

CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

BY-LAW # 13-06-628

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**Being a By-Law to authorize the execution of an Agreement between the Ontario Clean Water Agency (OCWA) and the Corporation of Township of Whitewater Region**

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**WHEREAS** pursuant to the Municipal Act, .S.O. 2001 as amended, a Council may enter into agreements;

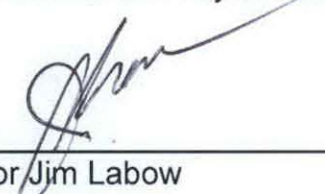
**AND WHEREAS** the Corporation of the Township of Whitewater Region deems it expedient to enter into an agreement with the Ontario Clean Water Agency (OCWA) to act as the "overall responsible operator" (the ORO) of the Township's water distribution and wastewater collection systems on a temporary basis;


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

1. The Mayor and the Deputy CAO/Treasurer are hereby authorized to execute this Overall Responsible Operator Services Agreement between the Ontario Clean Water Agency and the Township of Whitewater Region as in Schedule "A" attached hereto.

All By-Laws or parts of By-Laws previously passed that are inconsistent with the provisions of By-Law 13-06-628 are hereby repealed.

Passed this 19th day of June, 2013

  
\_\_\_\_\_  
Mayor Jim Labow

  
\_\_\_\_\_  
Deputy CAO/Treasurer Annette Mantifel

**OVERALL RESPONSIBLE OPERATOR SERVICES AGREEMENT**

**BETWEEN**

**ONTARIO CLEAN WATER AGENCY**

**A N D**

**THE TOWNSHIP OF WHITEWATER REGION**

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## OVERALL RESPONSIBLE OPERATOR SERVICES AGREEMENT

THIS AGREEMENT effective as of the 14th day of June, 2013

B E T W E E N

**ONTARIO CLEAN WATER AGENCY/AGENCE ONTARIENNE DES EAUX**, a corporation established under the *Capital Investment Plan Act, 1993*, c.23, Statutes of Ontario.

(“OCWA”)

A N D

**THE TOWNSHIP OF WHITEWATER REGION**

(the “Client”)

### RECITALS

- (a) OCWA is in the business of providing operation, maintenance and management services for water and wastewater treatment systems.
- (b) The Client is the owner and operating authority of the Township of Whitewater Region’s water distribution and collection systems more particularly described in Schedule A (the “Facility”).
- (c) The Client wishes OCWA to act as the “overall responsible operator” (the “ORO”) of the Facility in accordance with the provisions of this agreement (the “Agreement”) and to provide such other services as are set out in Schedule C of this Agreement.
- (d) The Client and OCWA (collectively, the “Parties” and each a “Party”) are entering this Agreement to clarify and set out their respective rights and obligations with respect to the oversight, operation and maintenance of the Facility.
- (e) The Council of the Client on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ passed By-Law No. \_\_\_\_\_ authorizing the Client to enter into this Agreement.

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby irrevocably acknowledged, the Client and OCWA agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### **Section 1.1 - Definitions**

In this Agreement, definitions are set out in Schedule B, or within applicable provisions as indicated.

## **ARTICLE 2 - RESPONSIBILITIES OF OCWA**

### **Section 2.1 - Retention of OCWA**

- (a) The Client retains OCWA to provide staff who will act as the overall responsible operator (“ORO”) pursuant to Section 23 of O. Reg. 128/04 under the *Safe Drinking Water Act, 2002* (the “SDWA”) in respect of the Facility. In acting as the ORO, OCWA will provide the services set out in Schedule C (the “Services”).
- (b) OCWA staff who act as ORO of the Facility will have certification levels equivalent to the class of the Facility to enable them to provide the Services.

### **Section 2.2 - Performance of Services**

- (a) OCWA shall attempt at all times to deliver the Services, and any Emergency Services (as described in Section 2.3 below) that may need to be provided, in compliance with all Water Treatment Laws, but shall not be responsible for any non-compliance under conditions described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
  - (i) the Client not carrying out its duties and responsibilities under this Agreement including, but not limited to, its responsibility for the day-to-day operation of the Facility and for the direction and discipline of any of the Client’s Employees assigned to work at the Facility;
  - (ii) the Client’s Employees not carrying out instructions given by OCWA;
  - (iii) lack of adequate response by the Client to a concern raised by OCWA in respect of the Client’s Employees on any matter;
  - (iv) the Client not making the capital expenditures reasonably recommended by OCWA;
  - (v) failure of the Client to meet its representations and warranties specified in this Agreement; and

- (vi) the water transmitted to the Facility for treatment contains pathogens or contaminants or other substances which cannot be treated or removed by the Facility's process.
- (b) OCWA may temporarily cease to provide or reduce the level of provision of Services hereunder in the event of an emergency, a breakdown or any Uncontrollable Circumstance. OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of any such occurrence.
- (c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the reasonable control of OCWA (an "Uncontrollable Circumstance"), including but not limited to any circumstances set out in Paragraph 2.2(b), decrees of government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, pandemics, war, civil disturbances, riots, explosions, fire and acts of third parties.
- (d) OCWA, in its discretion, may take remedial measures that it determines are reasonably necessary in attempting to maintain the Facility in compliance with Water Treatment Laws. Such measures may be beyond the scope of the Services and would be considered Additional Services fees as described in Schedule D. OCWA shall use its best efforts to contact the Client and obtain the Client's approval prior to undertaking such remedial measures.
- (e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that such remedial measures taken by OCWA may be as a result of an emergency situation or an Uncontrollable Circumstance and that in such situations OCWA's primary concern will be to make all reasonable efforts to maintain the Facility in compliance with Water Treatment Laws.

### **Section 2.3 - Emergency Services**

In the event of a non-routine operational situation or an emergency situation at the Facility including, but not limited to, a spill, by-pass, overflow, hydro interruption or equipment failure, the Client shall immediately inform OCWA (by a communication method to be arranged from time to time by the Client and OCWA) and the Client's Employees shall attend forthwith to deal with such operational or emergency situation in accordance with OCWA's instructions, Applicable Laws and the Facility's practices and procedures, including any contingency plans. In the event that OCWA's assistance is required to oversee the situation, OCWA, upon receiving the notification, shall attend as soon as possible to oversee the situation (the "Emergency Services"). OCWA shall charge the Client for the Emergency Services in accordance with Section 2 of Schedule D.

#### **Section 2.4 - Additional Services**

It is acknowledged and agreed by the Client and OCWA that OCWA's responsibilities are limited to the Services set out in Schedule C, and, if necessary, the Emergency Services described below. If the Client subsequently requires OCWA to provide any service in respect of the Facility in addition to the Services and the Emergency Services, such additional services may be provided following negotiation and at an additional cost to the Client (the "Additional Services"). If OCWA agrees to provide the Additional Services the fees for such services are set out in Section 3 of Schedule D of this Agreement.

#### **Section 2.5 - OCWA as Independent Contractor**

In performing the Services, OCWA shall be acting as an independent contractor and only to the extent and for the specific purposes expressly set forth herein. Neither OCWA nor its employees shall be subject to the direction and control of the Client, except as expressly provided in this Agreement.

#### **Section 2.6 - Authorized Representatives and Facility Contact Person**

Each of OCWA and the Client shall be entitled to designate in writing to the other, one or more individuals who shall be authorized to represent it in connection with the day-to-day administration of the provisions of this Agreement (the "Authorized Representatives").

#### **Section 2.7 - Insurance**

- (a) OCWA shall arrange for commercial general liability and automobile liability insurance in respect of its employees to cover its responsibilities under this Agreement and the Client shall be an additional insured under such insurance.
- (b) The Client shall be responsible for securing its own insurance to cover its responsibilities under this Agreement and OCWA shall be named as an additional insured under such coverage. The Client acknowledges that it will have no recourse under OCWA's policies of insurance for any such operations. The Client shall provide OCWA with a Certificate of Insurance that indicates that the Client has appropriate insurance in place.
- (c) The Client may, at its cost, maintain additional insurance in respect of the Facility if it wishes and OCWA shall be an additional insured under such insurance.
- (d) The Client specifically recognizes and agrees that OCWA does not bear any responsibility for any Pre-existing Conditions of the Facility, as described in Schedule E. As such, OCWA is not required to obtain insurance for this purpose and the Client has or will obtain its own insurance.



### **Section 2.8 - Representations and Warranties of OCWA**

OCWA represents and warrants to the Client that it has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement.

### **Section 2.9 – Municipal Drinking Water Licence**

- (a) The Client also acknowledges that it is solely responsible for meeting all of the requirements for obtaining the Municipal Drinking Water Licence. These requirements include but are not limited to the establishment of a Quality Management System (QMS) based on the requirements of the Drinking Water Quality Management Standard (DWQMS).
- (b) The Parties acknowledge that the Client is the operating authority for the Facility. The Parties further acknowledge that OCWA does not assume the status of operating authority for the Facility on account of performing the Services outlined in this Agreement.
- (c) As the operating authority for the Facility, the Client is also required to document its QMS in an operational plan for approval by the MOE. The Client shall provide OCWA with copies of its approved operational plan(s) for the Facility prior to OCWA performing the Services under this Agreement.

## **ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT**

### **Section 3.1 - Duties and Responsibilities of the Client**

The Client shall at all times be responsible for the operation and maintenance of the Facility and any related matter, cost or expenses.

### **Section 3.2 - Representations and Warranties of the Client**

The Client represents and warrants to OCWA that the following are true and correct:

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement.
- (b) The Client has passed all necessary by-laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility and has provided OCWA with a true copy of each of the Authorizations prior to the date of this Agreement, including a certified copy of each municipal by-law required to authorize the Client to enter into and perform its obligations under this Agreement.

- (c) As the owner and operating authority of the Facility, the Client is fully aware of its responsibilities and obligations under Applicable Laws, including but not limited to its responsibilities under the SDWA and the regulations thereunder regarding the operation and maintenance of the Facility.
- (d) The Client has provided OCWA with copies of all relevant procedures, Facility contingency plans, operational plans and other such documents related to the operation of the Facility to enable OCWA to provide the Services.
- (e) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facility is in compliance with all Applicable Laws.
- (f) The Client has an Occupational Health and Safety Policy in place at the Facility and the Client's employees have been trained on such policy and all relevant health and safety protocols and procedures.
- (g) The Client is not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (the "OHS") at the Facility. The Client acknowledges and agrees that it is responsible for dealing with the designated substances (including but not limited to asbestos) in accordance with the OHS and its regulations and for notifying OCWA staff of the location of any designated substance.

### **Section 3.3 - Covenants of the Client**

The Client hereby covenants for the benefit of OCWA:

- (a) The Client's Employees shall carry out all day-to-day operational duties at the Facility and all other duties in respect to the Facility other than those included in the Services or the Emergency Services, except where required to assist as described in Section 2.3.
- (b) The Client shall ensure that each of the Client's Employees has, at a minimum, his/her Class I operator certificates for water distribution and that at all times, these certificates remain in good standing.
- (c) The Client shall ensure that, at all times, at least one of the Client's Employees is designated as the "operator-in-charge" of the Facility pursuant to O. Reg. 128/04 under the SDWA, and that the operators-in-charge will provide regular written reports to OCWA's ORO for the Facility regarding the following:
- (d) The operators-in-charge designated by the Client shall be responsible for remaining in contact at all times with OCWA to advise on operational circumstances at the Facility. The Client shall provide the names of the operators-in-charge along with their contact information.

- (e) The Client agrees to promptly provide OCWA with any information relating to the Facility that could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report, notice, order or correspondence of any regulator pertaining to the Facility and any new Authorizations or amendments to any Authorizations.
- (f) In the event that the Client is issued an order or notice from the Ministry of Environment or Ministry of Health or other regulatory body in respect of the Facility, the Client is responsible for meeting the requirements of the order.
- (g) The Client shall ensure that its Employees are provided with the necessary tools, health and safety equipment, and other supplies required to perform their work in a safe and efficient manner, and that the Client's Employees are provided with the appropriate training and supervision necessary to comply with the OHSA and any facility specific health and safety procedures.
- (h) The Client shall ensure that OCWA staff are made aware of any health and safety risks and hazards at the Facility and any Facility specific health and safety procedures of the Client in order to ensure that OCWA staff who attend the Facility to provide services under this Agreement are able to do so in a safe manner.

#### **Section 3.4 - Exoneration and Indemnification of OCWA**

- (a) The Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, either arise from or are connected with the operation of this Agreement, and in particular, without limiting the generality of the foregoing, Claims which arise from or are connected with the failure of the Client or the Client's Employees to carry out operational work as instructed by OCWA.
- (b) OCWA shall be deemed to hold the provisions of this Section 3.4 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.



## **ARTICLE 4 - EMPLOYEE MATTERS**

### **Section 4.1 - OCWA Has No Liability for the Client's Employees**

- (a) Any and all employees of the Client assigned to work at the Facility at any time or from time to time (the "Client's Employees") shall continue to be employees of the Client at all times and nothing in this Agreement shall undermine or terminate the relationship of employee and employer between the Client and any of the Client's Employees.
- (b) Notwithstanding that performance of the Services requires OCWA to oversee tasks performed by and activities of the Client's Employees, OCWA shall under no circumstances have any liability whatsoever for any of the Client's Employees or any action performed by any of them, unless performed under the negligent direction of OCWA.
- (c) Notwithstanding any other provisions of this Agreement, OCWA shall not be a "supervisor" as that term is defined under the OSHA or its regulations and the Client acknowledges that it is solely responsible for appointing a "competent person" as a "supervisor" under the OSHA and its regulations. The Client further acknowledges that it is the "employer" under the OSHA of the Client's Employees.

### **Section 4.2 - Staffing Levels and Attendance**

The Client shall at all times provide a sufficient number of Client's Employees to carry out the responsibilities of the Client at the Facility provided for in this Agreement and to ensure that the Facility complies at all times with all Applicable Laws. The Client shall notify OCWA prior to any change in staffing levels or other relevant information about staffing of the Facility.

### **Section 4.3 - OCWA's Directions**

The Client acknowledges and agrees that the Client's Employees are to carry out the directions of OCWA staff acting as the ORO under this Agreement and the Client shall so instruct the Client's Employees.

### **Section 4.4 - Non-Compliance with OCWA's Directions**

OCWA shall notify the Client in writing of any failure on the part of any of the Client's Employees to comply with any direction given by OCWA and the Client shall take appropriate steps with respect to disciplining any of the Client's Employees and otherwise respond promptly and appropriately to any notification given by OCWA.

## **ARTICLE 5 - TERM, FEES FOR SERVICES AND OTHER CHARGES**

### **Section 5.1 - Term of Agreement**

This Agreement shall start on June 14, 2013 at 16:00 and shall continue in effect for a term of ninety (90) days, ending on September 12, 2013 at 15:59 (the "Term"). This Agreement may be renewed for successive two (2) month terms (each a "Renewal Term") only upon written agreement by both Parties in writing.

### **Section 5.2 - Fee**

The Fee for the Term is set out in Section 1 of Schedule D of this Agreement. The Fee does not include the following:

- (i) fees for the provision of Emergency Services (see Section 2, Schedule D);
- (ii) fees for the provision of Additional Services (see Section 3, Schedule D);
- (iii) any charges for the procurement of supplies and outside labour costs; and
- (iv) any additional costs resulting from Changes in Applicable Laws which relate to the provision of the Services.

### **Section 5.3 - Interest on Late Payments**

The Client shall pay OCWA interest at the rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the *Financial Administration Act*, R.S.O. 1990, c. F.12, plus any banking and administrative charges.

## **ARTICLE 6 - TERMINATION**

### **Section 6.1 - Termination of Agreement**

Either Party may terminate this Agreement at any time for any reason by giving the other Party thirty (30) days written notice.

### **Section 6.2 - Early Termination**

Upon termination of this Agreement prior to expiry of the Term, the Client shall pay OCWA for the Services rendered up to the date of termination and any outstanding charges for extra services negotiated by the Parties plus any applicable costs.

### **Section 6.3 - Final Settlement**

If OCWA ceases to provide Services to the Client, there shall be a final settlement of all

accounts and any other expenses incurred by OCWA and amounts owing by the Client under this Agreement no later than ninety (90) days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Client with a final invoice, whichever comes later.

## **ARTICLE 7 - LIMITATION ON DAMAGES**

### **Section 7.1 - Limitation on Damages**

Notwithstanding any other provisions in this Agreement, the aggregate liability of OCWA to the Client in relation to this Agreement shall not exceed \$22,500.00 regardless of whether such liability arises out of breach of contract, warranty, tort, indemnity, strict liability or any other legal or equitable theory.

## **ARTICLE 8 - GENERAL**

### **Section 8.1 - Entire Agreement**

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto.

### **Section 8.2 - Successors and Assigns**

This Agreement shall operate to the benefit of and be binding upon, the Parties hereto and their successors and assigns. This Agreement may be assigned in the discretion of either Party.

### **Section 8.3 - Survival**

Section 3.4 and all outstanding payment obligations shall survive indefinitely the termination of this Agreement.

### **Section 8.4 - Notices**

- (a) All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be properly given if hand-delivered, sent by confirmed facsimile or by registered mail postage prepaid, return receipt requested, or by courier, to the Parties at their respective addresses as set forth below, or to such other addresses as the Parties may advise by like notice. Such notices if sent by facsimile, registered mail or courier shall be deemed to have been given when received.
  - (i) if to the Client:

The Township of Whitewater Region  
44 Main Street,  
Cobden, ON.  
K0J 1K0

Telephone: (613)646-2282  
Fax: (613)646-2283  
Attention: Bill Misener, Public Works Manager, cell # (613)635-2358 or a  
Designated Representative of the Municipality

(ii) if to OCWA:

122 Patterson Crescent,  
Carleton Place, ON.  
K7C 4P3  
Telephone: (613)253-1590  
Fax: (613)253-8069  
Attention: Operations Manager, Brad Sweet, cell # (613)-833-3810 or  
Andrew Trader, Sr. Operations Manager.

(b) A Party to this Agreement may change its address for the purpose of this Section by giving the other Party notice of such change of address in the manner provided in this Section.

### **Section 8.5 - Freedom of Information**

The Client understands and agrees that this Agreement and any materials or information provided to OCWA through the performance of the Services may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, or as otherwise required by law.

**Section 8.6 - Confidentiality and Security**

The Parties shall strictly maintain confidential and secure all material and information provided, directly or indirectly, by the other Party pursuant to this Agreement. Subject to relevant legislation related to freedom of information or the protection of privacy and any other laws, neither Party shall directly or indirectly disclose to any person, either during or following the term of this Agreement, any such material or information provided to it by the other Party without first obtaining the written consent of the Party who provided such material or information, allowing such disclosure.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

**ONTARIO CLEAN WATER AGENCY**

July 16/2013  
Date of Signing

By: Bev Mollard  
(VP Operations, Bev Mollard)

7/31/2013  
Date of Signing

By: Dan Atkinson  
(VP Finance, Dan Atkinson)

**THE TOWNSHIP OF WHITEWATER REGION**

June 19, 2013  
Date of Signing

By: Jim Labow  
(Mayor, Jim Labow)

June 19, 2013  
Date of Signing

By: Annette Mantifel  
(Treasurer, Annette Mantifel)



**SCHEDULE A - Description of the Distribution System**

**Locations include the Cobden distribution and collection systems, and the Haley & Beachburg water distribution systems.**

## SCHEDULE B - Definitions

In this Agreement, the following terms are defined below or in the section in which they first appear:

**“Additional Services”** is defined in Paragraph 2.4 of this Agreement.

**“Agreement”** means this agreement together with Schedules A, B, C, D, and E attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

**“Fee”** is defined in Section 1(a) of Schedule D of this Agreement.

**“Applicable Laws”** means any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licences, judgments, orders, injunctions, authorizations, directives, whether federal, provincial or municipal including, but not limited to all laws relating to occupational health and safety matters, fire prevention and protection, health protection and promotion, land use planning, environment, or workers’ compensation matters, and includes any Water Treatment Laws.

**“Authorizations”** means each of the relevant by-laws regulating the operation of the Facility, licences, certificates of approval, permits, consents and other authorizations or approvals required under Environmental Laws from time to time in order to operate the Facility.

**“Authorized Representatives”** is defined in Section 2.6 of this Agreement.

**“Business Days”** means a day other than a Saturday, Sunday or statutory holiday in Ontario.

**“Call-out”** is defined in Section 2 of Schedule D of this Agreement.

**“Capital Expenditures”** means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding routine maintenance); any alterations and any associated installations, commissioning, including labour and pre-selection charges, together with the Service Fee.

**“Change in Applicable Laws”** means the enactment, adoption, promulgation, modification, issuance, repeal or amendment of any Applicable Laws that occur after the date this Agreement is executed by both Parties.

**“Claims”** means any claim, fine, penalty, liability, damages, loss and judgments (including but not limited to, costs and expenses incidental thereto) of any kind and nature whatsoever.

**“Client’s Employees”** is defined in Section 4.1 of this Agreement.

**“Emergency Services”** is defined in Section 2.3 of this Agreement.

**“Facility”** is defined in Paragraph (b) of the Recitals to this Agreement and further described in Schedule A.

**“Indemnified Parties”** is defined in Paragraph 3.4(a) of this Agreement.

**“MOE”** means (Ontario) Ministry of the Environment.

**“Municipal Drinking Water License”** means the license that the MOE’s requires owners of municipal drinking water systems to obtain in accordance with Part V of the SDWA. In order to obtain this license, owners are required to, among other things, prepare an operational plan and submit the operational plan to the MOE as well as retain an accredited operating authority.

**“OHSA”** is defined in Paragraph 3.2(g) of this Agreement

**“Overall Responsible Operator”** or **“ORO”** shall have the meaning set out in Paragraph 2.1(a) of this Agreement.

**“Parties”** and **“Party”** are defined in Paragraph (e) of the Recitals to the Agreement.

**“Pre-existing Condition”** means any conditions of the Facility that existed prior to OCWA’s commencement of the Services, including those outlined in Schedule E.

**“SDWA”** is defined in Paragraph 2.1(a) of this Agreement.

**“Services”** is defined in Paragraph 2.1(a) and further described in Schedule C of this Agreement.

**“Service Fee”** is defined in Section 4 of Schedule D of this Agreement

**“Supervise”** (and accordingly **“Supervising”**, **“Supervision”** and **“Supervisor”**) is defined in Paragraph 4.1(c) of this Agreement.

**“Term”** is defined in Section 5.1 of this Agreement.

**“Uncontrollable Circumstance”** is defined in Paragraph 2.2(c) of this Agreement.

**“Water Treatment Laws”** means the *Safe Drinking Water Act, 2002* and its regulations, as well as permits, approvals, licences issued under the SDWA or its regulations.

### **SCHEDULE C - The Services**

In acting as the ORO, OCWA shall provide the following services:

- Visit the Facility and meet with the Client's Employees for the distribution and wastewater collection on a weekly basis to review operational issues that the Client's Employees have raised with OCWA. The meetings will be performed in conjunction with the weekly JP2G Highway 17 Construction meeting, and documented in writing; Meetings to be held at 44 Main Street, Cobden, ON. at 10:00am.
- Review and comment on any operational data of the Facility provided by the Client's Employees within one business days;
- Be available by telephone twenty-four (24) hours a day, seven (7) days a week to advise the Client's employees about the operation of the Facility, as well as to respond to emergencies;
- Provide necessary operational instruction to the Client's Employees; and
- Provide emergency backup response as required.

## SCHEDULE D - The Fees

### 1. Fee for the Term

- (a) The Client shall pay OCWA the Fee for the Term (the "Fee"), in equal monthly payments, in advance, on the first day of each month. Payment shall be made by the Client by cheque by the Client.
- (b) The daily payment shall be **\$250.00**. The first payment shall be due and payable on July 1, 2013.

### 2. Fees for Emergency Services

Where OCWA is required to attend the Facility as described in Section 2.3 or provide advice to the Client's Employees outside the hours of 07:00 to 15:30 during Business Days and at any time on weekends, this shall be considered a "call-out". OCWA shall invoice the Client for call-outs at a minimum rate of **\$300** per call-out, per person, to a maximum of four (4) hours per call out.

### 3. Fees for Additional Services

Fees for Additional Services provided by OCWA at the request of the Client shall be billed directly to the Client at the following rates:

- Labour rates on Business Days, Monday to Friday, (07:00 to 15:30) shall be **\$85.00/hour/person** for an senior operations manager, process and compliance technician and **\$55.00/hour/person** for work of an operator or mechanic (actual working hours, plus travel to/from work location). Vehicle mileage is included.
- Labour rates at all other times (after hours on Business Days and on weekends) shall be **\$127.50/hour/person** for work of an senior operations manager, process and compliance technician and **\$82.50/hour/person** for work of an operator or mechanic, with a minimum four (4) hour charge. Vehicle mileage is included.
- Costs for parts, equipment and supplies, and outside labour charges (i.e., contractors), used by OCWA staff to provide the Additional Service shall be billed to the Client and will be subject to a Service Fee.

### 4. Service Fee

"Service Fee" means an additional fee of **fifteen percent (15%)** charged to the Client when OCWA purchases materials, supplies, equipment or contractor's services on behalf of the Client.

**SCHEDULE E - Pre-existing Conditions**

The Client is not aware of any Pre-Existing Conditions at the time that the Parties entered into this Agreement.