

EXTENSION AND AMENDING AGREEMENT

This Extension and Amending Agreement is made this ____ day of _____, 2020

BETWEEN:

**THE CORPORATION OF THE
TOWNSHIP OF CRAMAHE**
hereinafter called "Cramahe"

of the FIRST PART

- and -

LAKEFRONT UTILITY SERVICES INC.
hereinafter called the "Contractor"

of the SECOND PART

WHEREAS Cramahe and the Contractor entered into a Services Agreement on August 10, 2015 (the "Services Agreement") and the Services Agreement expires on August 1, 2020;

AND WHEREAS Cramahe and the Contractor wish to extend the term of the Services Agreement and to amend the terms and conditions of the Services Agreement as provided herein;

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. Extension of Term of Services Agreement

The term of the Services Agreement is extended for a one-year period, commencing August 1, 2020 and expiring August 1, 2021 (the "Extension Term").

2. Amendment of Services Agreement

The supplementary provisions set out below amend the terms and conditions of the Services Agreement (the "Supplementary Provisions"). In the event of a conflict or inconsistency between the existing terms and conditions in the Services Agreement and the Supplementary Provisions, the Supplementary Provisions shall take precedence.

2.1 Definitions

The following definitions are incorporated into and form part of the Services Agreement:

- (a) "Abnormal Circumstances" means circumstances that are beyond the reasonable control of the Contractor (it being agreed that lack of financial resources does not constitute such a circumstance) and that are of a significant nature and continue for a period of time sufficiently long to disrupt the municipal drinking water system from operating in accordance with the Regulatory Requirements or to otherwise prevent or disrupt the ability of the Contractor to perform the Services in accordance with the terms of this Agreement, including circumstances resulting from:
- i. Change in Regulatory Requirements;
 - ii. an Emergency; and
 - iii. Events of Force Majeure;

- (b) "Additional Services" means:
- i. Any short-term or temporary increase or alteration in the scope or cost of the Services; and
 - ii. Any additional services not included in the Services required to be undertaken by the Contractor or requested by Cramahe;

Including without limitation as a result of:

- iii. An Abnormal Circumstance or Change in Regulatory Requirements;
 - iv. A written request by Cramahe that the Contractor undertake services outside the Services including:
 - (A) Any assistance in connection with obtaining any Approvals not in place at the Commencement Date; and
 - (B) Maintenance and repairs having an aggregate cost in any contract year in excess of the sum of \$2,500;
- (c) "Applicable Law" means the law applicable in Ontario including any federal, provincial or local statute, ordinance, law, regulation, policy, by-law, notification, directive, order, certificate, instruction, rule, code, license, consent, permit, authorization or other approval, including any conditions attached thereto, having the force of law and with which Cramahe or the Contractor is legally obligated to comply;
- (d) "Approvals" means any consent, license, certificate, approval, permit, codes of practice or other authorization, including any conditions attached thereto, of whatever nature required to be granted in respect of the ownership or operation of the Colborne Water System or the performance of the Services, including the approvals granted under the SDWA;
- (e) "Change in Applicable Law" means:
- i. Any enactment or issuance of any new Applicable Law;
 - ii. Any change in the judicial interpretation or application of an existing Applicable Law;
 - iii. Any enactment, alteration or modification of an existing Applicable Law; and
 - iv. The repeal and reenactment of any existing Applicable Law;
- (f) "Change in Approvals" means:
- i. The imposition of any additional material requirement in connection with either the issuance of an Approval or the renewal, extension or

- modification of any Approval after such Approval was issued, in either case subsequent to the Commencement Date;
- ii. The imposition of a requirement for an Approval which did not exist on the Commencement Date; or
 - iii. The revocation or cancellation of any Approval after the Commencement Date;
- (g) "Change in Regulatory Requirements" means a Change in Applicable Law or a Change in Approvals;
 - (h) "Commencement Date" means the commencement date of the Extension Term, which is August 1, 2020;
 - (i) "Deficiency" means a deficiency as defined under the SDWA;
 - (j) "Emergency" means 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 the Regulatory Requirements or other Applicable Law;
 - (k) "Events of Force Majeure" means any event or circumstance that prevents or delays a party from performing any of its obligations under the Agreement within the time required for the performance of such obligation, but only to the extent that (i) the event is not reasonably within the control of the party (insufficiency of funds not being beyond the reasonable control of the Party) and (ii) despite the exercise of reasonable efforts, the event cannot be prevented, avoided or stopped by that party, and Events of Force Majeure may include the following: acts of God, strikes, wars, fire, earthquake, storms or other causes of the kind herein enumerated;
 - (l) "OWRA" means *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40 and the regulations thereunder, as enacted at the Commencement Date;
 - (m) "Regulatory Requirements" means any standards under Applicable Law that apply to the operation of the Colborne Water System including the SDWA, the OWRA, and which includes the Approvals;
 - (n) 'SDWA' means the *Safe Drinking Water Act* 2002, S.O. 2002, c. 32, and the regulations thereunder, as enacted at the Commencement Date;
 - (o) "Services" means the services as set out in the attached Schedule "A"

2.2 Force Majeure

Section 8 – Force Majeure of the Services Agreement is deleted in its entirety and replaced with the following:

Force Majeure and Abnormal Circumstances

- a) Neither party hereto shall be responsible for any losses or damages to the other party arising directly or indirectly as a result of the failure or

delay in the performance of any of said party's obligations (other than the obligation to make payments when due) when caused by Abnormal Circumstances, provided that the parties give notice of the Abnormal Circumstances 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 Abnormal Circumstances and in such notice or so soon after giving such notice is reasonably possible, the Contractor shall provide to Cramahe particulars of the Abnormal Circumstances 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 Abnormal Circumstances in the future.
- c) Cramahe shall immediately notify the Contractor after it becomes aware of any Abnormal Circumstances of which the Contractor has not already notified Cramahe.
- d) If the Abnormal Circumstances constitute an Emergency, the Parties shall follow the Emergency Protocol set forth in Schedule "C".
- e) Provided that the Contractor gives notice to Cramahe of such Abnormal Circumstances as required by this section, the Contractor and Cramahe shall deal with any action required to be taken as a result of an Abnormal Circumstance as Additional Services.
- f) The Contractor shall, to the extent it is relying on the existence of an Abnormal Circumstance 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 Abnormal Circumstances 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 Abnormal Circumstances.

2.3 The Contractor's Representations, Warranties, and Covenants

Section 11 – The Contractor's Representations, Warranties, and Covenants of the

Services Agreement is deleted in its entirety and replaced with the following:

Contractor Representations, Warranties, and Covenants

- a) The Contractor covenants that it will perform the Services in accordance with the specifications set out in Schedule "A" attached hereto.
- b) The Contractor agrees that it will perform the Services and operate the Colborne Water System in a competent manner, in accordance with this Agreement, all Applicable Law, and industry standards, as at the Commencement Date.
- c) The Contractor shall undertake the Services using qualified personnel who have the appropriate certification in operation and maintenance of municipal drinking water systems.
- d) The Contractor represents and warrants that it is and shall continue to be during the term of this Agreement, 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.
- 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 Law.
- 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.

2.4 Insurance

Section 13 – Insurance of the Services Agreement is deleted in its entirety and replaced with the following:

Insurance

The Contractor shall obtain, maintain and pay for the following insurance:

- a) Workers' Compensation insurance as required under Applicable Law;
- 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;
 - iii) 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;
 - iv) 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.

2.5 Schedule "A"

Schedule "A" – Services of the Services Agreement is deleted in its entirety and replaced with the new Schedule "A" - Services attached to this Agreement.

2.6 Schedule "B"

Schedule "B" – Payment Terms of the Services Agreement is deleted in its entirety and replaced with the new Schedule "B" – Payment Terms attached to this Agreement.

2.7 Schedule "C"

Schedule "C" – Emergency Protocols, as attached to this Agreement, is added to and becomes part of the Services Agreement.

3. Existing Terms and Conditions of Services Agreement

Except as expressly amended by the Supplementary Provisions set out in this Extension and Amending Agreement, all other terms and conditions of the Services Agreement remain unchanged.

4. Governing Law

This Extension and Amending Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

5. Agreement Binding

This Extension and Amending Agreement shall extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

6. Counterparts

This Extension and Amending Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one agreement.

IN WITNESS WHEREOF the parties hereto have executed this Extension and Amending Agreement effective as of the 1st day of August, 2020

THE CORPORATION OF THE TOWNSHIP OF CRAMAHE

Per: _____

Name:

Title:

Per: _____

Name:

Title:

LAKEFRONT UTILITY SERVICES INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

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*, ("SDWA") S.O. 2002, c. 32 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 is currently operating and has operated the Colborne Water System and 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 the 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;
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;
22. Receive and respond to emergency calls and inquires;

23. 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;
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

Services

1. Cramahe shall pay the Contractor in accordance with the fees set out in this Schedule "B".
2. The Contractor shall forward Invoices based on the fees set out in this Schedule "B" before and effective the first day of each month to be paid by the 15th of the following month.
3. Cramahe will directly pay all utility costs and chemical purchases.
4. Where customers are billed on a fixed cost basis the rate for meter reading shall apply.
5. Water meters, infrastructure replacement/repair materials and overtime costs provided by the Contractor shall be billed at actual cost plus 10%.

General Provision for Adjustment

1. If a permanent increase or alteration occurs in the scope and cost of the Services, the Contractor may give notice to Cramahe seeking an increase in the compensation payable for the Services, such additional compensation to include an increase in fees in the minimum amount of the actual cost or expenditure incurred by the Contractor as a result of the increase or alteration, as determined in accordance with GAAP. Any change in the compensation payable for Services shall be negotiated by the Parties within 30 days of the notice provided by the Contractor. If no agreement is achieved within such 30 day period, either Party may refer issues respecting the amount of such adjustment or whether or not a significant change has occurred warranting adjustment to the fee structure for resolution in accordance with the dispute resolution process.

SCHEDULE "B"

PAYMENT TERMS

Basis for determining the fees for Services by the Contractor:

Item	Units	Rate per Unit	Number of Units	Total Annual Cost
Annual Fee	each	\$132,200.00	1	\$132,200.00
Meter Reading and Billing Administration	each	\$17,200.00	1	\$17,200.00
Meter Reading and Billing	each	\$3.50	1025	\$43,050.00
Annual Hydrant Inspections	each	\$28.50	145	\$4,060.00
Hydrant Fire Flow Rating	each	\$75.00	As required	
Valve operation	each	\$57.50	20% of 300	\$3,420.00
Capitol Project Management (Operating Authority Oversight)	hourly		As required	
Contract Total				\$199,930.00
Overtime <small>Note 1</small>	estimate	-		\$25,000
Contingencies <small>Note 2</small>	estimate	-		\$50,000
Total				\$274,930.00

Notes

1. 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. There shall be no extra charges for work performed within the normal workday and scheduled WTP routine checks on weekends and holidays.

2. Contingencies are included for budgeting purposes only by Cramahe and shall not be construed as funds to be received by the Contractor unless so authorized in writing 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.