

**SERVICES AGREEMENT**

**BETWEEN**

**ONTARIO CLEAN WATER AGENCY**

**A N D**

**THE CORPORATION OF THE TOWNSHIP OF CHATSWORTH &  
THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS**

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## SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1<sup>st</sup> day of January, 2023 (the “Effective Date”),

B E T W E E N

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

(“OCWA”)

A N D

**THE CORPORATION OF THE TOWNSHIP OF CHATSWORTH & THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS**

(the “Clients”)

### **RECITALS**

- (a) OCWA is in the business of providing management, operations and maintenance services for wastewater facilities.
- (b) The Clients are the owner of the Derby Wastewater Treatment Works more particularly described in Schedule A (the “Facility”).
- (c) The Clients wishes to retain the services of OCWA to operate and maintain the Facility in accordance with the provisions of this agreement (the “Agreement”).
- (d) The Clients 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 Facility.
- (e) The Councils of the Clients on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ passed By-Law No. \_\_\_\_\_ authorizing the Clients 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 Clients 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 Clients retain OCWA to provide management, operation and maintenance services, as described in Schedule C to this Agreement, in respect of the Facility (the “Services”).
- (b) The Clients acknowledge 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 Clients.

### **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 Clients not making the Major Maintenance Expenditures and/or not undertaking the Capital Projects reasonably recommended by OCWA as per Sections 4.6 and 4.7 herein;
  - (ii) failure of the Clients to meet its responsibilities specified in this Agreement;
  - (iii) failure of any equipment at the Facility, unless the failure is due to OCWA’s negligent maintenance;
  - (iv) the wastewater transmitted to the Facility for treatment contains contaminants or pathogens which cannot be treated or removed by the Facility’s treatment processes;
  - (v) the wastewater transmitted to the Facility for treatment does not meet the requirements of the Clients’ sewer use by-law or any Environmental Law;
  - (vi) the quantity or quality of wastewater transmitted to the Facility exceeds the Facility’s design or operating capacity;
  - (vii) operational upset conditions caused by the acceptance of septage or leachate;
  - (viii) unavailability of approved lands for application of sludge.

- (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 Clients 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 Clients 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) The Clients recognize 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 Facility in compliance with Environmental Laws and that OCWA may be required to correct a deficiency or deal with the emergency situation without obtaining the Clients’ prior approval. Should such a situation arise, OCWA shall advise the Clients as soon as reasonably possible and shall provide as much information as possible to the Clients and will work with the Clients 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 Clients, except as expressly provided in this Agreement.

**Section 2.4 - Authorized Representatives**

Each of OCWA and the Clients 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 Clients**

- (a) OCWA shall exonerate, indemnify and hold harmless the Clients, 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 Clients 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 Facility 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 Clients. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly.

- (b) The Clients shall be deemed to hold the provisions of this Section 2.5 that are for the benefit of the Clients' directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.
- (c) Notwithstanding Paragraph 2.5(a) above, OCWA shall not be liable in respect of any Claim to the extent the Claim is covered by the Insurance.
- (d) Claims by the Clients for indemnification from OCWA will follow the Indemnification Process as set out 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 Clients shall be an additional insured under the Commercial General Liability and Contractor's Pollution Liability insurance. The Clients acknowledge 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 Clients will be notified if there is a change in coverage or a price increase.
- (b) The Clients specifically recognize and agree 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 Clients have or will obtain their own insurance.
- (c) The Clients 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 Clients acknowledge 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 Clients further acknowledge 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) No later than thirty (30) days following the Effective Date of this Agreement, the Clients will provide certificates of insurance for its property and boiler and machinery insurance policies to OCWA. The insurance coverage for both policies should be on a full replacement cost basis. OCWA will be named the loss payee on both policies.
- (f) The policies of insurance obtained by the Clients in subsection 2.7(e) shall be primary, notwithstanding other insurance obtained and maintained by OCWA.

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

#### **Section 3.1 - Obligations of the Clients**

- (a) The Clients have the full power and authority to enter into and perform their obligations under this Agreement.
- (b) The Clients have passed all necessary By-Laws and have obtained all necessary Authorizations to enable them to enter into and perform their obligations under this Agreement and to operate the Facility, (including, without limitation, any Authorizations required from the Local Planning Appeal Tribunal and the Ministry of the Environment, Conservation and Parks (MECP)), and the Authorizations are in good standing.
- (c) The Clients have 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 Clients to enter into and perform their obligations under this Agreement.
- (d) As the owner of the Facility, the Clients are fully aware of their responsibilities and obligations regarding the operation and maintenance of the Facility under Applicable Laws, including without limitation their responsibilities under the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40 (the "OWRA") and the *Occupational Health and Safety Act* (the "OHSA") and their regulations.
- (e) The Clients confirm that there are no Pre-existing Conditions existing at the Facility which would affect OCWA's ability to operate the Facility in compliance with the terms of this Agreement and Applicable Laws, other than what is listed in Schedule F. The Clients acknowledge and agree that the Clients shall be responsible for addressing such Pre-existing Conditions.



- (f) The Clients confirm that as of the date of execution of this Agreement, to the best of the Clients' knowledge, the Facility is in compliance with all Applicable Laws.
- (g) The Clients are not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (the "OHSA") at the Facility. The Clients acknowledge and agree that it is responsible for dealing with the designated substances (including but not limited to asbestos and lead) in accordance with the OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facility.

### **Section 3.2 - Covenants of the Clients**

The Clients hereby covenant the following for the benefit of OCWA:

- (a) The Clients agree 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 Clients agree to promptly provide OCWA with any information relating to the Facility 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 Facility, any Authorization or amendment to any Authorization, as well as any governmental notice or order relating to the Facility.
- (c) The Clients agree to commit the necessary resources to appropriately address and comply with any such reports, Authorizations, notices or orders.
- (d) The Clients 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 Clients and that collect and transmit wastewater to the Facility.
- (e) The Clients agree to promptly commit the necessary resources to appropriately address any health and safety issues identified by OCWA which are the responsibility of the Clients.
- (f) The Clients shall take reasonable steps to ensure that wastewater transmitted to the Facility complies with the Clients' sewer use by-law and any Environmental Laws. If requested by OCWA, the Clients shall provide OCWA with copies of the Clients' 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 Clients 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 Clients’ 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 Clients will follow the Indemnification Process as set out in Schedule B.
- (d) Notwithstanding Paragraph 3.3(a) above, the Clients shall not be liable in respect of any Claim:
  - (i) to the extent that such Claim is covered by the Insurance; however, the Clients 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 the Effective Date and shall continue in effect for an initial term of three years, ending on December 31<sup>st</sup>, 2025 (the “Initial Term”) and then may be renewed for successive five (5)-year terms (each a “Renewal Term”) subject to mutual 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 Clients 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 Clients 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 Clients 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 Clients 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<sup>st</sup>, 2023. Payment shall be made by the Clients by pre-authorized bank debit from a bank account designated by the Clients.

#### **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 below) or costs resulting from any failure of the Clients 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 Paragraph 4.8(a) below);
- (d) Hydro/Utility costs;
- (e) charges for any Optional Services that are provided by OCWA to the Clients;
- (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 Facility 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 labour charges, together with the Service Fee or fixed fee basis.
- (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 Clients with rolling six (6)-year recommendations of the Major Maintenance Expenditures required for the long term operation of the Facility. The Clients’ written approval of the estimate or revised

estimate, in the form set out in Schedule “J”, authorizes OCWA to incur the Major Maintenance Expenditures included in the estimate (the “Approved Major Maintenance Expenditures”).

- (c) OCWA will invoice the Clients for the Approved Major Maintenance Expenditures together with supporting documentation and the Clients 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 Clients for any Major Maintenance item costing less than \$2,000.00.

#### **Section 4.7 - Capital Projects**

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

#### **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 Clients 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 Clients with a report detailing the reasons the Unexpected Expenses were incurred.
- (c) Any Unexpected Expenses will be invoiced to the Clients together with appropriate supporting documentation, and the Clients 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 Clients for any Major Maintenance Expenditure item costing less than \$2,000.00.

#### **Section 4.9 - Interest on Late Payments**

- (a) **Monthly Payment of Annual Price.** If the Clients' monthly payment of the Annual Price is not available in OCWA's designated bank account on the agreed to date of payment, OCWA will notify the Clients that the funds were not available. Interest will be charged to the Clients 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 4.9(a) above, shall be paid no later than thirty (30) days from the date of the invoice and interest shall begin to accrue one (1) day after the payment is due.

#### **Section 4.10 - Partial Payment of Disputed Invoices**

If the Clients dispute any portion of an invoice, the Clients 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 defence 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 Clients 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 Costs/Utility Costs**

OCWA is not responsible for paying any Hydro/Utility Costs in respect of the Facility. The Clients shall pay all Hydro/Utility Costs.

#### **Section 4.12 - Optional Services**

- (a) If requested by the Clients, OCWA may provide Optional Services to the Clients by Change Order as set out in Schedule H, provided that the Clients 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 Clients shall be billed directly to the Clients on a time and materials basis as described in Schedule D.
- (c) Once OCWA has agreed to provide Optional Services to the Clients, 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 H which will state their agreement upon all of the following:
  - (i) the new 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.

**ARTICLE 5 - DISPUTE RESOLUTION**

**Section 5.1 - Mediation**

- (a) If a dispute arises between the Clients 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 Clients 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 Clients in writing of its decision to decline, within thirty (30) days of receipt of the Clients' written request to renew.
- (b) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Clients 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**

If this Agreement is terminated for any reason prior to the expiry of the Current Term, then the Clients 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.

### **Section 6.3 - Inventory Count of Consumables/Supplies**

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

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

If the amount of consumables/supplies at the Facility on the date of termination exceeds the amount on the first day of the Initial Term, the Clients 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 Facility, 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 Clients under this Agreement including, but not limited to any outstanding accounts, if any, owed to OCWA, no later than ninety (90) days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Clients with a final invoice, whichever comes later.

**Section 6.5 - Transfer of Operations**

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

- (a) The log book for the Facility in electronic format.
- (b) The original operations manual(s) that were provided by the Clients 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 Facility.
- (d) Maintenance and repair records of equipment at the Facility in electronic format.

**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 Clients shall not solicit or recruit any employee of OCWA, nor induce any OCWA employee to leave his or her employ to work at the Facility, unless mutually agreed to in writing by the Clients and OCWA.

**ARTICLE 7 - GENERAL**

**Section 7.1 - Ownership of Technology**

The Clients 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 Clients further agrees that use of the Technology by OCWA with respect to the Facility does not in any way give the Clients 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 Clients with the Technology and any upgrades or other similar technology in respect of the Facility 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 Clients 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 Clients 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 Clients:

**Township of Chatsworth**

316837 Highway 6

Chatsworth, ON N0H 1G0

Telephone: 519-794-3232, Ext. 124

Email: patty.sinnamon@chatsworth.ca

Attention: Patty Sinnamon: CAO

**Township of Georgian Bluffs**

177964 Grey Road 18

Owen Sound, ON N4K 5N5  
Telephone: 519-376-2729 x. 505  
Email: nlobley@georgianbluffs.ca  
Attention: Niall Lobley: Acting Chief Administrative Officer, Director of  
Community Services & Operations

- (ii) if to OCWA:  
**Ontario Clean Water Agency**  
Georgian Highlands Regional Hub Office  
30 Spence Avenue  
Midhurst ON L9X 0P2  
Telephone: 705-429-2525  
Email: [cmcrae@ocwa.com](mailto:cmcrae@ocwa.com), LFrigault@ocwa.com, sbudden@ocwa.com  
Attention: Regional Hub Manager: Caralynn McRae  
Senior Operations Manager: Leo-Paul Frigault  
Business Development Manager: Susan Budden

- (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, 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, 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.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

**ONTARIO CLEAN WATER AGENCY**

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

**THE CORPORATION OF THE TOWNSHIP OF CHATSWORTH**

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

**THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS**

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

\_\_\_\_\_  
Date of Signing (Authorized Signing Authority)

## **SCHEDULE A - The Facility**

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

For the purpose of this Agreement, the Facility is comprised of the following:

#### **Inlet Works:**

- a septage receiving tank at the main entrance;
- a 150 mm diameter influent sewer from the septage receiving tank to the aeration cell of the lagoon;
- a secondary septage receiving station with camlock fitting;
- an influent chamber and a 200 mm diameter sewer to direct all influent to the septage dewatering building (currently not being used);
- an existing 150 mm diameter sewer to be maintained and utilized as an emergency or maintenance bypass (currently being used as main influent);

#### **Lagoon**

- a 3,300 m<sup>3</sup> capacity aeration cell equipped with aerators complete with air headers and laterals;
- a 22,500 m<sup>3</sup> capacity facultative lagoon;
- a pump and blower house equipped with two (2) 5 HP air blowers to supply process air to the aeration cell, and a 10 H.P. centrifugal effluent pump, complete with suction line from the facultative lagoon and forcemain to the spray irrigation system;

#### **Spray Irrigation System**

- a 9,410 m<sup>2</sup> designated spray irrigation area complete with containment berms, spray irrigation pipes and sprinklers for disposal of effluent from the facultative lagoon;

**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 Clients.

**“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 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 Facility.

**“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 8:00 a.m. and 4:00 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, 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 June of the previous Year.

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

“**Crown**” means His Majesty the King 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 wastewater treatment facilities.

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

“**Facility**” 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 Facility.

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

- (a) upon receipt of a claim, or notice of claim, the Party shall immediately forward such claim or notice of claim to the Indemnifying Party;
- (b) if requested by the Indemnifying Party, the Party shall provide all documentation relating to the claim, or notice of claim;
- (c) the 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 Party; and
- (e) the Party shall have the right to take-over the defence of any claim, or notice of claim and the Indemnifying Party shall fully co-operate with such action.

“**Indemnified Parties**” is defined in Paragraph 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 Paragraph 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 Paragraph 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 Clients 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 15 of O. Reg. 129/04 under the *Ontario Water Resources Act*, R.S.O. 1990 (“OWRA”) in respect of the Facility.

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

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

**“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.

**“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 Paragraph 2.2(c) of this Agreement.

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

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

**“Year”** means the three hundred and sixty-five (365) day period from January 1<sup>st</sup> to December 31<sup>st</sup> of the calendar year.



## **SCHEDULE C - The Services**

The Services are set out below:

- Operations management for the Inlet works, Lagoon and Spray Irrigation System with the exception of the 200 mm diameter sewer to direct all influent to the septage dewatering building;
- Verification on Control & Septage Dewatering Building for signs of frost damage;
- Certified operators to operate and maintain Inlet Works, Lagoon and Spray Irrigation System portion of the facility in compliance according to the current Environmental Compliance Approvals (ECA);
- Access to OCWA skilled trades and UPITs when required to assist for operational requirements and capital projects;
- Access to an extensive support network with professional resources as well as our specialized operational support services team;
- Efficiencies and value for money – as a Crown Agency competing with the private sector, we not only focus on cost-effective and reliable delivery of services, but also ensure that we meet our public mandate to protect public health and the environment.

### **Operational and Maintenance Duties**

The following list provides a summary of typical operational duties to be performed on a regular basis to ensure the system is operating to the terms and within generally accepted industry standards.

- Comply with relevant government and agency regulations and standards and Environmental Compliance Approvals;
- Properly handle and dispose of treatment process residuals;
- Provide capital maintenance reporting to the Townships;
- Be available to provide for 24-hour, 7-day per week on call coverage;
- Carry out a routine lubrication program including greasing and oiling as specified in the lubrication schedule;
- Perform day-to-day maintenance duties to equipment by following the preventive maintenance procedures and by checking machinery and electrical equipment when required;
- Ensure security of the facility by locking doors and gates.

### **Part 2 – Optional Services (To Be Provided at the Request of the Clients)**

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

1. **Operation Related Services**
  - (a) operation manual updates;
  - (b) maintenance and repair of sewage collection system, including but not limited to, smoke/dye testing, manhole inspections, rodding, CCTV inspections, and tree root removal/treatments;

- (c) sewer system locates as set out by applicable legislation and Ontario One Call;
- (d) new sewer service installation or connection inspection;
- (e) contract repair for sewer line breaks including road restoration;
- (f) inspection of repaired sewer services;
- (g) inspect and flush sanitary collection system, including sewers, manholes and clean outs;
- (h) high pressure sewer flushing;
- (i) acoustic pipe inspection;
- (j) infiltration surveys, sewer cameraing;
- (k) adjust and leveling manholes;
- (l) biosolids removal from lagoon;
- (m) lagoon depth monitoring;
- (n) odour control system.

2. Capital Projects Plans

- (a) prepare a detailed Capital Projects Plan for the facility(ies).

3. Engineering Services

- (a) engineering services;
- (b) energy audits;
- (c) provide assistance and/or complete applicable funding applications;
- (d) financial plans.

4. 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 Clients 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 1<sup>st</sup> through to December 31<sup>st</sup>, 2023 inclusive: \$48,792.
- (ii) For Year Two and subsequent Years: \$48,792 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 \$4,066.

**3. Optional Services**

Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Clients shall be billed directly to the Clients on a time and materials basis at the following rates which may be adjusted on an annual basis:

- (a) Labour rates on Business Days, Monday to Friday, (0700 to 1530) shall be billed at \$90.00/hour/person for an operations manager and assistant operations manager, and \$65.00/hour/person for an operator or mechanic, plus vehicle expenses at \$0.50/km/vehicle;
- (b) Labour rates on statutory holidays shall be billed at \$132.50/hour/person for an operations manager and assistant operations manager, and \$87.50/hour/person for an operator or mechanic, with a minimum eight (8) hour charge, plus vehicle expenses at \$0.50/km/vehicle;
- (c) Labour rates at all other times (after hours and on weekends) shall be billed at \$132.50/hour/person for an operations manager and assistant operations manager, and \$87.50/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.50/km/vehicle;

- (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 Clients, and the Clients 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 Clients as part of the Optional Services approval process.

**4. Service Fee**

“**Service Fee**” means an additional fee of 15% charged to the Clients when OCWA purchases materials, supplies, equipment or contractor's services on behalf of the Clients.

**SCHEDULE E - Insurance**

**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 2023; subject to change on an annual basis.

**Contractor's Pollution Liability/Professional Liability Insurance**

**Coverage:** Professional Liability: To pay on behalf of OCWA sums which OCWA shall become legally obligated to pay as damages and/or claims expense as a result of claims made first against OCWA, and reported to the insurer, in writing during the policy period, automatic extended reporting period (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 acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA's profession.

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 Pollution Liability. \$10,000,000 aggregate.

**Limit:** \$5,000,000 per loss on a Claim Made basis for Professional Liability Insurance

**Deductible:** \$50,000 for the year 2023; subject to change on an annual basis.

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

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

- One of the lagoon system aeration lines is broken, it will have to be exposed and repaired;
- The Lagoon aeration system is currently without backup power or backup heat;
- Operators are currently monitoring a partial blockage on the 150 mm diameter influent sewer from the septage receiving tank to the aeration cell of the lagoon;
- Septage haulers dump at the septage receiving tank located at the main entrance instead of using the secondary septage receiving station with camlock fitting at the aeration lagoon when snow or ice accumulation makes the current sloped and narrow laneway difficult to safely access the secondary septage receiving station.

**SCHEDULE G - Change Order Form**



**Change Order Form**

**Change Being Requested**

<b>Name of Change:</b>			
<b>Ontario Clean Water Agency (OCWA)</b>	<b>Per:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____	<b>Date (YYYY/MM/DD):</b>	
<b>Clients</b>	<b>Per:</b> _____ <b>Name:</b> _____ <b>Title:</b> _____	<b>Date (YYYY/MM/DD):</b>	

**Adjustment**

Check Appropriate Type of Change

<b>Apply (Y/N)</b>	<b>Type of Change:</b>
	Adjustment to Annual Price
	Change to Service
	Impact

**Adjustment to Annual Price**

**Description – Attach Additional Documentation if Required**


**Change in Services**

**Description – Attach Additional Documentation if Required**


Cost Breakdown for Change in Services			
Item		One-time Cost	Annual Cost
	<b>Total Cost:</b>		



**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**

<b>Facility Name:</b>			
<b>Project Name:</b>			
<b>Project Number:</b>		<b>Estimated Project Start Date:</b>	
<b>Total Estimated Cost of the Project:</b>	\$	<b>Detailed Quote Attached:</b>	<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 Ontario Clean Water Agency*

**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**

<b>OCWA Internal Use Only:</b>			
Clients PO / Project #:		Date:	
Project Start Date:		Project Completion Date:	
OCWA Invoice #		Date:	
OCWA Account Code:		OCWA Work Order #	