

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

B E T W E E N:

**THE CORPORATION OF THE CITY OF PORT COLBORNE**

Hereinafter called "THE CITY"  
of the First Part

-AND-

**OWNER:**

Matthew Devries  
52048 Regional Road 24  
Wainfleet, ON L0S 1V0

in the Regional Municipality of Niagara, carrying on business under  
the firm name and style of:

**COMPANY NAME:**

Forks Creek Trucking Incorporated

Hereinafter called "THE OPERATOR"  
of the Second Part

WHEREAS the City operates the water supply system for the Corporation of the City of Port Colborne;

AND WHEREAS the City is agreeable to supplying water to the Operator on the following conditions;

THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this agreement, the parties hereto agree and covenant as follows:

**WATER RATES**

1. The City agrees to sell bulk water and the Operator agrees to purchase bulk water and pay any applicable fees at the rate established from time to time, for all bulk water consumers within the City. The current rates are set out in Schedule "A" attached hereto. These rates are subject to change at the sole discretion of the

City and the Schedule "A" shall be amended as required.

### **STATEMENT OF ACCOUNTS**

2. All accounts submitted hereunder are due and payable when rendered. Billing period shall be as established by the City.

### **DISCONTINUANCE OF SERVICE IN DEFAULT OF PAYMENT**

3. It is understood and agreed that the City shall have the right to discontinue water supply if payment in full of any water invoices are not made by the Operator within two weeks from the date of invoice and there shall be no liability on the part of the City for so doing.

### **INDEMNIFICATION**

4. The Operator shall indemnify and save harmless the City from and against any and all claims, actions, losses, expenses, costs, damages or demands whether for injuries to persons, or loss of life or damage to property arising out of the acts or omissions of the Operator in the operation of the bulk water hauling service.

### **INSURANCE**

5. At the time of signing of this agreement, the Operator agrees to furnish to the City a certified copy of a third party liability and property damage insurance in the amount of Two Million Dollars (\$2,000,000.00) showing the City as an additional insured and in a form satisfactory to the City. On or before the 1st day of January in each year the Operator agrees to provide written confirmation of renewal of the subject policies from the insurer for a further term of twelve months.

### **NON-ASSIGNMENT**

6. No rights of the Operator given under this agreement shall be assigned without the written consent of the Engineer or the City of Port Colborne, or his duly authorized representative. Any attempts to assign any of the rights, duties or obligations of

this agreement without written consent are void.

### **TERMINATION**

7. Save as is referred to in Clause 3 hereof, either party to this agreement at any time has the right to terminate this agreement, thirty days after giving written notice to the other party.

### **DISCLAIMER**

8. The parties hereto acknowledge and agree that no term of this agreement shall be deemed to imply a guarantee of a supply of water by the City to the Operator or the general public at any given time and the City shall not be held liable or responsible in any manner should water supply be unavailable for any reason whatsoever.

### **TERM**

9. This agreement and any amendments thereto shall continue until terminated in accordance with clause 3 or 6 hereof.

### **AMENDMENTS**

10. If at any time during the continuance of this agreement the parties shall deem it necessary or expedient to make any alterations or additions to this agreement they may do so by means of a written agreement between them which shall be supplemental and form part of this agreement.

### **NOTICES**

11. Any notice under this agreement shall be sufficiently given by personal delivery or by registered mail, postage prepaid and mailed in a Canadian Post Office, addressed in the case of the City to:

The Corporation of the City of Port Colborne  
66 Charlotte Street

Port Colborne, Ontario. L3K 3C8

and in the case of notice to the Operator to:

or to any other address as may be designated in writing by the parties and the date of receipt of any notice by mailing shall be deemed conclusively to be 5 days after the mailing.

#### **ENTIRETY**

12. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this agreement except as expressed in it.

#### **HEADINGS**

13. Descriptive headings are inserted solely for a convenience of reference, do not form part of this agreement and are not to be used as an aid in the interpretation of the agreement.

#### **INVALIDITY OF PARTICULAR PROVISION**

14. The invalidity of any particular provision of this agreement shall not affect any other provision of it, but the agreement shall be construed as if the invalid provision had been omitted.

#### **ACKNOWLEDGEMENT OF RECEIPT OF COPY**

15. The Operator acknowledges receipt of a true copy of this agreement.

#### **PRIOR AGREEMENTS**

16. This agreement shall replace any previous agreement between the parties prior to

this date.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their hand and seal and Corporate seal duly attested to by the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED )

In the Presence of

THE CORPORATION OF THE CITY OF

) PORT COLBORNE

)

)

PER: \_\_\_\_\_

)

Mayor

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)

)

PER: \_\_\_\_\_

)

Clerk

)

)

)

THE OPERATOR

)

)

)

PER: \_\_\_\_\_

)

Owner

)

)

PER: \_\_\_\_\_

Owner