

BULK WATER SALES AGREEMENT

BETWEEN

THE CORPORATION OF THE CITY OF GUELPH
(the "City")

and

(the "Customer")

Whereas the City owns and operates the Clair Road Bulk Water Filling Station located at 300 Clair Rd West, Guelph Ontario (the "**Station**") at which authorized customers can purchase large volumes of water;

And Whereas customers who wish to purchase water in bulk from the Station are required to enrol in the City's bulk water sales program and enter into a written agreement with the City;

And Whereas the parties wish to terminate the Bulk Water Agreement and replace it with this Agreement.

The parties hereby agree as follows:

Purchase of Bulk Water

1. The Customer is permitted to purchase water in bulk at the Station upon and subject to the provisions of this Agreement.

Term and Extension

2. Subject to the provisions of this Agreement, this Agreement shall commence on _____ ("**Effective Date**") and will remain in effect for an initial term of two (2) years ("**Initial Term**").
3. No later than three (3) months before the end of the Initial Term, the Customer may, in writing, request an extension of this Agreement for a further two (2) years (the "**Extension Term**"). The City may, at its sole discretion, agree in writing to extend this Agreement for the Extension Term. If the City does not agree in writing to extend this Agreement for the Extension Term, this Agreement will terminate at the end of the Initial Term.

Definitions

4. In this Agreement:
 - (a) "**Agreement**" means this Bulk Water Sales Agreement, as amended by written agreement between the parties.
 - (b) "**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.
 - (c) "**Deposit**" means any applicable deposit or prepayment in respect of the purchase of water in bulk, in accordance with the Water Rates and Charges By-law.
 - (d) "**Fees and Charges**" means fees and charges under the Water Rates and Charges By-law.
 - (e) "**Identification Code**" means the confidential, unique, code that identifies the Customer, comprising a Customer ID account number and a personal identification number.
 - (f) "**Outside Water Use By-law**" means City By-law Number (2014)-19714, as amended from time to time, or any successor to it.
 - (g) "**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.
 - (h) "**Rate**" means the price per cubic metre of bulk water under the Water Rates and Charges By-law.
 - (i) "**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.

- (j) **"Station"** is defined in the recitals to this Agreement.
- (k) **"Term"** means the Initial Term and any Extension Term, as defined in section 2.
- (l) **"Terms of Use"** is defined in section 6(a).
- (m) **"Vehicle Requirements"** is defined in Schedule "A".
- (n) **"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.
- (o) **"Water Rates and Charges By-law"** means City By-law Number (2017)-20224, as amended from time to time, or any successor to it.
- (p) **"Water Taker"** means a person or entity that is a Potable Water Hauler and/or a Water Hauler that is not the Customer.

Role of the City

5. The City shall:

- (a) Following execution of this Agreement 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.

6. The City may:

- (a) Define and, from time to time, amend or restate, the terms of account for the City's bulk water sales program and terms of use for the Station, including, but not limited to, terms relating to customer accounts, vehicle infrastructure and maintenance requirements, and record keeping and submission requirements (the **"Terms of Use"**);
- (b) Require Customer to provide copies of inspection or testing records applicable to the Customer's water taking;
- (c) Without prior notice to Customer, perform vehicle inspections from time to time for the purpose of verifying compliance with this Agreement, including the Vehicle Requirements; and
- (d) Take such further or other action as reasonably necessary in order to carry out the intent of this Agreement.

Role of the Customer

7. The Customer acknowledges and agrees that:

- (a) The Customer's right to access the Station and purchase water under this Agreement is conditional on the Customer's compliance with this Agreement and the Terms of Use;
- (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 its 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 this Agreement; and
- (i) Notwithstanding any inspection, the Customer is not relieved from, and the City is not responsible or liable for, the Customer's compliance with the Vehicle Requirements and it remains the Customer's obligation and responsibility to comply with all Vehicle Requirements during the Term.

8. The Customer shall:

- (a) If the Customer is a Potable Water Hauler, provide to the City, on or prior to the Effective Date, a copy of the current inspection record from the applicable local Public Health Unit to the satisfaction of the City;
- (b) During the Term, provide the City with current copies of inspection records promptly following update/renewal, and as may be requested by the City from time to time;
- (c) If the Customer is a Water Hauler, the Customer shall, on or prior to the Effective Date and from time to time as the City may require, arrange with and undergo a satisfactory vehicle inspection by the City to ensure compliance with the Vehicle Requirements. The Customer may arrange for a vehicle inspection by contacting Water Services at 519-837-5627 or waterservices@guelph.ca;
- (d) If this Agreement is extended pursuant to section 3, the Water Hauler shall arrange for a new inspection on or prior to the commencement of the Extension Term;
- (e) Upon enrollment in the City's bulk water sales program, pay any applicable Deposit and obtain an Identification Code from the City;
- (f) Protect the confidentiality of the Customer's Identification Code, and not share it with any third party including any other Water Taker;
- (g) 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 Identification Code;
- (h) Not modify, tamper, or otherwise alter the Station fill pipe's 3" male camlock fitting;
- (i) 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;
- (j) Pay for any costs, losses or repairs resulting from the Water Taker's improper use of, or damage to, the Station;
- (k) 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;
- (l) Not damage the Station, litter, wash vehicles or make any use of the Station other than the purchase of bulk water under the provisions of this Agreement;
- (m) 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 in accordance with the following procedures:
 - (i) where the damage, malfunction, or event has caused or is or reasonably likely to cause damage or injury to any person, property, or the natural environment, by immediately contacting Water Services at 519-837-5627 and subsequently in writing to waterservices@guelph.ca; or
 - (ii) for all other occurrences, by contacting Water Services at 519-837-5627 or waterservices@guelph.ca as soon as reasonably practicable.

9. 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

10. The Customer represents and warrants:

- (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 enter into and comply with its obligations under this Agreement; and
- (b) That Customer shall comply with applicable laws, rules and regulations.

11. 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

12. 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 discretion of the City, 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 this Agreement shall be suspended for the duration of the closure. Unless terminated in accordance with the provisions of this section 12, the Term of this Agreement shall continue to run during a Station closure;
- (b) Terminate this Agreement for convenience upon at least thirty (30) days' notice to Customer;
- (c) Terminate this Agreement 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 this Agreement;
 - (ii) the Customer has not purchased any water under this Agreement for one (1) year;
 - (iii) the Customer fails to comply with any provision of the Outside Water Use By-law, including any provision regarding causing or permitting a waste of water; or
 - (iv) the Customer fails to comply with any provision of the Water Rates and Charges By-law, including any provision regarding payment of water costs; and
- (d) Terminate this Agreement effective immediately, and without notice, if:
 - (i) a change in law after the date of this Agreement imposes any restriction or requirement that has or will have a material impact on the obligations or liability of the City under this Agreement or makes it unlawful for the City to perform its obligations under this Agreement;
 - (ii) the Customer is in default or fails to comply with any provision of this Agreement 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 this Agreement;
 - (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 this Agreement;
 - (v) the Customer:
 - a. 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;
 - b. winds up, dissolves, liquidates or takes steps to do so or otherwise ceases to function as a going concern; or
 - c. 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

13. The Customer shall indemnify and save harmless the City, its elected officials, officers, employees, volunteers agents, contractors, administrators, executors, successor and assigns ("**Indemnified Persons**") 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 this Agreement on the part of the Customer, its agents, employees and sub-consultants.

Insurance

14. The Customer shall:

- (a) Without restricting the generality of the provisions in this Agreement 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 this Agreement:

- (i) commercial general liability insurance covering all liabilities for personal injury and property damage arising from the Services, including personal injury, death, damage to and loss of use of property, with limits of not less than \$5,000,000 for each occurrence; and
 - (ii) automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of liability of not less than \$2,000,000 for each occurrence, and including:
 - a. standard owner's form automobile policy providing third party liability and accident benefits insurance;
 - b. coverage of licensed vehicles owned or operated by or on behalf of the Customer; and
 - c. standard non-owned automobile form policy including contractual liability endorsement.
- (b) Ensure that the foregoing insurance is primary and non-contributory and names "The Corporation of the City of Guelph" as additional insured and is endorsed to provide the City with not less than thirty (30) days' Notice, in advance, of any cancellation, change, or amendment of the insurance coverage.
- (c) Provide Certificates of Insurance acceptable to the City evidencing the foregoing insurance upon or prior to the Effective Date and thereafter on or prior to the expiry.

MFIPPA

15. 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 which is in the control and custody of the City with respect to the performance of this Agreement is subject to MFIPPA.

Notices

16. All notices, requests, demands, determinations under this Agreement (other than routine operational communication) will be in writing and will be deemed duly given: (i) when delivered by hand, (ii) when sent by facsimile (with receipt confirmed), (iii) on the designated date of delivery after being given to an express overnight courier with a reliable system for tracking delivery, or (iv) six (6) days after the date of mailing when mailed by Canada Post, registered or certified mail, return receipt requested and posted prepaid and addressed as follows:

For City:
The Corporation of the City of Guelph, Water Services
29 Waterworks Place
Guelph, Ontario N1E 6P7
Fax: (519) 822-8837

For Customer:
Attention: _____
Name of Customer: _____
Mailing Address: _____

Fax: () _____

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

General

17. This Agreement embodies the entire agreement of the parties with regard to the matters dealt with herein, and no understandings or agreements, verbal, collateral or otherwise exist between the parties except as herein expressly set out. This Agreement may be amended only by written agreement between the parties. No amendment of any of the terms or provisions of this Agreement shall be deemed valid unless it is in writing.

18. In the event of any expiration or termination of this Agreement for any reason whatsoever, the provisions of this Agreement that by their very nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied.

19. The Customer is acting as an independent contractor in the performance of this agreement 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.
20. This Agreement shall be construed and interpreted according to the laws of Ontario and the laws of Canada applicable therein and the parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
21. The Customer shall not assign any of its rights or obligations under this agreement to any third party without express written permission of the City which may be withheld.
22. No waiver or any breach of this Agreement shall operate as a waiver of any subsequent breach or of the breach of any other provision of this Agreement. No provision of this Agreement 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 party that is purported to have given such waiver or consent.
23. No delay or omission on the part of any party of this Agreement to avail itself of any right it may have under this Agreement shall operate as a waiver of any such right. No waiver or failure to enforce any of the provisions of this Agreement shall in any way affect the validity of this Agreement or any part hereof.
24. The rights and remedies of the parties to this Agreement are cumulative and are in addition to and not in substitution for any rights and remedies provided by in law or in equity.
25. This Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
26. This Agreement may be executed in counterparts in writing or by electronic signature and delivered by mail, facsimile or other electronic means, including Portable Document Format (PDF), no one copy needs to be executed by all parties, and all such counterparts together shall constitute one agreement and shall be valid and binding. The parties consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000* S.O. 2000, c. 17, as amended from time to time, with respect to the execution of this Agreement.
27. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this agreement. Any invalid or unenforceable provision shall be deemed to be severed.
28. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
29. This Agreement shall commence on the Effective Date notwithstanding the parties signature dates.

[Signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement under the hands of their respective authorized signing officers as of the date first written above.

Signed by the parties:

THE CORPORATION OF THE CITY OF GUELPH

(Date signed)

Per: _____
Name:
Title:

I am authorized to bind the corporation.

[Legal Name of Customer]

(Date signed)

Per: _____
Name:
Title:

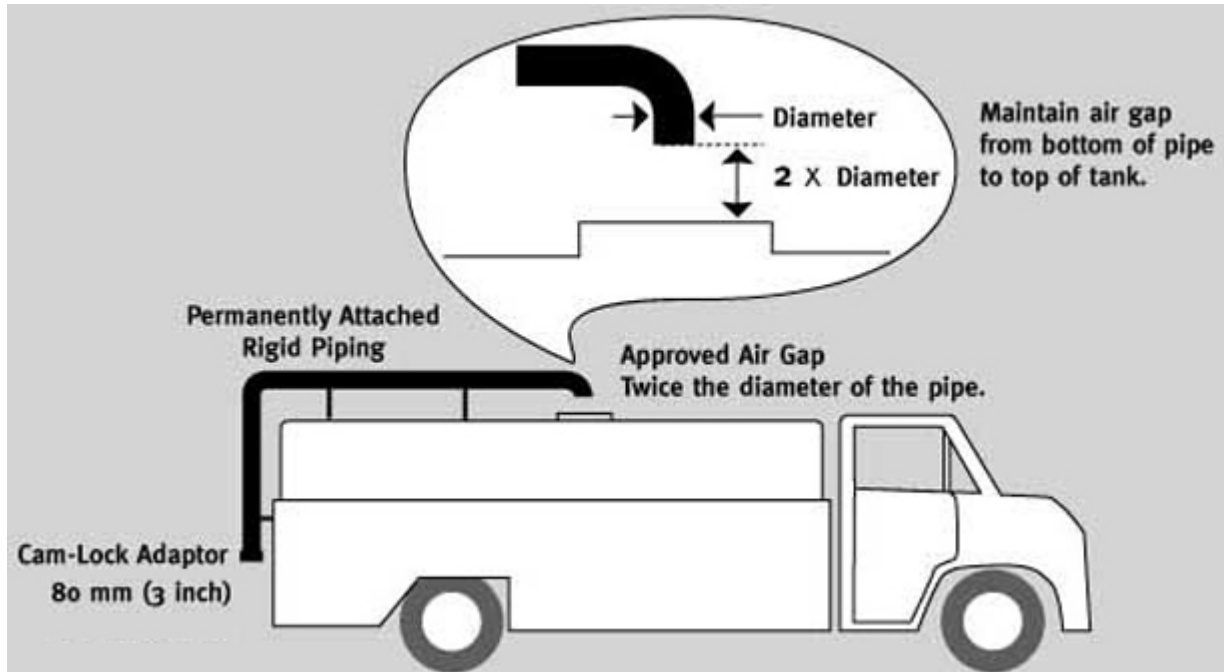
Per: _____
Name:
Title:

I am/we are authorized to bind the Customer.

Schedule "A"

Water Hauler Vehicle Requirements for Bulk Water Station Use

This Schedule A specifies the minimum vehicle requirements for Water Haulers taking water from the Station ("**Vehicle Requirements**"). The Vehicle Requirements may be amended, replaced or supplemented from time to time in accordance with changes to the Terms of Use. The City will provide notice to Customer of changes in Vehicle Requirements.



Air gap requirements

- Install and maintain permanent rigid piping, including a top of tank air gap on the vehicle to ensure consistent protection of the drinking water system.
- The air gap must be twice the diameter of the rigid fill pipe, to be approved by the City.

Hose requirements

- Customer shall provide their own fill hose to accommodate the size of adaptor the Customer has on their tank 80 millimeters (mm) or 3 inches.
- The hose must be able to withstand 80 pounds per square inch (psi) of pressure.
- The fill hose must have at least one female coupler end to connect to the male cam-lock adaptor at the Station.
- The length of the hose must reach from Customer's vehicle to the cam-lock adaptor.

Adapter requirements

- Female cam-lock adapter must be 80 mm or 3 inches in diameter. This will be provided by the Customer.