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(the “**Customer**”)

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(Date of Application)

### **Background**

1. The City owns and operates the Bulk Water Filling Station located at 1900 20<sup>th</sup> Street East, Owen Sound Ontario (the “**Station**”) at which authorized customers can purchase large volumes of water.
2. Customers who wish to purchase water in bulk from the Station are required to enrol in the City’s Bulk Water Sales Program by completing a Bulk Water Sales Program Application.
3. This application sets out the terms and conditions of enrolling into the Bulk Water Sales Program. By signing and submitting this application, the Customer agrees to be bound by these terms and conditions while enrolled in the Bulk Water Sales Program.

### **Definitions**

4. In this application:

“Backflow Preventor” means a backflow prevention device designed to prevent the reverse flow of water into the potable water supply. The Station’s Backflow Preventor is the point where the system connects to the Customer’s water taking system;

“Deposit” means any applicable deposit or prepayment in respect of the purchase of water in bulk, in accordance with the City’s Fees and Charges Bylaw;

“PIN Code” means the confidential, unique code that identifies the Customer, comprising a Customer ID account number and a personal identification number;

“Potable Water Hauler” means a person or entity engaged in bulk vehicular transportation of water for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans;

“Rate” means the price per cubic metre of bulk water under the City’s Fees and Charges By-law;

“Safe Drinking Water Act” means the *Safe Drinking Water Act*, S.O. 2002, c. 32, as amended from time to time or any successor legislation;

“Station” is defined in the background of this application;

“Term” means the Initial Term and any Extension Term;

“Terms of Use” means the conditions for use of the City’s Bulk Water Sales Program, including requirements related to use of the Station, customer accounts, vehicle infrastructure, maintenance, record keeping and submissions;

“Water Hauler” means a person or entity engaged in bulk vehicle transportation of water for purposes other than potable water used for drinking, culinary, or other purpose involving a likelihood of water being ingested by humans;

“Water Taker” means a person or entity that is a Potable Water Hauler or a Water Hauler that is not the Customer.

### **Purchase of Bulk Water**

5. The Customer is permitted to purchase water in bulk at the Station, subject to the terms and conditions provided in this application.

### **Role of the City**

6. The City shall:
  - a. following execution of this application and enrollment of the Customer in the Bulk Water Sales Program, issue an Identification Code to the Customer to allow the Customer access to the City’s licensed software to enable the Customer’s water taking;
  - b. test the water at the Station, up to the Station’s Backflow Preventor, for potability and ensure compliance with the applicable provisions of the Safe Drinking Water Act;
  - c. provide a 3” male camlock fitting on the pipe that provides the water at the Station;
  - d. record the amount of water (in cubic metres) taken by the Customer;
  - e. calculate the costs of water taken by the Customer, based on the quantity of water taken and the Rate; and
  - f. obtain payment from the Customer for the costs of water taken.
7. The City may:
  - a. define and, from time to time, amend or restate, the terms and conditions of the Bulk Water Sales Program;
  - b. require the Customer to provide copies of inspection or testing records applicable to the Customer’s water taking; and
  - c. take such further or other action as reasonably necessary in order to carry out the intent of the Bulk Water Sales Program.

### **Role of the Customer**

8. The Customer acknowledges and agrees that:
  - a. the Customer’s right to access the Station and purchase water is conditional on the Customer’s compliance with the terms and conditions of the Bulk Water Sales Program as detailed in this application;
  - b. the City only tests the water at the Station before its Backflow Preventor and does not test the water beyond the Station Backflow Preventor. Beyond the Station Backflow Preventor, contamination or cross-contamination of the water may occur and, as such, the water taken beyond the Station Backflow Preventor may not be potable;

- c. the Customer uses the water at their own risk;
  - d. the City does not guarantee any aspect of its bulk water sales service and water may not be available at the Station;
  - e. the City does not provide any alternative bulk water fill station in the event of Station closure or water unavailability;
  - f. the City is not liable for any losses, costs, or damages of any kind in respect of the quality, potability, quantity, or availability of water at the Station;
  - g. the City may conduct 24-hour video surveillance of the Station; and
  - h. the City may inspect any vehicle seeking to access or use the Station for compliance with these terms and conditions.
9. The Customer shall:
- a. upon enrollment in the City's Bulk Water Sales Program, pay any applicable Deposit and obtain an Identification Code from the City;
  - b. protect the confidentiality of the Customer's PIN Code, and not share it with any third party including any other Water Taker;
  - c. pay for all water taken in connection with the use or misuse of the Customer's Identification Code, including any water taken by any third party or other Water Taker using the Customer's PIN Code;
  - d. not modify, tamper, or otherwise alter the Station fill pipe's three inch (3") male camlock fitting;
  - e. pay all applicable fees and charges levied by the City in respect of the use of the Customer's Identification Code, the Station, and water-taking;
  - f. pay for any costs, losses or repairs resulting from the Water Taker's improper use of, or damage to, the Station;
  - g. follow all instructions given by the City in respect of use of the Station and the purchase of the water, whether such instructions are posted at the Station, or provided orally or in writing to the Customer;
  - h. not damage the Station, litter, wash vehicles or make any use of the Station other than the purchase of bulk water in accordance with these terms and conditions;
  - i. promptly notify the City if the Customer causes, observes, or becomes aware of any actual or threatened damage, malfunction, backflow (back-siphon) event or contamination to the water system at the Station by immediately contacting the City's Public Works division by phone or email.
10. The Customer may:
- a. when the Station is open, enter the Station and use the Customer's Identification Code to obtain water; and
  - b. at Customer's own cost and expense, have the water the Customer obtains at the Station tested to determine the quality and/or potability of the water.

### **Representations and Warranties**

11. The Customer represents and warrants that:
- a. if the Customer is a corporation, that it is duly incorporated, amalgamated, or continued under the law of its jurisdiction of incorporation, amalgamation or continuance, is in good standing,

- and all has all necessary corporation power and capacity to submit this application, enroll in the Bulk Water Sales Program and comply with its terms and conditions; and
- b. the Customer shall comply with applicable laws, rules and regulations.
12. The City makes no representation and gives no warranty:
- a. about the quality of water at the Station beyond the backflow preventor;
  - b. that any actions, measures or steps will be taken by the City to prevent any adverse effects on the quality of water at the Station, after its taking by the Customer;
  - c. that the water taken by the Customer is potable or suitable for any purpose (whether or not it is a purpose to which the City knows the Customer may put the water).

### **Suspension or Termination**

13. The City may:
- a. with or without prior notice to Customer, temporarily close the Station at any time for maintenance, repair, or any other reason in the City's sole discretion, in each case without any obligation to provide any alternative bulk water filling station. In the event of Station closure, the Customer's rights under the Bulk Water Sales Program shall be suspended for the duration of the closure. Unless terminated in accordance with the provisions of this section 14, the term of enrolment in the Bulk Water Sales Program shall continue to run during a Station closure;
  - b. terminate the Customer's enrollment in the Bulk Water Sales Program for convenience upon at least thirty (30) days' notice to Customer;
  - c. terminate the Customer's enrollment in the Bulk Water Sales Program upon at least seven (7) calendar days' notice to Customer if:
    - i. in the City's discretion, the Station becomes incapable of supplying water, or it is commercially impracticable or impossible for the City to perform its obligations under the Bulk Water Sales Program;
    - ii. the Customer fails to comply with any provision of the Water Management By-law, including any provision regarding payment of fees and charges; and
  - d. terminate the Customer's enrollment in the Bulk Water Sales Program effective immediately, and without notice, if:
    - i. a change in law after the date of this application imposes any restriction or requirement that has or will have a material impact on the obligations or liability of the City under the Bulk Water Sales Program or makes it unlawful for the City to perform its obligations under the Bulk Water Sales Program;
    - ii. the Customer is in default or fails to comply with any of the terms and conditions of the Bulk Water Sales Program and such default or non-compliance, in the City's discretion, is incapable of cure or is not cured to the City's satisfaction within the time period set out in a notice to Customer;
    - iii. the Customer causes any damage to the Station, litters, washes vehicles, or makes any use of the Station other

- than the purchase of bulk water in accordance with these terms and conditions;
- iv. the Customer causes, observes, or becomes aware of any actual or threatened damage, malfunction, backflow (back-siphon) event or contamination to the water system at the Station and fails to promptly notify the City in accordance with these terms and conditions;
  - v. the Customer:
    1. becomes insolvent, admits its inability to pay its debts generally as they become due, makes an assignment for the benefit of creditors or is the subject of any proceedings under any bankruptcy or insolvency law;
    2. winds up, dissolves, liquidates or takes steps to do so or otherwise ceases to function as a going concern; or
    3. if a receiver or other custodian, interim or permanent, of any of the assets of the Customer is appointed by private instrument or by court order, or if any exertion or other similar process of any court becomes enforceable against the Customer or its assets, or if distress is made against any of the Customer's assets.

### **Indemnification**

14. The Customer shall indemnify and save harmless the City, its elected officials, officers, employees, volunteers agents, contractors, administrators, executors, successor and assigns from and against any and all claims, actions, losses, expenses, cost or damage of every nature and kind (including legal fees) whatsoever which the indemnified persons may suffer as a result of any negligence, breach, violation or non-performance of the terms, covenants, or obligations of the Bulk Water Sales Program on the part of the Customer, its agents, employees and sub-consultants.

### **Insurance**

15. The Customer shall, without restricting the generality of the provisions in this application related to indemnification, at its own expense, purchase and maintain the following insurance, with insurers licensed to transact insurance business in Ontario in each case in the amount specified, or such other amount as the City agrees in writing, and in a form satisfactory to the City throughout the term and for a period of one (1) year after termination or expiry of enrollment in the Bulk Water Sales Program:
  - a. Commercial General Liability insurance providing coverage for bodily injury (including death), property damage, personal injury liability and advertising injury liability, and shall also include, but not be limited to, Products and Completed Operations Liability, Non-owned Automobile Liability, Tenant's Legal Liability, Blanket Contractual Liability and Owner's and Contractor's Protective Liability. The insurance shall be written on a comprehensive occurrence based form with minimum inclusive limit of not less than Five Million ( \$5,000,000) per occurrence. The policy shall include a cross-liability clause and severability of interests provision, naming The Corporation of the City of Owen Sound as an Additional Insured with respect to the Customer's operations

- and obligations under the Bulk Water Sales Program. All such insurance shall be maintained in full force and effect throughout the Customer's enrollment in the Bulk Water Sales Program; and
- b. automobile (motor vehicle) insurance covering all liabilities for bodily injury and property damage arising from the use of such vehicles, with limits of liability of not less than Two Million (\$2,000,000) for each occurrence, and including:
    - i. standard owner's form automobile policy providing third party liability and accident benefits insurance; and
    - ii. coverage of licensed vehicles owned or operated by or on behalf of the Customer.

**MFIPPA**

16. The Customer acknowledges that the City is bound by the *Municipal Freedom of Information & Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA") and that all information in the control and custody of the City with respect to enrollment in the Bulk Water Sales Program is subject to MFIPPA.

**Notices**

17. Any notice required to be given by the City shall be in writing and shall be sufficiently given by personal delivery or, if other than the delivery of an original document, by email to the other party at the address below in which case such notice or document shall be deemed to have been received the day that it was sent.

For Customer:

Attention: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

18. A Customer may from time to time change its address or designee for notification purposes by giving the City prior written notice of the new address or designee and the date upon which it will become effective.

**General**

19. This application embodies all the terms and conditions with regard to the Bulk Water Sales Program, and no understandings or agreements, verbal, collateral or otherwise exist between the parties. These terms and conditions may be amended unilaterally by the City upon notice to the Customer. No amendment of any of the terms or conditions of enrollment in the Bulk Water Sales Program shall be deemed valid unless it is in writing.
20. The Customer is acting as an independent contractor with respect to the City's Bulk Water Sales Program and shall not be deemed to be the employee, agent, partner of, or in joint venture with the City and the Customer's officers, directors, employees and agents shall not be deemed to be the employees, agents, partners of, or in joint venture with the City.

21. The Customer shall not assign any of its rights or obligations under the Bulk Water Sales Program to any third party without express written permission of the City, which may be withheld.
22. No waiver or any breach of these terms and conditions shall operate as a waiver of any subsequent breach or of the breach of any other terms and conditions. No provision of these terms and conditions shall be deemed to be waived, and no breach excused, unless such waiver or the consent excusing the breach is in writing and signed by the City official that is purported to have given such waiver or consent.
23. These terms and conditions shall extend to be binding upon and enure to the benefit of the Customer and their respective successors and permitted assigns.
24. The invalidity or unenforceability of any term or condition shall not affect the validity or enforceability of any other term or condition. Any invalid or unenforceable provision shall be deemed to be severed.

**Witness (to individuals)**

**THE CUSTOMER**

Per:

\_\_\_\_\_  
Name:

Per:

\_\_\_\_\_  
Name:

Per:

\_\_\_\_\_  
Name:  
Title:

Per:

\_\_\_\_\_  
Name:  
Title:

I am/we are authorized to bind the Customer.