

SERVICES AGREEMENT

THIS AGREEMENT made as of this ___ day of _____, 2021

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF
CRAMAHE**

hereinafter called "Cramahe"

of the FIRST PART

- and -

AQUATECH CANADIAN WATER SERVICES INC.

hereinafter called the "Contractor"

of the SECOND PART

WHEREAS Cramahe issued Tender 201-02 (Tender) to seek a firm to operate, maintain and provide related services for its water supply and distribution system.

AND WHEREAS the Contractor submitted a bid in response to the Tender (the "Bid") and has the requisite skills, personnel, and experience to perform the services required under the Tender;

AND WHEREAS the Contractor was selected by Cramahe as the preferred proponent, and now wishes to engage the Contractor to provide the Services as hereinafter defined, and the Contractor wishes to be so engaged;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements and for other good and valuable consideration, the parties hereto covenant and agree as follows:

1. Services

Cramahe shall engage the Contractor to provide Cramahe with the services detailed in Schedule "A" attached hereto (the "Services"), as may be amended by written agreement of the parties from time to time. Such Schedule "A" becomes and forms part of this Agreement.

2. Additional Services

The parties acknowledge that the Contractor and Cramahe may agree to the provision of additional Services by the Contractor to Cramahe, which Services will be covered by the terms of this Agreement. In such event, the additional Services shall be set out in additional schedules and identified as to date. Upon execution by both parties of such additional schedules, the Services under such additional schedules shall be deemed to be included under this Services Agreement.

3. Payment

Cramahe agrees to compensate the Contractor for the Services as set out in Schedule "B" attached hereto.

4. Change Orders

Cramahe shall have the right to issue change orders from time to time affecting the Contractor's Services hereunder. If any such changes cause an increase or decrease in the cost of the Services, or the time required for performance, an equitable adjustment to the terms of this Agreement shall be made and agreed upon prior to the Contractor being required to honor the change order. Such change in Services, term and payment, shall be included as a further Schedule and executed by both parties to be effective.

5. Term of this Agreement

The engagement of the Contractor pursuant to this Agreement shall commence August 01, 2021 ("Commencement Date"). Unless terminated in accordance with Article 3 below, this Agreement shall expire Five (5) years from the Commencement Date.

6. Termination

- a) Either party may terminate the agreement within six (6) months written notice at no penalty or cost to the other party. In the interim the Contractor shall continue to operate the system as if the contract was not being terminated and shall cooperate fully throughout the notice period with Cramahe.
- b) Notwithstanding the provisions of Section 5 hereof, this Agreement may be terminated by Cramahe in the following manner and circumstances:
 - (i) In the event of a material default by the Contractor of its obligations hereunder, which default is not corrected within fifteen (15) days of notice by Cramahe to the Contractor, then Cramahe may immediately terminate the Agreement upon the delivery of written notice to the Contractor of said termination.

- (ii) Immediately on the giving of written notice to the Contractor in the event that the Contractor becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors; or a resolution or other proceeding is taken by or instituted against the Contractor for the dissolution or winding up of the Contractor.
- c) The termination of this Agreement shall not affect the liabilities of either party hereto for amounts due or accruing due to the other party at the date of termination, which debts shall continue to be binding and enforceable obligations. Furthermore, the indemnities herein provided for the benefit of Cramahe shall survive any termination of this agreement and shall continue in full force and effect for the benefit of Cramahe.
- d) In the event that termination occurs part way through this Agreement, then the Contractor shall be paid for all Services performed to the date of termination in accordance with the terms of this Agreement. This is without prejudice to any claim by Cramahe for damages in the event the Agreement is terminated due to the default of the Contractor.

7. Confidentiality

The Contractor agrees not to divulge to any third party or to use except in connection with the performance of Services hereunder:

- a) any confidential information of Cramahe's business learned by the Contractor or its workers in the course hereof;
- b) any confidential information contained in any documents provided by Cramahe to the Contractor.

This obligation shall not apply to any information which is already in the public domain, is already known to the Contractor, has been obtained by the Contractor from a third party without the violation of any duty to Cramahe or is not identified as confidential information by Cramahe.

7. Force Majeure and Emergencies

- a) Neither party hereto shall be responsible for any losses or damages to the other occasioned by delays in the performance or non-performance of any of said party's obligations (other than the obligation to make payments when due) when caused by Acts of God, strike, acts of war, or any other cause beyond the reasonable control of the said party ("Force Majeure") at any time for performance of any Services or shall be extended by the period of such delay, provided that the parties give notice of the Force Majeure in accordance with this section, provided that each party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may suffer as a result of the other party's non-performance of any obligation contained herein or breach of a representation or warranty contained herein.

- b) The Contractor shall immediately notify Cramahe after it becomes aware of any Force Majeure and in such notice or so soon after giving such notice is reasonably possible, the Contractor shall provide to Cramahe particulars of the Force Majeure sufficient to permit Cramahe to assess the gravity and impact of the Abnormal Circumstances as well as details of any action taken by the Contractor to mitigate same and the action proposed by the Contractor to mitigate and, to the extent reasonably possible, to prevent the recurrence of such Force Majeure in the future.
- c) Cramahe shall immediately notify the Contractor after it becomes aware of any Force Majeure of which the Contractor has not already notified Cramahe.
- d) If the Force Majeure constitutes a sudden event affecting the Colborne Water System or the Services that requires an immediate response in order to prevent damage or injury, including incidents affecting personal or public safety or which may cause violations of applicable laws (“Emergency”), the parties shall follow the Emergency Protocol set out on Schedule “C” attached hereto.
- e) Provided that the Contractor gives notice to Cramahe of such Force Majeure as required by this section, the Contractor and Cramahe shall deal with any action required to be taken as a result of an Force Majeure as additional services.
- f) The Contractor shall, to the extent it is relying on the existence of an Force Majeure to excuse or delay performance:
 - i) Exercise all reasonable efforts to continue to perform its obligations under this Agreement;
 - ii) Expeditiously act to correct or cure the Force Majeure to the extent such action is within its power;
 - iii) Exercise all reasonable efforts to mitigate or limit damage to the Colborne Water System to the extent such action will not adversely affect its own interests; and
 - iv) Provide prompt notice to Cramahe of the cessation of the Force Majeure.

9. Nature of Relationship

- a) The Contractor is an independent contractor and will not act as a Cramahe agent, nor shall it or its workers, employees, contractors, or agents be deemed to be an agent, contractor, or employee of Cramahe for the purposes of any employee benefit program, income tax withholding, unemployment benefits, or otherwise.
- b) The Contractor shall assume full responsibility and liability for the payment of any taxes due on monies received from Cramahe and shall indemnify and hold Cramahe harmless from and against all claims or demands under the *Income*

Tax Act of Canada and the Province of Ontario, for or in respect of withholding tax and any interest or penalties resulting thereto, or similarly with respect to the *Occupational Health and Safety Act*, *Workplace Safety & Insurance Act*, *Employment Insurance Act* or the *Canada Pension Plan Act* and any costs or expenses incurred in defending such claims or demands.

- c) Neither party shall incur any obligation on the other's behalf, nor commit the other in any manner without the other's prior written consent.

10. Supervision & Safety

The parties acknowledge and agree that responsibility for the safety, supervision, instruction, and evaluation of the workers providing the Services is the sole and exclusive responsibility of the Contractor. The Contractor is responsible for compliance with the *Workplace Safety and Insurance Act* and the *Occupational Health and Safety Act*, as those acts are amended from time to time, related to duties performed by the Contractor for Cramahe, and the costs of such compliance.

11. The Contractor's Representations, Warranties, and Covenants

- a) The Contractor represents and warrants that the Services will function, operate and perform in accordance with the specifications set out in Schedule "A" attached hereto (except to the extent such specifications are modified by the parties from time to time), the bid, and the Tender.
- b) The Contractor agrees that it will perform the Services in a competent manner, in accordance with this Agreement, all applicable laws, and industry standards.
- c) The Contractor represents that it is and shall continue to be a corporation duly incorporated, organized and subsisting under the laws of Ontario with good and sufficient power, authority and right to enter into and deliver this Agreement.
- d) The Contractor represents that it is operating and shall continue to operate in compliance with all applicable laws, rules, regulations, notices, approvals and orders of Canada and of the Province of Ontario and all municipalities thereof in which its business is carried on, including in compliance with all tax and employment laws.
- e) Subject to Cramahe granting to the Contractor the right to access the Colborne Water System, and subject to the transfer of any personnel, facilities, materials and equipment from Cramahe to the Contractor contemplated hereunder, the Contractor represents and warrants that it has, directly or under contract, sufficient trained personnel, facilities, materials and equipment available to perform the Services.

- f) The Contractor represents and warrants that it is duly qualified under the SDWA, and skilled and knowledgeable in the management, operation and maintenance of municipal drinking water systems and has the expertise and skill required to discharge its obligations under this Agreement in accordance with its terms, the SDWA and all other applicable laws.
- g) The Contractor represents and warrants that it is not a party to any legal, administrative, arbitral, investigatory or other proceeding or controversy pending, or, to the best of the Contractor's knowledge, threatened, that would have a material adverse effect upon the Contractor's or Cramahe's ability to perform their respective obligations under the Agreement.
- h) The Contractor shall abide by Cramahe's policies and by-laws for the purchase of supplies and services for work performed under this Agreement, as same are provided to the Contractor and provided same are consistent with industry standards.

12. Indemnity

The Contractor agrees to indemnify and save harmless Cramahe from any costs, losses, expenses, damages, lawsuits, claims, obligations, debts, liabilities or demands resulting from any negligent acts or omissions by the Contractor related to or arising from this Agreement, and from every manner of costs, damages or expenses incurred by or injury or damage to any person or persons or his, her or their property.

13. Insurance

The Contractor shall obtain, maintain and pay for the following insurance, and such additional insurance as required under the Tender:

- a) Workers' Compensation insurance as required under applicable laws;
- b) All Risk Property Insurance insuring the Contractor's property to replacement value against physical loss or damage;
- c) Comprehensive general liability that will indemnify Cramahe against all claims for loss, damage, injury or death directly or indirectly arising from or as a consequence of or in any way relating to any act or omission of the Contractor or any officer, agent, servant, employee, workman, consultant, advisor or contractor of the Contractor from claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement, including but not limited to the maintenance or operation of the Colborne Water System and the following applies to the comprehensive general liability insurance:
 - i) The policy or policies of insurance shall name Cramahe as an Additional Insured and shall provide a minimum coverage of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury, death, and damage to property including the loss thereof;

- ii) The policy or policies of insurance shall provide "occurrence type" coverage, that is to say, the policy(ies) will cover any claims which may be presented at any time (subject to the Statute of Limitations) arising from an occurrence that happened within the policy period;
- v) The policy or policies of insurance shall provide that Cramahe will be given 30 days prior written notice of any material change, lapse or cancellation that is applicable to Cramahe, which notice shall be by registered mail, identifying the Corporation and any other relevant identifier;
- vi) The policy or policies of insurance will remain in full force and effect at all times during the term of this Agreement.
- d) The Contractor shall from time to time, at the request of Cramahe, furnish proof to Cramahe that all premiums on such policy or policies of insurance have been paid and that the insurance continues in full force and effect. In the event that any premium is not paid, Cramahe, in order to prevent the lapse of such policy or policies of insurance, may pay the premium or premiums and the Corporation shall reimburse Cramahe within ten (10) days of written demand being given by Cramahe.
- e) The Contractor hereby covenants at its own expense, to obtain prior to the execution of this Agreement by Cramahe a letter from the Contractor's insurance company(ies) addressed to Cramahe certifying that the policy or policies of insurance provided pursuant to this Agreement are in full force and in accordance in all respects with the provisions of this Agreement.
- f) Contractor's Pollution Liability. The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of Ontario for a limit of not less than \$2,000,000. The policy shall provide coverage on a gradual release for pollution conditions as a result of the operations performed at the job site. Coverage shall include bodily injury, property damage, clean-up and remediation costs. The Contractor shall purchase at minimum a 1 Year Extended Reporting Endorsement.

14. Other Provisions

The parties agree that:

- a) All tools and furniture, and mobile equipment and vehicles belonging to the Contractor purchased at no direct cost to Cramahe shall remain property of Contractor.
- b) Any instrumentation, SCADA, software or similar installations installed by the Contactor become the property of Cramahe upon installation.
- c) Should the province or another government agency impose new statutes, regulation or guidelines or impose further requirements for operation through a change of licence or permit or by Director's Order or similar means which impose a direct or indirect cost on Contractor, then such costs will be reimbursed by mutual agreement of both Cramahe and Contractor.

- d) Cramahe retains the right to audit the operating procedures and records of Contractor by a party named by Cramahe. Contractor shall provide such within a reasonable time as requested by the party undertaking the audit on behalf of Cramahe.
- e) Should operating problems arise that are directly or indirectly the result of activities or actions of the Contractor which might place a liability on Cramahe, Council, on its officers shall cover all legal fees of the township, its councilors and officers.
- f) An "emergency" shall include, but is not limited to a situation where public health or safety is immediately endangered or where the public is inconvenienced to the extent that a residence or business cannot be fully used for its intended purpose.
- g) The Contractor will notify the township of changes to the contractor's Overall-Responsible—Operator and person designated being responsible for contract administration.

15. Resolution of Disagreements

In the event of disagreements that may arise, a mediator will be jointly appointed. In the event that such a joint appointment can't be made each party will name a person to a mediation panel and the two appointees will select a third member to chair the panel. The chair and other panel members shall vote on a decision. A simple majority shall be the decision of the panel. If the mediation is unsuccessful, the mediator shall be given the powers of an arbitrator under the *Arbitration Act*, Ontario, and the decision of the arbitrator shall be binding on both parties without appeal or other recourse.

16. Assignment

Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party. This Agreement shall enure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

17. Notice

Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given (i) when delivered personally to any officer of the party being notified; or (ii) on the third business day after being sent by registered or certified mail, postage prepaid, facsimile, addressed as follows:

To *Cramahe*:
1 Toronto Street
PO Box 357
Colborne, ON KOK 150

To *the Contractor*:

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

19. Amendments

No provision of this Agreement shall be amended, altered or waived except by a further written agreement between the parties. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion.

20. Agreement

The Tender is incorporated by reference into this Agreement. In the event of a Bid, the provisions of this Agreement shall prevail, then the Tender, then the Bid, with respect to the conflict. This Agreement, including the Schedules, Tender, and Bid, constitute the entire agreement between the parties on the subject matter hereto.

21. General

- a) In the event any portion of this Agreement is deemed to be invalid or unenforceable, the parties agree that the remaining portions of this Agreement shall remain in full force and effect.
- b) Time shall be of the essence in the performance of obligations pursuant to this Agreement.
- c) The headings in this Agreement are for convenience and reference only and shall not form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date first written above.

THE CORPORATION OF THE TOWNSHIP OF CRAMAHE

Per: _____

Name:

I have authority to bind the corporation

AQUATECH CANADIAN WATER SERVICES INC.

Per: _____

Name:

I have authority to bind the corporation

SCHEDULE "A"

SERVICES

Cramahe is the "owner" as that term is defined in the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40 and the *Safe Drinking Water Act 2002*, S.O. 2002, c. 32 ("SDWA") of the Colborne Water System as described in this Schedule "A".

The Colborne Water System is a municipal drinking water system within Cramahe as defined in the SDWA.

Contractor represents and warrants that it has the requisite qualifications, skills, personnel, knowledge and experience to provide the services of the operating authority as defined under the SDWA to operate, maintain and provide related services for the Colborne Water System.

The Contractor agrees to provide the following Services:

1. Colborne Water System Operations and Maintenance to ensure compliance with and perform all duties required by applicable laws and related regulations ("Regulatory Requirements"), including but not limited to:
 - (a) Ensuring the duties set out in section 11 of the SDWA are carried out;
 - (b) Ensuring any operational plans are reviewed and revised in accordance with the SDWA;
 - (c) Conducting all sampling and preparing all reports required by the Regulatory Requirements;
 - (d) Ensuring the provision of adequate water treatment equipment; and
 - (e) Complying with all Regulatory Requirements in any event of a deficiency as defined under the SDWA;
2. Install off-site on-line monitoring as deemed necessary by Contractor.
3. Provide all labour (including transportation of employees complete with hand tools) to operate and to perform routine maintenance of the Colborne Water System.
4. Operate the Colborne Water System on a daily basis;
5. During the time that Contractor's employees are not present at the Colborne Water System, ensure an operator is available to be on-site within 60 minutes in the event of an Emergency;
6. Provide equipment and transport, less heavy equipment such as excavators and dump trucks.

7. Carry out preventative maintenance to a standard practiced by operating authorities in Ontario.
8. Review of engineering design.
9. Carry out water service and water main installation/repair inspections to a commonly accepted standard in Ontario.
10. Provide locating services for water mains and water services.
11. Maintenance records management.
12. Written monthly operating reports submitted to Cramahe.
13. Attend meetings with Cramahe Council and the Colborne Water Committee on an as required basis.
14. Keep Cramahe updated on the names and contact information of the operators of the Colborne Water System and the Contractor's contract administrator.
15. Provide minor general supplies such as (but not limited to) cleaning agents, towels, light bulbs etc.
16. Be the "prime contractor" for the Services pursuant to the *Occupational Health and Safety Act*, as amended from time to time, provided that the Contractor may, with the prior written consent of Cramahe, such consent not to be unreasonably withheld, assign this obligation to a subcontractor having substantial responsibility for the Services being performed during the term of this Agreement;
17. Be responsible for compliance with all conditions and regulations under the *Workplace Safety and Insurance Act*, as amended from time to time, and for all assessments and levies which may be made thereunder;
18. Pay, as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required by the Contractor to be paid in respect of the Services;
19. Maintain complete and accurate accounting records using GAAP sufficient to substantiate all of the Contractor's invoices and retain those records for five (5) years following the date of the rendering of an invoice to Cramahe;
20. Assist Cramahe in the preparation of operating and capital budgets in respect of the Colborne Water System;

Communication Services:

21. Respond to customers who contact the Contractor directly with concerns, complaints and other observations regarding the Contractor's activities;
23. Receive and respond to emergency calls and inquiries; When appropriate, pass calls to Cramahe;
24. Assist Cramahe in preparing applications for renewal or amendment of any Approvals required to be granted in respect of the ownership or operation of the Colborne Water System or the performance of the Services;

Meter reading and Billing:

25. Administer meter reading, billing, collection of associated revenues, reimbursement to Cramahe of revenues received and detailed reporting of billings and receivables;
26. Meter reading and billing monthly.
27. Water meter installation and replacement as required;

Services as Requested:

28. Fire flow rating of fire hydrants;
29. Provide Operating Authority oversight for regulatory compliance;
30. Equipment repair and replacement.

SCHEDULE "B"
PAYMENT TERMS

1. General Payment Provisions

- a) Invoices to be forwarded before and effective the first day of each month to be paid by the 15th of the following month.
- b) The township will directly pay all utility costs and chemical purchases.
- c) Where major capital works and equipment replacement exceeding \$1,000 are involved, Cramahe and Contractor will need to agree prior to the start of work the method of work administration and oversight, design and payment arrangements.

2. Meter reading and Billing:

The following billing services shall be provided by Contractor at the following Rates

- a) Administration of meter reading, billing, collection of associated revenues, reimbursement of the township of revenues received and detailed reporting of billings and receivables at a fixed rate of \$12,895.00 per year.
- b) Meter reading and billing at \$16.75 per meter.
- c) Where customers are billed on a fixed cost basis the above rate for meter reading shall apply.
- d) Water meter installation and replacement shall be provided by Contractor at the cost plus 10% with costs billed directly to the customer.

3. Other Costs:

The following services shall be provided by Contractor at the request of Cramahe at the following rates, which are in addition to the fees set out in section 2:

- a) Overtime based upon actual costs to the Contractor plus 10%.
- b) Fire hydrant inspections, maintenance and reporting to meet Ontario Fire Code and American Water Works Association Manual M17 Installation, Field Testing and Maintenance based upon \$25.00 /hydrant.
- c) Rating of 20% of the hydrants annually based upon \$74.00 / hydrant.
- d) Annual street valve operation at \$41.00 /valve.
- e) Equipment repair and replacement at cost plus 10%.

Basis for determining the overall annual costs of system operations by the Contractor:

Item	Units	Rate per Unit	Number of Units	Total Annual Cost
Start-up Costs (See Note #1)	each	\$24,000.00	0.2 (Note 1)	\$4,800.00
Annual Fee	each	\$125,595.00	1	\$125,595.00
Meter Reading and Billing Administration	each	\$12,895.00	1	\$12,895.00
Meter Reading and Billing	each	\$16.75	1028	\$17,219.00
Annual Hydrant Inspections	each	\$25.00	145	\$3,625.00
Hydrant Rating	each	\$74.00	25	\$1,850.00
Valve operation	each	\$41.00	60 (20% of 300)	\$2,460.00
Overtime ^{Note 2}	estimate	N/a	Lump Sum	\$25,000.00
Contingencies ^{Note 3}	estimate	N/a	Lump Sum	\$50,000.00
Total				\$243,444.00

Notes

1. For the purposes of annual cost comparison, the Start-up Costs are to be divided by five (5) to determine the total annual cost.
2. The amount of overtime shown is for budgeting purposes only. Cramahe shall be made aware of emergency overtime in advance if possible and immediately at the start of the next working day if the emergency occurred outside of normal working hours. Cramahe reserves the right to question the need for overtime.
3. Contingencies are included for budgeting purposes only by Cramahe and shall not be construed as funds to be received by Contractor unless so authorized by Cramahe.

SCHEDULE "C"

EMERGENCY PROTOCOL

The following protocol shall apply in the event of any Emergency affecting the Colborne Water System:

1. The Contractor shall promptly respond to the Emergency.
2. The Contractor shall promptly notify Colborne and where such Emergency may adversely affect the health of members of the public, then it shall forthwith notify the Ministry of the Environment and the local public health authority as to the extent and nature of the failure.
3. Should any Emergency place members of the public in immediate danger of adverse health effects then, in addition to the foregoing, the Contractor shall take all steps reasonably necessary to promptly notify such individuals of the nature of the risk and any prudent steps recommended to minimize or eliminate such risk, without regard to the time of day.
4. In all other circumstances, the Contractor shall promptly take all steps reasonably practicable to notify members of the public of any circumstances related to the operation of the Colborne Water System in which their health may be compromised and to advise of any known prudent steps which are recommended to be taken to minimize or eliminate such risk.
5. The Contractor shall give notice under the Regulatory Requirements and to Colborne, and in any event within 24 hours, after it becomes aware of any Emergency.
6. The Contractor shall, within a reasonable time, make recommendations to Colborne to restore normal service.