

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 06-668

Being a by-law to authorize the execution of an Agreement between the Ontario Clean Water Agency and the Corporation of the Municipality of Temagami for the provision of operation and maintenance services

WHEREAS under Section 8 of the Municipal Act, 2001, S.O., 2001 C.25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

AND WHEREAS under section 9. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues.

NOW THEREFORE the Council of the Corporation of the Municipality of Temagami enacts as follows:

1. The Mayor and Chief Administrative Officer be authorized to execute the agreement on behalf of the Corporation of the Municipality of Temagami, affix the Seal of the Corporation, and deliver the attached agreement known as Schedule 'A' to this By-law and forming part of the By-law;
2. This By-law shall come into force and take effect upon the final passing thereof.

Read a first and second time this 27th day of July, 2006.

Read a third time and finally passed this 27th day of July, 2006.



Mayor



CAO/C&

SERVICES AGREEMENT

BETWEEN

ONTARIO CLEAN WATER AGENCY

AND

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

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SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of July, 2006,

BETWEEN

ONTARIO CLEAN WATER AGENCY/AGENCE ONTARIENNE DES EAUX,
a corporation established under the *Capital Investment Plan Act, 1993, c.23*, Statutes
of Ontario.

("OCWA")

AND

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

(the "Client")

RECITALS

- (a) OCWA is in the business of providing operation and maintenance services for water and wastewater facilities.
- (b) The Client is the owner of the Temagami Water and Wastewater Facilities more particularly described in Schedule A (the "Facility").
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facility in accordance with the provisions of this agreement (the "Agreement").
- (d) The Client and OCWA (collectively, the "Parties" and each a "Party") are entering this Agreement to clarify and set out their respective rights and obligations with respect to the operation, maintenance, invoicing and payment arrangements for the Facility.
- (e) The Council of the Client on the day of, 2006 passed By-Law
No. authorizing the Client to enter into this Agreement.

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby irrevocably acknowledged, the Client and OCWA agree as follows:

ARTICLE 1 - INTERPRETATION

Section 1.1 - Definitions

In this Agreement, definitions are set out in Schedule B, or within applicable provisions as indicated.

Section 1.2 - Interpretation

The rule of construction that a document is to be construed more strictly against the party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

- (a) The Client retains OCWA to provide management, operation, administration and maintenance services, as described in Schedule C to this Agreement, in respect of the Facility (the "Services"). The Client acknowledges and agrees that OCWA bears no responsibility for the design of the Facility.
- (b) The Client acknowledges and agrees that for the purposes of section 449 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, OCWA is an agent of the Client.

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Capital Expenditures reasonably recommended by OCWA as per Section 4.6 herein;
 - (ii) failure of the Client to meet its representations and warranties specified in this Agreement;
 - (iii) failure of any equipment at the Facility unless the failure is due to negligent maintenance by OCWA;
 - (iv) the water transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes;
 - (v) the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Laws;

- (vi) the wastewater transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes;
 - (vii) the quantity or quality of water/wastewater transmitted to the Facility exceeds the Facility's design or operating capacity;
 - (viii) operational upset conditions caused by the acceptance of septage or leachate;
 - (ix) unavailability of approved lands for application of sludge.
- (b) OCWA may temporarily cease to provide or reduce, the level of provision of Services hereunder in the event of an emergency, a breakdown or any Uncontrollable Circumstance. OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of any such occurrence.
- (c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the reasonable control of OCWA (an "Uncontrollable Circumstance"), including but not limited to any circumstances set out in Paragraph 2.2(a), decrees of government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, war, civil disturbances, riots, explosions, fire and acts of third parties.
- (d) In the event that a deficiency in connection with the Facility is determined to exist, OCWA, in its discretion, may take remedial measures that it determines are reasonably necessary in attempting to maintain the Facility in compliance with Environmental Laws. Such measures may be beyond the scope of the Services and as such would be subject to extra costs. OCWA shall use its best efforts to contact the Client and obtain the Client's approval prior to undertaking such remedial measures.
- (e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that such remedial measures taken by OCWA may be as a result of an emergency situation or an Uncontrollable Circumstance and that in such situations OCWA's primary concern will be to make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.

Section 2.3 - Excluded Services

Any services not set out in Schedule C are excluded from the Services (the "Excluded Services") and, without limiting the generality of the foregoing, those services set out in Schedule D to this Agreement are examples of Excluded Services. If the Client subsequently requests OCWA to provide the Excluded Services, the Excluded Services may be provided at additional cost to the Client following negotiation.

Section 2.4 - Standard of Care

OCWA shall deliver the Services as would a reasonable operator with like skills in like circumstances.

Section 2.5 - OCWA as Independent Contractor

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

Section 2.6 - Authorized Representatives

Each of OCWA and the Client shall be entitled to designate in writing to the other, one or more individuals who shall be authorized to represent it in connection with the day-to-day administration of the provisions of this Agreement (the "Authorized Representatives"). Each of the Parties shall be entitled to rely on the acts and approvals given by the other Party's Authorized Representative until such time as it receives a written notification of change of the other Party's Authorized Representative.

Section 2.7 - Reporting

Within forty-five (45) days of the end of each year or such other period as the Client and OCWA may agree upon, OCWA shall provide the Client's Authorized Representative with a report describing the Facility's performance for that period.

Section 2.8 - Indemnification of the Client

OCWA shall exonerate, indemnify and hold harmless the Client, its directors, officers, employees and agents from and against any and all Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client to the extent that such Claim is caused by OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to a condition of the Facility which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule F. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly. The Client shall be deemed to hold the provisions of this Section 2.8 that are for the benefit of the Client's directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.

Section 2.9 - Insurance

- (a) OCWA shall arrange for and maintain, subject to reasonable availability, insurance coverage of the Facility as described in Schedule E to this Agreement (the "Insurance") and, with the exception of automobile insurance, the Client shall be an additional insured under the Insurance. The Client acknowledges that, given the unpredictability of the insurance market, deductibles and coverage limits may not be available (or may not be reasonably priced) from year to year and therefore insurance coverage is reviewed annually. Increases may be charged to the Client in accordance with Clause 4.2(a)(ii).
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the pre-existing condition of the Facility. As such, OCWA is not required to obtain insurance for this purpose and that the Client has or will obtain its own insurance.
- (c) The Client may, at its cost, maintain additional insurance in respect of the Facility if it wishes and OCWA shall be an additional insured under such insurance.
- (d) The Client shall be responsible for securing its own insurance for any operations with which it is involved or which are Excluded Services that are not the subject of this Agreement. The Client acknowledges that it will have no recourse under OCWA's policies of insurance for any such operations.
- (e) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule E.

Section 2.10 - Representations and Warranties of OCWA

OCWA represents and warrants to the Client that the following are true and correct:

- (a) that it has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement; and
- (b) OCWA's staff are trained and capable of carrying out the terms of this Agreement.

ARTICLE 3 ■ RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

The Client represents and warrants to OCWA that the following are true and correct:

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement.

- (b) The Client has passed all necessary by-laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, including without limitation, any Authorizations required from the Ontario Municipal Board and the Ministry of the Environment, and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal by-law required to authorize the Client to enter into and perform its obligations under this Agreement.
- (d) As owner of the Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility and recognizes its duty to ensure the protection and safety of the users of this municipal drinking-water system.
- (e) The Client warrants that there are no Pre-existing Conditions existing at the Facility which would affect OCWA's ability to operate the Facility under this Agreement, other than what is listed in Schedule F. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (f) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facility is in compliance with all Applicable Laws.

Section 3.2 - Covenants of the Client

The Client hereby covenants for the benefit of OCWA:

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.8.
- (b) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report required by regulation or governmental notice or order pertaining to the Facility.
- (c) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like facility, all wastewater works and water works that belong to or are under the control of the Client and that collect and transmit and distribute wastewater and water to and from the Facility.
- (d) The Client agrees to: (i) immediately provide OCWA with a copy of all orders which apply to the Facility as they may be issued to the Client by any regulatory agency from time to time; and (ii) commit the necessary resources (financial, technical, legal) to appropriately address such orders.

- (e) The Client shall take reasonable steps to ensure that wastewater transmitted to the Facility complies with the Client's sewer use by-law and any Environmental Laws. If requested by OCWA, the Client shall provide OCWA with copies of the Client's inspection reports (sewer usage, cross-connections, sump pump connections) if available.
- (f) The Client shall inform OCWA if the Facility is to accept septage or leachate. The Client shall provide OCWA with a report of a professional engineer indicating that the Facility is capable of handling such additional Loadings. The Client shall provide OCWA with a list of haulers from which OCWA is to accept septage or leachate at the Facility. OCWA shall not be responsible for any operational impacts caused by the septage or leachate. The Client shall be fully responsible for any additional costs incurred as a result of the acceptance of septage or leachate at the Facility.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all directors, officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, either arise from or are connected with the operation of this Agreement.
- (b) OCWA shall be deemed to hold the provisions of this Article 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding the other provisions of this Section 3.3, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by the Insurance, however, the Client shall be responsible for any deduction or self-insured retention amount in accordance with Schedule E;
 - (ii) to the extent that such Claim is caused by OCWA's negligence or wilful misconduct in providing the Services.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on July 1, 2006 and shall continue in effect for an initial term of five years, ending on June 30, 2011 (the "Initial Term") unless terminated under Sections 6.1 or 6.2 of this Agreement and then shall be renewed for successive five-year terms (each a "Renewal Term") upon agreement between the Parties, subject to Sections 4.3 and 6.2 of this Agreement.

Section 4.2 - Annual Price for Initial Term

- (a) Subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay OCWA for OCWA's provision of the Services, a price for each year of the Initial Term in the following amounts (the "Annual Price"):
 - (i) For Year One from July 1, 2006 through to June 30, 2007 inclusive: \$215,739.00.
 - (ii) For Year Two and subsequent Years: \$215,739.00 plus an adjustment for inflation calculated as described below in Paragraph 4.2(b), plus an adjustment for maintaining the Insurance which is renewed annually by OCWA (if over the CPI adjustment).
- (b) Statistics Canada Consumer Price Index, All Items (Ontario) ("CPI") shall be used to calculate the inflation adjustment referred to in Paragraph 4.2(a) above. The percentage difference between the CPI during November of the previous Year as compared to the CPI of November of the current Year shall be the inflation adjustment for the next Year. For example, the inflation adjustment for Year 2007 is the CPI of November 2006 divided by the CPI of November 2005. The adjustment shall be calculated as soon as necessary information is available from Statistics Canada. In Year Two of the Agreement and subsequent Years, the inflation adjustment shall be added to the Annual Price for Year One of the Agreement on a cumulative basis.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for any Renewal Term will be as agreed between the Client and OCWA. If the Parties cannot agree on the Annual Price for any Renewal Term within six months of the beginning of the last Year of the Initial Term or Renewal Term, as the case may be, (the "Current Term"), this Agreement will be terminated six months from the last day of the Current Term. During this six month period, the Client shall pay the Annual Price paid for the last Year of the Current Term plus an adjustment for inflation calculated as described in Paragraph 4.2(b), pro-rated over the six month period.

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each Year of the Initial Term or any Current Term, in twelve equal monthly payments, in advance, on the first day of each month. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client. In Year One of the Initial Term, the monthly payment of the Annual Price shall be \$17,978.25. The first payment shall be due and payable on July 1, 2006. Payment shall be made by the Client by pre-authorized debit from an account designated by the Client, or by cheque.

Section 4.5 - Items not included in the Annual Price

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

- (a) any Capital Expenditures, except as set forth in Paragraph 4.6(d), or costs resulting from any failure of the Client to implement reasonably recommended Capital Expenditures;
- (b) any emergency response and Call-outs (the "Call-out") in excess of 24 Call-outs per year outside of regular work hours (7.30 a.m. to 4:00 p.m.) on a Business Day, weekends and statutory holidays, which shall be billed to the Client at a minimum charge of \$240.00 per Call-out. Any Call-out requiring a response greater than 4 hours will incur additional charges at a rate of \$60.00 per hour per person.
- (c) additional costs resulting from changes to any Applicable Laws or Environmental Laws or the application thereof, which relate to the provision of the Services. Without limiting the generality of the foregoing, an amendment to an applicable Certificate of Approval shall be considered a change in Applicable Law. Although certain sections of the *Safe Drinking Water Act, 2002* ("SDWA"), O. Reg. 170/03 and various other regulations under the SDWA, came into force on June 1, 2003 or certain sections of the *Nutrient Management Act, 2002* (and its regulations) have come into force, many requirements have not yet been phased in as of the effective date of this Agreement. The Parties acknowledge and agree that any additional services and associated costs related to meeting the new regulatory requirements have not yet been determined as of the effective date of this Agreement, and therefore such costs have not been included in the Annual Price. OCWA reserves the right to negotiate with the Client to provide such additional services, if any, for additional cost;
- (d) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (e) the payment of municipal taxes or municipal grants in lieu of taxes; and

- (f) any charges resulting from adverse tax changes in respect of the Services or the Facility.
- (g) any charges resulting from OCWA having to address an emergency, breakdown or Uncontrollable Circumstance and, without limiting the generality of the foregoing, such charges resulting from those situations addressed in Section 2.2 of this Agreement.
- (h) any charges for hydro electricity and natural gas.

Section 4.6 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding routine maintenance); any alterations and any associated installations, commissioning, including labour and preselection charges, together with the Service Fee.
- (b) No later than November 31st of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with an estimate of the Capital Expenditures reasonably required for the operation of the Facility for the following Year. The Client's written approval of the estimate or revised estimate authorizes OCWA to incur the Capital Expenditures included in the estimate (the "Approved Capital Expenditures").
- (c) OCWA will invoice the Client for the Approved Capital Expenditures together with supporting documentation and the Client shall pay the invoice within 30 days of receipt.
- (d) Each Year, OCWA will pay the first \$2,000.00 of Capital Expenditures incurred during that Year of the Initial Term or Current Term. OCWA will not be required to obtain the prior approval of the Client before incurring such Capital Expenditures up to \$2,000.00 per Year.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures which may include Capital Expenditures outside of the Approved Capital Expenditures, that OCWA reasonably incurs in order to address changes in Environmental Laws, addressing adverse incidents, any work required by regulatory order (eg. MOE or MOL) or identified through an inspection (eg. ESA, MOE, MOL); equipment failure, acts of third parties, or other circumstances beyond OCWA's reasonable control, including but not limited to unregulated septic dumping, illegal industrial waste discharges or overflows, an emergency situation, circumstances set out in Paragraph 2.2(a), or any situation resulting from an Uncontrollable Circumstance, together with the Service Fee.

- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred and the Client shall pay OCWA for the Unexpected Expenses within thirty (30) days of receipt of an invoice from OCWA.

Section 4.8 - Interest on Late Payments

- (a) **Monthly Payment of Annual Price.** If the Client's monthly payment of the Annual Price is not available in its designated bank account on the agreed to date of payment, or if a cheque payable to the Ontario Clean Water Agency, has not been received, OCWA will notify the Client that the funds were not available. On the next Business Day, OCWA will again attempt to withdraw the monthly payment if payment is by electronic transfer. If funds are not available when the second attempt to withdraw funds is made or if OCWA has not yet received a cheque for payment, OCWA will notify the Client that the payment is late, and in addition to paying the monthly payment owing to OCWA, the Client shall pay OCWA interest at that rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the *Financial Administration Act*, R.S.0.1990, c.F.12, plus any banking and administrative charges. Continued non-payment shall constitute a material breach under Section 6.2(b).
- (b) **Other Invoices.** Paragraph 4.8(a) shall also apply to late payments of invoices for costs for other services provided under this Agreement.

Section 4.9 - Partial Payment of Disputed Invoices

- (a) If the Client wishes to dispute any portion of an invoice, within forty-five (45) days from the date on the disputed invoice, the Client must provide written notice to OCWA of the charges in dispute. If no written notice is received within the above 45 days, the invoice shall be deemed to be approved and interest shall be payable by the Client, if still unpaid after 30 days from the Client's receipt of the invoice.
- (b) If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date and shall also continue to pay all monthly payments of the Annual Price due on the first of each month. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided in Section 4.8 above, within ten days from the date of final determination.
- (c) If the disputed charges cannot be resolved with a reasonable time, the Parties shall seek resolution in accordance with Article 5, Dispute Resolution.

Section 4.10 - Hydro Costs

OCWA is not responsible for paying the hydroelectricity charges. The Client shall pay all hydroelectricity bills.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Mediation

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, the issue shall be referred to a mediator.
- (b) The fees and expenses of the mediator shall be divided equally between the Parties.
- (c) Involvement in mediation is on a without prejudice basis and does not preclude and is not a bar to either Party pursuing whatever legal remedies may be available, including litigation.

ARTICLE 6 - TERMINATION

Section 6.1 - Option for Early Termination within first year

In addition to all other rights of termination set out in this Agreement and available at law, the Client shall have the option to terminate this Agreement during the period between July 1, 2006 and June 30, 2007 (the "First Year"). If the Client provides notice for termination to OCWA during the first 6 months of the First Year, then this Agreement will terminate no sooner than June 30, 2007. If the Client provides notice to OCWA during the latter 6 months of the First Year, then this Agreement shall terminate 6 months from the date the termination notice was received by OCWA.

Section 6.2 - Termination of Agreement

- (a) At least six calendar months before the expiry of the Current Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or

- (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Current Term.

If no notice is given as indicated in Clause 6.2(a)(i) or (ii) and the Parties have not begun to negotiate the Annual Price for the next Renewal Term within the last six months of the final year of the Current Term, then the Current Term shall be extended by one year and Section 4.2 shall apply. If the Parties have begun to negotiate the Annual Price for the next Renewal Term within the first six months of the final year of the Current Term, Section 4.3 shall apply.

- (b) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA ("Termination for Cause") if:
 - (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party;
 - (iii) the other Party does not correct the breach within thirty days of receiving the notice; and
 - (iv) in accordance with Paragraph 6.2(c).
- (c) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.2(b) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least thirty (30) days notice in writing to the other Party.
- (d) If either Party disputes the existence of a breach or that the breach is material, the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (e) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) for any reason, upon six months prior written notice; or
 - (ii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraphs 6.2(b) and 6.2(c) above.
- (f) Continued non-payment for moneys payable under this Agreement shall constitute a material breach of the non-paying Party.

Section 6.3 - Early Termination

If this Agreement is terminated for any reason prior to expiry of the Current Term, the Client shall pay OCWA for the Services rendered up to the date of termination and any outstanding Capital Expenditures, Unexpected Expenses or other charges for extra services negotiated by the Parties plus any applicable Service Fees, and OCWA shall pay the Client for any moneys owed up to the date of termination in accordance with Section 6.5. Since Insurance is purchased on an annual basis, the Client will be charged the remainder of the annual premium for the Insurance.

Section 6.4 - Inventory Count of Consumables/Supplies

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

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

If the amount of consumables/supplies at the Facility on the date of termination exceeds the amount on the first day of the Initial Term, the Client will either reimburse OCWA for any excess or OCWA may take possession of any excess, as OCWA may determine.

Section 6.5 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement including, but not limited to the outstanding debt, if any, owed to OCWA, no later than ninety days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Client with a final invoice, whichever comes later.

ARTICLE 7 - GENERAL

Section 7.1 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA may utilize certain technology developed by or for OCWA, whether existing now or in the future, including but not limited to technology such as WMMS, Outpost 5 and PDC (the "Technology"). The Client further agrees that the use of the Technology at the Facility does not in any way give the Client any ownership or licensing rights in or Intellectual Property Rights to the Technology.

Section 7.2 - Agreement to Govern

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.

Section 7.3 - Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Section 7.4 - Entire Agreement

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto.

Section 7.5 - Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated March 10, 2006 shall not form part of this Agreement.

Section 7.6 - Amendments and Waivers

No amendment to this Agreement will be valid or binding unless it is in writing and duly executed by both of the Parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

Section 7.7 - Successors and Assigns

This Agreement shall operate to the benefit of and be binding upon, the Parties hereto and their successors and assigns. This Agreement may be assigned in the discretion of either Party.

Section 7.8 - Survival

All representations, warranties and indemnities given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation under Section 7.13, shall survive indefinitely the termination of this Agreement.

Section 7.9 - Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

Section 7.10 - Notices

(a) All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be properly given if hand-delivered, sent by confirmed facsimile or by registered mail postage prepaid, return receipt requested, or by courier, to the Parties at their respective addresses as set forth below, or to such other addresses as the Parties may advise by like notice. Such notices if sent by facsimile, registered mail or courier shall be deemed to have been given when received.

(i) if to the Client: Municipality of Temagami
P.O. Box 220, Welcome Centre
Lakeshore Drive
Temagami, ON POH 2H0
Telephone: 705-569-3421
Fax: 705-569-2834
Attention: CAO

(ii) if to OCWA: Ontario Clean Water Agency
P.O. Box 513,
1 Browning Street
Haileybury, ON POJ 1K0
Telephone: (705) 672-5549
Fax: (705) 672-2534
Attention: Operations Manager

(b) A Party to this Agreement may change its address for the purpose of this Section by giving the other Party notice of such change of address in the manner provided in this Section.

Section 7.11 - Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

Section 7.12 - Freedom of Information

The Client understands and agrees that this Agreement and any materials or information provided to OCWA through the performance of the Services may be subject to disclosure under the Freedom of Information and Protection of Privacy Act, R.S.O.1990, c.F.31, as amended, or as otherwise required by law.

Section 7.13 - Confidentiality and Security

The Parties shall strictly maintain confidential and secure, all material and information provided, directly or indirectly, by the other Party pursuant to this Agreement. Subject to relevant legislation related to freedom of information or the protection of privacy and any other laws, neither Party shall directly or indirectly disclose to any person, either during or following the term of this Agreement, any such material or information provided to it by the other Party without first obtaining the written consent of the Party who provided such material or information, allowing such disclosure.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

6/27/2006
Date of Signing

7/7/2006
Date of Signing

ONTARIO CLEAN WATER AGENCY

By: Dan Atkinson
Dan Atkinson, Vice President, Operations
(Authorized Signing Officer)

By: Ronda Baker
Ronda Baker, Vice President
Finance and Corporate Services
(Authorized Signing Officer)

MUNICIPALITY OF TEMAGAMI

July 27, 2006
Date of Signing

July 28, 2006
Date of Signing

By: Wayne Adair
Wayne Adair, Mayor
(Authorized Signing Officer)

By: Brian Koski
Brian Koski, CAO
(Authorized Signing Officer)

SCHEDULE A - The Facility

Part 1. Description of the Facility

For the purposes of this Agreement, the Facility is comprised of the following:

1) Temagami South Wastewater Lagoon System

This lagoon is a twin cell waste stabilization pond with a capacity of 25,000 m³ per cell. Each cell has a permanent liner, a flow control structure, flow meter and recording chart. There is a chemical storage tank, a re-circulation pump, an intercell chamber and outlet facilities.

2) Temagami South Water Treatment Plant

The Temagami South Water Treatment Plant located on Lakeshore Road obtains its raw water from Lake Temagami. The water is drawn by a 20m long, 200mm diameter intake pipe that extends from a submerged intake structure 5.7m below the average water level. This water flows to the raw water wet well via gravity then gets pumped to the water treatment building by two submersible low lift pumps (one duty, one reserve) each rated at 950 m³/day.

The water treatment plant consists of a BCA water treatment package plant and an upgraded Neptune Trident package treatment unit. Each plant provides chemically assisted filtration through coagulation, flocculation sedimentation and filtration operations. Alum and polymer are added to the raw water upstream of the static mixer for the coagulation/flocculation process. Sodium carbonate is injected for pH adjustment and sodium hypochlorite is used for disinfection. All chemicals are added using two metering pumps, one duty and one standby. The plant is equipped with an automated monitoring system that records various components of the process.

The treated water is then directed to two clearwells having a total capacity of 257 m³. Two high lift pumps rated at 916 m³/day (one duty, one reserve) directs finished water to the 82 cubic meter elevated tower which maintains pressure to the distribution system. Alarmed chlorine and turbidity monitoring systems are in place to ensure an acceptable quality of water leaves the treatment facility.

For emergency purposes, a 60 kW diesel generator set is available to provide emergency power to the entire facility in the event of a power outage.

3) Temagami North Wastewater Lagoon System

This lagoon is a twin cell aerated lagoon with three blowers in a utility building, outlet facilities and two lift stations situated within the community which pump raw influent to the Lagoon. The primary cell has a hypalon liner.

4) Temagami North Water Treatment Plant

Temagami North water treatment plant is a surface water treatment plant located on the west shoreline of Net Lake. A 222m long, 250mm diameter intake pipe extends from a submerged intake structure approximately 10m below the water level.

The low lift pumping station consists of a 1.83m x 1.5m wet well with two submersible low lift pumps (one duty, one reserve). Each pump is rated at 3.8 Us or 326 m³/day. The water is directed to the main water plant by way of a 65mm pipe.

The water treatment facility is equipped with two BCA water treatment package plants, each consisting of a flash mixing chamber, a flocculation tank, two clarification chambers, and two deep dual media filter (sand/anthracite). Alum and polymer are added for the coagulation/flocculation process, sodium carbonate for pH adjustment and sodium hypochlorite for disinfection. All chemicals are added using two metering pumps (one duty and one standby). The plant is equipped with an automated monitoring system that records various components of the process including system flows and chemical dosages.

The treated water is directed to two of the three clearwells which have a combined capacity of 167 m³. The Two highlift pumps direct the treated water into the distribution system which is equipped with a standpipe known as the North Tower. The standpipe has a total storage capacity of 732 m³ and helps to maintain water pressure in the system. Alarmed chlorine and turbidity monitoring systems are in place to ensure the water is of acceptable quality before entering the distribution system.

Filter backwashes are initiated by head loss, turbidity levels, timer or manually by the operator. The backwash wastewater and sedimentation sludge is directed to a drainage system that leads to the Municipal sanitary sewer system for disposal.

A back up 20 kW diesel generator with automatic start is located in a nearby sewage pumping station and is available to provide emergency power for the entire facility in the event of a power interruption.

Part 2. Street Address of the Facility

The street address of the Facility is as follows:

1) Temagami South Wastewater Lagoon System

2600 ft Southeast of intersection of Highway 11 and Fifth Avenue
Ski Hill Road, Temagami, ON POH 2H0

2A) Temagami South Water Treatment Plant

39 Lakeshore Drive, Temagami, ON POH 2H0

2B) Elevated Water Storage Tank

First Street, Temagami, ON POH 2H0

3) Temagami North Wastewater Lagoon System
Blower Room and Pumping Station

Cedar Avenue, Temagami, ON POH 2H0

4A) Temagami North Water Treatment Plant

Cedar Avenue, Temagami North, ON POH 2H0

4B) Pumping Station #1

Cedar Avenue, Temagami, ON POH 2H0

4C) Pumping Station #2

Spruce Drive, Temagami North, ON POH 2H0

4D) Water Storage Tank

Birch Crescent, Temagami, ON POH 2H0

SCHEDULE B - Definitions

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

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

“Annual Price” is defined in Paragraph 4.2(a) of this Agreement.

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

“Approved Capital Expenditures” is defined in Paragraph 4.6(b) of this Agreement.

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

“Authorized Representatives” is defined in Section 2.6 of this Agreement.

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

“Capital Expenditures” is defined in Paragraph 4.6(a) of this Agreement.

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

“Current Term” is defined in Section 4.3 of this Agreement.

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

“ESA” means Electrical Safety Authority.

“Excluded Services” is defined in Section 2.3 of this Agreement.

“Facility” is defined in Paragraph (b) of the Recitals to this Agreement and further described in Schedule A.

“**Hydro Costs**” means hydroelectricity costs due to operation of the Facility.

“**Indemnified Parties**” is defined in Paragraph 3.3(a) of this Agreement.

“**Initial Term**” is defined in Section 4.1 of this Agreement.

“**Insurance**” is defined in Paragraph 2.9(a) and further described in Schedule E.

“**Intellectual Property Rights**” means any copyright, trademark, patent, registered design, design right, topography right, service mark, application to register any of the aforementioned rights, trade secret, rights in unpatented know-how, right of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world.

“**MOE**” means (Ontario) Ministry of the Environment.

“**MOL**” means the (Ontario) Ministry of Labour.

“**Outpost 5**” means a remote monitoring and control system designed and constructed by OCWA and its consultants for the purpose of monitoring and controlling processes at water and wastewater treatment facilities and their related parts.

“**Tarties**” is defined in Paragraph (d) of the Recitals to the Agreement.

“**TDC**” or “**Process Data Collection**” means technology that allows process data to be entered into a format that can be viewed, manipulated and retrieved in the form of customized reports.

“**Tre-existing Condition**” is defined in Section 2.8 of this Agreement.

“**Renewal Term**” is defined in Section 4.1 of this Agreement.

“**Service Fee**” means an additional fee charged to the Client when OCWA purchases materials, supplies, equipment or contractor’s services on behalf of the Client. For any individual item or service purchased, the Service Fee shall be calculated as follows:

- (a) 20% of the first \$10,000; plus
- (b) 15% on the amount from \$10,000 to \$50,000; plus
- (c) 10% on the amount in excess of \$50,000.

For example, the Service associated with a capital project which required \$56,000 in supplies and materials would be \$8,600 (20% x \$10,000 + 15% x \$40,000 + 10% x \$6,000).

“**Services**” is defined in Section 2.1 and further described in Schedule C to this Agreement.

“Technology” is defined in Section 7.1 of this Agreement.

“Termination for Cause” is defined in Paragraph 6.2(b) of this Agreement.

“Uncontrollable Circumstance” is defined in Paragraph 2.2(c) of this Agreement.

“Unexpected Expenses” is defined in Paragraph 4.7(a) of this Agreement.

“WMMS” or **“Work Management Maintenance System”** means a computer program used to determine a program of preventive maintenance activities for equipment in a facility based on a risk analysis that considers factors such as equipment life expectancy, present value and replacement cost.

“Year” means the 365 day period from July 1 to June 30 of the following calendar year.

SCHEDULE C - The Services

1. Operating Duties

Subject to the provisions of this Agreement, the Services are those services set out in this Schedule:

A. Wastewater Lagoons

- inspect wastewater lagoon berms routinely for erosion and rodent control;
- inspect wastewater lagoon routinely, to monitor level, odour, algae growth and to collect lagoon samples as required; and
- treat wastewater at Temagami South Lagoon annually/semi-annually with ferric sulphate to remove phosphorus from lagoon cell contents prior to discharge and sample discharge as per requirements. The Temagami North Lagoon is continuous discharge with no phosphorus removal capabilities

B. Water Treatment Plant

- inspect process control equipment to ensure proper operation of chlorinators, flash mixing, coagulation, flocculation systems, clarifier, pumps, filters, chemical feeders;
- check low lift pumping station to ensure that everything is in order (also taking routine readings);
- operate pump controls and valve controls for pumping of all process streams;
- hoses down weirs, walls and channels in flocculation and sedimentation tanks and clarifier;
- filling chemical tanks and mixing PH /alkalinity adjustment chemicals like soda ash, mixing polyelectrolyte and water in a liquid feed tank;
- check filters and backwash filters on a routine basis;
- record and analyze water flow, chemicals used, chlorine residuals, turbidity;
- check chemical feed pumps, perform routine calculations and evaluations, and determine operational adjustment requirements;
- calculate, record and analyze daily and monthly water flows, pump running hours, the amount of chlorine, soda ash, polyelectrolyte, and alum used;
- routinely conduct water tests as per regulations and Facility's Certificate of Authority; and
- complete the daily operating forms for statistics for computer input.

C. Water Distribution

- inspect water tower, stand-pipe and ground water reservoir as per regulations through visual inspection, draining, checking controls and valves, or by monitoring pressure and water levels; and
- collect samples and monitor chlorine residual;

2. Routine Maintenance

Specifically, OCWA will:

- carry out a routine lubrication program including greasing and oiling as specified in the lubrication schedule;
- perform routine maintenance duties to equipment by following RISK-BASED preventive maintenance procedures by checking machinery and electrical equipment when required and overhauling equipment when necessary;
- maintain an inventory on all equipment and tools; and
- ensure the security of the project by locking doors and gates.

3. Capital Improvements

- OCWA, acting as a reasonable operator, will record information on the frequency of equipment breakdown and repair costs to determine replacement needs. Where reasonable, parts of the Facility requiring upgrading or improvement will be identified and brought to the attention of the Client in accordance with Paragraph 4.6(b) of this Agreement.

4. Compliance of Operation

- OCWA will routinely analyze, investigate and, where appropriate, implement measures to improve the effectiveness and efficiency of the Facility.
- OCWA, acting reasonably, is responsible for ensuring an efficient operation of the process and keeping records on a daily basis.

5. Regulatory Matters

- OCWA shall prepare the Facility for the any scheduled inspections by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA. Subject to any approvals of the Client required by Paragraph 4.7(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports or negotiate changes to the reports with the regulatory authorities if related to the operation of the Facility. If any orders are issued by a regulatory authority which will require Capital Expenditures or additional services, OCWA may negotiate with the Client to provide such additional services at additional cost, where OCWA can provide such services, as per Sections 4.6 and 4.7.

6. Staffing

- As appropriate, OCWA will staff the Facility with certified operators and other trained staff as required by regulation under Environmental Laws.
- OCWA will provide staff for the Facility trained in normal process operation and maintenance of the Facility and all staff will receive training on how to deal with emergency situations.
- OCWA staff will be available to provide after hour service for the Facility in the event of illness or emergencies, in accordance with Paragraph 4.5(b).

7. Emergency Situations

- OCWA will ensure that the Facility has a contingency plan in place for its staff to deal with non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.
- Emergency response outside of regular work hours shall be billed to the Client in accordance with Paragraph 4.5(b).

8. Sludge

- The Client acknowledges and agrees that the Client is responsible for arranging for all aspects of sludge removal, storage and spreading and is required to comply with all relevant Environmental Laws, including but not limited to, the *Nutrient Management Act, 2002* and its regulations as they may be amended from time to time, any relevant regulatory guidelines on biosolids management and disposal issued by the Ministry of the Environment and any applicable certificates of approval.

SCHEDULE D - Excluded Costs and Services

The following services are not included in the Services being provided by OCWA as part of the Annual Price ("Excluded Services"). OCWA may be able to provide some of these services on a case-by-case basis upon the Client's request and following negotiation and agreement on the scope of the work and price:

- thawing water services;
- installation and/or inspection of new water and sewer services;
- snow removal at plant, pumping stations and around hydrants;
- high pressure sewer flushing;
- foam swabbing and pigging watermains;
- cost for non-routine sampling and lab analysis;
- reading residential water meters;
- grounds maintenance including lawn care;
- window cleaning;
- dredging of lagoons;
- inspecting/maintaining curbstops;
- providing locates for subsurface infrastructure components;
- upgrading Operations Manuals ;
- enforcing or monitoring the Client's sewer use by-laws;
- reviews of reports by third parties related to the Facility upgrades;
- responding to regulatory orders issued solely to the Client;
- water conservation and optimization studies;
- arranging for sludge disposal, storage and/or hauling;
- preparation of a Nutrient Management Strategy;
- any costs for hydro electrical and natural gas.
- any emergency response and Call-outs in excess of 24 Call-outs per year outside of regular work hours (7.30 a.m. to 4:00 p.m.) on a Business Day, weekends and statutory holidays, which shall be billed to the Client as outlined under Paragraph 4.5(b).

SCHEDULE E - Insurance

A summary of the insurance coverage that OCWA will arrange for in respect of the Facility is described below:

Property Insurance

Perils: "All Risks" including earthquake and flood. Subject to policy exclusions.

Limits:

- Replacement Value (Subject to Annual Reports)
- Extra expenses
- Expediting expenses

Deductibles: For the year 2006, subject to change on annual basis:

All Perils -		\$5,000 (excluding earthquake and flood)
Earthquake	-	\$100,000
Flood	-	\$50,000

Where the Client's property is repaired or replaced the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

Property Insured: All reported properties including buildings and equipment situated within 1,000 feet of the premises. Includes pumping stations, excludes underground sewer and water system.

Boiler and Machinery Insurance

Coverage: Insures against loss or damage arising from an accident with Pressure Objects, Production Machines, and Machinery and Service Supply in use or connected ready for use.

Objects: Fired and Unfired Pressure Vessels (Excess of 15PSI) Piping, Production Machinery and Service Supply.

Accident: Sudden and accidental breakdown of an object which causes it physical damage, requiring its repair or replacement.
Subject to policy terms, conditions and exclusions.

Limit: \$60,000,000 per accident.

Deductibles: \$5,000 for the year 2006; subject to change on annual basis.

Where the Client's property is repaired or replaced the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$2,000,000
Accident Benefits per Ontario Statutes.

Coverage: Collision

Coverage: Comprehensive

Deductible: The deductible will be paid by OCWA.

Comprehensive General Liability Insurance

Coverage: Third party liability including legal fees, for property damage and/or bodily injury as caused by negligence arising out of all Premises, Property, Products and operations of the insured.

Limit: \$10,000,000 per occurrence.

Deductible: \$50,000 for the year 2006; subject to change on annual basis.

Where OCWA is negligent the deductible will be paid by OCWA. Where the Client is negligent, the deductible will be paid by the Client. In cases where both OCWA and the Client are negligent the deductible will be divided equally.

Consultants Environmental Liability (Pollution) Insurance

Coverage: As operator of the Facilities, covers third party property damage and bodily injury and clean up costs for pollution conditions emanating from the Facilities, with a coverage limit of \$5,000,000.00 per claim or occurrence and aggregate. Coverage provides for on-site clean up of the Facilities.

Limit: \$5,000,000 per loss on a Claims Made basis with automatic, extended reporting periods. \$5,000,000 aggregate.

Deductible: \$100,000 for the year 2006; subject to change on annual basis

Where OCWA is negligent the deductible will be paid by OCWA. Where the Client is negligent, the deductible will be paid by the Client. In cases where both OCWA and the Client are negligent the deductible will be divided equally.

Where neither the Client nor OCWA is negligent the deductible will be paid as follows:

Where the Client's property is repaired or replaced the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where the Client's and OCWA's and/or a third party's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

SCHEDULE F ■ List of Pre-Existing Conditions

List of Pre-existing Conditions

As per Paragraph 3.1(e) of this Agreement, the following Pre-existing Conditions have been identified:

- The Facility has received recent upgrades which may have operational and maintenance problems in the first one or two years of operations. The Client shall be responsible for any identified deficiency of new or integrated equipment.