

**CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION**

**BY-LAW # 09-04-378**

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**Being a By-Law to authorizing Council to enter into an agreement with the Ministry of Agriculture, Food and Rural Affairs regarding the Ontario Small Waterworks Assistance Program (OSWAP-2)**

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**WHEREAS** pursuant to the *Municipal Act, 2001* (Ontario), a Council may enter into Agreements;

**AND FURTHER** that the Municipal Council for the Township of Whitewater Region deems it beneficial to enter into agreement with the Ministry of Agriculture, Food and Rural Affairs for the participation in the Ontario Small Waterworks Assistance Program;

**THEREFORE** the Council of the Corporation of the Township of Whitewater Region enacts that:

1. The Township of Whitewater Region hereby authorizes the Mayor and Clerk execute the Ontario Small Waterworks Assistance Program agreement with the Ministry of Agriculture, Food and Rural Affairs (Schedule "A").

**READ** a First, Second and finally passed on the Third Reading this 1<sup>st</sup> day of April, 2009

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CAO/CLERK

**ONTARIO SMALL WATERWORKS ASSISTANCE PROGRAM PART 2 ("OSWAP-2")**

**CONTRIBUTION AGREEMENT**

Ministry of Agriculture, Food and Rural Affairs

File Number: 3102

**THIS AGREEMENT** made in triplicate as of the 1<sup>st</sup> day of April, 2009.

**B E T W E E N:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

as represented by the Minister of Agriculture, Food and Rural Affairs

(referred to herein as the "Ministry")

**A N D:**

**THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION**

(referred to herein as the "Recipient")

**WHEREAS** many small communities face unique challenges with the financial sustainability and affordability of Drinking Water Systems;

**AND WHEREAS** the Government of Ontario is investing in Drinking Water Systems in small municipalities or Local Services Boards (LSBs) in Ontario;

**AND WHEREAS** the purpose of OSWAP-2 is to address immediate operating pressures on Drinking Water Systems in municipalities or LSBs in Ontario serving 1,001 to 5000 residents;

**AND WHEREAS** municipalities or LSBs receiving OSWAP-2 funding may apply it to one or more of four focus areas: planning; direct costs associated with the operation of Drinking Water Systems; regulatory compliance; or retaining expertise to improve Drinking Water Systems;

**AND WHEREAS** municipalities or LSBs receiving OSWAP-2 funding may not apply it to capital costs to construct or to improve Drinking Water Systems;

**AND WHEREAS** municipalities or LSBs receiving OSWAP-2 funding must undertake one or more specified project(s) for improving system management and operations;

**AND WHEREAS** this Agreement establishes the terms and conditions applicable to OSWAP-2 funding;

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

OSWAP-2 Contribution Agreement

This Agreement, including:


- Schedule "A" - General Terms and Conditions
- Schedule "B" - Operational Overview and Budget
- Schedule "C" - Eligible & Ineligible Costs
- Schedule "D" - Additional Provisions
- Schedule "E" - Report

constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

**IN WITNESS WHEREOF**, the Ministry and the Recipient have respectively executed and delivered this Agreement on the date set out above.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

as represented by the Minister of Agriculture, Food and Rural Affairs  
by:

  
Name: The Honourable Leona Dombrowsky Date: 28/5/09  
Title: Minister of Agriculture, Food and Rural Affairs

**THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION:**

by:

  
Name: Donald Rathwell Date: April 1/09  
Title: Mayor

Affix  
Corporate  
Seal

  
Name: Dean Sauriol Date: April 1/09  
Title: Chief Administrative Officer/Clerk

I/we have authority to bind the Recipient

**SCHEDULE "A"**  
**GENERAL TERMS AND CONDITIONS**

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**SECTION 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** When used in this Agreement, including the cover and execution pages and all of the schedules, the following terms shall have the meanings ascribed to them below unless the subject matter or context is inconsistent therewith:

**"Adjust the Financial Assistance"** means an increase, reduction or termination of the amount of the Financial Assistance for the Operational Priority of the Recipient under the OSWAP-2 Program, or any other provincial program(s) or initiative(s), either current or future, as the Ministry may determine and which may require repayment by the Recipient of some or all of the Financial Assistance in an amount to be determined by the Ministry and within a period specified by the Ministry, and **"Adjustments to the Financial Assistance"** shall have a similar meaning.

**"Agreement"** means this agreement, including the cover and execution pages and all of the schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

**"Applicable Laws"** means applicable federal, provincial and municipal laws, all rules, regulations, by-laws, notices, orders and approvals.

**"Budget"** means the budget set out in Schedule "B" of this Agreement.

**"Business Day"** means any day on which Government of Ontario offices generally are open for business in the Province of Ontario.

**"Consultant"** means any consultant, engineer, contractor or other provider of goods or services, as the case may be, retained or selected by the Recipient in relation to the Operational Priority.

**"Contract"** means a contract between a Recipient and a third party at arm's length whereby the latter agrees to provide a product or service in relation to the Operational Priority.

**"Documentation"** includes but is not limited to invoices, receipts, timesheets, quotations, estimates, work authorizations, payroll records, tenders, proposals, payment certificates, correspondence, memoranda, contracts, amendments thereto and other records of costs, expenses and activities related to the Operational Priority.

**"Drinking Water System"** means one or more publicly owned, residential drinking water systems, as the Ministry may determine.

**"Eligible Cost"** means those costs so described in Schedule "C" of this Agreement.

**"End of Financial Assistance Date"** means March 31, 2012.

OSWAP-2 Contribution Agreement

**"Event of Default"** has the meaning given to it in Section 14.1 of Schedule "A" of this Agreement.

**"Expiration Date"** means March 31, 2013.

**"Financial Assistance"** means the funds provided by the Ministry to the Recipient pursuant to this Agreement.

**"Fiscal Year"** means the fiscal year of the Recipient.

**"Generally Accepted Accounting Principles"** means Canadian Generally Accepted Accounting Principles as adopted by the Canadian Institute of Chartered Accountants.

**"Government of Ontario"** means Her Majesty the Queen in Right of Ontario.

**"Indemnified Parties"** means Her Majesty the Queen in Right of Ontario, Her Ministers, appointees, directors, officers, employees and agents.

**"Ineligible Costs"** means those costs so described in Schedule "C" of this Agreement.

**"Maximum Financial Assistance"** means the utmost amount of Financial Assistance provided by the Ministry to the Recipient during the Term of this Agreement, subject to any Adjustments to the Financial Assistance.

**"Ministry"** means the Ministry of Agriculture, Food and Rural Affairs or such other Ministry as may be responsible for the operation and administration of OSWAP-2.

**"Operational Priority"** means the purposes to which the Recipient shall apply the Financial Assistance as described in Schedule "B" hereto.

**"OSWAP-2"** means the Ontario Small Waterworks Assistance Program Part 2.

**"Recipient"** has the meaning given to it on the cover page of this Agreement.

**"Report"** has the meaning given to it in Section 6.1 of Schedule "A" of this Agreement.

**"Term"** has the meaning given to it in Section 2.1 of Schedule "A" of this Agreement.

1.2 **Herein, etc.** The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular schedule, article, section, paragraph or other subdivision of this Agreement. The words "include", "includes" and "including" shall not denote an exhaustive list.

1.3 **Currency.** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

1.4 **Statutes.** Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the

effect of supplementing or superseding such statute or regulations.

- 1.5 **Gender, singular, etc.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.
- 1.6 **Ministry Approvals.** Any reference to, or requirement for, the approval of the Ministry in this Agreement or in any schedule hereto shall be deemed to require the prior and express written approval of the Ministry.

## SECTION 2 TERM OF AGREEMENT

- 2.1 **Term.** Subject to any extension or termination of this Agreement and the survival of any of the provisions of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date set out on the first page of this Agreement, up to and including the Expiration Date.
- 2.2 **End of Financial Assistance Date.** Notwithstanding anything in this Agreement, the Ministry shall not be obligated to provide Financial Assistance pursuant to this Agreement after the End of Financial Assistance Date.

## SECTION 3 ELIGIBLE COSTS

- 3.1 **Eligible Costs.** The Recipient shall use the Financial Assistance for costs and expenses related to the Operational Priority in accordance with Schedule "B" and Schedule "C", unless otherwise expressly approved in writing by the Ministry.
- 3.2 **Discretion of Ministry.** Subject to Section 3.1 of Schedule "A", the Ministry may determine in its sole discretion whether the Recipient may use the Financial Assistance for any cost or expense not listed in Schedule "B" or Schedule "C" to this Agreement. In the event that the Recipient seeks approval from the Ministry for the use of Financial Assistance for any cost or expense not listed in Schedule "B" or Schedule "C" to this Agreement, the Recipient shall submit a written request to the Ministry with its Report and in advance of any such use of the Financial Assistance.
- 3.3 **Retention of Receipts.** The Recipient shall retain all Documentation, related to the Operational Priority and the Recipient shall maintain and make available to the Ministry upon the Ministry's request such Documentation for audit or such other purposes as the Ministry may require for a period of six years from the conclusion of the term of this Agreement.
- 3.4 **Ineligible Costs.** Notwithstanding any other provision of this Agreement, the Recipient shall not use the Financial Assistance for any purpose that is specifically excluded from the Operational Priority in accordance with Schedule "B" or is ineligible for Financial Assistance pursuant to Schedule "C" of this Agreement ("Ineligible Costs").
- 3.5 **Clarification.** For clarity, the Recipient hereby expressly acknowledges and agrees that the inclusion of a cost or expense in Schedule "B" does not necessarily mean that such

cost or expense is an Eligible Cost. Where there is a conflict between the Schedule "B", s Section 3 (Eligible Costs) and Schedule "C", the provisions of this Section 3 (Eligible Costs) shall prevail.

#### **SECTION 4 FINANCIAL ASSISTANCE**

- 4.1 *Payment & Use of Financial Assistance.*** Subject to the terms and conditions of this Agreement, the Ministry shall provide Financial Assistance on an annual basis for the Term of this Agreement to the Recipient in the amounts set out in Schedule "B". The Recipient shall use the Financial Assistance that it receives in a Fiscal Year in that Fiscal Year. In the event that the Recipient does not use all of the Financial Assistance that the Recipient receives in a Fiscal Year, the Recipient may request in writing from the Ministry as part of the Recipient's Report approval to use the Financial Assistance in the next Fiscal Year, provided that all Financial Assistance shall be used by December 31, 2012.
- 4.2 *Funds advanced.*** The Financial Assistance, including all interest earned thereon, shall be deemed to be the property of the Ministry. The Recipient shall hold the Financial Assistance in trust for the Ministry in an interest bearing account pending payment of Eligible Costs during a Fiscal Year. The Recipient shall use any interest accruing on the Financial Assistance for Eligible Costs and such interest shall be added to and deemed to be part of the Maximum Financial Assistance.
- 4.3 *Maximum Financial Assistance.*** In any event, the Ministry shall not provide Financial Assistance to the Recipient that is greater than the sum of all Financial Assistance as set out in Schedule "B" hereto, inclusive of interest accrued in accordance with Section 4.2 of Schedule "A".
- 4.4 *Notice to the Ministry.*** The Recipient shall immediately notify the Ministry if the Recipient becomes aware of information, errors, omissions or other circumstances that affect the Operational Priority or the Financial Assistance.
- 4.5 *Reduction or Termination of Financial Assistance.*** The Ministry may reduce or terminate the Financial Assistance where, in the Ministry's sole discretion:
- (a) the Recipient's actual costs for the Drinking Water System in any Fiscal Year of the Term of the Agreement are less than the Financial Assistance that the Ministry provides for that Fiscal Year;
  - (b) the Recipient notifies the Ministry that the Recipient does not intend to carry out, perform or achieve the Operational Priority in whole or in part as specified in Schedule "B"; or
  - (c) new information, errors, omissions or other circumstances affect the Operational Priority or Financial Assistance.
- 4.6 *Withholding payment.*** Regardless of any other remedy available to the Ministry, the Ministry may, in its sole discretion, withhold any payment of Financial Assistance where

the Recipient is in default of any provisions of this Agreement or any Applicable Laws, including but not limited to the Recipient's obligation to provide any Report or other information to the Ministry.

- 4.7 **Insufficient funds provided by the Legislature.** Despite the preceding paragraphs and pursuant to the provisions of the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, if the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is obligated to make under the Agreement, the Ministry shall not be obligated to make the payment.

## SECTION 5 USE OF FINANCIAL ASSISTANCE

- 5.1 **Recipient fully responsible.** The Recipient shall be fully responsible for undertaking, implementing and completing the Operational Priority as described in Schedule "B". Where the Operational Priority is dependent on Consultants, the Recipient shall be fully responsible for obtaining any contracts, guarantees, security or other assurances that it may require from any Consultant in relation to the Operational Priority.
- 5.2 **Ministry not responsible for implementation.** The Ministry shall not be responsible in any way whatsoever for undertaking, implementing or completing the Operational Priority, the operation of the Drinking Water System or the provision of drinking water.
- 5.3 **Ministry not responsible for costs, etc.** The Ministry shall not be responsible for any claims, proceedings or judgments arising from any matter in relation to the Drinking Water System, Operational Priority or the provision of Financial Assistance to the Recipient.
- 5.4 **Behaviour of Recipient.** The Recipient shall carry out the Operational Priority in an economical and businesslike manner, with appropriate due diligence, in accordance with this Agreement and in particular, but without limitation, in accordance with Schedule "B".
- 5.5 **Policies.** The Ministry may from time to time establish and, upon receipt of notice, the Recipient shall comply with policies and processes with respect to OSWAP-2, including but not limited to the use of Financial Assistance.
- 5.6 **Competitive process.** The Recipient shall acquire all goods and services required for the Operational Priority through transparent, competitive processes that promote the best value for money.
- 5.7 **Trade Agreements.** If the Recipient is subject to any provincial or federal trade agreements to which the Government of Ontario is a party, the Recipient shall comply with the applicable requirements of such trade agreements. In particular, and without limitation, if the Recipient is subject to Annex 502.4 of the Agreement on Internal Trade, the Recipient shall comply with all of the applicable requirements of that Annex. In the event of any conflict between the requirements of Sections 5.6 of Schedule "A" of this Agreement and the requirements of this Section 5.7, the requirements in this Section 5.7 shall prevail.



**5.8 Contracts.** In entering into any Contract in relation to the Operational Priority, the Recipient shall:

- a) ensure that terms and conditions are consistent, and do not conflict, with this Agreement;
- b) incorporate relevant provisions of this Agreement;
- c) conform to all policies and procedures issued by the Ministry for the OSWAP-2 Program;
- d) subject to Section 5.5, 5.6 and 5.7 of Schedule "A" of this Agreement, award and manage Contracts in a way that is transparent, competitive and consistent with value for money principles
- e) require that the parties thereto comply with all Applicable Laws; and
- f) authorize the Ministry to gather data, perform audits and monitor the Operational Priority as the Ministry in its sole discretion may determine.

## **SECTION 6 REPORTING REQUIREMENTS**

**6.1 Reports.** The Recipient shall submit a Report in the form set out in Schedule "E" or such other form as the Ministry may require, together with all supporting Documentation, for the Ministry's approval, cost review and audit on or before thirty days following the end of the Fiscal Year in which the Ministry provides Financial Assistance to the Recipient or such later date as the Ministry may in writing allow. The Report shall include:

- (a) A description of the Eligible Costs related to the Operational Priority;
- (b) an explanation and accounting of any Financial Assistance that was not expended in the Fiscal Year for which the Financial Assistance was provided;
- (c) details of any changes in the Operational Priority anticipated in the upcoming Fiscal Year; and
- (d) such further information as the Ministry may from time to time advise.

**6.2 Additional Reports.** Notwithstanding Section 6.1 (Reports), the Recipient shall submit, upon request by the Ministry, any additional Documentation or report that the Ministry may require from time to time.

## **SECTION 7 RECORDS AND AUDIT**

**7.1 Separate records.** The Recipient shall maintain separate records for the Operational Priority and keep all records and Documentation for six (6) years from the end of the Term of this Agreement. Upon the Ministry's request, the Recipient shall submit to the

## OSWAP-2 Contribution Agreement

Ministry all records and Documentation relating to the Operational Priority. The Recipient shall maintain all records and Documentation in accordance with good business practices including but not limited to Generally Accepted Accounting Principles as applicable.

- 7.2 Provide records to Ministry.** The Recipient shall provide to the Ministry, upon request and at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses), all records and Documentation of the Recipient and its Consultants relating to the Operational Priority or the OSWAP-2 Program, or any other provincial program(s), as may be required by the Ministry. The Recipient shall provide such material to the Ministry and other ministries of the Government of Ontario as may be requested from time to time, all in a form and manner satisfactory to the Ministry and other ministries of the Government of Ontario, as applicable.
- 7.3 External auditor.** The Ministry may require the assistance of an external auditor to carry out an audit of records and Documentation referred to in Sections 7.1 and 7.2 of Schedule "A" of this Agreement. If so, the Recipient shall, upon the Ministry's request, retain an external auditor acceptable to the Ministry. If the Ministry reasonably believes that a Report or the Documentation contains material inaccuracies, then the external auditor shall be retained at the Recipient's sole expense. Otherwise, in the Ministry's sole discretion, the Ministry and the Recipient may share the cost of the external auditor. The Recipient shall require any auditor who conducts an audit pursuant to this section of the Agreement or otherwise to provide a copy of the audit report to the Ministry for its consideration at the same time that the audit report is given to the Recipient.
- 7.4 Review.** The Recipient shall allow the Ministry, its agents and employees and the Ontario Provincial Auditor's Office access to the Recipient's staff and entry to the Recipient's premises at all reasonable times to: (i) inspect or review anything related to the Operational Priority; or (ii) perform any cost review, audit or assessment of the Operational Priority as the Ministry may require.
- 7.5 Information condition precedent for payment.** The Ministry may, in its sole discretion, require the Recipient to comply with any requirement of this Section 7 (Records and Audit) as a condition precedent to any payment in relation to the Operational Priority or any other Operational Priority(ies) of the Recipient under the OSWAP-2 Program, or any other provincial program(s) either current or future, and if the Recipient fails to comply with any requirement of this Section 7 (Records and Audit), notwithstanding any other provision of this Agreement, the Ministry may, in its sole discretion, reduce or terminate the Financial Assistance for the Operational Priority.

## SECTION 8 OVERPAYMENT

- 8.1 Repayment of Financial Assistance.** The Recipient shall repay to the Ministry, upon receipt of a written demand and within a period specified by the Ministry, that portion of Financial Assistance that:

(a) exceeds the Maximum Financial Assistance, as the Ministry may determine;

- (b) is used for a purpose other than that stated in or allowed by the terms of this Agreement; or
- (c) is not used by the earlier of December 31<sup>st</sup> of the year following the Fiscal Year in which the Financial Assistance is provided or December 31, 2012;

Any Financial Assistance paid by the Ministry to the Recipient shall not be construed as a final determination of the Maximum Financial Assistance until the Ministry has received and approved the Recipient's Final Report.

**8.2 Deduction of overpayment.** The Ministry may deduct any overpayment of Financial Assistance in a Fiscal Year pursuant to Section 8.1 of Schedule "A" from any Financial Assistance payable in a subsequent Fiscal Year or on any other Operational Priority of the Recipient under the OSWAP-2 Program or any other provincial program(s) either current or future. Any overpayment made by the Ministry or any other ministry of the Government of Ontario under the OSWAP-2 Program or any other provincial program(s) either current or future may in turn be deducted from any Financial Assistance payable for the Operational Priority.

**8.3 Interest on overpayment.** The Ministry reserves the right to demand interest on any overpayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then current interest rate charged by the Government of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.

## SECTION 9 INSURANCE

**9.1 Insurance.** The Recipient represents and warrants that it has, and shall maintain in full force and effect for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence. The commercial general liability insurance policy shall include the following:

- (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (ii) a cross liability clause;
- (iii) contractual liability coverage; and
- (vii) a 30 day written notice of cancellation, termination or material change.

- 9.2 Certificates of Insurance.** The Recipient shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in Section 9.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

## SECTION 10 INDEMNITY

- 10.1 Ministry not liable.** In no event shall the Ministry be liable for:

- a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to this Agreement or the Operational Priority; nor
- b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to this Agreement or the Operational Priority.

- 10.2 Recipient to indemnify.** The Recipient agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her appointees, directors, officers, employees and agents from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses) and for any and all liability for damages to property and injury to persons (including death) which Her Majesty the Queen in Right of Ontario, Her appointees, directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees, agents and Consultants, or by a third party, and any of its officers, employees, servants or agents; (b) the ongoing provision, operation, maintenance and repair of the Recipient's Drinking Water System; or (c) any omission or other wilful or negligent act of the Recipient, a third party, or their respective employees, officers, servants or agents.

- 10.3 Further Indemnity.** The Recipient further agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her appointees, directors, officers, employees and agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which Her Majesty the Queen in right of Ontario, Her appointees, directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party, and any of its officers, employees, servants or agents; (b) the ongoing provision, operation, maintenance and repair of the Recipient's Drinking Water System; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

**SECTION 11  
CONFLICT OF INTEREST AND CONFIDENTIALITY**

- 11.1 **No conflict of interest.** The Recipient and its Consultants and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole opinion of the Ministry) with the provision of services under this Agreement. The Recipient acknowledges and agrees that it shall be a conflict of interest for the Recipient, its Consultants and any of their respective advisors, partners, directors, officers, employees, agents and volunteers to use confidential information of Her Majesty the Queen in right of Ontario that is relevant to the Operational Priority or otherwise where the Ministry has not expressly authorized such use in writing. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Recipient is able to benefit financially from the Operational Priority or where such a person owns or has an interest in an organization that is carrying out work related to the Operational Priority.
- 11.2 **Disclose potential conflict of interest.** The Recipient shall disclose to the Ministry without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 11.3 **Freedom of Information and Protection of Privacy Act.** The Recipient acknowledges that the Ministry is bound by the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

**SECTION 12  
COMMUNICATION AND RECOGNITION**

- 12.1 **Acknowledge the support of the Ministry.** The Recipients shall acknowledge the support of the Ministry and OSWAP-2 in such form as the Ministry may approve.
- 12.2 **OSWAP-2 may publicize information.** The Recipient acknowledges and agrees that the Ministry may publicize information regarding OSWAP-2 and the Recipient, including but not limited to the Recipient's name, description of the Recipient's Operational Priority and total amount of Financial Assistance.
- 12.3 **Recipients views do not necessarily represent those of the Ministry.** The Recipients shall indicate in any acknowledgement pursuant to Section 12.1 of Schedule "A" that the views expressed therein are the views of the Recipients and do not necessarily reflect those of the Ministry or OSWAP-2.

**SECTION 13  
COVENANTS, REPRESENTATIONS AND WARRANTIES**

- 13.1 **Covenants, representations and warranties.** The Recipient covenants, represents and warrants to the Ministry, and acknowledges and agrees that the Ministry relies on the Recipient's covenants, representations and warranties contained herein in entering

into this Agreement and providing Financial Assistance, that:

- a) It has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- b) it validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement;
- c) where applicable, it has passed any by-laws or resolutions required to undertake the Operational Priority;
- d) it has the experience and ability to carry out the Operational Priority;
- e) other than the Financial Assistance being provided pursuant to this Agreement, the Recipient has not and will not use any funds received from Her Majesty the Queen in Right of Ontario or a Crown Agency towards any aspect of the Operational Priority;
- f) all information provided in the Recipient's Expression of Interest is and remains true, correct and complete in every respect; and
- g) it provides its residential Drinking Water System(s) to a total population of 1,001 to 5000 residents.

**13.2 Representations and warranties true condition precedent for payment.** Upon the Ministry's request, the Recipient shall provide the Ministry with proof of the covenants, representations and warranties referred to in this Section 13 Covenants, Representations and Warranties. It is a condition precedent to any payment under this Agreement that the covenants, representations and warranties under Section 13.1 of Schedule "A" are true and correct at the time of any payment of Financial Assistance and that the Recipient is not in default any terms or conditions of this Agreement. Where the Recipient's covenants, representations and warranties are not true and correct, the Ministry may, in its sole discretion, reduce or terminate the Financial Assistance for the Operational Priority.

**SECTION 14**  
**DEFAULT, ENFORCEMENT AND TERMINATION**

**14.1 *Event of Default.*** Each and every one of the following events is an "Event of Default":

- a) if in the opinion of the Ministry, the Recipient fails to comply with any term or condition contained in this Agreement;
- b) if in the opinion of the Ministry any covenant, representation or warranty made by the Recipient in this Agreement is materially untrue in any respect;
- c) if an order or resolution is made or passed for the winding up, liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on operations;
- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement, without the prior written consent of the Ministry;
- e) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- f) if in the opinion of the Ministry, a material adverse change occurs such that the viability of the Recipient as a going concern is threatened;
- g) if in the opinion of the Ministry, the Recipient ceases to own, provide or operate a Drinking Water System;
- h) if the Recipient is in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the sole discretion of the Ministry, are beyond the control of the Recipient;
- i) if the Recipient has submitted false or misleading information or a false or misleading Report to the Ministry;
- j) if the Recipient and/or any of its Consultants and/or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Section 11 (Conflict of Interest and Confidentiality) of Schedule "A";  
or;

**14.2 *Waiver.*** The Ministry may, at any time, waive any Event of Default provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the Ministry's right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from the Ministry.

**14.3 Remedies on default.** Notwithstanding any other rights which the Ministry may have under this Agreement or at law, if an Event of Default has occurred, the Ministry shall have the following remedies, provided only that in the case of an Event of Default which, in the opinion of the Ministry in its sole discretion, is curable, the Ministry has first given written notice of the Event of Default to the Recipient and the Recipient has failed to correct the Event of Default within 30 days or such longer period of time as the Ministry may consent to in writing:

- a) the Ministry shall have no further obligation to provide any Financial Assistance;
- b) the Ministry may, at its option, terminate this Agreement immediately and may, in its sole discretion, reduce or terminate the Financial Assistance. The Recipient shall immediately pay to the Ministry any Financial Assistance that the Recipient has received from the Ministry but has not expended as of the date of termination together with interest on the Financial Assistance at the then-current interest rate charged by the Government of Ontario on accounts receivable from the date that the Ministry paid the Financial Assistance to the Recipient for the Fiscal Year in which termination occurs to the date of termination; and
- c) the Ministry may avail itself of any other legal remedy.

**14.4 Additional remedies.** In addition to the remedies described in Section 14.3 of Schedule "A", the Ministry may commence any legal action or proceeding without any additional notice under this Agreement. The rights and remedies of the Ministry hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to the Ministry.

**14.5 Termination without cause.** Notwithstanding anything other provision contained herein, the Ministry reserves the right to terminate this Agreement without cause upon such conditions as the Ministry may require, with a minimum of thirty (30) days written notice to the Recipient. If the Ministry terminates this Agreement prior to its expiration, the Ministry, subject to all of the Ministry's rights under this Agreement, including, without limitation, the Ministry's right to make Adjustments to the Financial Assistance prior to its expiration, shall only be responsible for the payment of Financial Assistance in the then current Fiscal Year.

## SECTION 15 NOTICE

**15.1 Notice.** Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or mailed by first class registered mail, postage prepaid or by transmittal by facsimile, telecopy, email or other electronic means of communication addressed to the respective parties as follows at the addresses set out in Schedule "D" attached hereto or to such other person, address, facsimile number, telecopy number or email address as either party may from time to time notify the other in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof. Any demand, notice or communication made or given by facsimile, email or other electronic means of



communication, if made or given at a time when it would be received by the recipient during its normal business hours on a Business Day, shall be deemed to be received at the time it is sent; otherwise, such electronic communication shall be deemed to be received on the first Business Day following the transmittal thereof. Any demand, notice or communication mailed by registered mail shall be deemed to have been received on the third Business Day following the day on which it was mailed.

- 15.2** **Representatives.** The individuals identified pursuant to Section 15.1 above will, in the first instance, act as the Ministry's or the Recipient's representative, as the case may be, for the purpose of this Agreement.

#### **SECTION 16 CONTRIBUTION ONLY**

- 16.1** **Contribution.** This Agreement is a contract for financial assistance only and nothing in it or done pursuant to it, shall be construed as, constitute or deem the Recipient to be the Ministry's agent, employee, partner or joint venturer.

#### **SECTION 17 MISCELLANEOUS**

- 17.1** **Terms binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents and Consultants shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein.
- 17.2** **Time of the essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision. The Ministry shall not be liable for any liquidated damages as a result of working days extensions.
- 17.3** **Successors and assigns.** This Agreement shall endure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4** **No waiver.** The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 17.5** **Division of Agreement.** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 17.6** **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

OSWAP-2 Contribution Agreement

- 17.7 Survival.** The following schedules, sections and provisions of this Agreement shall survive the expiration or early termination hereof: Sections 4.2, 4.4 and 4.5 (Financial Assistance), Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment), Section 10 (Indemnity), Section 11 (Conflict of Interest and Confidentiality), Section 12 (Communication and Recognition), Section 13 (Covenants, Representations and Warranties) and Section 14 (Default, Enforcement and Termination) of Schedule "A".
- 17.8 No assignment.** This Agreement shall not be assigned by the Recipient. The Ministry may assign this Agreement on written notice to the Recipient.
- 17.9 No amendment.** This Agreement shall not be varied or amended except by agreement in writing, dated and signed on behalf of the Ministry and the Recipient.
- 17.10 Consultants.** The Ministry acknowledges that, in connection with carrying out the Operational Priority, the Recipient may engage one or more Consultants, employees or agents. The Recipient shall have the sole authority and responsibility for such Consultants, employees, agents, including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's Consultants, employees and agents and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.
- 17.11 Cooperation.** The Ministry and the Recipient agree to cooperate with one another and will be frank, candid and timely when dealing with one another and will endeavour to facilitate the implementation of this Agreement.
- 17.12 Data.** The Recipient agrees that the Ministry may, in its sole discretion, collect, use and disclose any data required under this Agreement, including but not limited to data related to water.
- 17.13 Priority.** Where there is a conflict between one or more of the schedules of this Agreement, the following order of priority shall apply: Schedule "A", Schedule "C", Schedule "B" and all other schedules.

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE "B"**  
**OSWAP-2**  
**RECIPIENT'S OPERATIONAL PRIORITY**

**DESCRIPTION OF OPERATIONAL PRIORITY:**

The Township of Whitewater Region will incur expenditures in the operation of their Drinking Water System related to planning work, direct costs, retaining expertise to improve water services, improving energy efficiency of water facilities, a water meter program, preparing business plans/full cost reports/capital plans, operator training, and/or integrating administration with other municipal departments/local utilities.

**FINANCIAL ASSISTANCE**

Ontario's Maximum Financial Assistance: \$159,959.68

**Proposed Payment Schedule**

<b>Calendar Year</b>	<b>Financial Assistance</b>
<b>2009</b>	\$39,989.92
<b>2010</b>	\$39,989.92
<b>2011</b>	\$39,989.92
<b>2012</b>	\$39,989.92
<b>Total</b>	\$159,959.68

**SCHEDULE "C"**  
**ELIGIBLE AND INELIGIBLE COSTS**

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**C.1 ELIGIBLE COSTS**

C.1.1 The Recipient shall use Financial Assistance for costs that, in the opinion of the Ministry, are:

- a) properly and reasonably incurred by the Recipient and no other person; and
- b) necessary for the implementation of the Operational Priority as described in Schedule "B".

C.1.2 Subject to Section C.1.1 of the Schedule, the Recipient shall use all Financial Assistance for costs directly related to operating its Drinking Water System associated with planning, direct costs, regulatory compliance and retaining expertise. Eligible Costs include but are not limited to the following:

- a) Costs incurred by the Recipient on or after January 1, 2009 but before December 31, 2012;
- b) Costs incurred by the Recipient for employees, professionals and technical personnel as well as those for consultants and contractors specifically engaged to operate the Recipient's Drinking Water System, including wages and benefits, overhead and administrative costs;
- c) Materials, supplies, utilities and costs of testing and sampling incurred by the Recipient directly related to the operation of the Recipient's Drinking Water System;
- d) Costs for software, hardware and any other IT products incurred by the Recipient to operate its Drinking Water System;
- e) Staff training costs incurred by the Recipient, including training registration fees, travel expenses (airline/train ticket, car rental including the cost of gasoline, mileage if staff members' own car is used, hotel stays and meals (excluding alcohol) while attending a conference/seminar) and any materials that may be required to be purchased in advance of attending a training session, such as books and/or training manuals specifically requested by the training seminar organizer, related to the operation of the Recipient's Drinking Water System;
- f) Costs incurred by the Recipient directly related to data collection, modelling, research and data management for the Recipient's Drinking Water System; and
- g) Any other costs as approved by the Ministry.

**C.2 INELIGIBLE COSTS**

C.2.1. Notwithstanding any other provision in this Agreement, Financial Assistance shall not be used for any of the following:

- a) Any cost or expense incurred by the Recipient before January 1, 2009;
- b) Any cost or expense incurred by the Recipient after December 31, 2012;
- c) Lowering water rates;
- d) Supporting municipal / LSB services, other than those related to the operation of the Recipient's Drinking Water System;
- e) Salaries or other benefits of any employees of the Recipient that are not related to the operation of its Drinking Water System;

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- f) Any travel, gasoline, meal, hotel, material, education and other costs borne by the Recipient that are not directly related to the operation of the Drinking Water System;
- g) Personal expenses and alcohol;
- h) Taxes for which the Recipient or a third party is eligible for a tax rebate and all other costs or expenses eligible for rebates (e.g., GST);
- i) Operating costs of the Recipient's Drinking Water System funded by any other Government of Ontario grant program;
- j) Financing charges and interest costs on debt;
- k) Capital costs, including costs of capital leasing of equipment by the Recipient;
- l) Legal fees; or
- m) Matching any funding or grant provided under any Government of Ontario program, including but not limited to the Canada-Ontario Municipal Rural Infrastructure Fund - Asset Management Program (COMRIF - AMP).

**SCHEDULE "D"**  
**ADDITIONAL PROVISIONS**

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The Ministry and the Recipient agree to the following additional provisions:

1. Further to Section 15 of Schedule "A" hereto, notice can be given at the following addresses:

(a) If to the Ministry:

Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 4th Floor  
Guelph, ON  
N1G 4Y2

Phone: 1-866-306-7827  
Fax: (519) 826-4336

Attention: Dino Radocchia, Manager

(b) If to the Recipient:

Township of Whitewater Region  
44 Main Street  
PO Box 40  
Cobden, Ontario  
K0J 1K0

Phone: 613-646-2282  
Fax: 613-646-2283  
E-Mail: dsauriol@whitewaterregion.ca

Attention: Dean Sauriol, Chief Administrative Officer/Clerk

**SCHEDULE "E"  
ANNUAL REPORT**



**Ontario Small Waterworks Assistance Program Part 2 (OSWAP-2) Annual Report**

Municipality/Local Services Board:		
Telephone:	Fax:	Email:
For the Period: January 1 <sup>st</sup> to December 31 <sup>st</sup>		Enter grant year:
<b>Annual OSWAP-2 allocation received by the municipality/local services board:</b> (See Schedule B of your Contribution Agreement.)		\$

Authorized Official	Name:	Date:
	Title	
I acknowledge and confirm that the information contained within this report is accurate and complete and that funding is dependant on the Province's review and approval of this report:		
Signature		

**Please complete the following table (as applicable). NOTE: Total OSWAP-2 funding spent on operational priorities should equal annual OSWAP-2 allocation.**

Operational Priority:	OSWAP-2 Funding Allocation Spent (\$):	Description of Eligible Costs Funded by OSWAP-2:
<b>A. Operating Focus Areas</b>		
Planning Work		
Direct Costs		
Regulatory Compliance		
Retaining Expertise		

Operational Priority:	OSWAP-2 Funding Allocation Spent (\$):	Description of Eligible Costs Funded by OSWAP-2:
<b>B. Specific Projects</b>		
Undertaking a leakage audit / maintenance to reduce leakage		
Demand management program		
Improving energy efficiency of water facilities		
Water meter program		
Preparing business plans / full cost reports / capital plans		
Operator training		
Integrating administration		
Implementing shared service agreements with neighbouring communities		
Preparing an asset management plan / implementing broader asset management practices		

If your municipality/LSB did not spend its entire annual OSWAP-2 allocation for this year, please explain how you propose to use the remaining funds next year:

If applicable, please describe any significant changes to the municipality's/LSB's operational priorities:



**To the best of your knowledge, please answer the following questions regarding water services:**

How many residential customers (active accounts) are served by your municipality/LSB?	How many industrial, commercial, and institutional (IC&I) customers (active accounts) are served by your municipality/LSB?
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<b>In [year], how much water was:</b>			
Used by residents	Used by IC&I	Used by non-revenue sources	Lost due to leakage

Please indicate units of measurement used (e.g., cubic meters, gallons)

<b>In [year], how much water revenue was:</b> Collected from residents	Collected from IC&I
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In [year], what were the total expenditures on electricity for the provision of water services?	Does your municipality/LSB have a long-term capital plan for water services?
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What percentage of your residential customers are metered?	What percentage of your IC&I customers are metered?
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**Conservation and Efficiency-Specific Information**

Is your municipality undertaking universal metering of all its customers on municipal water supply?

Does your municipality/LSB have a leak detection and repair program?

Does your municipality/LSB have other water conservation/efficiency programs?  
(e.g., public information and education programs, rebates to replace existing fixtures with more water-efficient fixtures, lawn watering restrictions)