

CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

BY-LAW # 13-11-662

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

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

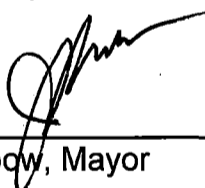
AND WHEREAS the Corporation of the Township of Whitewater Region deems it necessary to enter into an agreement with the Ontario Clean Water Agency (OCWA) for the provision of management, operation and maintenance of the Township's water and wastewater facilities;

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

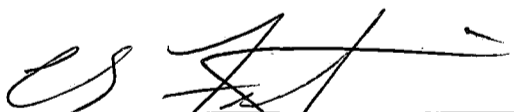
1. The Mayor and the CAO/Clerk are hereby authorized to execute this Agreement between the Ontario Clean Water Agency and the Township of Whitewater Region as in Schedule "A" attached hereto.

All By-Laws or parts of By-Laws previously passed that are inconsistent with the provisions of By-Law 13-11-662 are hereby repealed.

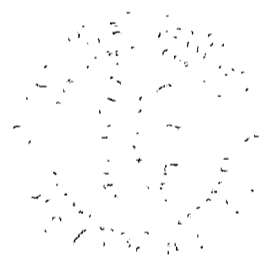
Passed this 6th day of November, 2013



Jim Labow, Mayor



Christine FitzSimons, CAO/Clerk



SERVICES AGREEMENT

BETWEEN

ONTARIO CLEAN WATER AGENCY

AND

THE TOWNSHIP OF WHITEWATER REGION

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SCHEDULE A - THE FACILITIES

SCHEDULE B - DEFINITIONS

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SERVICES AGREEMENT

THIS AGREEMENT effective as of the 12th day of November, 2013 (the "Effective Date"),

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 CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

(the "Client")

RECITALS

- (a) OCWA is in the business of providing operations and maintenance services for water and wastewater facilities.
- (b) The Client is the owner of the *Cobden Water, Wastewater Treatment, Distribution and Collection facilities, Beachburg Water and Distribution facilities, and Haley Water and Distribution facilities*, more particularly described in Schedule A (the "Facilities").
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facilities in accordance with the provisions of this agreement (the "Agreement").
- (d) The Client and OCWA (collectively, the "Parties" and each a "Party") are entering this Agreement to set out their respective rights and obligations with respect to the management, operation and maintenance of the Facilities.
- (e) The Council of the Client on the 6th day of November, 2013 passed By-Law No. 13-11-662 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.

Section 1.2 - Interpretation

The rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

- (a) The Client retains OCWA to provide management, operation and maintenance services, as described in Schedule C to this Agreement, in respect of the Facilities (the "Services"). The Client acknowledges and agrees that OCWA bears no responsibility for the design of the Facilities.
- (b) The Client acknowledges and agrees that for the purposes of Section 449 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, OCWA is an agent of the Client.

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Capital Expenditures reasonably recommended by OCWA as per Section 4.7 herein;
 - (ii) failure of the Client to meet its representations and warranties specified in this Agreement;
 - (iii) failure of any equipment at the Facilities, unless the failure is due to negligent maintenance by OCWA;
 - (iv) the water transmitted to the water treatment facility for treatment contains contaminants (blue/green algae) or pathogens which cannot be treated or removed by the facility's treatment processes;

- (v) the quantity or quality of water transmitted to the water treatment facility exceeds the facility's design or operating capacity;
 - (vi) the wastewater transmitted to the wastewater treatment facility for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Law;
 - (vii) the wastewater transmitted to the wastewater treatment facility for treatment contains contaminants or other substances which cannot be treated or removed by the facility's processes;
 - (viii) the quantity or quality of wastewater transmitted to the wastewater treatment facility exceeds the facility's design or operating capacity.
 - (ix) Operational upset conditions caused by the acceptance of septage or leachate;
 - (x) Unavailability of approved lands for application of sludge.
- (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(a), 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, war, civil disturbances, pandemics, riots, explosions, fire and acts of third parties.
- (d) In the event that OCWA determines that a deficiency exists with respect to the operation of the Facilities, OCWA will use its best efforts to contact the Client and obtain the Client's approval prior to undertaking any remedial measures to correct the deficiency. The Client acknowledges that such measures may be beyond the scope of the Services and thus subject to an additional charge.
- (e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that in an emergency situation or where an Uncontrollable Circumstance exists, OCWA's primary concern will be to use all reasonable efforts to maintain the Facilities in compliance with Environmental Laws and that OCWA may be required to correct a deficiency or deal with

the emergency situation without obtaining the Client's prior approval. Should such a situation arise, OCWA will provide as much information as possible to the Client and will work with the Client to ensure the emergency situation is appropriately addressed.

Section 2.3 - Optional Services

- (a) If requested by the Client, OCWA may provide Optional Services to the Client, provided that the Client and OCWA agree in writing to the specific scope of work required.
- (b) Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis at the following rates:
 - (i) Labour rates on Business Days, Monday to Friday, (0800 to 1630) shall be billed at \$85.00/hour/person for a senior operations manager, operations manager or process and compliance technician and \$55.00/hour/person for an operator or mechanic, plus vehicle expenses at \$0.42/km/vehicle;
 - (ii) Labour rates after hours and on weekends shall be billed at \$127.50/hour/person for a senior operations manager, operations manager or process and compliance technician and \$82.50/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.42/km/vehicle;
 - (iii) Labour rates during Statutory Holidays shall be billed at \$170.00/hour/person for a senior operations manager, operations manager or process and compliance technician and \$110.00/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.42/km/vehicle;
 - (iv) Costs for parts, equipment and supplies, and outside labour charges (i.e., contractors), used by OCWA staff to provide the Optional Services shall be billed to the Client, and the Client will pay such costs together with a Service Fee.
- (c) Once OCWA has agreed to provide Optional Services to the Client, the Optional Services shall be subject to the terms and conditions of this Agreement, with any necessary changes having been made.

Section 2.4 - Standard of Care

OCWA shall deliver the Services as would a reasonable operator with like skills in like circumstances.

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, agents or subcontractors shall be subject to the direction and control of the Client, except as expressly provided in this Agreement.

Section 2.6 - Authorized Representatives

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 Representative(s)"). Each of the Parties shall be entitled to rely on the acts and approvals given by the other Party's Authorized Representative until such time as it receives a written notification of change of the other Party's Authorized Representative.

Section 2.7 - Reporting

OCWA shall provide the following reports to the Client:

- (a) a facility performance report, within ninety (90) days of the completion of each year or such other period as the Client and OCWA may agree upon. (OCWA will endeavor to provide facility reports in a timely manner however performance reporting may be dependent on DWQMS audit dates and MOE guidelines for reporting).
- (b) a summarized financial report, in the format provided in Schedule F, on a quarterly basis, indicating expenditures to date and funds remaining; and
- (c) an annual financial report, in the format provided in Schedule F.

Section 2.8 - Indemnification of the Client

- (a) OCWA shall exonerate, indemnify and hold harmless the Client, its directors, officers, employees and agents from and against Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client to the extent that such Claim is solely attributed to OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to an Uncontrollable Circumstance or to a condition of the Facilities which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule E. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly.

- (b) The Client shall be deemed to hold the provisions of this Section 2.8 that are for the benefit of the Client's directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.
- (c) Notwithstanding Paragraph 2.8(a) above, OCWA shall not be liable in respect of any Claim to the extent the Claim is covered by the Insurance.

Section 2.9 - Insurance

- (a) OCWA shall maintain, subject to reasonable availability, insurance coverage as described in Schedule D to this Agreement (the "Insurance") and the Client shall be an additional insured under the Commercial General Liability and Contractor's Pollution Liability insurance. The Client acknowledges that, given the unpredictability of the insurance market, deductibles and coverage limits may not be available (or may not be reasonably priced) from year to year, and therefore, insurance coverage is reviewed annually.
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the Pre-existing Condition(s) of the Facilities. As such, OCWA is not required to obtain insurance for this purpose and the Client has or will obtain its own insurance.
- (c) The Client shall be responsible for securing its own insurance for any other operations with which it is involved that are not part of the Services. The Client acknowledges that OCWA's Commercial General Liability and Contractor's Pollution Liability insurance shall not extend to cover any claims, exposure or liability beyond those directly linked to the provision of Services by OCWA staff. The Client further acknowledges that it will have no recourse under OCWA's Commercial General Liability and Contractor's Pollution Liability insurance for any operations that do not form part of the Services.
- (d) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule D.

Section 2.10 - Representations and Warranties of OCWA

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

- (a) that it has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement; and
- (b) OCWA's staff are trained and capable of providing the Services set out under this Agreement.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - 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 Facilities, (including, without limitation, any Authorizations required from the Ontario Municipal Board and the Ministry of the Environment), and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above 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.
- (d) As the owner of the drinking water and wastewater treatment facilities, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the facilities under Applicable Laws, including without limitation its responsibilities under the *Safe Drinking Water Act, 2002* (the "SDWA"), the *Ontario Water Resources Act* ("OWRA") and the *Occupational Health and Safety Act* (the "OHSA") and their regulations.
- (e) The Client warrants that there are no Pre-existing Conditions existing at the Facilities which would affect OCWA's ability to operate the Facilities in compliance with the terms of this Agreement and Applicable Laws, other than what is listed in Schedule G. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (f) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facilities are in compliance with all Applicable Laws.
- (g) The Client is not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (the "OHSA") at the Facilities. 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 OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facilities.

Section 3.2 - Covenants of the Client

The Client hereby covenants the following for the benefit of OCWA:

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.9.
- (b) The Client agrees to promptly provide OCWA with any information relating to the Facilities which could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report prepared in respect of the Facilities, any Authorization or amendment to any Authorization, as well as any governmental notice or order relating to the Facilities.
- (c) The Client agrees to commit the necessary resources to appropriately address and comply with any such reports, Authorizations, notices or orders.
- (d) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like drinking water treatment facility, all water works that belong to or are under the control of the Client and that distribute water from the facility.
- (e) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like wastewater treatment facility, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the facility.
- (f) The Client agrees to promptly commit the necessary resources to appropriately address any health and safety issues identified by OCWA which are the responsibility of the Client.
- (g) The Client shall take reasonable steps to ensure that wastewater transmitted to the wastewater treatment facility complies with the Client's sewer use by-law and any Environmental Laws. If requested by OCWA, the Client shall provide OCWA with copies of the Client's inspection reports (sewer usage, cross-connections, sump pump connections) if available.
- (h) The Client shall inform OCWA if the wastewater treatment facility is to accept septage or leachate. The Client shall provide OCWA with a report of a professional engineer indicating that the facility is capable of handling such additional Loadings. The Client shall provide OCWA with a list of haulers from which OCWA is to accept septage or leachate at the facility. OCWA shall not be responsible for any operational impacts caused by the septage or leachate. The Client shall be fully responsible for any additional costs incurred as a result of the acceptance of septage or leachate at the facility.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, 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 directors, 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, arise from the Services provided under this Agreement.
- (b) OCWA shall be deemed to hold the provisions of this Article 3 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.
- (c) Notwithstanding Paragraph 3.3(a) above, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by the Insurance; however, the Client shall be responsible for any deduction or self-insured retention amount in accordance with Schedule D; and
 - (ii) to the extent that such Claim is caused solely by OCWA's negligence or wilful misconduct in providing the Services.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on the Effective Date *November 12th, 2013* and shall continue in effect for an initial term of **five years**, ending on *November 11th, 2018* (the "Initial Term") and then may be renewed for successive two-year terms (each a "Renewal Term") upon agreement between the Parties, unless terminated under Section 6.1 of this Agreement.

Section 4.2 - Operations Estimate

No later than **November 11th**, or an agreed upon date between OCWA and the Client, of each year of the Initial Term or any Renewal Term, OCWA shall prepare and submit to the Client, for its approval, an estimate of the charges associated with the provision of the operational and maintenance Services for the following calendar year. The Client will inform OCWA no later than December 1st whether the estimate is approved or not approved (the approved estimate is referred to as the "Estimate"). If the Client does not provide OCWA with its decision regarding approval by the December 1st date, the

estimate shall be deemed approved. The Estimate shall be OCWA's authorization to incur the expenditures in the Estimate. The Estimate for the first year of the Initial Term is **\$601,267.00**.

Section 4.3 - Payment of the Estimate

The Client shall pay OCWA the annual Estimate in twelve (12) equal monthly payments, in advance on the first day of each month. For the first year of the Initial Term, each monthly payment shall be **\$50,105.58**. The first payment shall be due and payable on November 12th, 2013. Payment shall be made by the Client by pre-authorized debit from an account designated by the Client.

Section 4.4 - Reconciliation of the Estimate and Actual Charges

At the end of each calendar year, OCWA will determine the actual charges for providing the Services to the Client for that year (the "Actual Charges") which, as indicated in Paragraph 2.9(a), may include an increase in premium for the Insurance. If the Estimate paid by the Client for the year exceeds the Actual Charges, OCWA will pay the Client the difference within thirty (30) days of OCWA making the determination. If the Actual Charges exceed the Estimate paid by the Client, the Client shall pay OCWA the difference within thirty (30) days of OCWA notifying the Client in writing of the determination.

Section 4.5 - Other Charges

The Estimate, as reconciled with the Actual Charges, includes all charges associated with providing the Services, except for the following:

- (a) OCWA's Management Fee (as described in Section 4.6 below);
- (b) Capital Expenditures (as described in Section 4.7 below);
- (c) Unexpected Expenses (as described in Section 4.8 below); and
- (d) fees for additional services provided by OCWA (as described in Paragraph 2.3(b) above).
- (e) any costs and charges related to meeting the requirements of the MOE's Municipal Drinking Water Licensing Program as described in Section 4.11;

Section 4.6 - Management Fee

- (a) In addition to payment of the Estimate, as reconciled with the Actual Charges, the Client shall also pay OCWA an annual management fee (the "Management Fee") to provide the management Services, which shall be **\$90,000.00** for the first year of the Initial Term ("Year One"). The Management Fee shall be paid by the Client in twelve (12) equal

monthly instalments at the same time and in the same manner as the Estimate. The monthly payment of the Management Fee for Year One of the Initial Term shall be **\$7,500.00**.

- (b) For the second year (“Year Two”) and subsequent years of the Initial Term, the annual management fee shall be **\$90,000.00** plus the CPI Adjustment.
- (c) The Management Fee in any Renewal Term shall be as agreed by the Client and OCWA. If the Client and OCWA cannot reach an agreement on the Estimate and Management Fee for any Renewal Term within six (6) months of the beginning of the last year of the current term (whether the Initial Term or a Renewal Term) (the “Current Term”), this Agreement will be terminated one year from the last day of the Current Term. The Parties shall treat this final year in the same manner as if the Current Term was extended an additional year.

Section 4.7 - Capital Expenditures

- (a) “Capital Expenditures” means the charges for all capital items in relation to the Facilities, 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 preselection charges, together with the Service Fee. Capital Expenditures shall be billed to the Client in the same manner as described in Paragraph 2.3(b). These charges would normally be for items beyond the normal “routine” operational estimate as listed in Section 4.2 Operations Estimate.
- (b) For any individual item or service purchased, a Service Fee shall be calculated as follows:
 - (a) 15% of the first \$10,000; plus
 - (b) 10% on the amount from \$10,000 to \$50,000; plus
 - (c) 5% on the amount in excess of \$50,000.

For example, the Service associated with a capital project which required \$56,000 in supplies and materials would be \$5,800 ($15\% \times \$10,000 + 10\% \times \$40,000 + 5\% \times \$6,000$).

- (c) No later than October 31st of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with an estimate of the Capital Expenditures reasonably required for the operation of the Facilities for the following Year. The Client’s written approval of the estimate or revised estimate authorizes OCWA to incur the Capital Expenditures included in the approved estimate (the “Approved Capital Expenditures”).

- (d) OCWA will invoice the Client for the Approved Capital Expenditures together with supporting documentation and the Client shall pay the invoice within forty-five (45) days of the date of invoice.
- (e) OCWA will not be required to obtain the prior approval of the Client for any Capital item costing less than \$1,000.00.

Section 4.8 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures or additional costs which may include Capital Expenditures in addition to the Approved Capital Expenditures, that OCWA reasonably incurs in order to address a Change in Applicable Laws, any Uncontrollable Circumstance, any work required by regulatory order (e.g. MOE or MOL) or identified through an inspection (e.g. ESA, MOE, MOL) that is not solely the result of OCWA's negligence in performing the Services or any other emergency situation, together with the Service Fee.
- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten (10) days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred.
- (c) Any Unexpected Expenses will be invoiced to the Client together with appropriate supporting documentation, and the Client shall pay the invoice within forty-five (45) days of the date of the invoice.
- (d) In the event that OCWA is required to incur Unexpected Expenses, OCWA will not be required to obtain the prior approval of the Client for any Capital Expenditure item costing less than \$1,000.

Section 4.9 - Interest on Late Payments

- (a) **Monthly Payment of Estimate and Management Fee.** If the Client's monthly payment of the Estimate and Management Fee are not available in its designated bank account on the agreed to date of payment, OCWA will notify the Client that the funds were not available. Interest will be charged to the Client starting from the day after the payment was due in the account. Interest shall be paid at a 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 charges and an administrative fee.

- (b) **Other Invoices.** Invoices, other than for the monthly payment set out in Section 4.9(a) above, shall be paid no later than thirty (30) days from the date of the invoice and interest shall begin to accrue one (1) day after the payment is due.

Section 4.10 - Partial Payment of Disputed Invoices

- (a) If the Client wishes to dispute any portion of an invoice, within forty-five (45) days from the date on the disputed invoice, the Client must provide written notice to OCWA of the charges in dispute. If no written notice is received within the above forty-five (45) days, the invoice shall be deemed to be approved and interest shall be payable by the Client, if still unpaid after thirty (30) days from the Client's receipt of the invoice.
- (b) If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date and shall also continue to pay all monthly payments of the Estimate and Management Fee due on the first of each month. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided in Section 4.9 above, within ten (10) days from the date of final determination.
- (d) If the disputed charges cannot be resolved with a reasonable time, the Parties shall seek resolution in accordance with Article 5, Dispute Resolution.

Section 4.11 - Additional Services and Charges Associated with the MOE's Municipal Drinking Water Licensing Program

Further to Paragraph 4.5(e) above, the Client and OCWA acknowledge that this Agreement does not address any additional services that may be provided by OCWA to the Client that are associated with meeting the requirements of the MOE's Municipal Drinking Water Licensing Program. The Client and OCWA agree to negotiate, in good faith, any necessary amendments to this Agreement, including adjustments to the Estimate and Management Fee, required to reflect any such additional services provided by OCWA as well as all costs and charges of OCWA in respect of the Municipal Drinking Water Licensing Program.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Mediation

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, then the issue shall be referred to a mediator.
- (b) The fees and expenses of the mediator shall be divided equally between the Parties.

- (c) Involvement in mediation is on a without prejudice basis and does not preclude and is not a bar to either Party pursuing whatever legal remedies may be available, including litigation.

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Termination of Agreement

- (a) At least twelve calendar months before the expiry of the Current Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or
 - (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Current Term.
- (b) If no notice is given as indicated in Clause 6.1(a)(i) or (ii) and the Parties do not agree to negotiate the Annual Price for the next Renewal Term within the last six (6) months of the final year of the Current Term, then the Current Term shall be extended by one (1) year and Article 4 will apply accordingly.
- (c) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA if:
 - (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party;
 - (iii) the other Party does not correct the breach within thirty days of receiving the notice; and
 - (iv) the complaining Party terminates in accordance with Paragraph 6.1(d).
- (d) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.1(c) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least thirty (30) days notice in writing to the other Party.

- (e) If either Party disputes the existence of a breach or that the breach is material, then the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (f) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) for any reason, upon twelve months (12) prior written notice; or
 - (ii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraphs 6.1(c) and 6.1(d) above.
- (g) For greater certainty, continued non-payment of monies owed to OCWA under this Agreement shall constitute a material breach of this Agreement by the Client.

Section 6.2 - Early Termination

If this Agreement is terminated for any reason prior to the expiry of the Current Term, then the Client shall pay OCWA for all Services provided up to the date of termination, as well as any costs relating to the early termination, including but not limited to demobilization and severance costs (in accordance with the collective agreements between OCWA and its employees); the costs associated with the removal of remote monitoring and control systems installed by OCWA; the costs of cancelling agreements with suppliers and subcontractors; as well as charges for Capital Expenditures, Unexpected Expenses and Optional Services.

Section 6.3 - Final Settlement

If OCWA ceases to operate and maintain the Facilities, there shall be a final settlement of all accounts with respect to the Actual Charges, Management Fee and any other charges and expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement including, but not limited to the outstanding debt, if any, owed to OCWA, 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.

Section 6.4 - Transfer of Operations

Upon the termination of this Services Agreement, OCWA will return the following documents to the Client:

- (a) The log book for each facility.
- (b) The original operations manual(s) that were provided by the Client to OCWA at the commencement of the Services.

- (c) A list of emergency phone numbers from the contingency plan binders used by OCWA staff in respect of the Facilities.
- (d) Maintenance and repair records of equipment at the Facilities.

ARTICLE 7 - GENERAL

Section 7.1 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA may utilize certain technology developed by or for OCWA, for example, OCWA's WMMS, Outpost 5 and/or PDC (the "Technology"). The Client further agrees that use of the Technology by OCWA with respect to the Facilities does not in any way give the Client any ownership or licensing rights in or to the Intellectual Property Rights to the Technology unless otherwise agreed to in writing between the Parties. For greater certainty, nothing in this Section 7.1 shall be interpreted as requiring OCWA to provide the Client with the Technology or other similar technology in respect of the Facilities as part of the Annual Price.

Section 7.2 - Agreement to Govern

If there is any inconsistency between the main body of this Agreement and any Schedule to this Agreement, then the provision in the main body shall govern.

Section 7.3 - Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Section 7.4 - 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 7.5 - Proposal Not Part of Agreement

OCWA's Agreement with the Client to act as ORO for Distribution and Collection shall be replaced by this O&M Agreement.

Section 7.6 - Change in Circumstance

- (a) In the event that there is a change in circumstances or condition that is not covered under the terms of this Agreement, including, without limitation, a Change in Applicable Laws or change in the scope of services provided (a "Change in Circumstance"), then the Party asserting the occurrence of such Change in Circumstance shall give written notice to the other Party, and the written notice shall contain:
 - (i) details of the Change in Circumstance;
 - (ii) details of the inadequacy of this Agreement; and
 - (iii) a proposal for an amending agreement to remedy the Change in Circumstance.
- (b) The Parties shall negotiate in good faith any amendments to this Agreement necessary to give effect to or comply with the Change, including any adjustments to the Annual Price or the Services to be provided, which shall be effected as of the date of the Change. If the Parties dispute the existence of a Change, or the recommendation proposed to rectify the Change or the terms and provisions of any amendment to the Agreement, then either Party may refer the dispute to mediation under Article 5, Dispute Resolution.

Section 7.7 - Amendments and Waivers

No amendment to this Agreement will be valid or binding unless it is in writing and duly executed by both of the Parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

Section 7.8 - 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 7.9 - Survival

All representations and warranties given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation under Section 7.14, shall survive indefinitely the termination of this Agreement.

Section 7.10 - Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

Section 7.11 - 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.

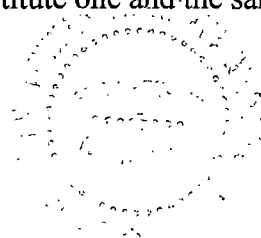
(i) if to the Client:
**Township of Whitewater Region
Municipal Office
44 Main Street, PO Box 40
Cobden, ON. K0J 1K0
Telephone: 613-646-2282
Fax: 613-646-2283
Attention: Steve Hodson, Environmental Services Manager**

(ii) if to OCWA:
**Ontario Clean Water Agency
593 Norris Court,
Kingston, ON. K7P 2R9
Telephone: 613-634-6292
Fax: 613-634-1942
Attention: Daragh Slowey, Business Development Manager
Cell: 613-290-6153**

(c) 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 7.12 - Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.



Section 7.13 - 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 7.14 - 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

Nov. 25, 2013
Date of Signing

11/25/2013
Date of Signing

By: [Signature]
(Authorized Signing Officer)

By: [Signature]
(Authorized Signing Officer)

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

12/03/2013
Date of Signing

12/03/2013
Date of Signing

By: [Signature]
(Authorized Signing Officer)

By: [Signature]
(Authorized Signing Officer)

SCHEDULE A - The Facilities

Part 1. Description of the Facilities

For the purposes of this Agreement, the Facilities are comprised of the following:

- 1 - Class II Water Treatment Plant (Cobden)
- 1 - Class II Water Treatment Plant (Beachburg)
- 1 - Class II Water Distribution System (Cobden)
- 2 - Class I Water Distribution Systems (Haley & Beachburg)
- 1 - Elevated Water Storage Reservoir (Cobden)
- 1 - Surface Water Supply (Cobden)
- 4 - Groundwater Wells (Haley & Beachburg)
- 23 Kilometers of water distribution pipe
- 1 - Class III Wastewater Treatment Plant (Cobden)
- 1 - Class II Wastewater Collection System (Cobden)
- 1 - Sewage Lift Station (Cobden)
- 6 Kilometers of wastewater mains

Cobden Drinking Water Treatment Plant

- Raw water intake system extending into Muskrat Lake.
- Two (2) low lift pump wells located inside the treatment plant.
- One (1) proprietary package flocculator/clarifier/filtration unit
- Description: Alum addition as coagulant
- Polymer addition as coagulant aid
- Sodium hypochlorite solution for disinfection
- Potassium permanganate for zebra mussel and manganese control
- One (1) backwash wastewater and sludge holding/settling tanks.
- One (1) twin-cell baffled clearwell
- Two (2) high lift pump wells adjacent to the clearwell, Discharges to: Distribution system, Package treatment units
- Process control and monitoring equipment
- Backup Power Supply, One (1) standby diesel generator rated 40 kW with fuel storage tank
- Including water distribution system

Cobden Wastewater Treatment Plant

- Aeration activated sludge sewage treatment plant
- Grit channels with proportional weir velocity control
- Aeration system - Two annular ring type aeration
- Final Clarifier - One circular clarifier

- Sludge Holding Tank
- Chlorination - One annular segment type chlorine contact chamber
- Flow Measurement - One 'V' notch weir located at the overflow of the chlorine contact chamber.
- Phosphorus Removal System
- Outfall to an existing earth bermed enclosure.
- Existing wastewater collection, including sewage lift station

Beachburg Drinking Water Treatment Plant

- 1 drilled well & 1 dug well
- One (1) proprietary package clarifier/filtration unit
- Alum addition as coagulant
- Sodium hypochlorite solution for disinfection
- One (2) two-cell filter backwash wastewater and sludge holding/settling tank
- One (1) multiple-cell treated water storage reservoir
- High lift pumping system
- Process control and monitoring equipment
- Backup Power Supply, One (1) standby diesel generator rated 150 kW with fuel storage tank

Haley Drinking Water Treatment Plant

- Dug Wells
- Sodium hypochlorite solution for disinfection
- Process control and monitoring equipment
- Backup Power Supply, One (1) external standby natural gas

Part 2. Street Addresses of the Facilities

Cobden Drinking Water System
28 Bonnechere Street North,
Cobden, ON. K0J 1K0

Cobden Elevated Tower
44 Gould Street,
Cobden, ON.

Cobden Wastewater Treatment Plant
1 Astrolabe Road,
Cobden, ON.

Cobden Sewage Lift Station
Morton St.
Cobden, ON.

Beachburg Drinking Water System
31 Robertson Drive,
Beachburg, ON.

Haley Drinking Water System
Heather Place Site
Haley, ON.

Part 3. Flow Diagrams of the Facilities

Please see attachments 1 to 4.

SCHEDULE B - Definitions

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

“Actual Charges” is defined in Section 4.4 of this Agreement.

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

“Applicable Laws” means any and all statutes, by-laws, regulations, permits, approvals, standards, guidelines, 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, Building Code, or workers’ compensation matters and includes Environmental Laws.

“Approved Capital Expenditures” is defined in Paragraph 4.7(b) of this Agreement.

“Authorizations” means any by-laws, licences, certificates of approval, permits, consents and other authorizations or approvals required under Applicable Laws from time to time in order to operate the Facilities.

“Authorized Representative(s)” is defined in Section 2.6 of this Agreement.

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

“Capital Expenditures” is defined in Paragraph 4.7(a) of this Agreement.

“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.

“Change in Circumstance” is defined in Paragraph 7.6(a).

“Claim” means any claim, fine, penalty, liability, damages, loss and judgments (including but not limited to, costs and expenses incidental thereto).

“CPI Adjustment” means the percentage difference between the Statistics Canada Consumer Price Index, All Items (Ontario) (“CPI”) during September of the previous Year as compared to the CPI of September of the current Year. For example, the CPI Adjustment for Year 2012, is the CPI of September 2011 divided by the CPI of September 2010.

“Current Term” is defined in Paragraph 4.6(c) of this Agreement.

“**Crown**” means Her Majesty the Queen in Right of Ontario.

“**Effective Date**” is defined on Page 1 of this Agreement.

“**Environmental Laws**” means, any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licences, judgments, orders, judicial decisions, injunctions, and authorizations related to environmental matters or occupational health and safety and which are applicable to the operation of water treatment facilities.

“**ESA**” means the Electrical Safety Authority.

“**Estimate**” is defined in Section 4.2 of this Agreement.

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

“**Hydro Costs**” means hydroelectricity costs due to the operation and maintenance of the Facilities.

“**Indemnified Parties**” is defined in Paragraph 3.3(a) of this Agreement.

“**Initial Term**” is defined in Section 4.1 of this Agreement.

“**Insurance**” is defined in Paragraph 2.9(a) and further described in Schedule D.

“**Intellectual Property Rights**” means any copyright, trademark, patent, registered design, design right, topography right, service mark, application to register any of the aforementioned rights, trade secret, rights in unpatented know-how, right of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world.

“**Management Fee**” is defined in Paragraph 4.6(a) of this Agreement.

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

“**MOL**” means the (Ontario) Ministry of Labour.

“**Municipal Drinking Water Licensing Program**” means the MOE’s program which requires owners of municipal drinking water systems to obtain a “municipal drinking water licence” (as defined under the SDWA) in accordance with Part V of the SDWA and as part of such process will require owners to: prepare an operational plan and submit the operational plan to the MOE; retain an accredited operating authority; obtain a “drinking water works permit” (as defined in the SDWA); prepare and submit a financial plan in accordance with Part V of the SDWA; and obtain a permit to take water.

“**OHSA**” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

“**Optional Services**” means any services not included in Schedule C “the Services” that the Client and OCWA agree in writing to designate as “Optional Services” subject to Section 2.3.

“**Outpost 5**” means a remote monitoring and control system designed and constructed by OCWA and its consultants for the purpose of monitoring and controlling processes at water treatment facilities and their related parts.

“**OWRA**” means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

“**Parties**” is defined in Paragraph (d) of the Recitals to the Agreement.

“**PDC**” or “**Process Data Collection**” means technology that allows process data to be entered into a format that can be viewed, manipulated and retrieved in the form of customized reports.

“**Pre-existing Condition**” is defined in Section 2.8 of this Agreement.

“**Renewal Term**” is defined in Section 4.1 of this Agreement.

“**SCADA**” means Supervisory Control and Data Acquisition.

“**SDWA**” means the *Safe Drinking Water Act, 2002*, S.O. 2002 c.32.

“**Service Fee**” means an additional fee charged to the Client when OCWA purchases materials, supplies, equipment or contractor’s services on behalf of the Client. For any individual item or service purchased, the Service Fee shall be calculated as follows:

- (a) 15% of the first \$10,000; plus
- (b) 10% on the amount from \$10,000 to \$50,000; plus
- (c) 5% on the amount in excess of \$50,000.

For example, the Service associated with a capital project which required \$56,000 in supplies and materials would be \$5,800 ($15\% \times \$10,000 + 10\% \times \$40,000 + 5\% \times \$6,000$).

“**Services**” is defined in Section 2.1 of this Agreement.

“**Technology**” is defined in Section 7.1 of this Agreement.

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

“**Unexpected Expenses**” is defined in Paragraph 4.8(a) of this Agreement.

“**WMMS**” or “**Work Management Maintenance System**” means a computer program used to determine a program of preventive maintenance activities for equipment in a facility based on a risk analysis that considers factors such as equipment life expectancy, present value and replacement cost.

“Year” means the 365 day period from *November 12th* to *November 11th* of the *following* calendar year.

SCHEDULE C - The Services

1. The Services

The Services are set out below:

A. Water Treatment - General Operation

- i. Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- ii. Inspect process control equipment to ensure proper operation of disinfection system, coagulation, flocculation, sedimentation and filtration systems, clarifier, pumps, chemical systems, on line monitors and standby power;
- iii. Check filters and backwashing on a routine basis;
- iv. Mix, monitor and adjust process chemicals to ensure adequate treatment;
- v. Record and analyze water flow, electricity used, chemicals used, chlorine residuals, turbidity and other process readings as required;
- vi. Routinely conduct water sampling/testing in accordance with Environmental Laws, including the facility's Certificate of Approval(s);
- vii. Complete OCWA's internal operational data forms for statistical input into a reporting system;
- viii. Calibrate equipment in accordance with the facility's Certificate of Approval(s).

B. Water Distribution - General Operation

- i. Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- ii. Inspect equipment at pumping stations, towers, stand pipes and reservoirs, rechlorination facilities, sampling stations to ensure proper operation of disinfection system, pumps, chemical systems, on line monitors and standby power;
- iii. Open, exercise flush and winterize water hydrants as required;
- iv. Exercise main distribution shut-off valves on a progressive schedule;
- v. Leak detection monitoring of tower, stand pipes and ground water reservoirs for levels and pressures;
- vi. Oversee repairs completed by The Client or third part contractor;
- vii. Routinely conduct water sampling/testing in accordance with Environmental Laws, including the facility's Certificate of Approval(s);
- viii. Complete OCWA's internal operational data forms for statistical input into a reporting system;
- ix. Calibrate equipment in accordance with the facility's Certificate of Approval(s).

C. Wells - General Operation

- i. Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- ii. Inspect process control equipment to ensure proper operation of disinfection system, pumps, valves, chemical systems, surge tanks, on line monitors and standby power;
- iii. Perform duties as outlined in any applicable Well Maintenance and Inspection Plans;
- iv. Routinely conduct water sampling/testing in accordance with Environmental Laws, including the facility's Certificate of Approval(s);
- v. Complete OCWA's internal operational data forms for statistical input into a reporting system;
- vi. Calibrate equipment in accordance with the facility's Certificate of Approval(s).

D. Wastewater Treatment

- i. Ensure that daily operations comply with Environmental Laws;
- ii. Inspect process control equipment to ensure proper operation of bar screens, primary and secondary wastewater treatment clarifiers, pumps, blower and aeration systems, disinfection systems, digesters, sludge holding tanks, stand by power and other chemical feeders;
- iii. Remove grit as required;
- iv. OCWA staff will on a routine basis:
 - monitor and adjust dosages of process chemical as required;
 - record and analyze electricity used, chemicals used, chlorine residuals, disinfection, process water and wastewater flow calculations;
 - collect samples and perform routine wastewater tests in accordance with the Certificate of Approval or legislation;
- v. Calculate, record and analyze the amount of wastewater treated, the daily flows and monthly flows, pumping station run hours, and standby equipment running hours;
- vi. Complete OCWA's internal operational data forms for statistical input into PDC;
- vii. Calibrate equipment in accordance with the facility's Certificate of Approval;
- viii. Clean wet wells, bar screens, annually or as needed.

E. Wastewater Collection

- i. Ensure that daily operations comply with Environmental Laws;
- ii. Inspect equipment at pumping stations and forcemains to ensure proper operation of bar screens and pumps;
- iii. As required, remove maintenance hole covers and inspect maintenance holes for flow through, debris accumulation, structural stability of walls, rungs, infiltration and proper benching;
- iv. Record flow readings on operational forms for computer input;
- v. Calibrate equipment in accordance with the facility's Certificate of Approval;
- vi. Clean wet wells, bar screens, annually or as needed.

2. Routine Maintenance

OCWA will:

- (a) carry out a routine lubrication program including greasing and oiling as required in the lubrication schedule;
- (b) perform routine maintenance duties to equipment by following preventive maintenance procedures; Parts required for repair of equipment to be invoiced as a capital expense.
- (c) maintain an inventory of all key equipment and tools; and
- (d) ensure the security of the Facilities by locking doors and gates.

3. Capital Improvements

OCWA, acting as a reasonable operator, will record information on the frequency of equipment breakdown and repair costs to determine replacement needs. Parts of the Facilities requiring upgrading or improvement will be identified and brought to the attention of the Client in accordance with Paragraph 4.7(b) of this Agreement.

4. Efficient Operation/Record Keeping

- (a) OCWA, acting reasonably, is responsible for ensuring the efficient operation of the Facilities' processes.
- (b) OCWA will maintain records regarding the operation of the Facilities in compliance with Environmental Laws.

5. Regulatory Matters

- (a) OCWA shall prepare the Facilities for any scheduled inspection by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA.
- (b) Responding to a regulatory report on behalf of the Client (for example, a report of an inspection from the MOE or MOL), either directly or indirectly shall be considered an Unexpected Expense as per Section 4.8. Subject to any approvals of the Client required by Paragraph 4.8(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports (in accordance with Paragraph 4.8(a)) or negotiate changes to the reports with the regulatory authorities if related to the operation of the Facilities. If any orders are issued by a regulatory authority which will require Capital Expenditures or any additional services, then OCWA may negotiate with the Client to provide such services at additional cost to be agreed upon by the Parties.

6. Reporting

- a) OCWA shall provide a facility performance report for each facility, within ninety (90) days of the completion of each year or such other period as the Client and OCWA may agree upon. (OCWA will endeavor to provide facility reports in a timely manner however performance reporting may be dependent on DWQMS audit dates and MOE guidelines for reporting).
- b) a summarized financial report, in the format provided in Schedule F, within forty-five (45) days of the completion, on a quarterly basis, indicating expenditures to date and funds remaining; and
- c) an annual financial report, in the format provided in Schedule F.

7. Staffing

- (a) OCWA will ensure the Facilities are operated with certified operators and other trained staff as required by Environmental Laws.
- (b) OCWA will ensure that staff working at the Facilities are trained in normal process operation and maintenance of the Facilities and that all staff are trained to deal with emergency situations.

8. Emergency Situations

- (a) OCWA will ensure that there are contingency plans in place for OCWA staff to address non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- (b) In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facilities in compliance with Environmental Laws.
- (c) Emergency responses outside of regular work hours shall be billed to the Client in accordance with Paragraph 2.3(b).

9. Sludge

- a) OCWA will adhere to the current disposal agreement in place with Mississippi Mills and the Client.
- b) OCWA shall arrange for sludge removal in accordance with all relevant certificates of approval and Environmental Laws in force as of the commencement date of this Agreement indicated in Section 4.1. For the purposes of Paragraph 4.5(c) of this Agreement, if a provision of the *Nutrient Management Act, 2002* (the "NMA") or its

regulations (as they may be amended from time to time), or any relevant regulatory guidelines on biosolids management and disposal issued by the Ministry of the Environment or Ministry of Agriculture and Food has not yet been phased in as of the commencement date of this Agreement, such provision will be deemed to not yet be in force and shall be considered a change in Environmental Law.

- c) As owner of the wastewater treatment facility, the Client acknowledges that it shall be the Client's responsibility to meet the requirements of the NMA regarding preparation and submission of a nutrient management strategy; such requirement is being phased in depending upon the size of the facility. OCWA may be able to provide assistance in the preparation of the strategy upon the Client's request and the Parties' agreement on the scope of the work and price.
- d) Future NMA requirements also affect sludge haulers with respect to certification. The Client acknowledges that these "new" NMA requirements may affect the price of sludge haulage and therefore would be considered a change in Applicable Laws under Paragraph 4.8(a).
- e) With an approved Nutrient Management Plan, OCWA would land apply the biosolids during summer months.

10. **Excluded Services**

- Leak Detection surveys (Recommended - \$5000 over 5 years, or \$1000 per year)
- Asset Management Plan (Recommended - \$20,000 over 5 years or \$5000 per year)
- Cost to certify sludge sites/fields (Nutrient Management Plan)
- Engineering Services, ie. Energy Management Audits
- Overtime and call-backs, after first twelve (12), if reason beyond OCWA's control.
- Water Meter installation & maintenance
- Costs for non-routine sampling, lab analysis and associated remediation efforts to address adverse results
- Costs of any External Audits related to the DWQMS
- Costs for preparation of Operation and Maintenance Manuals
- Costs for landscaping, snow removal and/or grass cutting
- Local water and utility charges
- Distribution Services; hydrant repair/replacement/turning & swabbing.

SCHEDULE D - Insurance

A summary of the insurance coverage that OCWA will arrange for in respect of the Facilities is described below:

Property Insurance

Perils: "All Risks" including earthquake and flood. Subject to policy exclusions.

Limits:

- Replacement Value (Subject to Annual Review by the Client)
- Extra expenses
- Expediting expenses

Deductibles: For the year 2013, subject to change on an annual basis:

All Perils	-	\$5,000 (except earthquake and flood)
Earthquake	-	\$100,000 (minimum)
Flood	-	\$50,000

Where the Client's property is repaired or replaced, the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

Property Insured: All reported properties including buildings and equipment situated within 1,000 feet of the premises. Includes pumping stations. Excludes underground sewer and water system.

Boiler and Machinery Insurance

Coverage: Insures against loss or damage arising from an accident with Pressure Objects, Production Machines, and Machinery and Service Supply in use or connected ready for use.

Objects: Fired and Unfired Pressure Vessels (Excess of 15PSI) Piping, Production Machinery and Service Supply.

Accident: Sudden and accidental breakdown of an object which causes it physical damage, requiring its repair or replacement. Subject to policy terms, conditions and exclusions.

Limit: \$100,000,000 per accident.

Deductibles: \$5,000 for the year 2013; subject to change on an annual basis.

Where the Client's property is repaired or replaced, the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

Commercial General Liability Insurance

Coverage: Third party liability including legal fees, for property damage and/or bodily injury as caused by OCWA's negligence arising out of OCWA's operations of the Facilities.

Limit: \$5,000,000 per occurrence.

Deductible: \$50,000 for the year 2013; subject to change on an annual basis.

Contractor's Pollution Liability/Professional Liability Insurance

Coverage: Professional Liability: To pay on behalf of OCWA sums which OCWA shall become legally obligated to pay as damages and/or claims expense as a result of claims made first against OCWA, and reported to the insurer, in writing during the policy period, automatic extended reporting period (60 days), and by reason of any act, error or omission in professional services rendered or that should have been rendered by OCWA, or by any person for whose acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA's profession.

Pollution legal liability covering third party property damage and bodily injury and clean up costs for pollution conditions arising out of the performance of the services provided by OCWA.

Limit: \$10,000,000 per loss on a Claims Made basis with automatic, extended reporting periods for Pollution Liability. \$10,000,000 aggregate.

Limit: \$5,000,000 for Professional Liability Insurance

Deductible: \$100,000 for the year 2013; subject to change on an annual basis.

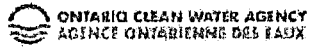
SCHEDULE E - List of Pre-Existing Conditions

As per Paragraph 3.1(e) of this Agreement, the following Pre-existing Conditions have been identified:

- Dialers, SCADA
- Security
- Out of Date Operations Manual

A more comprehensive list of Pre-Existing Conditions will be evaluated by a Third Party Sub-contractor, as part of the proposed asset management plan (AMP) outlined in Schedule C – Excluded Services. The plan would highlight facility and equipment condition, life expectancies, improvements and estimated replacement costs over a seven year term. While the AMP is a recommended service, it is optional. OCWA would still submit an annual 7-yr major maintenance forecast.

SCHEDULE F - Format for Financial Reporting



Quarterly Cost Plus

Page 1 of 1

Facility: 1234 Township of ABCD
 Project: ABCD1234-001 Cost Plus Client Report
 Date: 03/03/2014 For the Period of January 1, 2014 to March, 2014

Operating Charges	2013 Budget	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	YTD Budget	YTD Actuals	Variance
Salaries &	150,454.45	34,307.79	31,746.02	0.00	0.00	75,218.62	69,053.61	6,165.01
Chemicals	6,400.00	60.00	0.00	0.00	0.00	3,199.62	50.50	3,149.12
Sludge Haulage	17,500.00	0.00	0.00	0.00	0.00	8,750.00	0.00	8,750.00
Services	55,846.44	11,563.24	12,452.93	0.00	0.00	27,899.14	24,046.67	3,852.47
Supplies &	16,925.04	5,633.62	2,042.24	0.00	0.00	8,451.66	7,576.56	875.10
Total Operating Costs	247,127.94	51,775.55	46,251.19	0.00	0.00	123,499.64	98,026.74	25,472.90
Management Fee	47,346.25	11,812.05	11,612.07	0.00	0.00	23,624.12	23,624.12	0.00
Total Operating Charges	294,474.19	63,587.60	58,063.26	0.00	0.00	147,123.76	121,650.86	25,472.90