

EXTRA STRENGTH SURCHARGE AGREEMENT (the "Agreement")

THIS AGREEMENT made effective as of May 1, 2023

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF STRATHROY-CARADOC

(Hereinafter called "The Municipality")

OF THE FIRST PART

AND

KML WINDOWS, INC.

(Hereinafter called "The Company")

OF THE SECOND PART

WHEREAS:

- A. Pursuant to the provisions of the *Municipal Act, 2001*, the Municipality owns and operates a Sewage Works as that term is defined in *the Ontario Water Resources Act, R.S.O. 1990, c.40* (the "Sewage Works");
- B. A component of the Sewage Works includes a sewage treatment plant (the "Plant");
- C. The sewage treatment plant is governed by an Environmental Compliance Approval (ECA) issued pursuant to Section 53 of the *Ontario Water Resources Act, R.S.O. 1990, c.40*;
- D. Pursuant to the provisions of the *Municipal Act, 2001, s. 11*, the Municipality did enact Sewer Use By-law #64 - 14 (as amended from time to time) ("the By-law") to regulate wastewater discharges to the Sewage Works;
- E. The Company has agreed to pay a monthly surcharge for the levels of Total Phosphorous ("TP"), Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and Total Kjeldahl Nitrogen ("TKN") discharged in wastewater which exceed the levels set out in the By-law, and the Municipality has agreed to allow the Company to discharge wastewater containing Total Phosphorous (TP), Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), and Total Kjeldahl Nitrogen (TKN) to the Sewage Works at levels which would otherwise be prohibited by the By-law or future By-Laws, subject to such maximum levels as may be imposed by the Municipality.

NOW WITNESSETH that in consideration of the premises and of the covenants and agreements herein contained, the parties agree as follows:

1. The term of this Agreement is from May 1st, 2023 until December 31st, 2026, or until this Agreement is terminated as hereinafter provided.
2. Subject to the provisions of this Agreement, the Municipality agrees to allow the Company to discharge wastewater containing Total Phosphorous ("TP"), Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and Total Kjeldahl Nitrogen ("TKN") to the Sewage Works at levels which would otherwise be prohibited by the By-law.
3. During the term of this Agreement the Municipality may from time to time in its absolute discretion, establish the maximum levels of TP, BOD, TSS, and TKN that the Company is allowed to discharge in wastewater pursuant to this Agreement (the "Maximum Levels"). The Municipality will give the Company 90 days' notice of any change in the Maximum Levels.
4. Except as otherwise provided herein, all industrial waste discharge by the Company shall conform to the By-Law as amended from time to time.
5. The Company shall pay a monthly surcharge for the levels of TP, BOD, TSS, and TKN discharged in wastewater which exceed the levels set out in the By-law.
6. In calculating the quantity of wastewater for the purposes of this Agreement, the monthly water billing will be used.
7. In calculating the total monthly surcharge, the Municipality shall take a minimum of two effluent sample results per month which include the following parameters: BOD, TSS, TP, and TKN.
8. The monthly surcharge amount will be calculated based on the monthly quantity of wastewater and the levels of BOD, TSS, TP, and TKN indicated in the two monthly effluent samples, and invoiced in accordance with the fees set out in the most current applicable Municipal by-law(s).
9. In addition to the monthly surcharge amount, the Company shall pay the cost of time/materials/labour/laboratory costs associated with the two monthly effluent samples, which shall be billed to the Company as per the fees and charges in the most current applicable bylaw.
10. Payment of all amounts will be due within 30 days. Any overdue water and sewer bills and charges, including surcharge amounts and the cost of time/materials/labour/laboratory costs, may be added to the property owner's property tax bill with priority lien status if applicable and collected in the same manner as taxes as permitted by law. The water service may be shut off if a water bill or charges for the applicable property remains outstanding for more than 16 days past the due date, with due notice in accordance with the Municipality of Strathroy- Caradoc's By-law to Provide for the Regulation of Water

Supply in the Municipality of Strathroy-Caradoc, as may be amended.

11. The Municipality may require the Company to stop discharging waste above the allowable amounts in the current applicable bylaw immediately, and/or terminate the Agreement at any time, (such termination will be effective on the 90th calendar day following provision of written notice) for any of the following reasons:
- a. The Municipality is of the opinion that the discharge is causing a health and safety hazard to any person;
 - b. The Municipality is of the opinion that the discharge is causing damage to the sewers, increasing maintenance costs, or causing a dangerous condition;
 - c. The Municipality is of the opinion that the discharge is causing damage to the sewage treatment process or causing a dangerous condition in the sewage works;
 - d. The Municipality is of the opinion that the discharge is causing the sewage works' effluent to contravene any requirement of the sewage works Environmental Compliance Approval, the *Ontario Water Resources Act* or the *Environmental Protection Act*.
 - e. The Municipality is of the opinion that the discharge is contrary to the terms of the By-law in any way other than provided for in this Agreement or a compliance agreement;
 - f. For non-payment of any fees or charges required by the Agreement; or for regular and materially late payment of any fees or charges required by the Agreement. Such termination shall not relieve the Company from its liability to make such payments.
12. The Municipality's remedies under this Agreement are cumulative, and the exercise of one remedy shall not preclude the Municipality from exercising any additional remedies under this Agreement or at law; and shall not preclude the Municipality from exercising any remedies, authority, or powers under any statute, or by-law.
13. If, at the end of the term, if neither party has given notice to terminate this Agreement, then this Agreement shall be deemed to be extended from month to month upon the same terms.

14. Notices under this Agreement shall be sent to:

The Municipality at

52 Frank Street
Strathroy, Ontario N7G 2R4

Attention: Clerk

The Company at:

Plant Manager
71 Second St,
Strathroy, ON
N7G 3H8

15. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the Province of Ontario, without giving effect to any choice of law or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the Province of Ontario.
16. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts and provincial tribunals sitting in the City of London Ontario, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.
17. The parties hereto agree to exercise the utmost of good faith, co-operation, and communication in order to ensure the fulfillment of the Agreement and to reflect the spirit of this Agreement.
18. This Agreement shall supersede and replace all prior agreements, both written and oral, between the Company and the Municipality with respect to the Company's discharge to the Sewage Works of matter at levels which would otherwise be prohibited by the By-law, and such prior agreements shall be of no further force or effect.
19. If any of the Terms of this Agreement shall be found to be ultra vires of the Municipality, or otherwise unlawful, such terms shall inclusively be deemed to be severable, and the remainder of this Agreement mutatis mutandis shall be and remain in full force and effect.
20. This Agreement shall enure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

21. This Agreement may be executed in any manner of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement, by signing and delivering one or more counterparts.
22. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement, or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their signatures and Corporate Seals attested to by the hands of their proper officers, duly authorized, to this **EXTRA STRENGTH SURCHARGE AGREEMENT** dated as of May 1, 2023.

MUNICIPALITY

(SEAL)
**Corporation of the Municipality
of Strathroy-Caradoc**

Colin Grantham, Mayor

Bill Dakin, Acting CAO/Clerk

COMPANY

(SEAL)
KML WINDOWS, INC.

Name:
Title:
I have the authority to bind the Corporation.

Authorized by By-law No.
Adopted the ____ day of
_____, 2023.