

EQUIPMENT LEASE AGREEMENT

THIS LEASE is dated as of November 8, 2019

BETWEEN:

ENVIRONMENTAL AND POWER SOLUTIONS INC., a
corporation incorporated under the laws of Ontario

(the "Owner")

-and-

TOWN OF THE BLUE MOUNTAINS, a corporation
incorporated by Act of the Legislature of the Province of
Ontario

(the "User")

CONTEXT:

- A. The User owns and operates landfill site operations in the Town of the Blue Mountains and requires certain odour reduction equipment for these operations.
- B. The Owner has developed and has available for lease certain odour reduction equipment required by the User and has agreed to lease such equipment to the User on the terms and conditions in this Lease.

THEREFORE the Owner and the User agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Lease, the following terms have the following meanings:

- 1.1.1 "Business Day" means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.
- 1.1.2 "Commencement Date" means the date of delivery of the Equipment by the Owner to the User at the User Site.
- 1.1.3 "Communication" means any notice, demand, request, consent, approval or other communication which is required or permitted by this Lease to be given or made by a Party.
- 1.1.4 "Damages" means any loss, liability, damage, cost, expense, charge, fine, penalty or assessment including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, fines, penalties and reasonable professional fees and disbursements.
- 1.1.5 "Default" is defined in Section 14.1.

- 1.1.6 “**Encumbrance**” means any mortgage, charge, lien, security interest, pledge, hypothec, attachment, seizure or other encumbrance, right or claim of any kind.
- 1.1.7 “**Equipment**” means the odour treatment system as more particularly described in Schedule A attached to this Lease, and includes all parts, components, accessions and accessories attached to, relating to, or forming part of the Equipment or any of it.
- 1.1.8 “**Intellectual Property Rights**” means all industrial and other intellectual property rights comprising or relating to: (a) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights; (b) all rights in and to Canadian and foreign trademarks, trade dress, trade and business names, brand names, logos, design rights, corporate names and domain names and other similar designations of source, sponsorship, association or origin; (c) works of authorship, expressions, designs and industrial design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (e) trade secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection under the laws of any jurisdiction in any part of the world.
- 1.1.9 “**Lease**” means this Equipment Lease Agreement, including all of its schedules, as it may be amended, supplemented or restated by written agreement between the Parties.
- 1.1.10 “**Loss Value**” means at any time the value of the Equipment in an amount equal to the aggregate of:
- 1.1.10.1 any amount then due and owing by the User to the Owner under this Lease; and
 - 1.1.10.2 the present value at that time of:
 - 1.1.10.2.1 the aggregate of all Rent and other amounts payable to the end of the Term under this Lease but not yet due; and
 - 1.1.10.2.2 the residual value attributed to the Equipment on the books of the Owner.
- 1.1.11 “**Parties**” means the Owner and the User collectively, and “**Party**” means either of them.
- 1.1.12 “**Prime Rate**” means the fluctuating interest rate per annum which Royal Bank of Canada announces and adjusts from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada.
- 1.1.13 “**Rent**” means a monthly rent of \$7,000, plus applicable Taxes.
- 1.1.14 “**Repossession**” is defined in Section 14.2.1.1.
- 1.1.15 “**Representatives**” means the employees, subcontractors, agents, servants and representatives of a Party.

- 1.1.16 “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind, whether direct or indirect, including goods and services tax, harmonized sales tax, provincial sales tax and excise tax, together with all related interest, penalties, fines, additions to tax or other additional amounts, imposed by any governmental authority.
- 1.1.17 “**Term**” means the Initial Term and any Renewal Term, if applicable.
- 1.1.18 “**User Site**” means the User’s solid waste disposal site located at 788090 Grey County Rd 13, Clarksburg.

1.2 Certain Rules of Interpretation

- 1.2.1 In this Lease, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Lease is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.
- 1.2.2 The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Lease.
- 1.2.3 Unless otherwise specified in this Lease, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- 1.2.4 Unless otherwise specified, any reference in this Lease to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

1.3 Business Day

Whenever any calculation or payment to be made or action to be taken under this Lease is required to be made or taken on a day other than a Business Day, the calculation or payment is to be made or action is to be taken on the next Business Day.

**ARTICLE 2
LEASE**

2.1 Lease of Equipment

- 2.1.1 The Owner leases to the User, and the User leases from the Owner, the Equipment.
- 2.1.2 The User will take possession of the Equipment from the Owner on the Commencement Date at the User Site.

2.2 Term of Lease

- 2.2.1 Subject to the terms and conditions in this Lease, the term of the Lease commences on the Commencement Date, and continues for a period of five years (the “**Initial Term**”), after which time the Lease will terminate, unless terminated earlier as provided for in this Lease.
- 2.2.2 This Lease may not be terminated or cancelled for any reason during the Term except as expressly provided in this Lease.
- 2.2.3 Except as required to fulfill its obligations under this Lease, the Owner will not interfere with the User’s right to possession and quiet enjoyment of the Equipment during the Term provided the User performs its obligations under this Lease and no Default has occurred and is continuing.

ARTICLE 3 RENEWAL, OPTION TO PURCHASE

3.1 Renewal of Lease

- 3.1.1 The User shall have the option (the “**Renewal Option**”), exercisable via written notice to the Owner not less than 90 days prior to the end of the Term, to renew this Agreement for one subsequent term of five years (the “**Renewal Term**”). If the User exercises the Renewal Option, this Agreement will renew on the same terms and conditions, provided that the amount of the Rent shall increase by 15% for the Renewal Term.
- 3.1.2 The User may exercise the Renewal Option only if no Default, including default in payment of any Rent or other amounts owing under this Lease, has occurred and is continuing either on the date that the User gives notice of exercise of the Renewal Option.

3.2 Option to Purchase

- 3.2.1 Upon written request by the User to the Owner at least 90 days prior to the end of the Term, the Parties shall enter into good faith negotiations for the purchase by the User of the Equipment.
- 3.2.2 The Owner shall not be obligated to enter into the negotiations contemplated in Section 3.2.1 if there has been a Default by the User, including default in payment of any Rent or other amounts owing under this Lease, has occurred and is continuing either on the date that the User gives notice.

ARTICLE 4 RENT

4.1 Rent Payable

- 4.1.1 The User will pay Rent to the Owner monthly, in advance, on the first day of each month, starting on the Commencement Date, at the address of the Owner set out in this Lease or at any other address that the Owner may designate.
- 4.1.2 If the Commencement Date is not the first day of a calendar month, then the first payment of Rent due under this Lease will be a pro rata portion of the monthly Rent for that month,

calculated on the basis of a 30 day month and due and payable on the Commencement Date.

- 4.1.3 If the Term does not end on the last day of a calendar month, then the last payment of Rent due under this Lease will be a pro rata portion of the monthly Rent for that month, calculated on the basis of a 30 day month and due and payable on the first day of that last month of the Term.

4.2 No Set off or Deduction

The User's obligation to pay Rent is absolute and unconditional without any claim of set off, withholding, deduction, abatement or counterclaim.

4.3 Interest on Rent

Interest at the Prime Rate plus 5% per annum calculated daily will be payable on Rent not paid on its due date, from the due date to the date of payment of it.

4.4 Taxes

The User will pay to the Owner all Taxes required by law to be paid on the Rent and on any other amounts owing by the User under this Lease.

**ARTICLE 5
MAINTENANCE**

5.1 Maintenance

- 5.1.1 The Owner will at its own expense install the Equipment and perform the regularly scheduled maintenance on the Equipment as described in Schedule B; provided, however that any maintenance or repairs that are required as a result of the fault, negligence or breach by the User of any of its obligations under this Lease will be made by the Owner at the User's expense.

- 5.1.2 The User shall not repair or modify the Equipment or permit any person other than the Owner to maintain, repair or modify the Equipment.

- 5.1.3 The Owner may from time to time at its own expense make additions, alterations and improvements to the Equipment or any of it, if those additions, alterations and improvements do not impair the utility of the Equipment. All of those additions, alterations and improvements made to the Equipment will immediately become part of the Equipment for all purposes of this Lease and remain the property of the Owner.

5.2 Right of Access

The User grants to Owner and its Representatives a right and license to access the Equipment and the User Site during the Term for the purpose of installing, maintaining, repairing, modifying, adding to, and inspecting the Equipment, provided that Owner shall notify the User in advance of its intention to access the Equipment and the User Site.

ARTICLE 6 USE, RISK AND INSURANCE

6.1 Use and Operation

The User will:

- 6.1.1 cause the Equipment to be operated for business purposes only by competent and duly qualified personnel;
- 6.1.2 use the Equipment only for the purposes for which it was designed, and in accordance with all manuals, instructions and specifications that are provided to the User by the Owner, including the limitations set out in Schedule A. For certainty, the User will not exceed any of the performance limitations of the Equipment (including maximum flow) set out in Schedule A or set out in any of the manuals, instructions and specifications that are provided to the User by the Owner;
- 6.1.3 use the Equipment only in accordance and in compliance with all municipal, provincial, territorial and federal laws, regulations, bylaws, and ordinances applicable to the Equipment;
- 6.1.4 maintain the User Site in a good state of repair, cleanliness and accessibility (including snow removal) and will not obstruct the Equipment by placing or keeping any object, including any tools, equipment or garbage, on or near the Equipment;
- 6.1.5 not remove the Equipment from the User Site without the Owner's prior written consent.

6.2 Definitions

In this Article 6, "**Loss or Damage**" means loss, theft or destruction of, or damage to, the Equipment or any of it caused by any means, and whether or not caused through any fault or negligence of the User or its Representatives, and includes any Substantial Loss; and "**Substantial Loss**" means Loss or Damage to all or substantially all of the Equipment, or the seizure, expropriation, confiscation or condemnation of all or substantially all of the Equipment.

6.3 Risk

- 6.3.1 From and including the Commencement Date until the Equipment is returned to the Owner, the User assumes the entire risk of Loss or Damage; provided, however, that the User does not assume the risk of any Loss or Damage caused by (i) an inherent defect or failure of the Equipment; or (ii) the negligence or willful misconduct of the Owner or its Representatives ("**Owner Assumed Loss or Damage**").

6.4 Loss or Damage

- 6.4.1 Subject to Section 6.4.2, if the Equipment or any of it suffers Loss or Damage, the User will immediately notify the Owner in writing and the Owner will repair the Equipment or replace it at User's expense, except if such Loss or Damage is an Owner Assumed Loss or Damage, in which case the Owner will repair the Equipment or replace it at Owner's Cost.
- 6.4.2 If the Equipment suffers a Substantial Loss or other damage beyond repair, or is otherwise permanently rendered unfit for use during the Term, then:

- 6.4.2.1 if such damage is Owner Assumed Loss or Damage, the Owner shall replace, at the Owner's expense, that Equipment with new replacement equipment; or
- 6.4.2.2 if such damage is not Owner Assumed Loss or Damage, the Owner may, at its option, either:
 - 6.4.2.2.1 replace, at the User's expense, that Equipment with new replacement equipment; or
 - 6.4.2.2.2 treat that Substantial Loss as a Default and require the User, instead of paying Owner to repair or replace the affected Equipment, to pay to the Owner the total Loss Value, together with a late charge on the total amount payable at the Prime Rate plus 5% per annum from the date of the Substantial Loss through to the date of payment, plus all applicable Taxes.

6.4.3 All replacement equipment under Sections 6.3.1 or 6.4.2.1 will be the property of the Owner for all purposes in place of the Equipment that it replaces and will form part of the Equipment for all purposes of this Lease.

6.4.4 Any total or partial Loss or Damage of or to the Equipment or to the use or possession of it by the User will not relieve the User from its liabilities and obligations under this Lease.

6.5 Insurance

6.5.1 From and including the Commencement Date, the User at its sole expense will:

- 6.5.1.1 insure the Equipment against all risks of physical loss or damage, including loss by fire (including extended coverage), theft, collision and all other risks of loss that are customarily covered by insurance on similar equipment by prudent municipalities, in amounts and form, and with insurers, satisfactory to the Owner, but in no event will the insurance coverage be less than the greater of the full replacement value of the Equipment and the Loss Value; and
- 6.5.1.2 maintain public liability and property damage insurance in respect of the use, operation and possession of the Equipment and the ownership of it by the Owner, in a form and with insurers satisfactory to the Owner, and in an amount of not less than \$2,000,000 in respect of any one occurrence.

6.5.2 Each insurance policy under Section 6.5.1.1 relating to the Equipment will name the User as the insured and the Owner as first loss payee, and each insurance policy under Section 6.5.1.2 will name the User and the Owner as the insureds. At the Owner's request, the User will furnish the Owner with certificates of insurance or other evidence satisfactory to the Owner that insurance coverage as required by this Lease is in effect, provided that the Owner is under no duty to ascertain the existence of or examine the policy or policies.

6.5.3 Proceeds of insurance under Section 6.5.1.1 will, at the option of the Owner, be disbursed by the Owner against satisfactory invoices for repair or replacement of the Equipment, or in the case of a Substantial Loss may, at the option of the Owner, be retained by the Owner for application against the User's obligations under this Lease, and if the proceeds received are less than the Loss Value of the Equipment subject to the insurance claim, the User will immediately pay to the Owner the amount of that deficiency.

- 6.5.4 The User will immediately notify the insurer and the Owner of any Loss or Damage to the Equipment or any of it, and if any claim is made or action commenced arising out of the ownership, possession or use of the Equipment or any of it, the User will immediately notify the Owner in writing of the claim or action, and forward all correspondence and legal process in respect of the claim or action to the insurer with copies to the Owner.

ARTICLE 7 TITLE, SECURITY INTEREST

7.1 Title to the Equipment

- 7.1.1 Title to the Equipment is and will at all times be and remain vested in the Owner, and nothing in this Lease will give the User any right, title or interest in and to the Equipment, except the right to use the Equipment as a lessee on the terms of this Lease.
- 7.1.2 The Equipment is and will remain personal property even if the Equipment or any of it may be in any manner affixed or attached to, or imbedded in, or resting upon real property or any building, or attached in any manner to any other property.
- 7.1.3 The User will not change or remove any insignia or lettering on the Equipment and will conspicuously identify all of the Equipment by suitable lettering or labelling on it to show the Owner's ownership of it.

7.2 Security Interest

In addition to and without limiting the reservation of title in Section 7.1.1, the User grants to the Owner a security interest in all right, title and interest of the User in the Equipment, all present and after-acquired goods that form part of the Equipment and all proceeds of that personal property, as security for all indebtedness, liabilities and obligations of the User to the Owner under this Lease.

ARTICLE 8 INTELLECTUAL PROPERTY

8.1 Intellectual Property Owned by the Owner

User acknowledges and agrees that:

- 8.1.1 as between User and Owner, Owner (or its licensors) will retain all Intellectual Property Rights used to create, embodied in, used in and otherwise relating to the Equipment and any of its component parts;
- 8.1.2 any goodwill derived from the use by User of Owner's Intellectual Property Rights inures to the benefit of Owner or its licensors, as the case may be;
- 8.1.3 if User acquires any Intellectual Property Rights in or relating to the Equipment (including any rights in any trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Owner or its licensors, as the case may be, without further action by either Party; and
- 8.1.4 User shall use Owner's Intellectual Property Rights only in accordance with this Lease and any instructions of Owner.

8.2 Feedback

If the User provides the Owner with any suggestions, feedback or comments with respect to potential improvements, enhancements or modifications to the Equipment (“**Feedback**”), then the User grants the Owner a fully paid-up, royalty-free, perpetual, irrevocable, unrestricted, transferable, sub-licensable, worldwide right and license to use, share and commercialize the Feedback in any way and for any purpose. User waives in favour of Owner and its licensors, and each of their successors and assigns any and all of User’s moral rights in and to all Feedback. User further agrees, if requested by the Owner, to assign and have its Representatives assign all Intellectual Property Rights to Feedback to Owner and waive all moral rights in Feedback in favour of the Owner. This Section will survive the termination of this Agreement.

ARTICLE 9 INDEMNITY AND LIMITATION OF LIABILITY

9.1 Indemnification by Owner

Subject to Section 9.3, the Owner agrees to defend, indemnify and save harmless the User and its Representatives from and against any Damages, sustained or incurred by the User or its Representatives which arise or result directly from:

9.1.1 the breach by the Owner or its Representatives of any representation, warranty or covenant in this Agreement; and

9.1.2 any negligent or wilful act or omission of the Owner or its Representatives.

9.2 Indemnification by User

The User agrees to defend, indemnify and hold harmless the Owner and its Representatives from and against any Damages sustained or incurred by the Owner or its Representatives which arise or result directly from:

9.2.1 the breach by the User or its Representatives of any representation, warranty or covenant contained in this Agreement; and

9.2.2 any negligent or wilful act or omission of the User or its Representatives.

9.3 Limitation

In no event shall the Owner’s aggregate liability arising out of or related to this Lease, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Owner by User under this Lease.

9.4 Survival of Indemnity Obligation

The indemnities in this Article 9 will continue in full force and effect despite the expiration or other termination of this Lease.

9.5 Disclaimer and Release

Except as expressly provided in this Lease and to the maximum extent permitted by any applicable law, the remedies of the User set out in Section 9.1 are exclusive and in substitution for, and the User waives,

releases and disclaims, all other undertakings representations, warranties (express or implied), obligations and liabilities of the Owner and all other remedies, rights and claims against the Owner, arising by law, statute or otherwise, with respect to the Equipment and any other items subject or related to, or associated with, this Lease, including, any warranty of merchantability or fitness for a particular purpose, any warranty arising from course of performance, course of dealing or usage of trade, any obligation, liability, right, remedy or claim in tort, despite any fault, negligence, omission or strict liability of the Owner (whether active, passive or imputed).

9.6 No Liability for Consequential or Indirect Damages

In no event shall the Owner or its Representatives be liable for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of this agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not Owner was advised of the possibility of such damages or (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

ARTICLE 10 ASSIGNMENT

10.1 Assignment by the User

Without the prior written consent of the Owner, the User will not assign any of its rights, interests or obligations under this Lease or sublet any Equipment or permit any Equipment to be in the possession of anyone other than the User. Any assignment or subletting consented to by the Owner will not relieve or release the User from its obligations under this Lease, all of which obligations will remain in full force and effect.

10.2 Assignment by the Owner

10.2.1 The Owner may transfer, sell, assign, mortgage, pledge, encumber or otherwise grant a security interest in its right, title and interest in this Lease and the Equipment. The User consents to and waives notice of any transfer, sale, assignment, mortgage, pledge, encumbrance or other grant of security interest by the Owner, and acknowledges that the Owner is released from its obligations, responsibilities and liabilities under this Lease to the extent they are assumed by the transferee, assignee, purchaser, mortgagee or secured party of the Owner's interest. No transfer, sale, assignment, mortgage, pledge, encumbrance or other grant of security interest by the Owner will release the User from its obligations under this Lease.

10.2.2 If the Owner assigns, absolutely or by way of security, some or all of the Rent due under this Lease or all or any of the Owner's other rights or interests under this Lease, the assignee's rights or interests will be independent of any claim of the User against the Owner. The User, on receiving notice of any assignment by the Owner, will acknowledge the assignment and pay the Rent or other obligation as directed by the notice.

ARTICLE 11 COVENANTS

11.1 User's Covenants

The User covenants and agrees in favour of the Owner that the User will:

- 11.1.1 punctually pay all amounts, including Rent and applicable Taxes, required to be paid by the User under this Lease;
- 11.1.2 use the Equipment for business or commercial purposes only, and not use it or allow it to be used for personal, family or household purposes;
- 11.1.3 keep the Equipment at the User Site, and not move it from the User Site without the prior written consent of the Owner; and
- 11.1.4 implement and maintain at all times reasonable security and safety measures to prevent unauthorized access to, or use of, the Equipment and Loss or Damage to the Equipment. The Owner, acting reasonably, reserves the right to review and approve the User's security and safety measures.

11.2 Encumbrances by the User

The User will not directly or indirectly create, incur, assume or allow to exist any Encumbrance on or with respect to the Equipment, title to it or any interest in it, except for any Encumbrance in favour of the Owner. The User will give the Owner immediate notice of any seizure, attachment, Encumbrance or other process, judicial or otherwise, affecting any of the Equipment and will immediately obtain, as applicable, the discharge, removal or discontinuation of the seizure, attachment, Encumbrance or other process. Any amounts paid by the Owner upon failure of the User to make those payments will be immediately due from the User to the Owner upon the Owner's written demand for payment.

11.3 No Modification or Reverse Engineering

Except to use the Equipment as expressly stated in the Owner's written operating instructions for the Equipment provided to the User, the User shall not, and shall not permit any other person (other than the Owner) to, directly or indirectly:

- 11.3.1 modify, correct, adapt, alter, enhance or otherwise prepare derivative works or improvements of the Equipment; or
- 11.3.2 reverse engineer, disassemble, decompile, or adapt the Equipment, or otherwise attempt to derive or gain access to the internal components of the Equipment for any purpose whatsoever.

For greater certainty, the User shall not, and shall not permit any other person to remove the exterior casing of the Equipment or otherwise gain access to the internal components of the Equipment for any purpose whatsoever.

11.4 Owner's Covenants

The Owner covenants and agrees in favour of the User that the Owner will:

- 11.4.1.1 provide the Equipment as described in Schedule A and which meets the performance indicators set out therein;
- 11.4.1.2 perform regular maintenance on Equipment as set out in Schedule B at no cost to the User; and
- 11.4.1.3 where reasonably possible, modify the Equipment at the User's cost to operate with such future operations, as may be required by the User, from time to time.

11.5 Legislation and Regulatory Changes

If during the Term, any provincial or federal law, regulation, rule or other legislation comes into force or is amended so as to affect the ongoing operation of the Equipment at the User Site, then the Parties will cooperate in good faith and each make commercially reasonable efforts to resolve such impact.

ARTICLE 12 TERMINATION

12.1 Termination

The User shall be entitled to terminate the Lease if the Equipment does not meet the performance indicators set out in Schedule A; provided, however, that the User must provide written notice to Owner of its intention to terminate and the Owner shall have 30 days from its receipt of such notice to reasonably resolve the Equipment's failure to meet the subject performance indicator. If Owner resolves the failure within such 30 day period, the Lease shall not be terminated and shall continue in full force and effect.

12.2 Obligations on Termination

- 12.2.1 Upon the expiration or earlier termination of the Term, or any renewal of it, the User will immediately return the Equipment to the Owner by permitting the Owner to immediately enter upon the User Site to remove the Equipment from the User Site.
- 12.2.2 Upon return of the Equipment to the Owner, any name or other identification of the User will be removed from the Equipment, and the Equipment will be free and clear of all Encumbrances other than any Encumbrances of or against the Owner.
- 12.2.3 Despite the expiration or earlier termination of this Lease, all obligations of the User under this Lease will continue until they have been fully performed.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

13.1 Owner's Representations and Warranties

The Owner represents and warrants to and in favour of the User as follows, and acknowledges that the User is relying upon these representations and warranties in entering into this Lease:

- 13.1.1 this Lease has been duly authorized by all necessary action, corporate or otherwise, on the part of the Owner, has been duly executed and delivered by the Owner and constitutes a legal, valid and binding agreement of the Owner enforceable against it in accordance with its terms;

- 13.1.2 the execution, delivery, observance and performance of this Lease do not and will not result in the breach of, constitute a default under, or contravene any provision of the Owner's constating documents or any agreement, indenture or other instrument to which the Owner is a party or by which the Owner or any of its property or assets may be bound; and
- 13.1.3 provided the User duly and regularly pays the Rent and performs and observes all the covenants and provisions contained in this Lease to be performed and observed by the User, the User will enjoy quiet possession of the Equipment for the Term without interruption or disturbance from the Owner or anyone claiming through or under the Owner.

13.2 User's Representations and Warranties

The User represents and warrants to and in favour of the Owner as follows, and acknowledges that the Owner is relying upon these representations and warranties in entering into this Lease:

- 13.2.1 this Lease has been duly authorized by all necessary action, corporate or otherwise, on the part of the User, has been duly executed and delivered by the User and constitutes a legal, valid and binding agreement of the User enforceable against it in accordance with its terms;
- 13.2.2 the execution, delivery, observance and performance of this Lease do not and will not result in the breach of, constitute a default under, or contravene any provision of, or result in the creation of any Encumbrance on or in the Equipment or any other property or assets of the User, under the User's constating documents or under any agreement, indenture or other instrument to which the User is a party or by which the User or any of its property or assets may be bound; and
- 13.2.3 no financing statement or other registration relating to the Equipment is on file against the User in any public office, and no Encumbrance against the User attaches to the Equipment.

ARTICLE 14 DEFAULT AND REMEDIES

14.1 Events of Default

The occurrence of any of the following events will constitute a default under this Lease (each, a "Default"):

- 14.1.1 the User is in default of the payment of Rent or any other sum required to be paid by the User under this Lease and that default continues for a period of five days;
- 14.1.2 the User or the Owner is in default in performing or observing any covenants or obligations to be performed by the User or the Owner under this Lease, other than the obligation to pay Rent or any other sum of money, and that default continues for more than five days after notice of the default is given by the Owner to the User, or the User to the Owner, as the case may be;
- 14.1.3 any representation or warranty made by the User or the Owner in this Lease or in any document or certificate furnished to the Owner or the User in connection with or under this Lease is incorrect at any time in any material respect;
- 14.1.4 the User or the Owner becomes insolvent (within the meaning of the *Bankruptcy and Insolvency Act* (Canada)) or commits or threatens to commit an act of bankruptcy, or if a

petition in bankruptcy, proposal, arrangement or reorganization under the *Bankruptcy and Insolvency Act* (Canada), *Winding-up and Restructuring Act* (Canada) or *Companies' Creditors Arrangement Act* (Canada) is filed by or against the User, or if a receiver or receiver manager is appointed for the User or a substantial part of the User's property;

- 14.1.5 the holder of an Encumbrance or any other party takes possession of a substantial part of the User's property or any of the Equipment under legal process or otherwise;
- 14.1.6 any of the Equipment is confiscated, forfeited, seized or otherwise attached pursuant to any legal process or other means;
- 14.1.7 the User or the Owner is in default under any other lease, contract, agreement or obligation now existing or subsequently entered into between the parties, or any assignee of the Owner;
- 14.1.8 the User or the Owner is dissolved, amalgamated or wound up; or
- 14.1.9 the Owner believes in good faith that the payment of the Rent or the performance or observance of any covenant or obligation in this Lease is impaired or that the Equipment is in danger of suffering Loss or Damage, or of being encumbered by the User.

14.2 Remedies

- 14.2.1 Upon and after Default, and in addition to any other rights or remedies that the Owner may have at law or in equity, the Owner will have the following rights and remedies:
 - 14.2.1.1 without further notice, to take possession of the Equipment ("**Repossession**"), and for that purpose the User grants the Owner the right to enter its premises at the then current location of the Equipment for the purpose of Repossession and waives claims for any damages, whether to property or otherwise, arising out of a Repossession, and acknowledges that the Owner may retain all prior payments as partial compensation for the use of the Equipment;
 - 14.2.1.2 upon five days' prior written notice after the occurrence and continuance of Default, to terminate this Lease; and
 - 14.2.1.3 to demand, as a genuine pre-estimate of liquidated damages for loss of bargain and not as a penalty, the total Loss Value.
- 14.2.2 The defaulting party will pay all costs incurred by the other party or otherwise arising as a result of Default, including reasonable legal fees on a full indemnity basis.
- 14.2.3 The User will pay the Owner interest at the Prime Rate plus 5% per annum calculated daily on all sums not received by the Owner when due and owing under this Lease, from the due date to the date of payment.
- 14.2.4 The Owner may, but is not obligated to, discharge any Encumbrance of third parties against the Equipment related to the User, and any amounts paid by the Owner, together with any costs, charges and expenses incurred in connection with them, plus interest at the rate set out in Section 14.2.3, will be added to the amount owed by the User as Rent.

14.3 Remedying Defaults

- 14.3.1 If the User fails to perform or comply with any of the User's obligations under this Lease, the Owner in its discretion may, but is not required to, do all reasonable acts and make all reasonable disbursements as may be necessary to remedy that failure, and any disbursements made by the Owner will be payable by the User on demand, together with interest at the rate set out in Section 14.2.3 from the date of disbursement by the Owner to the date of payment by the User.
- 14.3.2 If the Owner fails to perform or comply with any of the Owner's obligations under this Lease, the User in its discretion may, but is not required to, do all reasonable acts and make all reasonable disbursements as may be necessary to remedy that failure, and any disbursements made by the User will be payable by the Owner on demand, together with interest at the rate set out in Section 14.2.3 from the date of disbursement by the User to the date of payment by the Owner.

**ARTICLE 15
GENERAL**

15.1 User's Expense

All of the User's obligations under this Lease will be performed or observed at the User's expense.

15.2 Owner's Expense

All of the Owner's obligations under this Lease will be performed or observed at the Owner's expense.

15.3 Time of Essence

Time is of the essence in all respects of this Lease.

15.4 Notices

Any Communication must be in writing and either:

- 15.4.1 delivered personally or by courier;
- 15.4.2 sent by prepaid registered mail; or
- 15.4.3 transmitted by e-mail.

Any Communication must be sent to the intended recipient at its address as follows:

to the Owner at:

Environmental and Power Solutions Inc.
80 Rankin Street, Unit 4
Waterloo, ON, N2V 1V9

Attention: Hamid Salsali
E-mail: hamid.salsali@epsinc.ca

to the User at:

Town of the Blue Mountains
32, Mill Street, PO Box 310
Thornbury, ON, N0H 2P0

Attention: Jeffery Fletcher
E-mail: jfletcher@thebluemountains.ca

or at any other address as any Party may at any time advise the other by Communication given or made in accordance with this Section 15.4. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication sent by prepaid registered mail will be deemed to have been given or made and received on the third Business Day after which it is mailed. Any Communication transmitted by e-mail will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4:00 p.m., the Communication will be deemed to have been given or made and received on the next Business Day.

15.5 Severability

Each Section of this Lease is distinct and severable. If any Section of this Lease, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect (i) the legality, validity or enforceability of the remaining Sections of this Lease, in whole or in part; or (ii) the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

15.6 Governing Law

This Lease is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

15.7 Submission to Jurisdiction

Each of the Parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity, arising from this Lease.

15.8 Amendment and Waiver

No amendment, discharge, modification, restatement, supplement, termination or waiver of this Lease or any Section of this Lease is binding unless it is in writing and executed by each Party. No waiver of, failure to exercise, or delay in exercising, any Section of this Lease constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

15.9 Further Assurances

Each Party will, at the requesting Party's cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting Party to give effect to this Lease and, without limiting the

generality of this Section 15.9, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all governmental authorities having jurisdiction over the affairs of a Party or as may be required at any time under applicable law.

15.10 Enurement

This Lease enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns, and the permitted sublessees of the User.

15.11 Counterparts and Electronic Delivery

This Lease may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

15.12 Remedies Cumulative

The rights and remedies under this Lease are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

15.13 *Personal Property Security Act*

- 15.13.1 The User acknowledges receipt of a copy of this Lease.
- 15.13.2 The User waives all rights to receive from the Owner a copy of any financing statement, financing change statement or verification statement filed or issued, as the case may be, at any time in respect of this Lease or any amendments to this Lease.
- 15.13.3 Any security interest created by this Lease attaches when this Lease is signed by the User and delivered to the Owner.
- 15.13.4 The User authorizes the Owner to file all financing statements, financing change statements and other documents and do any acts, matters and things as the Owner deems appropriate to perfect and continue any security interest or deemed security interest created by this Lease pursuant to the *Personal Property Security Act* (Ontario) or equivalent legislation in any other jurisdiction.

15.14 Entire Agreement

This Lease constitutes the entire agreement between the Parties pertaining to the subject matter of this Lease and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties, express or implied, in connection with the subject matter of this Lease except as specifically set out in this Lease. No Party has been induced to enter into this Lease in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Lease.

15.15 No Contra Proferentem

This Lease has been reviewed by each Party's professional advisors, and revised during the course of negotiations between the Parties. Each Party acknowledges that this Lease is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any of its provisions, no rule of interpretation favouring one Party over another based on authorship will apply.

SIGNATURE PAGE FOLLOWS

Each of the Parties has executed this Lease as of the date noted at the beginning of this Lease.

ENVIRONMENTAL AND POWER SOLUTIONS INC.

Per: 

Name: Hamid Salsali
Title: President

TOWN OF THE BLUE MOUNTAINS *EF*

Per: 

Name: *[Signature]*
Title:

SCHEDULE A EQUIPMENT

System Description

The Owner's Odomatic Leachate Treatment System (OLTS) is designed to improve the quality of the air being emitted from landfill leachate by reducing dissolved hydrogen sulfide in the liquid phase, in order to mitigate odour complaints received from local residents. The system is displayed in Figure 1.

In the OLTS, leachate is pumped from the leachate well to the storage tank, and once leachate volume reaches 20,000 litres, the pump starts recirculating and spraying the leachate within the storage tank to assist with hydrogen sulfide liquid to gas phase transfer. Once in the gas phase, hydrogen sulfide reacts with a wide range of strong oxidizers prior to be exhausted to the atmosphere. In addition, oxidants will also be simultaneously added to the liquid phase to promote further odour removal in the liquid phase prior leachate disposal at the local pump station.

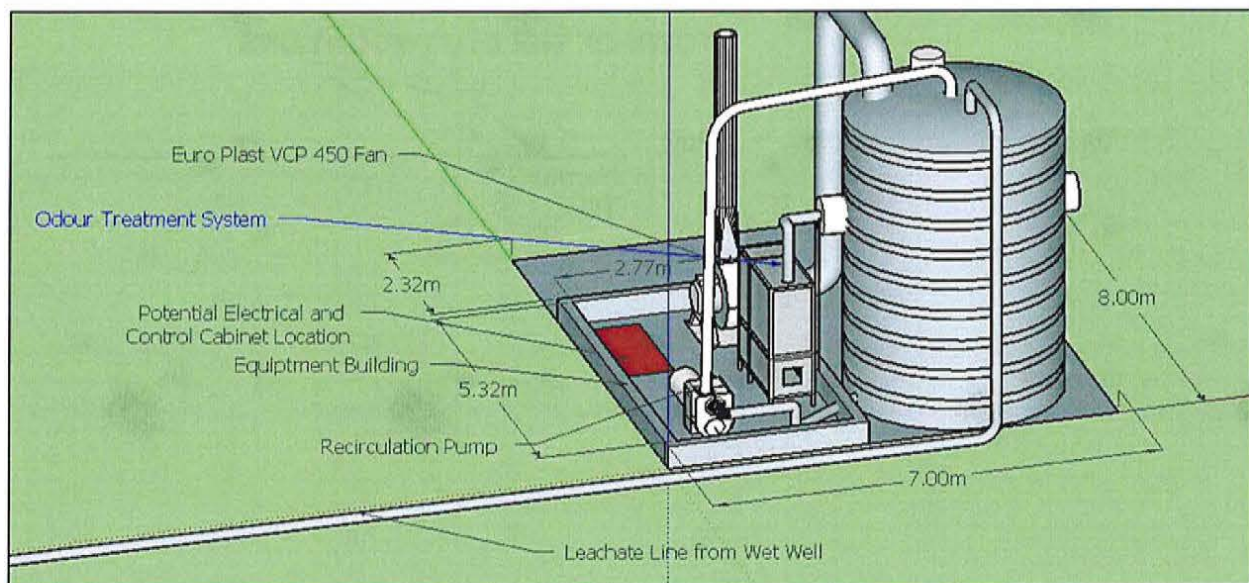


Figure 1: The Odomatic Leachate Treatment System

The OLTS consists of 6 major components:

1. Advanced oxidation system to generate wide range of strong oxidizers
2. Polyethylene leachate storage tank with 38,400 L Capacity
3. Process fan with design air flow rate up to 13,500 m³/hr
4. Leachate feed pump with design flow rate of 1860 LPM
5. Leachate Pump with design flow rate of 3785 LPM
6. Electrical Controls

Raw Leachate Design Characterization

OLTS treatment performance is guaranteed if the following raw leachate parameters are maintained:

Parameters	Minimum Level	Maximum Level
Leachate to be treated per Day	NA	40,000L
Total Dissolved Sulphide (as H ₂ S)	NA	220 mg/L
Total Suspended Solids	NA	1,000 mg/L
pH	6.5	8
Solid particle size	NA	15 mm

The Owner will accommodate changes in leachate quality to best of its ability, but any alterations or upgrades required due to leachate parameters that are outside of the range specified above will be at the sole cost of the User.

Performance Indicators

Given the above raw leachate parameters the OLTS will achieve the following performance indicators:

Parameter	Maximum Level
Daily Leachate Treatment Capacity	40,000 L
Total Dissolved Sulphide (as H ₂ S)	<1 mg/L

SCHEDULE B MAINTENANCE

Owner may access the Equipment at the User Site on an as needed base to inspection, maintenance, and repair purposes. Owner will give the User written notice at least 24 hours prior to any visit to the User Site. Maintenance will be conducted on one or more items listed below:

1. Advanced oxidation system,
2. Process fan,
3. Leachate Pump,
4. Leachate feed pump, and
5. Electrical Controls.