



SERVICES AGREEMENT
(Alberta Ag-Plastic. Recycle It! Pilot Program)

THIS SERVICE AGREEMENT (the “**Agreement**”) is effective October 1, 2019 (the “**Effective Date**”) between:

LACOMBE COUNTY

AND **CLEANFARMS INC.**

40403 Range Road 274
Lacombe, AB T4L 2N3

Suite 400 – 10 Four Seasons Place
Etobicoke, ON M9B 6H7

(“**Site Operator**”)

(“**Cleanfarms**”)

(Cleanfarms and the Site Operator each a “**Party**” and collectively the “**Parties**”)

BACKGROUND:

- A. Cleanfarms is a non-profit industry stewardship organization focused on the management and disposal of agricultural waste;
- B. Cleanfarms administers a pilot program for collecting used, rolled grain bags and bagged twine (the “**Materials**”) from farmers and other users (“**Participants**”) for recycling (the “**Program**”); and
- C. Site Operator has expertise in handling such Materials and has a facility located at **12-07-40-25-W4M** (the “**Collection Site**”) that it is prepared to make available for the collection and storage of Materials in accordance with this Agreement.

AGREEMENT:

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. ENGAGEMENT

- 1.1 **Engagement.** Cleanfarms hereby engages Site Operator to provide the Services (as defined below) on a non-exclusive basis on the terms set out in this Agreement, and Site Operator hereby accepts such engagement.
- 1.2 **Term.** This Agreement is effective beginning on the Effective Date and ending on April 1st, 2022, unless terminated earlier in accordance with its terms (the “**Term**”); this Term is effective only under the Program, unless written notice to the contrary is provided by one Party to the other Party in accordance with Section 7.2.

2. CLEANFARMS’ RESPONSIBILITIES

2.1 **Main responsibilities.** Cleanfarms will do the following during the Term:

- (a) post information about each Collection Site on the Cleanfarms website (www.cleanfarms.ca), including opening hours, contact information and other relevant information related to the Program;



- (b) use commercially reasonable efforts to inform Participants of best practices for preparing and dropping off Materials;
- (c) provide Site Operator with operational best practices for Collection Sites (the “**Operational Best Practices**”);
- (d) supply Site Operator with education and promotional tools (site signage, print communications, advertisements, and other materials) for use by the Site Operator in promoting the Collection Site;
- (e) unless otherwise agreed under Section 3.2 or 3.3, load (or arrange for the loading of) Material into trucks at the Collection Site. Grain bags will be loaded on a full-load basis, where a full load is approximately 18 metric tonnes (MT) of Material; Twine will be periodically removed for consolidation as necessary;
- (f) arrange for the transportation and recycling of loaded Materials from Collection Site, unless otherwise agreed;
- (g) provide compensation to Site Operator on a per metric tonne basis as described under Section 4.

2.2 **Performance standard.** Cleanfarms will perform the obligations above in accordance with this Agreement, applicable laws and good industry practice.

2.3 **Final load.** Notwithstanding the references above to loading, transporting and disposing of Materials on a full-load basis, Cleanfarms will, in the course of the final pickup under the terminated Agreement, accept a partial load of Materials. Any Materials accumulated up to termination date, will be removed in accordance under this agreement. Cleanfarms reserves the right to set a collection end date in order to coordinate the final load under this agreement.

3. **SITE OPERATOR'S RESPONSIBILITIES**

3.1 **Main responsibilities.** Site Operator will do the following during the Term (collectively, the “Services”):

- (a) ensure that the Collection Site is open to receive Materials and adequately staffed during the regularly scheduled operating hours agreed to with Cleanfarms;
- (b) accept Materials from Participants at no charge, provided that grain bags are rolled and securely bound and twine is bagged and secured to prevent contamination;
- (c) assist Participants in unloading Materials at the time of drop off;
- (d) visually inspect Materials to ensure materials meet minimum quality requirements as set out in the Operational Best Practices and reject any Materials that do not meet such requirements or that are not Materials accepted under the Program;
- (e) provide a safe area on the Collection Site for unloading and loading Materials;



- (f) provide a well-drained gravel or concrete pad on the Collection Site large enough to store a minimum of 18MT of Material (approximately 120 large rolled grain bags);
- (g) take reasonable steps to ensure such storage area remains free of standing water, minimize contamination (including in the form of dirt, mud and pests) of the storage area and the Materials, and to ensure that the Materials are stored separately from and not commingled with other ag plastics or wastes;
- (h) maintain vector control on the Collection Site, including (but not necessarily limited to) following the recommendations in the Operational Best Practices;
- (i) maintain a Collection Site layout and site conditions that can accommodate a 53' tractor trailer, including leaving room for the required turning radius and ensuring that the applicable access road and loading area can safely support the weight of a fully loaded tractor trailer (35-40 MT);
- (j) cooperate with Cleanfarms in communicating with Participants including providing information about when and how to drop off Materials, as well updates regarding any conditions that may restrict the access to or safe use of the Collection Site (e.g., unusually wet conditions);
- (k) distribute collection bags, promotion and educational materials (P&E) under this Program for Participants; communicate with Cleanfarms to ensure adequate supplies of collection bags P&E are available;
- (l) notify Cleanfarms in a timely manner when a full load of Material (18 MT) is ready to be picked up;
- (m) take loading photos, as directed by Cleanfarms, for loading and shipping, and provide those photos to Cleanfarms;
- (n) dispose of any waste that is left at the Collection Site but that does not constitute Material accepted under the Program;
- (o) obtain and maintain any permits, approvals or licenses required under applicable law in connection with the Services; and,
- (p) Use logos and other communications materials associated with the Program in accordance with standards established by Cleanfarms from time to time.

3.2 **Optional loading services.** Site Operator may, on prior reasonable notice to Cleanfarms, elect to undertake (as part of the Services) the loading of Materials into shipping containers on trucks at the Collection Site (in which case Cleanfarms will no longer be responsible for loading as provided in Section 2.1(e)). Where the Site Operator elects to be responsible and liable for loading activities, it shall do the following (in addition to its other responsibilities under this Agreement):

- (a) provide a loading dock and/or ramp suitable to load a standard 40' container, or 53' trailer on a truck;



- (b) provide loading equipment that is acceptable to Cleanfarms (e.g., a bobcat with grapple attachment) and staff qualified to operate such equipment during a two-hour window scheduled in advance by Cleanfarms; and
- (c) load a minimum of 18 MT of Materials within the scheduled two-hour loading window and use reasonable efforts to maximize the loaded weight.

3.3 Grain bag rollers and other Equipment.

- (a) The Site Operator will be fully responsible for the operation, maintenance and use of the grain bag roller, including transportation and use by any Participants. The Site Operator hereby releases, discharges and remises Cleanfarms from any liability of whatever nature, past, present, or future, which may later develop or be discovered, in any way connected to the grain bag roller. Grain bag rollers are operated at the Site Operators discretion in accordance with Section 3.6.
- (b) If Site Operator has existing equipment or contractor to assist with the baling, loading, or transporting of Materials; loading capabilities or shipping to end markets; additional Services and fair compensation may be provided by Cleanfarms, agreed upon prior to execution.

3.4 **Safety.** In providing the Services, the Site Operator will ensure, as far as it is reasonably practicable for it to do so, the health, safety and welfare of workers engaged in the provision of the Service (or otherwise present while the Services are being provided), of Participants on the Collection Site, and of the public.

3.5 **Performance standard.** Site Operator will perform the Service in accordance with this Agreement, applicable laws, good industry practice, and the Operational Best Practices. For clarity, where applicable law or good industry practice imposes a higher standard than the Operational Best Practices, Site Operator will meet that higher standard.

3.6 **Value-added services.** Site Operator may, in its sole discretion, offer additional services to Participants ("**Value-added Services**"), including but not limited to on-farm pickup of Materials, services to roll grain bags, or equipment rental/borrowing. Site Operator is not required to provide such Value-added Services and is not entitled to any additional compensation from Cleanfarms for providing such Value-added Services. If Site Operator chooses to offer Value-added Services, it will do so in accordance with applicable laws and good industry practice.

4. COMPENSATION

4.1 **Rates.** Cleanfarms will pay the Site Operator for the Services at the following rates:

- (a) \$55/MT of Materials collected under the Program; and
- (b) where the Site Operator elects to undertake loading as part of the Services pursuant to Section 3.2, an additional incentive of \$15/MT for Material loaded by Site Operator.

4.2 **Calculation.** Payments will be calculated based on the net weight (shipped weight) of Materials, determined as the difference between the loaded and empty weight of the container (and truck, as applicable) as measured on commercially operated weigh scales.



- 4.3 **Invoicing and payment.** Cleanfarms will send the Site Operator confirmation of net weight of Materials for each load within two weeks of collecting the load. Site Operator will then issue Cleanfarms an invoice for the compensation amount due under this Section 4. Cleanfarms will pay the undisputed amount of each invoice within 30 days of receipt of invoice.
- 4.4 **Conditions.** All payments are conditional on Site Operator providing the Services in accordance with this Agreement. Where the Site Operator has failed to perform the Services in accordance with this Agreement, Cleanfarms may withhold payment until such failure is corrected.
- 4.5 **Incentive Limit.** Cleanfarms retains the right to limit the amount of incentive paid to the Collection Site Operator and will inform the Site Operator of incentive limits as they are established from time to time.
- 4.6 **Legacy Material.** Any Materials accumulated before October 1, 2019 (Program start date) does not constitute program material and will not be eligible for incentive payments.
- 5. TITLE AND RISK OF LOSS**
- 5.1 **Title.** Title to the Materials will transfer to Cleanfarms when such Materials are loaded into a container for shipping pursuant to Section 2.1(e) or 3.2 as applicable.
- 5.2 **Risk of loss.** As between Cleanfarms and Site Operator, Site Operator will bear the risk of loss of the Materials until title to such Materials transfers to Cleanfarms under Section 5.1, at which time Cleanfarms will assume risk of loss for such Materials.
- 6. LIABILITY**
- 6.1 **Certain risks.** To the maximum extent permitted by applicable laws, Site Operator assumes all liabilities related to or caused by the Materials during the period where Site Operator has possession of the Materials and until title to the Materials transfers to Cleanfarms under Section 5.1, except to the extent such as liabilities are caused by the negligence or wilful misconduct of Cleanfarms.
- 6.2 **Insurance.** Site Operator will obtain (prior to providing any Services) and maintain (throughout the Term) policies of property and general liability insurance on terms that are reasonable and appropriate in the circumstances, and in any case no less than \$2 million in General Liability Insurance and appropriate Alberta WCB coverage for those on site. Such policies (where applicable) will name Cleanfarms as an additional insured. Site Operator will promptly upon request by Cleanfarms provide certificates of insurance evidencing that the policies required by this section are in place.
- 6.3 **Indemnification.** Site Operator agrees to indemnify, defend and hold harmless Cleanfarms on its own behalf and as trustee for its officers, directors, agents, employees, subcontractors, and affiliates from any and all costs, damages, expenses, losses, liabilities, demands, claims, suits, actions, proceedings, judgements, obligations and debts, including court costs, lawyers' fees and disbursements, environmental consulting and remediation costs and experts' fees, arising out of or related to: (a) Site Operator's breach of its obligations under this Agreement; (b) any act or omission by Site Operator or its employees, subcontractors or agent in connection with the Services; (c) the negligence, willful misconduct or fraudulent actions of the Site Operator, its employees, subcontractors or agents resulting in: bodily injury, including death to persons; damage to real or



tangible property; (d) any breach of applicable laws by the Site Operator, its employees, subcontractors or agents; and (e) the grain bag roller provided by the Site Operator pursuant to Section 3.3 (if the Site Operator has elected to make a grain bag roller available) or the transportation or use of such grain bag roller by any person.

7. GENERAL

7.1 **Breach.** Where the Site Operator has failed to perform the Services in accordance with this Agreement, and fails to remedy such non-performance within **10 business days** of receiving notice from Cleanfarms, Cleanfarms may (but is not required to) do any of the following (in addition to its right to withhold payment under Section 4.4 and any other rights it has under this Agreement or otherwise):

- (a) withhold payment until such failure is corrected;
- (b) undertake (or cause its representatives to undertake) such remedial action as Cleanfarms believes is required to rectify the Site Operator's failure, provided that Site Operator will: (i) grant Cleanfarms or its representatives access to the Collection Site for the purposes of undertaking such remedial action and will otherwise cooperate with Cleanfarms or its representatives; and (ii) reimburse Cleanfarms for any costs and expenses incurred by Cleanfarms in taking such remedial measures (and Cleanfarms may set off such costs and expenses against amounts owing to Site Operator);
- (c) refuse to collect Materials, in which case Site Operator will be responsible for disposing of such Materials in accordance with applicable law at its own expense; and/or
- (d) terminate this Agreement with 30 days written notice.

7.2 Termination.

- (a) Cleanfarms may terminate this Agreement on 30 days' written notice to Site Operator.
- (b) Site Operator may terminate this Agreement on 30 days' written notice to Cleanfarms.
- (c) Cleanfarms may terminate this Agreement immediately on notice if the Site Operator: (i) files a voluntary petition in bankruptcy or is adjudged to be in bankruptcy or makes any proposal or requests any arrangement for the benefit of its creditors generally, or if a court takes jurisdiction of either all, or substantially all of its assets, pursuant to proceedings brought under the provision of any provincial or federal law relating generally to the enforcement of creditor's rights, or if a receiver of all or a substantial part of its assets purports to have been appointed, whether or not pursuant to an order of any court of competent jurisdiction and any such taking or appointment is not stayed or vacated by a court of competent jurisdiction within a period of 60 days thereafter; (ii) is substantially divested of its assets or is substantially prevented by any action of any competent authority from providing the Services; or (iii) takes any corporate step, or steps by way of suit or otherwise, leading to the winding up of its affairs or the dissolution of its corporate existence.



- (d) Upon the expiry or termination of this Agreement for any reason, Site Operator will, upon request by Cleanfarms, grant access to the Collection Site for the purposes of removing Material within 90 days of the date that the Agreement expires or is terminated.
- 7.3 **Confidentiality.** Site Operator will not disclose the terms of this Agreement or any proprietary information related to the Program to any third party without the prior written consent of Cleanfarms, unless required to do so by applicable law.
- 7.4 **Subcontracting.** Site Operator may not subcontract any of its obligations under this Agreement without the prior written consent of Cleanfarms, which consent may be arbitrarily withheld. Where Site Operator subcontractors any such obligations, Contractor shall remain at all times the primary obligor under this Agreement and will not be relieved of any of its obligations by reason of having engaged a subcontractor.
- 7.5 **Relationship.** The Parties are independent of each other and neither is an agent, partner, employer/employee or joint venturer of the other Party. This Agreement does not authorize either Party to enter into or to execute any agreement on behalf of the other Party.
- 7.6 **Governing Law.** This Agreement is governed by, and shall be construed and interpreted in accordance with, the laws of Ontario and the federal laws of Canada applicable therein.
- 7.7 **Miscellaneous.** (a) No Party may assign this Agreement without the prior written consent of the other Party. Consent to assignment may be arbitrarily withheld. (b) This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns. (c) No waiver of any term of this Agreement is binding unless it is in writing and signed by all the Parties to this Agreement entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement shall be deemed to be a waiver of that right or remedy. No waiver of any breach or any term of this Agreement shall be deemed to be a waiver of any subsequent breach of that term. (d) No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each person that is a Party to this Agreement at the time of the amendment, supplement, restatement or termination. (e) This Agreement constitutes the entire agreement between the Parties with respect to the Agreement's subject matter and supersedes all prior agreements, negotiations, discussions, representations, warranties, and undertakings, whether written or verbal. (f) If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that term shall not affect: the legality, validity or enforceability of the remaining terms of this Agreement or the legality, validity or enforceability of that term in any other jurisdiction.
- 7.8 **Counterparts.** This Agreement may be executed in one or more counterparts, in facsimile or original form, and when so executed shall form one agreement.



IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

CLEANFARMS INC.

By: _____
Name: Barry Friesen
Title: General Manager

LACOMBE COUNTY

By: _____
Name: Tim Timmons
Title: County Manager