



**USED CONSUMER-TYPE PORTABLE BATTERY AND USED CELL PHONE
RECYCLING AGREEMENT**

(BRITISH COLUMBIA)

THIS AGREEMENT made in duplicate is made on the Commencement Date, as defined below:

B E T W E E N:

**RECHARGEABLE BATTERY RECYCLING
CORPORATION OF CANADA**
(hereinafter referred to as "RBRCC")

- and -

(INSERT MUNICIPALITY NAME)

**(HEREINAFTER REFERRED TO AS THE "LOCAL
GOVERNMENT")**

(hereinafter referred to as the "Parties" or singularly as a
"Party")

WHEREAS:

A. By letter dated March 1, 2010, the British Columbia Ministry of the Environment has approved the Call2Recycle® Stewardship Plan submitted by RBRCC on February 4, 2010, for implementation beginning on July 1, 2010, and

B. The Local Government collects Used Consumer-Type Portable Batteries for recycling and wishes to provide them in bulk to RBRCC for further handling.

NOW THEREFORE in consideration of the promises and mutual agreements contained herein and subject to the terms and conditions hereinafter set forth, the Parties covenant and agree as follows:

1.0. Definitions and Interpretation

1.1 Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the British Columbia *Environmental Management Act* and *Recycling Regulation*, as effective with amendments up to B.C. Reg. 296/2009 (December 11, 2009), or the British Columbia *Local Government Act*, as the case may be unless otherwise specified.

1.2 In this Agreement:

- (a) “**Act**” means the British Columbia *Environmental Management Act*;
- (b) “**Affiliated Company**” means an entity controlling, controlled by or under common control with RBRCC;
- (c) “**Agreement**” means this Agreement and includes all schedules and amendments hereto;
- (d) “**Bank of Canada Rate**” means the floating annual rate of interest published from day to day in The Globe and Mail Report on Business in its “Money Rates” column as the “Bank of Canada Overnight Rate.” Should such publication not continue to publish the Bank of Canada Overnight Rate or a substitute rate, then RBRCC will select a comparable announced rate;
- (e) “**Business Day**” means Monday through Friday, excluding statutory holidays and any other day that the Government of British Columbia has elected to be closed for business;
- (f) “**Collection Services**” means all the activities, including those conducted at Depots and Events operated by or on behalf of the Local Government for the purpose of receiving, classifying, and storing MHSW including the manifesting of the MHSW after the MHSW is loaded into the transportation vehicle prior to transportation away from the Depot or Event, but not including Value-Added Collection Services;
- (g) “**Commencement Date**” means the first date on which this Agreement has been executed on behalf of both Parties;
- (h) “**Designated RBRCC Receiving Facility**” means the facility operated by Toxco Waste Management located at Trail, British Columbia, or such other facility as RBRCC shall notify the Local Government that has been designated as a replacement or supplement to that facility;
- (i) “**Local Government**” means a Municipality or Regional District incorporated under the British Columbia *Local Government Act*;
- (j) “**MHSW**” means municipal hazardous or special waste;
- (k) “**Minister**” means the Minister of the Environment for the Province of British Columbia;
- (l) “**Plan**” means the Call2Recycle® Stewardship Plan approved by the Minister on March 1, 2010, as it may from time to time be amended;

- (m) **“Service Provider”** means a third party that provides services to the Local Government in relation to the MHSW Services;
- (n) **“Used Consumer-Type Portable Battery”** means a battery or battery pack weighing less than 5 kg/11 lbs, containing no liquid electrolyte, and employing one of the chemistries specified in the next sentence that a user no longer intends to put to its designed use. The pertinent chemistries are: nickel cadmium; nickel metal hydride; lithium ion; nickel zinc; sealed lead; alkaline-manganese; zinc-carbon; zinc-air; silver oxide; and lithium;
- (o) **“Used Cell Phone”** means a mobile device designed primarily to connect to a cellular or paging network, including, without limitation, phones, cellular personal digital assistants and pagers that a user no longer intends to put to its designed use.

1.3 In this Agreement:

- (a) Words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) The word “including” or “includes” shall mean “including [or includes] without limitation”;
- (c) Any reference to a statute shall mean the statute in force as of the date of this Agreement, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) When calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; if the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (e) All dollar amounts are expressed in Canadian dollars;
- (f) Any tender of notices or documents under this Agreement shall be made upon the relevant Party at the address set out in Subsection 11.1;
- (g) The division of this Agreement into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (h) Except as specifically defined or provided for in this Agreement, words and abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

- 1.4 The Parties acknowledge that the recitals to this Agreement are true and correct.

2.0. Term of Agreement and Amendment

- 2.1 The term of this Agreement shall commence as of the Commencement Date and shall remain in effect until December 31, 2012, unless terminated earlier in accordance with Section 13.0 of this Agreement or amended in accordance with Subsection 2.2. This Agreement shall automatically renew thereafter for up to two further one (1) year terms, unless either Party notifies the other at least ninety (90) days in advance of any renewal term commencement date that the Agreement shall not be renewed.
- 2.2 Subject to hereinafter provided, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and contains all of the representations and warranties, covenants, and agreements of the respective Parties and may not be amended or modified except by an instrument executed by all of the Parties hereto.
- 2.3 The Parties recognize that there may be changes to the Plan, in which event the Parties will, if necessary, amend this Agreement.

3.0. The Local Government's Shipments to RBRCC

- 3.1 The Local Government shall ship all Used Consumer-Type Portable Batteries and Used Cell Phones that are collected through its MHSW Services to the Designated RBRCC Receiving Facility in steel drums that conform to the packaging requirements set out in Subsection 7.4 of this Agreement. Each such steel drum shall be filled to capacity with Used Consumer-Type Portable Batteries and Used Cell Phones.
- 3.2 Each shipment by the Local Government to the Designated RBRCC Receiving Facility of Used Consumer-Type Portable Batteries and Used Cell Phones must contain a minimum of 227 kilograms of Used Consumer-Type Portable Batteries and Used Cell Phones.
- 3.3 All shipments to the Designated RBRCC Receiving Facility by the Local Government shall use RBRCC's designated freight provider and shall comply with the shipping instructions set out in **Schedule A (to be provided prior to shipping to the Designated RBRCC Receiving Facility)**. RBRCC shall notify the Local Government of its designated freight provider on or before the Commencement Date, and may replace or designate an additional freight provider(s) upon notification to the Local Government.

4.0. Service Provider Information and Contracts

- 4.1 Nothing in this Agreement is intended to interfere with the Local Government's contractual relations with Service Providers.

5.0. Financial Arrangements

- 5.1 For each shipment of Used Consumer-Type Portable Batteries and Used Cell Phones that is shipped by the Local Government to the Designated RBRCC Receiving Facility in accordance with Section 3.0 of this Agreement:
- (a) RBRCC shall pay to the Local Government a fee of \$.35 per kilogram to cover the cost of supplies/baggies and handling of the drums included in the shipments; and
 - (b) RBRCC shall cover the cost of the Local Government's shipment to the Designated RBRCC Receiving Facility.
- 5.2 The Local Government shall submit invoices on a quarterly basis for reimbursable services and payment shall be made by RBRCC to the Local Government in accordance with the provisions of this Agreement. Prior to payment, RBRCC will verify that the Used Consumer-Type Portable Batteries and Used Cell Phones shipped by the Local Government were received at the Designated RBRCC Receiving Facility.
- 5.3 Invoices submitted by the Local Government pursuant to Subsection 6.2 shall be paid by RBRCC within thirty (30) days of the date of receipt of the invoice by RBRCC provided that such invoices are proper, accurate, and not in dispute. Interest shall apply to any amounts unpaid within fifty (50) days of the date of receipt of the invoice by RBRCC at the Bank of Canada Rate plus 2% per annum.

6.0. Reporting

- 6.1 The Local Government shall keep proper books and records in respect of services for which the Local Government is reimbursed by RBRCC in accordance with good business practices and generally approved accounting procedures. These records shall be available at all reasonable times for examination or audit by RBRCC.
- 6.2 The Local Government shall provide RBRCC, or such other parties as RBRCC shall direct, with all the necessary information as may be reasonably required by RBRCC or its designee(s) to verify any claim by the Local Government for reimbursement of expenses pursuant to this Agreement including, but not limited to, the following information:
- (a) Quarterly reports: The Local Government, on a quarterly basis, shall provide RBRCC with summaries of all manifests/shipping documents prepared by the Local Government or a Service Provider; and
 - (b) The Local Government shall keep and preserve throughout the term of this Agreement, and for a period of not less than twenty-four (24)

months thereafter, all records, documents, and information relating to this Agreement.

7.0. Regulatory and Compliance

- 7.1 Title to products: The Local Government shall have title to all Used Consumer-Type Portable Batteries and all Used Cell Phones from the time when the Local Government accepts them until the point in time that title has transferred to a Service Provider or Designated RBRCC Receiving Facility. At no time will RBRCC have title to Used Consumer-Type Portable Batteries or Used Cell Phones unless handled directly by RBRCC employees.
- 7.2 Regulatory compliance: In performing its obligations under this Agreement, the Local Government shall obtain all permits, licenses, authorizations and approvals required by law and observe and comply with all applicable laws, including any Certificates of Approval issued to the Local Government. The Local Government shall assist RBRCC, as required, in providing information and reports to satisfy regulatory and reporting requirements relating to the Plan. The Local Government shall take all reasonable steps to ensure any Service Providers meet the same requirements.
- 7.3 Site visits and audits: Upon reasonable notice, RBRCC or its agent shall have the right to enter upon any collection facility utilized by the Local Government for the purpose of conducting inspections or compliance audits. The Local Government shall take all reasonable steps to ensure that RBRCC has the same rights in respect of any Service Provider used by the Local Government. RBRCC or its agent shall be accompanied by a representative of the Local Government for any such visits or audits. Information obtained by RBRCC pursuant to such inspections and audits shall only be used for the purposes of this Agreement.
- 7.4 Packaging: All drums used for shipment under this Agreement shall be 55-gallon, poly-lined, open-top steel drums rated under UN1A2. Drums will be filled completely prior to shipment. To prevent possible short circuits, all lithium, lithium-ion, or lead acid batteries placed in drums shall be placed in individual plastic bags or have their terminals securely taped.
- 7.5 Nonconforming shipments: If RBRCC or a Designated RBRCC Receiving Facility determines within thirty (30) days after receipt of a shipment from or on behalf of the Local Government that any container included in that shipment contains more than five percent (5%) by weight of materials that are not Used Consumer-Type Portable Batteries or Used Cell Phones, or any amount of hazardous waste (other than Used Consumer-Type Portable Batteries or Used Cell Phones) that is subject to regulation in the Province in which the Designated RBRCC Receiving Facility is located, RBRCC or its Designated RBRCC Receiving Facility shall (1) arrange with the Local Government for the satisfactory disposition of the materials that are not Used

Consumer-Type Portable Batteries and/or Used Cell Phones on mutually agreeable terms and conditions, or (2) reject and return such materials to the Local Government without further obligation. In either event, RBRCC shall bill the Local Government for the cost of handling the materials that are not Used Consumer-Type Portable Batteries or Used Cell Phones and the Local Government shall treat RBRCC's invoice as if it were an invoice rendered by the Local Government to RBRCC under Section 6.0 of this Agreement.

8.0. Indemnity and Insurance

- 8.1 Indemnity: Each Party (the "Indemnifying Party") hereby indemnifies and saves harmless the other Party (the "Indemnified Party"), its directors, officers, contractors, employees, and agents, from and against any and all manner of actions or causes of actions, damages (but not including consequential damages), costs, loss or expenses of whatever kind (including related legal fees on a full indemnity basis) which the Indemnified Party, its directors, officers, contractors, employees, and agents may sustain, incur or be put to by reason of or directly or indirectly arising out of any willful misconduct or negligence of the Indemnifying Party or any person for whom the Indemnifying Party is, at law, responsible, in relation to matters arising out of this Agreement.
- 8.2 The Local Government shall, during the term of the Agreement, self-insure, maintain at its expense, and/or require its Service Provider to maintain at either the Local Government's or Service Provider's expense Comprehensive General Liability coverage with limits of not less than \$5,000,000 (five million dollars) per occurrence. For clarity, only the Local Government can self-insure.
- 8.3 The Comprehensive General Liability policy of insurance referred to in this section shall include RBRCC as an additional insured for acts committed by the named insured.
- 8.4 Unless the Local Government wholly self-insures, the Local Government shall deliver a copy of Certificate(s) of Insurance maintained by the Local Government or a Service Provider pursuant to this Agreement, upon the Commencement Date, and annually upon renewal of the Local Government or Service Provider's insurance, naming RBRCC as an additional insured with the following language:

"RBRCC and its affiliated entities, officers, partners, directors, employees, representatives, and agents are included as Additional Insureds for Comprehensive General Liability. Such coverage is primary and non-contributing."

8.5 The Certificate(s) of Insurance, referred to in Subsection 8.4 must also provide that the Local Government shall provide RBRCC with thirty (30) days advance written notice of cancellation, termination, non-renewal, or material change.

9.0. Assignment

9.1 The Local Government shall not subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of RBRCC, which consent shall not unreasonably be withheld.

9.2 RBRCC may assign any of its rights or obligations under this Agreement or any part thereof to any Affiliated Company. RBRCC may assign any of its rights or obligations to a successor that is not an Affiliated Company only with the Local Government's consent, which consent shall not be unreasonably withheld.

10.0. Notices

10.1 Any notice, request, demand or other instrument or communication herein provided, permitted or required to be given by either RBRCC or the Local Government shall be in writing and sufficiently given if delivered personally, by facsimile transmission or other electronic means of written communication tested prior to transmission to the extent such testing is available (unless otherwise expressly provided herein), or if sent by registered mail to the following respective address hereinafter set out, namely:

Notices to RBRCC shall be delivered to:

4576 Yonge Street
Suite 606
Toronto, Ontario
M2N 6N4
Attention: Executive Director

with an additional copy to:

Chief Executive officer
RBRC
1000 Parkwood Circule
Suite 200
Atlanta, GA USA 30339

Notices to the Local Government shall be delivered to:

(INSERT MUNICIPALITY NAME)

- 10.2 Any such notice if delivered personally, by facsimile transmission or by other electronic means of written communication on a Business Day before 5:00 p.m. shall be conclusively deemed to have been given on the day of personal delivery, or facsimile transmission or electronic communication (and if after 5:00 p.m. E.T. the next following Business Day), or, if mailed as aforesaid, shall be conclusively deemed to have been received on the fifth (5th) business day following the day on which such notice is mailed as aforesaid (except during a postal strike in which case such notice shall be delivered personally). Either Party may, at any time, give written notice to the other of any change of address of the Party giving such notice and from and after the giving of such notice the address therein specified shall (in the absence of knowledge to the contrary) be deemed to be the address of such Party for the giving of notices thereafter.

11.0. Dispute Resolution

- 11.1 If any dispute arises between the Parties pursuant to this Agreement:
- (a) The Parties shall attempt to resolve the dispute through designated representatives from each of RBRCC and the Local Government within thirty (30) days upon which written notice of the dispute was first given, or as otherwise agreed upon;
 - (b) If the Parties are unable to resolve the dispute within the above period, the Local Government and RBRCC shall, within thirty (30) days thereafter, jointly select an arbitrator to arbitrate the dispute; and
 - (c) The arbitrator shall render a decision on the dispute and the award arising there from, in accordance with the *Commercial Arbitration Act* (British Columbia) or the *International Commercial Arbitration Act* (British Columbia), as applicable and as amended from time to time.

12.0. Termination

- 12.1 If, in the reasonable opinion of either Party, there has been a breach of this Agreement by the other Party (the “Defaulting Party”), the Local Government or RBRCC (the “Party giving notice”) may give the defaulting Party written notice to remedy the breach or default within sixty (60) days, failing which the Agreement may be terminated. In the event that the remedy of such breach reasonably requires more than sixty (60) days, the defaulting Party shall so

advise the Party giving notice forthwith and provide a revised timeline for remedying the breach. The Party giving notice shall notify the defaulting Party in writing as to whether the revised timeline is acceptable and, if it is, the revised timeline to remedy such breach will apply.

- 12.2 Notwithstanding Subsection 13.1, either Party may terminate this Agreement without cause upon delivery of six (6) months written notice to the other Party.
- 12.3 Notwithstanding Subsection 13.1, RBRCC may terminate this Agreement immediately upon written notice to the Local Government if:
- (a) The Local Government assigns or subcontracts any of its rights or obligations under this Agreement or any part thereof except as expressly provided for herein;
 - (b) A receiver or trustee is appointed for any part of the assets of RBRCC;
or
 - (c) The Minister terminates its approval of the Plan.
- 12.4 On the date of termination neither Party shall have any obligations, financial or otherwise, hereunder save and except for matters arising prior to termination, which may involve obligations of the Parties after termination.

13.0. General Provisions

- 13.1 All of the terms, covenants, conditions, and other provisions contained herein, and all of the obligations under or pursuant to this Agreement, shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 13.2 There are no representations, warranties, collateral agreements, or conditions affecting this Agreement, other than those expressed in writing herein.
- 13.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- 13.4 This Agreement may be executed in counterpart, the counterpart copies of this Agreement together constituting a full, valid, and binding Agreement among the Parties hereto.
- 13.5 In the event that any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement and will not affect the legality or validity or enforceability of the remainder of this Agreement or any other provision hereof.

- 13.6 The rights, remedies, and privileges in this Agreement given to the Parties:
- (a) are cumulative, and any one or more may be exercised;
 - (b) are without prejudice to and are in addition to and apply notwithstanding any other provisions in this Agreement; and
 - (c) are not and shall not be dependent or conditional upon, or in any way lessened, restricted, or affected by any other provisions of this Agreement.
- 13.7 No term, condition, or provision hereof shall be or be deemed to have been waived by RBRCC or the Local Government by reason of any act, forbearance, indulgence, omission, or event.
- 13.8 RBRCC or the Local Government may, from time to time, waive the performance of the other Party of any provision of this Agreement, either before or after that performance is done, but a waiver is not effective or binding upon the Party providing the waiver, unless it is in writing and signed by the Party providing the waiver or under its authority, and does not limit or affect the Party providing the waiver's right with respect to any other breach or non-performance, whether prior or subsequent thereto.
- 13.9 Any Service Providers engaged by the Local Government to assist in providing MHSW Services shall be required by the Local Government to comply with and adhere to the terms and conditions, as applicable, of this Agreement.
- 13.10 Each Party shall perform the acts, execute and deliver the writings, and give the assurances necessary from time to time to give full effect to this Agreement.
- 13.11 This Agreement supersedes and replaces all oral and written communications between the Parties relating to the subject matter of this Agreement.
- 13.12 RBRCC understands that if and to the extent that the Local Government shall be prevented, delayed, or restricted in whole or in part in the fulfillment of any obligations under this Agreement by reason of strikes or work stoppages, failure of any service or utility whether or not under the Local Government's control, or by reason of any statute, law, or regulation preventing, delaying, or restricting this fulfillment, or inability to obtain any permission from any governmental or other body having jurisdiction, or any cause beyond the Local Government's reasonable ability to control, the Local Government shall have no responsibility or liability for any loss or damage sustained by the RBRCC by reason thereof.

