

THE CORPORATION OF THE TOWNSHIP OF CRAMAHE

BY-LAW NO. BL-2023-42

Being a By-law to Authorize the Mayor and the Clerk to execute an agreement between the Corporation of the Township of Cramahe and Lakefront Utility Services Incorporated.

WHEREAS Section 23.1(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to delegate its powers and duties to a person or body subject to certain restrictions; and

WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act, 2001, or any other Act,

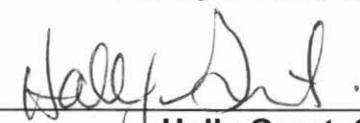
NOW THEREFORE BE IT RESOLVED THAT the Council of The Corporation of the Township of Cramahe hereby enacts as follows:

1. **THAT** the Mayor and Clerk are hereby authorized on behalf of The Corporation of the Township of Cramahe, to execute an agreement between the Township of Cramahe and Lakefront Utility Services Incorporated. Attached as Schedule A; and
2. **THAT** this by-law shall be deemed to be in force and effect as of June 20, 2023

Read a first, second and third time and finally passed this 20th day of June, 2023.



Mandy Martin, Mayor



Holly Grant, Clerk

SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this day of , 2023
BETWEEN

The Corporation of the Township of Cramahe
(The "Client")

-AND-

Lakefront Utility Services Inc.
("LUSI" "The Contractor")

WHEREAS the Client retains LUSI to provide management, operation and maintenance services, and overall responsible operator ("ORO") duties in respect of the Facility as described in Schedule A to this Agreement (the "Services"). The Client acknowledges and agrees that LUSI bears no responsibility for the design of the Facility; and

WHEREAS the Township of Cramahe now wishes to retain the Contractor to perform the temporary services for a 3 year term which will be included under Schedule "A", ("Services").

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

The Contractor agrees to provide Cramahe with the Services detailed in Schedule "A" attached hereto as may be amended by written agreement of the parties from time to time. Such Schedule "A" becomes and forms part of this Agreement. The service provided to Cramahe include operation of the Castleton Water System under O.Reg 319.

2. Additional Services

The parties acknowledge that the Contractor and Cramahe may agree to the provision of additional services by the Contractor, which additional 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 additional 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. The parties agree that the payment terms shall be prorated based on the term of this Agreement.

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

This Agreement shall start on the Effective Date and shall continue in effect for an initial term beginning June 21, 2023 and ending July 31, 2026 (the "Initial Term") and then shall be tendered as per the Municipal Procurement By-Law & Policy No. 2020-77, as amended.

Subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay the Contractor a price for the services for the 3 year period listed within Schedule "B" of this agreement.

6. Termination

6.1 Notwithstanding the provisions of Section 5 and 6.1 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.
- iii. 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.
- iv. 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 to not divulge to any third party or to use except in connection with the performance of services hereunder:

- i. Any confidential information of Cramahe's business learned by the Contractor or its workers in the course hereof;
- ii. 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.

8. Force Majeure

8.1 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 at any time (the "Abnormal Circumstances") for performance of any Services or shall be extended by the period of such delay.

8.2 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.

8.3 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"). If a sudden event occurs, the Contractor will follow the Colborne Drinking Water System Emergency Plan.

9. Nature of Relationship

9.1 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.

9.2 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.

9.3 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 and 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

11.1 The Contractor represents and warrants that the Facilities to be operated by it under this Agreement will function, operate, and perform in accordance with all applicable law and that it shall perform such Services as are necessary and more particularly described in Schedule "A" attached hereto (except to the extent such terms and conditions are modified by the parties from time to time).

11.2 The Contractor agrees that it will perform the Services in a competent manner, in accordance with this Agreement, all applicable laws, and in accordance with industry standards.

11.3 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.

11.4 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.

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

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

- i. Workers' Compensation Insurance as required under applicable laws.
- ii. 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. The following policy or policies of insurance shall:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. Remain in full force and effect at all times during the term of this agreement.

13.2 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.

14. Other Provisions

The parties agree that:

- 14.1 All tools and furniture, mobile equipment and vehicles belonging to the Contractor purchased at no direct cost to Cramahe shall remain property of the Contractor.
- 14.2 Any instrumentation, SCADA, software, or similar installations installed by the Contractor (at direct cost to the Client) become the property of Cramahe upon installation.
- 14.3 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.
- 14.4 Cramahe retains the right to audit the operating procedures and records of the Contractor by a party named by Cramahe. The Contractor shall provide such within a reasonable time as requested by the party undertaking the audit on behalf of Cramahe.
- 14.5 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.

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 parties shall appoint an arbitrator pursuant to the *Arbitration Act*, Ontario, and the decision of the arbitrator shall be binding on both parties without appeal or other recourse. Mediation and arbitration shall occur within 90 days of either party issuing notice of same, unless mutually agreed upon.

16. Assignment

Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party. This Agreement shall ensure 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 at the earliest of (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 K0K 1S0

To the Contractor:
207 Division Street
PO Box 577
Cobourg, ON K9A 4L3

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. General

20.1 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.

20.2 Time shall be of the essence in the performance of obligations pursuant to this Agreement.

20.3 The headings in this Agreement are for convenience, accessibility, 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.

PER: _____

NAME: _____

I have authority to bind the corporation.

LAKEFRONT UTILITY SERVICES INC.

PER: _____

NAME: _____

I have authority to bind the corporation.

SCHEDULE "A"

SERVICES

The Contractor agrees to perform the following services for the Colborne Drinking Water System #220000790 and the Castleton Drinking Water System # 735000491 (collectively the "Facility"):

1. Amending the necessary documentation such as but not limited to the system operating licence and for installation of off-site on-line monitoring as deemed necessary by Contractor, at the direct cost of the Client.
2. All labour (including transportation of employees complete with hand tools) to operate and to perform routine maintenance of the facilities.
3. Operation of the noted facilities on a daily basis. The Services shall be completed within the normal workday of eight (8) hours and three (3) hours on weekends and holidays. There shall be no extra charges or work performed outside these hours except for emergencies. Any hours outside of the non-emergency hours noted above must be approved in advance by Cramahe.
4. During the time that Contractor's employees are not present, there shall be an operator available on-site within 90 minutes for emergency response.
5. Use of Contractor's equipment and transport, less heavy equipment such as excavators and dump trucks.
6. Preventative maintenance shall be conducted in accordance with the Safe Drinking Water Act.
7. Review of engineering design and provision of comment on design.
8. Water service and water main installation/repair inspections.
9. Submission of reports as required by the Province of Ontario under the Safe Drinking Water Act.
10. Providing insurance as required by this Agreement.
11. Keep maintenance records.
12. Written bimonthly operating reports submitted to Cramahe.
13. Meetings with Cramahe's Council on an as required basis.
14. Preparation of routine reports as could be reasonably be expected as currently required by regulation, guidelines and directives, less preparation of documentation for Licensing as per the Safe Drinking Water Act.
15. Preparation of monthly financial reports to be given to Cramahe's Treasurer by the 15th day of each month.
16. Provision of minor general supplies such as (but not limited to) cleaning agents, towels, light bulbs etc. from Contractor's warehouse /inventory.
17. Contractor will adhere to Cramahe's policies and bylaws for the purchase of supplies and services for work performed under this agreement.

SCHEDULE "B"

TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

1. Invoices to be forwarded before the 15th of the month, effective the first day of each month, to be paid by the 1st of the following month.
2. The Township will directly pay all utility costs, telephone, internet, and chemical purchases.
3. Where major capital works and equipment replacement exceeding \$1,000 are involved, Cramahe and the Contractor will need to agree prior to the start of work the method of work administration and oversight, design and payment arrangements.
4. Billing Administration

The following billing services shall be provided by the Contractor at the following rates:

- 4.1 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 \$17,800.00 per year.
- 4.2 Start-up costs of \$3,000 (or 65 hours). Any additional hours resulting from implementing billing will be billed separately from the start-up costs.
5. Meter reading at \$21.60 per meter for the duration of the contract.
 - 5.1 Meter reading costs assume the Contractor will be able to utilize the current meter reader. If the Contractor has to outsource for a meter reader, the costs will be covered under section 7.2.
 - 5.2 Where customers are billed on a fixed cost basis, the above rate for meter reading shall apply.
 - 5.3 Water meter installation and replacement shall be provided by the Contractor at the cost, plus 10% with costs billed directly to the customer.
6. Locates billed at \$55.15 per locate with an estimate of 120 locates per year.
7. Other Costs

The following services shall be provided by the Contractor at the request of Cramahe at the following rates, which are in addition to the annual fee set out in section 5.6;

 - 7.1 Emergency overtime based upon actual costs to the Contractor, plus 10%.
 - 7.2 Third party costs will be billed at costs plus 10%.
 - 7.3 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 \$29.35/hydrant.
 - 7.4 Rating of 20% of the hydrants annually based upon \$130.00/hydrant.

7.5 Annual street valve operation at \$59.25/valve.

7.6 Equipment repair and replacement at cost, plus 10%.

8. DWQMS

All DWQMS costs will be billed at costs plus 10%. The Contractor does assume responsibility for DWQMS issues from August 2021 to the date of this Agreement.

9. Basis for determining the overall annual costs of system operations by the Operating Authority:

Table 9.0

Item	UNITS	Rate per UNIT	Number of UNITS	Total Annual Cost
Start-Up Costs				\$6,000.00
Annual Fee	Each	\$165,000.00	1	\$165,000.00
Billing Administration	Each	\$17,800.00	1	\$17,800.00
Meter Reading	Each	\$43.20	1090	\$47,088.00
Locates	Each	\$55.15	1090	\$6,618.24
Annual Hydrant Inspection	Each	\$45.00	145	\$6,525.00
Hydrant Rating	Each	\$130.00	25	\$3,250.00
Valve Operation	Each	\$59.25	60	\$3,555.00
Overtime	Estimate	N/A		\$30,000.00
Contingences	Estimate	N/A		\$50,000.00
TOTAL =				\$335,836.24

Table 9.0 Notes:

1. The amount of overtime shown is for budgeting purposes only. The Township 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. The township reserves the right to question the need for overtime.
2. 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.
3. *For the purposes of the service agreement; any costs related to Annual Hydrant Inspections, Hydrant Ratings and Valve Operations are based on the time/date of when these inspections/services were completed in the given calendar year.
4. *Start-Up Costs is a one-time fee and is only applicable at the beginning of the contract.

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 and conduct such actions and notifications as required by law.