

**Agreement for Operations, Maintenance and Management Services
By and Between The Corporation of the Township of North Huron
and Veolia Water Canada, Inc.**

THIS AGREEMENT (the “Agreement”) is entered into this __5th__ day of April 2016 by and between:

The Corporation of the Township of North Huron, with its principal address at 274 Josephine Street, Wingham, Ontario N0G 2W0 (hereinafter "the Municipality");

and

Veolia Water Canada, Inc., with a business address at 150 Pony Drive, #2, Newmarket Ontario L3Y 7B6 (hereinafter "VWC").

WHEREAS, The Municipality owns and provides for the operation of water and wastewater and related treatment facilities;

WHEREAS, the Municipality desires to employ the services of VWC in the management, operation and maintenance of these facilities, and VWC desires to perform such services for the compensation provided for herein;

WHEREAS, the Municipality and VWC were parties to a contract dated October 9th, 2015 for provision of Overall Responsible Operator (ORO) services for the water and wastewater facilities; and

WHEREAS, the Municipality desires to have VWC assume responsibility for the overall operation, maintenance and management of the water and wastewater facilities and ;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Municipality and VWC agree as follows:

1 General

1.1 Definitions of words and phrases used in this Agreement and the Attachments thereto are contained in Appendix A. The Municipality or VWC, or both, may be referred to herein as the “Party” or the “Parties,” as the context of the usage of such term may require.

1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by the Municipality shall remain the exclusive property of the Municipality unless specifically provided for otherwise in this Agreement.

1.3 Intentionally left blank.

- 1.4 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.
- 1.5 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- 1.6 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given as follows: (a) when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express; (b) three days after being deposited in the Canada Post mail postage prepaid, if delivered by certified or registered mail, return receipt requested; or (c) when received by the party for which notice is intended, if given in any other manner.
- 1.7 This Agreement, including Appendices A through B, Schedule 2 and any written amendments that may be agreed by the parties, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "VWC" and "the Municipality" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.8 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
- 1.9 It is understood that the relationship of VWC to the Municipality is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services, and nothing herein is intended to imply that VWC is to supply professional engineering services to the Municipality, unless specifically stated in this Agreement to the contrary.
- 1.10 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which are directly attributed to such litigation, in addition to any other relief to which it may be entitled.
- 1.11 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.12 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefor, execute written Change Orders reflecting such changes,

render decisions promptly, and furnish information expeditiously to the other party when necessary.

2 VWC's Services - General

- 2.1 At the time this agreement is signed, VWC will staff the Project with employees, including management and operational personnel, who have met appropriate licensing and certification requirements of the Province of Ontario and who meet relevant legal requirements and certifications regarding operations and maintenance of the facilities and demonstrate experience necessary to operate and maintain the facilities. In staffing the Project, VWC will consider existing employees of the Municipality for continued employment at the Project, provided however that the ultimate decision about staffing, including identity and number of personnel at the Project, shall be at VWC's discretion.
- 2.1 a) VWC shall take on successor employer obligations for the 3 existing municipal operations staff intended to be hired from the municipality at the start of this contract. Employees shall generally be kept whole, such that their total annual compensation package is comparable to what they received from the Municipality, subject to a limitation of a maximum of 4 weeks annual vacation.
- 2.2 VWC shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, such as operations, maintenance, safety, supervisory skills, energy management, etc.
- 2.3 VWC shall develop and/or supply and utilize computerized programs for collection and furnishing of complete and accurate maintenance, process control, cost accounting, and laboratory Quality Assurance/Quality Control records. The computerized programs shall be capable of readily providing historical data and trends. VWC may continue to make use of the Municipalities network and software for tracking process control and laboratory data.
- 2.4 Within one hundred eighty (180) days after VWC begins service under this Agreement, VWC will provide a physical inventory of the Municipality's vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 2.5 VWC will provide the Municipality with a physical inventory of chemicals and other consumables (including spare parts) on hand when VWC begins services under this Agreement. VWC will provide the Municipality with the same quantity of chemicals and other consumables (including spare parts) or equivalent upon termination of this Agreement. In the event that VWC provides the Municipality with a quantity in excess of the baseline amount, the Municipality shall pay VWC for the additional chemicals supplied.

- 2.6 VWC shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by the Municipality and will assist the Municipality in enforcing existing equipment warranties and guarantees.
- 2.7 VWC shall provide the Municipality with full documentation that preventive maintenance is being performed on the Municipality's owned equipment, in accordance with prudent industry practices, at intervals and in sufficient detail as may be determined by the Municipality. Such a maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory.
- 2.8 VWC shall operate, maintain and/or monitor the Project on a 24-hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by the Municipality's employees so designated by the Municipality's representative. Keys for the Project shall be provided to the Municipality by VWC for such visits. All visitors to the Project shall comply with VWC's operating and safety procedures.
- 2.10 VWC will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to the Municipality regarding the need, if any, for the Municipality to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to VWC's operations hereunder.
- 2.11 VWC may modify the process and/or facilities to achieve the objectives of this Agreement and charge the Costs to the Maintenance and Repair Limit; provided, however, no modification shall be without the Municipality's prior written approval, if the complete modification Cost shall be in excess of two thousand dollars (\$2,000.00).
- 2.12 In any emergency affecting the safety of persons or property, VWC may act without written amendment or change order, at VWC's discretion, to prevent threatened damage, injury or loss. Except where the emergency is the direct result solely of VWC's negligence, VWC shall be compensated by the Municipality for any such emergency work notwithstanding the lack of written approval. Such compensation shall include VWC's Costs for the emergency work plus a reasonable mark-up for overhead and profit. Nothing contained in this Section shall impose upon VWC a duty to perform any emergency work absent a change order, and failure to perform any such emergency work shall not impose upon VWC any liability for errors and omissions.
- 2.13 As required by law, permit or court order, VWC will prepare plant performance reports and submit them to the Municipality for signature and transmittal to appropriate authorities.
- 2.14 VWC will provide laboratory testing and sampling presently required by plant performance portions of any federal, provincial or local rules and regulations,

statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.

- 2.15 By Nov1 each year VWC will provide a listing of recommended capital improvements required for the Project. VWC will not be relieved of its responsibility to perform if the recommendations are not implemented; provided, however, that capital improvement necessary to: (i) meet effluent requirements; or (ii) meet federal, provincial or local laws, rules or regulations for the safety of persons in or about the Project, shall not be optional for the Municipality. If approved, the Municipality will make arrangements for the design and construction of said improvements.
- 2.16 VWC will otherwise operate the facilities in accordance with all applicable laws and regulations regarding the operation, maintenance, and management of the facilities and all applicable reporting requirements.

3 VWC's Scope of Services – Water and Wastewater

- 3.1 This Article shall apply to VWC's OM&M services for the Municipality's water treatment and supply systems and waste water treatment facilities (the “**Facilities**”), described in Schedule 2.1(a);
- 3.2 Within the design capacity and capabilities of the Facilities described in Schedule 2.1(a), VWC will manage, operate and maintain the Facilities in such manner that they meet the requirements specified in Schedule 2.
- 3.3 Subject to the availability of funds within the Maintenance and Repair Limit, VWC will perform all Maintenance and Repairs, and submit a monthly accounting to the Municipality, along with a detailed invoice, if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 5.1. The scope of the Systems and of VWC's services for the maintenance and repair of the Systems are set forth in Schedule 2.
- 3.4 VWC shall maintain lab sample analysis , of the Municipalities regulatory samples, by SGS labs, and shall not change labs without the express permission of the Municipality

4 The Municipality's Duties

- 4.1 The Municipality shall fund all necessary Capital Expenditures. Priority shall be given to safety related expenses. Any loss, damage, or injury resulting from the Municipality's failure to provide capital improvements and/or funds in excess of the Maintenance and Repair Limit, when reasonably requested by VWC, shall be the sole responsibility of the Municipality.

- 4.2 The Municipality shall keep in force and maintain at its sole expense all Project permits, warranties, guarantees, easements and licenses that have been granted to the Municipality and are not transferred to VWC under this Agreement.
- 4.3 The Municipality shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Project, if any, other than taxes imposed upon VWC's net income and/or payroll taxes for VWC employees.
- 4.4 The Municipality shall provide VWC, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of the Municipality's heavy equipment, including suitably licensed operator, that is available so that VWC may discharge its obligations under this Agreement in the most cost effective manner. This includes specifically the Municipalities sewer flushing truck, which the Municipality shall retain ownership of and keep licensed and in good repair
- 4.5 The Municipality shall provide all registrations and licenses, and insurance for the Municipality's vehicles used in connection with the Project.
- 4.6 As necessary, the Municipality shall provide for VWC's entry into existing disposal facilities for screenings, grit, sludge and scum.
- 4.7 The Municipality shall provide the Project with appropriate security personnel and/or devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by the Municipality and shall accept liability for such losses, except to the extent such losses are directly caused by the negligent acts or omissions of VWC.
- 4.8 The Municipality shall retain and maintain computer networks, software and storage and provide access to VWC, so as to permit VWC to utilize the existing Municipal system for maintaining and accessing operations report, records and data
- 4.9 The Municipality shall arrange and pay for the cost of all utilities (including but not limited to hydro, natural gas, telephone, internet, municipal IT infrastructure. VWC will pay for the cost of generator diesel fuel
- 4.10 The Municipality shall pay for the costs of any security systems that are in place at any of the facilities.
- 4.11 The Municipality shall pay for all Out of Scope services provided by VWC as Out of Scope Services, as approved by the Municipality.
- 4.12 The Municipality shall provide 2 bag tags per week for waste collection. VWC shall encourage recycling at the Facilities and any costs for additional waste disposal (additional bag tags) shall be covered by VWC.

- 4.13 Should the contract be terminated for any reason, the municipality shall instruct and require the replacement O&M service provider to hire and assume successor employer obligations for any of the 3 municipal employees referred to in section 2, who remain working at the project at the time the contract is terminated.

5 Compensation

- 5.1 VWC's compensation under this Agreement shall consist of an Annual Fee. For the first year of this Agreement, VWC's Annual Fee is \$625,000. The Maintenance and Repair Limit included in the Annual Fee is \$25,000. Beginning each year this agreement is in force, VWC will pay the first \$25,000.00, or an amount as may agree to in writing between the Parties, for all Maintenance and Repairs at the Facilities incurred during that Year of the Initial Term or Current Term. These costs will be tracked and reported to the Client on a quarterly basis.
- 5.1.1 If, during each contract year to the end of the initial term only, the maximum aggregate allowance is not exceeded, then the unexpended funds will be returned to the Municipality or carried over into the following year as agreed between the Parties.
- 5.1.2 Maintenance, repair, or replacement projects over \$10,000.00 dollars shall be deemed not to come within the Scope of Services and may be funded and managed by the Municipality in their entirety, provided that the Municipality may, at its discretion, have work related to the Maintenance performed by a third party, or by VWC on an Out of Scope basis.
- 5.1.3 For the first contract year only there shall be a one-time charge of \$10,000 for DWQMS set up and accreditation. To be charged upon receipt of accreditation by VWC
- 5.2 If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the Municipality will pay the excess to VWC as Out of Scope Service in accordance with Section 6. VWC will notify the Municipality when actual Maintenance and Repair expenditures equal eighty percent (80%) of Maintenance and Repair Limit.
- 5.3 The Annual Fee shall be negotiated each year at least four (4) months prior to the anniversary of this Agreement's commencement date. Should the Municipality and VWC fail to agree, the Annual Fee will be determined by applying yearly change in the Consumer Price Index (all items for the month of November) for Ontario to the Annual Fee, provided that the Fee will in no event decrease as a result of the application of the index. The portion of the Annual Fee attributed to the Maintenance and Repair Limit shall increase or decrease by a percentage equal to the change in the Annual Fee.

- 5.4 VWC shall bill the Municipality in its regular monthly billing for any Out of Scope Services provided according to the Out of Scope fee table in Schedule 2.

6 Payment of Compensation

- 6.1 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 provisions of the Services, provided that VWC shall have sent the Municipality an invoice on or around the 15th day of the previous month during which the Services were being provided.
- 6.2 All other compensation to VWC is due upon receipt of VWC's invoice and payable within fifteen (15) days.
- 6.3 The Municipality shall pay interest at an annual rate equal to the Bank of Canada's Prime Rate plus four percent (4.0%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

7 Scope Changes

- 7.1 A Change in Scope of services shall occur when and as VWC's costs of providing services under this Agreement change as a result of:
- 7.1.1 any change in Project operations, personnel qualifications or staffing or other cost which is a result of an Unforeseen Circumstance;
 - 7.1.2 increases or decreases in the user base;
 - 7.1.3 the Municipality's request of VWC and VWC's consent to provide additional services;
 - 7.1.4 increases or decreases in insurance premium costs or healthcare benefit costs which are not caused by the fault of either party; or
 - 7.1.5 The Municipality and VWC shall negotiate an increase or decrease in VWC's Annual Fee for Changes in Scope.

8 Indemnity, Liability and Insurance

- 8.1 Notwithstanding anything to the contrary in this Agreement, VWC hereby agrees to indemnify and hold the Municipality harmless from any liability or damages which may arise from VWC's negligence or willful misconduct under this Agreement; provided, VWC shall be liable only for that percentage of total damages that

corresponds to its percentage of total negligence or fault. Incidents related to influent containing Abnormal Substances beyond the control of VWC shall not be the responsibility of VWC.

- 8.2 The Municipality agrees to indemnify and hold VWC harmless from any liability or damages which may arise from all causes of any kind other than VWC's negligence or willful misconduct, including, but not limited to, breach of a Municipal warranty.
- 8.3 NEITHER PARTY NOR THEIR AFFILIATED COMPANIES, NOR THE OFFICERS, AGENTS AND EMPLOYEES OR CONTRACTORS OF ANY OF THE FOREGOING, SHALL BE LIABLE TO THE OTHER IN ANY ACTION OR CLAIM FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT, OR LOSS OF USE. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.
- 8.4 VWC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Nothing in this paragraph shall weaken or derogate any manufacturer's warranty which may be applicable.
- 8.5 Except when caused by Abnormal Substances, VWC shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the date of VWC's operation of the Facilities relating to the effluent quality requirements provided for in Schedule 2 that are a result of VWC's negligence. The Municipality will assist VWC to contest any such fines in administrative proceedings and/or in court prior to any payment by VWC. VWC shall pay the cost of any such contest.
- 8.6 The Municipality shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on the Municipality and/or VWC that are not a result of VWC's negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold VWC harmless from the payment of any such fines and/or penalties. VWC shall assist the Municipality to its fullest extent possible in defending the Municipality in any proceeding.
- 8.7 To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, VWC's liability for performance or non-performance of any obligation arising under the Agreement (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations specified in Section 8.1 of the Agreement, shall be limited to: (i) general money damages in an amount equal to the amount of any proceeds of insurance received by the Municipality or to which VWC is entitled

pursuant to any general liability insurance or automobile liability policy required to be maintained by VWC hereunder as specified in Appendix B (without regard to the amount of any deductible which may be applicable under any such general liability or automobile liability policy) with respect to such loss; or (ii) to the extent proceeds of insurance are not received and such general liability or automobile insurance is not applicable, a cumulative aggregate over the full initial term and any extended term(s) of this agreement of an amount not to exceed \$250,000.00.

- 8.8 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix B. Each party assumes the risk of loss or damage to its respective property, from any cause, including the actual or alleged negligence or strict liability of the other party, and shall maintain broad form property insurance in order to protect both parties against any such loss. Each party shall provide the other party with reasonably satisfactory proof of insurance.
- 8.9 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement, or any renewals thereof.

9 Term, Termination and Default

- 9.1 The initial term of this Agreement shall end May 31, 2021. Thereafter, this Agreement shall be automatically renewed for successive terms of five (5) years each, unless canceled in writing by either party no less than one hundred and twenty (120) days prior to expiration. During any term after the initial term, either party may terminate the contract with 180 days' written notice.
- 9.2 During the initial term, a party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by the Municipality for non-payment of VWC's invoices, in which case termination may be immediate by VWC, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 9.3 In the event that this Agreement is terminated for any reason other than material breach prior to the termination date of the initial term, the Municipality shall pay to VWC a termination fee based on VWC's good faith calculation of any remaining unamortized balance of start-up costs and any demobilization costs or committed costs of VWC.
- 9.4 Upon notice of termination by the Municipality, VWC shall assist the Municipality in assuming operation of the Project. If additional Cost is incurred by VWC at request of the Municipality, the Municipality shall pay VWC such Cost within 15 days of invoice receipt.

- 9.5 Upon termination of this Agreement and all renewals and extensions of it, VWC will return the Project to the Municipality in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by VWC for use in the operation or maintenance of the Project shall remain the property of VWC upon termination of this Agreement, unless the property was directly paid for by the Municipality, or the Municipality specifically reimbursed VWC for the cost incurred to purchase the property, or this Agreement provides to the contrary.
- 9.6 At the time of entering into this agreement, the Municipality is negotiating a services sharing agreement with the neighbouring municipality of Morris Turnberry, where VWC currently holds a contract for the Operation and Maintenance of the water system in the town of Belgrave. If the municipalities succeed in reaching an agreement, VWC agrees that this agreement and our agreement with Morris Turnberry, may be renegotiated in a manner acceptable to both parties, to reflect the sharing agreement of the two municipalities.

10 Disputes and Force Majeure

- 10.1 In the event activities by employee groups or unions cause a disruption in VWC's ability to perform at the Project, the Municipality, with VWC's assistance or VWC at its own option, may seek appropriate injunctive court orders. During any such disruption, VWC shall operate the facilities on a best-efforts basis until any such disruptions cease.
- 10.2 Neither party shall be liable for its failure to perform its obligations under this Agreement, if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

11 Confidentiality

- 11.1 VWC or the Municipality may from time to time disclose to the other party confidential information relating to the provision of services or the terms of this Agreement ("Confidential Information"). Neither party will disclose Confidential Information of the other to any third party, or use such Confidential Information for any purpose other than as specified herein, without the express written consent of the other party. Confidential Information will be clearly designated in writing as confidential. Confidential Information does not include information: (a) generally available to or known to the public; (b) previously known to the recipient; (c) independently developed by the recipient outside the scope of this Agreement; (d) lawfully disclosed by a third party; or (e) required to be disclosed by operation of law. Upon any termination or expiration of this Agreement in accordance with its terms, each party will, within a reasonable period of time thereafter return all confidential or proprietary information received from the other party under the terms of this Agreement, except that each party may retain a legal file copy.

- 11.2 Any protectable intellectual property developed or used by VWC in the course of performing the services under this Agreement shall be the exclusive property of VWC.
- 11.3 The obligations of the Municipality to maintain confidential information is subject to the application of the MFIPPA

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Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental actions necessary to bind the parties to the terms of this Agreement have been and will be taken.

I have authority to bind the corporation

I have authority to bind the corporation

THE CORPORATION OF THE Township of
North Huron

VEOLIA WATER CANADA, INC.

By:_____

By:_____

Name:_____

Name:_____Mark Rupke_____

Title:_____

Title: _____Vice President Operations_____

Date:_____

Date:_____

APPENDIX A

DEFINITIONS

- A.1 “Abnormal Substances” means substances or materials that: (i) create a fire or explosion hazard at the Facility; (ii) will cause corrosive structural damage to the Facility; (iii) contain solid or viscous pollutants in amounts which will cause obstruction to the flow in the Facility; (iv) are present in flow rates or concentrations that are not treatable by normal facility processes; (v) will result in the presence of toxic gases, vapors or fumes within the Facility in a 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 Facility.
- A.2 "Annual Fee" means a predetermined, fixed sum for VWC's services. The Annual Fee includes Cost and profit.
- A.3 "Capital Expenditures" means any expenditures for (1) the purchase of new or replacement equipment or facility items that cost more than Ten Thousand Dollars (\$10,000); or (2) major repairs which significantly extend equipment or facility service life and cost more than Ten Thousand Dollars (\$10,000) or (3) expenditures that are planned, non-routine and budgeted by the Municipality.
- A.4 "Cost" means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.
- A.5 "Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, tools, memberships and training supplies.
- A.6 "Maintenance" means those routine and/or repetitive activities required or recommended by prudent industry practices or by VWC to maximize the service life of the equipment, sewer, vehicles and facilities.
- A.7 "Maintenance and Repair Limit" means the total Maintenance and Repair expenditures that VWC has included in the Annual Fee. Such expenditures exclude any labor costs for VWC's staff assigned to the Project. VWC's specialized maintenance personnel, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.
- A.8
- A.9 “Out of Scope Services” are those services provided by VWC, at the request of the Municipality, which are outside of the scope of service under this agreement, or explicitly

identified as such herein, for which VWC shall bill the Municipality as indicated in Schedule 2.

- A.10 The "Project" means all equipment, vehicles, grounds, rights of way, sewers associated with the facilities described in Schedule 2.1(a) and, where appropriate, the management, operations and maintenance of such.
- A.11 "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- A.12 "Routine Maintenance" means those small regularly scheduled maintenance activities occurring at least annually such as lubricating equipment, changing oil, belts etc. for which costs are not charged to the Maintenance and Repair Limit.
- A.13 "Unforeseen Circumstances" shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, provincial, or federal administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body as it relates to performance under this Agreement, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of VWC; and (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

APPENDIX B

INSURANCE COVERAGE

VWC SHALL MAINTAIN:

1. Statutory workers' compensation for all of VWC's employees at the Project as required by the Province of Ontario.
2. Commercial General Liability insurance, insuring VWC's negligence, in an amount of \$15,000,000 each occurrence and \$15,000,000 general aggregate for bodily injury and/or property damage.
3. Business Automobile Liability insurance, insuring owned, non-owned and hired automobiles used by VWC in its performance of this Agreement in an amount of \$1,000,000 combined single limit each accident.
4. Pollution Liability Insurance, insuring VWC's negligence, in an amount \$5,000,000 per incident and \$5,000,000 policy aggregate on a Claims Made basis. Said policy will not cover pre-existing pollution caused by or existing at the Municipality's site, except for that portion of and to the extent exacerbated by VWC's negligent acts.

THE MUNICIPALITY SHALL MAINTAIN:

1. Statutory workers' compensation for all of the Municipality's employees associated with the Project as required by the Province of Ontario.
2. Property damage insurance at total replacement value for all property, including vehicles owned by the Municipality and operated by VWC under this Agreement. Any property, including vehicles, not properly or fully insured shall be the financial responsibility of the Municipality.

VWC will provide certificates of insurance at the Municipality's request upon signing of this Agreement. VWC and the Municipality will endeavor to provide at least ten (10) days' notice of the cancellation or non-renewal of any policy they are required to maintain under this Agreement. VWC may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law. Each party shall include the other party as an additional insured on the coverage's, required herein, excluding workers' compensation, required to be maintained hereby. Each party shall waive its and its insurers' rights of subrogation as respects any claims covered or which should have been covered by valid and collectible insurance including any deductibles and retentions maintained thereunder.