



- 2.2 After the expiration of such ten-year term, unless terminated in accordance with Article 11 of this Agreement, this Agreement shall continue to be in full force and effect as is, on a month to month basis, until such time as the parties agree to the renewal, alteration or dissolution of the Agreement pursuant to Article 11 of this Agreement.

### **3. Determination of Wastewater Quantity**

- 3.1 The quantity of Wastewater discharged by the Company from the Subject Property to the County Sewage Works shall be determined by direct metering of the combined sanitary and process wastewater discharge (hereinafter called the "Wastewater Discharge Meter").
- 3.2 The Company will provide and maintain at their expense a sampling manhole approved by the County. The location will allow the County unrestricted access.
- 3.3 The Company shall maintain and calibrate the Wastewater Discharge Meter on an annual basis or as recommended by the manufacturer, whichever is more frequent, at its own expense.
- 3.4 The Company agrees that if there are malfunctions of the Wastewater Discharge Meter the County may estimate the quantity of wastewater based on historical water consumption and wastewater discharge flow volumes (e.g. during the previous 12 months).
- 3.5 In calculating the quantity of wastewater for the purpose of this Agreement, storm water shall be excluded.
- 3.6 The Company shall be permitted to discharge wastewater within the following quantity limits:
- a) Peak Process Wastewater flow rate of 227.1 litres per minute, and
  - b) Maximum Process Wastewater daily flow of 70 m<sup>3</sup> per day

### **4. Over-strength Agreement**

- 4.1 During the term of this Agreement only, as renewed or extended as permitted hereunder the quality of the Wastewater discharged by the Company from the Subject Property to the County Sewage Works may exceed the prescribed limit in the County Sewer Use By-law with respect to 5-day BOD, TSS and TP; (hereinafter called the "Over-strength Wastewater"); however, the Company shall not exceed the following limit at any time:

Parameter (1) 5-day BOD (BOD<sub>5</sub>) concentration of 2,250 mg/L (single sample maximum).

Parameter (2) Total suspended solids (TSS) concentration of 1,000 mg/L (single sample maximum).

Parameter (3) Total phosphorous (TP) concentration of 20 mg/L (single sample maximum).

- 4.2 Loadings for the above parameters shall not exceed 157.5 kg/d (BOD<sub>5</sub>), 70 kg/d (TSS), and 1.4 kg/d (TP), respectively, based on monthly average concentrations multiplied by the average daily wastewater discharge flow rate for the month (based on calendar days).
- 4.3 The discharge of Over-strength Wastewater by the Company from the Subject Property with BOD<sub>5</sub>, TSS and TP in excess of the limits set out in Section 4.1 and 4.2 shall constitute a contravention of this Agreement and thus a contravention of the Sewer Use By-law.

### **5. Over-strength and Discharge Monitoring Fee**

- 5.1 The Company hereby covenants and agrees to pay the County a fee for Over-strength Wastewater and Wastewater discharge monitoring. The said fee shall become due and be paid quarterly. The fee payable shall be based on the following formula:

Total Fee = Surcharge (Parameter 1) + Surcharge (Parameter 2) + Surcharge (Parameter 3)

Where:

Surcharge = (B x C x D) + E + F

And where:

B = Flow (1000 m<sup>3</sup>) as measured by the Process Discharge Meter for the period or by estimate in accordance with clause 3.5 above.

C = Monthly Average Composite Sampling Results in mg/L less By-law Limit\*

D = Rate per kg (currently \$1.65/kg) \*\*

E = Hourly Labour Rate as reasonably determined by the County x three hours x the number of samples in the period

F = Cost of laboratory analysis as determined by the County x the number of samples (minimum monthly)

\* For the purposes of determining the strength, the principle of averaging is accepted, and analysis will be conducted on composite wastewater samples, each collected on a time or flow proportional basis, over a period of not less than 24-hours. Samples will be collected once with an option to increase it up to four times per month at the County's and Company's mutual agreement in order to determine the strengths and loadings discussed in this Agreement unless the Company is in violation of this agreement or any other provisions of the sewer use bylaw in which case it is up to the discretion of the County to sample as frequently as required.

\*\* Rate per kg will be based on the rate established in the County Schedule "A" Fees and Charges as amended from time to time.

## 6. Wastewater Abatement

6.1 The County hereby covenants and agrees to provide the Company, on a monthly basis, with abatement from the wastewater charges set by the County Water and Wastewater Rate By-law (the "By-law Charges") in the amount of the difference between the By-law Charges and a wastewater charge based on the calculation shown below ("WC") if the WC is lower than the By-law Charges, provided that the Company is in compliance with their obligations under the County Sewer Use By-law and this Agreement. For the purposes of this calculation the waste volume is to be determined by direct metering of wastewater as an alternative to the previous method of using the consumption volume.

The actual wastewater volume used for calculating the monthly wastewater charge will be measured with the existing Wastewater Discharge Meter. The monthly Wastewater Charge shall be based on the following formula:

$WC = WV \times VC + T$

Where:

WC = Wastewater Charge

WV = monthly Wastewater Volume (m<sup>3</sup>) discharged to the County Sewage Works as recorded by the Wastewater Discharge Meter or by estimate in accordance with Section 3.3 above.

VC = the Volumetric Charge (\$/m<sup>3</sup>) for wastewater set by the County Water and Wastewater Rate By-law.

T = Fixed Service Charges as defined in the County Water and Wastewater Rate By-law.

6.2 The Company will provide the County and/or a third party, which the County may designate, with the monthly Wastewater volume (m<sup>3</sup>) discharged to the County Sewage Works.

- 6.3 For greater clarity, if the Company is not in compliance with their obligations under the County Sewer Use By-law and/or this Agreement, they shall not be entitled to a rebate on the wastewater charges set by the County Water and Wastewater Rate By-law and the wastewater charges will be calculated based on water consumption as recorded by the potable water meter.

## **7. Ministry of the Environment, Conservation and Parks requirements**

- 7.1 In the event that Ministry of the Environment, Conservation and Parks imposes more stringent system effluent criteria than those established under the current Environmental Compliance Approval (ECA, formerly referred to as Certificate of Approval) governing the County WWTP (hereinafter called the "Revised Effluent Criteria"), the County reserves the right to establish more restrictive discharge limits for the Process Wastewater discharge from the Subject Property as necessary to ensure compliance with Revised Effluent Criteria, provided that the County shall make best efforts to immediately notify the Company of any plans, warnings, initiatives, actions, or notices by the Ministry of the Environment, Conservation and Parks and to keep the Company fully informed of all such reduction events and activities.

## **8. Additional Charges**

- 8.1 Any overdue fees or charges under this Agreement will be charged interest in accordance with the County of Oxford Receivable Management Policy Number 6.3. Collection of any overdue accounts under this Agreement will follow the prescribed method under Appendix A of said policy. The County may terminate this Agreement at its option, without notice, if the Company fails for more than three months to pay an overdue account provided the County has notified the Company thirty (30) days in advance of such proposed termination thereby giving the Company an opportunity to rectify such deficiency. Termination shall not relieve the Company from its liability to make such payments due prior to termination.

## **9. Upset conditions and Maintenance**

- 9.1 In the event of an overload condition in the County Sewage Works caused by the Company or maintenance or operational problems in the County Sewage Works caused by the Company or in the event of contravention of the County Sewer Use By-law, as modified by this Agreement, the County may notify and require the Company to correct the situation within a reasonable timeframe established by the County, or to reduce or eliminate the offending discharge to the County Sewage Works.
- 9.2 If the County Sewage Works is unable to comply with the discharge limits specified in its Environmental Compliance Approval (ECA), the County may require the Company to reduce its loadings to the County Sewage Works to loadings less than those specified in Section 4.2 of this Agreement as reasonable in the circumstances or take other steps deemed necessary to ensure compliance with the limits specified in the County's ECA.
- 9.3 In the event of planned maintenance to the County Sewage Works, the County will endeavour to give two (2) weeks' notice to the Company, if possible. This notice shall be delivered in accordance with Section 13.6 hereof.

## **10. Spill Control and Pollution Prevention Planning**

- 10.1 The Company will prepare and submit to the County within three months of the Effective Date, a Spill Control and Pollution Prevention Plan (hereinafter called the "Plan"). The Plan will identify the steps that the Company will take to ensure that the flow and loading limits specified in this Agreement are met on a consistent basis. The Plan will also identify the steps that the Company will take to minimize the occurrence of spills or other incidents which will adversely affect the County Sewage Works.

## **11. Termination**

- 11.1 This Agreement may be terminated by the Company, at its sole and absolute discretion, notwithstanding any other term, condition or covenant in this Agreement, by providing sixty (60) days prior written notice sent in accordance with Section 13.6 hereof to the County. The Company's termination rights pursuant to this Section shall be absolute and unconditional.

- 11.2 This Agreement may be terminated by the County notwithstanding any other term, condition or covenant in this Agreement, by providing sixty days (60) (hereinafter called the "Termination Notice Period") prior written notice (hereinafter called the "County Termination Notice") sent in accordance with Section 13.6 to the Company, if the County, acting reasonably and based on credible substantiating evidence, determines that one or more of the following conditions are met:
- a) The Wastewater from the Subject Property is causing a health or safety hazard to a Sewage Works employee; or
  - b) The Wastewater from the Subject Property is causing damage to the County Sewage Works, significantly increasing their maintenance costs or causing a dangerous condition; or
  - c) The Wastewater from the Subject Property is causing material damage to the wastewater treatment process or causing a dangerous condition in the County WWTP; or
  - d) The Wastewater from the Subject Property is causing the biosolids from the County Sewage Works to fail to meet criteria relating to contaminants for spreading the biosolids on agricultural lands under any existing or future regulation made under the *Nutrient Management Act 2002*, S.O. 2002, c. 4 or under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as those statutes may be amended from time to time, or any other relevant current or future regulation or any direction provided by an officer of the Ministry of the Environment, Conservation and Parks or any other relevant Provincial and/or Federal regulatory agency; or
  - e) The Wastewater from the Subject Property is causing the County Sewage Works effluent to contravene any current or future requirement by or under the *Ontario Water Resources Act*, R.S.O. 1990, c. o.40 or the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or their regulations, as those statutes and regulations may be amended from time to time, or any other relevant Provincial and/or Federal regulation or any direction provided by an officer of the Ministry of the Environment, Conservation and Parks or any other relevant Provincial and/or Federal regulatory agency; or
  - f) The Wastewater from the Subject Property is causing a hazard to any person, animal, property or vegetation; or
  - g) The Wastewater from the Subject Property is contrary to the County Sewer Use By-law in any way other than as permitted by this Agreement,
- (hereinafter called individually a "Termination Condition", or collectively the "Termination Conditions").
- 11.3 The County Termination Notice shall be accompanied by the substantiating information upon which the County determined that one or more of the Termination Conditions are met.
- 11.4 Should the Company disagree with the County's determination that one or more of the Termination Conditions are met, the Company shall provide written notice of this disagreement within fifteen days of receiving the County Termination Notice, failing which, this Agreement shall be terminated upon expiry of the Termination Notice Period (hereinafter called the "Notice Expiry Date"), unless, within the Termination Notice Period, the Termination Condition or Termination Conditions specified in the notice have been rectified or otherwise resolved to the County's satisfaction acting reasonably, or the Company has, to the County's satisfaction acting reasonably, commenced steps, and is acting diligently and continuously, to rectify the Termination Condition or Termination Conditions.
- 11.5 Should the Company provide notice of disagreement pursuant to Section 11.4 above; the parties agree to make good faith efforts to resolve the disagreement through consultative discussions. If the disagreement is not resolved by the Notice Expiry Date, and no agreement has been reached to extend the Notice Expiry Date, this Agreement shall terminate on the Notice Expiry Date.
- 11.6 This Agreement may be suspended by the County at any time where the County has determined that the continued discharge of Wastewater from the Subject Property in accordance with this Agreement will create an immediate threat or danger to any person, property, plant or animal life, or waters (hereinafter called

the "Emergency Situation"). This suspension shall continue until such time as the Emergency Situation no longer exists, to the County's satisfaction acting reasonably.

- 11.7 In the event of termination of this Agreement by either party, effective immediately upon termination, the Company shall ensure full compliance with all provisions, limits and standards set out in the County Sewer Use By-law for all Wastewater from the Subject Property.

## **12. Insurance and Indemnification**

- 12.1 The Company shall defend, indemnify and save harmless the County its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Company, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Company in accordance with this Agreement, and shall survive this Agreement.

The Company agrees to defend, indemnify and save harmless the County from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Company's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Company in accordance with this Agreement, and shall survive this Agreement.

### **12.2 Commercial General Liability Insurance**

The Company shall maintain Commercial General Liability Insurance satisfactory to the County and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$15,000,000/occurrence with an aggregate of not less than \$15,000,000
- (b) Add the County as an additional insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Broad Form Property Damage
- (g) Contractual Liability
- (h) Owners and Contractors Protective
- (i) The policy shall provide 30 days prior notice of cancellation.

### **12.3 Environmental Liability Insurance**

The Company shall maintain Environmental Liability insurance to cover injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual release. The policy shall include bodily injury, including sickness, disease, shock, mental anguish, and mental injury. The policy is to be renewed for 3 years after the term of this Agreement, or any extension thereof, and a Certificate of Insurance evidencing renewal shall be filed with the County. If the policy is to be cancelled or non-renewed for any reason, 90 days' notice of said cancellation or non-renewal must be provided to the County. The County has the right to request that an Extended Reporting Endorsement be purchased by the Company at the Company's sole expense.

## **13. General**

- 13.1 If any provision of this Agreement is for any reason held by the Courts to be invalid, all remaining provisions shall remain in full force and effect.

- 13.2 This Agreement shall endure to the benefit of, and be binding upon the heirs, executors, administrators, successors, and assignees of the parties hereto.
- 13.3 Except as specifically provided in this Agreement, the Company is in no way relieved of its obligation to fully comply with the provisions of the County Sewer Use By-law.
- 13.4 Insofar as the provisions of this Agreement may conflict with the provisions of the County Sewer Use By-law, the provisions of this Agreement shall prevail.
- 13.5 This Agreement shall be conclusively deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada as applicable.
- 13.6 Any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered personally, or if sent by registered mail or by private overnight courier service to such party, as follows:

(i) to the County at:

County of Oxford  
21 Reeve Street  
Woodstock, ON, N4S 3G1

Attention: Director of Public Works

(ii) if to Shaw's Ice Cream at

Shaw's Ice Cream  
1 Clearview Drive,  
Tillsonburg, ON  
N4G 4G8

Attention: Plant Manager

or, to such other address(es) as the parties may notify the other of according to this Section. Any notice delivered to the party to whom it is addressed hereinbefore provided shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day, then the notice shall be deemed to have been given and received on the business day next following such day.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their Corporate Seals attested to by the hands of their respective proper officers in that behalf duly authorized.

**County of Oxford**

Per:

Date:

\_\_\_\_\_  
Peter M. Crockett, P.Eng.  
Chief Administrative Officer

I have the authority to bind the corporation

**Shaw's Ice Cream**

Per:

Date:

\_\_\_\_\_  
Kristine Hayes  
President  
1467317 Ontario Inc. (o/a Shaw's Ice Cream)

I have the authority to bind the corporation