

SERVICES AGREEMENT

BETWEEN

ONTARIO CLEAN WATER AGENCY

A N D

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

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SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of January, 2025 (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 TOWN OF SAUGEEN SHORES

(the “Client”)

RECITALS

- (a) OCWA is in the business of providing management, operations and maintenance services for water and wastewater facilities.
- (b) The Client is municipal corporation pursuant to the *Municipal Act, 2001*, SO 2001, c25 and is the owner of the Southampton Water Treatment Facility, Saugeen Shores Distribution System, the Port Elgin and Southampton Wastewater Treatment Plants and Collection Systems , 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 ____ day of _____, 20__ 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 management, operation and maintenance services, as described in Schedule C to this Agreement, in respect of the Facilities (the “Services”).
- (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 Sections 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Major Maintenance Expenditures and/or not undertaking the Capital Projects reasonably recommended by OCWA as per Section 4.6 and Section 4.7 herein;
 - (ii) failure of the Client to meet its responsibilities specified in this Agreement;
 - (iii) failure of any equipment at the Facilities, unless the failure is due to OCWA’s negligence;
 - (iv) the water transmitted to the water treatment Facilities for treatment contains contaminants or pathogens which cannot be treated or removed by the Facilities treatment processes;
 - (v) the quantity or quality of water transmitted to the water treatment Facilities exceeds the Facilities’ design or operating capacity;
 - (vi) the wastewater transmitted to the wastewater treatment Facilities for treatment contains contaminants or other substances which cannot be treated or removed by the Facilities treatment processes;

- (vii) the wastewater transmitted to the wastewater treatment Facilities for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Law;
 - (viii) the quantity or quality of wastewater transmitted to the wastewater treatment Facilities exceeds the Facilities' design or operating capacity;
 - (ix) operational upset conditions caused by the acceptance of septage or leachate;
- (b) OCWA may temporarily cease to provide or reduce the level of provision of Services in the event of an emergency, a breakdown or any Uncontrollable Circumstance. OCWA shall, when practicable, try 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 Section 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) 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 shall advise the Client as soon as reasonably possible and shall 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 - 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 2.4 - 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 2.5 - Indemnification of the Client

- (a) OCWA shall exonerate, indemnify and hold harmless the Client, members of Council and Committees, 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 F. 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 2.5 that are for the benefit of the Client's members of Municipal Council and its Committees, employees and agents in trust for such members of Council and Committees, directors, officers, employees and agents as third party beneficiaries under this Agreement.
- (c) Notwithstanding Section 2.5(a) above, OCWA shall not be liable in respect of any Claim to the extent the Claim is covered by the Insurance, as defined herein.
- (d) Claims by the Client for indemnification from OCWA will follow the Indemnification Process as described in Schedule B.

Section 2.6 - Waiver of Consequential Damages

In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

Section 2.7 - Insurance

- (a) OCWA shall maintain, subject to reasonable availability, insurance coverage as described in Schedule E 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. Insurance coverage is reviewed annually and the Client will be notified if there is a change in coverage or price increase.

- (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 which are listed in Schedule F. 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 E.
- (e) Any policies of insurance obtained by the Client shall be primary, notwithstanding other insurance obtained and maintained by OCWA.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Obligations of the Client

- (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 Land Tribunal (OLT) and the Ministry of the Environment, Conservation and Parks (MECP)), 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 Section 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 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* and the *Occupational Health and Safety Act* (the "OHSA") and their regulations.

- (e) The Client confirms 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 F. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (f) The Client confirms 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 acknowledges and agrees that it is responsible for dealing with designated substances, as defined under the Occupational Health and Safety Act (the "OHSA") and its regulations, and to notify OCWA of the location of any designated substances in the Facilities. Any designated substances have been identified through surveys and have been documented and copies provided to OCWA. For clarity, designated substances include, but are not limited to, asbestos and lead.

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 facility, all water works that belong to or are under the control of the Client and that distribute water from the Facilities.
- (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 Facility, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the Facilities.
- (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 Facilities 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 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 Port Elgin Water Pollution Control Plant.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Section 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and His Majesty the King in Right of Ontario, as represented by the Minister of the Environment, Conservation and Parks and all directors, officers, employees and agents of the Ministry of the Environment, Conservation and Parks (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 is solely attributed to the Client's negligence or wilful misconduct.
- (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) Claims by OCWA for indemnification from the Client will follow the Indemnification Process as described in Schedule B.
- (d) Notwithstanding Section 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 E; 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 January 1, 2025 and shall continue in effect for an initial term of five (5) years, ending on December 31, 2029 (the “Initial Term”) and then may be renewed for successive five (5)-year terms (each a “Renewal Term”) upon agreement between the Parties, subject to Sections 4.3 and 6.1 of this Agreement.

Section 4.2 - Annual Price for the Initial Term

Subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay OCWA a price for the Services for each Year of the Initial Term as described in Schedule D.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for any Renewal Term will be as agreed between the Client and OCWA. If the Parties cannot agree on the Annual Price for any Renewal Term within six (6) months of the beginning of the last Year of either the Initial Term or the Renewal Term, as the case may be (the “Current Term”), then this Agreement will be terminated twelve (12) months after the last day of the Current Term unless the Parties mutually agree to extend the term of the Agreement. During this twelve (12) month period or mutually agreed upon extension period, the Client shall pay the Annual Price paid for the last Year of the Current Term, plus an adjustment for inflation calculated as described in Schedule D, pro-rated over that period.

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each Year of the Initial Term or any Current Term, in twelve (12) equal monthly payments, in advance, on the first day of each month. The first payment shall be due and payable on January 1, 2025. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client.

Section 4.5 - Items Not Included in the Annual Price

The Annual Price, as further described in Schedule D, for each Year of the Initial Term and any Renewal Term, covers all charges for the Services, but does not include any charges for the following:

- (a) any Capital Projects (as defined in Section 4.7(a) below) or costs resulting from any failure of the Client to implement reasonably recommended Major Maintenance Expenditures;
- (b) costs or charges for services resulting from a Change in Applicable Laws;
- (c) Unexpected Expenses (as defined in Section 4.8(a) below);
- (d) charges for any Optional Services that are provided by OCWA to the Client;

- (f) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facility;

Section 4.6 - Major Maintenance Expenditures

- (a) “Major Maintenance Expenditures” means the charges for all non-routine, non-repetitive activities, repair or replacement of machinery or equipment required for the continuity of operations, safety, and operating performance of the Facilities that are necessary to prevent or correct a failure of any component of the equipment which is not included as part of Routine Maintenance including OCWA staff time, third party labour charges, together with the Service Fee or fixed fee basis.
- (b) No later than September 30th of each Year, this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with rolling ten (10)-year recommendations for Major Maintenance Expenditures required for the long-term operation of the Facilities. The Client’s written approval of the estimate or revised estimate, in the form set out in Schedule H, authorizes OCWA to incur the Major Maintenance Expenditures included in the estimate (the “Approved Major Maintenance Expenditures”).
- (c) OCWA will invoice the Client for the Approved Major Maintenance Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.
- (d) OCWA will not be required to obtain the prior approval of the Client for any Major Maintenance Expenditures item costing less than \$10,000.00.

Section 4.7 - Capital Projects

- (a) “Capital Projects” means changes and improvements to the Facilities, which include the installation of new technology, improvements to the efficiency, performance and operation of the Facilities, replacement of major pieces of equipment, structural modifications to the Facilities and the construction and commissioning of new Facilities.
- (b) During the term of this Agreement, the Client may request OCWA to undertake Capital Projects for the Client. The terms and conditions of such Capital Projects including the fee shall be negotiated by OCWA and the Client.

Section 4.8 - Unexpected Expenses

- (a) “Unexpected Expenses” means unanticipated expenditures or additional costs which may include Major Maintenance Expenditures in addition to the Approved Major Maintenance 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.

MECP or MOL) or identified through an inspection (e.g. ESA, MECP, 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 thirty (30) 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 Major Maintenance Expenditure item costing less than \$10,000.00.

Section 4.9 - Interest on Late Payments

- (a) Monthly Payment of Annual Fee. If the Client's monthly payment of the Annual Fee is not available in OCWA's 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 Lieutenant Governor in Council under s.10(4) of 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 4.8(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

If the Client disputes any portion of an invoice, the Client shall pay to OCWA the undisputed portion of the invoice by the due date set out herein and provide OCWA with written notice of such dispute by the due date. Failure to provide such written notice of any such dispute will act as a waiver of any defense or justification for failing to pay the full amount of the invoice by the due date. Within ten (10) days of resolution of the disputed amount, the Client shall pay to OCWA all amounts determined to be payable to OCWA, plus interest in accordance with Section 4.9(a).

Section 4.11 – Hydro, Natural Gas & Water Costs

OCWA is responsible for paying hydro and natural gas costs in respect of the Facilities, and has included this cost in the Annual Price. Section 7 of Schedule D includes OCWA's budgetary annual estimate for Hydro Costs. The Town will pay for water costs in respect of the Facilities.

Section 4.12 - Optional Services

- (a) If requested by the Client, OCWA may provide Optional Services to the Client by Change Order as set out in Schedule G, 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 as described in Schedule D.
- (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.
- (d) The labour and mileage rates described in Schedule D will be reviewed annually by OCWA and may be subject to change.

Section 4.13 - Changes to the Agreement

- (a) A Change to the Agreement may be carried out after execution of this Agreement by Change Order. A Change Order shall be based upon agreement between the Parties and shall be reflected in a Change Order Form.
- (b) The Parties shall execute a Change Order Form, which shall be substantially in the form found in Schedule G which will state their agreement upon all of the following:
 - (i) the services to be provided;
 - (ii) fees for the services provided under the Change Order;
 - (iii) the extent of the adjustment to the maintenance and operating schedule, if any;
 - (iv) the extent of any adjustments to the Annual Price, if any; and
 - (v) all other effects that the change has on the provisions of this Agreement.

Section 4.14 – Biosolids Costs

OCWA's initial Annual Price is calculated based upon the current biosolids cost to operate the Facilities (the "Biosolids Cost") in the amount of \$110,000.00 annually, as per Schedule D, Section 5 (the "Current Annual Biosolids").

Section 4.15 – Chemical Costs

OCWA's initial Annual Price is calculated based upon an estimate of the annual cost of chemicals used in the operation of the Facilities (the "Chemical Costs") in the amount of \$140,000.00 as per Schedule D, Section 6 (the "Current Annual Chemical Cost").

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 - TERMINATION

Section 6.1 - Termination of Agreement

- (a) At least one (1) calendar year before the expiry of the Current Term, 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.
- (b) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA by giving at least thirty (30) days' notice in writing to the other Party 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; and
 - (iii) the other Party does not correct the breach within thirty (30) days of receiving the notice.
- (c) 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.

Section 6.2 - Early Termination

- (a) If this Agreement is terminated for any reason prior to the expiry of the Current Term, other than due to a material breach of the Agreement by OCWA, provided such material breach has not been cured by OCWA, 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 any previously incurred Major Maintenance Expenditures, costs related to Capital Projects, Unexpected Expenses and Optional Services.
- (b) If this Agreement is terminated by the Client pursuant to section 6.1 (b), then the Client shall only be responsible to pay OCWA for all Services provided up to the date of termination and for any previously incurred Major Maintenance Expenditures, costs related to Capital Projects, Unexpected Expenses and Optional Services.

Section 6.3 - Inventory Count of Consumables/Supplies

OCWA and the Client will conduct an inventory count of consumables/supplies at the Facilities on the first day of the Initial Term or as soon as the Parties may agree. If OCWA no longer operates the Facilities at termination of this Agreement, OCWA shall either:

- (a) ensure that there is the same amount of consumables/supplies at the Facilities on the date of termination as there was on the first day of the Initial Term; or
- (b) reimburse the Client for any shortfall.

If the amount of consumables/supplies at the Facilities on the date of termination exceeds the amount on the first day of the Initial Term, the Client will either reimburse OCWA for any excess or OCWA may take possession of any excess, as OCWA may determine.

Section 6.4 - Final Settlement

If OCWA ceases to operate the Facilities, there shall be a final settlement of any agreed upon amounts owed to OCWA pursuant to the terms of this Agreement up to the date OCWA ceases to provide the Services, 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, provided that the said amounts and/or invoices are not in dispute.

Section 6.5 - Transfer of Operations

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

- (a) The log books for the Facilities.

- (b) The original operations manuals that were provided by the Client to OCWA at the commencement of the Services with all updates to the expiry date of the Agreement.
- (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 in electronic format.
- (e) The operational plans under the Drinking Water Quality Management Standard (DWQMS) and Wastewater Quality Management Standard (WWQMS) any Standard Operating Procedures (SOPs) identified in the DWQMS.
- (f) The ten-year comprehensive capital plans and existing spreadsheet of facility assets.

Section 6.6 - Restrictions on Recruitment of OCWA's Employees

During the term of this Agreement and for one (1) year following the termination of this Agreement, the Client shall not solicit or recruit any employee of OCWA, nor induce any OCWA employee to leave his or her employ to work at the Facilities, unless mutually agreed to in writing by the Client and OCWA.

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 PDM (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 and any upgrades 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 of this Agreement shall govern.

Section 7.3 - 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 7.4 - 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 7.5 - 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 7.6 - Survival

All outstanding payment obligations, and the confidentiality obligation under Section 7.11, shall survive indefinitely the termination of this Agreement.

Section 7.7 - 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 7.8 - 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 email, 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 email, facsimile, registered mail or courier shall be deemed to have been given when received.

(i) if to the Client:

Town of Saugeen Shores
600 Tomlinson Drive, Box 820
Port Elgin ON
N0H 2C0

Telephone: 519-832-2008 ext 183
Email: matt.prentice@saugeenshores.ca
Attention: Matt Prentice - Director, Operations

(ii) if to OCWA:

Ontario Clean Water Agency
2085 Hurontario Street, Suite 500
Mississauga ON
L5A 4G1

Telephone: 519-318-3271
Email: sbudden@ocwa.com
Attention: Susan Budden, Business Development 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 7.9 - 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 7.10 - Freedom of Information

The Parties understand 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, *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, or as otherwise required by law.

Section 7.11 - Confidentiality

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.

Section 7.12 - 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 in Circumstance, including any adjustments to the Annual Price or the Services to be provided, which shall be effected as of the date of the Change in Circumstance. If the Parties dispute the existence of a Change in Circumstance, or the recommendation proposed to rectify the Change in Circumstance 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.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

Date of Signing

By: **Richard Junkin**
(Authorized Signing Officer)
Digitally signed by Richard Junkin
Date: 2024.12.02 10:31:00 -05'00'

Name:

Position:

Date of Signing

By: **Iman Hashemi**
(Authorized Signing Officer)
Digitally signed by Iman Hashemi
Date: 2024.12.04 11:43:58 -05'00'

Name:

Position:

We have authority to bind the Corporation.

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

Date of Signing

By: _____

Name: Luke Charbonneau

Position: Mayor

Date of Signing

By: _____

Name: Dawn Mittelholtz

Position: Clerk

We have authority to bind the Corporation

SCHEDULE A - The Facilities

Part 1. Description of the Facilities

For the purposes of this Agreement, the description of the Facilities is as follows;

Southampton Wastewater Treatment & Collection System

In Southampton there are 5 pumping stations of various sizes that collect and transport raw sewage either to another pumping station or directly to the treatment plant. The treatment plant located at 18 Caroline St West in Southampton and is a Class 2 Extended Aeration, Activated Sludge Treatment facility with a rated capacity of 3,042 m³ day. The facility utilizes a coarse bar screen, two concrete grit settling channels and raw flow monitoring. Raw sewage is then divided equally into two race track shaped aeration ditches equipped with surface agitation rotors. Aluminum Sulfate is used for phosphorus removal by use of two chemical metering pumps and a 22,700 L storage tank. Four rectangular clarifiers equipped with sludge and scum pumping systems are used for the settling process. Supernatant from the clarifiers pass through an effluent channel where ultraviolet light is used to achieve disinfection. Activated sludge is treated with a two-stage digestion process and is then stored in one of the sludge storage tanks until it can be hauled offsite for land application. All sewage facilities in Southampton have standby diesel backup generators onsite.

Saugeen Shores Drinking Water System: Treatment, Distribution and Supply

The Saugeen Shores Drinking Water System consists of a raw water low lift pumping station equipped with gas chlorine for zebra mussel control, pretreatment demand needs and raw water automatic strainers. The Zenon membrane treatment plant which utilizes sodium hypochlorite for primary disinfection and is located at 140 Island St in Southampton; it is permitted to pump 18,000 m³/day from Lake Huron. The plant has a two cell clearwell with a total storage capacity of 3,720 m³. High lift pumps then deliver water into two water storage standpipes located at 28 Victoria St Southampton and 850 Mill St Port Elgin, as well as a water storage reservoir with a total storage capacity of 4,546 m³ located at 841 Mill St Port Elgin. The system currently consists of over 900 fire hydrants, approximately 8 kilometers of trunk mains and 167 kilometers of distribution watermains.

Port Elgin Wastewater Treatment & Collection System

In Port Elgin there are 6 pumping stations of various sizes that collect and transport raw sewage either to another pumping station or directly to the treatment plant. The treatment plant located at 815 Lehn St in Port Elgin and is a Class 2 Extended Aeration, Activated Sludge Treatment facility current rated capacity of 6,455 m³/ day. The facility utilizes an inlet headworks building comprised of an automatic travelling screen, vortex grit separator and raw flow monitoring. Raw sewage is then divided equally into two rectangular aeration tanks with a total volume of 4,034 m³ equipped with fine bubble diffusers. Aluminum Sulfate is used for

phosphorus removal by use of two chemical metering pumps and a 25,000 L storage tank. Two 21.25m diameter x 3.6m deep circular clarifiers equipped with sludge and scum pumping systems are used for settling process. Supernatant from the clarifiers pass through the Effluent building where the Ultraviolet light is used to achieve disinfection. Activated sludge is treated with a two stage digestion process and is then stored in one of the two 1,680 m³ sludge storage tanks until it can be hauled offsite for land application. All sewage facilities in Port Elgin have standby diesel backup generators onsite.

Part 2. Street Addresses of the Facilities

The street addresses for each of the Facilities are as follows:

Southampton Wastewater Treatment Plant: 18 Caroline Street, Southampton
Pumping Station #1: 86 Saugeen Street, Southampton 3 Beach Road, Southampton
Pumping Station #2: 3 Beach Road, Southampton
Pumping Station #3: 315 Clarendon Street, Southampton
Pumping Station #4: 489 Ekford Street, Southampton
Pumping Station #5: 136 Shore Road, Southampton
Control building SPS 4&5: 247 Turner Street, Southampton

Port Elgin Wastewater Treatment Plant: 815 Lehn Street, Port Elgin
Harbour Pumping Station: 632 Harbour Street, Port Elgin
10 th concession Pumping Station: 345 Concession 10, Port Elgin
Mill Creek Pumping Station: 525 Mill Creek Road, Port Elgin
Shipley Pumping Station: 65 Shipley Ave, Port Elgin
Tomlinson Pumping Station: 500 Tomlinson Drive, Port Elgin
Westlinks Pumping Station: 2137 Bruce Rd 17

Southampton Water Treatment Plant: 140 Island Street, Southampton
Raw Water Intake: 57 Bay Street, Southampton
Southampton Standpipe: 28 Victoria St. South, Southampton
Port Elgin Standpipe: 850 Mill Street, Port Elgin
Water Reservoir: 841 Mill Street, Port Elgin
Water metering Station: MacGregor Park, Port Elgin

SCHEDULE B - Definitions

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

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

“Annual Price” is defined in Section 1 under Schedule D of this Agreement.

“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 Major Maintenance Expenditures” is defined in Section 4.6(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 2.4 of this Agreement.

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

“Business Hours” means the hours between 7:00 a.m. and 3:30 p.m. on a Business Day.

“Capital Projects” is defined in Section 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 Order” means the document shown in Schedule “G” describing the changes to the Agreement agreed to by both parties.

“Claim” means any claim in a lawsuit, 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.

“Current Annual Chemical Cost” is defined in Section 4.15.

“Current Term” is defined in Section 4.3 of this Agreement.

“Crown” means His Majesty the King in Right of Ontario.

“Drinking Water Quality Management Standard (DWQMS)” means the standard that sets out the minimum requirements for the operation of a drinking water system.

“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 and wastewater treatment facilities.

“ESA” means the Electrical Safety Authority.

“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.

“Indemnification Process” means the procedure a Party is required to follow to obtain indemnification:

- (a) upon receipt of a Claim, or notice of claim, the Indemnified Party shall immediately forward such Claim or notice of Claim to the Indemnifying Party;
- (b) if requested by the Indemnifying Party, the Indemnified Party shall provide all documentation relating to the Claim or notice of Claim;
- (c) the Indemnified Party shall take such steps necessary to protect its right to defend such Claim or notice of Claim and shall assign such right to the Indemnifying Party including any subrogation rights;
- (d) the Indemnifying Party shall not settle any Claim, or notice of Claim without the prior written consent of the Indemnified Party; and
- (e) the Indemnified Party shall have the right to take-over the defense of any Claim, or notice of Claim and the Indemnifying Party shall fully co-operate with such action.

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

“Indemnifying Party” means the Party responsible for dealing with any Claims and paying out any Claims.

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

“Insurance” is defined in Section 2.7(a) and further described in Schedule E.

“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.

“Major Maintenance Expenditures” is defined in Section 4.6(a) of this Agreement.

“MECP” means the (Ontario) Ministry of the Environment, Conservation and Parks.

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

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

“Optional Services” means any services not included in the Annual Price that the Client and OCWA agree in writing to designate as “Optional Services” subject to Section 4.12.

“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.

“Overall Responsible Operator” means the person who will act as the overall responsible operator pursuant to Section 23 of O. Reg. 128/04 under the *Safe Drinking Water Act, 2002* (the “SDWA”) and Section 15 of O. Reg. 129/04 under the *Ontario Water Resources Act* (the “OWRA”) in respect of the Facilities.

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

“Parties” and/or “Party” is defined in Paragraph (d) of the Recitals to the Agreement.

“PDM” or “Process Data Management” 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 2.5(a) of this Agreement.

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

“Routine Maintenance” means regular and/or repetitive activities recommended by the equipment or facility manufacturer or practices of a prudent operator to maintain the reasonably

expected service life of the equipment and components thereof and includes preventative maintenance.

“SCADA” means Supervisory Control and Data Acquisition.

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

“Service Fee” is defined and described in Schedule D.

“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 Section 2.2(c) of this Agreement.

“Unexpected Expenses” is defined in Section 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 three hundred and sixty-five (365) day period (or 366 days in a year in which there is a February 29th) starting from January 1st of the calendar year.

SCHEDULE C - The Services

Services for Water and Wastewater Treatment, Water Distribution and Collection Systems

Part 1 - Services included in the Annual Price

OCWA will provide the following services:

1. Staffing

- (a) OCWA will provide certified operator(s) to attend at the Facilities as required under normal operating conditions on Business Days and during Business Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities under normal operating conditions in compliance with the requirements of Applicable Laws, terms of an Agreement, including management, operation, routine maintenance, administration and reporting. the staff complement dedicated to the Saugeen Shores facilities shall be 10.5 FTE's as indicated in OCWA's renewal proposal dated October 17th, 2024;
- (b) supply a certified operator(s), who will be on call 24 hours per day, 365 days per year to respond to emergency conditions in respect of the operation of the Facilities, any such response to be charged to the Client in accordance with Schedule D herein or by way of an annual set amount;
- (c) provide all necessary training and continuing education for staff to ensure the continued operation of the Facilities, in accordance with all Applicable Laws;
- (d) employee discipline and promotions at the sole discretion and responsibility of OCWA;
- (e) provide an Overall Responsible Operator for the Facilities;
- (f) The Client reserves the right to request in writing upon reasonable notice to OCWA, that OCWA replace the Senior Operation's Manager for the Facilities or operator(s) at the Facilities, and OCWA shall, subject to Applicable Laws and OCWA policies, make best efforts to comply with such a request from the Client.

2. Regulatory Reporting and Communications

- (a) prepare and submit all reports to the Client and the MECP respecting the operation and maintenance of the Facilities as required by the MECP or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) review any inspection reports prepared by the MECP in respect of the Facilities and, subject to any approvals of the Client, either correct or negotiate with the MECP

amendments to a deficiency;

- (c) report to the Client and the MECP non-compliance with a regulatory requirement;
- (d) maintain Drinking Water Quality Management System (DWQMS) & Waste Water Quality Management System (WWQMS) plans, including audit costs for each;
- (e) on an annual basis conduct a risk assessment and management review meeting to include the Director of Operations, Manager of Operations, Public Works Manager,
- (f) endorsement of the Operational Plan to include the Mayor, CAO, and Director of Operations
- (g) OCWA shall provide a facility performance report for each facility, within forty-five (45) days of the completion of each year or such other period as the Client and OCWA may agree upon.
- (h) The Client and OCWA shall meet to discuss current operational issues and any other ongoing issues as necessary.
- (i) The Client and OCWA shall meet on a quarterly basis to review management, operational, performance, maintenance and capital planning matters arising with respect to the Facilities and this Agreement.
- (j) Both parties agree that Client staff may discuss operational matters with OCWA staff or vice versa from time to time. It is however, the intention, at all times, to keep all managers updated and informed of all ongoing issues. It is also understood that OCWA staff be directed by their designated OCWA manager.
- (k) OCWA is responsible to source a reasonable inventory (acreage for 1-2 years ahead of time) of land licenced under the Nutrient Management Act to receive biosolids. OCWA is to make all reasonable efforts to implement routine biosolids application in a timely manner on a twice-annual basis, or more often if the opportunity presents. If, due to circumstances outside OCWA's control, land application cannot proceed, OCWA will initiate an approved contingency plan. This could include third party storage, treatment offsite (i.e. Lystek), etc. It is recognized that extra costs may be incurred in those circumstances and the expenditure request process will be utilized.

3. 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) The first four (4) hours of every Emergency call-in or after hours response outside of regular work hours shall be included in the Annual Price, with the exception of underground linear assets or communication failures. Any time in excess of the first four (4) hours and any additional work required outside of regular work hours as agreed between OCWA and the Client shall be billed to the Client in accordance with Schedule D.

4. Change in Applicable Laws

- (a) notify the Client of any modifications or changes to the Services or the Facilities required to comply with any Change in Applicable Laws and subject to Client approval make the required modifications or changes at an additional cost.

5. Facility Emergency Preparedness

- (a) prepare and revise, as necessary, an Emergency Plan for the Facilities consistent with the requirements of the Applicable Laws and the Client's Emergency Plans, and provide to the Client by December 31st annually;
- (b) establish procedures for managing foreseeable emergencies or abnormal conditions affecting the Facilities.

6. General

- (a) good housekeeping to maintain a safe work environment;
- (b) provide security at the Facilities by maintaining the existing fences and gates and ensuring facilities are locked and notifying the Client of the need for any repairs;
- (c) provide mobile communications services.

7. Routine Operations & Maintenance

- (a) In providing routine operation of the Facilities, OCWA services shall include:
 - (i) visual inspection of all buildings, equipment and Facilities insofar as can be observed while these are in service;
 - (ii) sampling and/or on-site analysis;
 - (iii) sample collection, preservation, packing and shipment for off-site analyses as

- required by Applicable Laws at the time of the commencement of this Agreement;
- (iv) laboratory sampling, analysis and reports as required by Applicable Laws at the time of the commencement of this Agreement;
 - (v) purchase of chemical supply from chemical vendors;
 - (vi) checks and responses to alarms during Business Hours;
 - (vii) inspection of process control equipment to ensure proper operation of disinfection system, pumps, valves, chemicals system;
 - (viii) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass reports and routine checklists as required by Applicable Laws;
 - (ix) consolidation and processing of OCWA 's internal operational data forms for statistical input into a reporting system for the quarterly report;
 - (x) recording and analysis of flows, chemicals used, residuals and other process readings as required;
 - (xi) utilize Client's SCADA system (if applicable) for trending review and reporting, testing, and compliance;
 - (xii) before September 30th (as per agreement 4.6(b), prepare a report outlining Capital Projects required for the Facilities, for a period of 10 year complete with cost estimates for the Client's budgeting purposes;
 - (xiii) maintenance of vehicle(s) used in providing the services, including fuel and any other operating costs associated with such vehicle(s), excluding repairs and replacements of Town owned vehicles;
 - (xiv) detection of significant water loss based on monitoring of flow readings, tower stand pipes for levels and pressures;
 - (xv) "Flushing, opening, exercising, and maintaining water hydrants on and blowoffs and operate main valves on an annual basis. Fire hydrant flushing and maintenance to be in accordance with NFPA 25, most current version. Notify client of any issues affecting fire service and bag hydrant if required;

- (xvi) inspect distribution system visually for major leaks and collect samples and monitor chlorine residual regularly;
- (xvii) calculate, record and analyze of the amount of water and wastewater treated. Record daily and monthly flows;
- (xviii) monitor and adjust dosages of process chemicals;
- (xix) remove grit and screening;
- (xx) coordinate the removal of accumulated biosolids when required in accordance with applicable MECP Guidelines as required;
- (xxi) perform Routine Maintenance on the equipment used in the operation of the Facilities as specified in the maintenance management system which shall record information related to the maintenance of the Facilities;
- (xxii) verify or calibrate equipment including flow meters, handheld instruments, lifting and safety devices, back-flow preventers and other such similar equipment in accordance with manufacturers' recommendations;(includes inspection by third party, repairs are excluded from cost)
- (xxiii) assist with commissioning of water mains as long as the request does not impact the day to day operations of the facilities, otherwise subject to additional labour costs;
- (xxiv) isolate and tag out any unsafe or improperly operating piece of equipment and issue a request for maintenance;
- (xxv) suggest updates to the operations manuals;
- (xxvi) assist with non-emergency locates as long as the request does not impact the day to day operations of the facilities, otherwise subject to additional labour costs;
- (xxvii) operate standby generator under load conditions monthly; Schedule third party inspection by certified technician annually
- (xxviii) perform water shutoffs and turn ons -during Business Hours;
- (xxix) repair water leaks in distribution system on Client property only (to curb stop) and oversee curb stop/valves and water main isolation boxes during Business Hours as warranted from the Client;
- (xxx) inspection and cleaning of wet wells and sludge storage tanks - as required;

- (xxxi) oversee clear well and intake inspection every 5 years and cleaning as required - excludes third party costs;
- (xxxii) Town is responsible for water meter calls during Business Hours. OCWA will respond and resolve water meter calls after hours. The Town will supply meters, parts and couplings, fittings, etc.; and
- (xxxiii) Oversee the performance of watermain taps/ tie-ins and service connections during business hours.

Part 2 - Optional Services (To Be Provided at the Request of the Client)

OCWA may provide additional services to the Client including but not limited to the Optional Services set out below:

1. Operation Related Services

- (a) operation manual updates;
- (b) water meter installation/ replacement/reading;
- (c) water service disconnect and reconnect;
- (d) new water service installation or connection inspection;
- (e) well cameraing;
- (f) clearwell cleaning;

2. Capital Projects Plans

- (a) prepare a detailed Capital Projects Plan for the facility(ies);
- (b) assist in the development of Capital planning.

3. Watermain Services

- (a) thawing water pipes;
- (b) new watermain commissioning;
- (c) watermain swabbing;
- (d) intake inspection;
- (e) leak detection;
- (f) chamber inspections, monitoring.

4. Engineering Services

- (a) engineering services;
- (b) energy audits;
- (c) water tower painting and repair;
- (d) provide assistance and/or complete applicable funding applications;
- (e) initial condition inspection;

- (f) financial plans for water infrastructure.

5. Hydrant Services

- (a) hydrant flow testing in accordance with NFPA 291;
- (b) hydrant repairs;
- (c) painting hydrants.

6. Information Technology Services

- (a) SCADA development and maintenance.

SCHEDULE D - The Annual Price And Other Charges and Adjustments

1. Annual Price for the Initial Term

In accordance with Section 4.2 and subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay OCWA a price for the Services for each Year of the Initial Term in the following amounts (the “Annual Price”):

- (i) For Year One from January 1st 2025 through to December 31st 2025 inclusive: \$3,185,294.
- (ii) For Year Two and subsequent Years: \$3,185,294 plus the CPI Adjustment, plus an adjustment for maintaining the Insurance, which is renewed annually by OCWA. The CPI Adjustment shall be calculated as soon as necessary information is available from Statistics Canada. In Year Two of the Agreement, the CPI Adjustment shall be added to the Annual Price for Year One of the Agreement and for Subsequent Years, on a cumulative basis.

2. Payment of the Annual Price

In Year One of the Initial Term, the monthly payment of the Annual Price shall be \$265,441.17.

3. Optional Services

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:

- (a) Labour rates on Business Days, Monday to Friday, (7:00 a.m. to 3:30 p.m.) shall be billed at \$100.00/hour/person for an operations manager or process compliance technician, and \$75.00/hour/person for an operator or mechanic;
- (b) Labour rates on statutory holidays shall be billed at \$150.00/hour/person for an operations manager or process compliance technician, and \$112.50/hour/person for an operator or mechanic, with a minimum eight (8) hour charge;
- (c) Labour rates at all other times (after hours and on weekends) shall be billed at \$150.00/hour/person for an operations manager or process compliance technician, and \$112.50/hour/person for an operator or mechanic, with a minimum four (4) hour charge;
- (d) 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;

- (e) Costs for Optional Services provided by OCWA staff (i.e. engineering services, project management, SCADA, innovation technology, process optimization and asset management services) will be based on OCWA's technical services hourly rate schedule. This rate schedule will be set by OCWA at the beginning of each calendar year and will be reviewed by the Client as part of the Optional Services approval process.

4. Service Fee

“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) 10% on the first \$50,000; plus
- (b) 5% on the amount in excess of \$50,000.

For example, the Service associated with Major Maintenance which required \$56,000 in supplies and materials would be \$5,300 ($10\% \times \$50,000 + 5\% \times \$6,000$).

5. Adjustments for Biosolids Costs

OCWA's annual price includes the cost of biosolids and is calculated based on an average of previous years' actual costs. The estimated biosolids cost for year one (the “Base Year” is \$110,000). Annual cost adjustments are to be made as follows:

- i. If there is an increase of greater than 15% in total annual biosolid costs over the Base Year estimate in any year of the agreement then the Client shall pay OCWA the entire amount of the increase over and above the Annual Price.
 - ii. If there is a decrease of greater than 15% in total annual biosolid costs over the Base Year estimate in any year of the Agreement then the Client shall be compensated by OCWA for the entire amount of the decrease.
- (a) The calculations for the purpose of this section will take place as soon as it is reasonable possible once OCWA has received all related biosolid invoices for that year. At the end of each year of the Agreement, OCWA shall deliver an account to the Client. If the Client owes monies to OCWA under this section, then an invoice for that amount will be sent to the Client. If OCWA owes monies to the Client then a credit will be applied to the Client's account.
 - (b) Should the decrease in total annual biosolid costs be a direct result of an investment by OCWA then there shall be no credit under (b) above until such time as OCWA's investment is fully recovered. Such investment would be made in consultation and with the approval of the Client.

6. Adjustments for Chemical Costs

OCWA's annual price includes the cost of chemicals and is calculated based on an average of previous years' actual costs. The estimated chemical cost for year one (the "Base Year" is \$140,000). Annual cost adjustments are to be made as follows:

- iii. If there is an increase of greater than 10% in total annual chemical costs over the Base Year estimate in any year of the agreement then the Client shall pay OCWA the entire amount of the increase over and above the Annual Price.
 - iv. If there is a decrease of greater than 10% in total annual chemical costs over the Base Year estimate in any year of the Agreement then the Client shall be compensated by OCWA for the entire amount of the decrease.
- (c) The calculations for the purpose of this section will take place as soon as it is reasonable possible once OCWA has received all related chemical invoices for that year. At the end of each year of the Agreement, OCWA shall deliver an account to the Client. If the Client owes monies to OCWA under this section, then an invoice for that amount will be sent to the Client. If OCWA owes monies to the Client then a credit will be applied to the Client's account.
- (d) Should the decrease in total annual chemical costs be a direct result of an investment by OCWA then there shall be no credit under (b) above until such time as OCWA's investment is fully recovered. Such investment would be made in consultation and with the approval of the Client.

7. Adjustments for Hydro Costs

OCWA's annual price includes the cost of hydro and is calculated based on an average of previous years' actual costs. The estimated hydro cost for year one (the "Base Year" is \$570,000). In the event that the estimated hydro cost is exceeded, OCWA will inform the client and will provide a monthly invoice for any exceedances. If the hydro cost 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.

- (a) In the event that this Agreement is terminated for any reason, the Client shall reimburse OCWA for all actual hydroelectricity costs incurred to the date of termination no later than thirty (30) days after the date of termination.

SCHEDULE E - Insurance

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

Replacement Value;	Port Elgin WWT	\$ 24,125,088
	Southampton WT	\$ 32,590,272
	Southampton WWT	\$ 10,012,912

Property Insurance

Insured Perils: All Risks of direct physical loss or damage (including Flood and Earthquake) occurring during the term of this policy, except as hereinafter excluded.

Policy Limits:

- Replacement Value
- Extra expenses
- Expediting expenses

Insurable Values: Please report facilities' value (building and contents) based on current full Replacement Cost.
(Subject to Annual Review and Update by the Client.)

Deductibles: Earthquake – Up to 3% of the value of the property insured subject to a minimum of \$100,000

Flood – *Facilities and Locations in 50 or 100 year Flood Zones*
2% of the value of the property insured, subject to a minimum amount of \$100,000.

Flood - *All Other Facilities*
Up to 2% of the value of the property insured, subject to a minimum amount of \$60,000.

Water Damage – Up to \$130,000

Sewer back-up – Up to 2% of the value of the property insured, subject to a minimum amount of \$100,000.

Portable Generators – 3% of the value of the property insured, subject to a minimum amount of \$25,000.

Installations, Hook Liability or Portable Water Treatment Facility - \$25,000.

Testing & Commissioning - \$25,000

All Other Losses:

<u>Deductible for 2024-25</u>	<u>Facility & Location Insurable Value</u>
\$11,500	With total value up to \$10,000,000
\$13,000	With total value from \$10,000,000 under \$25,000,000
\$18,000	With total value over \$25,000,000 and at or under \$75,000,000
\$50,000	with total value over \$75,000,000

The above is 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.

Property Insured: Property of every kind and description as declared except as excluded under the "Property Excluded" section of the policy.]

Boiler & Machinery Insurance

Coverage: Sudden & Accidental Breakdown of a Pressure, Mechanical, Electrical Object including Production Machinery as defined under the policy. Coverage applies to the loss of the "Object" itself and for loss to other insured property directly damaged by the "Accident", except as excluded under the policy.

Limit: **Maximum** \$100,000,000 per Accident.

Deductibles: \$5,000 for Property Damage and \$15,000 for Extra Expense per Accident for the year 2024; subject to changes 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 per Occurrence

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 2024; subject to change on an annual basis.

Contractor's Pollution Liability Insurance

Coverage: Contractor's Pollution 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 Contractor's Pollution Liability. \$10,000,000 aggregate.

Deductible: \$50,000 for the year 2024; subject to change on an annual basis.

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 (90 days), and by reason of any negligent act, error or omission in professional services rendered or that should have been rendered by OCWA, or by any person for whose negligent acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA's profession.

Limit: \$5,000,000 per loss on a Claims Made basis for Professional Liability Insurance and including \$5,000,000 Aggregate.

Deductible: \$50,000 for the year 2024; subject to change on an annual basis.

Cyber Liability Insurance

OCWA to provide evidence of coverage by way of a letter, noting coverage for expenses incurred by OCWA consequential to a cyber event or privacy breach.

SCHEDULE F - List of Pre-Existing Conditions

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

- The Southampton WWTP facility has completed an Environmental Assessment (EA) and the in process of having new headworks building tendered for construction changes may will have implications to the facility operational costs.
- Once the upgrades have been completed OCWA and the Town will meet to discuss any potential changes that may be required and will formalize any changes to the scope of work and/or pricing through the Change Order Form.

Change Order Form

[illegible]

Cost Breakdown for Change in Services			
Item	Quantity	One-time Cost	Annual Cost
	Total Cost:		

SCHEDULE H - Expenditure Request and Approval to Proceed

Hub Name
 Hub Address
 City, ON Code
 Phone: XXX-XXX-XXXX Fax: XXX-XXX-XXXX

PART 1

Facility Name:			
Project Name:			
Project Number:		Estimated Project Start Date:	
Total Estimated Cost of the Project:	\$	Detailed Quote Attached:	<input type="checkbox"/> Yes <input type="checkbox"/> No

It is recognized that this is a budget estimate and the final price may vary. OCWA will provide additional justification where the final invoice price varies from the estimate by more than 10%

Type of Project:

- ☐ Maintenance Project
 ☐ Out of Scope Work
 ☐ Contingency
 ☐ Emergency
☐ Health & Safety

Description of Project or Expenditure:**Submission Prepared By:**

 Name (Print) Signature Date

Authorized Representative for the Municipality

PART 2**Approval to Proceed:**

☐ Approved
 ☐ Declined
 ☐ Deferred
 Reason if Declined or Deferred

The Ontario Clean Water Agency is authorized to proceed with the project/expenditure according to the description and cost estimate provided above. This may include but not limited to the hiring of sub-contractors, consulting firms, etc. as required. The Municipality agrees to pay OCWA the costs associated with this work upon its completion based on the terms of the Municipality's agreement with OCWA.

Approved By:

 Name (Print) Signature Date

Authorized Representative for the Municipality

PART 3

OCWA Internal Use Only:			
Client PO / Project #:		Date:	
Project Start Date:		Project Completion Date:	
OCWA Invoice #		Date:	
OCWA Account Code:		OCWA Work Order #	