill shall be only during the period Monday to Friday 8:30 am - 4:30 pm. There shall be no fill received outside these hours or on Saturdays, Sundays or Statutory Holidays;
- d) Hours of operation will be further restricted during any period in which a severe wind warning for the area has been issued by Environment Canada and during any time where weather, traffic and unusual events would compromise the ability of the Receiving Site activities to be conducted in a safe and environmentally sound manner with due consideration of the public; and
- e) The Owner may conduct site grading, levelling and contouring and general maintenance works on Saturdays so long as the activities comply with the Municipal Noise By-law.

**Comment [WU29]:** insert correct name if different

**Comment [WU30]:** The municipality must decide if onsite operations such as grading can occur outside these hours and should so specify in the permit and/or this Agreement.

## 10. Approved Haul Routes

- e) The Owner shall at all times comply with the Haul Routes as set out and attached to this Agreement as Appendix F.
- f) In the event that a Truck Driver fails to use and/or comply with the approved Haul Routes, and such failure is confirmed by the Owner or the Director or his/her Designate:
  - a. The Owner shall refuse to allow the Truck Driver to dump or place fill at the Receiving Site for a pre-determined period of time approved by the Director;
  - b. In the event that the Truck Driver has already dumped or placed the fill at the Receiving Site and fails to use and or/comply with the approved Haul Routes when exiting the Receiving Site, the Owner shall refuse to accept any subsequent loads from such Truck Driver for a pre-determined period of time approved by the Director;
  - c. The Owner shall forthwith report such incident to the Contractor from whence the fill originated and advise the Contractor that the Truck Driver has been instructed to return the Fill to the original source location, unless the fill has already been deposited at the Receiving Site, in which case the notification to the Contractor will be sufficient;
  - d. In the event that one or more Truck Drivers from a single hauling company are non-compliant with the use of the Haul Routes, then that company shall be

prohibited from bringing fill to the Receiving Site for a period of not less than three (3) months from the date of the 3<sup>rd</sup> infraction;

- e. The Owner shall record such incident(s) in a log book. The log shall include the following information as a minimum:
  - i. The date and time of the occurrence;
  - ii. The licence plate of the vehicle denied access;
  - iii. The name of the Truck Driver and company, if known;
  - iv. The source location of the fill; and
  - v. The name of the Contractor who obtained the tickets to dump or place the fill.;
- g) To further ensure that Contractors and Truck Drivers use and or /comply with the Haul Routes, the Owner agrees as follows:
  - iii. To distribute and to have available to all Truck Drivers an illustrative map identifying the Haul Routes;
  - iv. To post Signage identifying the Haul Routes at both the entrance and exit to the Receiving Site; and
- h) Provide a copy of the log book at the Director's request.;and
- i) The Parties agree there shall be **no queuing of trucks** permitted on any roads leading to or from the Receiving Site

**Comment [WU31]:** If three trucks from one company do not comply with the Haul Route requirements, that will be deemed to be three infractions

**Comment [CM32]:** This may necessitate the construction of a long paved entrance inside the Receiving Site so that trucks may queue up during the permitted Hours of Operation, if necessary.

## 11. Truck Traffic

- (a) The Owner shall at all times comply with the governing Region and/or County road requirements and the Ministry of Transportation requirements, if applicable, and as set out and attached to this Agreement as Appendix G;
- (b) Notwithstanding Section 11(a), the maximum number of trucks per day that may dump fill at the Receiving Site shall be 100; and
- (c) This number may be amended up to a maximum of 200 trucks per day or down to a specified number by the Director, should the Director so decide, and with the approval of Council.

## 12. Complaint Protocol

- c) The Owner shall at all times comply with the Complaint Protocol which is attached to this Agreement as Appendix H;
- d) Upon receiving a complaint in accordance with the Complaint Protocol, the Owner shall:
  - i. Acknowledge the complaint within 24hrs;
  - j. Complete a public complaint form;
  - k. Investigate the complaint immediately upon notification;
  - l. Notify the Director within 24 hours of the complaint and the proposed measures to address/mitigate the complaint;
  - m. Respond to the complainant with clear direction;
  - n. Implement measures to address the complaint to the satisfaction of the Municipality;
  - o. Follow up on complaint reconciliation measures; and

- p. Subject to Condition 19(a) of this Agreement, prepare and maintain a record of the complaints received in any quarter and provide this summary to the Director in a timely manner.

### **13. Security on Site**

- (c) The Owner shall keep and maintain a gated entrance to the Receiving Site at all times;
- (d) At all times, when the Receiving Site is closed or during times outside the approved hours of operation, the gate shall be closed to incoming loads of fill as per the Hours of Operation stipulated in this Agreement, under condition 9, supra.

### **14. Other Regulating Agencies**

- (a) The Owner shall at all times comply with such federal, provincial or municipal legislation, regulations, rules and requirements as may be applicable; and
- (b) Where the Owner determines that, in their opinion, there is a conflict between any other legislation and this Agreement, they shall forthwith notify the Director of the presumed conflict for his/her consideration.

### **15. Source Site Approval**

- (a) The Owner shall post on an Online Portal/Website the following documentation with respect to any Source Site used in connection with the Receiving Site:
  - a. The test results, whether generated by the QP, their representative, the Owner or otherwise upon which the QP relied in his determination of the acceptability of fill from the Source Site;
  - b. A copy of the QP's approval of the Source Site which shall include the volume of fill approved based on the QP's review of the Source Site soil test results; and
  - c. The test results from any audit samples taken at the Receiving Site by the QP or designate in accordance with the Fill Management Plan in Appendix A; and
- (b) The Owner acknowledges and agrees that the Owner shall not import fill or topsoil onto the Receiving Site unless prior written approval is obtained from the Director and/or Municipal Consultant for each Source Site; and
- (c) The QP, upon approving a new Source Site shall, at the request of the Director, forthwith provide the Director with all of the documents posted on the Online Portal relevant to that approval and any other information such as, but not limited to, environmental assessments and Soil Management Plans for all Source Sites.

## 16. Imported Fill/Topsoil

- f) All handling and processing of the fill at the Receiving Site, shall follow the process described in the Ministry of Environment and Climate Change Best Management Practices Guideline for Excess Soils, January 2014 as amended;
- g) The sampling requirements as noted in Section 55 and Schedule E in Ontario Regulation 153/04, as amended, shall be met regardless of whether the Receiving Site Owner or designate is filing a Record of Site Condition or not:
  - a. Specifically, for all soil to be brought to the Receiving Site, at least one soil sample shall be analyzed for each 160 cubic metres of soil for the first 5,000 cubic metres at each Source Site, following which at least one sample for each additional 300 cubic metres of soil which is to remain on, in or under the Receiving Site shall be analyzed;
- h) Soils brought from offsite Soil Remediation Facilities may have more stringent testing requirements as required in their Environmental Compliance approvals. In such instances, the more stringent testing requirements will apply with regards to testing at the Source Site;
- i) No new contaminants may be introduced to the Receiving Site from fill operations, nor may the natural, ambient level of existing contaminants on site be increased;
- j) Fill received at the Receiving Site shall meet the soil standards as determined during the pre-assessment requirements for the Receiving Site and as agreed by the Council of the Municipality;
- k) The SAR (Sodium Absorption Ratio) and Electrical Conductivity (EC) of the fill may not exceed Table 2 Standards for all imported soils;
- l) The QP of the Receiving Site shall ensure that all fill imported to the Receiving Site does not contain any putrescible material or rock, brick, or concrete, or other construction/demolition debris that contains cement fines, exposed rebar, metal paint or coatings, decomposable materials, plastic, asphalt, petroleum products, hydrocarbon materials and any putrescible organic materials;
- m) The Receiving Site QP will review all required soil testing for the Source Site as required in this Section and will provide all such documentation to the Director and/or Municipal Consultant for review and approval in accordance with Section 15(b).

**Comment [CM33]:** This direction is taken from the MOECC BMP. Aside from the "Contaminants of Concern" listed in the MOECC Site Condition Standard Tables, new contaminants may also refer to the introduction of invasive species including plants or animals (invertebrates).

## 17. Meetings

- (c) The Owner and the Municipality agree to hold project meetings, which will be attended by at least one (1) representative from each of the Parties:
- (d) The meetings will take place at the following intervals:
  - a. First meeting within 30 days of the effective date of this Agreement;
  - b. Second meeting within 90 days of the effective date of this Agreement;
  - c. Third meeting within 180 days of the effective date of this Agreement; and
  - d. Subsequent meetings, which may be called at the request of either party, and in any event the Parties shall meet no less than once in any six month period.

## 18. Right of Entry

- a) The Owner shall permit the Municipality and its Director and inspectors, agents or contractors to enter and attend at the Receiving Site for the purposes of conducting an inspection at any reasonable time, including but not limited to inspections during approved Hours of Operation;
- b) In the course of any such inspection, the Municipality or its agents or contractors may carry out any activity necessary to determine compliance with this Agreement and the requirements of the By-Law including but not limited to:
  - a. Soil and ground water sampling and testing at the discretion of the Director;
  - b. Reviewing and making copies of on-site records;
  - c. Inspection of equipment and vehicles used at the Receiving Site;
  - d. Taking of photographs or video of the Receiving Site;
  - e. Such further and other activities as may reasonably be necessary to determine compliance with the terms of this Agreement; and
- c) In addition to the inspections described in 18(a) and (b), the Municipality may carry out inspections at any reasonable time as permitted by law under the Municipal Act, 2001 S.O. 2001, Chapter 25 or a Municipal By-law Number xxxxxx.

## 19. Reporting

- (a) The Owner shall direct the QP to report in writing, quarterly, to the Director during the term of this Agreement, within seven (7) days of the end of each September, December, March and June, to verify that the Receiving Site alteration proceeded in accordance with the By-Law, the Site Alteration Permit, and this Agreement and its Appendices for the preceding quarter. The report will include, but is not limited to the following information:
  - a. A list of all of the sources for fill received at the Receiving Site during the quarter including the owner and municipal address for the Source Site;
  - b. The total volume of fill received at the Receiving Site for the quarter including the monthly load counts and volumes for each Source Site;
  - c. A list of all complaints received including a brief description of the complaint, contact information of the complainant (where permitted by law), the time and date the complaint was received, the full name of the person who received the complaint and how the complaint was addressed along with any mitigation measures taken to rectify the complaint;
  - d. The results of any testing conducted in connection with the fill operations, including but not limited to any soil and ground water testing on and off site and any confirmatory sampling conducted; and
  - e. A list of any incidents involving a breach of this Agreement and its Appendices, the By-Law or Permit, if applicable including the date, time, brief description, the persons involved and any mitigative actions taken;
- (b) The Director may, at any time, require such other information to be included in the quarterly reports as deemed necessary by the Director; and

- (c) In the event of a serious single breach or a number of breaches of any requirement of this Agreement or the By-Law, more frequent reporting by the Owner may be required by the Director, including any further information deemed appropriate by the Director.

## 20. Default

- d) In the event of any default by the Owner pursuant to any of the terms of this Agreement, and in addition to any other remedies available to the Municipality, the Director may:
- Draw on the Security Deposit referenced in Section 23 of this Agreement in whole or in part;
  - Undertake or complete any obligation of the Owner hereunder;
  - Enter upon the Receiving Site through its servants or agents for any purpose whatsoever;
  - Issue a stop work order with respect to any further dumping operations or dumping related work upon the Receiving Site; and
  - Recover from the Owner all costs and expenses incurred by the Municipality whether directly or indirectly, with respect to the default or the remedy thereof and collect such costs and expenses in like manner as municipal taxes; and
- e) If the Owner is in breach of the Agreement and the Municipality cannot address such breach with its own forces or contractors, then the draw on the Securities shall be limited to \$10,000 on the first occurrence in each calendar year, and \$15,000 per each subsequent occurrence in a calendar year. In such case, there shall be no recompense to the Owner.

**Comment [WU34]:** Examples of this type of breach might include the acceptance of Fill on a non-business day or outside or permitted business hours, or if the limit of truck deliveries is exceeded

## 21. Costs

- f) The Owner agrees to pay all costs incurred by the Municipality, whether directly or indirectly, in connection with this Agreement including but not limited to any inspection, monitoring and auditing of the site alteration and fill activities. Without limiting the generality of the foregoing, such costs and expenses shall include a charge for the review of any plans, reports or applications, review of all legal, surveying, geoscience and engineering costs and the costs of any consultants retained by the Municipality incurred in connection with the this Agreement, the supervision of all of the works undertaken in connection therewith or in ensuring compliance with this agreement and the registration thereof on title to the lands (Receiving Site);
- g) The Owner agrees that the Municipality reserves the right to randomly test the soil on a daily basis. The Owner shall reimburse the Municipality for all costs associated with the testing. The Municipality may take, at a minimum, one (1) soil sample from a location of its choosing on a daily basis. The Municipality may complete additional soil testing at their discretion;
- h) The Owner agrees that the Municipality, at its discretion, may conduct other such monitoring and inspections in order to ensure compliance with this Agreement and ensure the objectives of the Site Alteration By-Law are maintained. These activities may include, but are not limited to, monitoring and testing ground water elevation levels and quality, monitoring the hours of operation and truck traffic to and from the Receiving

**Comment [WU35]:** As per Section 436 (4) of the Municipal Act Municipal Act 2001 S.O. 2001, c.25, If a sample is taken for the purposes of inspection and the sample has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.

Site, inspecting Erosion and Sediment control measures, and review of all documentation associated with the operations of the Receiving Site; and

- i) The Owner agrees to reimburse all such costs associated with Municipality monitoring and compliance audits within 30 days of receipt of any such invoices from the Municipality.
- j) The Owner agrees to reimburse the Municipality of all legal costs associated with the drafting and executing of this Agreement prior to commencing filling operations.

## 22. Tipping Fee

- f) The Owner shall provide the Municipality with payments equal to:
  - a. **\$2.00 per cubic metre** for all fill materials brought to this Receiving Site under this Agreement in accordance with the current Municipal Fees and Charges By-Law (insert correct name of document if different than this); and
  - b. The amount of **\$40,000** payable at the first of every month of this Agreement for all fill anticipated to be accepted at the Receiving Site during the following month;
- g) On a quarterly basis the amount of fill accepted at the Receiving Site will be reconciled against monies provided to the Municipality using the quarterly reports to determine the volume of fill received at the Receiving Site;
- h) Every six (6) months, on the semi-annual anniversary of Agreement, contour mapping/topographic surveys must be undertaken to validate the amount of fill received at the Receiving Site during the Term of this Agreement and any monies owing shall be paid in full forthwith;
- i) Should the contour mapping/topographic surveys show that monies in excess of those required have been paid by the Owner, these monies shall be carried forward and applied to future payments owing to the Municipality; and
- j) The amounts owing based on these assessments will be reconciled within sixty days thereafter.

## 23. Securities

- g) The Security Deposit is designed to be used in situations when the Owner is unwilling or unable (due to financial, business, personal or other reasons) to comply with the terms of this Agreement or Orders issued by the Municipality. The Security Deposit must be able to survive the demise of the Owner's financial and business resources;
- h) In addition to the Tipping Fees specified in section 22, the Owner will provide Security to the Municipality, prior to receiving any fill at this Receiving Site, in the amount of \$1.00 for every cubic metre authorized under the Site Alteration Permit or this Agreement, and as detailed in the approved Grading/Site Plan and acknowledges that the Municipality may use the Security to remedy any breach of this Agreement;
- i) The Security may be provided in the form of cash or an Irrevocable Letter of Credit in a form acceptable to the Director;
- j) Insurance policies may not be used as a form of Security;
- k) Provided that the Director has confirmed that no drawings on the Security are required, the Municipality will return the Security, or the amount thereof then remaining, to the

**Comment [WU36]:** An alternative method of ensuring payment and compensation is for the municipality to adopt this option:

The Owner will provide the Municipality with a Cash Deposit of \$100,000, to be topped up within 30 days if Municipality draws from it. In the event that the Cash Deposit is not replenished within 30 days, a Stop Work Order will be issued until such time as the Cash deposit is replenished.

### Use of Cash Deposit

The Cash Deposit will provide the Municipality the resources to retain appropriately qualified Peer Review Consultants to oversee all aspects of the Site Alteration including:

- Source Site Assessment;
- Report, manifest, and document review;
- Site Inspections;
- Site topographic survey, to confirm contours and volumes;
- Drilling and test pitting to confirm sub-surface conditions; and
- Collection and analysis of samples for soil, surface water, groundwater and air quality.

The Peer Review Consultant would assist the Director, and By-law Officer with inspections and make recommendations to the Director.

The Peer Review Consultant could provide the expertise to review the completion of the site alteration and make recommendations for terminating the Permit and/or Agreement and/or Orders to allow the return of the unused portions of the Cash Deposit and Security Deposit.

**Comment [WU37]:** The formula for calculating the amount payable is based on: \$2/cu.m x 10 cu.m/truck x 100 trucks per day x 20 working days/month. This should increase if load limits increase

Owner within ninety days (90) of the date that the Permit or this Agreement expires and the Receiving Site has been stabilized and revegetated according to the approved Grading/Site Plan;

- l) If the Municipality draws upon the Security Deposit, the Owner will top up the Security within 30 days of a request being received from the Municipality;
- m) In the event that the Agreement is expired, cancelled or revoked after work has commenced but prior to completion of the fill Operations in accordance with the Agreement, the Owner, at his/her cost shall forthwith stabilize the Receiving Site, including but not limited to adding topsoil, grading and sodding, to the satisfaction of the Director; and
- n) Should the costs referenced in this Agreement be incurred by the Municipality in excess of the amount of the Security Deposit, the Municipality shall place a lien on the Receiving Site for such amount necessary and the amount shall be deemed to be municipal taxes and may be collected in the same manner and with the same priorities as municipal taxes.

#### **24. Liability Insurance**

- d) The Owner shall at all times maintain Insurance as outlined below, and documented in Appendix I, during the term of this Agreement and shall provide a Certificate of Insurance as proof of same.
  - a. Commercial General Liability insurance subject to limits of not less than Five Million (\$5, 000, 000) inclusive per occurrence. To achieve the desired limit, umbrella or excess liability insurance may be used. Coverage shall include but is not limited to bodily injury including death, personal injury, damage to property including loss of use thereof, blanket contractual liability, owner's and contractor's protective, non-owned automobile, and contain a cross liability, severability of insured clause. The Municipality is to be added as an additional insured on the Commercial General Liability Policy;
  - b. Pollution Liability Insurance subject to limits of not less than Five Million (\$5,000,000) inclusive per claim and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or disposal of soil, fill, surface water, ground water or other contamination. The policy shall remain in force for a minimum of two (2) years following termination of this Agreement for whatsoever reason. Notwithstanding the aforementioned, the Pollution Liability insurance shall remain in effect until the Ground Water Monitoring Program as described in Section 5 is complete. The Municipality shall be named as an additional insured; and
  - c. All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario.



**25. Indemnity**

- a) The Owner hereby indemnifies and holds the Municipality harmless for any liability, costs, damages or losses caused directly or indirectly by the issuance of the Agreement or Site Alteration permit.

**26. Registration on Title**

- a. The Owner hereby consents to the registration of this Agreement on the title of the lands at the Owner's expense.

**27. Application to the Court**

- a) Nothing in this Agreement shall be construed to prevent:
  - i. The Municipality or the Owner from applying to the Court for an Order for injunctive or other relief; or
  - ii. The Municipality from acting under the provisions of the By-Law or the Municipal Act, 2001, as amended.

**28. Invalidity**

- a) If a court of competent jurisdiction should declare any section or part of a section of this Agreement to be invalid or unenforceable, such section or part of a section shall not be construed as being an integral part of the Agreement or having persuaded or influenced a party to this Agreement to execute the same, and it is hereby agreed that the remainder of the Agreement shall be valid and in full force and effect.

**29. Interpretation**

- (f) In construing this Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and the neutral and vice versa, and words importing persons shall include corporations and vice versa;
- (g) In the event of inconsistencies between the Site Alteration By-Law and this Agreement, the Parties agree the provisions in this Agreement shall prevail;
- (h) In the event of inconsistencies between the terms of this Agreement and the Appendices, the Director shall provide clarity and the decision of the Director shall be final;
- (i) The Parties acknowledge and agree that this Agreement shall be binding upon and shall ensure to the benefit of the Parties hereto, and each of their respective representatives, successors, heirs and assigns; and
- (j) This Agreement may not be assigned by the Owner without the express
- (k) written consent of the Municipality, such consent to be at the sole discretion of the Municipality.

**30. Record Retention**

- b) The Owner shall retain all records associated with the filling operations for a minimum of seven (7) years after completion of the filling operations.

**31. Record of Site Condition**

- a) According to O. Reg. 153/04, as amended a Record of Site Condition (RSC) must be filed and acknowledged by the MOE for any future more sensitive land use; and
- b) The Agreement will remain in place until there is receipt of MOE acknowledgement of the filing of an RSC for the more sensitive property use, if applicable.

**32. Public Liaison Committee**

- e) Depending on the size and nature of the Site Alteration project and the public interest expressed by the community, the Owner, at the discretion of the Council of the Municipality, may be required to host a Public Liaison Committee (PLC) which shall meet, at a minimum, quarterly during the year;
- f) The Committee approved minutes shall be provided to Council within 30 days after the meeting date;
- g) The Terms of Reference for the PLC shall form part of the Agreement and are set out in Appendix J; and
- h) The Director may become involved in the development of the Terms of Reference, at their sole discretion, with respect to any matter including, but not limited to, membership and representation, timing and frequency of meetings, mandate and scope of the committee, and reporting.

**33. Notice**

Where notice is required under this Agreement it may be personally delivered, sent via fax, sent via mail or email and shall be addressed as follows:

(a) Municipality:

Insert name and title of Municipal representative and address

Fax:

Email:

(b) Owner:

Insert name and title of Receiving Site representative and address

Fax:

Email:

(c) Notice sent via fax is effective on the date of transmittal, notice personally delivered is effective on the date it is delivered, notice sent via email is effective on the date it is acknowledged as received by reply email from the recipient, and notice sent by mail is Effective five (5) business days after mailing.

IN WITNESS THEREOF the Corporation has caused its Corporate Seal to be affixed as attested to by the hands of its proper Officers in that behalf and the Owner has hereunto set his hand and seal.

SIGNED, SEALED AND DELIVERED  
THE MUNICIPALITY OF \_\_\_\_\_

PER:  
\_\_\_\_\_ I have the authority to bind ..

# Model Fill Management Plan for presentation across southern Ontario- DRAFT

## Fill Management Plan

**Preamble:** This Fill Management Plan was drafted with excerpts adapted from Fill Protocols in the municipalities of Uxbridge, Scugog, East Gwillimbury and Whitchurch-Stouffville and with reference to requirements detailed in the Ministry of the Environment and Climate Change (MOECC), “Management of Excess Soil – A Guide for Best Management Practices” January 2014, as amended (MOECC BMP).

### FILL MANAGEMENT PLAN

This Plan has been developed to manage operations at a Fill site [redacted] hereby after referred to as “the Receiving Site”)

**Comment [WU38]:** Insert name and municipal address of the receiving site

### INTRODUCTION

The following document describes fill management procedures at the Receiving Site. This Plan will be administered and enforced by the Receiving Site’s Qualified Person (QP) as defined in Section 5 of Ontario Regulation 153/04, as amended, on behalf of **Owner** of the Receiving Site. The Municipality or any other entity incorporated for self-government, at the expense of the Owner of the Receiving Site, will be responsible for ensuring compliance through audits, inspections, sampling and any other means deemed appropriate by the Municipality.

**Comment [CM39]:** “Owner” will have to be defined to include the registered owner of the lands to which a site alteration is proposed and any person, firm or corporation managing or controlling such lands.

### DEFINITIONS

**Comment [WU40]:** Insert relevant definitions such as QP, Receiving Site, Soil Management Plan, acceptable fill materials etc.

### PURPOSE

The purpose of this Plan is to ensure the environmentally protective placement of acceptable fill materials on the Receiving Site and to ensure the filling operations proceed in accordance with sound environmental practices. This document outlines minimum requirements that a Municipality may require and/or include in authorizing documents when managing large fill operations.

### REGULATORY COMPLIANCE

Any soils received at the Receiving Site or destined for the Receiving Site shall be managed in accordance with the MOECC document entitled, “Soil Management – A Guide for Best Management Practices”, January 2014 as amended (MOECC BMP). All handling, sampling, assessing and receipt of soils at the Receiving Site, shall be done in accordance with the provisions of O. Reg. 153/04, as amended where applicable. It should be noted that, for the purposes of this document, the applicability of the provisions of O. Reg. 153/04 are not limited

to sites where a Record of Site Condition (RSC) has been submitted or will be submitted to the MOECC. Rather, the relevant provisions of this Regulation, as described in this document, apply and must be adhered to for any site where excess soils are generated or received for disposal. Compliance with either of the documents listed in this paragraph does not abrogate the need to comply with any other applicable federal, provincial or municipal legislative or regulatory requirements.

### SOURCE SITE APPROVAL

Care needs to be taken to delineate and distinguish fill quality at every Source Site to ensure only acceptable soil and fill materials are shipped to the Receiving Site. Managing fill from Soil Remediation facilities is addressed in Appendix A.

Before accepting any soil from a Source Site, the Receiving Site QP must review:

- (a) All documentation regarding the management and treatment of soils at the Source Site, any environmental assessments undertaken at the Source Site, including all Phase I and/or II Environmental Site Assessment (ESA) reports, and/or remediation reports, and any compliance documents issued, including but not limited to MOECC Environmental Compliance Approvals. The documentation must be signed by the Source Site QP;
- (b) A site specific Soil Management Plan (SMP) for the Source Site, signed by the Source Site QP, that will be utilized to ensure that soil transported to the Receiving Site meets the soil quality standards approved by the Municipality as designated in the Agreement for the Receiving Site.
- (c) The Source Site SMP shall include as a minimum:
  - (i) Indicators that define all areas to be excavated with the estimated volume of excess soil to be managed off-site and the representative chemical composition of the excess soils, along with detailed instructions to on-site contractors identifying the depth of soil to be excavated for off-site management;
  - (ii) Appropriate characterization of all excavated soil by a QP, or a person under the supervision of a QP, to determine the volume and chemical composition of the soil that is to be managed off-site;
  - (iii) Appropriate sampling and laboratory testing to ensure that all chemical parameters in the soil are identified and characterized. The sampling frequency of soils shipped to a Receiving Site must, at a minimum, be at a frequency as set out in O. Reg. 153/04, as amended for soils shipped to an RSC property. For soils from all Source Sites, analysis shall be as follows

**Comment [CM41]:** Note that in most instances the Standard used will be Table 1 of the Soil, Ground Water and Sediment Standards for use Under Part XV.1 of the Environmental Protection Act, dated April 15, 2011. The Owner shall ensure a pre-assessment of the ambient soils on the Receiving Site. There shall be no "polluting up". When applicable, the Owner shall also specify a grain size analysis of the Receiving Site soils to determine if the soil is medium and fine textured or coarse textured as per O. Reg. 153/04. This analysis will not be necessary when Table 1 Standards are used.

**Comment [WU42]:** Refer to PIBS 8429e – April 2011.

at a minimum: one (1) sample for every 160 cubic metres for the first 5000 cubic metres from each Source Site, then one (1) for each additional 300 cubic metres of soil from said Source Site. The QP of the Receiving Site must sign verify in writing that this has been done; and

- (iv) Documentation signed by the Source Site QP, including appropriate and representative soil analyses, confirming that the quality of fill meets the Receiving Site's soil standards as designated in the Agreement, including the Sodium Adsorption Ratio (SAR) and Electrical Conductivity (EC) standards.
- d) If the Receiving Site QP is unsure of the quality of the proposed soils, he must either order or undertake resampling or additional sampling of soils from the Source Site before further considering these soils for receipt at the Receiving Site.
- e) If all criteria have been met, the Receiving Site QP will write a Source Site Approval Report indicating the volume of soil approved and any analysis and reports used to approve the Source Site soils.
- f) The Owner of the Receiving Site shall provide all required documentation to the Municipality for review by the Municipality's Consultant, who will peer review all documentation from the Source Sites at the expense of the proponent. The Municipality's Consultant will have the option to carry out a reconnaissance of the Source Site to confirm that an appropriate representative Soil Management Plan is in place. All fees associated with the peer review will be borne by the Owner of the Receiving Site. The Municipality can request further documentation or testing at its discretion and will then approve or reject management of soils/fill from the Source Site at the Receiving Site based on the peer review. No soils are to be shipped to the Receiving Site without the advance written approval of the Municipality.

## **ON SITE APPROVAL PROCEDURES**

### **Volume Approval**

Once the above criteria have been met for fill from the Source Site, the Source Site Manager is permitted to purchase fill tickets from the Receiving Site Owner. The number of tickets issued is based upon the estimated volume of soil to be generated from the Source Site. Before any soil is shipped to the Receiving Site, the volume of soil must be approved by the Receiving Site QP based on a review of all documentation and analytical data. Should the operators of the Source Site wish to ship more soil than has been approved by the Receiving Site QP and the Municipality, the Receiving Site QP will justify the need to do so by supporting documentation, requesting the appropriate supporting documentation stating the rationale for the increased soil

volume. The Municipality shall be notified forthwith to facilitate the review and approval for management of the additional soils.

### **Posting Records/Transparency**

Following confirmation that the quality of Fill from the Source Site is acceptable for placement at the Receiving Site, the Receiving Site QP will forthwith post all sample analysis reports and Source Site Approval Reports on the internet at a unique website created for the Receiving Site (e.g. www.the Site.net) The Soil Analysis Reports will show that the Source Site sampling meets the designated standard in the Agreement and that the soil is of a quality that meets the appropriate standards as set out in this Plan. The web page will be available to the public for review. Note that all Source Site approval letters and audit testing of soils at the Receiving Site shall be posted as well.

### **Fill Tickets**

There must be a QP or a person designated by the QP at the Receiving Site at any time that the Receiving Site is open for receipt of fill. The QP is responsible for monitoring the quality of incoming fill received at the Receiving Site. Any fill received at the Receiving Site shall be handled in accordance with this Plan.

A sample Fill Ticket is herein presented below. A similar one is to be developed and implemented by the QP for the Source Site and must include the quantity of soil on board every vehicle (Note the “volume” must be added to the sample Fill Ticket provided). All Fill Tickets must be retained at the Receiving Site for review by the Municipality at their request.

No: 0000001

Name and Location of Generating Location:
Date Shipped:
Time Shipped:
Haulage Company:
Truck Number:
Licence Plate:
Signature of Authorized Personnel at Generating Location
Date Received:
Time Received:
Assigned Location for Deposit at Receiving Site:
Signature of Authorized Personnel at Receiving Site:

ANY UNSIGNED OR INCOMPLETE FORMS WILL RESULT IN REFUSAL OF LOAD AT THE RECEIVING LOCATION.

WHITE COPY – RECEIVING SITE  
 YELLOW COPY – HAULAGE COMPANY  
 PINK COPY – GENERATING LOCATION

(Source: The illustrated Fill Ticket is taken from the MNR's Aurora Fill Protocol)

A Fill Ticket must be presented to the Receiving Site's gate staff before the truck offloads the fill. Gate staff must check to ensure that the Fill Ticket is valid. Gate staff will provide each Fill Ticket to the Receiving Site administration staff for record-keeping purposes by the end of each working day.

### Documentation

Administration staff at the Receiving Site are to keep the following documentation for the tracking of all incoming loads of fill for review by the Municipality at their request:

- (a) A copy of all Fill Tickets corresponding to all loads received at the Receiving Site
- (b) Name and location of the Source Site.
- (c) Date and time of arrival of each load at the Receiving Site;
- (d) The name and licence plate number of each truck that delivers fill to the Receiving Site;



- (e) Daily volumes of soil received from each Source Site;
- (f) Documentation signed by the Source Site QP that includes appropriate and representative soil analyses of the soil at the Source Site by an accredited laboratory (SCC - <https://www.scc.ca>. or CALA - <http://www/cala.ca/>) confirming the soil quality is acceptable for the intended Receiving Site in accordance with the Receiving Site's Fill Management Plan;
- (g) Confirmation by the Receiving Site's QP acknowledging that the quality and quantity of the soil is acceptable for receipt at the Receiving Site; and
- (h) Details of any rejections of any loads of soil due to visual inspection or review of analytical results, including reasons why the load was rejected at the Receiving Site and how it was eventually managed.

### **Screening Loads**

Each incoming load of fill is monitored by the Receiving Site's QP or its designate as it is dumped at the tipping area to verify that only no unacceptable materials are included in the load. Each incoming load is to be visually inspected and screened for odours, staining, debris or other forms of contamination whether known or suspected. The use of a photoionization detector PID or flame ionization detector FID will be used to screen for VOCs. The daily shipments are checked by the Receiving Site QP or designate that each load is coming from an approved Source Site.

Fill that is observed to contain unacceptable materials must be returned to the Source Site. The Fill Ticket is forfeited under these circumstances. Staff at the Receiving Site shall record the rejected load in a daily log. The Receiving Site QP will also keep a record of the contaminated load and its fate. Any further soils from the Source Site will not be permitted to be shipped to the Receiving Site until the unacceptable material is returned and until it can be demonstrated that the remaining soil at the Source Site that are destined to be shipped to the Receiving Site meets the appropriate standard for the Receiving Site. This will be carried out through confirmatory sampling of stockpiles or excavations at frequencies required by O. Reg. 153/04, as amended - See Table 2 and 3 in Schedule E of Part 12 of O.Reg. 153/04, as amended.

The QP at the Receiving Site shall record, in a log kept at the Receiving Site, any instances when fill is returned under these circumstances, recording the Source Site, hauler, date of the incident, and any and all information pertaining to the unacceptable fill. This information shall be reported to the Municipality forthwith for review and action if applicable. Note that the Municipality has the ability to withdraw approval of the Source Site based on these incidences. This information is to be summarized in Quarterly Reports submitted to the Municipality.

**Segregation**

Soils from each Source Site shall be deposited in segregated areas within the approved fill area of the Receiving Site so that they can be assessed and remediated if necessary.

**Sampling Requirements at the Receiving Site**

The QP at the Receiving Site, or his representative, will collect a minimum of one (1) audit sample per day of soil received from each approved Source Site. Audit sampling protocols are to be developed and utilized by the Receiving Site QP, sufficient to produce results that would be representative of the volume of excess soil that is being received from each Source Site.

The Owner or designate shall ensure that the accredited testing laboratory copies the Municipality directly on reports for all audit samples taken.

It is understood that the Municipality will retain their own QP (Municipal Consultant) to collect samples for testing at the frequency agreed to in the Agreement. The minimum amount of testing by the Municipality will be daily. The location, frequency and timing of sampling will be at the Municipality's sole discretion.

All Municipal costs incurred will be borne by the Owner of the Receiving Site.

**Haul Routes**

Trucks transporting fill material must enter and exit the Receiving Site along routes and time intervals designated in the Agreement.

**CONTINGENCY PLAN**

A Contingency Plan is a procedure that prepares an organization to respond coherently to an unplanned event. It shall be developed by the Receiving Site Owner for review and approval by the Municipality to deal with failed or contaminated loads of soil intended for management by the Receiving Site. Provisions must be included to deal not only with soils imported to the Receiving Site for management, but those that were inadvertently or knowingly accepted at the Receiving Site; the latter being subject to penalty in accordance with section 10 (d) of the Model Agreement. Provisions in the plan must include, as a minimum, a rationale for the volume of which must be removed for export back to its origin and the amount of confirmatory sampling that will be carried out at the Receiving Site to ensure that contaminated, non-compliant fill is identified for removal. A verification sampling study will be performed at the Owner's expense to confirm that all contaminated fill has been removed.

**GEOTECHNICAL REQUIREMENTS**

The Receiving Site Operator will develop a Contingency Plan that will also address operational issues such as flooding, slumping or collapse of berms, crevicing and the like and will include

provisions to mitigate and report on these issues. The Receiving Site Owner will retain the services of an Ontario licenced professional engineer (PEO) with academic qualifications in geotechnical engineering who will assess these issues and provide a quarterly

### **SECURITY/ ENFORCEMENT**

The Receiving Site will be monitored by security cameras located in such a manner as to record all movement of soil within the Site.

The Receiving Site will be secured by a fence and an entrance gate that will be locked outside of the approved Hours of Operation.

There will be personnel at the entrance to the Receiving Site at all times during Hours of Operation controlling traffic and directing trucks to the appropriate tipping areas.

### **DAILY SITE INSPECTION REPORT**

Aside from the other reports and documentation requirements listed throughout this Plan, a Daily Site Inspection report will be generated and made available to the Municipality upon request. The checklist will include the following:

- Date of inspection
- Weather conditions
- Printed name and signature of inspector
- Haul route condition
- Grading condition
- Drainage conditions
- Safety concerns
- Dust and noise monitoring
- Security camera function
- Names of Personnel/Operators

**Comment [WU43]:** Need to determine how long the video recordings will be kept

## **AMENDMENTS TO THE FILL MANAGEMENT PLAN**

This Plan will be deemed amended once reviewed and approved by the Director of Public Works and Parks and Municipal Council. Amended Plans shall form part of the legal Agreement with the Municipality.

### **APPENDIX A**

#### **SOILS FROM THE GREEN FOR LIFE (GFL) SOIL TREATMENT FACILITY**

Before accepting any soil from the GFL Soil Treatment Facility:

- a) The Receiving Site QP will retain a copy of GFL's Environmental Compliance Approval (ECA), along with relevant Schedules for review and provide the same to the Municipality. The Receiving Site QP will obtain and review relevant compliance testing and/or analytical reports and submit these to the Municipality for their review.
- b) The Receiving Site QP will reconcile the volumes of tested soils vs. volumes of soils to be shipped according to the requirements in the ECA and schedules. For GFL, the compliance approval indicates there is to be one (1) test for every fifty (50) cubic metres for Petroleum Hydrocarbon (PHC), Volatile Organic Compounds (VOC), and Benzene, Toluene, Ethylbenzene and Xylene Mixture (BTEX) and there is to be one (1) test for every two hundred (200) cubic metres for Semi-Volatile Organic Compounds (SVOC) and heavy metals by an accredited laboratory.
- c) The Receiving Site QP will ensure that the SAR and EC parameters are also tested and meet the accepted standard as agreed to by the Municipality. The concentration levels will not exceed Table 2 Site Condition Standards ("SCS") for the appropriate textured soils.
- d) The Receiving Site QP will ensure that any information provided by GFL's QP is prepared or reviewed by GFL's QP, or a person working under his/her direct supervision, before it is presented for review to the Receiving Site QP.
- e) A copy of GFL's "Bill of Lading" shall be maintained at the Receiving Site office for each load of soil shipped by GFL to the Receiving Site for inspection by the Receiving Site QP and municipal staff. Each Bill of Lading will list the source of the soil and the quantity and the "cell" and "pad" number associated with the treated soil.
- f) The Receiving Site QP and /or the Municipality may require additional sampling or testing of soils from GFL over and above those parameters and frequencies defined in GFL's ECA.

#### **Audit Sampling of GFL soils at the Receiving Site**

As with other Source Sites, the Receiving Site QP will collect a minimum of one (1) audit sample per day for laboratory testing. The soil received from the GFL Soil Treatment Facility

will require additional audit sampling if soil from more than one (1) source cell is transported to the Receiving Site on any one day. In conjunction with daily sampling, audit sampling protocols are to be developed and utilized by the Receiving Site QP sufficient to produce results that would be representative of the volume of excess soil that is being received from the facility. The rationale regarding audit sampling frequency that is representative of the volume of excess soil shall be provided to the Municipality for approval.

In the event that analytical results from any audit sample indicate a concentration greater than the Receiving Site Condition Standards, the Receiving Site QP will immediately notify the Operator of the findings and provide recommendations for mitigation. At a minimum, no further soils will be shipped from the GFL facility to the Receiving Site until the unacceptable soils are removed from the Receiving Site and the source of contamination at the GFL facility is discovered.

### **Contingency Plan**

A contingency plan shall be developed by GFL in accordance with their Environmental and Quality Policy (<http://gflenv.com/about/gfl-environmental-and-quality-policy>) regarding actions to be taken in the event that audit samples from GFL soils fail to meet the specified standard including their own. Understanding that a particular treated “cell” at the GFL facility has a defined volume, when audit tests are taken of GFL soils at the Receiving Site, a rationale should be provided as to mitigation measures when audit tests do not meet the Receiving Site’s standard for specific chemical parameters. In the event that non-compliant soil (for whatever reason) is exported to the Receiving Site it will be exported back to GFL or if already tipped, must be delineated and removed for export back to GFL. A confirmatory sampling program will be carried out at the Receiving Site to ensure that contaminated, non-compliant fill is identified for removal followed by a verification sampling study to confirm that all contaminated fill has been removed.

## **APPENDIX B**

### **SOILS FROM OTHER SOIL TREATMENT FACILITIES**

For any soils received from other soil recycling or soil remediation facilities, other than GFL, the Receiving Site QP must assess and impose similar safeguards and testing requirements to those implemented for GFL, regarding compliance testing and documentation and report review. The Municipality may require further sampling and testing of soils at these Soil Treatment Facilities at their sole discretion, (particularly those Soil Treatment Facilities with outdated compliance approvals) before any soils are shipped to the Receiving Site. Despite the requirements specified in the Soil Treatment Facility’s Compliance Approval, minimum sampling requirement for these soils shall be those required as outlined in Section b) in Appendix A.