

**SERVICES AGREEMENT**  
**BETWEEN**  
**ONTARIO CLEAN WATER AGENCY**  
**A N D**  
**THE CORPORATION OF THE TOWN**  
**OF FORT FRANCES**

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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 TOWN OF FORT FRANCES

(the “Client”)

### **RECITALS**

- (a) OCWA is in the business of providing management, operations and maintenance services for wastewater facilities and Overall Responsible Operator (“ORO”) Services for wastewater collection and water treatment systems.
- (b) The Client is the owner of the Fort Frances Water Pollution Control Plant, Wastewater Collection Systems and Water Treatment Plant more particularly described in Schedule A (the “Facilities”).
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facilities and to provide ORO services, where needed, 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 \_\_\_\_\_ 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 Water Pollution Control Plant.
- (b) The Client also retains OCWA to provide staff who will act as the ORO pursuant to Section 23 of O.Reg. 128/04 under the *Safe Drinking Water Act, 2002* (the “SDWA”) in respect of the Water Pollution Control Plant. In addition, OCWA will act as provisional ORO in respect of the Wastewater Collection Systems and Water Treatment Facilities.
- (c) In providing operational services to the Facilities and acting as ORO (where needed), OCWA will provide the services set out in Schedule C to this Agreement (the “Services”). The Client acknowledges and agrees that OCWA bears no responsibility for the design of the Facilities.
- (d) OCWA staff who act as ORO of the Facilities will have certification levels equivalent to the class of the Facilities to enable them to provide the Services.
- (e) 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 Sections 4.6 and 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 negligent maintenance;

- (iv) the wastewater transmitted to the Facilities for treatment contains contaminants or pathogens which cannot be treated or removed by the Facilities' treatment processes;
  - (v) the wastewater transmitted to the Facilities for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Law;
  - (vi) the quantity or quality of wastewater transmitted to the Facilities exceeds the Facilities' design or operating capacity;
  - (vii) when OCWA is acting as provisional ORO in respect of the Wastewater Collection Systems and Water Treatment Facilities;
    - I. the Client's water treatment operators and wastewater collection operators (individually, the "Client's Employee," or collectively, the "Clients' Employees") not carrying out their duties and responsibilities under the terms of this Agreement, when OCWA is acting as ORO;
    - II. the Clients' Employees do not carry out OCWA's instructions;
    - III. lack of adequate response by the Client or the Client's Employees to a concern raised by OCWA in respect of the Client's Employees or any other matter related to the operation of the Facilities, or any other matter which, in OCWA's sole opinion, affects the provision of Services as contemplated herein.
- (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 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 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.
- (e) No later than thirty (30) days following the Effective Date of this Agreement, the Client 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 as an additional insured on both policies.
- (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 - Representations and Warranties 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 Local Planning Appeal Tribunal and the Ministry of the Environment, Conservation, and Parks), 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) The Client has provided OCWA with copies of all relevant procedures, Facility contingency plans, operational plans and other such documents related to the operation of the Facility to enable OCWA to provide the Services.
- (e) 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 SDWA, *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. The Client warrants that, as of the date of the execution of the Agreement, to the best of the Client’s knowledge, the Facilities are in compliance with all Applicable Laws.
- (f) 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.
- (g) The Client confirms that as of the date of execution of this Agreement, to the best of the Client’s knowledge, the Facilities is in compliance with all Applicable Laws.
- (h) The Client is not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (the “OHSA”) at the Facilities. The Client acknowledges and agrees that it is responsible for dealing with the designated substances (including but not limited to asbestos and lead) in accordance with the OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facilities.
- (i) The Client has an Occupational Health and Safety Policy in place at the Facility and the Client’s employees have been trained on such policy and all relevant health and safety protocols and procedures.

### **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 Facilities, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the Facilities.
- (e) 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.
- (f) 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) In the event that the Client is issued an order or notice from MECP or the Ministry of Health or other regulatory body in respect of the Facility, the Client is responsible for meeting the requirements of the order.
- (i) The Client shall ensure that OCWA staff are made aware of any health and safety risks and hazards at the Facility and any Facility specific health and safety procedures of the Client in order to ensure that OCWA staff who attend the Facility to provide services under this Agreement are able to do so in a safe manner.

### **Section 3.3 - Covenants of the Client in respect of any Provisional ORO Services**

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

- (a) The Client's Employees shall carry out all day-to-day operational duties at the Facility and all other duties in respect to the Facility other than those included in the Services or the Emergency Services, except where required to assist as described in Section 2.3.
- (b) The Client shall ensure that each of the Client's Employees has, at a minimum, his/her Class I operator certificates for water treatment and distribution and that at all times, these certificates remain in good standing.
- (c) The Client shall ensure that, at all times, at least one of the Client's Employees is designated as the "operator-in-charge" of the Facility pursuant to O. Reg. 128/04 under the SDWA, and that the operators-in-charge will provide regular written reports to OCWA's ORO for the Facility regarding the following:
  - (i) Analytical results from the laboratory;
  - (ii) Log book entries
  - (iii) Maintenance records and rounds sheets
  - (iv) Health and safety issues
  - (iv) Operator training records and plans
- (d) The operators-in-charge designated by the Client shall be responsible for remaining in contact at all times with OCWA to advise on operational circumstances at the Facility. The Client shall provide the names of the operators-in-charge along with their contact information.
- (e) The Client shall ensure that its Employees are provided with the necessary tools, health and safety equipment, and other supplies required to perform their work in a safe and efficient manner, and that the Client's Employees are provided with the appropriate training and supervision necessary to comply with the OHSA and any facility specific health and safety procedures.

#### **Section 3.4 - 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, Conservation, and Parks and all directors, officers, employees and agents of the Ministry of the Environment, Conservation, and Parks (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that is solely attributed to the Client's negligence or wilful misconduct.

- (b) OCWA shall be deemed to hold the provisions of this Article 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Claims by OCWA for indemnification from the Client will follow the Indemnification Process as set out 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.
- (e) OCWA agrees to promptly provide the Client 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.

#### **ARTICLE 4 - EMPLOYEE MATTERS**

##### **Section 4.1 - OCWA Has No Liability for the Client's Employees**

- (a) Any and all employees of the Client assigned to work at the Facility at any time or from time to time (the "Client's Employees") shall continue to be employees of the Client at all times and nothing in this Agreement shall undermine or terminate the relationship of employee and employer between the Client and any of the Client's Employees.
- (b) Notwithstanding that performance of the Services may require OCWA to oversee tasks performed by and activities of the Client's Employees, OCWA shall under no circumstances have any liability whatsoever for any of the Client's Employees or any action performed by any of them, unless performed under the negligent direction of OCWA.
- (c) Notwithstanding any other provisions of this Agreement, OCWA shall not be a "supervisor" as that term is defined under the OHSA or its regulations and the Client acknowledges that it is solely responsible for appointing a "competent person" as a "supervisor" under the OHSA and its regulations. The Client further acknowledges that it is the "employer" under the OHSA of the Client's Employees.

#### **Section 4.2 - Staffing Levels and Attendance**

In respect of provisional ORO services, the Client shall at all times provide a sufficient number of Client's Employees to carry out the responsibilities of the Client at the Facility provided for in this Agreement and to ensure that the Facility complies at all times with all Applicable Laws. The Client shall notify OCWA prior to any change in staffing levels or other relevant information about staffing of the Facility.

#### **Section 4.3 - OCWA's Directions**

In respect of provisional ORO services, the Client acknowledges and agrees that the Client's Employees are to carry out the directions of OCWA staff acting as the ORO under this Agreement and the Client shall so instruct the Client's Employees.

#### **Section 4.4 - Non-Compliance with OCWA's Directions**

OCWA shall notify the Client in writing of any failure on the part of any of the Client's Employees to comply with any direction given by OCWA and the Client shall take appropriate steps with respect to disciplining any of the Client's Employees and otherwise respond promptly and appropriately to any notification given by OCWA.

### **ARTICLE 5 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES**

#### **Section 5.1 - 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 five (5) years, ending on December 31, 2023 (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 5.2 - 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 5.3 - 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 5.4 - 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 5.5 - 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 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) Hydro/Utility costs;
- (e) charges for any Optional Services that are provided by OCWA to the Client;
- (f) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facilities;
- (g) any costs arising from a significant increase in loadings, as set out in Part 1 of Schedule G to this Agreement.

#### **Section 5.6 - 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 September 30<sup>th</sup> 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 six (6)-year recommendations of the Major Maintenance Expenditures required for the long term

operation of the Facilities. The Client's written approval of the estimate or revised estimate, in the form set out in Schedule "H", authorizes OCWA to incur the Major Maintenance Expenditures included in the estimate (the "Approved Major Maintenance Expenditures").

- (c) OCWA will invoice the Client for the Approved Major Maintenance Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.
- (d) OCWA will have the option to submit a quotation, or all-inclusive proposal, for consideration by the Client.

### **Section 5.7 - 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 5.8 - Unexpected Expenses**

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

arises. OCWA considers the safety of the workers, the public, the environment and the Facilities when making these decisions.

#### **Section 5.9 - Interest on Late Payments**

- (a) **Monthly Payment of Annual Price.** If the Client's 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 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 4.9(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 5.10 - 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 5.11 - Hydro Costs/Gas Costs**

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

#### **Section 5.12 - Optional Services**

- (a) If requested by the Client, OCWA may provide Optional Services to the Client by Change Order as set out in Schedule G, provided that the Client and OCWA agree in writing to the specific scope of work required.
- (b) Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis as described in Schedule D.



- (c) Once OCWA has agreed to provide Optional Services to the Client, the Optional Services shall be subject to the terms and conditions of this Agreement, with any necessary changes having been made.
- (d) The labour and mileage rates described in Schedule D will be reviewed annually by OCWA and may be subject to change.

### **Section 5.13 - Changes to the Agreement**

- (a) A Change to the Agreement may be carried out after execution of this Agreement by Change Order. A Change Order shall be based upon agreement between the Parties and shall be reflected in a Change Order Form.
- (b) The Parties shall execute a Change Order Form, which shall be substantially in the form found in Schedule G which will state their agreement upon all of the following:
  - (i) the 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 6 - DISPUTE RESOLUTION**

### **Section 6.1 - 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 7 - TERMINATION**

### **Section 7.1 - 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 7.2 - 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 7.3 - 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 7.4 - 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 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 Client with a final invoice, whichever comes later.

### **Section 7.5 - Transfer of Operations**

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

- (a) The log book for the Facilities.
- (b) The original operations manual(s) 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.

## **ARTICLE 8 - GENERAL**

### **Section 8.1 - 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 8.2 - 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 8.3 - 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 8.4 - 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 8.5 - 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 upon sixty (60) days written notice.

#### **Section 8.6 - Survival**

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

#### **Section 8.7 - 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 8.8 - 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 facsimile, registered mail or courier shall be deemed to have been given when received.

- (i) if to the Client:  
Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON, P9A 3P9  
Telephone: 807-274-9893  
Fax: 807-274-7360  
Attention: Travis Rob, Manager of Operations and Facilities
- (ii) if to OCWA:  
Ontario Clean Water Agency  
574B Memorial Avenue  
Thunder Bay, ON P7B 3Z1  
Telephone: 807-252-8233  
Attention: Business Development Manager, Johanna Kirkbride

- (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 8.9 - 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 8.10 - 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 8.11 - 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: \_\_\_\_\_  
(Terry Bender, VP of Operations)

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

By: \_\_\_\_\_  
(Prem Rooplal, VP Finance)

**THE CORPORATION OF THE TOWN OF  
FORT FRANCES**

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

By: \_\_\_\_\_  
(Roy Avis, Mayor)

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

By: \_\_\_\_\_  
(Lisa Slomke, Clerk)

## **SCHEDULE A - The Facilities**

For the purposes of this Agreement, the description of the Facilities are set out in the following document(s):

### **I - Water Pollution Control Plant**

The Waste Water Treatment Plant (Class III) employs an activated sludge process complete with secondary clarification, phosphorus removal and disinfection. The waste activated sludge is treated via a two step aerobic digestion process. The facility is rated for an average daily flow of 9,000m<sup>3</sup> and a peak hydraulic capacity of 25,000m<sup>3</sup>/day. Primarily, disinfection is achieved via flow through an ultraviolet light radiation process rated at 18,000m<sup>3</sup>/day design capacity. Disinfection of flows in excess of 18,000m<sup>3</sup>/day is accommodated via augmentative processes such as chemical injection of Sodium Hypochlorite.

Globally, the treatment facility consists of a rotating bar screen with de-watering Rotary press, grit separator, dual aeration basins applying mechanical aeration with 22.4 kW blowers and 25hp mixing pumps, dual rectangular secondary clarifiers equipped with flight and chain mechanisms rated at 12,500m<sup>3</sup>/day each, scum removal, ultraviolet disinfection augmented by sodium hypochlorite feed, flow metering, and two aerobic digestors.

The treatment facility's alarm, process monitoring and control activities are managed, in varying degrees, via SCADA technology.

### **II - Sewage Lift Stations**

#### **Central Lift Station**

1. Wet well/drywell configuration – rectangular wet pit footprint is approximately 3.57m x 4.6m and overflows to the Rainy River.
2. Equipped with 3 – 40HP, 1200 RPM, 575V, Smith and Loveless pumps.
3. Pump No.'s 1 & 2 are variable speed driven as governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, ultrasonic liquid level measurement.
5. Station control housed in brick utility building that also contains a standby diesel generator. Building is positioned remotely from the access to the dry pit containing pumps.
6. Catchment receives Church Street and White Pine Station discharge.

#### **White Pine Lift Station**

1. Wet well/drywell configuration – cylindrical wet pit with a diameter of approximately 1.75m.
2. Equipped with 2 – 7.5 HP, 1200 RPM, 575V, Smith and Loveless pumps.

3. Both pumps are constant speed with their operation governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, wetwell level sensing transducer.
5. Station control housed in brick utility building that also contains a standby diesel generator. Building is positioned remotely from the access to the dry pit containing pumps.
6. Catchment receives Church Street Station discharge.

#### **Fifth Street Lift Station**

1. Wet well/drywell configuration – rectangular wet pit footprint is approximately 6.1m x 4.2m and overflows to the Rainy River.
2. Equipped with 3 – 15HP, 1170 RPM, 575V, Smith and Loveless pumps.
3. Pumps are constant speed with their operation governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, ultrasonic liquid level measurement.
5. Station control housed in brick utility building that also contains a standby diesel generator. Building is positioned remotely from the access to the dry pit containing pumps.
7. Catchment receives Couchiching pumping station and Strachan pumping station discharges.

#### **Church Street Lift Station**

1. Wet well configuration – cylindrical with a diameter of approximately 2.4m with overflow to the Town's storm sewer network.
2. Equipped with 2 – 2.7hp, 1400 RPM, 208V, Flygt pumps.
3. Both pumps are constant speed with their operation governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, wetwell level sensing ultrasonic. No flow meter

#### **Strachan Lift Station**

1. Wet well configuration – cylindrical with a diameter of approximately 2.4m with overflow to the Town's sanitary sewer network.
2. Equipped with 2 – 2.7HP, 1400 RPM, 208V, Flygt pumps.
3. Both pumps are constant speed with their operation governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, ultrasonic liquid level measurement.

### **Boundary Road Lift Station**

1. Wet well/drywell configuration – cylindrical with a diameter of approximately 1.8m; no overflow; wet pit sized for up to 12 hours of operational storage.
2. Equipped with 2 – 7.5HP, 1400 RPM, 600V, Smith & Loveless pumps.
3. Pumps are constant speed with their operation governed by the wet well liquid level.
4. GE Fanuc 90-30 PLC Control, ultrasonic liquid level measurement.

### **Couchiching First Nations Lift Stations**

Couchiching First Nations' sewage pumping/lift stations alarm, process monitoring and control activities are communicated, in varying degrees as dictated by the extent of on-site instrumentation, to the Wastewater Treatment Plant's SCADA system.

## **III - Sanitary Collection System**

Force mains

## **IV - Water Treatment Plant**

The Water Treatment Plant, Sub-System Class 3 (Certificate of Approval #9828-5VZSEK),

## **V - Water Distribution System**

Main drinking water system - DWS #220000978

The Airport Terminal Building - Groundwater Well - DWS #26002736.

Watermains:

Size: 100 - 630 mm

Age: 1912 - 2017 (installation date)

Material: AC, PVC, DI, CI, POLY

Approximate Length: 69.9 km

Hydrants: 368 town owned, 51 private

Valves: 711

## **Part 2. Street Address of the Facilities**

The street addresses of the Facilities are as follows:

### **I - Water Pollution Control Plant**

200 McIrvine Road

### **II - Sewage Pumping Stations**



Central Avenue Pumping Station – 712 Central Avenue  
White Pine Pumping Station – 780 Scott Street  
Fifth Street Pumping Station – 1330 Fifth Street East  
Church Street Pumping Station – 1107 Church Street  
Boundary Road Pumping Station – 1713 Colonization Road West  
Strachan Pumping Station – 936 Kaitlyn Drive  
Couchiching First Nation Reserve Three Pumping Station – Rainy Lake Blvd., Frog Creek Road,  
and Gabe's Road

### **III - Sanitary Collection System**

Those forcemains lying within the Boundaries of the Town of Fort Frances discharging from the above mentioned sanitary pumping stations.

### **IV - Water Treatment Plant**

901 Colonization Road East

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**SCHEDULE B - Definitions**

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

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

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

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

**“Approved Major Maintenance Expenditures”** is defined in 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 7:00 a.m. and 15:30 p.m. on a Business Day.

**“Capital Projects”** is defined in Section 4.7(a) of this Agreement.

**“Change in Applicable Laws”** means the enactment, adoption, promulgation, modification, issuance, repeal or amendment of any Applicable Laws that occur after the date this Agreement is executed by both Parties.

**“Change Order”** means the document shown in Schedule “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

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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 4.3 of this Agreement.

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

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

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

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**“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 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 15 of O. Reg. 129/04 under the *Ontario Water Resources Act*, R.S.O. 1990 (“OWRA”) in respect of the Facilities.

**“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.

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**“Routine Maintenance”** means regular and/or repetitive activities recommended by the equipment or Facilities 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.

**“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 Facilities 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 to December 31 calendar year.

## **SCHEDULE C - The Services**

### **Part 1 Services for Water Pollution Control Plant - 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 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; The cost for all call outs are included in this agreement, excluding power related call outs where there is no backup generator power. This will be billed at the rates provided in Schedule D “Optional Services”;
- (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 MECP respecting the operation and maintenance of the Facilities as required by the MECP or any other regulatory agency or body having jurisdiction at the time of the Agreement;
- (b) review any inspection reports prepared by the MECP in respect of the Facilities and, subject to any approvals of the Client may correct or negotiate with the MECP amendments to a deficiency;
- (c) report to the Client and the MECP non-compliance with a regulatory requirement;
- (d) OCWA shall provide a monthly operating and performance report to the Client.
- (e) OCWA shall meet with Council and municipal representatives a minimum of twice per year and present the annual report and capital recommendations.
- (f) OCWA shall prepare a 5 year capital budget each Year of the agreement and submit it to the Client prior to September 30th of each Year.

3. 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.

4. Initial Inventory

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

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. Facilities 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 locking doors and gates and notifying the Client if 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) 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 of disinfection system, pumps, chemicals system;
  - (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 monthly report;
  - (xi) calculation, recording and analysis of the amount of wastewater treated daily flows/monthly flows;
  - (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 September 30<sup>th</sup> (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;
  - (xviii) coordination and removal of biosolids, haulage and disposal from the Facilities to the Town of Fort Frances landfill. The surcharges for the landfill are not included in this agreement.
- (b) perform routine preventive maintenance on the equipment used in the operation of the Facilities as specified in the maintenance management system including mechanical, electrical, instrumentation and communication;
  - (c) utilize a maintenance management system which shall record information related to the maintenance of the Facilities.



**9. Services for Sewage Pumping Stations**

**Sewage Pumping Stations – Municipal**

- (a) Ensure that daily operations comply with Environmental Laws;
- (b) Monitor operations at lift stations on a daily basis utilizing municipality provided SCADA system;
- (g) Inspect equipment on a weekly basis at pumping stations to ensure proper operation of bar screens, pumps and stand by power;
- (h) Record flow readings on operational forms for computer input;
- (i) Clean wet wells as required utilizing the Municipality's vacuum truck provided at no cost.
- (j) Inspect and maintain forcemains discharging from lift stations on a cost plus basis

**Couchiching First Nation Pumping Stations**

- (a) Monitor operations at lift stations on a daily basis utilizing municipality provided SCADA system;
- (b) Record flow readings on operational forms for computer input;
- (c) Advise municipality immediately if any issues with flow monitoring; and
- (d) Provide notification of alarms and assistance if required on a cost plus basis.

**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) odour control system
  - (c) swabbing
- 2. Capital Projects Plans

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

### **Part 3 – Services for Wastewater Collection Systems and Water Treatment Plant Facilities**

#### **Provisional General ORO Services**

- (a) visit the Facilities and meet with the Members' Employees to review operational issues that the Members' Employees have raised with OCWA. The meetings will be documented in writing;
- (b) review and comment on any operational data of the Facilities provided by the Client's Employees within 24 hours;
- (c) be available by telephone twenty-four (24) hours a day, seven (7) days a week to advise the Client's Employees about the operation of the Facilities, as well as to respond to emergencies;
- (d) review the Facilities' log books, maintenance records, inspection reports and work orders on a regular basis; and
- (e) provide necessary operational instruction to the Client's Employees.

## **SCHEDULE D - The Annual Price and Other Charges**

### **1. Annual Price for the Initial Term**

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

- (i) For Year One from January 1, 2019 through to December 31, 2019 inclusive:  
**\$479,044.00.**
- (ii) For Year Two from January 1, 2020 through to December 31, 2020 inclusive:  
**\$488,624.88.**
- (iii) For Year Three from January 1, 2021 through to December 31, 2021 inclusive: **\$498,397.38**
- (iv) For Year Four from January 1, 2022 through to December 31, 2022 inclusive  
**\$508,365.33**
- (v) For Year Five from January 1, 2023 through to December 31, 2023 inclusive  
**\$518,532.63.**

### **2. Payment of the Annual Price**

In Year One of the Initial Term, the monthly payment of the Annual Price shall be **\$39,953.33.**

### **3. Optional Services**

Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis at the following rates 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 Client, and the Client will pay such costs together with a Service Fee.

**4. Service Fee**

“Service Fee” means an additional fee of 10% charged to the Client when OCWA purchases materials, supplies, equipment or contractor’s services on behalf of the Client.

**5. Provisional Monthly Fees to Provide Overall Responsible Operator (ORO) Services**

Fees Apply to either the Wastewater Collection System or the Water Treatment System

For Years One through Five of the initial term from January 1 through to December 31 inclusive the monthly fee shall be \$6,500.00.

**SCHEDULE E - Insurance**

**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 2018; 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 2018; 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:

- Scum pump on site requires installation and commissioning.
- There are no backup generators at Boundary LS, Strachan LS, Church St LS and the main Water Pollution Control Plant.
- The Occupational Health and Safety Act lists a number of designated substances, Silica being one of those. The Client acknowledges that silica is a component of Concrete and as such proper care and control needs to be taken when drilling, breaking or cutting of concrete or cleanup of concrete dust is taking place at the Facilities.
- Polymer pumps are incapable of handling viscosity of polymer (supplier has given options on pump replacement, more suitable to application)
- Central Ls Drywell needs an assessment on integrity of metal flooring
- Central and 5th Street Lift Stations' require thorough cleaning due to ongoing construction/replacement of mains. ( Severe grit build up, conventional cleaning is not effective)

**SCHEDULE G - Change Order Form**

**Ontario Clean Water Agency**  
**Agence Ontarienne Des Eaux**

**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		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>Facilities 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>			
Client PO / Project #:		Date:	
Project Start Date:		Project Completion Date:	
OCWA Invoice #		Date:	
OCWA Account Code:		OCWA Work Order #	