

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

BY-LAW NO. 18-1411

**Being a by-law to authorize an Agreement with the Ontario Clean Water Agency for
Provision of Operation and Maintenance of the Municipal Water and Wastewater Systems
for the years 2019 to 2028.**

WHEREAS under Section 8 of the Municipal Act, 2001, S.O., 2001 C.25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

AND WHEREAS under section 9. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues.

AND WHEREAS the Corporation of the Municipality of Temagami has an existing agreement with the Ontario Clean Water Agency (OCWA) to provide operation and maintenance services for the municipal Water and Waste Water systems which expires on the 31st day of December, 2018;

AND WHEREAS the Council of the Corporation of the Municipality of Temagami deems it expedient to enter into a new agreement for Water and Wastewater Systems Operation and Maintenance with OCWA from the 1st day of January 2019 to the 31st day of December 2028;

NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute the Agreement, for the provision of Operation and Maintenance of the Municipal Water and Wastewater Systems, attached hereto as Schedule "A" and forming part of this by-law.
2. That this by-law shall come into force and take effect on the final passing thereof.
3. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

TAKEN AS READ A FIRST TIME on this 26th day of July, 2018.

READ a Second and Third time and finally passed on this 26th day of July, 2018.

Mayor

Clerk

SERVICES AGREEMENT
BETWEEN
ONTARIO CLEAN WATER AGENCY
AND
THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

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SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of January, 2019 (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 MUNICIPALITY OF TEMAGAMI

(the “Client”)

RECITALS

- (a) OCWA is in the business of providing management, operations and maintenance services for water and wastewater facilities.
- (b) The Client is the owner of the water and wastewater facilities, water distribution systems, and wastewater collection systems, more particularly described in Schedule A (the “Facilities”).
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facilities in accordance with the provisions of this agreement (the “Agreement”).
- (d) The Client and OCWA (collectively, the “Parties” and each a “Party”) are entering this Agreement to set out their respective rights and obligations with respect to the management, operation and maintenance of the Facilities.
- (e) The Council of the Client on the ____ day of _____, 20__ passed By-Law No. _____ authorizing the Client to enter into this Agreement.

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

ARTICLE 1 -
INTERPRETATION

Section 1.1 - Definitions

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

ARTICLE 2 -
RESPONSIBILITIES OF
OCWA

Section 2.1 - Retention of OCWA

- (a) The Client retains OCWA to provide management, operation and maintenance services, as described in Schedule C to this Agreement, in respect of the Facilities (the “Services”).
- (b) The Client acknowledges and agrees that for the purposes of Section 449 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, OCWA is an agent of the Client.

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Major Maintenance Expenditures and/or not undertaking the Capital Projects reasonably recommended by OCWA as per Section 4.6 and Section 4.7 herein;
 - (ii) failure of the Client to meet its responsibilities specified in this Agreement;
 - (iii) failure of any equipment at the Facilities, unless the failure is due to OCWA’s negligence;
 - (iv) the water transmitted to the water treatment Facilities for treatment contains contaminants or pathogens which cannot be treated or removed by the Facilities treatment processes;
 - (v) the quantity or quality of water transmitted to the water treatment Facilities exceeds the Facilities’ design or operating capacity;
 - (vi) the wastewater transmitted to the wastewater treatment Facilities for treatment contains contaminants or other substances which cannot be treated or removed by the Facilities treatment processes;

- (vii) the wastewater transmitted to the wastewater treatment Facilities for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Law;
 - (viii) the quantity or quality of wastewater transmitted to the wastewater treatment Facilities exceeds the Facilities' design or operating capacity;
 - (ix) operational upset conditions caused by the acceptance of septage or leachate;
 - (x) unavailability of approved lands for the 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 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) The Client recognizes that in an emergency situation or where an Uncontrollable Circumstance exists, OCWA's primary concern will be to use all reasonable efforts to maintain the Facilities in compliance with Environmental Laws and that OCWA may be required to correct a deficiency or deal with the emergency situation without obtaining the Client's prior approval. Should such a situation arise, OCWA shall advise the Client as soon as reasonably possible and shall provide as much information as possible to the Client and will work with the Client to ensure the emergency situation is appropriately addressed.

Section 2.3 - OCWA as Independent Contractor

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

Section 2.4 - Authorized Representatives

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

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

Section 2.5 - Indemnification of the Client

- (a) OCWA shall exonerate, indemnify and hold harmless the Client, its directors, officers, employees and agents from and against Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client to the extent that such Claim is solely attributed to OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to an Uncontrollable Circumstance or to a condition of the Facilities which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule F. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly.
- (b) The Client shall be deemed to hold the provisions of this Section 2.5 that are for the benefit of the Client's 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 Client for indemnification from OCWA will follow the Indemnification Process as described in Schedule B.

Section 2.6 - Waiver of Consequential Damages

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

Section 2.7 - Insurance

- (a) OCWA shall maintain, subject to reasonable availability, insurance coverage as described in Schedule E to this Agreement (the "Insurance") and the Client shall be an additional insured under the Commercial General Liability and Contractor's Pollution Liability insurance. The Client acknowledges that, given the unpredictability of the insurance market, deductibles and coverage limits may not be available (or may not be reasonably priced) from year to year. Insurance coverage is reviewed annually and the Client will be notified if there is a change in coverage or a price increase.
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the Pre-existing Condition(s) of the Facilities. As such, OCWA is

not required to obtain insurance for this purpose and the Client has or will obtain its own insurance.

- (c) The Client shall be responsible for securing its own insurance for any other operations with which it is involved that are not part of the Services. The Client acknowledges that OCWA's Commercial General Liability and Contractor's Pollution Liability insurance shall not extend to cover any claims, exposure or liability beyond those directly linked to the provision of Services by OCWA staff. The Client further acknowledges that it will have no recourse under OCWA's Commercial General Liability and Contractor's Pollution Liability insurance for any operations that do not form part of the Services.
- (d) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule E.
- (f) The policies of insurance obtained by the Client in connection with this Agreement shall be primary, notwithstanding other insurance obtained and maintained by OCWA.

ARTICLE 3 -
RESPONSIBILITIES OF
THE CLIENT

Section 3.1 - Obligations of the Client

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement.
- (b) The Client has passed all necessary By-Laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facilities, (including, without limitation, any Authorizations required from the Ontario Municipal Board and the Ministry of the Environment and Climate Change), 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 Facilities, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facilities under Applicable Laws, including without limitation its responsibilities under the *Safe Drinking Water Act, 2002* (the "SDWA"), the *Ontario Water Resources Act* and the *Occupational Health and Safety Act* (the "OHSA") and their regulations.
- (e) The Client confirms that there are no Pre-existing Conditions existing at the Facilities which would affect OCWA's ability to operate the Facilities in compliance with the terms of this Agreement and Applicable Laws, other than what is listed in Schedule F.

The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.

- (f) The Client confirms that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facilities are in compliance with all Applicable Laws.
- (g) The Client 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 and lead) in accordance with the OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facilities.

Section 3.2 - Covenants of the Client

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

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.9.
- (b) The Client agrees to promptly provide OCWA with any information relating to the Facilities which could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report prepared in respect of the Facilities, any Authorization or amendment to any Authorization, as well as any governmental notice or order relating to the Facilities.
- (c) The Client agrees to commit the necessary resources to appropriately address and comply with any such reports, Authorizations, notices or orders.
- (d) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like facility, all water works that belong to or are under the control of the Client and that distribute water from the Facilities.
- (e) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like Facility, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the Facilities.
- (f) The Client agrees to promptly commit the necessary resources to appropriately address any health and safety issues identified by OCWA which are the responsibility of the Client.
- (g) The Client shall take reasonable steps to ensure that wastewater transmitted to the Facilities complies with the Client's sewer use by-law and any Environmental Laws. If requested by OCWA, the Client shall provide OCWA with copies of the Client's

inspection reports (sewer usage, cross-connections, sump pump connections), if available.

- (h) The Client shall inform OCWA if the Facility is to accept septage or leachate. The Client shall provide OCWA with a report of a professional engineer indicating that the Facility is capable of handling such additional Loadings. The Client shall provide OCWA with a list of haulers from which OCWA is to accept septage or leachate at the Facility. OCWA shall not be responsible for any operational impacts caused by the septage or leachate. The Client shall be fully responsible for any additional costs incurred as a result of the acceptance of septage or leachate at the Facility.]

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and Climate Change and all directors, officers, employees and agents of the Ministry of the Environment and Climate Change (collectively referred to as the “Indemnified Parties”) from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that is solely attributed to the Client’s negligence or wilful misconduct.
- (b) OCWA shall be deemed to hold the provisions of this Article 3 that are for the benefit of OCWA’s directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Claims by OCWA for indemnification from the Client will follow the Indemnification Process as described in Schedule B.
- (d) Notwithstanding 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 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 January 1, 2019 and shall continue in effect for an initial term of ten (10) years, ending on December 31st, 2028 (the “Initial Term”) and then may be renewed for successive five (5)-year terms (each a “Renewal Term”) upon agreement between the Parties, subject to Sections 4.3 and 6.1 of this Agreement.

Section 4.2 - Annual Price for the Initial Term

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

Section 4.3 - The Annual Price in Renewal Terms

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

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each Year of the Initial Term or any Current Term, in twelve (12) equal monthly payments, in advance, on the first day of each month. The first payment shall be due and payable on January 1, 2019. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client.

Section 4.5 - Items Not Included in the Annual Price

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

- (a) any Capital Projects (as defined in Paragraph 4.7(a) below) or costs resulting from any failure of the Client to implement reasonably recommended Major Maintenance Expenditures;
- (b) costs or charges for services resulting from a Change in Applicable Laws;
- (c) Unexpected Expenses (as defined in Paragraph 4.8(a) below);
- (d) charges for any Optional Services that are provided by OCWA to the Client;
- (e) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facility;

- (f) any costs and charges related to third party auditing of the MOECC's Municipal Drinking Water Licensing Program as described in Section 4.12.
- (g) any costs arising from a significant increase in flows, as set out in Part 1 of Schedule G to this Agreement.]

Section 4.6 - Major Maintenance Expenditures

- (a) "Major Maintenance Expenditures" means the charges for all non-routine, non-repetitive activities, repair or replacement of machinery or equipment required for the continuity of operations, safety, and operating performance of the Facilities that are necessary to prevent or correct a failure of any component of the equipment which is not included as part of Routine Maintenance including labour charges, together with the Service Fee or fixed fee basis.
- (b) No later than November 30th of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with rolling five (5)-year recommendations for Major Maintenance Expenditures required for the long term operation of the Facilities. The Client's written approval of the estimate or revised estimate, in the form set out in Schedule "J", authorizes OCWA to incur the Major Maintenance Expenditures included in the estimate (the "Approved Major Maintenance Expenditures").
- (c) OCWA will invoice the Client for the Approved Major Maintenance Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.
- (d) OCWA will not be required to obtain the prior approval of the Client for any major Maintenance item costing less than \$2000.00. Regardless of the amount, OCWA will not be required to obtain the prior approval of the Client for any Major Maintenance item related to the health and safety of employees, the facility or the public.

Section 4.7 - Capital Projects

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

Section 4.8 - Unexpected Expenses

- (a) “Unexpected Expenses” means unanticipated expenditures or additional costs which may include Major Maintenance Expenditures in addition to the Approved Major Maintenance Expenditures, that OCWA reasonably incurs in order to address a Change in Applicable Laws, any Uncontrollable Circumstance, any work required by regulatory order (e.g. MOECC or MOL) or identified through an inspection (e.g. ESA, MOECC, MOL) that is not solely the result of OCWA’s negligence in performing the Services or any other emergency situation, together with the Service Fee.
- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten (10) days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred.
- (c) Any Unexpected Expenses will be invoiced to the Client together with appropriate supporting documentation, and the Client shall pay the invoice within thirty (30) days of the date of the invoice.
- (d) In the event that OCWA is required to incur Unexpected Expenses, OCWA will not be required to obtain the prior approval of the Client for any Major Maintenance Expenditure item costing less than \$2,000.00. Regardless of the amount, OCWA will not be required to obtain the prior approval of the Client for any Major Maintenance item related to the health and safety of employees, the facility or the public.

Section 4.9 - Interest on Late Payments

- (a) **Monthly Payment of Annual Fee.** If the Client’s monthly payment of the Annual Fee is not available in OCWA’s designated bank account on the agreed to date of payment, OCWA will notify the Client that the funds were not available. Interest will be charged to the Client starting from the day after the payment was due in the account. Interest shall be paid at a rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the Lieutenant Governor in Council under s.10(4) of the *Financial Administration Act*, R.S.O. 1990, c.F.12, plus any banking charges and an administrative fee.
- (b) **Other Invoices.** Invoices, other than for the monthly payment set out in Section 4.8(a) above, shall be paid no later than thirty (30) days from the date of the invoice and interest shall begin to accrue one (1) day after the payment is due.

Section 4.10 - Partial Payment of Disputed Invoices

If the Client disputes any portion of an invoice, the Client shall pay to OCWA the undisputed portion of the invoice by the due date set out herein and provide OCWA with written notice of such dispute by the due date. Failure to provide such written notice of any such dispute will act as a waiver of any 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 Client

shall pay to OCWA all amounts determined to be payable to OCWA, plus interest in accordance with Section 4.9(a).

Section 4.11 – Hydro Costs / Natural Gas Costs / Utility Costs

OCWA will pay the hydroelectricity and Natural Gas costs on behalf of the Client. The Client shall reimburse OCWA for all such hydroelectricity costs, based on the cost indicated on the bill from the utility provider, as further described in Schedule D.

Section 4.12 - Optional Services

- (a) If requested by the Client, OCWA may provide Optional Services to the Client by Change Order as set out in Schedule H, provided that the Client and OCWA agree in writing to the specific scope of work required.
- (b) Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis as described in Schedule D.
- (c) Once OCWA has agreed to provide Optional Services to the Client, the Optional Services shall be subject to the terms and conditions of this Agreement, with any necessary changes having been made.
- (d) The labour and mileage rates described in Schedule D will be reviewed annually by OCWA and may be subject to change.

Section 4.13 - Changes to the Agreement

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

Section 5.1 - Mediation

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, then the issue shall be referred to a mediator.
- (b) The fees and expenses of the mediator shall be divided equally between the Parties.
- (c) Involvement in mediation is on a without prejudice basis and does not preclude and is not a bar to either Party pursuing whatever legal remedies may be available, including litigation.

ARTICLE 6 -
TERMINATION

Section 6.1 - Termination of Agreement

- (a) At least one (1) calendar year before the expiry of the Current Term, the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew.
- (b) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA by giving at least thirty (30) days' notice in writing to the other Party if:
 - (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party; and
 - (iii) the other Party does not correct the breach within thirty (30) days of receiving the notice.
- (c) If either Party disputes the existence of a breach or that the breach is material, then the dispute may be referred to mediation under Section 5.1 of this Agreement.

Section 6.2 - Early Termination

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

well as any previously incurred Major Maintenance Expenditures, costs related to Capital Projects, Unexpected Expenses and Optional Services.

Section 6.3 - Inventory Count of Consumables/Supplies

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

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

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

Section 6.4 - Final Settlement

If OCWA ceases to operate the Facilities, there shall be a final settlement of 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, 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 6.5 - Transfer of Operations

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

- (a) The log books for the Facilities.
- (b) The original operations manuals that were provided by the Client to OCWA at the commencement of the Services with all updates to the expiry date of the Agreement.
- (c) A list of emergency phone numbers from the contingency plan binders used by OCWA staff in respect of the Facilities.
- (d) Maintenance and repair records of equipment at the Facilities in electronic format.
- (e) The operational plans under the Drinking Water Quality Management Standard (DWQMS) and any Standard Operating Procedures (SOPs) identified in the DWQMS.

Section 6.6 - Restrictions on Recruitment of OCWA's Employees

During the term of this Agreement and for one (1) year following the termination of this Agreement, the Client shall not solicit or recruit any employee of OCWA, nor induce any

OCWA employee to leave his or her employ to work at the Facilities, unless mutually agreed to in writing by the Client and OCWA.

ARTICLE 7 –
GENERAL

Section 7.1 - Ownership of Technology

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

Section 7.2 - Agreement to Govern

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

Section 7.3 - Entire Agreement

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

Section 7.4 - Amendments and Waivers

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

Section 7.5 - Successors and Assigns

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

Section 7.6 - Survival

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

Section 7.7 - Severability

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

Section 7.8 - Notices

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

(i) if to the Client:

Municipality of Temagami
P.O. Box 220, 7 Lakeshore Drive
Temagami, ON
P0H 2H0

Telephone: (705) 569-3421
Fax: (705) 569-2834
Attention: Craig Davidson, Treasurer Administrator

(ii) if to OCWA:

Ontario Clean Water Agency
31 Station Road North
Kirkland Lake ON
P2N 3J5

Telephone: (705) 567-3955
Fax: (705) 567-7974
Attention: Eric Nielson, Regional Hub Manager

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

Section 7.9 - Counterparts

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

Section 7.10 - Freedom of Information

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

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

Date of Signing

By: _____
(Authorized Signing Officer)

Date of Signing

By: _____
(Authorized Signing Officer)

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

Date of Signing

By: _____
(Authorized Signing Officer)

Date of Signing

By: _____
(Authorized Signing Officer)

SCHEDULE A - The Facilities

Part 1. Description of the Facilities

For the purposes of this Agreement, the description of the Facilities is set out in the following:

1) Temagami South Wastewater Lagoon System

This lagoon is a twin cell waste stabilization pond with a capacity of 25,000 m³ per cell. Each cell has a permanent liner, a flow control structure, flow meter and recording chart. There is a chemical storage tank, a re-circulation pump, an intercell chamber and outlet facilities.

2) Temagami South Water Treatment Plant

The Temagami South Water Treatment Plant located on Lakeshore Road obtains its raw water from Lake Temagami. The water is drawn by a 20m long, 200mm diameter intake pipe that extends from a submerged intake structure 5.7m below the average water table. This water flows to the raw water wet well via gravity and then is pumped to the water treatment building by two submersible low lift pumps (one duty, one reserve) each rated at 950 m³/day.

The water treatment plant consists of a BCA water treatment package plant and an upgraded Neptune Trident package treatment unit. Each plant provides chemically assisted filtration through coagulation, flocculation sedimentation and filtration operations. Alum and polymer are added to the raw water upstream of the static mixer for the coagulation/flocculation process. Sodium carbonate is injected for pH adjustment and sodium hypochlorite is used for disinfection. All chemicals are added using two metering pumps, one duty and one standby. The plant is equipped with an automated monitoring system that records various components of the process.

The treated water is then directed to two clearwells having a total capacity of 257 m³. Two high lift pumps rated at 916 m³/day (one duty, one reserve) directs finished water to the 82 cubic meter elevated tower which maintains pressure in the distribution system. Alarmed chlorine and turbidity monitoring systems are in place to ensure an acceptable quality of water leaves the treatment facility.

For emergency purposes, a 60 kW diesel generator set is available to provide emergency power to the entire facility in the event of a power outage.

3) Temagami North Wastewater Lagoon System

This lagoon is a twin cell aerated lagoon with three blowers in a utility building, outlet facilities and two lift stations situated within the community which pump raw influent to the lagoon. The primary cell has a hypalon liner.

4) Temagami North Water Treatment Plant

Temagami North water treatment plant is a surface water treatment plant located on the west shoreline of Net Lake. A 222m long, 250mm diameter intake pipe extends from a submerged intake structure approximately 10m below the water level.

The low lift pumping station consists of a 1.83m x 1.5m wet well with two submersible low lift pumps (one duty, one reserve). Each pump is rated at 3.8 L/s or 326 m³/day. The water is directed to the main water plant by way of a 65mm pipe.

The water treatment facility is equipped with two BCA water treatment package plants, each consisting of a flash mixing chamber, a flocculation tank, two clarification chambers, and two deep dual media filter (sand/anthracite). Alum and polymer are added for the coagulation/flocculation process, sodium carbonate for pH adjustment and sodium hypochlorite for disinfection. All chemicals are added using two metering pumps (one duty/one standby). The plant is equipped with an automated monitoring system that records various components of the process including system flows and chemical dosages.

The treated water is directed to two of the three clearwells which have a combined capacity of 167 m³. The two highlift pumps direct the treated water into the distribution system which is equipped with a standpipe known as the North Tower. The standpipe has a total storage capacity of 732 m³ and helps to maintain water pressure in the system. Alarmed chlorine and turbidity monitoring systems are in place to ensure the water is of acceptable quality before entering the distribution system.

Filter backwashes are initiated by head loss, turbidity levels, timer or manually by the operator. The backwash wastewater and sedimentation sludge is directed to a drainage system that leads to the Municipal sanitary sewer system for disposal.

A back up 20 kW diesel generator with automatic start is located in a nearby sewage pumping station and is available to provide emergency power for the entire facility in the event of a power interruption.

5) Water Distribution System

The water distribution piping within the Municipality of Temagami.

6) Marten River Fire Dept - UV Water Treatment Unit

The UV Unit is a Trojan UVMax Model "C" with a Maximum flow rate of 34 liters/min (9 Gallons/min) serves the building only. The UV system operates on a "water use" basis and is located inside the shop area of the Fire Station building.

Part 2. Street Addresses of the Facilities

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

- 1) Temagami South Wastewater Lagoon System
22 Jack Guppy Way, Temagami, ON P0H 2H0
- 2A) Temagami South Water Treatment Plant
39 Lakeshore Drive, Temagami, ON P0H 2H0
- 2B) Elevated Water Storage Tank
41 Railway Road, Temagami, ON P0H 2H0
- 3) Temagami North Wastewater Lagoon System Blower Room and Pumping Station
37 Cedar Avenue, Temagami, ON P0H 2H0
- 4A) Temagami North Water Treatment Plant
5 Cedar Avenue, Temagami, ON P0H 2H0
- 4B) Pumping Station #1
Cedar Avenue, Temagami, ON P0H 2H0
- 4C) Pumping Station #2
Spruce Drive/Goward Avenue, Temagami, ON P0H 2H0
- 4D) Water Storage Tank
26 Birch Crescent, Temagami, ON P0H 2H0
- 5) Water distribution system throughout the Municipality
- 6) Marten River Fire Department - UV Water Treatment Unit
2877 ON-11, Marten River, ON P0H 1T0

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, H, I, J attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

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

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

“Approved Major Maintenance Expenditures” is defined in 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 2.4 of this Agreement.

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

“Business Hours” means the hours between 7:30 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 “H” 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 September of the previous Year as compared to the CPI of September of the current Year. For example, the CPI Adjustment for Year 2018 is the CPI of September 2017 divided by the CPI of September 2016.

“Current Term” is defined in Section 1 under Schedule D of this Agreement.

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

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

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

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

“ESA” means the Electrical Safety Authority.

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

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

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

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

“**MOECC**” means the (Ontario) Ministry of the Environment and Climate Change.

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

“**Natural Gas Costs**” means natural gas costs due to the operation and maintenance of the Facilities.

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

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

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

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

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

“**Parties**” 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 of this Agreement.

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

“Routine Maintenance” means regular and/or repetitive activities recommended by the equipment or facility manufacturer or practices of a prudent operator to maintain the reasonably expected service life of the equipment and components thereof and includes preventative maintenance.

“SCADA” means Supervisory Control and Data Acquisition.

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

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

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

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

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

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

“Utility Costs” means the costs of natural gas used in the operation of the Facilities.

“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 1st to December 31st of the calendar year.

SCHEDULE C - The Services

A - Services for Water Treatment System

Part 1 - Services included in the Annual Price

OCWA will provide the following services:

1. **Staffing**

- (a) certified operator(s) to attend at the Facilities as required under normal operating conditions on Business Days and during Business Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities under normal operating conditions in compliance with the requirements of Applicable Laws, terms of an Agreement, including management, operation, routine maintenance, administration and reporting;
- (b) supply a certified operator(s), who will be on call 24 hours per day, 365 days per year to respond to emergency conditions in respect of the operation of the Facilities, any such response to be charged to the Client in accordance with Schedule D herein or by way of an annual set amount;
- (c) provide all necessary training and continuing education for staff to ensure the continued operation of the Facilities, in accordance with all Applicable Laws;
- (d) provide an Overall Responsible Operator for the Facilities;
- (e) investigate and respond to public complaints at the request of the client.

2. **Regulatory Reporting**

- (a) prepare and submit all reports to the Client and the MOECC respecting the operation and maintenance of the Facilities as required by the MOECC or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) accompany MOECC officials on inspections and provide all documentation required prior to and following inspection reports;
- (c) review any inspection reports prepared by the MOECC in respect of the Facilities and, subject to any approvals of the Client, either correct or negotiate with the MOECC amendments to a deficiency;
- (d) report to the Client and the MOECC non-compliance with a regulatory requirement;
- (e) maintain Drinking Water Quality Management System plan.

3. Reporting

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

4. Operations Manuals

- (a) recommend to the Client, any section in the operating manuals that should be modified/changed to ensure that the operating manuals reflect the actual or revised approach to operating the Facilities; which recommendations may require third party assistance.

5. Initial Inventory

- (a) develop and maintain an inventory of the Client's original equipment tools and attractables in place as of the effective date of the Agreement;
- (b) develop an inventory of critical spare parts.

6. Change In Laws

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

7. Facility Emergency Preparedness

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

8. General

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

9. Routine Operations & Maintenance

- (a) in providing routine operation of the Facilities, OCWA will conduct:
- (i) visual inspection of all buildings, equipment and Facilities insofar as can be observed while these are in service;
 - (ii) instrumentation cleaning, verification of meters;
 - (iii) sampling and/or on-site analysis;
 - (iv) sample collection, preservation, packing and shipment for off-site analyses as required by Applicable Laws at the time of the commencement of this Agreement;
 - (v) laboratory sampling, analysis and reports as required by Applicable Laws at the time of the commencement of this Agreement;
 - (vi) coordination of chemical supply with chemical vendors;
 - (vii) checks and responses to alarms during Business Hours;
 - (viii) inspection of process control equipment to ensure proper operation;
 - (ix) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass reports and routine checklists as required by Applicable Laws;
 - (x) consolidation and processing of OCWA's internal operational data forms for statistical input into a reporting system for the quarterly and annual reports;
 - (xi) recording and analysis of flows, chemicals used, residuals and other process readings as required;
 - (xii) utilize Client's SCADA system (if applicable) for trending review and reporting, gap analysis, testing, and compliance;
 - (xiii) before November 30th (as per agreement 4.6(b), prepare a report outlining the foreseeable Major Maintenance Expenditures and Capital Projects required for the Facilities, complete with cost estimates for the Client's budgeting purposes;
 - (xiv) maintenance of vehicle(s) used in providing the services, including fuel and any other operating costs associated with such vehicle(s);
- (b) perform Routine Maintenance on the equipment used in the operation of the Facilities as specified in the maintenance management system;
- (c) utilize a maintenance management system which shall record information related to the maintenance of the Facilities.

B - Services for Water Distribution System

Part 1 - Services included in the Annual Price

OCWA will provide the following services:

1. Staffing

- (a) certified operator(s) to attend at the Facilities as required under normal operating conditions on Business Days and during Business Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities under normal operating conditions in compliance with the requirements of Applicable Laws, terms of an Agreement, including management, operation, routine maintenance, administration and reporting;
- (b) supply a certified operator(s), who will be on call 24 hours per day, 365 days per year to respond to emergency conditions in respect of the operation of the Facilities, any such response to be charged to the Client in accordance with Schedule D herein or by way of an annual set amount;
- (c) provide all necessary training and continuing education for staff to ensure the continued operation of the Facilities, in accordance with all Applicable Laws;
- (d) provide an Overall Responsible Operator for the Facilities.

2. Regulatory Reporting

- (a) prepare and submit all reports to the Client and the MOECC respecting the operation and maintenance of the Facilities as required by the MOECC or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) review any inspection reports prepared by the MOECC in respect of the Facilities and, subject to any approvals of the Client, either correct or negotiate with the MOECC amendments to a deficiency;
- (c) report to the Client and the MOECC non-compliance with a regulatory requirement;
- (d) maintain Drinking Water Quality Management System plan.

3. Reporting

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

4. Change In Laws

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

5. Facility Emergency Preparedness

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

6. General

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

7. Operations & Maintenance

- (a) in providing routine operation of the Facilities, OCWA will conduct:
 - (i) visual inspection of all buildings, equipment and Facilities insofar as can be observed while these are in service;
 - (ii) instrumentation cleaning, verification of meters;
 - (iii) sampling and/or on-site analysis;
 - (iv) sample collection, preservation, packing and shipment for off-site analyses as required by Applicable Laws at the time of the commencement of this Agreement;
 - (v) laboratory sampling, analysis and reports as required by Applicable Laws at the time of the commencement of this Agreement;
 - (vi) checks and response to alarms during Business Hours;
 - (vii) inspection of process control equipment to ensure proper operation;

- (viii) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass reports and routine checklists as required by Applicable Laws;
 - (ix) consolidation and processing of OCWA's internal operational data forms for statistical input into a reporting system for the quarterly and annual reports;
 - (x) detection of significant water loss based on monitoring of flow readings, tower stand pipes and ground water reservoir's for levels and pressures;
 - (xi) recording and analysis of flows, residuals and other process readings as required;
 - (xii) before November 30th as per agreement 4.6(b), prepare a report outlining the foreseeable Major Maintenance Expenditures and Capital Projects required for the Facilities, complete with cost estimates for the Client's budgeting purposes;
 - (xiii) maintenance of vehicle(s) used in providing the services, including fuel and any other operating costs associated with such vehicle(s);
 - (xiv) flushing, opening, exercising and winterizing of water hydrants as required
 - (xv) main distribution shut-off valves exercising on a semi-annual basis;
 - (xvi) operation of the water towers;
- (b) implement and utilize a maintenance management system which shall record information related to the maintenance of the Facilities.

C – Services for Wastewater Treatment System

Part 1 – Services included in the Annual Price

OCWA will provide the following services:

1. Staffing

- (a) certified operator(s) to attend at the Facilities as required under normal operating conditions on Business Days and during Business Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities under normal operating conditions in compliance with the requirements of Applicable Laws, Agreement Terms and Scope of Work (SOW), including management, operation, routine maintenance, administration and reporting;
- (b) supply a certified operator(s), who will be on call 24 hours per day, 365 days per year to respond to emergency conditions in respect of the operation of the Facilities, any such response to be charged to the Client in accordance with Schedule D herein or by way of an annual set amount;
- (c) provide all necessary training and continuing education for staff to ensure the continued operation of the Facilities, in accordance with all Applicable Laws;
- (d) provide an Overall Responsible Operator for the Facilities.

2. Regulatory Reporting

- (a) prepare and submit all reports to the Client and the MOECC respecting the operation and maintenance of the Facilities as required by the MOECC or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) review any inspection reports prepared by the MOECC in respect of the Facilities and, subject to any approvals of the Client may correct or negotiate with the MOECC amendments to a deficiency;
- (c) report to the Client and the MOECC non-compliance with a regulatory requirement.

3. Reporting

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

4. Operations Manuals

- (a) recommend to the Client, any section in the operating manuals that should be modified/changed to ensure that the operating manuals reflect the actual or revised approach to operating the Facilities, which recommendations may require third party assistance.

5. Initial Inventory

- (a) develop and maintain inventory of the Client's original equipment tools and attractables in place as of the date of the Agreement;
- (b) develop and maintain an inventory of critical spare parts.

6. Change In Laws

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

7. Facility Emergency Preparedness

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

8. General

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

9. Routine Operations & Maintenance

- (a) in providing routine operation of the Facilities, OCWA will conduct:
 - (i) visual inspection of all buildings, equipment and Facilities insofar as can be observed while these are in service;
 - (ii) instrumentation cleaning, verification of meters;
 - (iii) sampling and/or on-site analysis;
 - (iv) sample collection, preservation, packing and shipment for off-site analysis as required by Applicable Laws at the time of the commencement of this Agreement;

- (v) laboratory sampling, analysis and reports as required by Applicable Laws at the time of the commencement of this Agreement;
 - (vi) coordination of chemical supply with chemical vendors;
 - (vii) checks and response to alarms during Business Hours;
 - (viii) inspection of process control equipment to ensure proper operation;
 - (ix) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass reports and routine checklists as required by Applicable Laws;
 - (x) consolidation and processing of OCWA's internal operational data forms for statistical input into a reporting system for the quarterly and annual reports;
 - (xi) calculation, recording and analysis of the amount of wastewater treated as per regulation;
 - (xii) recording and analysis of flows, chemicals used, residuals and other process readings as required;
 - (xiii) monitor and adjust dosages of process chemicals;
 - (xiv) utilize Client's SCADA system (if applicable) for trending review and reporting, gap analysis, testing, and compliance;
 - (xv) before November 30th (as per agreement 4.6(b)) prepare a report outlining the foreseeable Major Maintenance Expenditures and Capital Projects required for the Facilities, complete with cost estimates for the Client's budgeting purposes;
 - (xvi) maintenance of vehicle(s) used in providing the services, including fuel and any other operating costs associated with such vehicle(s);
 - (xvii) removal of grit and screening;
- (b) perform routine preventive maintenance on the equipment used in the operation of the Facilities as specified in the maintenance management system;
- (c) implement and utilize a maintenance management system which shall record information related to the maintenance of the Facilities.

D - Services for Wastewater Collection System

Part 1 - Services included in the Annual Price

OCWA will provide the following services:

1. Staffing

- (a) certified operator(s) to attend at the Facilities as required under normal operating conditions on Business Days and during Business Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities under normal operating conditions in compliance with the requirements of Applicable Laws, Agreement Terms and Scope of Work (SOW), including management, operation, routine maintenance, administration and reporting;
- (b) supply a certified operator(s), who will be on call 24 hours per day, 365 days per year to respond to emergency conditions in respect of the operation of the Facilities, any such response to be charged to the Client in accordance with Schedule D herein or by way of an annual set amount;
- (c) provide all necessary training and continuing education for staff to ensure the continued operation of the Facilities, in accordance with all Applicable Laws;
- (d) provide an Overall Responsible Operator for the Facilities.

2. Regulatory Reporting

- (a) prepare and submit all reports to the Client and the MOECC respecting the operation and maintenance of the Facilities as required by the MOECC or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) review any inspection reports prepared by the MOECC in respect of the Facilities and, subject to any approvals of the Client may correct or negotiate with the MOECC amendments to a deficiency;
- (c) report to the Client and the MOECC non-compliance with a regulatory requirement.

3. Reporting

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

4. Initial Inventory

- (a) develop inventory of the Client's original equipment tools and attractables in place as of the date of the Agreement;

- (b) develop inventory of critical spare parts.

5. Change In Laws

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

6. Facility Emergency Preparedness

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

7. General

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

8. Routine Operations & Maintenance

- (a) in providing routine operation of the Facilities, OCWA will conduct:
 - (i) visual inspection of all buildings, equipment and Facilities insofar as can be observed while these are in service;
 - (ii) instrumentation cleaning, verification of meters;
 - (iii) sampling and/or on-site analysis;
 - (iv) sample collection, preservation, packing and shipment for off-site analysis as required by Applicable Laws at the time of the commencement of this Agreement;
 - (v) laboratory sampling, analysis and reports as required by Applicable Laws at the time of the commencement of this Agreement;
 - (vi) checks and response to alarms during Business Hours;
 - (vii) inspection of process control equipment to ensure proper operation;
 - (viii) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass reports and routine checklists as required by Applicable Laws;

- (ix) consolidation and processing of OCWA's internal operational data forms for statistical input into a reporting system for the quarterly and annual report;
 - (x) recording and analysis of flows, chemicals used, residuals and other process readings as required;
 - (xi) utilize Client's SCADA system (if applicable) for trending review and reporting, gap analysis, testing, and compliance;
 - (xii) before November 30th (as per agreement 4.6(b) prepare a report outlining the foreseeable Major Maintenance Expenditures and Capital Projects required for the Facilities, complete with cost estimates for the Client's budgeting purposes;
 - (xiii) maintenance of vehicle(s) used in providing the services, including fuel and any other operating costs associated with such vehicle(s);
-
- (b) perform routine preventive maintenance on the equipment used in the operation of the Facilities as specified in the maintenance management system;
 - (c) implement and utilize a maintenance management system which shall record information related to the maintenance of the Facilities.

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

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

1. Operation Related Services

- (a) operation manual updates;
- (b) 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 camera inspections;
- (k) adjust and leveling manholes;
- (l) biosolids removal from lagoon;
- (m) lagoon depth monitoring;
- (n) odour control system;
- (o) clean valve chambers and exercise valves as requested by the client .

2. Capital Projects Plans

- (a) prepare a Comprehensive 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 E - Insurance

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

Property Insurance

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

Policy Limits:

- Replacement Value
- Extra expenses
- Expediting expenses

Insurable Values: Client reports facilities' value based on Replacement Cost. (Subject to Annual Review by the Client.)

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

A flood deductible based on the Total Insured Value (TIV) of the property insured applies to locations in the 100-year flood zones determined as follows:

Less than 1 million in TIV	\$50,000
1 million to 3.3 million in TIV	\$100,000
3.3 million to 5 million in TIV	\$125,000
5 million to 6.8 million in TIV	\$200,000
More than 6.8 million in TIV	3% of the property insured subject to a minimum of \$100,000

A flood deductible of \$50,000 applies to all other locations.
Sewer back-up and water damage deductible of \$50,000.
Except \$100,000 for locations in 100-year flood zones.

All Other Losses: \$5,000 based on the insurable value of the Facilities at the time of execution of this Agreement (except earthquake, flood and sewer back-up).

The above is subject to change on an annual basis.

Where the Client's property is repaired or replaced, the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the

deductible will be paid by both the Client and OCWA *pro rata* in accordance with the total loss.

Property Insured: Property of every kind and description as declared except as excluded under the “Property Excluded” section of the policy. Marten River Fire Hall and UV Treatment unit is excluded from the property insurance provided by OCWA.

Boiler & Machinery Insurance

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

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

Deductibles: \$5,000 for Property Damage per Accident for the year 2019; subject to changes on an annual basis.

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

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

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 2019; 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 act, error or omission in professional services rendered or that should have been rendered by OCWA, or by any person for whose acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA's profession.

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

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

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

Deductible: \$50,000 for the year 2019; 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:

There are no known 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.

SCHEDULE G - Flows

Part 1: Changes in Flows

A significant change in flow means a flow that is 10% greater or 10% less than the Base Year Flow.

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

The Base Year Flow for Temagami North Water Treatment Facility for the Initial Term is 57,150 m³ per year.

The Base Year Flow for Temagami South Water Treatment Facility for the Initial Term is 54,630 m³ per year.

Part 2: Calculation of Flow Debit/Credit

A debit/credit amount equal to \$0.60 per m³ of 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).

SCHEDULE H - Change Order Form



Change Order Form

Change Being Requested			
Name of Change:			
Ontario Clean Water Agency (OCWA)	Per: _____ Name: _____ Title: _____	Date (YYYY/MM/DD):	
Client	Per: _____ Name: _____ Title: _____	Date (YYYY/MM/DD):	

Adjustment	
Check Appropriate Type of Change	
Apply (Y/N)	Type of Change:
	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	Quantity	One-time Cost	Annual Cost
	Total Cost:		

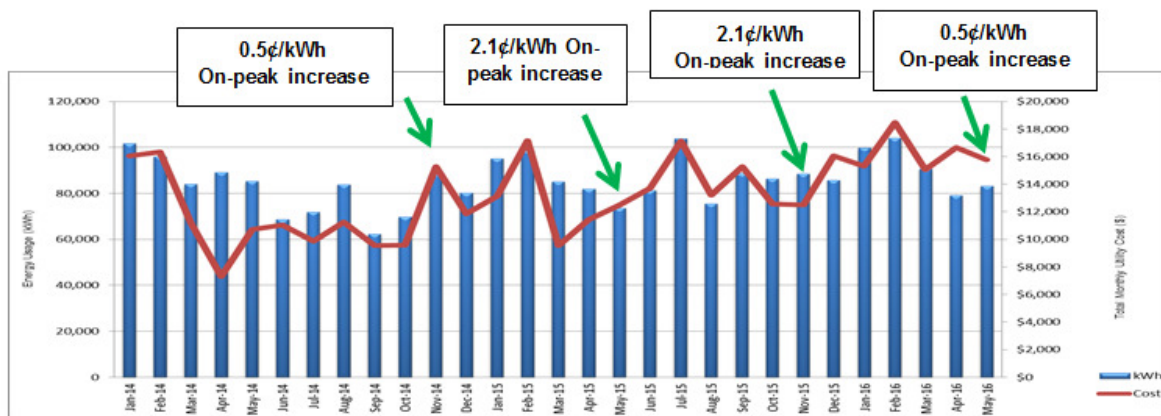
SCHEDULE I - Energy

OCWA will analyze the hydro bill information for electrical energy consumption and gas bills for natural gas consumption using available information such as energy and gas consumption charges, metered usage, adjusted usage, global adjustment, delivery, regulatory, debt retirement, demand, kW (kilowatts), kWh (kilowatt hours), kVA (kilovolt amperes), meter multipliers, adjustment factors, cubic meters etc.

OCWA will perform the following function with regards to hydro and gas bills using Hydro and Gas Bill Analysis template.

- load electricity and gas bills, record data
- verify costs, report information using graphical tools &
- assess/identify for new opportunities
- establish KPIs for internal and external benchmarking
-

OCWA will provide 3 quarterly that relating to energy consumption and projections for the next quarter and a year end annual report.



SCHEDULE J - Expenditure Request and Approval to Proceed



Northeastern Ontario Regional Hub
P.O. Box 513
1 Browning Street
HAILEYBURY ON
Phone: 705-672-5549 Fax: 705-672-2534

PART 1

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

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

Type of Project:

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

Description of Project or Expenditure:

Submission Prepared By:

Name (Print)	Signature	Date

Authorized Representative for the Municipality

PART 2

Approval to Proceed:

Approved
 Declined
 Deferred
 Reason if Declined or Deferred:

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

Approved By:

Name (Print)	Signature	Date

Authorized Representative for the Municipality

PART 3

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