

November 7, 2012

Report To: Mayor & Council

From: Doug Brown, Manager Operations & Facilities

SUBJECT: Renewal of OCWA for the Operations and Maintenance of the Sewage Treatment Plant



Further to the discussion of the Operations and Facilities Executive Committee Meeting on November 7, 2012 in accordance with the existing service agreement with OCWA to provide management, operations and maintenance services for the wastewater facilities the Town must provide notice 12 months in advance before the expiry of the current term. See attached sections 4.1, 4.3 and section 6.1 of the existing agreement.

At this time, the Operations & Facilities Executive Committee is recommending that written notice be given to OCWA prior to December 31, 2012 that the Town will be tendering the management, operations and maintenance services for the Town's wastewater facilities in 2013 or to operate or maintain the wastewater facilities with it's own staff.

However the Town is willing to negotiate with OCWA a new price for an additional 5-year term in accordance with section 4.3, with the understanding that the Town does not want to have any restrictions under the existing service agreement with OCWA agreement in providing services for the management, operations and maintenance of the Towns wastewater facilities come January 1, 2014.

Respectfully submitted,
Operations & Facilities Division

Doug Brown

Doug Brown, P. Eng.
Manager Operations & Facilities

Council approval of this report will ensure the following:

- 1) Administration will try to negotiate with OCWA a new price for an additional 5-year term in accordance with section 4.3, with the understanding that the Town does not want to have any restrictions under the existing service agreement with OCWA to providing services for the management, operations and maintenance of the Town's wastewater facilities come January 1, 2014.
- 2) That written notice be given to OCWA prior to December 31, 2012 that the Town will be tendering the management, operations and maintenance services for the Town's wastewater facilities in 2013 or to operate or maintain the wastewater facilities with its own staff.

2012NovemberOCWA Agreement

RECOMMENDED

NOV - 7 2012

DIV. MNG.

EXECUTIVE COMM.

Doug B.
R. Widenhoft

Reprint

- (c) Notwithstanding Paragraph 3.3(a) above, the Client shall not be liable in respect of any Claim:
- (i) to the extent that such Claim is covered by the Insurance; and
 - (ii) to the extent that such Claim is caused 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 1st, 2009 and shall continue in effect for an initial term of five years ending on December 31st, 2013 (the "Initial Term") and then may be renewed for successive five 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 for OCWA's provision of the Services, a price for each Year of the Initial Term in the following amounts (the "Annual Price"):

- (i) For Year One from January 1, 2009 through to December 31, 2009 inclusive:
\$434,278.00.
- (ii) For Year Two from January 1, 2010 through to December 31, 2010 inclusive:
\$444,861.00.
- (iii) For Year Three from January 1, 2011 through to December 31, 2011 inclusive:
\$455,708.00.
- (iv) For Year Four from January 1, 2012 through to December 31, 2012 inclusive
\$466,826.00
- (v) For Year Five from January 1, 2013 through to December 31, 2013 inclusive
\$478,223.00.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for any Renewal Term will be as agreed between the Client and OCWA. If the Parties cannot agree on the Annual Price for any Renewal Term within six months of the beginning of the last Year of the Initial Term or Renewal Term, as the case may be, (the "Current

term”), this Agreement will be terminated six months after the last day of the Current Term. During this six month period, the Client shall pay the Annual Price paid for the last Year of the Current Term plus a CPI Adjustment pro-rated over the six month period. The CPI Adjustment shall be calculated as soon as necessary information is available from Statistics Canada.

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each Year of the Initial Term or any Current Term, in twelve equal monthly payments, in advance, on the first day of each month. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client. In Year One of the Initial Term, the monthly payment of the Annual Price shall be \$36,189.83. The first payment shall be due and payable on January 1, 2009.

Section 4.5 - Items Not Included in the Annual Price

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

- (a) any Capital Expenditures (as defined in Section 4.6 below) or costs resulting from any failure of the Client to implement reasonably recommended Capital Expenditures;
- (b) costs or charges for services resulting from a Change in Applicable Laws;
- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below) including Force Majeure events;
- (d) any charges resulting from adverse tax changes in respect of the Services or the Facility;
- (e) Hydro or natural gas costs, as set out in Section 4.10;
- (f) charges for any Optional Services that are provided by OCWA to the Client;
- (g) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facility;
- (h) landfill site tipping fees
- (i) any charges resulting from a significant increase in Loadings (as measured by sludge production), as set out in Part 1 of Schedule E to this Agreement.

- (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 twelve calendar months before the expiry of the Current Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or
 - (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Current Term.
- (b) If no notice is given as indicated in Clause 6.1(a)(i) or (ii) and the Parties do not agree to negotiate the Annual Price for the next Renewal Term within the last six (6) months of the final year of the Current Term, then the Current Term shall be extended by one (1) year and Section 4.2 shall apply.
- (c) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA if:
 - (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party;
 - (iii) the other Party does not correct the breach within thirty days of receiving the notice; and
 - (iv) the complaining Party terminates in accordance with Paragraph 6.1(d).
- (d) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.1(c) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least thirty (30) days notice in writing to the other Party.

- (e) If either Party disputes the existence of a breach or that the breach is material, then the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (f) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) for any reason, upon twelve months (12) prior written notice; or
 - (ii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraphs 6.1(c) and 6.1(d) above.
- (g) For greater certainty, continued non-payment of monies owed to OCWA under this Agreement shall constitute a material breach of this Agreement by the Client.

Section 6.2 - Early Termination

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

Section 6.3 - Inventory Count of Consumables/Supplies

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

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

If the amount of consumables/supplies at the Facility on the date of termination exceeds the amount on the first day of the Initial Term, the 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 and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement no later than ninety (90)