

**CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION**

**BY-LAW # 11-05-485**

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**Being a By-Law to authorize the Mayor and CAO to execute a with the Ministry of Public Works and Government Services.**

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**WHEREAS** pursuant to the Municipal Act, R.S.O. 1990 Chapter M.45, as amended, a Council may enter into agreements;

**AND FURTHER** that the Municipal Council for the Township of Whitewater Region deems it necessary to enter into an agreement with the Ministry of Public Works and Government Services regarding the execution of an Accreditation of the Operating Authority of Municipal Drinking Water System Agreement.

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

1. The Head of Council and the CAO are hereby authorized to execute this Accreditation of the Operating Authority of Municipal Drinking Water System Agreement between the Ministry of Public Works and Government Services and The Township of Whitewater Region as in Schedule A attached hereto.

**READ** a First, Second and finally passed on the Third Reading this 4<sup>th</sup> day of May, 2011

  
\_\_\_\_\_  
MAYOR

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

**THIS AGREEMENT** made

**BETWEEN** Her Majesty the Queen in right of Canada, as represented by the Minister of Public Works and Government Services acting through the Canadian General Standards Board (hereinafter referred to as "Canada")

**AND** The Corporation of the Township of Whitewater Region, a corporation incorporated under the laws of the Province of Ontario, Canada, and having its head office in Cobden, Ontario (hereinafter "the Operating Authority")

**AGREEMENT FOR THE ACCREDITATION OF THE OPERATING AUTHORITY OF MUNICIPAL DRINKING WATER SYSTEMS**

**WHEREAS** Canada, as represented by the Minister of Public Works and Government Services, has made the Canadian General Standards Board (hereinafter "the CGSB") responsible for the administration of certain accreditation programs;

**AND WHEREAS** the CGSB has further to its mandate established an accreditation program for the purpose of ascertaining whether a party is capable of meeting the requirements under the Accreditation Program for Operating Authorities of Municipal Drinking Water Systems (hereinafter "the Accreditation Program");

**AND WHEREAS** the Operating Authority wishes to participate in and be listed under the Accreditation Program with respect to those of its Drinking Water Systems that are listed in the attached Schedule "B";

**AND WHEREAS** the Operating Authority has made an Application to Canada representing that its services meet the requirements of Ontario's Drinking Water Quality Management Standard (hereinafter "the Standard") as well as the Program Handbook for the Accreditation of Operating Authorities — Municipal Drinking Water Systems (hereinafter "the Handbook");

**AND WHEREAS** Canada is prepared to list the Operating Authority under the Accreditation Program upon the terms and conditions and for the consideration set out herein;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, Canada and the Operating Authority (hereinafter collectively "the Parties") agree as follows:

1. This non-exclusive Accreditation shall be for a term of three (3) years commencing the 6th day of October 2010 and expiring on the 6th day of October 2013.
2. The following listed documents form part of and are incorporated into this Agreement as fully and effectively as if they were set forth at length in this Agreement:
  - a. These articles of Agreement;
  - b. Schedule "A" — "Operating Authority's Application for Accreditation";
  - c. The Handbook
  - d. Schedule "B" — "Operating Authority's Drinking Water Systems and Facilities".

In the event of any discrepancies, inconsistencies or ambiguities in the wording of these documents, the wording of the document that first appears on the above list shall prevail.

In the event that a document on the above list is internally inconsistent or ambiguous, the wording that first appears in the document shall prevail over any subsequent wording in the document.

#### **Application**

3. Canada declares, and the Operating Authority acknowledges, that Canada's decision to enter into this Agreement is based in part upon the Operating Authority's representations and undertakings that are set out in the Operating Authority's Application for Accreditation submitted by the Operating Authority.

#### **Listing in the Accreditation Program**

4. During the term of this Agreement and subject to the conditions set out herein, Canada shall list the Operating Authority as a participant in the Accreditation Program provided that the Operating Authority satisfies on an ongoing basis the terms, conditions and other requirements of the Agreement of the Accreditation Program as detailed in the Handbook.
5. The Operating Authority agrees and covenants that it will comply with and perform all its obligations in accordance with the terms, conditions, specifications, representations, undertakings and other requirements of this Agreement, the Standard and the Handbook, during the term of this Agreement and for all its drinking water systems and facilities listed at Schedule "B", which may be amended from time to time through mutual agreement of CGSB and the Operating Authority, including taking responsibility for ensuring that:
  - a. the Operating Authority continues to respect the representations made in the Operating Authority's Application for Accreditation (Schedule "A") throughout the term of this Agreement; and
  - b. the Operating Authority reports to the CGSB, without any delay, any changes to its operations, facilities and procedures, or any other changes relative to its representations made in the Operating Authority Application for Accreditation (Schedule "A").
6. Canada also reserves the right to change the Handbook at any time. If Canada amends the Handbook, the Operating Authority will be notified that a new revision of the Handbook has been released, and it will be the sole responsibility of the Operating Authority to retrieve and implement the most current revision of the Handbook. If required, the Operating Authority will be given reasonable time to implement associated changes to its operations, facilities and procedures that are needed to conform to these amendments. After this time, Canada may require that the Operating Authority confirm in writing that it conforms to the revised Handbook. Failure to bring a listed facility into conformance with the revised Handbook within the time given for implementation shall be, at the option of Canada, either grounds for de-listing or a default under this Agreement.
7. Similarly, the Province of Ontario may amend the Standard at any time. It is the sole responsibility of the Operating Authority to ensure that they monitor and conform to the most current revision of the Standard. If required, the Operating Authority will be given reasonable time to implement associated changes to its operations, facilities and procedures that are needed to conform to these amendments. After this time, Canada may require that the Operating Authority confirm in writing that it conforms to the revised Standard. Failure to bring a listed facility into conformance with the revised Standard within the time given for implementation shall be, at the option of Canada, either grounds for de-listing or a default under this Agreement.

### **Withdrawal and/or Termination by the Operating Authority**

8. The Operating Authority may, at any time, inform Canada in writing that it is withdrawing from the Accreditation Program. The Operating Authority shall no longer use the CGSB accreditation number. Upon the Operating Authority's formal withdrawal from the Accreditation Program, Canada shall not be obligated to repay any payment or portion of any payment made by the Operating Authority that corresponds to a period of time extending beyond the withdrawal from the Accreditation Program.

The Operating Authority may, at the option of the Operating Authority, terminate this Agreement by giving sixty (60) days' written notice to Canada in the manner set forth and at the address listed at Article 28.

### **Significance of Accreditation**

9. The Operating Authority understands and agrees that Canada's execution of this Agreement and Canada's listing of the Operating Authority as a participant in the Accreditation Program means that the Operating Authority has demonstrated to the satisfaction of Canada that it is capable of conforming to the requirements of the Handbook and those of the Standard. The Operating Authority shall make no other implied or express representations as to the meaning of such a listing. The Operating Authority understands and agrees that the listing of the Operating Authority under the Accreditation Program in no way relieves the Operating Authority of the duty to uphold the laws and regulations applicable to the industry and to maintain a continuing, systematic and diligent program and a quality management system to ensure that the Operating Authority meets or exceeds the requirements of the Handbook and the Standard.

### **Agreement to use the CGSB Accreditation number**

10. During the term of this Agreement and subject to the terms and conditions set out herein, Canada hereby grants the Operating Authority the right to use the CGSB accreditation number in accordance with Section 10 of the Handbook, "Use of the CGSB name and Accreditation number".
11. Canada shall have the right to preview and approve the use of its name, the CGSB accreditation number or any other representation of its Accreditation Program before publication, printing or other use by the Operating Authority. This right includes the right to preview any other claim or representation made by the Operating Authority in or on advertising, promotional materials or labels that have not been assessed and listed by Canada.
12. The Operating Authority acknowledges that the CGSB accreditation number is the exclusive property of Canada and that all use of the CGSB accreditation number by the Operating Authority shall inure to the benefit of Canada. If Canada notifies the Operating Authority that it objects to a use of the CGSB accreditation number by the Operating Authority, the Operating Authority will have to cease such use immediately. The Operating Authority agrees that it will do nothing inconsistent with Canada's ownership of and title to the CGSB accreditation number, or with the rights provided to the Operating Authority under this Agreement regarding the CGSB accreditation number. Nothing in this Agreement shall give the Operating Authority any right, title or interest in the CGSB accreditation number other than the right to use the number in accordance with this Agreement.
13. The failure of the Operating Authority to conform to the terms, conditions and covenants contained in this Agreement shall entitle Canada, acting reasonably at its sole discretion, to terminate the Agreement. The Operating Authority agrees that the breach of any term, condition or covenant contained in Section 10 of the Handbook, "Use of the CGSB name and Accreditation number", or Articles 10 to 13 of this Agreement, or any use of the CGSB accreditation number without

Canada's prior consent, will cause irreparable injury to Canada. The Operating Authority therefore agrees, in the event of any such breach, and notwithstanding any provision to the contrary in this Agreement, that it will not oppose Canada's request to a court of competent jurisdiction for injunctive relief preventing the Operating Authority's continued use of the CGSB accreditation number.

14. The Operating Authority shall immediately notify Canada of any apparent infringement of or challenge or claim by any person relating to the CGSB accreditation number. Canada shall have the exclusive right to control as it sees fit, in its sole discretion, any settlement, litigation or other proceeding relating to such infringement, challenge or claim or otherwise relating to the CGSB accreditation number.

#### **Accreditation Program Fees**

15. Each year during the term of this Agreement, in consideration of the non-exclusive accreditation granted by Canada hereby, and in consideration of Canada's activities relating to its management of the Accreditation Program and its listing of the Operating Authority as a participant, the Operating Authority shall pay to Canada fees and charges as detailed at Section 9, "Costing", of the Handbook.
16. Payment of the said fees and charges shall be made in the manner set forth at Section 9, "Costing", of the Handbook.

#### **Interest on Late Payments**

17. The Operating Authority shall be liable to pay to Canada simple interest at the Bank Rate, plus three percent (3.00%), on any overdue amount from the date such amount became overdue until the date prior to the date of payment, inclusively.
18. For the purposes of Article 17
  - a. an amount is "due and payable" when it is due and payable by the Operating Authority to Canada pursuant to the terms of this Agreement;
  - b. an amount is "overdue" when it is unpaid on the first day following the day that it is due and payable;
  - c. "date of payment" means the date on which the payment of the fees and charges detailed in Section 9, "Costing", of the Handbook is received by Canada; and
  - d. "Bank Rate" means the prevailing discount rate of interest set by the Bank of Canada at the opening of business on the date the amount of the fees and charges detailed in Section 9, "Costing", of the Handbook become overdue.

#### **Termination for Default**

19. Canada may terminate this Agreement upon giving written notice to the Operating Authority in the event that
  - a. the Operating Authority fails, refuses or neglects, or is unable to comply with any of the provisions of this Agreement;
  - b. the Operating Authority fails to comply with the provisions of its Application for Accreditation (Schedule "A");
  - c. the Operating Authority fails to comply with the requirements of the Standard or the Handbook;

- d. the Operating Authority fails to respect any of the time periods stipulated, referred to or set in accordance with this Agreement; or
  - e. any amount payable by the Operating Authority to Canada under the terms of this Agreement remains unpaid for more than sixty (60) days.
20. This Agreement shall terminate without notice, and all rights accorded to the Operating Authority under this Agreement shall be terminated, if the Operating Authority
- a. applies for or consents to the appointment of a receiver, receiver manager, trustee or liquidator for itself or any of its property;
  - b. is unable or admits its inability to pay its debts as they become due;
  - c. makes a general assignment for the benefit of creditors;
  - d. is adjudicated bankrupt or insolvent; or
  - e. files a voluntary petition in bankruptcy or a petition seeking reorganization or arrangement with creditors; takes advantage of any insolvency law; admits to the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; initiates a corporate action to effect any of the foregoing; or if an order is made or a resolution passed for the winding up of the Operating Authority.
21. The Operating Authority shall be liable to Canada for all loss and damage that may be suffered by Canada by reason of any default on the part of the Operating Authority.
22. Notwithstanding anything herein to the contrary, upon termination of this Agreement for any reason of default by the Operating Authority, all fees and charges that are owing pursuant to the terms of this Agreement shall immediately become due and payable, and in no event shall Canada become obligated to repay any payment made or any portion of a payment that has been made and that corresponds to a period of time that extends beyond the date of termination by reason of default.

#### **Termination by Canada**

23. Canada may, at the option of Canada, and in addition to the provisions of Article 20 herein, terminate this Agreement by giving sixty (60) days' written notice to the Operating Authority in the manner set forth and at the address listed at Article 28.
24. In the event Canada terminates this Agreement for any reason other than the Operating Authority's default in respecting any of its obligations hereunder, the annual Program Management charges will be prorated according to the number of days of the then current year during which this Agreement is in effect, and the remaining portion for that year will be reimbursed to the Operating Authority. In the event, however, that the Operating Authority terminates this Agreement pursuant to Article 8 hereof, then the Operating Authority shall not be entitled to any reimbursement.

#### **Indemnity**

25. Without limiting Canada's remedies and recourses at law, the Operating Authority covenants and agrees to indemnify and save harmless Canada, the Minister of Public Works and Government Services Canada and their servants and agents from and against

- a. any damages, costs or expenses or any claim, action, suit or other proceeding that they or any of them may at any time incur or suffer as a result of or arising out of any injury to persons (including injuries resulting in death) or loss of or damage to property of others that may be or be alleged to be caused by or suffered as a result of
  - i. the Operating Authority's operations, facilities and procedures;
  - ii. the provision of a service by or for the Operating Authority and in connection with which the CGSB accreditation number is used, whether such use is authorized or unauthorized; or
  - iii. any other act or omission of the Operating Authority;
- b. any and all liability, loss, cost, damages, legal fees and expenses of whatever kind or nature that Canada may sustain or incur by reason or in consequence of any act or omission of the Operating Authority in respect of the right granted herein to use the CGSB accreditation number or display the certificate issued by Canada, or the right to use or the use of the CGSB accreditation number in connection with any product and/or facilities, whether authorized or unauthorized; and
- c. any reasonable costs that may be sustained or incurred by Canada in making any investigation on account of any such liability, loss, cost, damage, legal fees or expenses in defending or prosecuting any action, suit or other proceeding that may be brought in connection therewith or in obtaining a release from liability in connection therewith, or in enforcing any of the obligations herein contained.

Canada shall give notice to the Operating Authority of any claim, action, suit or proceeding referred to above. To the extent requested by the Attorney General of Canada, the Operating Authority shall, at its own expense, participate in or conduct the defense of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Operating Authority shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

#### **Assignment**

- 26. This Agreement is personal to the Operating Authority and shall not be assigned or otherwise encumbered by the Operating Authority or by operation of law, in whole or in part. Any purported assignment or encumbrance of this Agreement by the Operating Authority shall be null and void.

#### **Time is of the Essence**

- 27. Time shall be of the essence of this Agreement.

#### **Notice**

- 28. a. Any notice shall be in writing and may be delivered by hand or sent by e-mail, by courier, by registered mail or by facsimile or other electronic means that provides a paper record of the text of the notice, and addressed to the Party for whom it is intended at the address set out below. Any notice shall be deemed to be effective on the day it is received at that address.

**For the Operating Authority, to:**

Chief Administrative Officer  
The Corporation of the Township of Whitewater Region  
44 Main Street  
Cobden, Ontario  
K0J 1K0

**For Canada, to:**

Manager, Accreditation Program for Operating Authorities  
Canadian General Standards Board  
11 Laurier Street, Place du Portage  
Phase III, 6B1  
Gatineau, Quebec  
(Canada)  
K1A 1G6

- b. Either party may, by written notice to the other, change its address for purposes of this article. In the event that any notice sent to the address set out in this article, or in the latest address change notice received by the party sending the notice, shall be returned undelivered by reason of the fact that the party to whom it was addressed has moved or does not occupy the designated address, such notice shall nevertheless be deemed to have been received by such party on the date it was sent.

**Miscellaneous**

29. This Agreement shall be governed by and construed in accordance with the laws in effect in the Province of Ontario.
30. No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
31. a. The Operating Authority certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Agreement to any person other than an employee of the Operating Authority acting in the normal course of the employee's duties.

In this article,

“contingency fee” means any payment or other compensation that depends or is calculated on the basis of a degree of success in soliciting, negotiating or obtaining the Agreement, and “person” includes any individual who is required to file a return with the Commissioner of Lobbying pursuant to section 5 of the *Lobbying Act*, 1985, c. 44 (4th Supp.);

“employee” means a person with whom the Operating Authority has an employer-employee relationship; and

“person” means an individual or a group of individuals, a corporation, a partnership, an organization, an association and, without restricting the generality of the foregoing, any individual who is required to file a return with the Commissioner of Lobbying pursuant to section 5 of the *Lobbying Act*, 1985, c. 44 (4th Supp.) as the same may be amended from time to time.

- b. All accounts and records of the Operating Authority pertaining to payment of fees or other compensation for the solicitation, negotiation or obtaining of this Agreement shall be open to audit, inspection and examination by the authorized representatives of the CGSB, who may make copies and take extracts therefrom. The Operating Authority shall provide all facilities for



such audits and inspections and shall furnish all such information as the representatives of the CGSB may from time to time require with respect to such accounts and records.

- c. If the Operating Authority certifies falsely under this article or is in default of the obligations contained herein, the CGSB may either terminate this Agreement for default in accordance with the termination for default provisions of the Agreement or recover from the Operating Authority the full amount of the contingency fee.
32.
  - a. Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. Details on existing sanctions can be found at [www.dfait-maeci.gc.ca/trade/sanctions-en.asp](http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp).
  - b. The Operating Authority undertakes and agrees that it will, in the performance of this Agreement, comply with any such regulations that are in force on the effective date of the Agreement.
  - c. The Operating Authority must comply with changes to such regulations imposed during the period of the Agreement. The Operating Authority must immediately advise Canada if it is unable to abide by the terms of the Agreement or the other documents listed at Article 2 of this Agreement, as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the Parties cannot agree on a workaround plan, the Agreement will be terminated.
33. This Agreement represents the entire agreement between Canada and the Operating Authority relating to the subject matter of the Agreement and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Agreement. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Agreement.
34. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Operating Authority.
35. All of the Operating Authority's representations and warranties set out in this Agreement as well as the provisions concerning indemnity against third party claims shall survive the expiry of the Agreement or the termination of the Agreement for default, for convenience or by mutual consent, as shall any other provision of the Agreement that, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.
36. No amendment or modification to this Agreement shall be valid and binding unless it is incorporated into the Agreement by written amendment executed by the authorized representatives of both Canada and the Operating Authority.
37. No waiver shall be valid, binding or affect the rights of the Parties unless their respective authorized representatives make it in writing. The waiver by a Party of a breach of any term or condition of the Agreement shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or constitute a waiver of any subsequent breach. Every right, remedy, power and discretion vested in or acquired by Canada under this Agreement or by law shall be cumulative and non-exclusive.

IN WITNESS WHEREOF this Agreement has been duly executed on behalf of HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Public Works and Government Services acting through the Canadian General Standards Board, and has been duly executed on behalf of THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION, the Operating Authority, by its duly authorized officer effective the day and year first above written.

**MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES**  
(as represented by and acting through the Canadian General Standards Board)



October 6, 2010


\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Martin Desnoyers  
(Name in Print)

Manager, Canadian General Standards Board  
(Title)

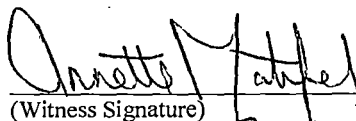
**OPERATING AUTHORITY**  
The Corporation of the Township of Whitewater Region



\_\_\_\_\_  
(Signature) May 4/10  
(Date)

Jim Labow Dean Samuel  
(Name in Print)

Mayor CAO / Clerk  
(Title)



\_\_\_\_\_  
(Witness Signature) May 4/10  
(Date)

Annette Manifel  
(Witness Name in Print)

Treasurer  
(Witness Title)

**SCHEDULE "A"**

**APPLICATION AND UNDERTAKING**

As per the signed application dated the 1st day of December 2009

**SCHEDULE "B"**

**DRINKING WATER SYSTEMS AND FACILITIES**

**Drinking Water System Name(s) / Address(es):**

Beachburg Drinking Water System

Cobden Drinking Water System

Haley Drinking Water System