

The Corporation of the Township of Oro-Medonte

By-law No. 2014-075

AMENDED

**A By-law to authorize an agreement between The Corporation of the Township of Oro-Medonte and Skyline Utility Services Inc. with respect to the Horseshoe Valley Resort Waste Water Treatment Plant as a municipal capital facility (Horseshoe Valley Resort Waste Water Treatment Plant Municipal Capital Facility By-law)**

**Whereas** section 110 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the council of a municipality may enter into agreements for the provision of municipal capital facilities by any person and may pass by-laws to enter into agreement relating thereto;

**And Whereas** paragraph 6 of subsection 2(1) of Ontario Regulation 603/06, as amended, prescribes municipal capital facilities for water, sewers, sewage, drainage and flood control;

**And Whereas** the Horseshoe Valley Resort Waste Water Treatment Plant ("WWTP") is a facility that is owned and operated by Skyline Utility Services Inc. and provides waste water treatment services to lands and users within the Township of Oro-Medonte;

**And Whereas** Skyline Utilities Inc. proposes to transfer the WWTP to the Township as a municipal capital facility pursuant to section 110 of the *Municipal Act, 2001*;

**And Whereas** the Council of The Corporation of the Township of Oro-Medonte is desirous of entering into an agreement to accept the WWTP as a municipal capital facility in order to be authorized to impose a fee or charge upon persons that derive or will derive a benefit from waste water services provided by the WWTP that will ensure the continued operation of the WWTP and the improvement and upgrade of the facility by Skyline Utility Services Inc.;

**Now Therefore** the Council of the Township of Oro-Medonte hereby enacts as follows:

1. The Township is authorized to enter into an agreement pursuant to section 110 of the *Municipal Act, 2001* with Skyline Utility Services Inc. for the provision of a municipal capital facility for a sewage facility, being the WWTP, in accordance with Ontario Regulation 603/06, as amended (the "Agreement") in substantially the form and substance as set out in Schedule "A" to this by-law.
2. That the Mayor and Chief Administrative Officer are authorized to execute the Agreement.
3. That the Township shall be authorized to take such additional actions and execute such additional documents in furtherance of the requirements and authorities set out in the Agreement.
4. This by-law shall take effect on the final passing thereof.

**By-law read a First, Second and Third time, and Passed this 21<sup>st</sup> day of May, 2014.**

The Corporation of the Township of Oro-Medonte

  
Mayor, H.S. Hughes

  
Deputy Clerk, Janette Teeter

## MUNICIPAL CAPITAL FACILITY AGREEMENT

THIS AGREEMENT made this 01 day of May 2014.

BETWEEN:

**SKYLINE UTILITY SERVICES INC.**

("Skyline")

- and -

**THE CORPORATION OF THE TOWNSHIP OF ORO-MEDONTE**

("Township")

**WHEREAS:**

- (a) Skyline is the owner of a facility known as the Horseshoe Valley Resort Waste Water Treatment Plant ("WWTP") located within the geographic boundaries of the Township;
- (b) The WWTP, originally constructed in 1997 and subsequently expanded in 2001, provides waste water treatment services to lands and users within the Township;
- (c) On September 30, 2001 the Township and Azurix North America (Canada) Corp. ("Azurix") entered into a Municipal Responsibility Agreement with respect to the expansion and operation of the WWTP;
- (d) The Township and American Water Services Canada Corp. ("AWS"), a successor of Azurix, entered into a Sewer Responsibility Agreement on February 5, 2003 whereby, among other things, the Township agreed to use its best efforts within its jurisdiction, to enact a by-law allowing AWS to collect water and/or sewage fees from Township residents which would provide an enforcement mechanism by which AWS could have remedies for non-payment of fees;
- (e) On July 10, 2008 Skyline, American Water Canada Corp. ("AWC"), a successor of AWS, and the Township entered into an Assignment and Assumption Agreement, with respect to the WWTP and the Municipal Responsibility Agreement whereby the Township provided consent to Skyline acquiring the WWTP and acknowledged that AWC would continue to operate the WWTP. Simultaneously, Skyline and AWC entered into an Operation, Maintenance and Management Agreement;
- (f) Skyline operates the WWTP as a private facility pursuant to the Assignment and Assumption Agreement and pursuant to certificates of approval issued by the Ministry of the Environment;

- (g) Section 110 of *Municipal Act, 2001*, S.O. 2001, c. 25, allows municipalities to enter into agreements with persons for the provision of municipal capital facilities, including facilities for sewage;
- (h) Skyline proposes to transfer the WWTP to the Township as a municipal capital facility pursuant to section 110 of the *Municipal Act, 2001* and the Township proposes to impose fees and charges under Part XII of the *Municipal Act, 2001* upon users for sewage treatment services;
- (i) The Township shall re-convey the WWTP to Skyline, upon passage of one or more by-laws to constitute the WWTP as a municipal capital facility and to impose fees and charges for wastewater services.

**NOW THEREFORE WITNESSETH** that in consideration of the covenants and premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree with each other as follows:

## **DEFINITIONS**

1. In this Agreement, the following terms shall have the following meanings:
  - (a) "Agreement" means this agreement expressly made pursuant to section 110 of the *Municipal Act, 2001*;
  - (b) "By-law" means a by-law duly enacted by the Council pursuant section. 110 of the *Municipal Act, 2001*;
  - (c) "Council" means the council for the Township;
  - (d) "Date of Completion" means August 15, 2014;
  - (e) "MOE" means the Ministry of the Environment;
  - (f) "Municipal Responsibility Agreements" mean the Municipal Responsibility Agreement entered into between the Township and Azurix and the Sewer Responsibility Agreement entered into between the Township and AWS;
  - (g) "Party" means Skyline or the Township and "Parties" means both Skyline and the Township";
  - (h) "Services" mean the sewage services supplied by the WWTP;
  - (i) "Skyline" means Skyline Utility Services Inc.;
  - (j) "Tetra Tech Report" means the Report to Skyline Utility Services Inc. from TetraTech entitled "Horseshoe Valley Resort WWTP – Summary of Recommended Upgrades" dated January 14, 2013;
  - (k) "Township" means The Corporation of the Township of Oro-Medonte;

- (l) "Upgrades" means the upgrades to the WWTP comprising the influent screens, SCADA upgrades and SBR mixing all as set out in sections 2.2, 2.3 and 2.5, respectively, of the Tetra Tech Report, and as outlined in the agreement between Skyline and Western Mechanical Electrical Millwright Services Ltd.;
- (m) "Users" means the persons and properties who are provided sewage services from the WWTP as set out in Schedule "A";
- (n) "WWTP" means the Horseshoe Valley Resort Waste Water Treatment Plant.

## **TRANSFER**

2. The Parties agree as follows:

- (a) Skyline shall transfer the WWTP to the Township for a nominal consideration of ONE DOLLAR (\$1.00), the receipt and sufficiency whereof is hereby acknowledged by the Township;
- (b) the Township shall, upon passage of one or more by-laws to constitute the WWTP as a municipal capital facility and to impose fees and charges for wastewater services upon the Users, re-convey the WWTP to Skyline (which Skyline shall accept) for a nominal consideration of ONE DOLLAR (\$1.00), the receipt and sufficiency whereof is hereby acknowledged by Skyline.

## **OPERATION AND ADMINISTRATION**

3. Notwithstanding the transfer of the WWTP to the Township, Skyline covenants and agrees that it shall remain solely and wholly responsible for the operation and administration of the WWTP and the provision of services to Users without interruption. Skyline further covenants and agrees that, following the enactment of the fees and charges by-law, the operation of the WWTP shall not be discontinued for non-payment of fees and charges, or for any other reason, without the express written consent of the Township.

## **MAINTENANCE AND REPAIR**

4. Skyline covenants and agrees to be solely and wholly responsible for all maintenance and repairs of the WWTP, including all repairs and rectifications that may be necessary in order to ensure its continued and future operation in compliance with all federal, provincial and municipal laws and requirements in accordance with the Municipal Responsibility Agreements.

## **UPGRADES**

5. Skyline covenants and agrees to commence the Upgrades to the WWTP no later than May 19, 2014 and to complete the Upgrades no later than the Date of Completion. Should Skyline fail to satisfy either of the aforementioned requirements by the above-noted dates, Skyline hereby grants the Township a right of entry onto its lands to undertake and complete the Upgrades. Without limiting the generality of the foregoing,

Skyline agrees that the Township shall be entitled to avail itself of the authority to undertake remedial action as set out in section 446 of the *Municipal Act, 2001*. The Parties acknowledge that a technical amendment to the Certificate of Approval for the WWTP was requested by the MOE to include the Upgrades and that the MOE has not yet processed or executed the technical amendment. The Parties agree that any delay resulting from the MOE not having processed and executed the technical amendment will be grounds to extend the Date of Completion and the Parties agree to act reasonably in extending the Date of Completion in such circumstances.

#### **LETTER OF CREDIT**

6. Skyline agrees to file with the Township, upon the execution of this Agreement, an irrevocable letter of credit issued from a Canadian Chartered Bank that is satisfactory in form to the Township's Treasurer in the amount of \$515,896.00. Skyline agrees that the Township shall be entitled to draw upon said letter of credit to the extent that it deems to be appropriate, in its sole and absolute discretion, should Skyline fail to carry out and complete the Upgrades to the WWTP as set out in this Agreement. The Township shall return the letter of credit to Skyline's issuing financial institution once the Upgrades are completed in accordance with this Agreement.

#### **FEES & CHARGES**

7. Upon the WWTP being declared by Council resolution to constitute a municipal capital facility within the meaning of O. Reg. 603/06, the Township acknowledges that it will have the authority to impose fees and charges on the Users for the costs payable for the Services provided to them on behalf of the Township and to collect such fees and charges. Upon the authorization of the Council, the Township shall impose fees and charges, which may increase from time to time, on the Users who receive Services from the WWTP in such amounts as may be permitted pursuant to Part XII of the *Municipal Act, 2001*, such fees and charges to comprise costs related to:
  - (a) operation of the WWTP;
  - (b) immediately-required maintenance and repair of the WWTP;
  - (c) funds to be set aside in a reserve fund for future upgrades, improvements, repairs and maintenance;
  - (d) administrative costs incurred by the Township and Skyline.

#### **REMITTANCE OF PORTION OF FEES & CHARGES TO SKYLINE**

8. A portion of the fees and charges collected by the Township pursuant to Section 7 (being the portion related to operating and administrative costs of Skyline) shall be remitted to Skyline on a quarterly basis on the following dates:
  - (i) February 28
  - (ii) May 31

- (iii) August 31
- (iv) November 30

The Township makes no representations as to any amounts collected being sufficient or satisfactory to reimburse Skyline in full for any costs incurred by Skyline. If any fees and charges are not collected, the Township shall transfer the balance owing to the tax roll of the properties to which Services have been supplied pursuant to section 398 of the *Municipal Act, 2001* and collect same in accordance with the provisions thereof.

## **RESERVE FUND**

- 9. The Township shall establish a reserve fund pursuant to the *Municipal Act, 2001* whereby a portion of the fees and charges collected shall be deposited in order to pay for future upgrades, improvements, repairs and maintenance to the WWTP. Skyline shall be entitled to seek funds from the reserve fund in accordance with the terms of Article 7 of the Municipal Responsibility Agreement.

## **SKYLINE'S ACKNOWLEDGMENTS**

- 10. Skyline acknowledges as follows:
  - (a) that its existing Municipal Responsibility Agreements with the Township will remain fully in force and shall continue to apply until such time as said agreements are amended or terminated. The Parties agree that this Agreement applies in the event of a conflict between this Agreement and the provisions of the Municipal Responsibility Agreements pertaining to the collection of fees and charges and, specifically, section 9.1 of the Municipal Responsibility Agreement;
  - (b) that the Township will undertake an Environmental Assessment/Master Environmental Servicing Plan process with respect to the current and future waste water servicing needs for the Township and that Skyline shall cooperate, as necessary, with respect to the Township's efforts as they relate to the Horseshoe Valley Corridor provided that nothing shall be interpreted as committing Skyline to being involved with any process that extends to the Township at large or to other areas of the Township.

## **NO FETTERING OF COUNCIL'S DISCRETION**

- 11. Notwithstanding any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement (including any statement of the Parties' intentions) are intended to operate, nor shall have the effect of operating, in any way to fetter the discretion of the Council which authorizes the execution of this Agreement or any of the Township's successor councils in the exercise of any of Council's discretionary powers, duties or authorities, including the enactment of any fees and charges by-laws. Skyline acknowledges that it will not obtain any preferential or advantageous consideration or treatment by the Council or the Township by virtue of it having entered into this Agreement.

## NOTICE

12. Any notice required to be provided by this Agreement shall be provided by either Party to the other by pre-paid postage delivery or by email to the person and to the addresses set out below:

(a) to Skyline:

Skyline Utility Services Inc.

90 Eglinton Avenue East, Suite 800

Toronto, ON M4P 2Y3

Attention: Kevin Toth, President & C.O.O, Skyline Hotels & Resorts,

Email: [kevint@skylineinvestments.com](mailto:kevint@skylineinvestments.com)

(b) to the Township:

The Corporation of the Township of Oro-Medonte

148 Line 7 South

Oro-Medonte, ON L0L 2E0

Attention: Robin Dunn, Chief Administrative Officer

Email: [rdunn@oro-medonte.ca](mailto:rdunn@oro-medonte.ca)

Any notice forwarded by pre-paid postage mail shall be deemed to have been received by the receiving Party five (5) days from the date of posting.

## INDEMNIFICATION

13. Skyline covenants and agrees to well and truly save, defend and keep harmless and fully indemnify the Township and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the Township, except where caused by the wilful misconduct or negligence of those being indemnified herein, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Township, its elected officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the fulfilment by Skyline of its obligations under this Agreement including the default or breach by Skyline of its obligations under this Agreement or by reason of any negligence or wilful default of Skyline, its officers, employees, agents or persons acting under its direction in connection with Skyline's obligations hereunder. Skyline will pay to the Township and to each such elected official, officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Township or by any of its elected officials, officers, employees and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the Township or any of its elected officials, officers, employees or agents in settlement of or in discharge or on account thereof.

## **COOPERATION & INFORMATION**

14. The Parties will cooperate with one another and agree to provide such information that either Party may deem necessary and appropriate in order to carry out the matters contemplated by this Agreement. The Parties agree that at all times and from time to time hereafter upon every reasonable written request to do so, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

## **JURISDICTION TO ENTER INTO THIS AGREEMENT**

15. This Agreement is entered into by the Parties as an agreement contemplated by section 110 of the *Municipal Act*, 2001. It is agreed and acknowledged by the Parties hereto that each is satisfied as to the jurisdiction of the other to enter into this Agreement and the authority of the Township to enact the By-law. Skyline acknowledges and agrees that it shall not question the jurisdiction of the Township to enter into this Agreement nor question the legality of any portion thereof, and, likewise, the Township agrees that it shall not question the jurisdiction of Skyline to enter into this Agreement nor question the legality of any portion hereof. The Parties hereto and their respective successors, assigns and sub-lessees are and shall be estopped from challenging the jurisdiction of the other Party to enter into this Agreement in any proceeding before a Court of competent jurisdiction.

## **APPLICABLE LAWS**

16. This Agreement shall be governed by the law of the Province of Ontario and nothing in this Agreement shall relieve the Parties from compliance with all applicable federal, provincial or municipal laws having jurisdiction over the WWTP or the subject matter of this Agreement.

## **ENUREMENT**

17. The Parties agree that this Agreement shall be enforceable by and against them as well as their administrators, successors and assigns.

## **ENTIRE AGREEMENT**

18. This Agreement, together with the Municipal Responsibility Agreements, expresses the final agreement between the Parties hereto with respect to all matters herein and its execution has not been induced by, nor do any of the Parties hereto rely upon or regard as material any representations or promises whatsoever not incorporated herein or made a part hereof. Any alteration, amendment or qualification to this Agreement shall be of no force or effect and shall not be binding upon either Party hereto unless made in writing and signed by both Parties. Nothing herein shall limit or restrict the Parties from entering into any subsequent agreements relating to the subject matter of this Agreement.



**WAIVER**

19. The failure of any Party to this Agreement to enforce at any time any of the provisions of this Agreement or any of its rights in respect thereto or to insist upon strict adherence to any term of this Agreement shall not be considered to be a waiver of such provision, right or term or in any way to affect the validity of this Agreement or deprive the applicable Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver by any Party of the performance of any of the provisions of this Agreement shall be effective only if it is in writing and signed by a duly authorized representative of such Party.

**HEADINGS**

20. The headings in this Agreement are solely for convenience or reference and shall not affect the interpretation nor be deemed to define, limit or construe the contents of any provision of this Agreement.

**SEVERABILITY**

21. If any provision of this Agreement is determined by a Court of competent jurisdiction or any administrative tribunal to be illegal or beyond the power, jurisdiction or capacity of any Party bound hereby, such provision may be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect provided both Parties agree whereby they shall negotiate in good faith to amend this Agreement in order to implement the intentions as set out in the severed portion and in this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

**SIGNED, SEALED AND DELIVERED**

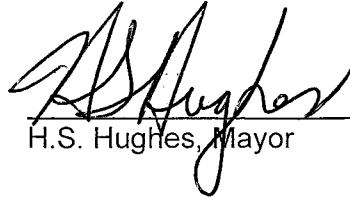
**SKYLINE UTILITY SERVICES INC.**

  
Name: Michael Sneyd  
Title: CEO

\_\_\_\_\_  
Name: c/s  
Title:

I/We have authority to bind the corporation.

THE CORPORATION OF THE TOWNSHIP  
OF ORO-MEDONTE



\_\_\_\_\_  
H.S. Hughes, Mayor



\_\_\_\_\_  
Robin Dunn, Chief Administrative Officer

**SCHEDULE "A"**

**LIST OF USERS**

<b>Development Name</b>	<b>Assessment Roll #</b>	<b># of Units/Lots</b>
Carriage Hills Phase 1	4346-010-002-03550	52 units
Carriage Hills Phase 2	4346-010-002-03580	52 units
Carriage Hills Phase 3	4346-010-002-03540	68 units
Carriage Hills Recreation Centre	4346-010-002-03550	12 units
Carriage Ridge Phase 4	4346-010-002-03320	78 units
Carriage Ridge Recreation Centre	4346-010-002-03320	8 units
Horseshoe Resort	4346-010-002-03500-0000	80 units
Horseshoe Resort	4346-010-002-03501-0000	102 units
Horseshoe Lodges	4346-010-002-03502	40 units
Landscapes Phase 1 (Plan M-741)	4346-010-002-21700 4346-010-002-21702 4346-010-002-21704 4346-010-002-21706 4346-010-002-21708 4346-010-002-21710 4346-010-002-21712 4346-010-002-21716 4346-010-002-21718 4346-010-002-21720 4346-010-002-21722 4346-010-002-21724 4346-010-002-21726 4346-010-002-21728 4346-010-002-21730 4346-010-002-21732 4346-010-002-21734 4346-010-002-21736 4346-010-002-21738 4346-010-002-21740 4346-010-002-21742 4346-010-002-21744 4346-010-002-21746 4346-010-002-21748 4346-010-002-21750 4346-010-002-21752 4346-010-002-21754 4346-010-002-21758 4346-010-002-21760 4346-010-002-21762 4346-010-002-21764	66 lots

	4346-010-002-21766 4346-010-002-21768 4346-010-002-21770 4346-010-002-21774 4346-010-002-21776 4346-010-002-21778 4346-010-002-21780 4346-010-002-21782 4346-010-002-21784 4346-010-002-21786 4346-010-002-21788 4346-010-002-21790 4346-010-002-21792 4346-010-002-21794 4346-010-002-21798 4346-010-002-21800 4346-010-002-21802 4346-010-002-21804 4346-010-002-21806 4346-010-002-21808 4346-010-002-21810 4346-010-002-21812 4346-010-002-21814 4346-010-002-21816 4346-010-002-21818 4346-010-002-21820 4346-010-002-21822 4346-010-002-21826 4346-010-002-21828 4346-010-002-21830 4346-010-002-21832 4346-010-002-21834 4346-010-002-21836 4346-010-002-21838 4346-010-002-21840	
HV Lands Phase 2A (Plan M-981)	4346-010-002-21842 4346-010-002-21844 4346-010-002-21846 4346-010-002-21848 4346-010-002-21850 4346-010-002-21852 4346-010-002-21854 4346-010-002-21856 4346-010-002-21858 4346-010-002-21860 4346-010-002-21862 4346-010-002-21864 4346-010-002-21866 4346-010-002-21868 4346-010-002-21870 4346-010-002-21872	16 lots

Heights of Horseshoe Townhouses – Phase 1	4346-020-010-00411 4346-020-010-00412 4346-020-010-00413 4346-020-010-00414 4346-020-010-00415 4346-020-010-00416 4346-020-010-00417 4346-020-010-00418 4346-020-010-00419 4346-020-010-00420 4346-020-010-00421 4346-020-010-00422 4346-020-010-00423 4346-020-010-00424 4346-020-010-00425 4346-020-010-00426 4346-020-010-00427 4346-020-010-00428 4346-020-010-00429 4346-020-010-00430 4346-020-010-00431 4346-020-010-00432 4346-020-010-00433 4346-020-010-00434	24 units
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