

**SERVICES AGREEMENT**  
**BETWEEN**  
**ONTARIO CLEAN WATER AGENCY**  
**AND**  
**THE CORPORATION OF THE**  
**TOWNSHIP OF KILLALOE, HAGARTY & RICHARDS**

## TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
<b>RECITALS</b> .....	1
<b>ARTICLE 1 - INTERPRETATION</b> .....	2
SECTION 1.1 - DEFINITIONS .....	2
SECTION 1.2 - INTERPRETATION .....	2
<b>ARTICLE 2 - RESPONSIBILITIES OF OCWA</b> .....	2
SECTION 2.1 - RETENTION OF OCWA .....	2
SECTION 2.2 - PERFORMANCE OF SERVICES .....	2
SECTION 2.3 - STANDARD OF CARE .....	4
SECTION 2.4 - OCWA AS INDEPENDENT CONTRACTOR .....	4
SECTION 2.5 - AUTHORIZED REPRESENTATIVES .....	4
SECTION 2.6 - INDEMNIFICATION OF THE CLIENT.....	4
SECTION 2.7 - INSURANCE.....	5
SECTION 2.8 - REPRESENTATIONS AND WARRANTIES OF OCWA.....	5
<b>ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT</b> .....	6
SECTION 3.1 - REPRESENTATIONS AND WARRANTIES OF THE CLIENT .....	6
SECTION 3.2 - COVENANTS OF THE CLIENT .....	7
SECTION 3.3 - EXONERATION AND INDEMNIFICATION OF OCWA .....	7
<b>ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES</b> .....	8
SECTION 4.1 - INITIAL TERM OF AGREEMENT .....	8
SECTION 4.2 - ANNUAL PRICE FOR THE INITIAL TERM.....	8
SECTION 4.3 - THE ANNUAL PRICE IN RENEWAL TERMS .....	9
SECTION 4.4 - PAYMENT OF THE ANNUAL PRICE .....	9
SECTION 4.5 - ITEMS NOT INCLUDED IN THE ANNUAL PRICE.....	9
SECTION 4.6 - CAPITAL EXPENDITURES.....	10
SECTION 4.7 - UNEXPECTED EXPENSES .....	10
SECTION 4.8 - INTEREST ON LATE PAYMENTS .....	11
SECTION 4.9 - PARTIAL PAYMENT OF DISPUTED INVOICES .....	11
SECTION 4.10 - HYDRO COSTS .....	11
SECTION 4.11 - OPTIONAL SERVICES.....	11
SECTION 4.12 - ADDITIONAL SERVICES AND CHARGES ASSOCIATED WITH THE MOE'S MUNICIPAL DRINKING WATER LICENSING PROGRAM.....	12
<b>ARTICLE 5 - DISPUTE RESOLUTION</b> .....	12
SECTION 5.1 - MEDIATION.....	12
<b>ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION</b> .....	13
SECTION 6.1 - EXISTING AGREEMENTS.....	13
SECTION 6.2 - TERMINATION OF AGREEMENT .....	13
SECTION 6.3 - EARLY TERMINATION.....	14
SECTION 6.4 - INVENTORY COUNT OF CONSUMABLES/SUPPLIES .....	14

SECTION 6.5 - FINAL SETTLEMENT .....	15
SECTION 6.6 - TRANSFER OF OPERATIONS.....	15
<b>ARTICLE 7 - GENERAL .....</b>	<b>15</b>
SECTION 7.1 - OWNERSHIP OF TECHNOLOGY.....	15
SECTION 7.2 - AGREEMENT TO GOVERN.....	15
SECTION 7.3 - HEADINGS .....	16
SECTION 7.4 - ENTIRE AGREEMENT.....	16
SECTION 7.5 - CHANGE IN CIRCUMSTANCE .....	16
SECTION 7.6 - AMENDMENTS AND WAIVERS.....	16
SECTION 7.7 - SUCCESSORS AND ASSIGNS.....	17
SECTION 7.8 - SURVIVAL.....	17
SECTION 7.9 - SEVERABILITY .....	17
SECTION 7.10 - NOTICES .....	17
SECTION 7.11 - COUNTERPARTS.....	18
SECTION 7.12 - FREEDOM OF INFORMATION.....	18
SECTION 7.13 - CONFIDENTIALITY AND SECURITY .....	19
<b>SCHEDULE A - THE FACILITIES</b>	
<b>SCHEDULE B - DEFINITIONS</b>	
<b>SCHEDULE C - THE SERVICES</b>	
<b>SCHEDULE D - INSURANCE</b>	
<b>SCHEDULE E - FLOWS</b>	
<b>SCHEDULE F - LIST OF PRE-EXISTING CONDITIONS</b>	

## SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of June, 2009 (the "Effective Date"),

BETWEEN

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

("OCWA")

AND

**THE CORPORATION OF THE TOWNSHIP OF KILLALOE, HAGARTY & RICHARDS WATER AND WASTEWATER FACILITIES**

(the "Client")

### RECITALS

- (a) OCWA is in the business of providing operations and maintenance services for drinking water and wastewater facilities.
- (b) The Client is the owner of the Killaloe Wastewater Treatment Plant & Collection System and the Killaloe Water Treatment Plant 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 2 day of JUNE, 2009 passed By-Law No. 21-2009 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 4.6 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 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) unavailability of approved private 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 - Standard of Care**

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

**Section 2.4 - 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 2.5 - 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 2.6 - 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 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 2.6 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 2.6(a) above, OCWA shall not be liable in respect of any Claim to the extent the Claim is covered by the Insurance.

**Section 2.7 - 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 Facility. 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 2.8 - 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 Treatment Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility under Applicable Laws, including without limitation its responsibilities under the *Safe Drinking Water Act, 2002* (the "SDWA") and its regulations.
- (e) As the owner of the Wastewater Treatment Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility under Applicable Laws, including without limitation its responsibilities under the *Ontario Water Resources Act, R.S.O. 1990, c. O.40* (the "OWRA") and its regulations.
- (f) 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 F. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (g) 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.
- (h) 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 4.8.
- (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 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.

**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 of June 1, 2009 and shall continue in effect for an initial term of five years, ending on May 31, 2014 (the "Initial Term") and then may be renewed for successive two-year terms (each a "Renewal Term") upon agreement between the Parties, subject to Sections 4.3 and 6.2 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 in the following amounts (the "Annual Price"):

- (i) For Year One from :  

Killaloe Water System  
Killaloe Wastewater System
- (ii) For Year Two and subsequent Years: 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.

**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 months of the beginning of the last Year of the Initial Term or Renewal Term, as the case may be, (the "Current Term"), this Agreement will be terminated six months after the last day of the Current Term. During this six month 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 Paragraph 4.2(ii), pro-rated over the six month 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 equal monthly payments, upon receipt of a monthly invoice from OCWA. In Year One of the Initial Term, the monthly payment of the Annual Price shall be the first payment shall be due and payable on June 1, 2009.

**Section 4.5 - Items Not Included in the Annual Price**

The Annual Price, for each Year of the Initial Term and any Renewal Term, covers all charges for the Services, but does not cover items or matters that are outside the scope of the Services. Without limiting the generality of the foregoing, the Annual Price does not include the following:

- (a) any Capital Expenditures (as defined in Section 4.6 below) or costs resulting from any failure of the Client to implement reasonably recommended Capital Expenditures;
- (b) costs or charges for services resulting from a Change in Applicable Laws;
- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (d) any charges resulting from adverse tax changes in respect of the Services or the Facilities;
- (e) Hydro Costs, as set out in Section 4.10;
- (f) Charges for any Optional Services that are provided by OCWA to the Client;
- (g) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facilities;
- (h) any costs arising from a significant increase in flows, as set out in Part 1 of Schedule E to this Agreement.

**Section 4.6 - 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.
- (b) 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 estimate (the "Approved Capital Expenditures").
- (c) OCWA will invoice the Client for the Approved Capital Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.
- (d) OCWA shall pay up to the first ..... of Capital Expenditures in each year of the initial term on a noncumulative basis.

**Section 4.7 - 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 should pay the invoice within thirty (30) days of the date of the invoice.

**Section 4.8 - Interest on Late Payments**

- (a) **Monthly Payment of Annual Price.** 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 4.8(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 4.9 - 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 invoice and charge 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 charged to the Client effective thirty (30) days from the date 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 Annual Price 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 4.8 above, within ten (10) days from the date of final determination.
- (c) If the disputed charges cannot be resolved within a reasonable time, the Parties shall seek resolution in accordance with Article 5, Dispute Resolution.

**Section 4.10 - Hydro Costs**

OCWA is not responsible for paying any Hydro Costs in respect of the Facilities. The Client shall pay all Hydro Costs.

**Section 4.11 - 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 a rate of \_\_\_\_\_ per hour for an operations manager, assistant operations manager or process and compliance technician and \_\_\_\_\_ per hour for an operator or mechanic, plus vehicle expenses at \_\_\_\_\_ per hour;
  - (ii) Labour rates at all other times (after hours and on weekends) shall be billed at \_\_\_\_\_ per hour for an operations manager, assistant operations manager or process and compliance technician and \_\_\_\_\_ per hour for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \_\_\_\_\_ per hour;
  - (iii) 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 4.12 - Additional Services and Charges Associated with the MOE's Municipal Drinking Water Licensing Program**

The Client and OCWA acknowledge that this Agreement includes additional services that may be provided by OCWA to the Client that are associated with meeting the operational plan and accredited operator components of the MOE's Municipal Drinking Water Licensing Program. This does not include external auditing costs or program fees.

**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 - Existing Agreements**

- (a) Subject to Paragraph 6.1(b) below, upon the execution of this Agreement, all existing agreements between the Client and OCWA or a predecessor of OCWA including any agreements made under Section 63 of the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, entered into before April 1, 1974, that relate to the operation, maintenance or construction of the Facilities ("Existing Agreements"), are terminated.
- (b) Notwithstanding any other provision of this Agreement, all financial obligations of the Client to OCWA or any of OCWA's predecessors under any Existing Agreement, including but not limited to the obligation of the Client to pay any outstanding debt owed in respect of the Facilities, shall remain in effect until such time, if applicable, that new financing arrangements have been entered into between the Client and OCWA.

### **Section 6.2 - 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 6.2(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 Section 4.2 shall apply.
- (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 6.2(d).
- (d) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.2(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 6.2(c) and 6.2(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 6.3 - Early Termination**

If this Agreement is terminated for any reason prior to expiry of the Current Term, the Client shall pay OCWA for all Services provided up to the date of termination and any other amounts owed (including but not limited to charges for Capital Expenditures, Unexpected Expenses and Optional Services).

### **Section 6.4 - 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 6.5 - Final Settlement**

If OCWA ceases to operate and maintain the Facilities, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement, no later than ninety (90) days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Client with a final invoice, whichever comes later.

**Section 6.6 - Transfer of Operations**

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

- (a) The log books 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 each of the Facilities.
- (d) Maintenance and repair records of equipment at each of 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, except for the provisions of any Existing Agreements which remain in effect in accordance with Paragraph 6.1(b) of this Agreement.

**Section 7.5 - 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 7.6 - 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 7.7 - 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 7.8 - 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 7.9 - 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 7.10 - Notices**

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

(i) if to the Client:      The Corporation of the Township of Killaloe, Hagarty and Richards  
1 John Street, P.O. Box 39  
Killaloe, Ontario K0J 2A0  
Telephone:                (613) 757-2300  
Fax:                        (613) 757-3634  
Attention:                Lorna Hudder, CAO / Clerk-Treasurer

(ii) if to OCWA:            Ontario Clean Water Agency  
593 Norris Court  
Kingston, Ontario K7P 2R9  
Telephone:                (613) 634-6292  
Fax:                        (613) 634-1942  
Attention:                John Kingsbury, Client Services

(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 7.11 - 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 7.12 - 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 7.13 - 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**

By: *Don McElroy*  
(Authorized Signing Officer)

By: *Randa Bal*  
(Authorized Signing Officer)

**THE CORPORATION OF THE TOWNSHIP  
OF KILLALOE, HAGARTY AND RICHARDS**

By: *Janie Visneske*  
(Authorized Signing Officer)

By: *Jane Hadden*  
(Authorized Signing Officer)

6/17/2009  
Date of Signing

6/17/2009  
Date of Signing

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
Date of Signing

## **SCHEDULE A - The Facilities**

### **Part 1. Description of the Facilities**

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

#### **Wastewater**

The Killaloe wastewater system includes an extended aeration treatment plant with phosphorus removal, one remote pumping station and a sewage collection system. A diesel generator located at the plant supplies both the treatment plant and pumping station. The facility discharges to the Brundnell Creek and has a design capacity of 518 m<sup>3</sup>/day.

#### **Water Treatment**

The Killaloe water system consists of a groundwater supplied plant with chemical addition, flash mixing, filtration, in-ground reservoir, one jockey pump, three duty pumps, one fire pump and a hydra-pneumatic pressure tank. The plant has a settling pond for filter backwash water. The rated capacity for the plant is 886 m<sup>3</sup>/day.

### **Part 2. Location of the Facilities**

The locations of the Facilities are as follows:

#### **Wastewater Treatment Plant**

Part Lot 445  
Conc VI  
Hagarty & Richards Township

#### **Water Treatment Plant**

Lot 3  
Conc IV  
Hagarty & Richards Township

### **Part 3. Diagrams of the Facilities**

N/A

## **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, and F attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

**"Annual Price"** is defined in Paragraph 4.2(a) 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 Capital Expenditures"** is defined in Paragraph 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 2.5 of this Agreement.

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

**"Capital Expenditures"** is defined in Paragraph 4.6(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 November of the previous Year as compared to the CPI of November of the current Year.

**"Current Term"** is defined in Section 4.3 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 drinking water and wastewater treatment facilities.

**"ESA"** means the Electrical Safety Authority.

**"Existing Agreements"** are defined in Paragraph 6.1(a) 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 2.7(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.

**"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.

**"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 4.11.

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

**"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 drinking water and wastewater treatment facilities and their related parts.

**"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 2.6 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)

(b)

(c)

For example, the Service associated with a capital project which required  
would b

supplies and materials

**"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 4.7(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 at 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 January 1st to December 31<sup>st</sup> of the following calendar year.

## **SCHEDULE C - The Services**

The Services are set out below:

### **1. Water Treatment - General Operation**

- (a) Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- (b) Inspect process control equipment to ensure proper operation of chlorinators, flash mixing, coagulation, flocculation systems, clarifier, pumps, filters, chemical feeders;
- (c) Check low lift pumping station to ensure that everything is in order (also taking routine readings)/
- (d) Operate pump controls and valve controls for pumping of all process streams;
- (e) Check filters and backwashing filters as required on a routine basis;
- (f) Check wells and level of groundwater to ensure aquifer is not over-pumped; and
- (g) Mix, monitor and adjust process chemicals to ensure adequate treatment;
- (h) Record and analyze water flow, electricity used, chemicals used, chlorine residuals, turbidity and other process readings as required;
- (i) Routinely conduct water sampling/testing in accordance with Environmental Laws, including the Facility's Certificate of Approval(s);
- (j) Complete OCWA's internal operational data forms for statistical input into a reporting system;
- (k) Calibrate equipment in accordance with the Water Treatment Facility's Certificate of Approval(s).

### **2. Water Distribution - General Operation**

- (a) Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- (b) Open, exercise and flush water hydrants annually, make repairs and paint where necessary and winterize each fall;
- (c) Inspect distribution system, visually for major leaks, sound for minor leaks, exercise main distribution shut-off valves and collect samples and monitor chlorine residual.

- (d) Routinely conduct water sampling/testing in accordance with Environmental Laws, including any applicable Certificate of Approval(s);
- (e) Complete OCWA's internal operational data forms for statistical input into a reporting system;
- (f) Calibrate equipment in accordance with any applicable Certificate of Approval(s).

3. **Wells - General Operation**

- (a) Ensure that daily operations comply with and fulfill the requirements of Environmental Laws;
- (b) Inspect process control equipment to ensure proper operation;
- (c) Perform duties as outlined in any applicable Well Maintenance and Inspection Plans;
- (d) Routinely conduct water sampling/testing in accordance with Environmental Laws, including any applicable Certificate of Approval(s);
- (e) Complete OCWA's internal operational data forms for statistical input into a reporting system;
- (f) Calibrate equipment in accordance with any applicable Certificate of Approval(s).

4. **Wastewater Treatment**

- (a) Ensure that daily operations comply with Environmental Laws;
- (b) Inspect process control equipment to ensure proper operation of secondary wastewater treatment clarifiers, pumps, blower and aeration systems and chemical feeders;
- (c) Check pumping stations to ensure that everything is in order (also take routine readings);
- (d) Sound clarifier for sludge depth to ensure proper return rates;
- (e) Operate pump controls and valve controls for pumping of all process streams;
- (f) Clean grit channels;
- (g) Skim chlorine contact chambers and settling tanks;
- (h) Rake bar screens;
- (i) Hose down weirs, walls and channels in aeration and secondary clarifier;

- (j) OCWA staff will on a routine basis:
- monitor and adjust dosages of process chemical as required;
  - check filters and backwash as required;
  - record and analyze 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;
- (k) Calculate, record and analyze the amount of wastewater treated, the daily flows and monthly flows, pumping station run hours, and standby equipment running hours;
- (l) Complete OCWA's internal operational data forms for statistical input into PDC;
- (m) Calibrate equipment in accordance with any applicable Certificate of Approval;
- (n) Clean wet wells.

2. **Wastewater Collection**

- (a) Ensure that daily operations comply with Environmental Laws;
- (b) Inspect equipment at pumping stations and forcemains to ensure proper operation;
- (c) As required, remove maintenance hole covers and inspect maintenance holes for flow through, debris accumulation, structural stability of walls, rungs, infiltration and proper benching;
- (d) Flush maintenance hole and sewers once per year with hydrant water and remove sand and debris; and
- (e) Routinely monitor wastewater collection system for infiltration, illegal connections and illegal discharge of contaminants to system.
- (f) Record flow readings on operational forms for computer input;
- (g) Calibrate equipment in accordance with any applicable Certificate of Approval;
- (h) Clean wet wells.

3. **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;
- (c) maintain an inventory of all key equipment and tools; and
- (d) ensure the security of the Facilities by locking doors and gates.

4. **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 4.6(b) of this Agreement.

5. **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.

6. **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 4.7. Subject to any approvals of the Client required by Paragraph 4.7(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports (in accordance with Paragraph 4.7(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.

7. **Reporting**

OCWA shall provide a Facility performance report for each Facility, within forty-five (45) days of the completion of each quarter or such other period as the Client and OCWA may agree upon.

8. **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 is trained in normal process operation and maintenance of the Facilities and that all staff are trained to deal with emergency situations.

9. **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 Section 4.7.

10. **Sludge**

- 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.

- OCWA will meet the requirements of the NMA regarding preparation and submission of a nutrient management strategy as defined on the effective date of this agreement
- 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 4.7(a).



## 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 Reports)
- Extra expenses
- Expediting expenses

**Deductibles:** For the year 2009, 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:** \$60,000,000 per accident.

**Deductibles:** \$5,000 for the year 2009; 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

**Deductible:** The deductible will be paid by OCWA.

**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 2009; subject to change on 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:** \$5,000,000 per loss on a Claims Made basis with automatic, extended reporting periods. \$5,000,000 aggregate.

**Deductible:** \$100,000 for the year 2009; subject to change on an annual basis

**SCHEDULE E - Flows**

**Part 1: Changes in Flows**

- (a) A significant change in flow means a flow that is at least 6 % greater or 6 % less than the Base Year Flow.

“Base Year Flow” means the annual average flow volume of the three years (3) immediately preceding the Initial Term or any Renewal Term, as may be applicable.

The Base Year Flow for the Water Treatment Facility for the Initial Term is 28,785 m<sup>3</sup> per year.

The Base Year Flow for the Wastewater Treatment Facility for the Initial Term is 140,201 m<sup>3</sup> per year.

	2006	2007	2008	Total	3-year Average
<b>Water</b>	26362	30050	29942	86354	28785
<b>Wastewater</b>	146981	119494	154127	420602	140201

**Part 2: Calculation of Flow Debit/Credit**

A debit/credit amount equal to \_\_\_\_\_ of treated water which is greater than/less than the applicable Base Year Flow for water treatment will be levied based on a significant change in flow (as per Part 1 above).

A debit/credit amount equal to \_\_\_\_\_ of raw wastewater which is greater than/less than the applicable Base Year Flow for water treatment will be levied based on a significant change in flow (as per Part 1 above).

**SCHEDULE F - List of Pre-Existing Conditions**

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

- None identified