

SERVICES AGREEMENT

BETWEEN

ONTARIO CLEAN WATER AGENCY

A N D

THE CORPORATION OF CITY OF LONDON,

AYLMER AREA SECONDARY WATER SUPPLY SYSTEM BOARD OF

MANAGEMENT AND THE

ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM BOARD OF

MANAGEMENT

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
RECITALS	1
ARTICLE 1 - INTERPRETATION	2
SECTION 1.1 - DEFINITIONS.....	2
SECTION 1.2 - INTERPRETATION.....	2
ARTICLE 2 - RESPONSIBILITIES OF OCWA	2
SECTION 2.1 - RETENTION OF OCWA.....	2
SECTION 2.2 - PERFORMANCE OF SERVICES.....	2
SECTION 2.3 - STANDARD OF CARE AND BEST PRACTICES.....	4
SECTION 2.4 - OCWA AS INDEPENDENT CONTRACTOR.....	4
SECTION 2.5 - AUTHORIZED REPRESENTATIVES.....	4
SECTION 2.6 - INDEMNIFICATION OF THE CLIENT.....	4
SECTION 2.7 - INSURANCE.....	5
SECTION 2.8 - REPRESENTATIONS AND WARRANTIES OF OCWA.....	5
ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT	6
SECTION 3.1 - REPRESENTATIONS AND WARRANTIES OF THE CLIENT.....	6
SECTION 3.2 - COVENANTS OF THE CLIENT.....	7
SECTION 3.3 - EXONERATION AND INDEMNIFICATION OF OCWA.....	7
SECTION 3.4 - OCWA HAS NO LIABILITY FOR THE CLIENT’S EMPLOYEES WHILE PROVIDING ORO SERVICES.....	8
ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES	8
SECTION 4.1 - INITIAL TERM OF AGREEMENT.....	8
SECTION 4.2 - ANNUAL PRICE FOR THE INITIAL TERM.....	8
SECTION 4.3 - THE ANNUAL PRICE IN RENEWAL TERMS.....	9
SECTION 4.4 - PAYMENT OF THE ANNUAL PRICE.....	9
SECTION 4.5 - ITEMS NOT INCLUDED IN THE ANNUAL PRICE.....	9
SECTION 4.7 - UNEXPECTED EXPENSES.....	10
SECTION 4.8 - INTEREST ON LATE PAYMENTS.....	11
SECTION 4.9 - PARTIAL PAYMENT OF DISPUTED INVOICES.....	11
SECTION 4.10 - UTILITY COSTS.....	12
SECTION 4.11 - OPTIONAL SERVICES.....	12
SECTION 4.12 - ADDITIONAL SERVICES AND CHARGES ASSOCIATED WITH THE MOE’S MUNICIPAL DRINKING WATER LICENSING PROGRAM.....	12
ARTICLE 5 - DISPUTE RESOLUTION	13
SECTION 5.1 - MEDIATION.....	13
ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION	13
SECTION 6.1 - TERMINATION OF AGREEMENT.....	13
SECTION 6.2 - EARLY TERMINATION.....	14
SECTION 6.3 - INVENTORY COUNT OF CONSUMABLES/SUPPLIES.....	14
SECTION 6.4 - FINAL SETTLEMENT.....	15
SECTION 6.5 - TRANSFER OF OPERATIONS.....	15

ARTICLE 7 - GENERAL	15
SECTION 7.1 - OWNERSHIP OF TECHNOLOGY	15
SECTION 7.2 - AGREEMENT TO GOVERN	15
SECTION 7.3 - HEADINGS	15
SECTION 7.4 - ENTIRE AGREEMENT	16
SECTION 7.5 - CHANGE IN CIRCUMSTANCE	16
SECTION 7.6 - AMENDMENTS AND WAIVERS	16
SECTION 7.7 - SUCCESSORS AND ASSIGNS	16
SECTION 7.8 - SURVIVAL.....	17
SECTION 7.9 - SEVERABILITY.....	17
SECTION 7.10 - NOTICES	17
SECTION 7.11 - COUNTERPARTS.....	18
SECTION 7.12 - FREEDOM OF INFORMATION	18
SECTION 7.13 - CONFIDENTIALITY AND SECURITY.....	19
SCHEDULE A - THE FACILITY	
SCHEDULE B - DEFINITIONS	
SCHEDULE C - THE SERVICES	
SCHEDULE D - INSURANCE	
SCHEDULE E - LIST OF PRE-EXISTING CONDITIONS	
SCHEDULE F - REPORTING	
SCHEDULE G - PRICING	

SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of July, 2012 (the "Effective Date"),

B E T W E E N

ONTARIO CLEAN WATER AGENCY/AGENCE ONTARIENNE DES EAUX, a corporation established under the *Capital Investment Plan Act, 1993*, c.23, Statutes of Ontario.

("OCWA")

A N D

**THE CORPORATION OF CITY OF LONDON, AYLMER AREA
SECONDARY WATER SUPPLY SYSTEM BOARD OF MANAGEMENT
AND THE ST. THOMAS AREA SECONDARY WATER SUPPLY
SYSTEM BOARD OF MANAGEMENT**

(the "Client")

RECITALS

- (a) OCWA is in the business of providing operations and maintenance services for water facilities.
- (b) The Client is the owner of the Secondary Water Supply System portion of the Elgin Middlesex Pumping Station more particularly described in Schedule A (the "Facility").
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facility in accordance with the provisions of this agreement (the "Agreement").
- (d) The Client and OCWA (collectively, the "Parties" and each a "Party") are entering this Agreement to set out their respective rights and obligations with respect to the management, operation and maintenance of the Facility.
- (e) The respective Councils of the Client have passed by-laws authorizing the Client to enter into the Agreement as follows:

Corporation of the City of St. Thomas: By-Law No. _____ passed on _____
Corporation of the City of London: By-Law No. _____ passed on _____
Corporation of the Township of Malahide: By-Law No. _____ passed on _____
- (f) The Client has requested that the Regional Water Supply facilitate the payment of invoices related to the operation, maintenance, and repair of the Facility on behalf of the Client in accordance with the terms and conditions of this Agreement, and recover related

costs from the Client as mutually agreed by the constituent municipalities that comprise the Client.

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby irrevocably acknowledged, the Client and OCWA agree as follows:

ARTICLE 1 - INTERPRETATION

Section 1.1 - Definitions

In this Agreement, definitions are set out in Schedule B, or within applicable provisions as indicated.

Section 1.2 - Interpretation

The rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

- (a) The Client retains OCWA to provide management, operation and maintenance services, and overall responsible operator (“ORO”) duties in respect of the Facility as described in Schedule C to this Agreement, in respect of the Facility (the “Services”). The Client acknowledges and agrees that OCWA bears no responsibility for the design of the Facility.
- (b) The Client acknowledges and agrees that for the purposes of Section 449 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, OCWA is an agent of the Client.

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Capital Expenditures reasonably recommended by OCWA as per Section 4.6 herein;

- (ii) failure of the Client to meet its representations and warranties specified in this Agreement;
 - (iii) failure of any equipment at the Facility, unless the failure is due to negligent operation and/or maintenance by OCWA;
 - (iv) the water transmitted to the Facility for treatment contains contaminants or pathogens which cannot be treated or removed by the Facility's treatment processes; and
 - (v) the quantity or quality of water transmitted to the Facility exceeds the Facility's design or operating capacity.
 - (vi) With respect to Overall Responsible Operator duties, the Client not carrying out its duties and responsibilities under this Agreement including, but not limited to, its responsibility for the day-to-day operation of the Facility and for the direction and discipline of any of the Client's Employees assigned to work at the Facility.
- (b) OCWA may temporarily cease to provide or reduce the level of provision of Services hereunder in the event of an emergency, a breakdown or any Uncontrollable Circumstance. OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of any such occurrence, and shall endeavour to coordinate operational activities with the Client in such circumstances.
- (c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the reasonable control of OCWA (an "Uncontrollable Circumstance"), including but not limited to any circumstances set out in Paragraph 2.2(a), decrees of government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, war, civil disturbances, pandemics, riots, explosions, fire and acts of third parties.
- (d) In the event that OCWA determines that a deficiency exists with respect to the compliant operation of the Facility, OCWA will use its best efforts to contact the Client and obtain the Client's approval prior to undertaking any remedial measures to correct the deficiency. The Client acknowledges that such measures may be beyond the scope of the Services and thus subject to an additional charge.
- (e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that in an emergency situation or where an Uncontrollable Circumstance exists, OCWA's primary concern will be to use all reasonable efforts to maintain the Facility in compliance with Environmental Laws and that OCWA may be required to correct a deficiency or deal with the emergency situation without obtaining the Client's prior approval. Should such a situation arise,

OCWA will provide as much information as possible to the Client and will work with the Client to ensure the emergency situation is appropriately addressed.

Section 2.3 - Standard of Care and Best Practices

- (a) OCWA shall deliver the Services as would a reasonable operator with like skills in like circumstances.
- (b) OCWA shall operate, maintain and manage the Facility in accordance with Best Practices.

Section 2.4 - OCWA as Independent Contractor

In performing the Services, OCWA shall be acting as an independent contractor and only to the extent and for the specific purposes expressly set forth herein. Neither OCWA nor its employees, agents or subcontractors shall be subject to the direction and control of the Client, except as expressly provided in this Agreement.

Section 2.5 - Authorized Representatives

Each of OCWA and the Client shall be entitled to designate in writing to the other, one or more individuals who shall be authorized to represent it in connection with the day-to-day administration of the provisions of this Agreement (the "Authorized Representative(s)"). Each of the Parties shall be entitled to rely on the acts and approvals given by the other Party's Authorized Representative until such time as it receives a written notification of change of the other Party's Authorized Representative.

Section 2.6 - Indemnification of the Client

- (a) OCWA shall exonerate, indemnify and hold harmless the Client, its directors, officers, elected officials of the Client, employees and agents from and against Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client to the extent that such Claim is attributed to OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to an Uncontrollable Circumstance or to a condition of the Facility which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule E. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly.
- (b) The Client shall be deemed to hold the provisions of this Section 2.6 that are for the benefit of the Client's directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.

- (c) Notwithstanding Paragraph 2.6(a) above, OCWA shall not be liable in respect of any Claim with respect to the Facilities described in Schedule A to the extent the Claim is covered by the Insurance.

Section 2.7 - Insurance

- (a) OCWA shall maintain, subject to reasonable availability, insurance coverage as described in Schedule D to this Agreement (the “Insurance”) and the Client shall be an additional insured under the Commercial General Liability and Contractor’s Pollution Liability insurance. The Client acknowledges that, given the unpredictability of the insurance market, deductibles and coverage limits may not be available (or may not be reasonably priced) from year to year, and therefore, insurance coverage is reviewed annually. Any changes or increases to the coverage shall be accepted by the Client, acting reasonably. Increases may be charged to the Client in accordance with Paragraph 4.2(ii).
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the Pre-existing Condition(s) of the Facility. As such, OCWA is not required to obtain insurance for this purpose and the Client has or will obtain its own insurance.
- (c) The Client shall be responsible for securing its own insurance for any other operations with which it is involved that are not part of the Services. The Client acknowledges that OCWA’s Commercial General Liability and Contractor’s Pollution Liability insurance shall not extend to cover any claims, exposure or liability beyond those directly linked to the provision of Services by OCWA staff. The Client further acknowledges that it will have no recourse under OCWA’s Commercial General Liability and Contractor’s Pollution Liability insurance for any operations that do not form part of the Services provided under this Agreement.
- (d) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule D.

Section 2.8 - Representations and Warranties of OCWA

OCWA represents and warrants to the Client that the following are true and correct:

- (a) that it has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement; and
- (b) OCWA’s staff are trained and capable of providing the Services set out under this Agreement. OCWA acknowledges that OCWA is the employer for the purposes of the *Occupational Health and Safety Act* and its regulations, OCWA is the “employer” of its staff who provide with regard to the provision of Services set out under this Agreement.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

The Client represents and warrants to OCWA that the following are true and correct:

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement.
- (b) The Client has passed all necessary By-Laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, (including, without limitation, any Authorizations required from the Ontario Municipal Board and the Ministry of the Environment), and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal By-Law required to authorize the Client to enter into and perform its obligations under this Agreement.
- (d) As the owner of the Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility under Applicable Laws, including without limitation its responsibilities under the *Safe Drinking Water Act, 2002* (the "SDWA") and the *Occupational Health and Safety Act* (the "OHSA") and their regulations.
- (e) The Client warrants that there are no Pre-existing Conditions existing at the Facility which would affect OCWA's ability to operate the Facility in compliance with the terms of this Agreement and Applicable Laws, other than what is listed in Schedule E. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (f) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facility is in compliance with all Applicable Laws.
- (g) The Client is not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (the "OHSA") at the Facility. The Client acknowledges and agrees that it is responsible for dealing with the designated substances (including but not limited to asbestos) in accordance with the OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facility, which is owned and under the Client's control of the Client as set out in paragraph (b) of the Recitals and in Schedule A of this Agreement. (The Client shall supply OCWA with annual updates on all hazardous substances within the Facility building belonging to each Client)

Section 3.2 - Covenants of the Client

The Client hereby covenants the following for the benefit of OCWA:

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.8.
- (b) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report prepared in respect of the Facility, any Authorization or amendment to any Authorization, as well as any governmental notice or order relating to the Facility.
- (c) The Client agrees to commit the necessary resources to appropriately address and comply with any such reports, Authorizations, notices or orders.
- (d) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like facility, all water works that belong to or are under the control of the Client and that distribute water from the Facility.
- (e) The Client agrees to promptly commit the necessary resources to appropriately address any health and safety issues identified by OCWA which are the responsibility of the Client.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all directors, officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, arise from the Services provided under this Agreement.
- (b) OCWA shall be deemed to hold the provisions of this Article 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding Paragraph 3.3(a) above, the Client shall not be liable in respect of any Claim:

- (i) to the extent that such Claim is covered by the Insurance; however, the Client shall be responsible for any deductible or self-insured retention amount in accordance with Schedule D; and
- (ii) to the extent that such Claim is caused by OCWA's negligence or wilful misconduct in providing the Services.

Section 3.4. - OCWA Has No Liability for the Client's Employees while Providing ORO Services

- (a) Any and all employees of the Client assigned to work at the Facility at any time or from time to time (the "Client's Employees") shall continue to be employees of the Client at all times and nothing in this Agreement shall undermine or terminate the relationship of employee and employer between the Client and any of the Client's Employees.
- (b) OCWA shall under no circumstances have any liability whatsoever for any of the Client's Employees or any action performed by any of them.
- (c) Notwithstanding any other provisions of this Agreement, OCWA shall not be a "supervisor" as that term is defined under the OSHA or its regulations and the Client acknowledges that it is solely responsible for appointing a "competent person" as a "supervisor" under the OSHA and its regulations. The Client further acknowledges that it is the "employer" under the OSHA of the Client's Employees.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on the Effective Date and shall continue in effect for an initial term of five years, ending on June 30, 2017 (the "Initial Term") and then may be renewed for an additional five-year term (the "Renewal Term") upon agreement between the Parties, subject to Sections 4.3 and 6.2 of this Agreement.

Section 4.2 - Annual Price for the Initial Term

Subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay OCWA a price for the Services for each Year of the Initial Term in the following amounts (the "Annual Price"):

- (i) For the six-month period from **July 1, 2012** through to **December 31, 2012** (Year One) inclusive: **\$82,478**.
- (ii) For **January 1, 2013** through to **December 31, 2013** (Year Two) inclusive: **\$176,743**, plus an adjustment for maintaining the Insurance which is renewed

annually by OCWA. The CPI Adjustment will be added after July 1, 2013. The CPI Adjustment shall be calculated as soon as necessary information is available from Statistics Canada. In Year Two of the Agreement, the CPI Adjustment shall be added to the Annual Price for Year One of the Agreement and for subsequent Years, on a cumulative basis.

- (iii) The Annual Price for Years Three, Four and Five (exclusive of the CPI Adjustment) are outlined in Schedule G.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for the Renewal Term will be as agreed between the Client and OCWA. If the Parties cannot agree on the Annual Price for the Renewal Term within six months of the beginning of the last Year of the Initial Term, this Agreement will be terminated six months after the last day of the Initial Term. During this six month period, the Client shall pay the Annual Price paid for the last Year of the Initial Term plus an adjustment for inflation calculated as described in Paragraph 4.2(iii), pro-rated over the six month period.

Section 4.4 - Payment of the Annual Price

- (a) The Regional Water Supply on behalf of the Client shall pay OCWA the Annual Price for each Year of the Initial Term or the Renewal Term, in twelve equal monthly payments, in advance, on the first day of each month. Payment shall be made by the Regional Water Supply by pre-authorized bank debit from a bank account designated by the Regional Water Supply. In Year One of the Initial Term, the monthly payment of the Annual Price shall be **\$13,746.33**. The first payment shall be due and payable on July 1, 2012.
- (b) The Client and OCWA each acknowledge and agree that the Regional Water Supply is acting on behalf of the Client, and for the convenience of OCWA and the Client, in the payment of invoices and costs associated with the operation, maintenance and repair of the Facility. The Client and OCWA each acknowledge and agree that the Regional Water Supply bears no liability or responsibility with regard to the ownership or operation of the Facility.

Section 4.5 - Items Not Included in the Annual Price

The Annual Price, for each Year of the Initial Term and any Renewal Term, covers all charges for the Services, but does not cover items or matters that are outside the scope of the Services. Without limiting the generality of the foregoing, the Annual Price does not include the following:

- (a) any Capital Expenditures (as defined in Section 4.6 below) or costs resulting from any failure of the Client to implement reasonably recommended Capital Expenditures;
- (b) costs or charges for services resulting from a Change in Applicable Laws;

- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (d) any charges resulting from adverse tax changes in respect of the Services or the Facility;
- (e) Utility Costs, as set out in Section 4.10;
- (f) any costs and charges related to meeting the requirements of the MOE's Municipal Drinking Water Licensing Program as described in Section 4.12;
- (g) charges for any Optional Services that are provided by OCWA to the Client;
- (h) costs and charges associated with providing and/or maintaining continuous monitoring technology (SCADA technology) used in respect of the Facility;
- (i) any costs arising from a significant increase in flows, as set out in Part 1 of Schedule E to this Agreement.

Section 4.6 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding routine maintenance); any alterations and any associated installations, commissioning, including labour and preselection charges, together with the Service Fee.
- (b) No later than October 31st of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with an estimate of the Capital Expenditures reasonably required for the operation of the Facility for the following Year. The Client's written approval of the estimate or revised estimate authorizes OCWA to incur the Capital Expenditures included in the estimate (the "Approved Capital Expenditures").
- (c) OCWA will invoice the Client for the Approved Capital Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.
- (d) OCWA will not be required to obtain the prior approval of the Client for any Capital item costing less than \$1,000.00.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures or additional costs which may include Capital Expenditures in addition to the Approved Capital Expenditures, that OCWA reasonably incurs in order to address a Change in Applicable Laws, any Uncontrollable Circumstance, any work required by regulatory order (e.g. MOE or MOL) or identified through an inspection (e.g. ESA, MOE, MOL) that is not solely the result of

OCWA's negligence in performing the Services or any other emergency situation, together with the Service Fee.

- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten (10) days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred.
- (c) Any Unexpected Expenses will be invoiced to the Client together with appropriate supporting documentation, and the Client shall pay the invoice within thirty (30) days of the date of the invoice.
- (d) In the event that OCWA is required to incur Unexpected Expenses, OCWA will not be required to obtain the prior approval of the Client for any Capital Expenditure item costing less than \$1,000.

Section 4.8 - Interest on Late Payments

- (a) **Monthly Payment of Annual Price.** If the Client's monthly payment of the Annual Price is not available in its designated bank account on the agreed to date of payment, OCWA will notify the Client that the funds were not available. Interest will be charged to the Client starting from the day after the payment was due in the account. Interest shall be paid at a rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the *Financial Administration Act*, R.S.O. 1990, c.F.12, plus any banking charges and an administrative fee.
- (b) **Other Invoices.** Invoices, other than for the monthly payment set out in Section 4.8(a) above, shall be paid no later than thirty (30) days from the date of the invoice and interest shall begin to accrue one (1) day after the payment is due.

Section 4.9 - Partial Payment of Disputed Invoices

- (a) If the Client wishes to dispute any portion of an invoice, within forty-five (45) days from the date on the disputed invoice, the Client must provide written notice to OCWA of the invoice and charge in dispute. If no written notice is received within the above forty-five (45) days, the invoice shall be deemed to be approved and interest shall be charged to the Client effective thirty (30) days from the date of the invoice.
- (b) If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date and shall also continue to pay all monthly payments of the Annual Price due on the first of each month. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided in Section 4.8 above, within ten (10) days from the date of final determination.

- (c) If the disputed charges cannot be resolved within a reasonable time, the Parties shall seek resolution in accordance with Article 5, Dispute Resolution.

Section 4.10 - Utility Costs

Each municipality that comprises the Client will be responsible for paying its own Utility Costs that will be invoiced directly to the Regional Water Supply, on behalf of the Client. The Regional Water Supply shall invoice the Utility Costs to the constituent municipalities that comprise the Client as mutually agreed by the constituent municipalities that comprise the Client.

Section 4.11 - Optional Services

- (a) If requested by the Client, OCWA may provide Optional Services to the Client, provided that the Client and OCWA agree in writing to the specific scope of work required.
- (b) Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis at the following rates:
- (i) Labour rates on Business Days, Monday to Friday, (0800 to 1630) shall be billed at \$85.00/hour/person for a senior operations manager or team lead and \$55.00/hour/person for an operator or mechanic, plus vehicle expenses at \$0.50/km/vehicle;
 - (ii) Labour rates at all other times (after hours and on weekends) shall be billed at \$127.50/hour/person for a senior operations manager or team lead and \$82.50/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.50/km/vehicle;
 - (iii) Costs for parts, equipment and supplies, and outside labour charges (i.e., contractors), used by OCWA staff to provide the Optional Services shall be billed to the Client, and the Client will pay such costs together with a Service Fee.
- (c) Once OCWA has agreed to provide Optional Services to the Client, the Optional Services shall be subject to the terms and conditions of this Agreement, with any necessary changes having been made.
- (d) The Optional Services will be reviewed on an annual basis.

Section 4.12 - Additional Services and Charges Associated with the MOE's Municipal Drinking Water Licensing Program

Further to Paragraph 4.5(f) above, the Client and OCWA acknowledge that this Agreement does not address any additional services that may be provided by OCWA to the Client that are associated with meeting the requirements of the MOE's Municipal Drinking

Water Licensing Program. The Client and OCWA agree to negotiate, in good faith, any necessary amendments to this Agreement, including adjustments to the Annual Price, required to reflect any such additional services provided by OCWA as well as all costs and charges of OCWA in respect of the Municipal Drinking Water Licensing Program.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Mediation

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, then the issue shall be referred to a mediator.
- (b) The fees and expenses of the mediator shall be divided equally between the Parties.
- (c) Involvement in mediation is on a without prejudice basis and does not preclude and is not a bar to either Party pursuing whatever legal remedies may be available, including litigation.
- (d) The Parties will consider utilizing a staged dispute resolution process similar to the Dispute Resolution Policy adopted by the Board of Management for the Elgin Area Primary Water Supply System.

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Termination of Agreement

- (a) At least twelve calendar months before the expiry of the Initial Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Initial Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or
 - (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Initial Term.
- (b) If no notice is given as indicated in Clause 6.1(a)(i) or (ii) and the Parties do not agree to negotiate the Annual Price for the next Renewal Term within the last six (6) months of the final year of the Initial Term, then the Initial Term shall be extended by one (1) year and Section 4.2 shall apply.
- (c) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA if:

- (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party;
 - (iii) the other Party does not correct the breach within thirty (30) days of receiving the notice; and
 - (iv) the complaining Party terminates in accordance with Paragraph 6.2.
- (d) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.1(c) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least thirty (30) days notice in writing to the other Party.
- (e) If either Party disputes the existence of a breach or that the breach is material, then the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (f) For greater certainty, continued non-payment of monies owed to OCWA under this Agreement shall constitute a material breach of this Agreement by the Client.

Section 6.2 - Early Termination

If this Agreement is terminated for any reason prior to expiry of the Initial or Renewal Term, the Client shall pay OCWA for all Services provided up to the date of termination and any other amounts owed (including but not limited to charges for Capital Expenditures, Unexpected Expenses and Optional Services).

Section 6.3 - Inventory Count of Consumables/Supplies

OCWA and the Client will conduct an inventory count of consumables/supplies at the Facility on the first day of the Initial Term or as soon as the Parties may agree. If OCWA no longer operates the Facility at termination of this Agreement, OCWA shall either:

- (a) ensure that there is the same amount of consumables/supplies at the Facility on the date of termination as there was on the first day of the Initial Term; or
- (b) reimburse the Client for any shortfall.

If the amount of consumables/supplies at the Facility on the date of termination exceeds the amount on the first day of the Initial Term, the Client will either reimburse OCWA for any excess or OCWA may take possession of any excess, as OCWA may reasonably determine.

Section 6.4 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement including, but not limited to the outstanding debt, if any, owed to OCWA, no later than ninety (90) days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Client with a final invoice, whichever comes later. Disputes over the payment of an invoice related to the final settlement of accounts shall be addressed in accordance with Section 4.9.

Section 6.5 - Transfer of Operations

Upon the termination of this Services Agreement, OCWA will return the following documents to the Client:

- (a) The log book(s) for the Facility.
- (b) The operations manual(s) and maintenance records as amended by OCWA in electronic format.
- (c) A list of emergency phone numbers from the contingency plan binders used by OCWA staff in respect of the Facility.

ARTICLE 7 - GENERAL

Section 7.1 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA may utilize certain technology developed by or for OCWA, for example, OCWA's WMS, Outpost 5 and/or PDC (the "Technology"). The Client further agrees that use of the Technology by OCWA with respect to the Facility does not in any way give the Client any ownership or licensing rights in or to the Intellectual Property Rights to the Technology unless otherwise agreed to in writing between the Parties. For greater certainty, nothing in this Section 7.1 shall be interpreted as requiring OCWA to provide the Client with the Technology or other similar technology in respect of the Facility as part of the Annual Price.

Section 7.2 - Agreement to Govern

If there is any inconsistency between the main body of this Agreement and any Schedule to this Agreement, then the provision in the main body shall govern.

Section 7.3 - Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of

headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Section 7.4 - Entire Agreement

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto.

Section 7.5 - Change in Circumstance

- (a) In the event that there is a change in circumstances or condition that is not covered under the terms of this Agreement, including, without limitation, a Change in Applicable Laws or change in the scope of services provided (a “Change in Circumstance”), then the Party asserting the occurrence of such Change in Circumstance shall give written notice to the other Party, and the written notice shall contain:
 - (i) details of the Change in Circumstance;
 - (ii) details of the inadequacy of this Agreement; and
 - (iii) a proposal for an amending agreement to remedy the Change in Circumstance.
- (b) The Parties shall negotiate in good faith any amendments to this Agreement necessary to give effect to or comply with the Change, including any adjustments to the Annual Price or the Services to be provided, which shall be effected as of the date of the Change. If the Parties dispute the existence of a Change, or the recommendation proposed to rectify the Change or the terms and provisions of any amendment to the Agreement, then either Party may refer the dispute to mediation under Article 5, Dispute Resolution.

Section 7.6 - Amendments and Waivers

No amendment to this Agreement will be valid or binding unless it is in writing and duly executed by both of the Parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

Section 7.7 - Successors and Assigns

This Agreement shall operate to the benefit of and be binding upon, the Parties hereto and their successors and assigns. This Agreement may be assigned in the discretion of either Party.

Section 7.8 - Survival

All representations and warranties given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation under Section 7.13, shall survive indefinitely the termination of this Agreement.

Section 7.9 - Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

Section 7.10 - Notices

(a) All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be properly given if hand-delivered, sent by confirmed facsimile or by registered mail postage prepaid, return receipt requested, or by courier, to the Parties at their respective addresses as set forth below, or to such other addresses as the Parties may advise by like notice. Such notices if sent by facsimile, registered mail or courier shall be deemed to have been given when received.

(i) if to the Client:
 City of London
 663 Bathurst St.
 London, ON N5Z 1P8

Telephone: (519) 661-2500 ext. 4938
 Fax: (519) 661-2352
 Attention: John Simon

City of St. Thomas
 545 Talbot St.
 St. Thomas, ON N5P 3V7

Telephone: (519) 631-1680 ext. 4164
 Fax: (519) 631-2130
 Attention: Edward Soldo

Township of Malahide
 87 John St. South
 Aylmer, ON N5H 2C3

Telephone: (519) 773-5344 ext. 231
 Fax: (519) 773-5334
 Attention: Rob Johnson

With copy to the Regional Water Supply:

Elgin Area Primary Water Supply System
235 North Centre Road, Suite 200
London, ON M5X 4E7

Telephone: (519) 930-3505
Fax: (519) 474-0451
Attention: Andrew Henry

- (ii) if to OCWA:
Ontario Clean Water Agency
1100 Dearness Drive
London, Ontario
N6E 1N9

Telephone: (519) 680-1310 ext 7003
Fax: (519) 680-1390
Attention: Susan Budden

- (b) A Party to this Agreement may change its address for the purpose of this Section by giving the other Party notice of such change of address in the manner provided in this Section.

Section 7.11 - Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

Section 7.12 - Freedom of Information

- (a) The Client understands and agrees that this Agreement and any materials or information provided to OCWA through the performance of the Services may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, or as otherwise required by law.
- (b) OCWA understands and agrees that this Agreement and any materials or information provided to the Client through the performance of the Services, or owned by the Client and in the possession of OCWA, may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M.56, as amended, or otherwise required by law.

Section 7.13 - Confidentiality and Security

The Parties shall strictly maintain confidential and secure all material and information provided, directly or indirectly, by the other Party pursuant to this Agreement. Subject to relevant legislation related to freedom of information or the protection of privacy and any other laws, neither Party shall directly or indirectly disclose to any person, either during or following the term of this Agreement, any such material or information provided to it by the other Party without first obtaining the written consent of the Party who provided such material or information, allowing such disclosure.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

Date of Signing

By: _____
(Dan Atkinson, VP Finance)

Date of Signing

By: _____
(Nick Reid, VP Strategic Partnerships)

THE CORPORATION OF THE CITY OF LONDON

Date of Signing

By: _____
(Joseph Fontana, Mayor)

Date of Signing

By: _____
(Cathy Saunders, City Clerk)

AYLMER AREA SECONDARY WATER SUPPLY SYSTEM BOARD OF MANAGEMENT

Date of Signing

By: _____
(Dave Mennill, Mayor)

Date of Signing

By: _____
(Michelle Casavecchia, CAO/Clerk)

**ST. THOMAS AREA SECONDARY WATER
SUPPLY SYSTEM BOARD OF
MANAGEMENT**

Date of Signing

By: _____
(Heather Jackson, Mayor)

Date of Signing

By: _____
(Wendell Graves, CAO/Clerk)

SCHEDULE A - The Facility

OVERVIEW

This Schedule contains a description of the following:

- Description of existing system
- Description of future capital works
- Description of scope of work

DESCRIPTION OF EXISTING SYSTEM

Overview

The Elgin Middlesex Pumping Station is located at 490 South Edgeware Road, northeast of the City of St. Thomas in the Municipality of Central Elgin.

The Elgin Middlesex Pumping Station (EMPS) property and buildings are owned by the Elgin Area Primary Water Supply System Joint Board of Management.

Within the Elgin Middlesex Pumping Station is process equipment owned by the following:

1. City of London
2. Aylmer Area Secondary Water Supply System Joint Board of Management, administered by the Township of Malahide
3. St. Thomas Area Secondary Water Supply System Joint Board of Management, administered by the City of St. Thomas

Delineation of the system ownership between the Elgin Area Primary Water Supply System and the other systems is included in the CD/DVD of supporting information that has been provided as part of the *Request for Proposals for Lake Huron & Elgin Area Primary Water Supply Systems Contract Successful Proponent Procurement dated August 2, 2011*, under the folder E3 -Drawings – EMPS.

At present, the Supervisory Control and Data Acquisition (SCADA) system is monitored at the Elgin Area Water Treatment Plant (WTP).

City of London Water System

The City of London portion of the EMPS comprises the following:

- Piping specific to the London pump trains up to and including the flow meter located on the discharge header
- three centrifugal pumps, two of which are variable speed pumps

- one hydropneumatic surge tank with two air compressors
- piping, electrical, mechanical, instrumentation, and SCADA/PLC controls

Aylmer Area Secondary Water Supply System

The Aylmer Area Secondary Water Supply System portion of the EMPS comprises the following:

- Piping specific to the Aylmer pump trains up to and including the flow meter located on the discharge header
- two fixed speed centrifugal pumps
- one 600 kW emergency diesel generator (shared with St. Thomas Area Secondary Water Supply System)
- one rechlorination system using chlorine gas (shared with St. Thomas Area Secondary Water Supply System)
- piping, electrical, mechanical, instrumentation, and SCADA/PLC controls

St. Thomas Area Secondary Water Supply System

The St. Thomas Area Secondary Water Supply System portion of the EMPS comprises the following:

- Piping specific to the St. Thomas pump trains up to and including the flow meter located in the East Chamber
- three fixed speed centrifugal pumps
- one 600 kW emergency diesel generator (shared with Aylmer Area Secondary Water Supply System)
- one rechlorination system using chlorine gas (shared with Aylmer Area Secondary Water Supply System)
- piping, electrical, mechanical, instrumentation, SCADA/PLC controls

Additional Information

A CD/DVD containing supporting information has been provided as part of the *Request for Proposals for Lake Huron & Elgin Area Primary Water Supply Systems Contract Successful Proponent Procurement dated August 2, 2011*.

DESCRIPTION OF FUTURE CAPITAL WORKS

The City of London plans to change the two VFD pumps associated with London's portion of the pump station in 2012, in coordination with ongoing changes in their water distribution system and the completion of their Southeast Reservoir and Pump Station (not part of this agreement). There are no other long-term major capital works planned for the systems.

The Township of Malahide plans to change two pumps on the Aylmer Area Water Supply System in 2012 to VFD pumps.

SCHEDULE B - Definitions

In this Agreement, the following terms are defined below or in the section in which they first appear:

“Agreement” means this agreement together with Schedules A, B, C, D, E, F and G attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

“Annual Price” is defined in Section 4.2 of this Agreement.

“Applicable Laws” means any and all statutes, by-laws, regulations, permits, approvals, standards, guidelines, certificates of approval, licences, judgments, orders, injunctions, authorizations, directives, whether federal, provincial or municipal including, but not limited to all laws relating to occupational health and safety matters, fire prevention and protection, health protection and promotion, land use planning, environment, Building Code, or workers’ compensation matters and includes Environmental Laws.

“Approved Capital Expenditures” is defined in Paragraph 4.6(b) of this Agreement.

“Authorizations” means any by-laws, licences, certificates of approval, permits, consents and other authorizations or approvals required under Applicable Laws from time to time in order to operate the Facility.

“Authorized Representative(s)” is defined in Section 2.5 of this Agreement.

“Best Practices” means best Operations and Maintenance and management practices as established in accordance with applicable Canadian water utility or industry standards that a prudent and reasonable operator of the Facilities would follow in similar circumstances, having regard to the objectives and terms of this Agreement.

“Business Days” means a day other than a Saturday, Sunday or statutory holiday in Ontario.

“Capital Expenditures” is defined in Paragraph 4.6(a) of this Agreement.

“Change in Applicable Laws” means the enactment, adoption, promulgation, modification, issuance, repeal or amendment of any Applicable Laws that occur after the date this Agreement is executed by both Parties.

“Change in Circumstance” is defined in Paragraph 7.5(a).

“Claim” means any claim, fine, penalty, liability, damages, loss and judgments (including but not limited to, costs and expenses incidental thereto).

“CPI Adjustment” means the percentage difference between the Statistics Canada Consumer Price Index, All Items (Ontario) (“CPI”) during September of the previous Year as compared to

the CPI of September of the current Year. For example, the CPI Adjustment for Year 2010, is the CPI of September 2009 divided by the CPI of September 2008.

“**Crown**” means Her Majesty the Queen in Right of Ontario.

“**Effective Date**” is defined on Page 1 of this Agreement.

“**Environmental Laws**” means, any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licences, judgments, orders, judicial decisions, injunctions, and authorizations related to environmental matters or occupational health and safety and which are applicable to the operation of water treatment facilities.

“**ESA**” means the Electrical Safety Authority.

“**Facility**” is defined in Paragraph (b) of the Recitals to this Agreement and further described in Schedule A.

“**Indemnified Parties**” is defined in Paragraph 3.3(a) of this Agreement.

“**Initial Term**” is defined in Section 4.1 of this Agreement.

“**Insurance**” is defined in Paragraph 2.7(a) and further described in Schedule D.

“**Intellectual Property Rights**” means any copyright, trademark, patent, registered design, design right, topography right, service mark, application to register any of the aforementioned rights, trade secret, rights in unpatented know-how, right of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world.

“**MOE**” means the (Ontario) Ministry of the Environment.

“**MOL**” means the (Ontario) Ministry of Labour.

“**Municipal Drinking Water Licensing Program**” means the MOE’s program which requires owners of municipal drinking water systems to obtain a “municipal drinking water licence” (as defined under the SDWA) in accordance with Part V of the SDWA and as part of such process will require owners to: prepare an operational plan and submit the operational plan to the MOE; retain an accredited operating authority; obtain a “drinking water works permit” (as defined in the SDWA); prepare and submit a financial plan in accordance with Part V of the SDWA; and obtain a permit to take water.

“**OHSA**” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

“**Optional Services**” means any services not included in Schedule C “the Services” that the Client and OCWA agree in writing to designate as “Optional Services” subject to Section 4.11.

“Overall Responsible Operator” or **“ORO”** shall have the meaning set out in Paragraph 2.1(a) of this Agreement.

“Outpost 5” means a remote monitoring and control system designed and constructed by OCWA and its consultants for the purpose of monitoring and controlling processes at water treatment facilities and their related parts.

“Parties” is defined in Paragraph (d) of the Recitals to the Agreement.

“PDC” or **“Process Data Collection”** means technology that allows process data to be entered into a format that can be viewed, manipulated and retrieved in the form of customized reports.

“Pre-existing Condition” is defined in Section 2.6 of this Agreement.

“Regional Water Supply” is defined as the administrating body for the payment of services and utilities for the Facility. The Regional Water Supply is the Elgin Area Primary Water Supply c/o the Regional Water Supply Division of the City of London, acting in its capacity as Administering Municipality for the Elgin Area Primary Water Supply System in accordance with Transfer Order Elgin Area W1/1998 (dated November 29, 2000) issued by the Ontario Minister of the Environment. The Client may, at its discretion and acting reasonably, change the entity which acts as the administrating body as identified in this Agreement, subject to the Terms and Conditions of this Agreement, including but not limited to Section 7.10 (Notices).

“Renewal Term” is defined in Section 4.1 of this Agreement.

“SCADA” means Supervisory Control and Data Acquisition.

“SDWA” means the *Safe Drinking Water Act, 2002*, S.O. 2002 c.32.

“Service Fee” means an additional fee charged to the Client when OCWA purchases materials, supplies, equipment or contractor’s services on behalf of the Client. For any individual item or service purchased, the Service Fee shall be calculated as follows:

- (a) 15% of the first \$10,000; plus
- (b) 10% on the amount from \$10,000 to \$50,000; plus
- (c) 5% on the amount in excess of \$50,000.

For example, the Service associated with a capital project which required \$56,000 in supplies and materials would be \$5,800 ($15\% \times \$10,000 + 10\% \times \$40,000 + 5\% \times \$6,000$).

“Services” is defined in Section 2.1 of this Agreement.

“Technology” is defined in Section 7.1 of this Agreement.

“Uncontrollable Circumstance” is defined in Paragraph 2.2(c) of this Agreement.

“Unexpected Expenses” is defined in Paragraph 4.7(a) of this Agreement.

“Utility Costs” means natural gas, electricity, chemicals and diesel costs due to the operation and maintenance of the Facility.

“WMS” or **“Work Management System”** means a computer program used to determine a program of preventive maintenance activities for equipment in a facility based on a risk analysis that considers factors such as equipment life expectancy, present value and replacement cost.

“Year” means the 365 day period from July 1 to June 30 of the following calendar year.

SCHEDULE C - The Services

A. General

OCWA will use trained, certified operators and professional staff to manage, operate and maintain the systems presented in this Services Agreement to:

- Manage, operate and maintain the systems described in this Schedule
- Comply with all Applicable Laws
- Provide insurance coverage as required for the operation and occupancy of the facilities
- Have in place adequate contingency and emergency plans acceptable to the Client and employ a workplace safety program that meets or exceeds provincial standards
- Meet the potable water performance criteria
- Conduct onsite sampling and operational testing as necessary, and sampling and laboratory testing with an accredited laboratory in Ontario
- Develop a preventive maintenance program for the facilities, which shall include at a minimum:
 - Pump station (internal) valves, and yard/watermain valves exercised at least annually
 - Maintenance and calibration of instrumentation and analyzers
 - Maintenance of backflow prevention and meters
 - Periodic inspection of pumps and associated equipment
- Deliver detailed monthly, quarterly and annual reports to the Client that demonstrate compliance and support all future planning, including operational activities, maintenance activities, and regulatory compliance, and management system conformance. The frequency of reporting is further described in Schedule F.
- Manage all human resource functions such as payroll, recruitment, termination and employee relations
- Ship and receive (and purchase where applicable) all materials, consumables and supplies related to the operation and maintenance of the Facilities
- Obtain and pay for all software excluding the systems' PLC and HM (SCADA) software, WaterTrax (laboratory information management system) and the Client's CMMS license (any additional CMMS license for use by OCWA is OCWA's responsibility)
- Provide 24-hour 7-day per week monitoring of the pumping systems and facilities, and responding to alarms, emergency response, etc. as necessary (based on twenty-four (24) call-outs per full Year)
- Pay for all maintenance inclusive of pipes and, sandblasting/recoating of equipment, etc., up to and including \$1,000 per single item. Items in excess of \$1,000 will be invoiced to the Client in addition to the Service Fee
- Pay for telephone communications

Specific components related to the Scope of Services are listed below.

B. Staffing, Training and Certification

OCWA will ensure that the Facility is visited by a licence operator at least once per weekday (Monday to Friday) (excluding Statutory Holidays) for operational checks, includes sampling and testing, equipment operational checks, instrumentation checks, and logbook entries.

OCWA shall respond as necessary and required to alarms and emergencies.

OCWA shall have discretion to staff the Facility as required to fulfill deliver the Services in accordance with this Agreement and comply with the requirements in the *Safe Drinking Water Act*.

All training and fees required to maintain operator's certification in accordance with Applicable Laws shall be OCWA's responsibility.

C. Effective Management and Service Levels

OCWA will perform the Services in compliance with all Applicable Laws in effect at the time of the relevant submission, and as amended from time to time.

D. Control and Accountability

OCWA provide complete and comprehensive financial, operational and maintenance details for all activities related to the Facility's functions.

OWCA will deliver frequent formal and informal reporting to the Client, including but not limited to regular contact regarding day-to-day issues, periodic meetings, and timely delivery of all relevant documentation relating to the management, operation and maintenance of the facilities.

E. Compliance Responsibility

OCWA will ensure complete and timely compliance with all Applicable Laws.

Compliance activities or Capital Improvements that result from changes in the law or from regulatory intervention will be pre-approved by the Client.

F. Capital Improvements

OCWA will record information on the frequency and causes of equipment breakdown and repair prices to determine replacement needs.

OCWA will identify elements of the Facility that require upgrading or improvement and bring these to the attention of the Client with due regard for planning and budgeting requirements. The funding of Capital improvements will be the responsibility of the Client. The Client will have final approval for any Capital Improvement proposed by OCWA. OCWA shall not rely in any

way on the Client's annual capital budgets and acknowledges that the identification of a capital improvement in the Client's capital budgets in no way ensures that the capital improvement will be carried out by the Client.

G. Asset Protection

OCWA will be the steward of the Facility on behalf of the Client. OCWA will maintain the Facility based on industry standards for similar facilities, normal wear and tear excluded.

OCWA will maintain and utilize the Client's computerized maintenance management system (CMMS; currently incorporated into the CMMS of the Elgin Area Primary Water Supply System) to control and record all maintenance activities, including but not limited to routine, preventative and breakdown maintenance activities.

OCWA will provide the Client with immediate and complete access to all available information relating to the Facility as well as regular reporting.

H. Operational and Maintenance Duties

OCWA will perform regularly scheduled inspections and carry out associated operational and maintenance duties at the Facility, including all related equipment, to ensure that the Facility is operated and maintained effectively. OCWA will perform inspection and maintenance duties in accordance with the Operations Manuals for the Facility, as well as the Operation and Maintenance (O&M) manuals developed and provided by the suppliers of the specific equipment.

I. Services Innovation and Improvement

OCWA will propose innovative strategies to the Client to enhance performance and reduce the overall cost of the Facility's operations without adversely impacting health and safety, or acceptable operating standards.

OCWA will operate and maintain the Facility cooperatively with the Client, including but not limited to the dosage of chlorine for secondary disinfection, and pumping schedules.

The Client will consider cost savings-sharing formula for dealing with savings that result from innovations proposed and implemented by OCWA.

J. Risk Management

OCWA will implement risk identification strategies and create, maintain and implement contingency, emergency, and health and safety plans to manage risk for the Client's facilities within OCWA's control under this Agreement.

OCWA will respond to emergency situations within thirty (30) minutes and appropriate staffing will be available within sixty (60) minutes.

K. Site Visits

OCWA will facilitate site visits at the Facility on a periodic basis. Visitors to the Facility will include the Client's staff, MOE staff, maintenance services staff as well as the Health Units' staff.

L. Potable Water Performance Criteria

At all times, OCWA will deliver the Services in accordance with the requirements of the *Safe Drinking Water Act*, the Drinking Water Systems Regulation (O. Reg. 170/03) and the Ontario Drinking Water Quality Standards (O. Reg. 169/03), except for Uncontrollable Circumstances.

M. Sampling and Testing Requirements

OWCA will perform sampling and testing at the Facility in accordance with the *Safe Water Drinking Act*, the Drinking Water Systems Regulation (O. Reg. 170/03), Municipal Drinking Water Licences (or Certificates of Approval) and Applicable Laws.

Sampling and testing shall occur for the following three sub-systems separately:

1. City of London
2. Aylmer Area Secondary Water Supply System
3. St. Thomas Area Secondary Water Supply System

N. Addressing Potential Performance Concerns

OCWA is committed to maintaining excellent client service and transparent communications with regarding the performance of its staff working at the Facility. If the Client has concerns about the work performance of OCWA's staff, these concerns can be forwarded in writing to OCWA's General Manager for the Facility. The Client's concerns about the work performance of OCWA's staff will be thoroughly reviewed with the assistance of OCWA's Human Resources Department, and dealt with on a case-by-case basis. OCWA will apprise the Client of the actions taken to improve performance. In addressing issues of staff work performance, OCWA will attempt to have a resolution that is satisfactory to both Parties..

SCHEDULE D - Insurance

A summary of the insurance coverage that OCWA will arrange for in respect of the Facility is described below:

Property Insurance

Perils: "All Risks" including earthquake and flood. Subject to policy exclusions.

Limits:

- Replacement Value (Subject to Annual Review by the Client)
- Extra expenses
- Expediting expenses

Deductibles: For the year 2012, subject to change on an annual basis:

All Perils	-	\$250,000 (except earthquake and flood)
Earthquake	-	\$100,000 (minimum)
Flood	-	\$50,000

Where the Client's property is repaired or replaced, the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will pay the deductible. In cases where both the Client's and OCWA's property is repaired or replaced, the deductible will be paid by both the Client and OCWA pro rata in accordance with the total loss.

Property Insured: All reported properties including buildings and equipment situated within 1,000 feet of the premises. Includes pumping stations. Excludes underground sewer and water system.

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

Commercial General Liability Insurance

Coverage: Third party liability including legal fees, for property damage and/or bodily injury as caused by OCWA's negligence arising out of OCWA's operations of the Facilities.

Limit: \$50,000,000 per occurrence.

Deductible: \$50,000 for the year 2012; subject to change on an annual basis.

Contractor's Pollution Liability/Professional Liability Insurance

Coverage: Professional Liability: To pay on behalf of OCWA sums which OCWA shall become legally obligated to pay as damages and/or claims expense as a result of claims made first against OCWA, and reported to the insurer, in writing during the policy period, automatic extended reporting period (60 days), and by reason of any act, error or omission in professional services rendered or that should have been rendered by OCWA, or by any person for whose acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA's profession.

Pollution legal liability covering third party property damage and bodily injury and clean up costs for pollution conditions arising out of the performance of the services provided by OCWA.

Limit: \$10,000,000 per loss on a Claims Made basis with automatic, extended reporting periods for Pollution Liability. \$10,000,000 aggregate.

Limit: \$5,000,000 for Professional Liability Insurance

Deductible: \$100,000 for the year 2012; subject to change on an annual basis.

SCHEDULE E - List of Pre-Existing Conditions

As per Paragraph 3.1(e) of this Agreement, the following Pre-existing Conditions have been identified:

- Potential changes to operating requirements and impacts associated with the commissioning of the City of London's Southeast Reservoir & Pumping Station located on Highbury Avenue
- City of London's contracted minimum daily current average volume is 22.7 million litres

SCHEDULE F - Reporting

EMPS Reporting Plan		
Report	Frequency	Submission
Operations, Maintenance and Compliance	Monthly	Informally discuss facility operations
Operations, Maintenance and Compliance	Quarterly	45 days after month end
Annual Report (MOE) (O. Reg. 170, Section 11)	Annually	February 1
Yearly Summary Report (O. Reg. 170, Schedule 22)	Annual	February 28
Capital Recommendations	Quarterly/annually	Quarterly and by October 31 for preceding year
Contingency and Emergency Preparedness		Within 90 days of the start of the contract
Review of provision of infrastructure	Annually	Oct 31
Management Review	Annually	30 days after review
Internal Audit Report	Annually	30 days after audit
Initial Condition Survey		90 days from the start of the contract
Final Condition Survey		60 days prior to end of term

Proposed Meeting Schedule		
Meeting	Frequency	Agenda
Operations and Maintenance	Monthly	Informally discuss facility operations
Operations and Maintenance	Quarterly	45 days following quarter end
Annual performance review	Annual (year end)	Review of operations, maintenance, compliance and capital for the year.
Capital Recommendations	Annual (Q3)	Presentation of recommended capital for coming year

SCHEDULE G – Pricing

EMPS Price Proposal						
Item	Year 1 (6 months)	Year 2	Year 3	Year 4	Year 5	Year 6 (6 months)
Salaries & Benefits	\$51,212	\$104,472	\$106,562	\$108,693	\$110,866	\$56,542
Transportation & Communication	\$3,344	\$6,706	\$6,841	\$6,978	\$7,117	\$3,629
Services	\$16,924	\$43,492	\$44,363	\$45,250	\$46,154	\$23,539
Supplies & Equipment	\$10,998	\$22,072	\$22,544	\$23,024	\$23,515	\$11,879
Total Fixed Price, excluding taxes	\$82,478	\$176,743	\$180,310	\$183,946	\$187,652	\$95,590

The Prices for Years 3 through Year 5 as well as the last six months of Year 2 (from July 1, 2013 to December 31, 2013) do not include the CPI Adjustment, which will be calculated in accordance with Section 4.2.

Salaries and Benefits – salaries, on call, ORO

Transportation and Communication – telephones, data communication, cell phone, training

Services – vehicles, lab equipment, repairs and maintenance, lab analysis, insurances

Supplies and Equipment – lubricants, calibration, vehicle fuel, safety, laboratory, hardware supplies

Included:

- Annual DWQMS costs
- On call costs
- Lab costs
- Data communication and phones costs
- 20 hours per week for operator
- Operator hours are Monday to Friday excluding weekends and holidays
- Shared ORO from Elgin Plant and/or Elgin Middlesex Hub

Excluded:

- Initial and final condition surveys
- All capital costs
- All natural gas and utilities costs
- Writing the DWQMS operational plans
- External DWQMS audit
- All lifting devices
- Chlorine gas