

The Corporation of the Municipality of Brockton

By-Law 2016-025

Being a By-Law to authorize The Corporation of The Municipality of Brockton to enter into an agreement with Veolia Water Canada Inc referred to herein as Veolia.

Whereas Sections 8, 9 and 11 of the Municipal Act, S.O. 2001, as amended, authorizes Municipalities to pass by-laws to enable them to govern their affairs and to respond to municipal issues.

Whereas Veolia is in the business of providing operation and maintenance services for water and wastewater facilities.

And Whereas the Corporation of the Municipality of Brockton is the owner of the Walkerton water supply and distribution system, the Lake Rosalind water supply and distribution system, the Power Subdivision (Chepstow) water supply and distribution system and the Walkerton Wastewater Treatment Plant and the Walkerton Sewage Collection System hereinafter referred to as the “facilities”.

And Whereas the Council of the Corporation of the Municipality of Brockton is desirous to enter into an operations and maintenance agreement for the aforementioned facilities.

Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as follows:**

1. That the Corporation of the Municipality of Brockton enter into a Services Agreement with Veolia for operating and maintenance services for the facilities.
2. That this aforementioned Services Agreement with Veolia shall be labeled as Schedule “A” to this by-law and shall form an integral part thereof and;
3. That the Mayor and Clerk be and are hereby authorized on behalf of the Corporation of the Municipality of Brockton to execute the attached Services Agreement as well as any other related documents and;
4. That this by-law shall come into full force and effect upon final reading thereof.

Read, Enacted, Signed and Sealed this 11th Day of April, 2016.

Original Signed by:
Mayor – David Inglis

CAO/Clerk – Debra Roth

SERVICES AGREEMENT

FOR

THE OPERATION, MAINTENANCE AND MANAGEMENT

OF THE

WATER AND WASTEWATER SYSTEMS

BETWEEN

VEOLIA WATER CANADA, INC.

AND

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON

Renewal 2016

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION.....	1
1.1 DEFINITIONS.....	1
1.2 INTERPRETATION.....	4
1.3 CONSTRUCTION.....	4
1.4 HEADINGS.....	5
ARTICLE 2 RESPONSIBILITIES OF SUPPLIER.....	5
2.1 RETENTION OF SUPPLIER.....	5
2.2 PERFORMANCE OF SERVICES.....	5
2.3 CALL-OUT AND EMERGENCY RESPONSE.....	6
2.4 EXCLUDED SERVICES.....	6
2.5 STANDARD OF CARE.....	6
2.6 ASSET MANAGEMENT.....	6
2.7 COMPLIANCE RESPONSIBILITY.....	7
2.8 PERFORMANCE GUARANTEES.....	7
2.9 REPRESENTATIONS AND WARRANTIES OF SUPPLIER.....	8
2.10 CHANGES OF LAW.....	8
2.11 SUPPLIER AS INDEPENDENT CONTRACTOR.....	9
2.12 INSURANCE.....	9
ARTICLE 3 RESPONSIBILITIES OF MUNICIPALITY.....	9
3.1 REPRESENTATIONS AND WARRANTIES OF MUNICIPALITY.....	9
3.2 COVENANTS OF THE MUNICIPALITY.....	10
ARTICLE 4 TERM, PAYMENT FOR SERVICES AND OTHER CHARGES.....	10
4.1 INITIAL TERM OF AGREEMENT.....	10
4.2 EXTENSION OF INITIAL TERM.....	11
4.3 ANNUAL PRICE FOR INITIAL TERM.....	11
4.4 PAYMENT OF THE ANNUAL PRICE.....	11
4.5 UNEXPECTED EXPENSES.....	12
4.6 INTEREST ON LATE PAYMENTS.....	12
4.7 PARTIAL PAYMENT OF DISPUTED INVOICES.....	12
ARTICLE 5 RELATIONSHIP MANAGEMENT.....	13
5.1 MUNICIPAL REPRESENTATIVE.....	13
5.2 SUPPLIER REPRESENTATIVE.....	13
5.3 MEETINGS.....	13
5.4 REPORTS.....	15
5.5 SUBCONTRACTORS - PROCUREMENT.....	16
5.6 CHANGE ORDER PROCEDURE.....	16
5.7 PUBLIC AND MEDIA RELATIONS.....	17
ARTICLE 6 CONFIDENTIALITY.....	19
6.1 CONFIDENTIALITY.....	19
6.2 MUNICIPAL DATA.....	21
6.3 UNAUTHORIZED ACTS.....	21
ARTICLE 7 AUDIT RIGHTS.....	22
7.1 OPERATIONAL AND FINANCIAL AUDITS.....	22
7.2 RECORDS.....	22
ARTICLE 8 PROPRIETARY RIGHTS.....	22

8.1	OWNERSHIP	22
ARTICLE 9 INDEMNIFICATION AND LIMITATION ON DAMAGES		23
9.1	INDEMNIFICATION OF THE MUNICIPALITY	23
9.2	INDEMNIFICATION OF SUPPLIER.....	24
9.3	INFLUENT AND ENVIRONMENTAL INDEMNIFICATION.....	24
9.4	LIMITATION ON DAMAGES	25
ARTICLE 10 OWNERSHIP OF FACILITIES AND EQUIPMENT, AND FINANCING		25
10.1	FACILITIES AND EQUIPMENT	25
10.2	CAPITAL EXPENDITURES	26
ARTICLE 11 DISPUTE RESOLUTION		27
11.1	REFERENCE TO ARBITRATION	27
11.2	CONTINUATION OF SERVICES	27
11.3	COSTS OF MEDIATION OR ARBITRATION	27
ARTICLE 12 TERMINATION.....		27
12.1	TERMINATION OF AGREEMENT FOR CAUSE.....	27
12.2	TERMINATION FOR CONVENIENCE.....	29
12.3	FINAL SETTLEMENT.....	29
12.4	TERMINATION ASSISTANCE SERVICES.....	29
12.5	INVENTORY VALUE RECONCILIATION	30
12.6	FINAL CONDITION	30
ARTICLE 13 FORCE MAJEURE		31
13.1	FORCE MAJEURE EVENTS.....	31
ARTICLE 14 GENERAL		32
14.1	JURISDICTION	32
14.2	AGREEMENT TO GOVERN	32
14.3	ENTIRE AGREEMENT	32
14.4	NOTICES	32
14.5	SEVERABILITY	33
14.6	NO WAIVER.....	33
14.7	AMENDMENT.....	33
14.8	BURDEN AND BENEFIT	33
14.9	ASSIGNMENT	34
14.10	FREEDOM OF INFORMATION	34
14.11	COUNTERPARTS.....	34
14.12	FURTHER ASSURANCES	34
14.13	SURVIVAL.....	34
14.14	FACSIMILE OR DIGITAL TRANSMISSION.....	34
SCHEDULE 2.1(A) DESCRIPTION OF THE FACILITIES		1
SCHEDULE 2.1(B) SCOPE OF SUPPLIER SERVICES.....		1
SCHEDULE 2.4 SUPPLIER RATE SCHEDULE FOR EXCLUDED SERVICES		1
SCHEDULE 2.8(A) DRINKING WATER PERFORMANCE GUARANTEE		1
SCHEDULE 2.8(B) WASTEWATER PERFORMANCE GUARANTEE		1
SCHEDULE 2.12 INSURANCE.....		1
SCHEDULE 3.2(A)(VI) SCOPE OF MUNICIPAL SERVICES.....		1
SCHEDULE 4.6(D) COST BASIS ANNUAL AVERAGE.....		1

SCHEDULE 5.5 (A)(VII) SUBCONTRACTOR AGREEMENT TERMS AND CONDITIONS 1
SCHEDULE 13.4 TERMINATION ASSISTANCE SERVICES 1
SCHEDULE 13.4 –A DESCRIPTION OF TERMINATION ASSISTANCE SERVICES 1

SERVICES AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made as of the 1st day of July, 2016 (the “**Effective Date**”), between Veolia Water Canada, Inc., a company incorporated under the laws of Ontario (the “**Supplier**”) and The Corporation of the Municipality of Brockton (“the **Municipality**”) (together, the “**Parties**” and each separately a “**Party**”).

WHEREAS the Supplier is in the business of providing operation and maintenance services for water and wastewater facilities;

AND WHEREAS the Municipality is the owner or beneficial owner of the Municipality of Brockton’s water treatment and supply systems and wastewater treatment facilities;

AND WHEREAS the Supplier submitted a proposal in response to a Request for Proposals issued by the Municipality on February 1, 2006, in which it represents having the resources and the capabilities to provide certain services in respect of the operations and maintenance of the Facilities, and has provided those services to the Municipality since June 28, 2006;

AND WHEREAS the Municipality wishes to continue to retain the services of the Supplier to operate and maintain the Facilities in accordance with the provisions of the Agreement;

AND WHEREAS the Parties wish to enter into this Agreement to describe their respective rights and obligations with respect to the operation and maintenance of the Facilities;

AND WHEREAS the Council of the Municipality has passed a By-Law authorizing the Municipality 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 are hereby irrevocably acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

“**Abnormal Substances**” means substances or materials that are not identified in the Influent Specifications and that (i) create a fire or explosion hazard at the Facilities (ii) will cause corrosive structural damage to the Facilities; (iii) contain solid or viscous pollutants in amounts which will cause obstruction to the flow in the Facilities; (iv) are present in flow rates or concentrations which will cause Interference or Pass Through; (v) will result in the presence of toxic gases, vapours or fumes within the Facilities in a quantity or quality that may cause acute worker health and safety problems; or (vi) will result in an alteration of the requirements or costs for the operation or maintenance of the Facilities.

“**Affiliate**” has the meaning ascribed thereto in the Canada Business Corporations Act, as may be amended from time to time.

“Agreement” includes all schedules attached hereto and all amendments made hereto by written agreement between the Parties.

“Annual Price” is defined in Article 4.3(a) of the Agreement.

“Applicable Laws” means any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licenses, 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, Building Code, or workers’ compensation matters and all Environmental Laws that apply to the Facilities, the operation of the Facilities and the land on which the Facilities are located.

“Approved Capital Expenditure” has the meaning ascribed thereto in Article 10.2(c)(iii) of the Agreement.

“Authorizations” means each of the sewer use and water by-laws, licenses, certificates of approval, permits, consents and other authorizations or approvals required under Applicable Laws from time to time in order to operate the Facilities.

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

“Call-Out” means a response to an alert or alarm notification (including a response triggered by the Municipal Representative) occurring outside Regular Work Hours, where the Supplier handles non-routine equipment maintenance issues, treatment system adjustments, concentrations of treatable parameters outside normal operating range, public complaints or other circumstances within the Supplier’s reasonable control, including but not limited to SCADA alerts or alarms, and may include an Emergency Response.

“Capital Expenditures” has the meaning ascribed thereto in Article 10.2(a) of the Agreement.

“Change Order Document” has the meaning ascribed in Article 5.6(c) of the Agreement.

“Change Order Procedure” has the meaning ascribed in Article 5.6(a) of the Agreement.

“Change of Law” means any change in Applicable Laws and any Authorizations affecting the performance, operation, maintenance or repair of the Facilities, and any change in the standards and conditions governing the quality of the treated water produced by the Facilities.

“Claim” means any claim, fine, penalty, liability, damages, loss and judgments (including but not limited to, costs and expenses incidental thereto) of any kind and nature whatsoever.

“Confidential Information” is defined in Article 6.1(a) of the Agreement.

“Cost-Savings Project” is defined in Article 5.3(c)(iii) of the Agreement.

“Drinking Water” has the meaning ascribed thereto in Article 2.8(a) of the Agreement.

“Drinking Water Performance Guarantee” has the meaning ascribed thereto in Article 2.8(a) of the Agreement.

“Effective Date” means the date that this Agreement is made, as set forth in the first paragraph of this Agreement.

“Emergency Response” means a response to an alert or alarm notification (including a response triggered by the Municipal Representative, a regulatory agency, or public complaint) to which the Supplier responds and which results from an Uncontrollable Circumstance that would otherwise result in an imminent or immediate threat to public safety or result in damage or failure of the Facilities.

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

“Facilities” is defined in Article 2.1(a).

“Flowthrough Expense” means the cost for all Flowthrough Utilities, which are to be paid directly by Municipality.

“Flowthrough Utilities” mean all electricity, natural gas, and heating oil required to provide the Services set out in this Agreement

“Indemnification of the Municipality” is defined in Article 9.1 of the Agreement.

“Indemnification of the Supplier” is defined in Article 9.2 of the Agreement.

“Influent Specifications” shall mean the Raw Water Influent Specifications and Wastewater Influent Specifications.

“Initial Term” is defined in Article 4.1 of the Agreement.

“Insurance” is defined in Article 2.12(a) of the Agreement and further described in Schedule 2.12.

“Intellectual Property” 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.

“Municipal Data” has the meaning ascribed thereto in Article 6.2(a) of the Agreement.

“Municipal Representative” is defined in Article 5.1(a) of the Agreement.

“Raw Water Influent” has the meaning ascribed thereto in Article 2.8(a) of the Agreement.

“Raw Water Influent Specifications” has the meaning ascribed thereto in Article 2.8(a) of the Agreement.

“Rebased Annual Price” is defined in Article 4.2(b) of the Agreement.

“Regular Work Hours” means the following: (i) scheduled hours from 8:00 am to 5:00 pm daily from Monday to Friday, and (ii) any scheduled consecutive 4 hours between 8:00 am and 5:00 pm on Saturdays and Sundays, except for statutory holidays in the Province of Ontario.

“Renewal Term” is defined in Article 4.2(a) of the Agreement.

“Services” is defined in Article 2.1(b) of the Agreement and further described in Schedule 2.1(b).

“**Standard Industry Practices**” means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the water and wastewater treatment industry with respect to plants of similar type as the Facilities.

“**Supplier Representative**” is defined in Article 5.2(a) of the Agreement.

“**Survey**” is defined in Article 12.6 of the Agreement.

“**Termination Assistance Period**” has the meaning ascribed thereto in Article 12.4(a) of the Agreement.

“**Termination Assistance Plan**” has the meaning ascribed thereto in Schedule 13.4-A.

“**Termination Assistance Services**” has the meaning ascribed thereto in Article 12.4(a) of the Agreement.

“**Termination for Cause**” is defined in Article 12.1(a) of the Agreement.

“**Termination for Convenience**” is defined in Article 12.2(a).

“**Termination Management Team**” is defined in Schedule 13.4 subarticle 2.

“**Uncontrollable Circumstance**” has the meaning ascribed in Article 2.2(b) of the Agreement.

“**Unexpected Expenses**” is defined in Article 4.5(a) of the Agreement.

“**Wastewater Effluent**” has the meaning ascribed in Article 2.8(b) of the Agreement.

“**Wastewater Influent**” has the meaning ascribed in Article 2.8(b) of the Agreement.

“**Wastewater Influent Specifications**” has the meaning ascribed in Article 2.8(b) of the Agreement.

“**Wastewater Performance Guarantee**” has the meaning ascribed in Article 2.8(b) of the Agreement.

“**Year**” means from July 1 of each year to June 30th of the next year.

1.2 Interpretation

In this Agreement, the word ‘persons’ includes corporations, limited liability companies, partnerships, joint ventures, trusts, associations, individuals, unincorporated organizations, or governmental agencies; references to statutes, sections, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statute, section, or regulation referred to; the words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; and words importing only the singular include the plural and vice versa when the context requires.

1.3 Construction

Each Party has participated in the drafting of the Agreement which, in the event of any dispute over its meaning or application, shall be interpreted fairly and reasonably, and neither more strongly for or against either Party.

1.4 Headings

The division of this Agreement into Articles and sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

ARTICLE 2 RESPONSIBILITIES OF SUPPLIER

2.1 Retention of Supplier

- (a) The Supplier shall provide certain services in respect of the Municipality's water treatment and supply systems and waste water treatment facilities (the "**Facilities**"), described in Schedule 2.1(a);
- (b) The Municipality hereby retains the Supplier to provide certain management, operation, administration and maintenance services (the "**Services**") in respect of the Facilities, as such Services are described in the attached Schedule 2.1(b).

2.2 Performance of Services

- (a) The Supplier shall provide the Services, except in the following circumstances:
 - (i) Where the Municipality, or any of its contractors and/or agents, breaches a term of the Agreement or fails to comply with any directive from the Ministry of the Environment and/or any other governing body, such that the Supplier is unable to perform its obligations under the Agreement;
 - (ii) Where there is mechanical or electrical failure of any equipment at the Facilities that is caused by the Municipality or a third party that is not a subcontractor of the Supplier, such that the Supplier is unable to perform its obligations under the Agreement;
 - (iii) Where the Raw Water Influent or Wastewater Influent transmitted to the Facilities for treatment contain Abnormal Substances or other substances that cannot be adequately treated or removed by the Facilities' processes or causes a failure of the physical, biological, and/or chemical treatment processes;
 - (iv) Where the treatable contaminant concentrations, loadings, or volume of the Wastewater Influent transmitted to, or raw water demand exceeds the Facilities' design and operating capabilities;
 - (v) Where an emergency situation or breakdown occurs through no fault of the Supplier.
- (b) In all of the above (each an "**Uncontrollable Circumstance**"), the Supplier may temporarily reduce or stop the level or provision of the Services, but only to the extent that the Supplier is unable to provide such Services. The Supplier shall otherwise make all commercially reasonable efforts to continue providing the Services in the circumstances. The Supplier may take remedial measures that it determines are reasonably necessary in attempting to maintain the Facilities in compliance with Applicable Laws.

- (c) As soon as an Uncontrollable Circumstance occurs which impedes the ability of the Supplier to provide the Services in the manner described in this Agreement, the Supplier shall immediately contact the Municipality, or shall do so as soon as is reasonably practicable, to notify the Municipality of the circumstances surrounding the reduced service levels. The Supplier shall make all reasonable efforts to update the Municipality of all measures taken to date, if any, and obtain the approval of the Municipality prior to undertaking any further remedial measures necessary to stabilize the situation. The Supplier shall then promptly follow up with a written report to the Municipality describing the Uncontrollable Circumstance, including remedial measures taken and, if practical, recommendations to prevent future incidents of this character.

2.3 Call-Out and Emergency Response

- (a) The Supplier shall be available for Call-Outs at all times throughout the Term, provided that a Call-Out shall be considered to come within scope of the Services.
- (b) The Supplier shall be available for Emergency Responses at all times throughout the Term, provided that an Emergency Response may give rise to an Unexpected Expense as set forth in Article 4.5.

2.4 Excluded Services

Where the Municipality requests the Supplier to provide a service that is not included in the Services, the Municipality reserves the right to retain the services of a third party to provide such services, or it may request the Supplier to provide such services at an additional cost to the Municipality at rates set out in the attached Schedule 2.4, provided that Supplier shall not be in breach of its obligations under this Agreement if third-party supplied services impair or prevent Supplier from meeting its performance and/or other obligations in this Agreement.

2.5 Standard of Care

The Supplier shall provide the Services in a professional manner, as would a competent operator providing similar services in similar circumstances in accordance with Standard Industry Practices.

2.6 Asset Management

- (a) The Supplier agrees that it shall act as a steward of the Facilities on the Municipality's behalf and shall accept, preserve and return the Facilities in accordance with the terms of this Agreement and Schedule 2.1(a).
- (b) At a minimum, the Supplier shall maintain the Facilities consistent with Standard Industry Practices, and shall return the Facilities to the Municipality in as good or better condition than the condition of the Facilities as of the Effective Date, normal wear, tear, and aging excepted.
- (c) In the course of maintaining the Facilities, the Supplier shall ensure that spare parts which are critical to the operations of the Facilities, and which are itemized in the Survey, are maintained, subject to reasonable availability and delivery from equipment suppliers and provided that such parts are not obsolete due to a change in equipment or process, provided further that where it is not possible or desirable to replace a critical spare part for any

reason, in each case the Supplier shall provide timely notice to the Municipality in this regard, and shall propose an alternative solution to the Municipality.

2.7 Compliance Responsibility

- (a) The Supplier shall ensure complete and timely compliance with all Applicable Laws, including directives from the Ministry of the Environment and all other governing bodies, as such Applicable Laws and directives may be amended from time to time.
- (b) Compliance activities that result from a Change of Law or from any regulatory intervention and that affect the scope of the Services shall be treated in accordance with the terms of the Agreement.

2.8 Performance Guarantees

- (a) The Supplier shall operate and maintain the Facilities so as to produce drinking water (“**Drinking Water**”) that meets the specifications for Drinking Water set out in Schedule 2.8(a) (the “**Drinking Water Performance Guarantee**”). Subject to the requirements of Schedule 3.2(a)(vi) (Scope of Municipal Services), the Supplier’s obligation to comply with the Drinking Water Performance Guarantee shall depend on the Municipality providing raw water to the Facilities (“**Raw Water Influent**”) which (i) meets the specifications for Raw Water Influent set forth in Schedule 2.8(a) (the “**Raw Water Influent Specifications**”) and (ii) does not contain Abnormal Substances. In the event that the Municipality provides Raw Water Influent which does not meet the Raw Water Influent Specifications or which contains Abnormal Substances; then (i) the Supplier shall use reasonable commercial efforts to treat such Raw Water Influent and comply with the Drinking Water Performance Guarantee, but the Supplier shall have no responsibility or liability to the Municipality in the event the Supplier does not meet the Drinking Water Performance Guarantee; and (ii) the Municipality shall continue to make all required payments to the Supplier, and shall further pay those additional amounts reasonably requested by the Supplier so that the Supplier may exercise reasonable commercial efforts to meet the Drinking Water Performance Guarantee.
- (b) The Supplier shall operate and maintain the Wastewater Treatment Facilities so as to produce wastewater (“**Wastewater Effluent**”) which meets the specifications for Wastewater Effluent set out in Schedule 2.8(b)(the “**Wastewater Performance Guarantee**”). Subject to the requirements of Schedule 3.2(a)(vi) (Scope of Municipal Services), the Supplier’s obligation to comply with the Wastewater Performance Guarantee depends on the Municipality providing wastewater to the Wastewater Treatment Facilities (“**Wastewater Influent**”) which (i) meets the specifications for Wastewater Influent set forth on Schedule 2.8(b) (the “**Wastewater Influent Specifications**”); and (ii) does not contain Abnormal Substances. In the event that the Municipality provides Wastewater Influent which does not meet the Wastewater Influent Specifications or which contains Abnormal Substances, then (i) the Supplier shall use reasonable commercial efforts to treat such Wastewater Influent and comply with the Wastewater Performance Guarantee, but the Supplier shall have no responsibility or liability to the Municipality in the event that the Supplier does not meet the Wastewater Performance Guarantee, and (ii) the Municipality shall continue to make all required payments to the Supplier, and shall further pay those additional amounts reasonably requested by the Supplier so that the Supplier may exercise reasonable commercial efforts to meet the Wastewater Performance Guarantee.

2.9 Representations and Warranties of Supplier

- (a) Supplier represents and warrants to the Municipality that the following are true and correct as at the Effective Date:
 - (i) The Supplier has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement;
 - (ii) The Supplier represents and warrants that the Supplier's operators assigned to provide the Services shall be certified as required under O. Reg 129/04 of the *Ontario Water Resources Act*, and O. Reg. 128/04 of the *Safe Drinking Water Act*;
 - (iii) The execution and delivery of this Agreement does not violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Supplier.
- (b) The Supplier makes the additional following representations and warranties:
 - (i) The Supplier will use an adequate number of qualified personnel to perform the Services, and the Supplier covenants that the Supplier's employees utilized in the provision of Services to the Municipality will possess suitable training, education, experience and skill to perform the Services.
 - (ii) The Supplier will, at its own cost and expense, obtain all necessary regulatory approvals applicable to its business, obtain any necessary permits for its business except for any environmental authorization and permits which are the responsibility of the Municipality. For clarity, the Municipality, and not the Supplier, is required to obtain all environmental authorizations and permits required to withdraw and treat raw water and to treat and discharge wastewater.
 - (iii) The Supplier will comply in all material respects with all laws and regulatory requirements applicable to the performance of its obligations under this Agreement.
 - (iv) Where the Supplier uses any intellectual property of a third party in providing the Services, the Supplier shall have obtained all consents in advance from any such third party, if any were required, to use such intellectual property in providing the Services at no additional cost the Municipality, and where the Supplier is a licensee of any software, the Supplier shall be in a position to sublicense, assign or transfer such license to the Municipality at no additional cost to the Municipality, in accordance with the terms of subparagraph 3 of Schedule 13.4.
 - (v) Where any intellectual property, including any software, is required to be sublicensed to the Municipality from the Supplier, the Supplier shall have the full authority, including any consent which may be required from any third party, to pass on such sublicense to the Municipality, at no additional cost to the Municipality.

2.10 Changes of Law

- (a) The Supplier shall make all commercially reasonable efforts to comply, within the existing cost structure of the Services, with Changes of Law provided, however, such Change of

Law does not require a modification or expansion of the Services. In the event that a Change of Law requires that the Services be modified or expanded, the Parties will work together to identify the required changes to the Facilities and/or the operation of the Facilities in order to ensure full compliance with the Change of Law.

- (b) If required, the Parties will negotiate in good faith any modifications of the terms and conditions of this Agreement, provided that all reasonable costs associated with any Changes in Law will be at the Municipality's expense and dealt with in accordance with the Change Order Procedure set out in article 5.6.

2.11 Supplier as Independent Contractor

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

2.12 Insurance

- (a) The Supplier shall arrange for and maintain during the term of this Agreement and any Renewal Term, insurance coverage as described in Schedule 2.12 (the "**Insurance**").
- (b) The Municipality shall arrange for and maintain during the term of this Agreement and any Renewal Term, property and boiler and machinery insurance for the Facilities as set forth in Schedule 2.12.
- (c) In the event of a claim under the Insurance, the payment of deductibles shall be as specified in Schedule 2.12.

ARTICLE 3 RESPONSIBILITIES OF MUNICIPALITY

3.1 Representations and Warranties of Municipality

- (a) The Municipality represents and warrants to the Supplier that the following are true and correct as at the Effective Date:
 - (i) The Municipality has the full power and authority to enter into and perform its obligations under this Agreement;
 - (ii) The Municipality has passed all of the necessary by-laws and has obtained all necessary Authorizations and permits to enable it to enter into and perform its obligations under this Agreement and to operate the Facilities, including without limitation, any Authorization from the Ontario Municipal Board and the Ontario Ministry of the Environment, and any Authorizations and permits required to treat raw water and to treat discharge wastewater, and such Authorizations are in good standing;
 - (iii) The Municipality warrants that, as of the Effective Date, there are no pre-existing conditions at the Facilities that would affect the Supplier's ability to perform the Services in accordance with all Applicable Laws and the terms of this Agreement.

- (iv) The Municipality warrants that the capability and capacity of the Facilities are adequate to treat all raw water and wastewater in accordance with all statutory and regulatory requirements.

3.2 Covenants of the Municipality

- (a) The Municipality hereby covenants the following:
 - (i) The Municipality shall, as soon as is reasonably practicable, upon receipt thereof, provide the Supplier with any information relating to the Facilities which could be related to the provision of the Services by the Supplier, including but not limited to any engineering report in respect of the Facilities and whether or not required by any Applicable Law, and any government notice or order pertaining to the Facilities;
 - (ii) The Municipality shall be responsible for Capital Expenditures in accordance with 10.2, upgrades, renewal and replacements of the Facilities to ensure that the Facilities comply with all Applicable Laws and Authorizations and is in good working condition, and the Municipality shall act reasonably and prudently in its plans for such upgrades, renewal and replacement;
 - (iii) The Municipality shall be responsible to maintain in good standing all Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facilities, including without limitation, any Authorizations from the Ontario Municipal Board and the Ontario Ministry of the Environment;
 - (iv) The Municipality shall, as soon as is reasonably practicable, provide the Supplier with copies of all orders and notices issued by any governmental authority having jurisdiction over the Facilities, and shall take all actions required to fully comply with and/or address such orders;
 - (v) The Municipality shall provide Supplier with access to the Facilities and other areas required by the Supplier to exercise its rights and perform its obligations under this Agreement; and
 - (vi) The Municipality shall provide the Supplier with all those supplies, materials, services and utilities as are set out in Schedule 3.2(a)(vi).
 - (vii) The Municipality shall pay for the cost of any third party audits related to the DWQMS.

ARTICLE 4

TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

4.1 Initial Term of Agreement

- (a) The Supplier shall begin providing the Services on July 1, 2016 and shall continue for an initial term of five (5) years ending on June 30, 2021 (“**Initial Term**”).

4.2 Extension of Initial Term

- (a) The Municipality may, subject to 4.2(b), extend the Initial Term for another five (5) year term, provided that the Municipality shall provide notice to the Supplier of such proposed extension at least six (6) months before the expiry of the Initial Term (the “**Renewal Term**”).
- (b) During any Renewal Term, the Annual Price for the Services will be adjusted in the first year of the Renewal Term based on the Annual Price to the Municipality for the Supplier to provide the Services during the Initial Term and then adjusted for inflation in accordance with Article 4.3, below (the “**Rebased Annual Price**”), provided that where the Supplier believes, in good faith, that such adjustment does not allow it to make a reasonable profit in the circumstances, the Supplier and the Municipality shall meet to review the Supplier’s financial position in respect of the Services and shall consider in good faith the possibility of making appropriate adjustments to the Rebased Annual Price.

4.3 Annual Price for Initial Term

- (a) Subject to any adjustment made pursuant to other provisions of the Agreement, the Municipality shall pay the Supplier for providing the Services a price for each Year of the Initial Term in the following amounts (the “**Annual Price**”):
 - (i) for the first Year from July 1, 2016: **six hundred and sixty thousand dollars (\$660,000)**;
 - (ii) for the subsequent Years of the Initial Term: **The previous year’s price** plus an adjustment for inflation calculated as described in this Article 4.3(b).

The Supplier shall use the Statistics Canada Consumer Price Index, All Items Ontario (“CPI”) to calculate the inflation adjustment. The percentage difference between the CPI during March of the previous Year as compared to the CPI of March of the current Year shall be the inflation adjustment for the following Year.

- (b) Subject to the above qualification, $\text{New Annual Price} = \text{prior year's Annual Price} \times [1 + \text{percentage change in CPI Index for Ontario (all items)}]$ where CPI is expressed as a decimal (for example, 5% written as 0.05).
- (c) In no event shall the percentage change in the CPI index used in 4.3(b) be negative. If the reported change in CPI is negative, a value of zero shall be used.
- (d) The CPI adjustment shall be calculated as soon as the required information becomes available from Statistics Canada. The inflation adjustment in the second Year of the Agreement and all subsequent Years shall be added to the Annual Price for Year one of the Agreement on a cumulative basis.

4.4 Payment of the Annual Price

- (a) The Municipality shall pay the Annual Price in twelve (12) monthly payments in arrears, with each payment to be made on the 15th day of the month following the provision of the Services, provided that the Supplier shall have sent the Municipality an invoice on the 15th day of the previous month during which the Services were being provided.

4.5 Unexpected Expenses

- (a) “**Unexpected Expenses**” means any unanticipated expenditure that the Supplier reasonably incurs to address equipment failure, acts of third parties, or other circumstances beyond the Supplier’ reasonable control, including but not limited to unregulated septic dumping, industrial waste discharges or overflows, an emergency situation or any situation resulting from an Uncontrollable Circumstance.
- (b) Subject to Article 2.2(b) and (c), above, regarding any Uncontrollable Circumstance, in the event that the Supplier incurs Unexpected Expenses, the prior written approval of the Municipality with respect to those Unexpected Expenses shall be required. For clarity, where an Unexpected Expense occurs in a circumstance that does not qualify as an Uncontrollable Circumstance, the approach to notice described in Articles 2.2(b) and (c) shall also apply.
- (c) Within one (1) scheduled working day after any Unexpected Expense was incurred, the Supplier shall provide the Municipality with an oral report explaining why the Unexpected Expense was incurred, and shall provide a detailed written cost analysis within ten (10) scheduled working days. The Municipality shall pay the Supplier for the Unexpected Expense within thirty (30) days of receipt of an invoice from the Supplier.
- (d) The Parties acknowledge that the constituents labelled ‘Cost Basis Annual Average’ in Schedule 4.6(d) shall serve as a baseline with which to measure any potential cost reimbursement related to influent and effluent flows and/or loadings, as the case may be. The Municipality shall pay the Supplier its costs required to treat the excess flows and loadings in excess of those amounts set forth in Schedule 4.6(d). For clarity, any cost reimbursement under this Article 4.5(d) shall not be considered an Unexpected Expense, and in particular for any Article 4.5(d) cost reimbursement request the Supplier shall not be obligated to obtain the prior written approval of the Municipality as set forth in Article 4.5(b) or provide the notice required under Article 4.5(c).

4.6 Interest on Late Payments

- (a) If any amount owing to the Supplier by the Municipality under this Agreement is not paid on the date on which it is due, then interest thereon will accrue at a rate of interest which is equal to two percent (2%) above the prime rate published from time to time by the Royal Bank of Canada from the date when such payment was due until the same is paid.

4.7 Partial Payment of Disputed Invoices

- (a) Where the Municipality wishes to dispute any portion of any invoice, the Municipality shall provide written notice to the Supplier of the charges in dispute within fifteen (15) days of receipt of the invoice in question. If no written notice is received within the fifteen (15) days, the invoice shall be deemed to be approved and interest shall be payable by the Municipality if the invoice remains unpaid as at the due date.
- (b) Where the Municipality disputes any portion of any invoice in any month, the Municipality shall pay to the Supplier the undisputed portion of the invoice by the due date and shall continue all subsequent monthly payments of the Annual Price, or the Rebased Annual Price, as the case may be, in accordance with the terms of article 4.5. If any amount is

finally determined by the Parties to be payable to the Supplier, the Municipality shall pay the Supplier the additional amount.

- (c) Where the disputed portion of any invoice cannot be resolved within fifteen (15) days of the Supplier receiving written notice of the dispute from the Municipality, the Parties shall seek to resolve the dispute in accordance with Article 11 (Dispute Resolution).

ARTICLE 5 RELATIONSHIP MANAGEMENT

5.1 Municipal Representative

- (a) The Municipality shall designate in writing to the Supplier an individual who shall be authorized to represent it in connection with the day-to-day administration of the provisions of this Agreement (the “**Municipal Representative**”).
- (b) The Supplier shall be entitled to rely on the acts and approvals given by the Municipal Representative until such time as it receives a written notification of change of the Municipal Representative.
- (c) As of the Effective Date, the Municipal Representative shall be Municipal Utilities Manager.
- (d) The Municipal Representative shall act as the primary daily contact between the Municipality and the Supplier. The Municipal Representative shall work closely with the Supplier and will at all times act as the sole point of contact in the handling of public relations and any complaints by customers.

5.2 Supplier Representative

- (a) The Supplier shall designate in writing to the Municipality an individual who shall be authorized to represent it in connection with the day-to-day administration of the provisions of this Agreement (the “**Supplier Representative**”).
- (b) The Municipality shall be entitled to rely on the acts and approvals given by the Supplier Representative until such time as it receives a written notification of change of the Supplier Representative.
- (c) As of the Effective Date of this Agreement, the Supplier Representative shall be the Supplier Project Manager, provided that where the Supplier proposes to substitute a new Supplier Project Manager, the Supplier shall first consult with the Municipality, which shall be given a reasonable opportunity to express any concerns or reservations about the proposed substitution, and the Supplier shall make reasonable efforts to accommodate the views of the Municipality.

5.3 Meetings

- (a) As frequently as may be requested by either Party, with a target of at least once per week, the Municipal Representative and the Supplier Representative will meet face-to-face to review operational and maintenance activities, including, among others, those activities that relate to safety issues and customer concerns.

- (b) At least once monthly, and once quarterly, or as frequently as may be requested by either Party, the Municipal Representative and the Supplier Representative shall meet to review the Supplier's performance under the Agreement.
- (c) On each anniversary date of the Agreement, the Municipal Representative and the Supplier Representative shall meet to
 - (i) review the Supplier's performance in the previous 12 months;
 - (ii) discuss and consider the Supplier's recommendations in respect of any proposed Capital Expenditure; and
 - (iii) discuss any proposed strategies for enhancing performance and reducing the overall costs of operating the Facilities that the Supplier may wish to present to the Municipality, provided that any such strategies may be proposed by the Supplier at any monthly and quarterly meeting. Strategies that produce a cost-savings ("**Cost-Savings Project**") shall be handled as follows:
 - (A) For Cost-Savings Projects proposed and funded entirely by the Municipality, the Municipality shall retain 100 percent of the resulting net operations fee savings;
 - (B) For Cost-Savings Projects proposed by the Supplier but funded entirely by the Municipality the savings shall be split 50:50 once the Municipality has recovered its initial investment;
 - (C) For Cost-Savings Projects proposed by the Municipality but funded entirely by the Supplier the savings shall be split 50:50 once the Supplier has recovered its initial investment;
 - (D) For Cost-Savings Projects proposed and funded entirely by the Supplier, the Supplier shall retain 100 percent of the resulting operations fee savings;
 - (E) For Cost-Savings Projects proposed and funded by the mutual contributions of the Parties, the Municipality and the Supplier shall share the resulting net operations fee savings equal to their proportionate share of funding.
 - (F) In all of the Cost-Savings Projects proposed by the Supplier or the Municipality, the Municipality shall reserve the right, but not the obligation, to fund the Cost-Savings Projects, in which case the formula in (B), above, shall apply.
 - (G) In every case where a Party makes a proposal in respect of a Cost-Savings Projects, it shall do so in writing, setting out the core idea and the main details related to implementation.
 - (H) Where the Supplier makes a proposal, the Municipality and the Supplier shall discuss, in advance, the costs, if any, to the Supplier of validating

and/or implementing the proposal, which the Municipality may authorize, in advance.

5.4 Reports

- (a) By not later than March 31 of each Year, or as may be required by Applicable Laws, the Supplier shall provide the Municipal Representative with a report describing the Facilities' performance for that period. Such performance report shall be presented to the Council of the Municipality by the Municipal Representative and the Supplier Representative.
- (b) The Supplier shall provide monthly reports to the Municipality that will include, at a minimum (recognizing that the Municipality may require additional information from the Supplier over time), information on the following:
 - (i) For wastewater:
 - (A) flows (average, maximums);
 - (B) volumes (treated, by-passed);
 - (C) loadings and concentrations (raw and treated);
 - (D) facility and equipment repair and maintenance details;
 - (E) sewer blockage and backups;
 - (F) complaints and other public inquiries received and action taken;
 - (G) regulatory issues - inspections, orders, adverse incidents, reports filed with regulators;
 - (H) health and safety issues;
 - (I) status of capital projects;
 - (J) additional items as per each applicable Certificate of Approval
 - (ii) For water:
 - (A) flows (average, maximums);
 - (B) volumes (treated, by-passed);
 - (C) raw and treated water quality, distribution sample results;
 - (D) facility and equipment repair and maintenance details;
 - (E) water main breaks;
 - (F) complaints and other public inquiries received and action taken;
 - (G) regulatory issues - inspections, orders, reports filed with regulators;

- (H) adverse water quality responses;
 - (I) health and safety issues;
 - (J) status of capital projects; and
 - (K) additional items as per each applicable Certificate of Approval and/or Permit to Take Water.
- (c) The Supplier shall provide all reports which are required to be submitted to any government and/or regulatory authority, including those that are required to be submitted pursuant to O. Reg 170/03 of the *Safe Drinking Water Act, 2002*.

5.5 Subcontractors - Procurement

- (a) Where the Supplier proposes to retain a subcontractor or intends to procure goods and/or services, the following shall apply:
- (i) Where the work proposed to be subcontracted comes within the scope of the Services, the Supplier shall be solely responsible to retain the services of any subcontractor.
 - (ii) Where the Supplier procures work pursuant to Subsection (i), above, the Supplier shall comply with sound procurement practices and, where applicable, shall ensure that a subcontract document is executed prior to the provision of the goods and/or services by the subcontractor.
 - (iii) Where the work proposed to be subcontracted involves the procurement of goods that are expected to become an integral part of the Facilities, including any Capital Expenditure, the Supplier shall consult with the Municipality in respect of such proposed procurement.
 - (iv) In all cases where the Supplier retains a subcontractor in accordance with this Section, the Supplier shall be fully responsible for the quality of the goods and/or services provided by the subcontractor, including the manner in which such goods and /or services are provided.
 - (v) In all cases where the Supplier retains a subcontractor in accordance with this Section, at a minimum, the subcontract document between the Supplier and the subcontractor shall include such provisions as are intended to protect the rights of the Municipality, including those set out in Schedule 5.5 (a)(vii).

5.6 Change Order Procedure

- (a) From time to time during the term of the Agreement, the Municipality or the Supplier may propose changes in or additions to the Services or other aspects of the Agreement. Subject to clause (e) below, all such changes shall be implemented pursuant to the procedures set out in this section (the “**Change Order Procedure**”).
- (b) Any change to the Agreement, including any Change Order described in this Article 5.6, shall be approved by the Municipal Representative and the Supplier Representative and

shall be documented in a written amendment that specifically identifies this Agreement, the provision of the Agreement that is the subject of the amendment, and the new provision.

- (c) If the Municipality wishes to propose a change to, or an addition to the Services or any aspect of the Agreement, it shall deliver a written notice to the Supplier Representative describing the proposal. The Supplier shall respond to such proposal as promptly as reasonably possible by preparing at the Supplier's expense and delivering to the Municipal Representative a written document ("**Change Order Document**"), indicating (i) the effect of the proposal, if any, on the amounts payable by the Municipality hereunder and the manner in which such effect was calculated, (ii) the effect of the proposal, if any, on the performance of the Services, if any, with a full explanation to the Municipality, (iii) the anticipated time schedule for implementing the proposal, and (iv) any other information requested in the proposal or reasonably necessary for the Municipality to make an informed decision regarding the proposal.
- (d) If the Supplier wishes to propose a change to, or an addition to the Services or any aspect of the Agreement, it may do so by preparing at its expense and delivering a Change Order Document to the Municipal Representative. A Change Order Document, once submitted to the Municipality, shall constitute an offer by the Supplier to implement the proposal described therein on the terms set out therein, and shall be irrevocable for a minimum of 30 days.
- (e) No change to, or an addition to the Services or any other aspect of the Agreement shall become effective without the written approval of the appropriate officer(s) of the Municipality. If the Municipality accepts the offer set out in the Change Order Document, as evidenced by the written approval of the appropriate signing officer(s) of the Municipality, any change to, or addition to the Services described in the Change Order Document shall thereafter be deemed to constitute a part of the "Services," and the Parties shall agree on any further modification to the Agreement required to reflect the Change Order Document.
- (f) The Supplier may make routine changes, at no additional cost to the Municipality, where such changes are made in the ordinary course of the Supplier's provision of the Services that are performed within the then-existing resources used to provide the Services.

5.7 Public and Media Relations

- (a) The Municipal Utilities Manager shall be the primary contact during business hours to handle public relations and customer complaints, recognizing, however, that in some circumstances the Supplier Project Manager may be the initial point of contact, in which case the Supplier Project Manager shall be required to react promptly in providing information, or in dealing with complaints from customers. After having done so, the Supplier Project Manager shall, in a timely manner, inform the Municipal Utilities Manager of remedial steps taken, if any, by the Supplier, including details of the Supplier's response time.
- (b) The Supplier shall put in place a public relations plan that includes, but is not limited to, the following:
 - (i) A telephone number shall be published in the local telephone directory for normal business hours and after-business hours.

- (ii) Calls shall be received during normal business hours, Monday through Friday. After business hours and on weekends, calls to the business number shall be handled by an automated answering system that provides an emergency number to use, if necessary.
 - (iii) Written records of calls received shall be kept, which shall be used for tracking purposes and to provide a written basis for appropriate follow-up action.
 - (iv) Significant contacts with the public shall be documented and reported to the Municipal Utilities Manager by the next working day, or immediately if the issue is deemed to be of a serious nature.
 - (v) Detailed summary reports of customer calls shall be provided to the Municipal Utilities Manager on a monthly basis, and Municipal representatives shall have free access to all recorded information related to customer calls. Summary updates of customer call reports shall be provided to the Municipal Utilities Manager at the weekly meetings, or more frequently, if requested by the Municipality.
 - (vi) Signs shall be posted by the Supplier at all Facilities to identify the location and to provide the Supplier's contact telephone number in Canada.
 - (vii) All Supplier vehicles shall carry proper identification signs on the doors, including a local telephone phone number which may be used by the residents of the Municipality.
 - (viii) Each of the Supplier's employees shall carry photo identification and business cards, which may be provided to members of the public, on request.
 - (ix) All Supplier personnel shall identify themselves to any person who requests identification.
 - (x) Any printed or promotional materials, signs or information produced for distribution within the boundaries of the Municipality or targeted at the residents of the Municipality relating specifically to the Facilities shall be reviewed and approved by the Municipality in writing prior to use by the Supplier, provided that such approval may be withheld for any reason, Where the Municipality approves specific language in respect of any particular promotional initiative, the Supplier shall be authorized to re-use such specific language, without additions or deletions, in subsequent promotions without being required to obtain the Municipality's prior approval.
 - (xi) The Supplier shall cooperate with the Municipality in respect of public awareness programs within the boundaries of the Municipality.
- (c) Where reasonably possible, other than those authorized contacts noted above, the Supplier Representative shall not, without the prior written authorization of the Municipal Representative, have any contact with any member of the media to communicate any information in respect of the Services under this Agreement.
- (d) Subject to the provisions of Article 6.1(f), in respect of the Supplier's promotional and marketing initiatives outside the boundaries of the Municipality, the Supplier shall not at

any time refer to the Municipality without the Municipality's prior written approval, which may be withheld for any reason.

ARTICLE 6 CONFIDENTIALITY

6.1 Confidentiality

- (a) In connection with this Agreement, each Party has disclosed and may continue to disclose to the other Party information that relates to the disclosing Party's business operations, financial condition, customers, customer information, customer lists, products, services, know how, proprietary information, or technical knowledge. Except as otherwise specifically agreed in writing by the Parties, the Supplier and the Municipality each agree that (i) all information communicated to it by the other and identified as confidential or proprietary, whether before or after the Effective Date, (ii) all information identified as confidential or proprietary to which it has access in connection with the Services, whether before or after the Effective Date, (iii) the Municipal Data, (iv) all information communicated to it that reasonably should have been understood by the receiving Party, because of confidentiality or similar legends, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing Party and (v) the terms and conditions of this Agreement (collectively, the "**Confidential Information**"), will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement. In the case of the Municipality, Confidential Information also will include the Municipal Data, information regarding the Municipality's businesses, plans, operations, or other information or data stored on magnetic media or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by the Supplier under this Agreement. In the case of the Supplier, Confidential Information also will include the Supplier Software, Supplier Intellectual Property, proprietary items, financial information, information regarding the Supplier's businesses, plans and operations, and software, tools and methodologies owned or licensed by the Supplier. The Parties acknowledge that third-party software may be subject to additional confidentiality restrictions imposed by the applicable vendor's license or other agreement.
- (b) Each Party's Confidential Information will remain the property of that Party. Each of the Parties shall use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information (or information of its customers) of a similar nature, and in any event, no less than reasonable care. Each Party may disclose relevant aspects of the other Party's Confidential Information to its employees, Affiliates, subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this Agreement; *provided, however*, that such Party shall use reasonable efforts to ensure that such employees, Affiliates, subcontractors or agents comply with these confidentiality provisions. Each Party will be responsible for any improper disclosure of Confidential Information by such Party's employees, Affiliates, subcontractors or agents.
- (c) Neither Party shall (i) make any use or copies of the Confidential Information of the other except as contemplated by this Agreement, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) sell, assign, lease or otherwise commercially exploit the Confidential Information (or any derivative works thereof) of the other Party. Neither Party may withhold the Confidential Information of the other Party

(including in the case of the Municipality, the Municipal Data) or refuse for any reason (including due to the other Party's actual or alleged breach of this Agreement) to promptly return to the other Party its Confidential Information (including copies thereof) if requested to do so. Upon expiration or any termination of this Agreement and completion of a Party's obligations under this Agreement, each Party shall (except as otherwise provided in this Agreement) return or destroy, as the owner may direct, all documentation in any medium that contains or refers to the other Party's Confidential Information, and retain no copies. Subject to the foregoing confidentiality obligations, either Party may retain copies of the Confidential Information of the other Party to the extent required for (i) in the case of the Supplier, compliance with applicable professional standards, quality assurance purposes or as required by law, and (ii) in the case of the Municipality, its continuing operations or internal business purposes.

- (d) This Article 6.1 will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it; or (v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party. In addition, a Party will not be considered to have breached its obligations under this Article 6.1 for disclosing Confidential Information of the other Party to the extent required to satisfy any legal requirement of a competent governmental authority, *provided* that promptly upon receiving any such request and to the extent that it may legally do so and it is possible to do so, such Party advises the other Party prior to making such disclosure in order that the other Party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information.
- (e) Nothing contained in this Article 6.1 will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.
- (f) The Municipality recognizes that the Supplier is in the business of providing contract operations services for municipal water and wastewater systems and that it is a requirement of procurement processes to provide prospective clients with relevant information about current projects, including annual fee amount, start date, term, size and type of facilities, and the Municipality's contact person and telephone number. The Municipality authorizes the Supplier to provide this information about the Municipality to prospective customers in a table format or as may be required to complete the required forms. In addition, the Supplier shall be able to use the following sentence without additional approval: VWC manages, operates and maintains the Municipality of Brockton's water and wastewater system (including a 7,500 (m³/d) wastewater plant, three water treatment plants of 5,500 (m³/d), 75 (m³/d), and 45 (m³/d) capacities respectively, and related collection and distribution systems) under a five (5) year contract term (July 1, 2016 – June 30, 2021) valued at approximately \$660,000 per year. VWC has provided services to Brockton since June 2006. Where the Supplier proposes to refer to the Municipality with a potential customer, other than as set forth above, the language proposed to be included in such proposal shall be approved in writing, in advance, by the Municipality, provided that where

the Municipality approves specific language in respect of any particular Supplier proposal, the Supplier shall be authorized to re-use such specific language, without additions, deletions, or subtractions, in subsequent proposals without being required to obtain the Municipality's prior approval.

6.2 Municipal Data

- (a) As between the Parties, the Municipality will be the sole and exclusive owner of all the municipal data, which is defined herein as all of the data that relates to the operations of the Facilities, whether or not generated by the Supplier, including the data supplied by the predecessor to the Supplier but excluding all of Supplier's Intellectual Property that Supplier incorporates into any municipal data (the "**Municipal Data.**") The Supplier shall utilize the Municipal Data solely for purposes of this Agreement and shall not sell, assign, lease or otherwise commercially exploit the Municipality's Data. The Municipal Data will be deemed the Municipality's Confidential Information for purposes of Article 6.1. The Supplier is hereby authorized to have access to and to make use of the Municipality's Data for the term of the Agreement to the extent reasonably necessary or appropriate for the performance by the Supplier of its obligations hereunder.
- (b) The Supplier shall assist the Municipality in developing appropriate procedures and safeguards against the destruction, loss or alteration of the Municipal Data in the possession of the Supplier. The Municipality will be responsible for the sufficiency of such policies and safeguards. With respect to the Municipal Data in the possession of the Supplier, the Supplier will be responsible for compliance with such procedures and safeguards. The Municipality may establish backup security for the Municipality's Data and keep backup data and data files in its possession if it so chooses.

6.3 Unauthorized Acts

- (a) Each Party shall:
 - (i) notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any Person that may become known to such Party;
 - (ii) promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
 - (iii) use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights; and
 - (iv) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.
- (b) The Party whose Confidential Information is the subject of such activity set out in Subsections 6.3(a)(i)-(iv) above shall reimburse any out-of-pocket expenses incurred by the other Party as a result of compliance with this Article 6.3.

**ARTICLE 7
AUDIT RIGHTS**

7.1 Operational and Financial Audits

- (a) Subject to the requirements of Article 6 (Confidentiality), the Supplier shall provide to such auditors (including third-party auditors and the Municipality's internal audit staff) as the Municipality may designate in writing, access to any Facilities at which the Services are being performed, to the Supplier management personnel and material subcontractors, and to the operational data and records and those records related to time and materials and/or cost-plus projects conducted by the Supplier on behalf of the Municipality in respect of the Facilities which are maintained by the Supplier for the purpose of (i) performing audits and inspections of the businesses of the Municipality (including any audits necessary to enable the Municipality to meet its applicable regulatory requirements), (ii) to verify the integrity of the Municipal Data, (iii) to examine the systems that process, store, support and transmit such Municipality Data, and (iv) to confirm that the Services are being provided in accordance with this Agreement. To the extent applicable to the Services performed by the Supplier, the scope of such audits may include, (i) the Supplier's practices and procedures, (ii) the adequacy of general controls (*e.g.*, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and security practices and procedures, and (iii) the adequacy of disaster recovery and back-up procedures provided that Municipality shall have no right of access or audit to any of the Supplier's financial records and data related to the Annual Price and the Rebased Annual Price.

7.2 Records

- (a) The Supplier shall retain its standard records and supporting documentation for at least 3 years.

**ARTICLE 8
PROPRIETARY RIGHTS**

8.1 Ownership

- (a) Facilities: At all times during the term of the Agreement, the Facilities shall remain the property of the Municipality, which shall not be leased to the Supplier.
- (b) Inventory: All of the parts and other equipment which are owned by the Municipality at the outset of this Agreement, shall remain the property of the Municipality.
- (c) Intellectual Property: All trademarks, manuals and other documents and records which are required to operate the Facilities shall at all times belong to the Municipality, provided that any portion of any manual, document or record that contains Supplier Intellectual Property shall remain the property of the Supplier. Supplier hereby grants to Municipality a perpetual, royalty-free, non-exclusive and irrevocable license with respect to any Supplier Intellectual Property that is included within any manual, document, record or other medium and that relates to the Services, provided that where the Municipality has taken steps to protect the Intellectual Property of the Supplier, including requiring the execution of a non-disclosure agreement for this purpose which, among other standard terms, limits the use of the Supplier Intellectual Property to the use in operating and maintaining the Facilities

only, as such Facilities may change over time, the Municipality shall be authorized to disclose to, share with, any third-party service provider such Intellectual Property for the purposes of receiving services related to the Facilities.

- (d) SCADA: The ownership of the database software and software configuration, SCADA application, all software licenses or registrations, PLC applications, complete documentation and all hardware required by the system to perform as designed, including all related intellectual property, shall be owned by the Municipality upon acceptance of the system by the Municipality. In addition:
- (i) All process control and SCADA interface software, including database software and maintenance management software shall be registered and licensed in the name of the Municipality.
 - (ii) The Supplier shall administer and be responsible for the annual maintenance of the software and shall retain a limited right to use such software for the purpose only of providing the Services in respect of the Facilities pursuant to this Agreement.
 - (iii) The Supplier and any third-party subcontractor retained by the Supplier for the purposes of this Agreement (such as a systems integrator) shall have no claim, right, demand or recourse against the Municipality in respect of the work product provided by the Supplier or any third party pursuant to the Agreement, including any claim, right, demand or recourse related to any intellectual property.
 - (iv) With the exception of the following components of the SCADA system specifically identified immediately below (title of which will remain with the Supplier), as noted above, all components of SCADA shall at times remain the property of the Municipality:
 - (A) Any pre-existing software brought by, and used by, the Supplier for the purposes of internal tracking or auditing including, compliance or reporting software;
 - (B) Any pre-existing software brought by, and used by, the Supplier for the purposes of PDA (Personal Digital Assistant) data logging, data transfer, and communication functions used by Supplier staff; and
 - (C) three (3) personal computers the Supplier is bringing to the Facilities for the Supplier's use.

ARTICLE 9 INDEMNIFICATION AND LIMITATION ON DAMAGES

9.1 Indemnification of the Municipality

- (a) Supplier releases and shall indemnify and hold the Municipality, its Affiliates, its directors, officers, councillors employees, and agents and subcontractors harmless from and against any and all Claims which may be suffered or incurred by, brought against or be charged to or recoverable from the Municipality, Affiliates its directors, officers, employees, and agents to the extent that such Claim arises from any error or omission, default or breach of

this Agreement or is related or is caused by the negligence or wilful misconduct of the Supplier.

- (b) Such indemnity shall not apply in respect of any Claim against the Municipality, its directors, officers, employees and agents:
 - (i) to the extent that such Claim is due to or arises from a condition of the Facilities, including without limitation the environmental condition of the property on which the Facilities are situated and non-compliance of the Facilities with Applicable Laws, which existed prior to the term of this Agreement.
 - (ii) to the extent that such Claim is caused by any negligent act, wilful misconduct, error or omission, default, breach of warranty or misrepresentation of the Municipality, its employees and agents; or
 - (iii) to the extent that such Claim is caused by a third party.

9.2 Indemnification of Supplier

- (a) The Municipality releases and shall indemnify and hold the Supplier, its Affiliates, and their respective members, directors, officers, employees, agents and subcontractors harmless from and against any and all Claims which may be suffered or incurred by, brought against or be charged to or recoverable from the Supplier, its directors, officers, employees, agents and subcontractors to the extent that such Claim is related to or caused by
 - (i) any negligent act, wilful misconduct, error or omission, default, breach of warranty or misrepresentation, of the Municipality, its directors, officers, employees or agents that is in any way related to the Services or this Agreement; or
 - (ii) any non-compliance of the Facilities and the land on which the Facilities are located and adjacent land with any Authorizations and Applicable Laws.
- (b) Such indemnity shall not apply in respect of any Claim against the Supplier, its directors, officers, employees, agents and subcontractors to the extent that such Claim is caused by any negligent act, wilful misconduct, error or omission, default, breach of warranty or misrepresentation of Supplier, its employees, agents and subcontractors.

9.3 Influent and Environmental Indemnification.

- (a) The Municipality releases and shall indemnify and hold the Supplier, its affiliates, and their respective members, directors, employees, agents and subcontractors harmless from and against any and all Claims arising or resulting from: (a) any environmental conditions on, in, under, around or at the Facilities; (b) any Claim arising from non-specification raw water or wastewater; (c) any violation of any Environmental Laws; provided, however, the foregoing indemnity shall not apply to the extent and to that portion of such Claims that are caused by: (i) the negligent or wilful misconduct or omissions of the Supplier; or (ii) the failure by the Supplier to fulfill its obligations under this Agreement.

9.4 Limitation on Damages

- (a) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of the Supplier to the Municipality shall be as follows:
 - (i) for direct contract damages in relation to this Agreement, the aggregate liability of the Supplier shall not exceed one million dollars (\$1,000,000);
 - (ii) for tort, product liability, indemnity, contribution, Supplier's strict liability or any other legal or equitable theory other than direct contract damages, the aggregate liability of the Supplier shall not exceed ten million dollars (\$10,000,000), provided that Intellectual Property infringements and breaches of confidentiality shall be excluded from the aggregate limit of damages set out herein;
 - (iii) UNDER NO CIRCUMSTANCES SHALL THE SUPPLIER BE LIABLE TO THE MUNICIPALITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES.

- (b) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of the Municipality to the Supplier shall be as follows:
 - (i) for direct contract damages in relation to this Agreement, the aggregate liability of the Municipality shall not exceed one half of the Annual Price to the Supplier for any single calendar year of the Agreement provided that the foregoing limitation shall not apply in respect of liabilities resulting from any breach by the Municipality to make payments when due;
 - (ii) for tort, product liability, indemnity, contribution, Municipality's strict liability or any other legal or equitable theory other than direct contract damages, the aggregate liability of the Municipality shall not exceed ten million dollars (\$10,000,000), provided that Intellectual Property infringements and breaches of confidentiality shall be excluded from the aggregate limit of damages set out herein.
 - (iii) UNDER NO CIRCUMSTANCES SHALL THE MUNICIPALITY BE LIABLE TO THE SUPPLIER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES OTHER THAN ACTUAL DIRECT DAMAGES.

ARTICLE 10 OWNERSHIP OF FACILITIES AND EQUIPMENT, AND FINANCING

10.1 Facilities and Equipment

- (a) All land, buildings, improvements and permanent equipment which are in place as at the date of this Agreement or new facilities or equipment that may be added by future construction projects during the term of this Agreement or any renewal thereof, shall remain or become the property of the Municipality subject to the terms of the respective contract related to the new facilities, equipment or construction project.

10.2 Capital Expenditures

- (a) “Capital Expenditures” means the charges for all capital items in relation to the Facilities, including new facilities, future construction projects related to the Facilities, new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; any work required by any government authority having jurisdiction or identified through a third party inspection including without limitation an inspection conducted by a regulatory authority; any work required as result of a Change of Law, any work required to ensure that the Facilities remain in good working order; maintenance (excluding routine maintenance as generally described in schedule 2.1(b)); any alterations and any associated installations, commissioning, including labour and pre-selection charges and services fees.
- (b) “Breakdown Maintenance”, which is a subset of Capital Expenditures, means any repair, replacement or renewal of equipment or other capital item that has failed or where failure is deemed to be imminent.
- (c) Annually, no later than 30 days from the anniversary date of the Agreement, or a date as the Parties may agree to in writing, the Supplier shall provide the Municipality with an estimate of the Breakdown Maintenance costs reasonably required for the operation of the Facilities for the following Year. Breakdown Maintenance shall be handled as follows:
 - (i) Breakdown Maintenance for projects under \$5,000 per project (up to a maximum annual aggregate of \$25,000), shall be deemed to come within the scope of the Services and shall be funded by the Supplier, provided, however, that before proceeding with any Breakdown Maintenance, the Supplier shall consult with the Municipality.
 - (ii) Breakdown Maintenance for projects over \$5,000 shall be deemed not to come within the scope of the Services and shall be funded by the Municipality in their entirety, provided that the Municipality may, at its entire discretion, have any work related to Breakdown Maintenance under this Article 10.2(c)(ii) performed by a third party.
 - (iii) Where the work related to any Capital Expenditure is performed by a third party under this section, the Supplier shall assist the Municipality by providing advice from an operational and maintenance perspective. Where the Municipality requests the Supplier to proceed to perform the work related to any Capital Expenditure under this section, the prior written approval of the Municipality of the estimate or revised estimate shall be required by the Supplier to incur the Capital Expenditure included in the estimate (the “**Approved Capital Expenditures**”). The Supplier shall not be in breach of its obligations under this Agreement if the third party supplied capital impairs or prevents the Supplier from meeting its obligations performance and/or other objectives in this Agreement.
- (d) Where applicable, the Supplier shall invoice the Municipality for the Approved Capital Expenditures plus 15% together with any additional supporting documentation, and the Municipality shall pay such invoice once the Supplier has incurred the Approved Capital Expenditure, and the Municipality shall pay each invoice within thirty (30) days of receipt thereof, or as may be agreed upon by the Parties.

**ARTICLE 11
DISPUTE RESOLUTION**

11.1 Reference to Arbitration

- (a) The Parties shall make a bona fide attempt to settle all disputes which may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations and will make timely disclosure to one another of all relevant facts and information to facilitate negotiations. If any dispute remains unresolved within 15 Business Days of either Party requesting that the other Party enter into negotiations to resolve the dispute, or if the Parties agree to waive such discussions in respect of a particular issue, then the dispute may, if both the Municipality and the Supplier agree, be promptly submitted to mediation in a manner agreed to by the Parties. If the Parties fail to resolve the dispute through mediation within 15 Business Days of the Parties agreeing to participate in a mediation, the unresolved dispute shall be referred to and finally settled by arbitration, in which case each Party shall select an arbitrator who shall be qualified by education and training to pass upon the particular matter to be decided, and such two arbitrators shall together select a third arbitrator who also shall be qualified by education and training to pass on the matter to be decided. The panel of arbitrators shall render a decision in accordance with the terms of the *Ontario Arbitration Act, 1991*, and the then current rules of the ADR Institute of Canada. The place of arbitration shall be Toronto, Ontario, or any other location in Ontario as may be agreed to by the Parties. The arbitration shall be conducted in English.
- (b) For the purposes of this Agreement, the arbitrator's decision shall be binding on the Parties.

11.2 Continuation of Services

- (a) Each Party shall perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that may arise from time to time between them in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 11.

11.3 Costs of Mediation or Arbitration

- (a) Each Party involved in mediation or arbitration shall be solely responsible for its own costs and legal fees and the mediator or arbitrator shall not be entitled to award the same. The costs and expenses of the mediation or arbitration, but not those incurred by the Parties, shall be shared equally, unless the mediator or arbitrator determines that a specific Party prevailed. In such case, the non-prevailing Party shall pay all costs and expenses of the mediation or arbitration, but not those of the prevailing Party.

**ARTICLE 12
TERMINATION**

12.1 Termination of Agreement For Cause

- (a) During the Initial Term or any Renewal Term, this Agreement may be terminated by either the Municipality or the Supplier ("**Termination for Cause**") only where:

- (i) the other Party has committed 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 rectify the breach within thirty (30) days of receiving such written notice, or the breaching Party has commenced efforts to rectify the breach and is continuing to engage in those efforts but the breach reasonably cannot be rectified within the thirty (30) day timeframe; and
 - (iv) in accordance with Article 12.1(b).
- (b) Where there is a material breach of the Agreement and (i) such material breach has not been rectified within the time period set forth in Article 12.1(a), (ii) the material breach has not been referred to mediation in accordance with Article 12.1(c), or (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least six (6) months notice in writing to the other Party, provided that where Termination for Cause is triggered by non-payment, including but not limited to non-payment of the Annual Price or Rebased Annual Price, as the case may be, including any non-payment of any service not including in the Services pursuant to article 2.4, the Supplier may terminate this Agreement by giving three (3) months notice in writing to the Municipality.
- (c) If either Party disputes the existence of a breach or that the breach is material, the dispute shall be resolved in accordance with Article 11 (Dispute Resolution).
- (d) Where there is a Termination for Cause by the Municipality, the Municipality shall pay the Supplier for the Services rendered up to the date of termination as well as any Supplier unamortized costs, provided that the quality of such Services are not in question and the Supplier has performed the Services in accordance with the requirements of the Agreement, and for any other costs and/or expenses incurred by the Supplier in respect of the Services and the Facilities which are not in question or which are not disputed by the Municipality.
- (e) Where there is a Termination for Cause by the Municipality, the Supplier shall pay the Municipality
- (i) the full costs incurred by the Municipality to transition the Services to another Supplier, or to bring the Services back in-house, as the case may be; and
 - (ii) the reasonable incremental cost (those that exceed the cost of the Services under the Agreement) of having the Services provided by a new supplier pursuant to a competitive tendering process, or having them performed in-house, as the case may be, from the date of termination of the Agreement for the twenty-four (24) months following termination, provided that where termination occurs in the final twenty-four (24) months of the Agreement, the Municipality shall be entitled to be paid its incremental costs for the remaining months left until the expiry of the Initial Term or the Renewal Term, as the case may be, as though there had there been no Termination for Cause.
- (f) If there has been a Termination for Cause by the Supplier, the Municipality shall pay the Supplier for the Services rendered up to the date of termination, for all of the Supplier's

demobilization costs, and a termination fee equal to its lost profits for the eighteen (18) months following termination, provided that where termination occurs in the final eighteen (18) months of the Agreement, the Supplier shall only be entitled to be paid for the Services rendered, and lost profits equal to those months remaining from the date of termination of the Agreement to the expiry of the Initial Term, or the Renewal Term, as the case maybe, as though there had been no Termination for Cause.

12.2 Termination for Convenience

- (a) The Municipality may terminate the Agreement, in whole but not in part, for convenience (*i.e.*, for any reason or for no reason) upon at least six (6) months prior written notice to the Supplier (“**Termination for Convenience**”).
- (b) Where the Municipality terminates the Agreement for convenience, the Municipality shall pay the Supplier for the Services rendered up to the date of termination, for all of the Supplier’s demobilization costs, and a termination fee equal to its lost profits for the twelve months following termination, provided that where termination occurs in the final year of the Agreement, the Supplier shall only be entitled to the profits it would have made had the Agreement expired.
- (c) Any termination fee payable by the Municipality pursuant to this Article 12.2 shall be paid in accordance with Article 12.3, below.

12.3 Final Settlement

- (a) Where the Supplier ceases to perform the Services, for any reason, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by the Supplier and amounts owing by or to the Municipality under the Agreement, if any, no later than ninety (90) days after the Supplier ceases to provide the Services, or thirty (30) days after the Supplier has provided the Municipality with a final invoice, whichever comes later.

12.4 Termination Assistance Services

- (a) Commencing at the later of (i) six (6) months prior to the scheduled expiration date of the Agreement, or (ii) the delivery of any notice of termination of the Agreement (or such other date as may be mutually agreed to by the Parties), and continuing through the effective date of the expiration or termination (the “**Termination Assistance Period**”), the Supplier shall provide the Municipality, or at the Municipality’s request to the Municipality’s designee, such cooperation, assistance and services, in accordance with the terms of Schedule 12.4 to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transition and migration of the Services to the Municipality or its designee (the “**Termination Assistance Services**”), provided that the Municipality is current with its payment obligations to the Supplier pursuant to this Agreement.
- (b) Upon at least thirty (30) days prior written notice to the Supplier, and subject to the provisions of Article 12.4(a), the Municipality may, within its entire discretion, extend the Termination Assistance Period as it may deem necessary to effect an orderly transition of the Services, provided that where the Agreement is so extended, the Municipality shall continue to pay for the provision of the Services in accordance with the term of the Agreement.

- (c) In the event that the Agreement is terminated by the Supplier for non-payment of the Annual Price or the Rebased Annual Price, as the case may be, the Supplier shall be entitled to be paid in advance of providing the Termination Assistance Services or for the Services to be provided during the extension of the Agreement noted in (b), above.

12.5 Inventory Value Reconciliation

- (a) In accordance with Article 12.6, the Supplier and the Municipality shall conduct an inventory count of consumables, supplies, mobile equipment, tools, spare parts and documentation at the Facilities. At the termination of this Agreement, the Supplier shall either
 - (i) ensure there is the same value, plus annual CPI adjustments as set forth in Article 4.3(b), of consumables, supplies, mobile equipment, tools, spare parts and documentation at the Facilities on the date of termination as there was on the date of the inventory; or
 - (ii) reimburse the Municipality for any shortfall, not otherwise accounted for by municipal use or disposal, which would not have been accounted for as Capital Expenditures.
- (b) Subject to the requirements of Article 2.6(c), above, if the aggregate value, plus annual CPI adjustments as set forth in Article 4.3(b), excluding items accounted for as Capital Expenditures, of the consumables, supplies, mobile equipment, tools, spare parts and documentation at the Facilities on the date of termination exceeds the value determined during the inventory valuation, the Municipality shall either reimburse the Supplier for any excess or supplier shall take possession of any excess, as Supplier may determine.

12.6 Final Condition

- (a) No later than 30 days prior to the termination of the contract, the Supplier shall have completed a final condition survey (“**Survey**”), which shall be conducted and certified by a qualified individual such as a C.E.T. or professional engineer. The selected individual shall be approved in advance by the Municipality. The Survey will include all sites on which the Facilities are located and all equipment.
- (b) The Survey shall include, but not be limited to an evaluation of:
 - (i) the availability of tools and laboratory equipment to perform the operations and maintenance functions;
 - (ii) the health and safety issues that could impact operations staff;
 - (iii) the status of the spare parts available at the Facilities, including a valuation and a detailed inventory of such parts;
 - (iv) the operational status of the instrumentation, SCADA, alarms and other monitoring equipment
 - (v) the general condition of all mechanical equipment, including pumps, motors, blowers and chemical feeders, and;

- (vi) the general electrical condition of motor control centers, and panels;
- .
- (c) The Municipality may, in its sole discretion and at its own expense, contract the preparation of the Survey to a third party.

**ARTICLE 13
FORCE MAJEURE**

13.1 Force Majeure Events

- (a) Subject to the other provisions of this Article 13.1, if either party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.
- (b) For purposes of this Agreement, the term “Force Majeure” means any event or occurrence not within the control of the party claiming Force Majeure and which by the exercise of reasonable diligence such party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen’s or public enemies, terrorism, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 13.1, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.
- (c) Neither Party shall be entitled to the benefit of this provision, under any of the following circumstances:
 - (i) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;
 - (ii) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
 - (iii) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
 - (iv) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming party’s ability to observe or perform any of its covenants or obligations under this Agreement, the claiming party will have given to the other party notice to the effect that the claiming party is unable by

reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

- (d) The party claiming Force Majeure will give notice to the other party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.
- (e) Notwithstanding any of the provisions of this Article 13.1, and subject to Article 13.1(c), the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular party involved and the party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the party of the benefit of Article 13.1(a).

ARTICLE 14 GENERAL

14.1 Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the parties shall agree to attorn to the jurisdiction of the Courts of Ontario.

14.2 Agreement to Govern

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

14.3 Entire Agreement

- (a) The Agreement constitutes the entire agreement between the Municipality and the Supplier 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 Municipality and the Supplier with respect to the subject matter hereof.

14.4 Notices

- (a) Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the party for whom it is intended at the following address or such other address as such party may designate to the other party by notice in writing delivered in accordance with this provision:

To the Municipality:

Attention: Director of Operations
Municipality of Brockton
100 Scott Street
Walkerton, ON
N0G 2V0

Telephone: 519.881.2223

Telecopy: 519.881.2991

To the Supplier:

Attention: Mark Rupke
Area Manager - Canada
Veolia Water Canada, Inc.
150 Pony Drive, Unit #2
Newmarket ON
L3Y7B6

Telephone: 905-868-9683

Telecopy: 905-868-9870

- (b) Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the parties as the person or persons authorized to receive such notices.

14.5 Severability

- (a) If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the parties as if such provision had been deleted.

14.6 No Waiver

- (a) No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. No waiver 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.

14.7 Amendment

- (a) No amendment to this Agreement will be valid or binding unless it is in writing and duly executed by both of the Parties hereto.

14.8 Burden and Benefit

- (a) This Agreement shall enure to the benefit of and be binding upon the Parties.

14.9 Assignment

- (a) The Municipality may not assign this Agreement or any of its rights or obligations hereunder without the consent of Supplier, such consent not to be unreasonably withheld. Supplier may assign this Agreement or any of its rights or obligations hereunder to, or sell the majority of its shares or business or its material assets to, or amalgamate with, any of its Affiliates or any third party without the consent of the Municipality, provided that such Affiliate or third party agrees to be bound by the terms and conditions of this Agreement including but not limited to all confidentiality provisions.

14.10 Freedom of Information

- (a) The Municipality acknowledges and agrees that this Agreement and any materials or information provided to Supplier through the performance of the Services may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, or as otherwise required by law. The Municipality shall inform Supplier of any requests for disclosure and allow Supplier to make a claim of confidentiality with respect to any information that meets an exception to the Act.

14.11 Counterparts

- (a) This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

14.12 Further Assurances

- (a) Each party will, at all times hereafter, execute and deliver all such further documents and do all such further acts and things as may be reasonably requested by the other party to give full effect to the intent and meaning of this Agreement.

14.13 Survival

- (a) All representations, warranties, indemnities, and limitations on liability given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation pursuant to the Agreement shall survive the termination of the Agreement.

14.14 Facsimile or Digital Transmission

- (a) This Agreement may be executed by the parties and transmitted by facsimile or digital transmission (for example, e-mailed .pdf pages) and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the parties had delivered and executed the original Agreement and each party undertakes to provide the other party with a copy of this Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

VEOLIA WATER CANADA, INC.

Per: _____
Name: Mark Rupke
Title: Vice President and Area Manager

:
I have authority to bind the Corporation.

**THE CORPORATION OF THE MUNICIPALITY
OF BROCKTON**

Per: _____
Name:
Title:

Per: _____
Name:
Title:
We have authority to bind the Corporation.

Schedule 2.1(a)

Description of the Facilities

Defined terms set out below but not defined in this Schedule 2.1(a) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 2.1(a) and the terms of the main body of the Agreement, the later shall govern.

For the purposes of this Agreement, the Facilities are described generally as follows:

(i) Walkerton Wastewater Collection, Treatment, and Disposal System

Site Location:

The street address of the Walkerton Wastewater Treatment Plant is as follows:

300 Durham Street West
Walkerton, ON
Municipality of Brockton
County of Bruce

General Description of facility:

The Walkerton Wastewater Treatment Plant consists of a conventional activated sludge treatment plant with a nominal design capacity of 7,560 m³/d, including the following additional processes: a continuous phosphorus removal system using ferric chloride, seasonal effluent disinfection using chlorine gas, a two-stage anaerobic digester and process sludge storage system, and two (2) auxiliary storage tanks which can be used to permit the controlled feed of high-strength wastewater into the plant. Treated effluent is discharged to the Saugeen River. The sewage collection system consists of an extensive system of service connections, sewers and maintenance ports located in Walkerton. There are two inverted siphon sewer crossings of the Saugeen River. There is one (1) sewage pumping station located on the wastewater treatment plant site.

Existing Works:

- Raw Sewage Pumping Station equipped with one (1) coarse bar screen, and three (3) pumps
- Standby Power System consisting of one (1) 300 kW generator with the capability to run off of natural gas, or a blend of natural gas and bio-gas
- Inlet Works consisting of one (1) mechanical step screen, and one (1) aerated grit tank rated at 28,388 m³/d
- Primary Clarification System consisting of three (3) primary clarifiers and two (2) sludge pumps
- Aeration system consisting of two (2) aeration tanks equipped with 30 HP mechanical surface aerators and air diffuser, and two (2) aeration tanks equipped with 40 HP mechanical surface aerators and three (3) air blowers

- Secondary Clarification System consisting of four (4) secondary clarifiers, two of which are equipped with floating siphon sludge collectors, and three (3) return activated sludge pumps
- Disinfection system consisting of one (1) gas chlorinator and two (2) chlorine contact tanks
- An Outfall Sewer consisting of 102 m of 750 mm diameter outfall sewer pipe branching into a 10.4 m long (approximate) 610 mm diameter outfall pipe and a 19.5 m long (approximate) 510 mm diameter outfall pipe discharging to the Saugeen River
- Flow Measurement System consisting of one (1) electromagnetic flow meter for influent measurement and one (1) Parshall flume for final effluent measurement
- Phosphorus Removal System consisting of two (2) ferric chloride dosing pumps and one 27 m³ chemical storage tank
- Anaerobic Digestion System consisting of a control building with one (1) SWD fixed cover conical bottom anaerobic sludge digester equipped with a gas mixing recirculation system, one fixed roof SWD anaerobic digester equipped with a gas mixing recirculation system, one (1) digester sludge recirculating pump, and one (1) gas compressor
- Sludge Storage facilities consisting of one (1) SWD sludge storage tank equipped with a coarse bubble diffused aeration system and two (2) 10.5 kW rail-mounted propeller sludge mixers
- Plant Control Building housing three (3) air blowers, three (3) activated sludge pumps, two (2) raw sludge pumps, one (1) sludge recirculating pump, one (1) hot water boiler, one (1) tube-in-tube sludge heater, chlorination equipment, washroom, office and laboratory
- A System of Appurtenances and Controls consisting of piping, heating, ventilation, electrical, instrumentation and control systems to operate the plant

(ii) Walkerton Water Supply, Treatment, and Distribution System

Site Location:

The street and legal address of the Walkerton Water Treatment Plant (Well 7 and 9) and the Well 6 Distribution Monitoring Station is as follows:

1244 Bruce Road #3
Part of Lot 6 and 7, Concession 1 NDR
Former Brant Township
Municipality of Brockton
County of Bruce

The legal address of the Walkerton Water Tower and Walkerton Booster Station is as follows:

Lot #12 (Plan 105)
Wallace Street
Walkerton, ON

Municipality of Brockton
County of Bruce

The legal address of the Brockton Water Tower and Brockton Booster Station is as follows:

Part of Lot #25 (Plan 38)
Cunningham Road
Walkerton, ON
Municipality of Brockton
County of Bruce

General Description of facility:

The Walkerton Water Supply and Distribution System is a groundwater based water system consisting of two (2) supply wells and associated buildings and equipment including an ultraviolet (UV) disinfection system, chlorination system, surge suppression tank, standby diesel generator, water distribution piping network, two (2) elevated storage facilities, one (1) water booster pumping station, and associated monitoring and control equipment.

Existing Works:

- Well 7: a 381 mm diameter drilled well approximately 76.2 m deep, equipped with a lineshaft vertical turbine pump delivering 56.8 L/s at a TDH of 55.0 m
- Well 9: a 350 mm diameter drilled well equipped with a submersible pump rated at 56.8 L/s delivered at a TDH of 55.0 m, located near Well 7 and connected to water treatment plant by a 200 mm diameter supply line
- Well 6: an observation and monitoring well located approximately 150 m from the water treatment plant on the same property; building used as a distribution system monitoring station equipped with a continuous free chlorine analyzer, well used for groundwater monitoring only
- A Water Treatment Plant recently upgraded to utilize a primary disinfection system consisting of ultraviolet disinfection equipment including:
 - Two (2) 300 mm diameter UV reactors (one duty, one standby), on-line UV transmittance sensors, UV intensity monitoring sensors, automatic cleaning system and associated controls, instrumentation and appurtenances,
 - One (1) secondary disinfection system consisting of a 9.0 kg/d rated gas chlorinator, chlorine analyzer, chlorine leak detector and associated pumps and controls
 - One (1) baffled chlorine contact tank located at Well 7
 - Two (2) 37.3 kW high-lift pumps (one duty, one standby), each rated at 57.9L/s connected from the high-lift pumps to a 350 mm diameter distribution main,
 - One (1) 100 kW diesel standby power generator

- Two (2) water towers to provide storage and pressure
- One (1) booster pumping station located at the Brockton Water Tower site
- One (1) booster pumping station located at the Walkerton Water Tower site

(iii) Lake Rosalind Water Supply, Treatment, and Distribution System

Site Location:

The street and legal address of the Lake Rosalind Water Treatment Plant is as follows:

442 Lake Rosalind Road #4
Part of Lot 68, Concession 3 NDR
Former Township of Brant
Municipality of Brockton
County of Bruce

General Description of facility:

The Lake Rosalind Water Supply and Distribution System services Lots 67, 68, and 69, Concession 3 in the former Township of Brant. This system has a rated capacity of 80 L/min and services approximately 68 homes. Two (2) groundwater wells supply water to a 91 m³ reservoir. Wells in operation are: Well 1 and Well 3. The distribution system is served by approximately 1,200 m of 100 mm diameter (4" nominal) PVC watermain. Raw water is disinfected prior to entering a cartridge filtration system, which then enters a chlorine contact chamber before flowing into the reservoir. The raw water pumps are activated based on reservoir level. Treated water is pumped from the reservoir by high-lift pumps to the distribution system via a series of pressure retention tanks, which serve to maintain system pressure. Flow rate and volume pumped is recorded by a flow meter installed on the piping system.

Existing Works:

- Well 1: a dug well approximately 3 m deep equipped with a jet pump having a capacity of 0.35 L/s.
- Well 3: a 200 mm diameter drilled well approximately 22.9 m deep equipped with a submersible pump rated at 1.28 L/s.
- One (1) air relief valve on the distribution system
- A water treatment plant (pump house) containing:
 - Two (2) cartridge filtration systems (one duty one standby)
 - Two (2) liquid chlorine (sodium hypochlorite) metering pumps (one duty, one standby)
 - One (1) 190 L chemical storage tank
 - One (1) 30.1 m³ in-ground chlorine contact chamber

- One (1) 91.0 m³ concrete reservoir located under the pump house
- Two (2) submersible high-lift pumps rated at 5.3 L/s each
- Six (6) steel hydro-pneumatic pressure retention tanks
- One (1) continuous free chlorine residual analyzer
- One (1) continuous turbidity analyzer
- One (1) 50 mm diameter flow meter/totalizer
- One (1) 56 kW standby diesel generator

(iv) Chepstow Water Supply, Treatment, and Distribution System

Site Location:

The legal address of the Chepstow Water Treatment Plant is as follows:

51 John Street
Part of Lot 7, Concession 7
Former Township of Greenock
Municipality of Brockton
County of Bruce

General Description of facility:

The Chepstow Water Supply and Distribution System supplies water from a groundwater source to the Powers Subdivision in the former Township of Greenock. This system has a rated capacity of 2.21 L/sec and services approximately 19 homes. One groundwater well supplies water to the pump house. The water treatment system consists of cartridge filtration, and a two stage disinfection system that contains UV disinfection and chlorination.

Existing Works:

- One 150 mm diameter drilled well approximately 57 m deep equipped with a 3 HP, 230 V submersible pump rated at 2.21 L/s
- A water treatment plant (pump house) containing:
 - Two (2) cartridge filtration systems (one duty, one standby)
 - An ultraviolet disinfection system consisting of two (2) UV reactors (one duty, one standby)
 - One (1) 50 mm diameter magnetic flow meter
 - Four (4) 455 L hydro-pneumatic pressure retention tanks
 - Two (2) chlorine metering pumps (one duty, one standby)

- Two (2) 23 L sodium hypochlorite solution tanks (one duty, one standby)
- One (1) continuous free chlorine analyzer
- One (1) continuous turbidity analyzer

Schedule 2.1(b)

Scope of Supplier Services

Defined terms set out below but not defined in this Schedule 2.1(b) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 2.1(b) and the terms of the main body of the Agreement, the later shall govern.

The Supplier shall provide the following scope of Services expressly set forth below and which can be reasonably implied to be the Supplier's responsibility in connection with the Services except, where it is expressly stated to be a Municipality responsibility under this Agreement.

(i) Walkerton Wastewater Collection, Treatment, and Disposal System

- Continuous monitoring of the Wastewater Treatment Facility processes and response to SCADA alerts/alarms
- Daily inspection and maintenance of the Wastewater Treatment Facility to ensure acceptable operation of the headworks, primary and secondary wastewater treatment clarifiers, secondary treatment systems, biosolids management systems, pumps, blower and aeration systems, chemical feeders, and all ancillary equipment
- Operation of the raw sewage pumps at the wastewater pumping station to minimize plant bypasses and flooding of the collection system, while optimizing treatment process efficiency
- Routine removal of screenings and scum from the pump station wet well
- Routine cleaning of grit channels
- Routine raking and inspection of bar screens, step screen, and barminuter
- Screenings and grit disposal as necessary
- Routine hosing/washing of weirs, walls, and channel in aeration and secondary clarifier
- Routine sounding of clarifier for sludge depth to ensure acceptable return rates
- Routine observation of sludge collection mechanisms for operation, alignment, tension, gearbox leakage, oil condition, and operating temperature
- Routine exchange of gearbox lubricants
- Routine dewatering of clarifier basins and inspection of respective chain and flight collector alignment, mechanical condition, and condition of concrete
- Routine dewatering of aeration basins, inspection and maintenance of aeration diffusers as per manufacturer specifications, of aeration distribution piping grid, and condition of concrete

- Utilize flow splitting to optimize seasonal variations in flows while maximizing treatment efficiency
- Optimization of dissolved oxygen and blower operation in the aeration process to minimize energy usage and maintain biological treatment
- Operational monitoring and optimization of chemical feed rates and return sludge rates
- Daily monitoring and operation of secondary clarifiers and return activated sludge system to optimize solids removal, minimize hydraulic loading, and minimize solids carryover
- Routine monitoring and replenishment of chlorine feed tanks, ferric chloride tanks, and other process chemicals as necessary
- Routine monitoring and replenishment of fuel tanks, including diesel fuel used for heating in the Raw Sewage Pumping Station
- Routine skimming of chlorine contact chambers and clarifiers
- Routine monitoring and operation of the anaerobic digester gas mixing system to ensure full utilization of the digester capacity, maintain consistent primary digester temperatures, maintain adequate pressure to prevent gas flow to waste gas burners and digester pressure relief valves, maximize supernatant return to the treatment system, and ensure the condensate drain system is working as per design
- Scheduling of digester loadings as regularly as possible to ensure maximum volatile solids reduction and gas production
- Routine monitoring and operation of the gas chlorination system including, checking the self-contained breathing apparatus, checking operation of the exhaust fans, checking for leaks, inspection and replacement of chlorine tanks, and optimization of chlorine dosing
- Routine monitoring and recording of wastewater influent and effluent flows, pump station running hours, diesel generator running hours, utilities usage, volume of chemicals used, volume of sludge disposal, and any other parameters deemed necessary to meet compliance requirements and provide an acceptable level of process evaluation information
- Routine sampling, analysis, and recording of any process wastewater parameters deemed necessary to meet compliance requirements and provide an acceptable level of process monitoring and evaluation
- Manage the sludge hauling and land application The sludge hauling and land application contract shall be between a third party and the Municipality at the Municipality's cost
- Routine monitoring and operation of the service water system to minimize potable water usage
- Monthly test operation of the standby generator

- Operation of the hot water boiler to maximize the usage of digester gas, and minimize the use of natural gas supply
- Provide for manhole inspection and flushing of the entire Wastewater Collection System during the term of the agreement, including inspection for debris accumulation, structural integrity of walls and access ladders, condition of benching, and infiltration/inflow
- Provide sewer locates as required
- Manage the receipt and treatment of brewery waste at the Walkerton waste water treatment plant (sewage disposal plant) provided Supplier shall not be obligated to receive or treat brewery waste exceeding an average daily intake of 120 m3.
- Brewery waste in excess of an average daily intake of 120 m3 may be accepted for disposal on the agreement of both parties provided such excess amount does not impede the ability of the system to function properly or endanger compliance with operational requirements.
- Supplier shall monitor the treatment of brewery waste and advise Municipality of any abnormalities or compliance issues related to such treatment.
- For new sewer service connections, on infill lots, lay pipe and make connections on municipal property. Excavation, supply and placement of bedding, backfill etc is excluded. New service connections for new subdivisions or developments are excluded

(ii) Walkerton Water Supply, Treatment, and Distribution System

- Continuous monitoring of the Water Treatment Facility processes and response to SCADA alerts/alarms
- Daily inspection and maintenance of the Walkerton Water Treatment Plant (Well 7 and 9), the Walkerton Well 6 Distribution Monitoring Station, the Walkerton Water Tower, the Geeson Avenue Booster Station, the Brockton Water Tower, and the Brockton Booster Station to ensure acceptable operation of the wells, UV disinfection systems, pressure and level control systems, pumping systems, chemical feeders, analyzers, and all ancillary equipment
- Routine monitoring of well static water levels as per Applicable Laws and timely reporting of any abnormal fluctuations in ground water levels
- Periodic inspection and maintenance of UV sensors and cleaning systems
- Replacement of UV bulbs on low output or after 5,000 h of use
- Routine monitoring and operation of the gas chlorination system including, checking the self-contained breathing apparatus, checking operation of the exhaust fans, checking for leaks, inspection and replacement of chlorine tanks, and optimization of chlorine dosing

- Routine monitoring and optimization of chlorination contact process to achieve inactivation and removal of regulated pathogenic organisms while maintaining acceptable levels of free chlorine in the treated water and distribution systems
- Routine monitoring and recording of raw water influent and treated water flows, standby generator running hours, utilities usage, volume of chemicals used, free chlorine residual, treated water turbidity, UV transmittance, and any other parameters deemed necessary to meet compliance requirements and provide an acceptable level of process evaluation information
- Maintain chlorine residual in the distribution system
- Conduct water main flushing and hydrant flushing and testing scheduled such that all of the water mains and hydrants have been flushed and tested throughout the Walkerton Water Distribution System annually during the term of the agreement
- Monthly test operation of the standby generator
- Repair and paint hydrants where necessary, and winterize each fall
- Routine monitoring of water towers through visual inspections, checking controls and valves, and monitoring pressure and water levels
- Routine monitoring of distribution system by looking for major leaks (visual and through water usage trending), inspection of booster stations, exercising of main distribution shutoff valves, and regular collection of distribution samples
- Exercise at least 50% of the valves in the Water Distribution System annually.
- Preparation of strategies to mitigate water main leakage as necessary, and repair water main breaks as per Emergency Response procedures
- Provide water service disconnects and reconnects as required
- Provide water locates as required
- For new water service connections on infill lots, lay pipe, and make connections between water main and property owners piping at curb stop. Excavation, supply and placement of bedding material, backfill, etc. are excluded. New service connections for new subdivisions or developments are excluded

(iii) Lake Rosalind Water Supply, Treatment, and Distribution System

- Continuous monitoring of the Water Treatment Facility processes and response to SCADA alerts/alarms
- Daily inspection and maintenance of the Lake Rosalind Water Treatment Plant to ensure acceptable operation of the wells, pressure and level control systems, pumping systems, chemical feeders, analyzers, and all ancillary equipment

- Routine monitoring of well static water levels as per Applicable Laws and timely reporting of any abnormal fluctuations in ground water levels
- Daily monitoring of cartridge filter differential pressure, and replacement of cartridge filters as per Applicable Laws
- Daily monitoring and operation of the liquid chlorination system including checking the chemical feed pumps, monitoring and replacement of sodium hypochlorite as necessary, and optimization of chlorine dosing
- Routine monitoring and optimization of chlorination contact process to achieve inactivation and removal of regulated pathogenic organisms while maintaining acceptable levels of free chlorine in the treated water and distribution systems
- Periodic inspection and cleaning of the chlorine contact chamber as required
- Routine monitoring and recording of raw water influent and treated water flows, standby generator running hours, utilities usage, volume of chemicals used, free chlorine residual, treated water turbidity, and any other parameters deemed necessary to meet compliance requirements and provide an acceptable level of process evaluation information
- Maintain chlorine residual in the distribution system
- Conduct water main flushing and hydrant flushing and testing scheduled such that all of the water mains and hydrants have been flushed and tested throughout the water distribution system annually during the term of the agreement
- Monthly test operation of the standby generator
- Routine monitoring of distribution system by looking for major leaks (visual and through water usage trending), exercising of main distribution shutoff valves, and regular collection of distribution samples
- Preparation of strategies to mitigate water main leakage as necessary, and repair water main breaks as per Emergency Response procedures
- Provide water service disconnects and reconnects as required
- Provide water locates as required
- For new water service connections on infill lots, lay pipe, and make connections between water main and property owners piping at curb stop. Excavation, supply and placement of bedding material, backfill, etc. are excluded. New service connections for new subdivisions or developments are excluded

(iv) Chepstow Water Supply, Treatment, and Distribution System

- Continuous monitoring of the Water Treatment Facility processes and response to SCADA alerts/alarms
- Daily inspection and maintenance of the Chepstow Water Treatment Plant to ensure acceptable operation of the wells, pressure and level control systems, pumping systems, chemical feeders, analyzers, and all ancillary equipment
- Routine monitoring of well static water levels as per Applicable Laws and timely reporting of any abnormal fluctuations in ground water levels
- Daily monitoring of cartridge filter differential pressure, and replacement of cartridge filters as per Applicable Laws
- Periodic inspection and maintenance of UV sensors and cleaning systems
- Replacement of UV bulbs on low output or after 5,000 h of use
- Daily monitoring and operation of the liquid chlorination system including checking the chemical feed pumps, monitoring and replacement of sodium hypochlorite as necessary, and optimization of chlorine dosing
- Routine monitoring and optimization of chlorination contact process to achieve inactivation and removal of regulated pathogenic organisms while maintaining acceptable levels of free chlorine in the treated water and distribution systems
- Routine monitoring and recording of raw water influent and treated water flows, standby generator running hours, utilities usage, UV transmittance, volume of chemicals used, free chlorine residual, treated water turbidity, and any other parameters deemed necessary to meet compliance requirements and provide an acceptable level of process evaluation information
- Maintain chlorine residual in the distribution system
- Conduct water main flushing such that all of the water mains have been flushed and tested throughout the water distribution system annually during the term of the agreement
- Monthly test operation of the standby generator
- Routine monitoring of distribution system by looking for major leaks (visual and through water usage trending), exercising of main distribution shutoff valves, and regular collection of distribution samples
- Preparation of strategies to mitigate water main leakage as necessary, and repair water main breaks as per Emergency Response procedures
- Provide water service disconnects and reconnects as required

- Provide water locates as required
- For new water service connections on infill lots, lay pipe, and make connections between water main and property owners piping at curb stop. Excavation, supply and placement of bedding material, backfill, etc. are excluded. New service connections for new subdivisions or developments are excluded

(v) General Services

- Monitor the Facilities twenty-four (24) hours per day, seven (7) days per week
- Maintain a clean work environment to promote occupational health and safety, and protect the Municipal assets
- Provide window washing, janitorial services, and maintenance of HVAC systems as required
- Provide and maintain the Process Control (Hach WIMS®), Computerized Maintenance Management Software (JOB Plus®) Databases, and Compliance Management System
- Provide certified operators as required by Applicable Laws
- Provide for third party compliance related laboratory analyses as required by Applicable Laws
- Cooperate with and accompany any regulatory authorities on any scheduled or unscheduled inspections, review any inspection reports or orders prepared by such regulatory authority, and prepare any reports or notifications to the Municipality on a timely basis to address any identified deficiencies or recommendations in relation to the Facility or the Services
- Perform and document all required maintenance in accordance with this Schedule 2.1(b)
- Within the first ninety (90) days of the start of the Initial Term of this Agreement, provide Owner for approval a complete and detailed schedule of all routine and preventive maintenance activities for the Facilities, including threshold values for preventive maintenance testing along with appropriate justification
- Provide annual testing and calibration of flow measuring and analytical equipment by an independent firm
- Routine testing of safety equipment
- Routine exercising of standby equipment to ensure 100% operability
- Maintain existing or future Municipality owned inventories of spare parts pertaining to or part of the Facilities and provide inventories of any consumables deemed necessary by the Supplier to perform the Services

- Maintain manufacturer's warranties on new equipment purchased by the Municipality
- Supervise contractors performing sewer or water main cleaning.

(vi) Staffing, Training, and Corporate Resources

The Supplier shall provide appropriate staffing of the Facilities with certified operators and other trained staff as required by Applicable Laws and Standard Industry Practice. The following general staffing provisions shall be made:

- Staff the Facilities five (5) days per week (Monday through Friday during Regular Work Hours), eight (8) hours per day; and four (4) hours per day on weekends (Saturday and Sunday, excluding statutory holidays)
- Provide on-call coverage seven (7) days per week, twenty-four (24) hours per day
- Provide a minimum staff of 4.83 full-time (equivalent) on-site employees dedicated to the Municipality project including, one (1) project manager, one (1) part-time administrative assistant, three (3) full-time certified operators, and one (1) temporary summer student or part-time summer position to assist in seasonal maintenance activities
- Provide staff visits to each water and wastewater Treatment Facility, once per day, seven (7) days per week (including statutory holidays)
- Provide staff with cell phones such that they can be reached at any time in case of an emergency situation
- Initiate a response to Call-Outs within thirty (30) minutes during Regular Work Hours and within sixty (60) minutes outside of Regular Work Hours
- Provide qualified employees from nearby sites operated by the Supplier to fill the required positions on an interim or long-term basis as a backup plan during staff shortages
- Provide corporate support resources and a corporate management team generally as described in the Proposal to be available to the Municipality project as required
- Provide employees with a compensation and benefits package as outlined in the Proposal
- Train site personnel as relevant to his/her respective position in ethics and compliance policies, environmental, health, safety and security (EHSS), supervisory skills, unit processes, process control and troubleshooting, operations, maintenance, equipment troubleshooting and repair, sampling and field testing techniques, laboratory procedures, personal computer use, sludge handling and disposal, energy management and all other topics relevant to their position
- Provide a safety program in accordance with Applicable Laws and Standard Industry Practice which comprises policies, training, and procedures including, but not limited to, the provision of a Safety Policies and Procedures Manual, a site-specific Environmental Compliance Manual, and Standard Operating Procedures (SOP)

(vii) Quality Assurance/Quality Control (QA/QC)

The Supplier QA/QC program will be the primary means by which the Supplier delivers on the Performance Guarantees. QA/QC will generally comprise the program as outlined in the Proposal, including an integration of the following 11 unit function operations and 3 industry standard tracking software packages:

- Compliance Management System
- Peer Audit Review Program (Formal Comprehensive O&M Audit)
- Hach WIMS® (Process Control Software)
- Process Control Management Plan (PCMP, Process Oversight System)
- JOB Plus (Computerized Maintenance Management Software)
- Laboratory QA/QC (Laboratory Management Program)
- Outside Laboratory QA/QC Program
- Safety Program
- Triple I Program (Incident, Injury, and Injury Free reporting/tracking program)
- Environmental Compliance Action Plan (Site-Specific Plan)
- Customer Satisfaction (Site-Specific Plan)
- Environmental Compliance and Reporting

The Supplier shall closely monitor the operational performance of each of the systems for which it is responsible. Monthly reports will be submitted to confirm that the project has complied with all regulatory requirements. These monthly reports would include, but not be limited to, records of the Facility's operations compliance, water quality analysis, maintenance plans and activities, public inquiries, plant tours, and any other information considered relevant to the project and the partnership with the Municipality.

Supplier technical and management staff, including senior management shall be responsible for monitoring the PCMP. As part of the PCMP, the Hach WIMS® software will generate the operations database and monitor the process control. Subject to availability of OPS software compatible with the proposed systems, the process control software and CMMS shall be supplemented by the use of Hach WIMS®, which will be used by operators to record process readings such as DO, flow, temperature, etc. electronically to be uploaded to the database. When implemented, this system shall be used for maintenance activities in place of paper work orders, wherein any maintenance activity is input as work is performed into a PDA, which will be uploaded to the database on a daily basis.

Specific items to be implemented by the Supplier QA/QC program as per the Proposal are as follows:

- The Supplier shall provide a corporate level EHSS management program to monitor occupational health and safety of the project.

- The Supplier shall perform audits or inspections as required to determine compliance with all Applicable Laws with respect to environmental, health and safety compliance programs.
- All incidents and “near-misses” shall be investigated by the Supplier for root cause analysis, and corrective actions/measures shall be put forward to eliminate future similar incidents. This program shall be documented in the Triple I database.
- The Supplier shall utilize a Compliance Management System to ensure all required reporting and other necessary functions are completed on time.
- The Supplier shall provide staff at the project level access to the corporate Regulatory Compliance Database as required.
- The Supplier shall provide staff at the project level access and training with respect to the corporate Safety Policies and Procedures Manual.
- The Supplier shall provide the Facilities with a site-specific Environmental Compliance Manual, which sets forth all aspects of environmental compliance, including all site-specific operating permits and approvals.
- The Supplier shall provide detailed Standard Operating Procedures (SOPs) and associated training for all activities that may place an employee at risk, including written step-by-step procedure outlines, required safety equipment, proper equipment handling, and hazards associated with each activity.
- The Supplier shall implement a Safety Training Program to ensure that staff is competent in all necessary safety procedures, corporate policy, and regulatory requirements in accordance with Applicable Laws and Standard Industry Practice, including site-specific training, a 3-month evaluation for new staff, minimum monthly training classes for all employees, annual reviews, personal protective equipment, SOPs, and Emergency Plans.
- The Supplier shall provide a Safety Incentive Program to reinforce the importance of safety and recognize those who achieve outstanding safety performance, including cash awards of at least \$200/employee for one-year with no lost-time accidents, and \$500/employee for 5 years with no lost-time accidents.

(viii) Residuals Management

The Supplier shall provide for the safe disposal of any and all solid and liquid waste material produced by the water and wastewater Facilities in accordance with Applicable Laws.

In addition, the Supplier shall arrange for and manage sludge disposal in accordance with the Nutrient Management Act (NMA), 2002, as amended from time to time, and in accordance with the Nutrient Management Strategy to be developed for the Walkerton Wastewater Treatment Plant subject to the Change of Law provisions set forth in Article 2.10.

(ix) Disaster, Contingency, and Emergency Programs

The Supplier shall prepare and provide for Municipal approval an Emergency Plan for the Municipality Facilities to the satisfaction of the Municipality within six (6) months of the start of the Initial Term. In the

case of an Emergency Response, the Supplier will be responsible to ensure all necessary actions are performed, including those specified in the Emergency Plan. The costs associated with such emergencies will be considered the responsibility of the Municipality to the extent that such services fall outside the scope of Services outlined in this Schedule 2.1(b). The Emergency Plan shall be a site-specific disaster, contingency, and emergency preparedness plan that will be tailored to the exact needs of the Municipality Facilities, and generally follow the scope as given in the sample plan provided in the Proposal.

(x) Asset Management

The Supplier shall provide for asset management of the Facilities in accordance with the objectives provided in the Proposal, and prioritizing:

- Reliability,
- Criticality, and
- Cost effectiveness

The objective of the Asset Management program will be to maintain a high state of reliability in a cost effective manner while protecting the Facilities and assets. The Supplier will develop life-cycle templates for all major assets at the Facilities, which will quantify and evaluate elements like initial cost, criticality, average expected life, average expected overhaul cycle, and all applicable scheduled and unscheduled service activities. These templates shall become part of the CMMS and serve as the basis for asset management of all critical assets.

The Asset Management program will involve both maintenance and operational procedures. The emphasis of the maintenance plan will be:

- Safeguarding the investment in equipment and Facilities
- Using the predictive, preventive, and proactive maintenance programs, which can extend the life, performance reliability and efficiency of equipment
- Ensuring that maintenance is performed in accordance with the equipment manufacturer's warranty, specifications, and Standard Industry Practice

The primary maintenance tool will be the Computerized Maintenance Management System (CMMS). The Supplier shall begin population of the CMMS database in JOB Plus® (OPS Systems Inc.) during the transition period, and complete the database to the satisfaction of the Municipality within six (6) months of the start of the Initial Term. All software (or a licensed copy of the software) and data associated with the CMMS shall become the property of the Municipality. The Municipality shall have unimpeded read-only access to this database to review maintenance activities and costs. The CMMS shall be used by project staff to schedule and document all preventive maintenance activities required under equipment warranty provisions, as well as the work recommended by the equipment manufacturers following the expiration of the warranty periods. The CMMS program shall be designed to minimize record-keeping tasks, thereby allowing maintenance personnel to spend more time on equipment maintenance. The CMMS will assist the operations and Municipal staff on a reliability-based program as follows:

- Organizing a regular preventive maintenance program for each piece of equipment

- Prioritizing and scheduling preventive and corrective maintenance
- Tracking corrective and preventive maintenance work orders and summarizing the total effort by area, craft, and equipment type
- Analyzing maintenance program and equipment repair costs
- Ensuring that equipment operating time is scheduled to minimize damage to equipment caused by extended idle periods
- Automatically assigning preventive/predictive maintenance tasks from the calendar to create a balanced workload schedule
- Maintaining a complete maintenance history on each piece of equipment by activity and cost
- Assisting with cost-effective decisions, such as repair or replacement, from a firm knowledge base
- Maintaining a record of predictive maintenance measurements and providing the means to more accurately identify future problem areas
- Preparing printed work orders for issuance to appropriate trades
- Preparing and tracking purchase orders and managing parts inventory
- Preparing exception reports and indicating equipment status and repair priority

The Supplier shall perform day-to-day preventive maintenance including, but not limited to the following:

- Carrying out a routine lubrication program including greasing and oiling as specified in the lubrication schedule
- Performing maintenance duties on equipment by following the preventive measures procedures, including testing motor windings, and checking machinery and electrical equipment when required
- Maintaining an inventory on all equipment and tools
- Ensuring the security of the facilities by locking doors and gates
- Inspecting process control equipment to ensure proper operation of all pumps and treatment systems, chemical feed systems, etc.
- Checking pumping stations for operational condition in addition to routine readings
- Cleaning chambers, reservoirs and all other facilities

- Monitoring and enforcement of equipment warranties and activities required to preserve such warranties
- General cleaning, calibration, equipment adjustments, lubrication, repairs, and painting to preserve the condition and appearance of the Facilities

The Supplier shall perform predictive maintenance techniques to monitor and test equipment used during normal operation. This data shall be used to indicate if conditions exist that may lead to equipment failure, including trending analysis to predict equipment useful life. Predictive maintenance techniques include the following:

- Vibration analysis
- Oil analysis
- Infrared thermography
- Motor circuit evaluation
- MCC thermography

This comprehensive maintenance approach should ensure that all plant equipment that is part of the Facilities is always in top condition to provide for maximum performance, dependability and life span. This program shall be augmented by the Supplier corporate and regional staff in terms of training and support. In addition, the Supplier shall make use of various local firms that possess the skills and technology that may be required to supplement the Supplier resources.

All maintenance activities shall be documented and included in summary reports to the Municipality. Summary reports shall also include work order backlog, projects completed, projects scheduled, total monthly and year-to-date repair and maintenance costs, and an assessment of the program and staff utilization. Summary reports shall be provided by the Supplier on a monthly and annual basis. The Supplier shall provide the Municipality full documentation validating that the appropriate maintenance procedures are being performed on all Municipally owned equipment in accordance with manufacturer recommendations and Standard Industry Practice. The documentation will indicate the defined service intervals and a description of the service activities in sufficient detail to satisfy the interest of the Municipality. The maintenance program shall include documentation of maintenance and spare parts inventory.

The Supplier shall provide all personnel material, parts, equipment, subcontractors, and services necessary to maintain the Facilities structures, process equipment, buildings, HVAC systems, electrical equipment, instrumentation and controls, sewage collection systems, water distribution systems, etc. to maintain high efficiency operations, long-term reliability and preservation of capital investment, excepting that Capital Expenditures, Unexpected Expenses, Excluded Services, and breakdown maintenance of \$5,000 or more shall be treated as per the Services Agreement. Routine and predictive maintenance costs up to a single item or event cost of \$4,999 or annual aggregate cost of \$24,999 shall be considered within the scope of Services, including the cost of labour, services, materials and replacement parts, lubricants, filters, belts, and all other consumable materials.

(xi) DWQMS

The Supplier shall obtain and maintain accreditation as the operating authority under the Safe Drinking Water Act.. Supplier shall undertake:

- Operate water facilities according to DWQMS operational plans
- Ongoing maintenance of operation plans
- Annual internal audits as required under DWQMS
- Annual Management review as required under DWQMS
- Participation in external DWQMS audits every 3rd year
- Maintain documentation according to document management system

Schedule 2.4
Supplier Rate Schedule for Excluded Services

Defined terms set out below but not defined in this Schedule 2.4 shall have the meaning ascribed to such terms in the main body of the Agreement.

Where the Supplier provides Excluded Services, the following rates (which shall be subject to annual CPI adjustment pursuant to Article 4.4(b)) shall apply:

	Hourly Rate	Subcontracted Cost	VWC Mark-up	Total
Monday Through Friday - Business Hours	\$58.54			
Overtime Monday Through Saturday	\$90.47			
Sundays and Holidays	\$101.12			
Shutoffs and Turn-ons in excess of Thirty five (35) per year (Note 2)				\$42.58
Utility locates in excess of forty (40) per year				\$58.54
Raise or lower curb stops in excess of twenty five (25) per year				\$58.54
New Service Installations for fill in lots beyond ten (10) per year		Cost plus VWC Markup	13%	
Service Thawing (1)		Cost plus VWC Markup	13%	
Water Main or sewer Swabbing, cleaning, jetting, or televising using 3 rd party services,		Cost plus VWC Markup	13%	
Sewer backup clearing, or rodding using municipalities equipment in excess of five (5) per year		Cost plus VWC Markup	13%	
Sewer Televising with Municipalities equipment beyond (25) per year		Cost plus VWC Markup	13%	

(1) All supervision for subcontracted service will be charged at the above applicable rates.

(2) Shutoffs and Turn-ons includes all services to a given address within one business day,.

Schedule 2.8(a)
Drinking Water Performance Guarantee

Defined terms set out below but not defined in this Schedule 2.8(a) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 2.8(a) and the terms of the main body of the Agreement, the later shall govern.

(i) Walkerton Water Supply, Treatment, and Distribution System

	Raw Water Influent Specification	Drinking Water Specification
Flow		
Maximum Monthly Average (m ³ /d)	3900	3550
Maximum Day (m ³ /d)	6200	5600
Peak Hourly (m ³ /h)	327	297
Quality Parameters		
Total Coliform (CFU/100mL)	-	Non-detectable
E. Coli (CFU/100mL)	-	Non-detectable
HPC (CFU/mL)	-	1,500
Turbidity (NTU)	1.0	1.0
Free Residual Chlorine (mg/L)	-	0.20

(ii) Lake Rosalind Water Supply, Treatment, and Distribution System

	Raw Water Influent Specification	Drinking Water Specification
Flow		
Maximum Monthly Average (m ³ /d)	40	32.8
Maximum Day (m ³ /d)	75	65
Peak Hourly (m ³ /h)	3.8	3.3
Quality Parameters		
Total Coliform (CFU/100mL)	-	Non-detectable
E. Coli (CFU/100mL)	-	Non-detectable
HPC (CFU/mL)	-	1,500
Turbidity (NTU)	1.0	1.0
Free Residual Chlorine (mg/L)	-	0.20

(iii) **Chepstow Water Supply, Treatment, and Distribution System**

	Raw Water Influent Specification	Drinking Water Specification
Flow		
Maximum Monthly Average (m³/d)	20	15.1
Maximum Day (m³/d)	45	40
Peak Hourly (m³/h)	2.5	2.1
Quality Parameters		
Total Coliform (CFU/100mL)	-	Non-detectable
E. Coli (CFU/100mL)	-	Non-detectable
HPC (CFU/mL)	-	1,500
Turbidity (NTU)	1.0	1.0
Free Residual Chlorine (mg/L)	-	0.20

Schedule 2.8(b)
Wastewater Performance Guarantee

Defined terms set out below but not defined in this Schedule 2.8(b) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 2.8(b) and the terms of the main body of the Agreement, the later shall govern.

(i) **Walkerton Wastewater Collection, Treatment, and Disposal System**

	Wastewater Influent Specification⁽²⁾	Wastewater Effluent Specification
Flow		
Maximum Monthly Average (m ³ /d)	7560	7560
Maximum Day (m ³ /d)	18160	18160
Peak Hourly (m ³ /h)	937	937
Carbonaceous Biochemical Oxygen Demand (CBOD₅)		
Annual Average (mg/L)	200	25.0
Maximum Monthly Average (mg/L)	250	-
Maximum Day (mg/L)	500	-
Annual Average (kg/d)	660	-
Maximum Monthly Average (kg/d)	900	-
Maximum Day (kg/d)	1650	-
Total Suspended Solids (TSS)		
Annual Average (mg/L)	250	25.0
Maximum Monthly Average (mg/L)	355	-
Maximum Day (mg/L)	500	-
Annual Average (kg/d)	660	-
Maximum Monthly Average (kg/d)	1200	-
Maximum Day (kg/d)	1650	-
Total Ammonia Nitrogen (NH₄⁺ + NH₃)		
Annual Average (mg/L)	40	-
Maximum Monthly Average (mg/L)	50	-
Maximum Day (mg/L)	100	-
Annual Average (kg/d)	130	-
Maximum Monthly Average (kg/d)	150	-
Maximum Day (kg/d)	325	-

	Wastewater Influent Specification⁽²⁾	Wastewater Effluent Specification
Total Phosphorus (TP)		
Annual Average (mg/L)	3.0	1.0
Maximum Monthly Average (mg/L)	7.0	-
Maximum Day (mg/L)	14.0	-
Annual Average (kg/d)	10.0	-
Maximum Monthly Average (kg/d)	25.0	-
Maximum Day (kg/d)	50.0	-
E Coli ⁽¹⁾		
Annual Geometric Mean Density (CFU/100 mL)	-	200
pH		
At all times	6.0 - 9.0	6.0 – 9.0
Notes:		
(1) During disinfection period, from April 01 until November 30 each year		
(2) Samples used for the purposes of calculating a daily concentration must be a composite sample consisting of equal proportions of at least 8 samples equally spaced over a 24-hour period		

Schedule 2.12 Insurance

Defined terms set out below but not defined in this Schedule 2.12 shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 2.12 and the terms of the main body of the Agreement, the later shall govern.

(i) Supplier Insurance

Throughout the term of this Agreement, Supplier shall procure and maintain the following insurance coverages:

Automobile Insurance

Coverage: Commercial Automobile Liability (including owned, non-owned, and hired vehicles)

Limits: \$5,000,000 combined single limit per accident for non-owned and hired vehicles
\$10,000,000 combined single limit per accident for owned vehicles

Deductible: \$250,000

General Liability Insurance

Coverage: Commercial General Liability (including contractual liability)

Limits: \$10,000,000 per occurrence
\$10,000,000 general aggregate

Deductible: \$1,000,000

General Environmental Liability Insurance

Coverage: Contractor's Pollution Liability insurance ("CPL")

Limits: \$2,000,000 per loss
\$4,000,000 annual general aggregate

Deductible: \$250,000

Details: Coverage shall include the following:

- Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

- Defence including costs, charges and expenses incurred in the investigation, adjustment or defence of Claims for such compensatory damages; and
- Losses arising from pollution conditions that are caused by the operations of the Supplier described under the scope of services of this contract.
- Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.
- Such insurance is claims-made and shall: (a) include a retroactive date on or before commencement of the work; (b) Supplier shall continuously maintain such coverage for three (3) years after completion of all work required under the Agreement; and (c) such policy shall provide that in the event of cancellation or non-renewal by either the Supplier or Supplier's insurer, the insurer will provide an extended reporting period for twelve (12) months.

Workplace Safety and Insurance Board Requirements

Coverage: As required by applicable law

The commercial general liability and commercial automobile liability policies shall name the Municipality as an additional insured as respects liability caused by work or operations performed, or ownership, maintenance or use of autos, by or on behalf of Supplier. Supplier shall provide Municipality at least thirty (30) days notice prior to the cancellation, non-renewal or material modification of any such policy. Supplier shall promptly furnish the Municipality with certificates of insurance evidencing the preceding coverages.

(ii) Municipal Insurance

Throughout the term of this Agreement, the Municipality shall procure and maintain at its cost the following insurance coverage naming both the Municipality and the Supplier as "Named" insureds:

Property Insurance

Coverage: Standard "All-Risk" Property Insurance

Limits: Full Replacement Cost of Facilities

Deductible: \$1,000

Boiler and Machinery Insurance

Coverage: Boiler & Machinery, including mechanical breakdown

Limits: \$50,000,000 limit

Deductible: \$5,000

(iii) Deductibles

The following deductible arrangements shall be applicable to losses covered under the above insurance policies:

Fault-based

In the event Supplier is negligent, Supplier will pay the deductible. Where the Municipality is negligent, the Municipality will pay the deductible. In cases where both Supplier and the Municipality are negligent, the deductible will be divided on a pro rata equal to each party's proportionate fault.

No Fault

Where neither the Municipality nor Supplier is negligent, the deductible will be paid as follows: Where the Municipality's property is repaired or replaced, the Municipality will pay the deductible. Where Supplier's property is repaired or replaced, the Supplier will pay the deductible. In cases where the Municipality's and the Supplier's and/or a third party's property is repaired or replaced, the deductible will be paid by both the Municipality and the Supplier pro rata equal to each party's proportionate fault.

Schedule 3.2(a)(vi)
Scope of Municipal Services

Defined terms set out below but not defined in this Schedule 3.2(a)(vi) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 3.2(a)(vi) and the terms of the main body of the Agreement, the later shall govern.

The Municipality shall:

1. Provide all existing and future Facilities and equipment required by the Supplier to perform its Services and other obligations under this Agreement;
2. Pay for disposal of wastewater plant sludge;
3. Maintain existing easements, licenses and warranties for the mutual benefit of both parties;
4. Provide to the Supplier for use by the Supplier all existing equipment currently being used by the Municipality for the Facilities; (Municipality represents and warrants that said equipment shall be in good and serviceable condition and shall comply with all regulatory requirements);
5. Pay for all such expenses in accordance with Article 10.2 of the Agreement;
6. Apply for, obtain and pay for all permits, licenses, certifications and approvals, including but not limited to, the C of A, as required by regulatory agencies;
7. Provide raw water and wastewater influent which meets the requirements of Schedules 2.8(a) and 2.8(b);
8. Provide Supplier access to all Facilities necessary for Supplier to provide the Municipality with all services, and to exercise Supplier's rights under this Agreement;
9. Provide for all Flowthrough Utilities at the cost of the Municipality;
10. Provide the Supplier the use of the former Walkerton PUC workshop building free of charge to the Supplier;
11. Finalize the Nutrient Management Strategy;
12. Provide for snow plowing and grass cutting at the Facilities; and
13. Provide Property, and Boiler & Machinery insurance for all Facilities, making Supplier, at no cost to Supplier, a "Named" insured on those policies.
14. Pay costs for DWQMS third party auditors

Schedule 4.6(d)
Cost Basis Annual Average

Defined terms set out below but not defined in this Schedule 4.6(d) shall have the meaning ascribed to such terms in the main body of the Agreement. In the event of any inconsistency between the terms of this Schedule 4.6(d) and the terms of the main body of the Agreement, the later shall govern.

(i) Walkerton Water Supply, Treatment, and Distribution System

	Drinking Water Specification
Flow (m³/d)	
Cost Basis Annual Average	2550

(ii) Lake Rosalind Water Supply, Treatment, and Distribution System

	Drinking Water Specification
Flow (m³/d)	
Cost Basis Annual Average	26.0

(iii) Chepstow Water Supply, Treatment, and Distribution System

	Drinking Water Specification
Flow (m³/d)	
Cost Basis Annual Average	10.5

(iv) Walkerton Wastewater Collection, Treatment, and Disposal System

	Wastewater Influent Specification
Flow (m³/d)	
Cost Basis Annual Average	3304
Carbonaceous Biochemical Oxygen Demand (CBOD₅)	
Cost Basis Annual Average (mg/L)	138
Cost Basis Annual Average (kg/d)	456
Total Suspended Solids (TSS)	
Cost Basis Annual Average (mg/L)	176
Cost Basis Annual Average (kg/d)	582
Total Ammonia Nitrogen (NH₄⁺ + NH₃)	
Cost Basis Annual Average (mg/L)	23
Cost Basis Annual Average (kg/d)	76
Total Phosphorus (TP)	
Cost Basis Annual Average (mg/L)	3.0
Cost Basis Annual Average (kg/d)	10.0

Schedule 5.5 (a)(vii)
Subcontractor Agreement Terms and Conditions

Where the Supplier retains a subcontractor either in respect of the Services or outside the scope of the Services but for the benefit of the Municipality, at a minimum the subcontract between the Supplier and the subcontractor shall include the following provisions for the benefit of the Municipality:

1. The Supplier is acting as an independent contractor vis-à-vis the Municipality and not as an agent of the Municipality.
2. The subcontractor will comply with all applicable laws and will remain compliant while providing the services under the subcontract with the Supplier.
3. The subcontractor will maintain the confidentiality of the Municipality's confidential information to which it may become privy.
4. The subcontractor will not assert any claim, right, demand or recourse against the Municipality in respect of the services provided under the subcontract with the Supplier.
5. The subcontractor will not use the Municipality's name in any promotional materials or other communications with third parties without the Municipality's written consent.
6. Where applicable, the subcontract will ensure a pass-through of any warranties and indemnities provided by the subcontractor, which will operate for the benefit of the Municipality.

Schedule 13.4

Termination Assistance Services

1. **Termination Assistance Services.**

The Supplier shall provide to the Municipality or its designee the Termination Assistance Services set out in Schedule 13.4 -A.

2. **Termination Management Team.**

Promptly after the commencement of the Termination Assistance Period, The Municipality and Supplier shall establish a termination management team comprised of one or more representatives of each Party, including representatives from any designee of the Municipality (the "**Termination Management Team**"). The Termination Management Team shall hold periodic meetings and telephone conference calls (i) to oversee and develop a detailed methodology for the transition and migration of the Services to the Municipality or its designee, (ii) to review the status of all Termination Assistance Services and (iii) to review recommendations and suggestions for an orderly transition and migration.

3. **Transfer of Resources.**

Upon the effective date of expiration or termination of the Agreement, the Parties shall effect the following:

- (a) **Assignment of Software Licenses.** The Supplier shall assign to the Municipality or its designee, and the Municipality or such designee shall assume the licenses with third-party vendors of the systems and application software licensed by the Supplier, including all manuals and databases, then being utilized primarily to provide the Services. The Supplier shall also contact all applicable software providers to release the Supplier from further annual support agreements and shall provide all applicable software providers appropriate contact information of the Municipality's software administrator. The Parties shall execute and deliver such assignment and assumption agreements as may be necessary for (i) the transfer and assignment to the Municipality of the Supplier's interests in such software, and (ii) the Municipality's assumption of the Supplier's obligations accruing under the applicable license agreements from and after the date of such assignment.
- (b) **Arrangements under Other Service Agreements.** Where possible, the Supplier shall arrange to pay all third-party service providers subcontractors in full to the date of termination of the Agreement. The Supplier shall otherwise make commercially reasonable efforts to make available to the Municipality or its designee, pursuant to reasonable terms and conditions, any third-party services then being utilized by the Supplier in the provision of the Services. The Supplier shall be entitled to retain the right to utilize any such third-party services in connection with the provision of services to other of the Supplier's municipal customers.

4. **Continuation of Services.**

- (a) To the extent that the Supplier provides Termination Assistance Services with the personnel and other resources then dedicated to the Municipality under this Agreement in the ordinary course of their work, the Municipality shall not be required to compensate the Supplier for any amounts in addition to the Annual Price or Rebased Annual Price, as the

case may be, provided that such reallocation does not impair Supplier's ability to continue providing the Services in compliance with the terms of this Agreement and all Applicable Laws.

- (b) If (i) the Supplier is required to utilize resources in providing such Termination Assistance Services other than the resources then assigned to the Municipality, or (ii) the Municipality extends the Termination Assistance Period beyond the effective date of the expiration or termination of this Agreement, the Municipality shall compensate the Supplier therefore in accordance with the rates set in Schedule 2.4 (Supplier Rate for Excluded Services).
- (c) The Municipality may reallocate the Supplier's resources then being used to provide the Services to the provision of Termination Assistance Services, provided that such reallocation does not make impair Supplier's ability to provide the Services in compliance with the terms of this Agreement and all Applicable Laws.

5. **Confidentiality.**

Where the Municipality requests that the Termination Assistance Services be provided in connection with the transition of the Services to an alternative third-party service provider, the Municipality shall require that such third-party service provider execute a non-disclosure agreement to protect the confidential information of the Supplier.

Schedule 13.4 –A
Description of Termination Assistance Services

1. **Pre-Termination Services:**

(a) Termination Assistance Plan

(i) The Supplier shall provide a Termination Assistance Plan (“**Termination Assistance Plan**”) to the Municipality within 120 days of the Effective Date, which Termination Assistance Plan shall ensure an orderly transition of the Services to the Municipality and/or its designee, in a manner that creates no risk of interruption of the Services and does not compromise the quality of the Services. The Termination Assistance Plan shall include, without limitation the following:

- a) an identification of the Services and related positions or functions that require transition and a schedule, plan and procedures for the Municipality and/or its designee assuming responsibility therefore;
- b) documentation of existing and planned projects and support activities;
- c) a schedule and plan for the Supplier's return to the Municipality of (i) the Facilities then occupied by the Supplier, (ii) office furniture, equipment and related items previously provided by the Municipality to the Supplier, and (iii) the Municipality Confidential Information, including the Municipality Data, documents, records, files, tapes and disks in the Supplier's possession;
- d) working to facilitate the transition of the Supplier staff providing the Services to the Municipality and/or its designee, as the case may be;
- e) conducting a complete inventory of the materials at the Facilities and documenting and reconciling all materials against purchase and consumption records, with any discrepancy being addressed in accordance with Article 13.5 of the Agreement; and
- f) conducting a complete inventory and inspection of the equipment at the Facilities, including providing a written report regarding the condition, deferred maintenance and anticipated remaining future life of the equipment.

(ii) The Supplier shall assist the Municipality in the identification of significant potential risk factors relating to the transition and shall assist in designing plans and contingencies to mitigate such risks.

(iii) The Supplier shall assist the Municipality in notifying any third-party vendors of the procedures to be followed during the transition.

(b) Other Pre-Termination Services:

(i) The Supplier shall provide to the Municipality multiple and interim tape copies of the Municipal Data as may be requested by the Municipality.

(c) Other Services

- (i) The Supplier shall provide training to the personnel of the Municipality or its designee to use any equipment, software or processes to be transitioned.
- (ii) The Supplier shall cooperate with the Municipality and its designee in conducting migration testing.
- (iii) The Supplier shall, to the extent possible and not prohibited by agreements with third parties, provide reasonable access to personnel, equipment, software, third parties and other resources used by the Supplier to provide the Services and information related thereto.

(d) Documentation

- (i) The Supplier shall provide to the Municipality and its designee copies of the manuals used to provide the Services, including other related documentation (such as equipment and software inventories, configuration information and all other technical documentation) within the possession or control of the Supplier that are required for continued provision of the Services by the Municipality or its designee, including:
 - a) Operations documentation
 - b) Account Manual
 - c) Disaster Recovery Plan

2. **Post Termination Services:**

- (a) Supplier shall provide such additional cooperation and assistance as may be reasonably requested by the Municipality and necessary to ensure continuity of operations, all upon such terms as the Parties may agree.