

THE CORPORATION OF THE MUNICIPALITY WEST GREY

BY - LAW NUMBER 18 -2018

BEING, A by-law to enter into an Operation, Maintenance and Management Agreement for Water and Wastewater Systems between the Municipality of West Grey and American Water Canada Corp.;

WHEREAS, the Council of the Municipality of West Grey deems it expedient and in the public interest to enter into the aforementioned Agreement;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOW:

1. That the Operation, Maintenance and Management Agreement for Water and Wastewater Systems between the Municipality of West Grey and American Water Canada Corp., attached hereto as Schedule "A", and forming part of this bylaw, is hereby approved.
2. That the Mayor and Clerk are hereby authorized to sign and seal the said Agreement.
3. That this by-law shall come into full force and effect on the date of passing.

READ a first and second time this 5th day of February, 2018.

READ a third time and finally passed this 19th day of March, 2018.

(Signed)
Kevin Eccles, Mayor

(Signed)
Mark Turner, Clerk

SCHEDULE "A" TO BY-LAW NUMBER 18 - 2018

MUNICIPALITY OF



OPERATION, MAINTENANCE AND MANAGEMENT
AGREEMENT FOR THE
WATER AND WASTEWATER SYSTEMS
BETWEEN THE MUNICIPALITY OF WEST GREY
AND AMERICAN WATER CANADA CORP.

OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT

BETWEEN

**THE CORPORATION OF THE
MUNICIPALITY OF WEST GREY**

and

AMERICAN WATER CANADA CORP.

FEBRUARY 2018

THIS OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT (the “Agreement”) is made as of this ____ day of January, 2018 .

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

a municipal corporation incorporated under the Laws of the Province of Ontario
(hereinafter referred to as the “Owner”)

AND:

AMERICAN WATER CANADA CORP.

a corporation incorporated under the Laws of the Province of Ontario
(hereinafter referred to as the “Contractor”)

WHEREAS the Owner owns and is responsible for the operation, maintenance and management of the water and wastewater treatment facilities and distribution and collection systems located in the communities of Durham and Neustadt, Ontario (the “Facilities”, as more particularly set out in Schedule “A” attached hereto);

AND WHEREAS the Owner is desirous that the Facilities be operated, maintained and managed by the Contractor;

AND WHEREAS the Contractor is a corporation in the business of supplying operation, maintenance and management services for water and wastewater treatment facilities and distribution and collection systems;

AND WHEREAS the Owner and Contractor have the corporate capacity and are duly authorized to enter into this Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the Owner and the Contractor hereby agree as follows:

ARTICLE 1 - DEFINITIONS AND TERM OF AGREEMENT

1.1 As used in this Agreement, words and phrases not otherwise defined herein, have the following meaning:

- (a) **“Acceptable Effluent”** means the treated liquid and gaseous byproduct from the wastewater treatment processes of the Facilities that complies with all applicable guidelines and criteria under Applicable Law for such byproduct substances.
- (b) **“Acceptable Finished Water”** means treated water leaving the Facilities that complies with all applicable guidelines and criteria under Applicable Law for delivering water to the residents and customers within the service area of the Owner.
- (c) **“Acceptable Influent”** means domestic, commercial, institutional, industrial and other wastewater received at the Facilities in quantities not exceeding the design capacity of the Facilities, and which does not include any substances or Contaminants that the Facilities

are not currently designed to treat and/or are capable of treating to the standards required for Acceptable Effluent as set forth in this Agreement.

- (d) **“Acceptable Raw Water”** means raw water coming into the Facilities which in all respects is within the constituent levels and parameters for the quality and quantity of raw water established through the historical data for the last five (5) years the Facilities have been in operation, and which contains no Contaminants or other biological or chemical elements which prevent the Facilities from producing Acceptable Finished Water within the specified criteria and parameters set forth in this Agreement.
- (e) **“Additional Services”** has the meaning set forth in Section 5.5.
- (f) **“Additional Services Fee”** has the meaning set forth in Section 5.5.
- (g) **“Applicable Law”** means any federal, provincial or local statute, municipal charter provision, regulation, ordinance, rule, mandate, order, decree, permit, Certificate of Approval, code or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either party under this Agreement, which includes, without limitation, the extent to which the foregoing pertain to the operation and maintenance of the Facilities.
- (h) **“Basic Services”** has the meaning set forth in Section 2.1.
- (i) **“Basic Services Fee”** has the meaning set forth in Section 2.1.
- (j) **“Capital Expenditures”** means and shall comprise the cost for all Capital Improvements, as well as all expenditures for the purchase, Repair and Maintenance of the Facilities, Equipment or any part thereof or any additions to the Facilities, including the Contractor’s labour.
- (k) **“Capital Improvement”** means (i) any non-routine work which requires a modification, alteration, addition or improvement to any portion of the Facilities or the Equipment owned by the Owner; (ii) any replacement, overhaul or rebuild of any Equipment or materials within the Facilities that has met or exceeded its useful life; and (iii) any construction of new facilities or addition of new Equipment to the Facilities.
- (l) **“Certificate of Approval”** means the certificate(s) of approval(s) issued from time to time by the MOE to the Owner for the operation of the Facilities.
- (m) **“Change in Law”** means the enactment, adoption, promulgation, modification, repeal or change of any Applicable Law.
- (n) **“Commencement Date”** has the meaning set forth in Section 1.2.
- (o) **“Contaminant”** means (i) oil, petroleum or petroleum product, and (ii) any pollutant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation by any Applicable Law.

- (p) **“Contract Year”** means any twelve-month period commencing March 1 and ending February 28 during the Term of this Agreement.
- (q) **“CPI”** means the Consumer Price Index - All Items (Ontario) as reported by Statistics Canada.
- (r) **“Equipment”** means the equipment, including operating and processing equipment, tools and rolling stock, owned or leased by the Owner and in use at the Facilities as of the Commencement Date of this Agreement, or procured or provided by either the Owner or the Contractor (on behalf of Owner) pursuant to this Agreement for use at the Facilities.
- (s) **“Excluded Services”** has the meaning set forth in Section 2.4.
- (t) **“Maintenance”** means maintenance prescribed by the manufacturer of the Facilities and Equipment, including routine lubrication, adjustments and oiling, all maintenance expenditures required for the Facilities, including but not limited to maintenance supplies, outside maintenance services, oil and grease and maintenance equipment rental, but excluding Repairs.
- (u) **“MOE”** means the Ontario Ministry of the Environment, or such other governmental entity governing the operation of the Facilities, as may be appointed from time to time.
- (v) **“Owner Representative”** has the meaning set out in Section 8.1.
- (w) **“Performance Security”** has the meaning set out in Section 10.1.
- (x) **“Prudent Industry Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the water and wastewater treatment industries operating in the immediate area surrounding the Facilities during the Term of this Agreement. Prudent Industry Practices are not to be interpreted, construed as or limited to the optimum industry practices, methods or acts, but rather as a range of acceptable practices, methods or acts consistent with the duties and obligations of the Contractor under this Agreement.
- (y) **“Repairs”** means all activities related to reinstating the Facilities or Equipment to normal service, excluding maintenance prescribed by the manufacturer of the Facilities or Equipment, or modifications to the type or level of Services, or routine or repetitive activities required for the operational continuity, safety and performance of the Facilities or Equipment.
- (z) **“Services”** means those Basic Services, Additional Services and Excluded Services that are provided by the Contractor pursuant to this Agreement.
- (aa) **“Service Fee”** has the meaning set forth in Section 5.1.
- (bb) **“Term”** means the current term of this Agreement, of either the Initial Term or any renewal term as provided in Section 1.3.
- (cc) **“Uncontrollable Circumstance”** means any act, event, condition or circumstance that (1) is beyond the reasonable control of the party relying thereon as justification for not performing an obligation of such party under this agreement, (2) by itself or in

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combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays the party's ability to perform its obligations under this agreement, expands the scope of the party's obligations under this agreement, or increases the party's cost of performing its obligations under this agreement, and (3) is not the direct result of the willful or negligent act, intentional misconduct, failure to exercise proper due diligence or breach of this agreement by the party claiming the occurrence of an Uncontrollable Circumstance.

Subject to clauses (2) and (3) above, an Uncontrollable Circumstance shall include, but not be limited to, the following:

- (a) a Change in Law;
 - (b) any injunction or similar order issued by a governmental or regulatory body;
 - (c) the existence of a concealed or latent environmental condition on the Facilities site prior to the date of execution of this Agreement;
 - (d) contamination of the Facilities site from groundwater, soil or airborne substances migrating from sources outside of the Facilities site;
 - (e) naturally-occurring events such as earthquakes, hurricanes, tornadoes, floods, fires, landslides, underground movement, lightning, epidemics and other acts of nature;
 - (f) war, terrorism, explosion, sabotage, extortion, blockade, insurrection, riot, civil disturbance or acts of a declared public enemy;
 - (g) labor disputes, except labor disputes involving employees of the Contractor;
 - (h) the failure of any subcontractor of a party to furnish services, materials, chemicals, equipment or otherwise perform its contractual obligations to the party, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the party directly;
 - (i) the failure of any governmental body or private utility having operational jurisdiction in the area in which the Facilities are located to provide and maintain utility services (including gas, water, sewer, electric, telephone and telecommunications) to the project;
 - (j) the failure of title to the Facilities or the placement of any encumbrance on the Facilities;
 - (k) the receipt of influent other than Acceptable Influent at the Facilities;
 - (l) the receipt of raw water other than Acceptable Raw Water at the Facilities;
 - (m) any breach by a party (other than the party claiming the occurrence of an Uncontrollable Circumstance) of its representations, warranties and covenants as set forth in this Agreement;
 - (n) any failure, non-performance or non-compliance by a party (other than the party claiming the occurrence of an Uncontrollable Circumstance) with respect to its obligations and responsibilities under this Agreement; or
- (dd) "Utilities" means all electricity, natural gas, propane, telephone, water use, etc required for the operation of the Facilities and Equipment.

1.2 The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term") commencing March 1, 2018 (the "Commencement Date") and terminating at 11:59 p.m. on February 28, 2023, unless the Agreement is terminated earlier as herein provided.

1.3 The parties may extend the Initial Term of this Agreement for one or more additional terms (the "Renewal Term") as mutually agreed to by the parties. The Owner shall notify the Contractor verbally at least twelve (12) months prior to the expiration of the Initial Term or

the then-current term and again in writing at least six (6) month prior to the expiration of the Initial Term or the then-current term of its desire to renew the Agreement and the parties shall commence negotiation of the pricing and any other terms during such period. If the parties are unable to negotiate mutually acceptable terms for any additional term prior to the expiration of the then-current term, this Agreement shall expire and become null and void except with respect to any outstanding obligations accruing prior to the date of such expiration.

ARTICLE 2 - SERVICES

- 2.1 Throughout the Term of this Agreement, the Contractor shall operate and maintain the Facilities on a twenty-four (24) hours per day, seven (7) days per week basis in compliance with Applicable Law and Prudent Industry Practices, as well as the Owner's written operation and maintenance manuals provided to the Contractor, in order to achieve operating objectives and specific services set out in Schedule "B" attached hereto, as may be amended from time to time by mutual agreement of the parties (the "Basic Services").
- 2.2 The Contractor shall be required to pay for those costs and expenses for the Basic Services required for the operation, maintenance and management of the Facilities, including costs for personnel and outside services.
- 2.3 The Contractor shall perform the Required Additional Services set forth in Schedule "C". If the Owner directs the Contractor to perform any of the Optional Additional Services set forth in Schedule "C", the Contractor shall perform such services. For all Additional Services set forth in Schedule "C", the Owner shall pay the Contractor for performance of such services as set forth in Article 5 of this Agreement.
- 2.4 Notwithstanding the foregoing, the Owner shall, at its sole cost and expense, be responsible for providing those services or items set out in Schedule "D" hereto (the "Excluded Services") and the Contractor shall be under no obligation to provide such Excluded Services, unless the parties mutually agree to amend this Agreement to require the Contractor to provide any such Excluded Services.
- 2.5 The Contractor shall provide the Basic Services in a manner consistent with its normal business practices and the Owner agrees that the Contractor has the right to determine the most effective method of delivering the Basic Services, in consultation with the Owner, if not otherwise provided in this Agreement.
- 2.6 In the event of changes to any applicable employment/labor laws that increase the direct costs incurred by the Contractor to perform under the Agreement, the amount of such increased costs shall be borne by the Owner and be deemed to be an Additional Services under Schedule C. For purposes of this paragraph, "direct costs" shall be limited to actual wages/benefits paid to employees performing services and shall exclude administrative employees.

ARTICLE 3 - MAINTENANCE AND REPAIR SERVICES

- 3.1 The Contractor shall perform all Repairs and Maintenance as part of the Required Additional Services. When performing Repair and Maintenance work under this Agreement, (i) Contractor may subcontract to any subcontractor all or any part of the

Repair and Maintenance work described in or contemplated under this Agreement without the prior written consent of Owner. All performance of Repair and Maintenance work shall at all times be in accordance with the terms and conditions of this Agreement. Contractor shall at all times be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or affiliates, or to any other third party.

- 3.2** The Contractor shall meet with the Owner Representative from time to time, and such meetings will be held at dates and times that are mutually acceptable to both Contractor and the Owner Representative. The purpose of these meetings shall be to discuss the operation and maintenance of the Facilities. The Owner, at its sole cost, may involve such other consultants and agents as it may deem necessary for these meetings and inspections; provided, however, that any such consultants and agents are not competitors of the Contractor and further provided that the Contractor has consented to the involvement of the particular consultant or agent selected by the Owner, which consent shall not be unreasonably withheld.
- 3.3** Within forty-five (45) days following the end of each Contract Year, the Contractor and the Owner Representative shall conduct a yearly joint comprehensive inspection of the Facilities to evaluate and record the condition of the Facilities.
- 3.4** The Contractor shall maintain records of preventative and corrective Maintenance for the Equipment located at the Facilities in accordance with the provisions of Schedule "B".

ARTICLE 4 - REPORTS AND RECORDS

- 4.1** The Contractor shall prepare and provide quarterly operations and maintenance reports, in accordance with those reporting requirements set out in Schedule "B" hereto.
- 4.2** The Contractor shall prepare an annual report on the operation and maintenance of the Facilities at the end of each calendar year during the Term of this Agreement. The report shall be prepared in accordance with applicable Certificate of Approval or environmental compliance approval requirements from the Ministry of the Environment and Climate Change and the reporting requirements set out in Schedule "B".

The Contractor shall immediately report to the Owner any and all circumstances, conditions and occurrences at the Facilities of which it becomes aware that the Contractor believes may have the direct or indirect result of causing harm, injury, or death to any person, and particularly, without limitation, any anomaly, significant condition or significant occurrence at the Facilities.

ARTICLE 5 - COMPENSATION AND PAYMENT

- 5.1** The Owner shall pay to the Contractor, in legal Canadian currency an annual operating, maintenance and management fee for the Basic Services and an additional fee for any Additional Services provided under this Agreement, plus goods and services tax (the "Service Fee"). The "Basic Services Fee" for each Contract Year is set forth in Schedule "E" attached hereto, as adjusted pursuant to Section 5.2. The Basic Services Fee shall be invoiced in twelve (12) equal monthly payments payable in advance on the first day of the month in which the Basic Services are rendered.

- 5.2** Beginning with the second Contract Year, the Basic Services Fee for each Contract Year shall be determined by multiplying (1) the Basic Services Fee amount shown in Schedule E for such Contract Year, times (2) the Adjustment Factor. The “Adjustment Factor” for any particular Contract Year shall be determined as follows:

$$AF_n = 1 + ((CPI_{n-1} - CPI_c) \div CPI_c), \text{ where,}$$

AF_n = Adjustment Factor for Contract Year “n”

CPI_c = The monthly CPI value for the month that is two months preceding the month in which the Commencement Date occurred

CPI_{n-1} = The monthly CPI value for the month that is two months preceding the month in which the first day of the Contract Year for which an adjustment is to be made occurred

n = The Contract Year for which the Service Fee is to be determined

c = The month that is two months preceding the month in which the Commencement Date occurred

n-1 = The month that is two months preceding the month in which the first day of the Contract Year occurs

The Basic Services Fee for each Contract Year shall also be adjusted to account for any interim adjustments made necessary by any negotiated change in the scope of Basic Services, any Uncontrollable Circumstances, a Change in Law or modifications to or the Owner’s failure to modify the Facilities, which increase the cost of performing duties and responsibilities of the Contractor under this Agreement.

- 5.3** If the cost of chemicals, laboratory testing, bonding or vehicle related expenses in any Contract Year increases, as compared to the cost of such item the previous Contract Year, by a percentage amount greater than an amount equal to two (2) times the percentage change in the CPI_{n-1} as compared to the previous Contract Year for such item, the Basic Services Fee shall be adjusted retroactively for such previous Contract Year and added to the Basic Services Fee for subsequent Contract Years pursuant to Section 5.2 to account for the full value of the increase for such items.
- 5.4** (a) The parties acknowledge and agree that the Basic Services Fee has been calculated on the basis of the Contractor providing certified operator(s) to attend the Facilities during regular hours, which are Monday to Friday, 7:30 a.m. to 4:00 p.m. and Saturday, Sunday and Statutory Holidays, 7:30 a.m. to 4:00 pm. (“Regular Hours”), such attendance is calculated at eight (8) hours per day, Monday to Friday and eight (8) hours per day Saturday, Sunday and Statutory Holidays. If the Contractor is required to perform the Basic Services outside the Regular Hours for any reason, the Owner shall compensate the Contractor for such attendance (including all traveling time) at a rate of Seventy-five Canadian Dollars (\$75.00) per hour (as adjusted annually by the Adjustment Factor) plus mileage of the operator. The Owner will be charged a minimum of three (3) hours for any such additional attendance outside Regular Hours.

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- (b) For Additional Services completed during Regular Hours, the Contractor will be compensated at a rate of Sixty Canadian Dollars (\$60.00) per hour (as adjusted annually by the Adjustment Factor). There is no minimum charge for this work.
- 5.5** (a) In addition to compensation as provided above, the Owner shall pay the Contractor for any Additional Services performed by the Contractor, which are listed in Schedule "C", at a rate of cost plus a ten percent (10%) administration fee (the "Additional Services Fee").
- (b) The Contractor will obtain approval from the Owner for any purchases over \$2,000.00 CAN (two thousand Canadian Dollars).
- 5.6** The Contractor shall provide the Owner with supporting documentation for any and all Additional Services provided.
- 5.7** The Contractor shall invoice the Owner on a monthly basis all amounts owed to the Contractor for Basic Services due in accordance with section 5.1 and Additional Services provided the previous month. All invoices submitted by the Contractor shall be paid by the Owner no later than thirty (30) days after receipt of the invoice by the Owner (for each invoice, the "Due Date").
- 5.8** The Owner shall pay on all outstanding amounts not paid on the Due Date, including any arbitration award, interest at a rate of prime (prime rate to be determined on a monthly basis by the Bank of Montreal) plus three percent (3%) per annum. Such interest shall be calculated and added to any unpaid amounts on a daily basis from the due date, but shall not be compounded or treated as recomputed principal.
- 5.9** If the Owner disputes any portion of an invoice, the Owner shall pay to the Contractor the undisputed portion of the invoice by the Due Date and shall provide the Contractor with written notice of such dispute by the Due Date. Failure to provide timely written notice of any such dispute will act as a waiver of any defense 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 Owner shall pay to the Contractor all amounts determined to be payable to the Contractor, plus interest in accordance with Section 5.8.

ARTICLE 6 - CAPITAL IMPROVEMENTS

- 6.1** During the Term, the Contractor may provide the Owner with a listing of recommended Capital Improvements, identifying Capital Improvements that are necessary to improve the performance or increase the capacity of the Facilities, to address or anticipate the obsolescence of portions of the Facilities, to reduce the cost to the Contractor of performing this Agreement, to produce cost savings or efficiency innovations to the Facilities or are necessary to comply with existing or anticipated changes to Applicable Law. The decision to proceed with construction and implementation of any such Capital Improvement projects shall be at the sole discretion and decision of the Owner. If the Owner decides not to proceed with construction and implementation of a Capital Improvement project recommended by the Contractor that is necessary to provide the Services, such decision shall be considered an Uncontrollable Circumstance and the Contractor shall be entitled to all appropriate price, performance and schedule relief as contemplated by the terms of this Agreement. Similarly, if the Owner implements a Capital Improvement project, whether recommended by the Contractor or not, such implementation shall be considered an Uncontrollable Circumstance and the Contractor

shall be entitled to all appropriate price, performance and schedule relief as contemplated by the terms of this Agreement, if any. If a Capital Improvement project results in a cost savings for the Facilities, Contractor and Owner agree to discuss how such cost savings will affect this Agreement, if at all.

- 6.2** If the Owner requests the Contractor to develop a proposal for a Capital Improvement, and the Contractor agrees to submit such a proposal, the Owner shall have no obligation to approve or proceed with the Capital Improvement proposal. If the Owner declines to award implementation of the Capital Improvement to the Contractor, the Contractor shall be entitled to reimbursement of all engineering fees and other costs (including a 10% (ten percent) profit) incurred in preparing the proposal. If the Owner elects to award implementation of the Capital Improvement to the Contractor, the parties shall mutually agree on appropriate compensation for such work which shall be evidenced by an amendment to this Agreement.

ARTICLE 7 - SAFETY MEASURES

- 7.1** In providing the Services, the Contractor shall take all necessary precautions in ensuring: (a) the safety of and prevention of injury to persons, including its own employees, agents and subcontractors, the Owner's employees, and any third parties; and (b) the safety of and prevention of damage to the Facilities, the property on which the Facilities are located and any adjacent property thereto. The Contractor shall immediately advise the Owner of any unsafe condition or operation of the Facilities, of which and when it becomes aware of such condition. The Owner shall be responsible for the costs of any modifications or Capital Improvements to the Facilities necessary to correct any such condition and shall undertake such modification as soon as reasonably practicable or as may be required by Applicable Law, whichever is the lesser. The Contractor shall be responsible for any and all damages to the Facilities, the Owner's property and any property adjacent thereto arising from its negligent performance of the Services.
- 7.2** During the Term of this Agreement, the Contractor and its employees shall comply with all applicable requirements of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O-1 (the "OHS Act") and any other applicable federal, provincial or municipal health and safety standards, orders, rules, regulations and ordinances.
- 7.3** The Contractor acknowledges and agrees that it shall be solely liable for the health and safety of its employees in providing the Services hereunder, except to the extent of any injury or death that may arise from the negligence or willful misconduct of the Owner, or their respective employees, agents or subcontractors, for which the Owner hereby indemnifies and saves harmless the Contractor, its employees, agents and subcontractors for any such injury or death.
- 7.4** The Contractor acknowledges that the Services to be provided hereunder involve the use of chemicals with potential hazardous effects, for which it has provided its employees with the required health and safety training and medical surveillance as set out in the OHS Act and any regulations thereunder.
- 7.5** The Contractor shall ensure that all of its personnel performing the Services are covered by the insurance plan pursuant to the *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Schedule A*. Prior to the Commencement Date and upon the Owner's request during the Term, the Contractor shall provide the Owner with an original letter of good

standing issued from the Workplace Safety and Insurance Board (the "Board") indicating that the Contractor has made all required payments to the Board. Prior to final payment, the Contractor shall provide the Owner with a Certificate of Clearance issued from the Board, indicating that all payments by the Contractor in connection with this Agreement have been made and that the Owner will not be liable to the Board for future payments in connection with the Services provided hereunder.

ARTICLE 8 - OWNER'S OBLIGATIONS AND REPRESENTATIONS

- 8.1** The Owner shall designate a contact person (the "Owner Representative") who shall have authority to act as the Owner's legal representative for all purposes under this Agreement, to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to the Facilities and the Services provided hereunder and to bind the Owner in respect of the foregoing.
- 8.2** The Owner shall provide the Contractor with all Equipment manuals and operating manuals in respect of the operation and maintenance of the Equipment and the Facilities, as well as any construction drawings or specifications for the Facilities. Such manuals shall remain the property of the Owner. The Contractor shall maintain such manuals at the Facilities and shall make them available to the Owner or any representative of the MOE upon their reasonable request.
- 8.3** The Owner shall provide and replace as required, at no cost to the Contractor, all Equipment (which includes, but is not limited to, operational, maintenance, testing, control, monitoring and safety equipment) necessary for the Contractor to provide the Services outlined in this Agreement. The Owner shall not be required to provide and pay the cost of providing and maintaining any vehicles that may be required by the Contractor to provide the Basic Services. Any such Equipment provided to the Contractor shall be properly maintained by the Contractor and returned to the Owner in complete, good and serviceable condition upon the termination or expiration of this Agreement, reasonable wear and tear excepted.
- 8.4** Within thirty (30) days of the Commencement Date, the Owner shall provide the Contractor with a list of and access to the tools, Equipment, structures, facilities, spare parts, consumables and readily moveable property under its ownership or control, which are necessary to perform the Services under this Agreement. The Contractor shall, within sixty (60) days thereafter, provide the Owner with a confirming inventory of all Equipment, facilities, spare parts and readily moveable property to be used in connection with the Facilities. Such inventory shall be adjusted from time to time based upon the obsolescence or replacement of Equipment or other materials, or as otherwise mutually agreed upon by the parties. Upon termination of this Agreement, the Contractor shall return to the Owner a quantity of spare parts equal to that provided at the Commencement Date, considering the utility of such spare parts at the Facilities.
- 8.5** All land, buildings and facilities, including any parts thereof or improvements thereto, incorporating the Facilities for the Term of this Agreement shall remain the property of the Owner. The Owner shall make all existing land, buildings, facilities and inventory of all Equipment, spare parts and chemicals to be used in connection with the Facilities available to the Contractor for its use in providing the Basic Services hereunder.

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- 8.6** The Owner shall receive and examine all reports, estimates, proposals and other documents, required to be presented by Contractor to Owner under this Agreement or at law, presented by the Contractor and render in writing decisions pertaining thereto within a reasonable time or the time set forth under Applicable Law, whichever is the lesser, so as not to delay the Contractor in the performance of the Services.
- 8.7** The Owner shall be responsible for and pay the cost to rectify any deficiencies of the Facilities identified by the MOE or any other additions or modifications necessary to maintain the operation of the Facilities in compliance with Applicable Law or any Change in Law.
- 8.8** The Owner represents and warrants to the Contractor that as of the date of execution of this Agreement and as of the Commencement Date:
- (a) there are no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or threatened against the Owner in connection with the operation or maintenance of the Facilities, nor are there any judgments, decrees or orders of any court, governmental or administrative agency against the Owner which could be expected to materially and adversely affect the Owner's ability to perform its obligations under this Agreement;
 - (b) the historical data and specification parameters for raw water, finished water, wastewater influent and effluent provided by the Owner to the Contractor are true, accurate and complete to the best of the Owner's knowledge;
 - (c) the Owner understands and acknowledges that the Contractor has not performed an independent investigation or analysis of the engineering or design of the Facilities and its Equipment, and is relying upon the Owner's representations as to the systems and processes performance capabilities for achieving the performance criteria set forth in this Agreement, and that Contractor accepts no responsibility for any design deficiencies or defects in the Facilities; and
 - (d) all licenses, permits, certificates, approvals, registrations and authorizations held by the Owner in connection with the Facilities will be listed and provided to the Contractor, and the Owner has complied with, and is currently in compliance with, all of the foregoing and all provisions of Applicable Law in the operation and maintenance of the Facilities.

ARTICLE 9 - INSURANCE

- 9.1** For the Term of this Agreement, the Contractor shall as a Basic Service, maintain the following insurance:
- (a) commercial general liability insurance in respect of third party liability for property damage and/or bodily injury, caused by the Contractor's negligent actions or omissions, including sudden and accidental leaks and spills subject to immediate notification to Insurer of such events, in performing the Services to a maximum of One Million Canadian Dollars (\$1,000,000) per occurrence and an aggregate limit of Two Million Canadian Dollars (\$2,000,000), containing a separation of insured clause;
 - (b) automobile liability insurance to a maximum of One Million Canadian Dollars (\$1,000,000) per occurrence to cover automobile liability; and

- (c) excess liability (or umbrella liability) insurance in an amount of Ten Million Canadian Dollars (\$10,000,000) and shall be in excess of the Commercial General Liability and Automobile Liability for each occurrence.
- 9.2** The Owner shall be included as an additional insured in the insurance coverage obtained by the Contractor.
- 9.3** The Contractor shall annually provide the Owner with proof of insurance coverage obtained by it, in the form of a certificate of insurance and shall require its insurer to provide the Owner thirty (30) days written notice of cancellation of or material change to such insurance policy.
- 9.4** For the Term of this Agreement, the Owner shall at its own expense, purchase and maintain property insurance on the Facilities, including the Equipment.
- 9.5** The Contractor shall be entitled to a dollar-for-dollar increase to the Basic Services Fee in any applicable Contract Year to the extent (a) premiums payable for insurance required hereunder increase in a given Contract Year by Five Hundred Canadian Dollars (\$500) or more when compared to the previous Contract Year's premiums payable, and (b) such increase is attributable to a fundamental change in the insurance markets caused by a catastrophic occurrence, and not attributable to the insurance claims history of the Contractor.

ARTICLE 10 - PERFORMANCE SECURITY

- 10.1** The Contractor shall each Contract Year provide the Owner with a performance bond equal to *fifty percent (50%) of the Basic Services Fee* for such Contract Year (the "Performance Security"). The surety issuing the performance bond will be rated at least "A" by A.M. Best and Co. and will be licensed to do business in the Province of Ontario. If there has been an Event of Default by Contractor pursuant to this Agreement, the Owner shall be entitled to draw upon the Performance Security an amount equal to the reasonable costs and expenses incurred by Owner resulting from such Event of Default. The amount drawn upon the Performance Security shall be applied against all costs, damages and expenses incurred by the Owner as a result thereof.

ARTICLE 11 - DEFAULT AND TERMINATION

- 11.1** Events of Default – The following shall constitute "Events of Default" hereunder:
 - (a) The failure of the Owner to make any payment required hereunder within seven (7) days following notice from the Contractor that such payment is overdue;
 - (b) The failure of either party (the "Defaulting Party") to perform any term, covenant or condition of this Agreement and the continuation of such default for more than thirty (30) days following the giving of notice of such default to the Defaulting Party; provided, however, that if and to the extent such default cannot reasonably be cured within such thirty (30) day period, and if the Defaulting Party has diligently attempted to cure the same and thereafter continues to diligently attempt to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, ninety (90) days.

- 11.2** Termination for Default – If an Event of Default occurs, either party may terminate this Agreement immediately upon written notice to the Defaulting Party. The terminating party may enforce any and all rights and remedies it may have against the Defaulting Party under Applicable Law.
- 11.3** Within thirty (30) days following expiration or notice of termination of this Agreement, the Contractor shall at its own cost and expense commence clean-up of the Facilities, by removing all of its materials, temporary structures, rubbish and waste materials. The Contractor shall return the Facilities to the Owner in a neat and orderly condition, reasonable wear and tear excepted. If the Contractor fails to clean-up the Facilities during such thirty (30) day period which has not been excused or waived by the Owner, the Owner may implement such clean-up and deduct the cost of such from any amounts due or to become due to the Contractor.
- 11.4** Upon expiry or termination of this Agreement for any reason, the Owner shall pay the Contractor the sum of:
- (a) all Capital Expenditures of the Contractor approved by the Owner pursuant to this Agreement relating to the purchase by the Contractor of Capital Improvements which have not been fully amortized;
 - (b) payment of the Service Fee and any other compensation owed to the Contractor under this Agreement up to the date of expiration or termination.
- 11.4** Termination for Convenience. Either party may terminate this Agreement at any time, in whole or in part, for its convenience, provided that the terminating party provides at least twelve (12) months' advance written notice to the other party of its intention to so terminate the Agreement.

ARTICLE 12 - LIMITATION OF LIABILITY AND INDEMNIFICATION

- 12.1** Notwithstanding any other provision of this Agreement, the Contractor shall not be liable or responsible for any loss, damages, claims or demands, which arise or result from the following:
- (a) the failure of wastewater or sewage influent at the Facilities to be Acceptable Influent;
 - (b) the quality or quantity of raw water and/or wastewater transmitted to the Facilities exceeds the Facilities' design parameters or operating capacity;
 - (c) the failure of raw water transmitted to the Facilities to be Acceptable Raw Water;
 - (d) if the loss, damages or claims results from the Owner's failure to make Capital Expenditures and/or Capital Improvements reasonably recommended by the Contractor or required by Applicable Law;
 - (e) mechanical failures of or within the Facilities which are not the result of improper or inadequate operation or maintenance of the Facilities by the Contractor;
 - (f) Deficiencies identified by the Contractor and advised to the Owner;

- (g) operating limitations imposed by the Owner;
 - (h) an Uncontrollable Circumstance; or
 - (i) environmental impairment due to wastewater effluent that is not Acceptable Effluent arising from any of the above conditions.
- 12.2** The Contractor shall not be responsible for wrongful or negligent acts of the Owner, through their officers, agents or employees, and wrongful or negligent acts of third parties for whom the Contractor is not responsible, which acts cause damage to the Facilities or to other third parties or properties.
- 12.3** The limitations of liability set forth in this Section do not apply to personal injury or property damage arising from discharge, escape, dispersal or release of water and wastewater into or upon land or water, but only if and to the extent it is determined that the injury or damage is directly and proximately caused by the negligence or wrongful act of the Contractor or by those acting under the direction and control of the Contractor.
- 12.4** Notwithstanding the limitations of liability in this Section, should the Facilities' loading exceed the Facilities' design parameters, or should influent contain deleterious or other substances, which cannot be removed or treated by the existing Facilities or contain discharges that violate Applicable Law, the Contractor shall use reasonable efforts to minimize the consequences thereof. The Contractor shall advise the Owner of the circumstances and planned course of action immediately or as soon thereafter as is practicable. The Contractor agrees to utilize reasonable efforts to return the Facilities' performance to limits set out herein as soon as is practicable. The services provided by the Contractor hereunder shall be treated as Additional Services pursuant to Section 5.5 herein.
- 12.5** The Contractor shall indemnify and hold the Owner, its employees, elected officers, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure or negligence of the Contractor, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of the Services, but only to the extent of and in proportion to the degree of fault, failure or negligence of the Contractor, its employees, officers, directors, agents and representatives.
- 12.6** The Owner shall indemnify and hold the Contractor, its employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property (a) which arises or results from the circumstances set forth in Section 12.1 above; or (b) which is caused by or directly attributable to the fault, failure or negligence of the Owner, its employees, elected officers, agents and representatives for which it may be responsible, but only to the extent of and in proportion to the degree of fault, failure or negligence of the Owner, its employees, elected officers, agents and representatives.
- 12.7** The Owner agrees to indemnify and hold the Contractor harmless from any claims of patent infringement for any Equipment, systems or materials incorporated (other than

those provided by Contractor) within the Facilities, and shall be solely responsible for any claim or damages due to such infringement.

ARTICLE 13 - WAIVER OF CONSEQUENTIAL DAMAGES

13.1 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.

ARTICLE 14 - FINES

14.1 The Contractor shall be liable for all fines and penalties imposed upon the Contractor or Owner as a result of any error, omission, wrongful act, or negligence on the part of the Contractor or those for whom it is in law responsible in performing the Services, provided, however, that the Contractor shall not be liable for any fines or penalties resulting from matters coming within the exceptions set out in Section 12.1. The Owner shall be liable for and indemnifies and saves harmless the Contractor, its employees, officers, directors, agents and representatives from all fines and penalties levied against the Contractor described in Section 12.1, together with all legal and other costs incurred in defending against the imposition of such fines or penalties.

14.2 The Contractor shall be responsible for any MOE or Ministry of Labour orders issued upon the Contractor as a result of any error, omission, wrongful act, or negligence on the part of the Contractor or those for whom it is in law responsible in performing the Services, provided however, that the Contractor shall not be liable for any orders resulting from matters coming within the exceptions set out in Section 12.1, or for Excluded Services. The Owner shall be liable for and indemnifies and saves harmless the Contractor, its employees, officers, directors, agents and representatives from all orders against the Contractor described in Section 12.1, and the Excluded Services, together with all legal and other costs incurred in defending against the imposition of such orders.

ARTICLE 15 - UNCONTROLLABLE CIRCUMSTANCES

15.1 If an Uncontrollable Circumstance occurs, the affected party shall be entitled to (a) relief from its performance obligations under this Agreement to the extent the occurrence of the Uncontrollable Circumstance prevents the affected party's performance of such obligations, (b) an extension of schedule to perform its obligations under this Agreement to the extent the occurrence of the Uncontrollable Circumstance prevents the affected party's ability to perform such obligations in the time specified in this Agreement, and (c) an increase in the Service Fee to be paid under this Agreement to the extent the occurrence of the Uncontrollable Circumstance increases the Contractor's costs of performance of its obligations under this Agreement. The occurrence of an Uncontrollable Circumstance shall not, however, excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation under this Agreement not affected by the occurrence of the Uncontrollable Circumstance. The Owner shall continue to pay the Service Fee to the

Contractor during the continuance of any Uncontrollable Circumstance. The parties shall commence negotiations for appropriate relief consistent with this Section upon five (5) days notice by either party to the other. If parties are unable to reach an agreement for appropriate relief within ten (10) days of commencing negotiations, both parties shall have the right to require dispute resolution pursuant to Section 16.1.

15.2 The party that claims the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone, electronic mail or facsimile promptly after the party affected by such Uncontrollable Circumstance first knew of the occurrence thereof, followed within 15 days by a written description of the Uncontrollable Circumstance, the cause thereof (to the extent known), the date the Uncontrollable Circumstance began, its expected duration and an estimate of the specific relief requested by the affected party. The affected party shall use all reasonable efforts to reduce costs resulting from the occurrence of the Uncontrollable Circumstance, fulfill its performance obligations under the agreement and otherwise mitigate the adverse effects of the Uncontrollable Circumstance. While the Uncontrollable Circumstance continues, the affected party shall give the other party a monthly update of the information previously submitted. The affected party shall also provide prompt written notice to the other party of the cessation of the Uncontrollable Circumstance.

15.3 The Contractor shall not be responsible for any damage caused to the Facilities or the Equipment as a result of an Uncontrollable Circumstance and the Owner shall be responsible for the cost of any necessary Repairs or replacement required for the Facilities or the Equipment. At the Owner's request, the Contractor may assist with or perform the necessary Repairs or replacement at a cost to be negotiated between the parties upon such request.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 If a dispute arises between the parties, which the parties are unable to resolve through negotiation within thirty (30) days following the date the dispute was first discussed between the parties, the parties shall refer the matter in dispute to a single arbitrator appointed by the parties for determination, who shall be a disinterested person of recognized competence in water and wastewater infrastructure management in Ontario. If the parties cannot agree on a single arbitrator, each party shall appoint one arbitrator, who shall then appoint a third arbitrator who will chair the arbitration. The determination of the sole arbitrator or the arbitration panel, as applicable, shall be final and binding on the parties and shall not be subject to appeal. The expense of such arbitration shall be borne equally by the Owner and the Contractor and each party shall be responsible for its own legal costs. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991, S.O. 1991, c. 17*.

ARTICLE 17 - GENERAL PROVISIONS

17.1 STRIKES

In the event that labour interruption, work slowdown or work stoppage by Facilities employees or other labour groups, other than the Contractor's employees, within or outside the Facilities, prevents the Contractor's employees from entering upon or interferes with at the operation and maintenance the Facilities, the Owner with the

Contractor's assistance or the Contractor at its own option, shall seek appropriate legal injunctions or court orders to cease and desist such labour disruption and restore the Facilities to normal operating conditions. During any such a period of disruption the Contractor shall operate the Facilities on a reasonable efforts basis until labour relations are normalized. During such a labour disruption the Owner may, but shall not be required to, engage another operator, or may use its own forces to operate and maintain the Facilities in order to maintain the safe and efficient operation of the Facilities, all of the costs of which shall be borne by the Owner.

17.2 RECRUITMENT OF CONTRACTOR'S EMPLOYEES

During the Term of this Agreement and for a period of one (1) year following expiration or termination of this Agreement, the Owner shall not directly or indirectly solicit, recruit or induce any employee of the Contractor, including any employee who is providing the Services in respect of the Facilities hereunder, for the purpose of working at the Facilities under the employment of the Owner or another contract operator, without the prior written consent of the Contractor, which may be arbitrarily withheld in the Contractor's sole discretion.

17.3 ENTIRE AGREEMENT

- (a) No oral agreement or conversation with any employee, officer, director, agent or representative of the Owner or the Contractor, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained. This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No changes, alterations or modifications to this Agreement shall be effective unless in writing and signed by both parties hereto. Any changes, alternations or modifications to this Agreement, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Agreement, shall be covered by a written amendment signed by both parties.
- (b) If any provision hereof or the application thereof to any person or circumstances shall be invalid, illegal or unenforceable, the remaining provisions or the application of each provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall continue to be valid and enforceable.

17.4 RELATIONSHIP OF CONTRACTOR TO OWNER

It is understood that the relationship of the Contractor to the Owner is that of an independent contractor and that none of the employees, officers, directors, agents or representatives of the Contractor shall be considered employees, officers, directors, agents or representatives of the Owner. The Contractor shall be solely responsible for the acts of its employees, agents or subcontractors. Except as stated otherwise in this Agreement, the Contractor shall control how the Basic Services specified as the Contractor's obligations in this Agreement are performed.

17.5 WAIVER

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The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

17.6 ASSIGNMENT

The Contractor may assign this Agreement with the prior written consent of the Owner, which consent shall not be unreasonably withheld by the Owner; provided that the Contractor shall not require the consent of the Owner in the event of assignment to an affiliate, subsidiary or related entity of the Contractor.

17.7 APPLICABLE LAW

This Agreement and its interpretation shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

17.8 CONTRACTOR'S EQUIPMENT

Any Contractor's equipment used by the Contractor during the Term of this Agreement shall remain the property of the Contractor.

17.9 OWNER ACCESS

The Contractor shall provide the Owner's officials and representatives reasonable access to the Facilities. The Contractor shall advise the Owner of all regulatory inspection of the Facilities and allow the Owner the opportunity to be present during any such inspections.

17.10 ADDRESSES FOR NOTICES

Except as provided for otherwise in the Agreement, where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other, it shall be in writing and shall be mailed or actually delivered to the respective addresses of the parties hereto:

The Owner at:

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

#402813 Grey Road #4
Rural Route, No. 2
Durham, Ontario
N0G 1R0

Attn: Director of Infrastructure and Public Works

Phone: (519) 369-2200

Fax: (519) 369-5962

The Contractor at:

AMERICAN WATER CANADA CORP.

200 Eastport Blvd
Hamilton, ON L8H 7S4

Attn: VP of Operations

Phone: 856-359-2779

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Fax: 856-359-2762

with a copy to:

AMERICAN WATER ENTERPRISES, LLC.
1025 Laurel Oak Road
Voorhees, NJ 08043

Attn: General Counsel

Service shall be effective, if delivered in person, on the date thereof, and if mailed, five (5) days after the date upon which such notice, directive or communication was posted.

17.11 HEADINGS AND CAPTIONS

The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

17.12 BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective administrators, successors and permitted assigns

17.13 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one Agreement. In the absence of an original signature page, a signature page transmitted by facsimile transmission shall be effective to bind the party for all purposes of this Agreement.

17.14 SEVERABILITY

The invalidity, for any reason, of any term or provision of this Agreement shall not in any manner invalidate or cause the invalidation of any other term or provision thereof but the same shall be deemed to have been severed therefrom so that the validity, legality and enforceability of the remaining terms and provisions shall not be affected, prejudiced or impaired thereby.

IN WITNESS WHEREOF the Owner and the Contractor have executed this Agreement under the hands of their proper officers duly authorized as of the day and year first above written.

AMERICAN WATER CANADA CORP.

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

Per: _____

Per: _____

Name: John Fogarty

Name: _____

Title: Vice President

Title: _____

THE MUNICIPALITY OF WEST GREY

Operation, Maintenance and Management Agreement for Water and Wastewater Systems

Per: _____

Name: _____

Title: _____

SCHEDULE "A"

THE FACILITIES

PART 1 - DESCRIPTION OF THE FACILITIES

The description of the Facilities is as follows:

Durham Drinking Water System, as defined and approved in Drinking Water Works Permit (DWWP) 096-201 and Municipal Drinking Water License (MDWL) 096-101

Neustadt Drinking Water System, as defined and approved in DWWP 096-202 and MDWL 096-102

Durham Sewage Works, as defined and approved in Certificate of Approval, 9287-6GTGYS

Neustadt Sewage Works, as defined and approved in Certificate of Approval, 4631-6V4KUY

PART 2 - STREET ADDRESS OF THE FACILITIES

The location of the Facilities is as follows:

Durham Water Works (Well 1B)
172 South Street East, Durham
West Grey Township, County of Grey

Durham Water Works (Well 2)
488 Lambton St, Durham
West Grey Township, County of Grey

Durham Sewage Works
455 Saddler Street West, Durham
West Grey Township, County of Grey

- and -

Neustadt Water Supply Works
Well #1
181071 Concession 12, Normanby
Municipality of West Grey
Well #2
181135 Concession 12, Normanby
Neustadt Water Tower
535 Tower St, Neustadt, ON

Neustadt Pumping Station
319 David Winkler Parkway, Neustadt, ON
Neustadt Sewage Lagoons
221165 Grey Rd 9, Neustadt, ON

SCHEDULE "B"

BASIC SERVICES

PART 1 - OPERATING OBJECTIVES

The Contractor, in operating and maintaining the Facilities, shall be required to meet the following operating objectives:

- a) comply with the conditions of any and all environmental compliance approvals, municipal drinking water licenses, and drinking water works permits issued in respect of the Facilities by the MOE;
- b) ensure the Facilities are operated in accordance with Prudent Industry Practices in a cost effective and professional manner, having regard to all the circumstances and limitations, if any, inherent in the Facilities, not merely adequate to meet the regulatory requirements;
- c) ensure that the Basic Services and Additional Services are performed in workmanlike manner, consistent with the level of care and skill ordinarily exercised by qualified persons rendering services of the type set out herein;
- d) ensure that any equipment used in the operation and maintenance of the Facilities receives routine Maintenance (cleaning, lubricating and adjusting) in accordance with the manufacturers' recommended schedule so as to ensure long term reliability and efficiency;
- e) ensure Repairs and Maintenance are performed on a best value for money basis, and coordinated with the Owner according to priority; and
- f) operate the Facilities within the design capacity and capabilities to minimize odour and noise.

PART 2 - BASIC SERVICES

To meet the operating objectives outlined above, the Contractor shall be required to perform, subject to payment per Article 5 of this Agreement, the following Basic Services in taking full responsibility for the day-to-day operation of the Facilities:

- a) certified operator(s) to attend at the Facilities during Regular Hours and supply other personnel as may be necessary to operate, maintain and manage the Facilities in compliance with the requirements of Applicable Law, including, but not limited to, management, field testing, Maintenance, administration, reporting and security.
- b) supply a certified operator, who shall be on Stand-by 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 Owner in accordance with Section 5.4 herein;
- c) provide all necessary training and continuing education for its personnel to ensure the continued safe and efficient operation of the Facilities, in conformity with all Applicable Law;

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- d) obtain and maintain in effect all operator licenses and approvals, except as specified in Schedule C item 1.i), that may be required to perform the Services hereunder and provide a copy of such licenses and approvals to the Owner upon its request;
- e) implement and utilize a water quality data management tool, which data shall be owned by the Owner and shall record and trend information related to sampling and analytical results for the Facilities;
- f) **RESERVED**
- g) perform regularly scheduled inspections and on a daily basis adequately maintain the Facilities, including mechanical, electrical, HVAC, instrumentation, communication and computer systems to ensure effective operation of the Facilities and efficiency, long-term reliability and conservation of the Owner's capital investment.
- h) Implement and utilize a maintenance management system to operate and maintain the Facilities, which shall record information related to Facilities maintenance.
- i) coordinate removal of sludge, haulage and disposal from the Facilities in accordance with applicable MOE Guidelines for sludge disposal to the sites approved and permitted by the Owner to receive such sludge and biosolids. All work to be in accordance with MOE's "Guideline for Sludge Utilization on Agricultural Lands", dated October 1992.
- j) payment for sludge haulage and disposal of up to \$40,000 per Contract Year;
- k) conduct laboratory sampling, analysis and reports as required by Applicable Law;
- l) in providing day-to-day operation and routine Operation of the Facilities, the Contractor shall conduct:
 - i) visual inspection of all buildings, Equipment and Facilities;
 - ii) instrumentation cleaning, calibration (not certified);
 - iii) daily sampling and on-site analysis of water and wastewater;
 - iv) sample collection, preservation, packing and shipment for off-site analyses;
 - v) purchase of water and wastewater treatment chemicals with chemical vendors;
 - vi) checks and response to alarms during Regular Hours;
 - vii) maintenance of daily on-site logs and records, including process control log sheets, laboratory data log sheets, bypass report sheets and routine checklists. The daily log book shall detail weather conditions, anomalies, complaints received, unusual conditions and any other information relevant to the operation and maintenance of the Facilities; and
 - viii) other duties as required and essential to the continuous operation of the Facilities;

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- m) prepare and submit all reports to the Owner and the MOE respecting the operation and maintenance of the Facilities as required by the MOE or any other regulatory agency or body having jurisdiction thereof;
- n) act as the primary contact with the MOE in respect of handling day-to-day regulatory requirements and operating issues regarding the Facilities;
- o) review any inspection reports prepared by the MOE in respect of the Facilities and, subject to any approvals the Owner may retain hereunder, correct or negotiate with the MOE amendments in respect of those deficiencies identified in such inspection reports;
- p) report to the Owner and the MOE any loading, concentration or other result that exceeds a criterion specified in the Certificates of Approval issued as soon as is reasonably possible and in writing within three (3) days of becoming aware of the exceedance;
- q) provide a quarterly operations and maintenance report thirty (30) days after the end of each quarter and an annual written report to the Owner ninety (90) days after the end of each Contract Year, which shall document the status of the Facilities ;
- r) make available to the Owner, all water and wastewater sampling results and reports;
- s) take all required action to promptly comply with Applicable Law and shall notify the Owner of any modifications or changes to the Basic Services or the Facilities required to comply with any Change in Law;
- t) keep the Facilities free from debris and unsafe conditions resulting from the Basic Services;
- u) **RESERVED**
- v) submit to the Owner for review and approval, any recommended changes to the operating manuals for the Facilities to ensure that the operating manuals reflect the Contractor's approach to operating the Facilities, which changes may require the consultation of the original author's of the materials;
- w) supply cell phone services;
- x) supply of vehicle(s), including fuel and any other operating costs associated with such vehicle(s);
- y) light housekeeping (sweeping floors, cleaning washroom, tidying);
- z) provide an operator with suitable licensing to act as Overall Responsible Operator for the Water Treatment and Wastewater Treatment systems;
- aa) Annual review of the Facilities' operations and maintenance manuals; and
- bb) Conduct internal and external Drinking Water Quality Management System ("DWQMS") audits

SCHEDULE "C"

ADDITIONAL SERVICES

The Additional Services consist of the Required Additional Services and the Optional Additional Services. The Contractor shall perform the Required Additional Services set forth below. In addition, the Contractor shall perform any or all of the Optional Additional Services as listed below if requested to do so by the Owner.

1. Required Additional Services

- a) the Contractor shall provide Maintenance in accordance with industry standards, equipment manufacturers' instructions and the operating and maintenance manuals relating to the Facilities (excluding Contractor's labour during Regular Hours);
- b) supply of all material, consumables, parts, services, equipment necessary to Maintain the Facilities in accordance with the Certificate of Approval and Applicable Law;
- c) annual calibrations and annual Facility and Equipment inspections, by subcontractor specialists;
- d) Repairs of the Facilities, Equipment and Facilities' building(s) (excluding Contractor's labour during Regular Hours);
- e) non-routine sampling and laboratory analysis in excess of the MOE requirements in effect as of December 31, 2017 and shipping fees;
- f) calibration (not certified) and routine Maintenance of chemical metering systems;
- g) coordination of Maintenance requirements with original equipment suppliers;
- h) checks and response to alarms outside of Regular Hours.
- i) perform the obligations of the 'Operating Authority' under the Licensing of Municipal Water Systems Program.
- j) removal of sludge, haulage and disposal from the Facilities, including but not limited to, transfer, pumping, trucking, application, permitting, planning and payment; in excess of \$40,000 per Contract Year.

2. Optional Additional Services

- a) 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;
- b) maintenance and repair of water distribution system including but not limited to valves, hydrants, reservoirs/standpipes, services lines, and leak detection,
- c) regular scheduled watermain or forcemain swabbing;

- d) contract repair for watermain breaks or sewer line including road restoration;
- e) new water/sewer service installation or connection inspection;
- f) new watermain pressure test and super-chlorination;
- g) water service disconnect and reconnect;
- h) water meter installation/replacement/reading;
- i) thawing water services;
- j) high pressure sewer flushing;
- k) inspection of repaired water/sewer services; and
- l) water and sewer locates.
- m) annual fire hydrant flushing.
- n) annual exercising of street valves.

SCHEDULE "D"

EXCLUDED SERVICES

The Contractor shall not be responsible for providing the services listed in Schedule "D" below. Where the Contractor agrees to provide a service listed in Schedule "D" on either a one-time or continuous basis, the service shall then be considered part of Schedule "C" Optional Additional Services and the Contractor will be compensated per Section 5.5 of this Agreement. The Owner shall be solely responsible for performing and paying for the following services and items:

- a) all Capital Improvements and Capital Expenditures to the Facilities recommended by the Contractor or necessary to operate, maintain and manage the Facilities in accordance with the applicable Certificate of Approval and Applicable Law;
- b) continuous supply and payment of all Utilities;
- c) maintenance of Facilities' grounds, including grass cutting, road maintenance and snow removal, which road shall be kept fully accessible at all times;
- d) issuance of purchase orders for purchasing of operational materials and supplies for Facilities (which shall be directly invoiced to Owner);
- e) obtaining all Certificates of Approvals and permits required for the Facilities
- f) deficiencies identified by the Contractor;
- g) storage space for spare parts;
- h) call centre for customer relations;
- i) cleaning of water reservoirs/standpipes or sewer tanks;
- j) any cost that is required to adhere to new legislation or regulation;
- k) anything that results in an amendment or replacement of the Certificate of Approval;
- l) any cost that is required as a result of a Ministry or other regulatory inspection and order;
- m) all rate setting, billing and collections in respect of the water and wastewater services provided to the Town's residents;
- n) maintenance and Repairs or any other expenditure caused by Uncontrollable Circumstance, the Owner or any third party except as specifically provided under Section 12.1; and
- o) municipal taxes or like payments.

SCHEDULE "E"

BASIC SERVICES FEE

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The Basic Services Fee for the first Contract Year shall be \$393,000

The Basic Services Fee for the second Contract Year shall be \$393,000, plus any applicable adjustments made in accordance with Articles 5, 9 and 15.

The Basic Services Fee for the third Contract Year shall be \$393,000, plus any applicable adjustments made in accordance with Articles 5, 9 and 15.

The Basic Services Fee for the fourth Contract Year shall be \$393,000, plus any applicable adjustments made in accordance with Articles 5, 9 and 15.

The Basic Services Fee for the fifth Contract Year shall be \$393,000, plus any applicable adjustments made in accordance with Articles 5, 9 and 15.