

Joint Occupancy and Use Agreement Elgin – Middlesex Pumping Station

THIS AGREEMENT made in quadruplicate the _____ day of _____, 2021

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(herein after referred to as "**London**")

AND

THE ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM
(herein after referred to as "**St. Thomas**")

AND

THE AYLMER AREA SECONDARY WATER SUPPLY SYSTEM
(herein after referred to as "**Aylmer**")

AND

THE ELGIN AREA PRIMARY WATER SUPPLY SYSTEM
(herein after referred to as "**Elgin**")

(herein after collectively referred to as the "**Parties**")

WHEREAS Elgin owns the property municipally known as 490 South Edgeware Road in the Municipality of Central Elgin (the "**Property**") at which Elgin owns, operates and maintains a terminal reservoir and associated appurtenances of Elgin.

AND WHEREAS Elgin owns and maintains a building on the Property known as the Elgin-Middlesex Pumping Station (the "**EMPS**") that is jointly occupied by London, Aylmer and St. Thomas.

AND WHEREAS London, Aylmer, and St. Thomas jointly occupy the **EMPS** for their operation of pumping stations and associated equipment and appurtenances.

AND WHEREAS Elgin, London, Aylmer, and St. Thomas wish to enter into an Agreement related to the joint occupancy of London, Aylmer, and St. Thomas of the EMPS.

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 parties agree as follows:

Article 1. INTERPRETATION

Section 1.1 Purpose and Affect

Elgin, London, St. Thomas and Aylmer agree that the scope of this agreement is limited to the occupancy and use of the Property, the Facility and the EMPS, and excludes the provision of operating services by a contracted operating authority, or the operation of water works by any of the Parties.

Section 1.2 Definitions

“Annual Rate” means the cost per square metre of occupancy charged to each of London, Aylmer, and St. Thomas for their respective occupancy of the Elgin-Middlesex Pumping Station.

“Aylmer” means the Aylmer Area Secondary Water Supply System, supplying water to the Township of Malahide, The Municipality of Central Elgin, and the Town of Aylmer

“Business Day” means a day other than any holiday as defined in the Interpretation Act (Ontario) and Boxing Day.

“CMMS” means the Computerized Maintenance Management System owned and utilized by Elgin, and having given authorization for the use of the CMMS for the purposes of tracking work and activities undertaken for the benefit of the EMPS at no cost or liability to Elgin.

“Elgin” means the Elgin Area Primary Water Supply System

“EMPS” means the building which contain the pumps and associated equipment of London, Aylmer, and St. Thomas. For clarity, this includes the original pumping station building constructed in about 1967 and the building addition constructed in 1996 and the associated building services, but excludes the Surge Control Building owned by London and the Storage Building jointly owned by Aylmer and St. Thomas.

“Facility” means the EMPS building, the Surge Control Building owned by London, the Storage Building jointly owned by Aylmer and St. Thomas, the meter chamber owned by St. Thomas, and any building-related services including the sanitary septic system, the HVAC system, and the electrical system.

“London” means the Corporation of the City of London

“Property” means the property owned by Elgin located in the Municipality of Central Elgin, municipally known as 490 South Edgeware Road.

“RWS” means the Regional Water Supply Division of the City of London, seconded to report to and administer Elgin on behalf of the Board of Management for the Elgin Area Primary Water Supply System.

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- “SCADA” means the Supervisory Control and Data Acquisition System. Elgin has authorized the routing of control code from the Aylmer SCADA at the EMPS, the London SCADA at EMPS, and St. Thomas SCADA at EMPS for the purposes and benefit of remote operation of the EMPS from Elgin’s water treatment plant at no cost or liability to Elgin.
- “St. Thomas” means the St. Thomas Secondary Water Supply System, supplying water to the city of St. Thomas, the Municipality of Central Elgin, the Township of Southwold, and the Municipality of Dutton Dunwich.
- "Uncontrollable Circumstance" means any event or condition which materially alters the rights and obligations of the Parties under this Agreement, or the management, operation or maintenance of the Facility, or the EMPS, which is beyond the reasonable control of or could not reasonably be anticipated by the Party relying thereon as justification for a delay in or non-performance of any obligation of such Party pursuant to this Agreement and shall include but not be limited to:
- i. an act of God, landslide, lightning, earthquake, hurricane, flood, tornado or other natural disaster, fire, explosion, acts of public enemy, terrorism, war, blockade, sabotage, insurrection, riot or public disturbance;
 - ii. an order of any court, administrative or governmental agency of competent jurisdiction which has not been made as a result directly or indirectly of the actions or inaction of Elgin, London, St. Thomas, and/or Aylmer. This specific provision shall be construed strictly against the Party seeking to so rely to excuse non-performance or delay;
 - iii. a Change of Laws. This specific provision be construed strictly against the Party seeking to so rely to excuse non-performance or delay;
 - iv. loss or inability to obtain service from a utility;
 - v. provided, however, that a failure by a Party to perform its obligations under this Agreement arising from or related to such Party's insufficient cash flow or its economic or financial condition generally, shall not constitute an Uncontrollable Circumstance

Section 1.3 Term, Amendment and Termination

The Parties agree that this agreement has an effective date of January 1, 2022 and, subject to amendment or termination in accordance with this Section, this Agreement shall continue indefinitely.

This Agreement may be amended from time to time by mutual agreement of the Parties. No amendments to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.

Any Party shall have the right to terminate this Agreement. The terminating Party shall provide twelve (12) months written Notice of Termination to the Parties pursuant to [Section 9.9](#) of this Agreement.

Section 1.4 Identification of Sole Ownership – Elgin

The Parties acknowledge that Elgin is the sole owner of the Property, the two cells of the reservoir on the Property, the valve house on the Property, the swab-catch and settling pond on the Property, the overflow and drain from the reservoir, the site drainage and runoff, the associated piping and appurtenances associated with the transmission pipeline to the Property, and the EMPS and associated building-related services on the Property but excluding the pumps and related equipment owned and operated by London, Aylmer, and St. Thomas.

In addition, the Parties acknowledge that Elgin owns:

- the water meter on the discharge piping after the pumps at the Facility that is associated with St. Thomas;
- the water meter on the discharge piping after the pumps at the Facility that is associated with Aylmer;
- the water meter on the discharge piping after the surge tanks in the Surge Control Building that is associated with London;
- the discharge piping from the reservoir outlet and the suction header up to and including the first isolation valve on the suction header within the EMPS;
- The driveway, perimeter fence, and landscaping of the Property;
- The 25m (approximate) communications tower;
- The electrical substation supplying power to the Facility;
- The EMPS building-related services including septic system, HVAC, overhead crane, and exterior lighting

The Parties further acknowledge that Elgin does not own, in whole or in part, and has no obligations, except where specifically identified within this Agreement, with respect to assets identified as solely or jointly owned by London, St. Thomas or Aylmer, including but not limited to the Surge Control Building and related assets owned by London, and the Storage Building jointly owned by Aylmer and St. Thomas that was previously used for the storage of diesel fuel for the backup generator.

For greater clarity, the assets on the Property which are owned by Elgin are identified in [Schedule A](#) of this Agreement.

Section 1.5 Identification of Sole Ownership – London

The Parties acknowledge that London is the sole owner of the pumps generally referred to as #4, #5, and #6, including their associated electrical systems, controls and appurtenances, the transmission pipeline from the discharge header of London's pumps in the EMPS to London's water distribution system, and the Surge Control Building including all equipment within the building, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by London are identified in [Schedule A](#) of this Agreement, and the assets within the Facility which are owned by London are identified in [Schedule B](#) of this Agreement.

Section 1.6 Identification of Sole Ownership – St. Thomas

The Parties acknowledge that St. Thomas is the sole owner of the pumps generally referred to as #1, #2, and #3, including their associated electrical systems, controls and appurtenances, and the transmission pipeline from the discharge header of St. Thomas' pumps in the EMPS to St. Thomas's water transmission system, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by St. Thomas are identified in [Schedule A](#) of this Agreement, and the assets within the EMPS which are owned by St. Thomas are identified in [Schedule B](#) of this Agreement.

Section 1.7 Identification of Sole Ownership – Aylmer

The Parties acknowledge that Aylmer is the sole owner of the pumps generally referred to as #7, and #8, including their associated controls and appurtenances, and the transmission pipeline from the EMPS to Aylmer's water transmission system, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by Aylmer are identified in [Schedule A](#) of this Agreement, and the assets within the EMPS which are owned by Aylmer are identified in [Schedule B](#) of this Agreement.

Section 1.8 Identification of Joint Ownership

1. *Rechlorination System*

The Parties acknowledge that Aylmer and St. Thomas jointly own a rechlorination system within the EMPS, including associated electrical systems, controls and appurtenances, which benefit Aylmer and St. Thomas.

2. *Backup Generator*

The Parties acknowledge that Aylmer and St. Thomas jointly own a backup generator within the EMPS, including associated electrical systems, controls, fuel storage tank, and appurtenances, which benefit Aylmer and St. Thomas.

3. *Diesel Fuel Storage Tank*

The Parties acknowledge that Aylmer and St. Thomas jointly own an above-ground diesel fuel storage tank located outside the EMPS for the Backup Generator, which benefit Aylmer and St. Thomas.

4. *Storage Building*

The Parties acknowledge that Aylmer and St. Thomas jointly own the building which formerly contained an above-ground fuel storage tank. The fuel storage tank was previously decommissioned and removed by Aylmer and St. Thomas, and the fuel tank replaced with an above-ground storage tank located exterior to the EMPS. The building is currently used for storage of materials and equipment associated with Aylmer and/or St. Thomas.

For greater clarity, the assets on the Property which are jointly owned by London, St. Thomas and/or Aylmer are identified in [Schedule A](#) of this Agreement, and the assets within the Facility which are jointly owned by London, St. Thomas, and/or Aylmer are identified in [Schedule B](#) of this Agreement.

Article 2. Operation and Maintenance of the Terminal Reservoir and Property

Section 2.1 Site Security

London, Aylmer, and St. Thomas acknowledge and agree that the Property, the Facility, and the EMPS (as applicable) will be secured by Elgin's master key and/or access control system. Monitoring of the site security, including any existing door-switches and motion sensors, will be undertaken by Elgin.

Elgin agrees to allow unrestricted access by London, Aylmer, and St. Thomas to the Facility and the EMPS, including the Operating Authority of London, Aylmer, and St. Thomas, subject to reasonable security protocols implemented by Elgin.

The Parties agree that unrestricted access is not granted to London, Aylmer, and St. Thomas to the two cells of the reservoir on the Property, the valve house on the Property, the swab-catch and settling pond on the Property, the overflow and drain from the reservoir, the associated piping and appurtenances associated with the transmission pipeline to the Property.

Section 2.2 Property Maintenance

Further to [Section 1.4](#), Elgin is responsible for maintaining the Property including snow removal, pavement maintenance, perimeter fencing, grass cutting and landscaping.

Section 2.3 Property Taxes

Elgin is responsible for paying Property Taxes, or payments in lieu of taxes, to the municipality with respect to the Property and Facility.

Article 3. Operation and Maintenance of the Elgin-Middlesex Pumping Station and the Facility

Section 3.1 Maintenance and Repair of the EMPS Building and Building-Related Assets

Elgin shall be responsible for the maintenance and repair of the EMPS building and building-related assets, including the building HVAC, exterior building lighting, septic system, and electrical substation and excluding the motor control centres and related electrical systems associated with London, Aylmer and St. Thomas.

Section 3.2 Maintenance and Repair of Pumps and Associated Equipment

Notwithstanding [Section 2.1](#), London, Aylmer, and St. Thomas shall each be responsible for maintaining and repairing all assets related to their respective pumps and associated equipment.

Section 3.3 Maintenance and Repair of Jointly Owned Assets

Prior to undertaking the maintenance or repair of jointly owned assets, the joint owners of the asset shall agree in writing to the apportionment of all related costs associated with the repair. [Schedule C](#) of this Agreement may be used as a guide with regard to the apportionment of costs.

Section 3.4 Supervisory Control and Data Acquisition

London, Aylmer, and St. Thomas are each responsible for their respective SCADA systems, including but not limited to the programmable logic controllers (PLC) and human-machine interface (HMI), or other similar control-related equipment, at the EMPS.

If London, Aylmer, and St. Thomas use the same operating authority for the operation of the EMPS that is used by Elgin, Elgin hereby consents to allowing the remote operation of the EMPS to be routed through Elgin's SCADA system and remotely controlled at the Elgin water treatment plant. London, Aylmer and St. Thomas further agree that any routed controls through Elgin's SCADA system shall comply with the network security requirements of Elgin, and any cost associated with adding, maintaining, modifying, or deleting the control routing and associated programming will be at the cost of London, Aylmer, and St. Thomas.

Section 3.5 Computerized Maintenance Management System

If London, Aylmer, and St. Thomas use the same operating authority for the operation of the EMPS that is used by Elgin, Elgin hereby consents to allowing the use of Elgin's CMMS for managing and maintaining the work records associated with the EMPS. The utilization of Elgin's CMMS will be at no cost to London, Aylmer, and St. Thomas.

Notwithstanding the forgoing, any cost associated with the addition of assets, modification of asset data or work schedule, or exportation of data related to assets owned or jointly owned by London, Aylmer and/or St. Thomas, including costs associated with licencing and using Elgin's CMMS, shall be at the cost of London, Aylmer, and St. Thomas.

Section 3.6 Coordination of Operating Authority

London, Aylmer, St. Thomas, and Elgin agree to coordinate the activities of the respective operating authorities for work undertaken at the EMPS, the Facility, and the Property.

Section 3.7 Payment of Operating Expenses

London, Aylmer, and St. Thomas authorize and delegate to the RWS the authority to approve, pay, and recover the regular, reoccurring operational costs incurred with respect to the operation of the EMPS. For further clarity, RWS shall undertake payment of the following regular reoccurring operating expenses on behalf of London, Aylmer, and St. Thomas:

- If the operating authority used by London, Aylmer, and St. Thomas is the same as the operating authority of Elgin, the monthly Service Fee from the operating authority for the operation of the EMPS and the Facility on behalf of London, Aylmer, and St. Thomas
- Electricity
- Natural Gas

All other fees and charges will be paid by London, Aylmer and/or St. Thomas for materials, services and supplies related to the Facility and the EMPS.

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In lieu of Elgin paying and providing other services under this Agreement, London, Aylmer, and St. Thomas agree that Elgin will not be allocated costs associated with electricity. London, Aylmer and St. Thomas are not obligated to pay for other operating expenses associated with the remainder of the Property and Facility, including but not limited to property maintenance and payment of property taxes.

Section 3.8 Allocation of Operating Expenses

On a monthly basis, RWS will invoice to London, Aylmer, and St. Thomas for the regular reoccurring operational expenses paid by RWS on behalf of London, Aylmer, and St. Thomas as authorized in [Section 3.7](#). The regular reoccurring operational expenses shall be apportioned to each of London, Aylmer, and St. Thomas proportionate to the respective occupancy and/or material utilization.

For greater clarity, the allocation of common operating expenditures which have been authorized for payment are outlined in [Schedule C](#) of this Agreement.

Section 3.9 Payment for Occupancy

1. Annual Rate Charged for Occupancy

On or before January 1, 2022 and by January 1st every 5 years thereafter, Elgin will notify each of London, Aylmer, and St. Thomas the Annual Rate charged to each of London, Aylmer and St. Thomas for their respective occupancy of the EMPS.

2. Dedicated Reserve Fund

Revenue from the Annual Rate charged to each of London, Aylmer, and St. Thomas will be placed in a dedicated Reserve Fund which will be used as a source of finance for maintenance, repairs and the renewal of the EMPS building and building-related assets. The dedicated Reserve Fund shall not be used for any other purpose than the maintenance, repair and renewal of the EMPS building and building-related assets, which may include principle and interest payments for debentures and/or intra-Fund loans issued for this purpose.

3. Asset Management Plan

Starting in 2020 and every five-years thereafter, Elgin will update the Asset Management Plan which will form the basis of establishing the long-term financial requirements for the maintenance, repairs and renewal of the EMPS building and building-related assets. The Annual Rate set by Elgin shall be sufficient to ensure the long-term financial requirements necessary are available in the dedicated Reserve Fund for the EMPS.

Article 4. Undertaking Repairs and Capital Investments

Section 4.1 Repairs to Sole-Owned Assets

Where a Party is the sole owner or has the sole care and control of an asset, that respective Party is responsible for any Repair of any asset beyond that which may be included in a service agreement with a contracted operating authority, including the cost of the Repair. That Party is responsible for the coordination of the operating authority and any contractor utilized for the Repair, with the activities undertaken by the other Parties.

Section 4.2 Repairs to Jointly Owned Assets

Where an asset is jointly owned, the Parties which jointly own the asset are collectively responsible for any Repair of the jointly owned asset, beyond that which may be included in a service agreement with a contracted operating authority. The Parties which jointly owned the asset are collectively responsible for the coordination of the operating authority and any contractor utilized for the Repair, with the activities undertaken by the other Parties.

Section 4.3 Capital Improvements

The Parties are separately entitled to undertake capital improvements at the Facility, including the replacement of existing assets or the construction and installation of new assets, subject to [Section 7.1](#) and [Section 7.2](#) of this agreement. The capital improvement is the sole responsibility of the Party, including but not limited to financing, project management, project coordination with other Parties, permits and approvals.

If a capital improvement will be jointly owned by two or more of the Parties, the Parties must agree in writing, prior to undertaking the project, the allocation of the anticipated costs.

The Parties are not entitled to remove, replace, alter, or otherwise modify any asset to which they are not the sole owner without the express written permission of the asset's owner or joint owners.

Article 5. Representations, Warrantees and Covenants

Section 5.1 Representations, Warrantees and Covenants of Elgin

1. Authority to Contract.

Elgin warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. Provision of Information.

Elgin shall use reasonable care to prepare and supply to St. Thomas, London, and/or Aylmer, for the benefit of itself or themselves of any report or information required hereunder.

3. Skilled Personnel.

Elgin represents and warrants to St. Thomas, London, and Aylmer that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

4. Construction and Maintenance.

Elgin covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of Elgin at the Facility and on the Property.

5. *Access.*

Elgin covenants and agrees to allow unrestricted access to London, Aylmer, and St. Thomas to the Property and the Facility in accordance with [Section 2.1](#) of this Agreement.

Section 5.2 Representations, Warrantees and Covenants of London

1. *Authority to Contract.*

London warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. *Provision of Information.*

London shall use reasonable care to prepare and supply to Elgin, Aylmer, and/or St. Thomas, for the benefit of itself or themselves of any report or information required hereunder.

3. *Skilled Personnel.*

London represents and warrants to Elgin, Aylmer, and St. Thomas that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

4. *Construction and Maintenance.*

London covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of London at the Facility.

5. *Use of the Property.*

London covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

Section 5.3 Representations, Warrantees and Covenants of Aylmer

1. *Authority to Contract.*

Aylmer warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. *Provision of Information.*

Aylmer shall use reasonable care to prepare and supply to Elgin, London, and/or St. Thomas, for the benefit of itself or themselves of any report or information required hereunder.

3. *Skilled Personnel.*

Aylmer represents and warrants to Elgin, London, and St. Thomas that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

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4. *Construction and Maintenance.*

Aylmer covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of Aylmer at the Facility.

5. *Use of the Property.*

Aylmer covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

Section 5.4 Representations, Warrantees and Covenants of St. Thomas

1. *Authority to Contract.*

St. Thomas warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. *Provision of Information.*

St. Thomas shall use reasonable care to prepare and supply to Elgin, London, and/or Aylmer, for the benefit of itself or themselves of any report or information required hereunder.

3. *Skilled Personnel.*

St. Thomas represents and warrants to Elgin, London, and Aylmer that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

4. *Construction and Maintenance.*

St. Thomas covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of St. Thomas at the Facility.

5. *Use of the Property.*

St. Thomas covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

Article 6. Liability, Indemnity, and Insurance

Section 6.1 Indemnification of London, Aylmer, and St. Thomas by Elgin

Elgin shall indemnify and hold London, Aylmer, and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of Elgin, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Elgin.

Section 6.2 Indemnification of Elgin, Aylmer, and St. Thomas by London

London shall indemnify and hold Elgin, Aylmer and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of London, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of London.

Section 6.3 Indemnification of Elgin, London, and St. Thomas by Aylmer

Aylmer shall indemnify and hold London, Elgin and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of Aylmer, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Aylmer.

Section 6.4 Indemnification of Elgin, London, and Aylmer by St. Thomas

St. Thomas shall indemnify and hold London, Aylmer and Elgin, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of St. Thomas, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of St. Thomas.

Section 6.5 Waiver of Consequential Damages

In no event shall the Parties be liable to each other, and each party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

Section 6.6 Uncontrollable Circumstances

In the event that performance of this Agreement in the reasonable opinion of a Party is made impossible by reason of an Uncontrollable Circumstance, and if a Party seeks to rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as grounds for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall:

1. Provide prompt notice to the other Party of the occurrence of the act, event or condition as soon as reasonably practicable after the Party first knew of such occurrence and give an estimation of its expected duration and the probable impact on the performance of its obligations hereunder,
2. Exercise all reasonable efforts to continue to perform its obligations hereunder,
3. In accordance with this Agreement, as expeditiously as reasonably practicable take action to correct or cure the act, event or condition preventing its performance,
4. Exercise all reasonable efforts to mitigate or limit damages to the other Party, and
5. Provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability *to perform*,

Except as expressly provided under the terms of this Agreement, no Party to this Agreement shall be liable to the other Parties for any loss, damage, delay, default, or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

Article 7. Changes and Amendments to the Agreement

Section 7.1 New Equipment and Processes

Where a capital improvement is undertaken by London, Aylmer and/or St. Thomas in the EMPS that results in a change in their respective occupancy of the EMPS or Facility, or results in a change in their consumption of natural gas or electricity, the [Schedule C](#) of this agreement shall be reviewed and if necessary revised with respect to the allocation of costs based on occupancy and/or utilization.

Any amendments or changes to [Schedule C](#) shall be agreed upon in writing by the Parties.

Section 7.2 New Buildings or Building Additions

Buildings or other permanent structures shall not be extended or added to the Property by London, Aylmer, and/or St. Thomas without the express written permission of Elgin.

Section 7.3 Material Changes to the Agreement

A Party must provide Notice to the other Parties upon the initiation of a project or undertaking which may materially affect the allocation of costs, and/or coordination of operational responsibilities, and/or ownership or joint ownership of assets.

Any Party may request that the Agreement and/or Schedules be reviewed by the Parties upon significant changes to processes and equipment at the Facility that materially affect the allocation of costs, and/or coordination of operational responsibilities, and/or ownership or joint ownership of assets.

Section 7.4 Renegotiation of the Agreement

Any Party can give Notice to the other Parties requesting a review and renegotiate the terms and conditions of the Agreement at any time. The Notice must include, at a minimum: (1) identification of proposed changes to the process/equipment, (2) anticipated impact on the agreement, and (3) proposed changes/amendments to the agreement.

A Notice of request to review and amend the Agreement and/or Schedules must be submitted to the Parties in writing. The Parties agree to meet within a reasonable timeframe to discuss proposed amendments to the Agreement and/or Schedules.

All Parties must respond in writing to the notifying Party within 14 days of the Notice, specifying their acceptance of the proposed changes or the timeframe for which the negotiations are to take place.

All changes or amendments to this Agreement must be rendered in writing.

Article 8. Health and Safety

Section 8.1 Asbestos

Elgin will maintain and update at least annually an asbestos inventory of the EMPS, and provide an updated inventory to each of London, Aylmer and St. Thomas. Elgin is responsible for the maintenance, repair and abatement, if and as applicable, of asbestos containing materials that is associated with the EMPS building and building-related assets.

London, Aylmer, and St. Thomas will immediately notify Elgin of any damage observed to asbestos containing substances related to construction or operational activities undertaken by London, Aylmer and/or St. Thomas.

Each of London, Aylmer, and St. Thomas are responsible for the maintenance, repair and abatement, if and as applicable, of asbestos containing materials associated with their pumps and associated equipment.

Section 8.2 Notification of Designated Substances

Elgin, London, Aylmer, and St. Thomas acknowledge and agree that each of Elgin, London, Aylmer, and St. Thomas, individually, are each responsible for the notification of designated substances to the Parties, their operating authority, and any contractor undertaking a Repair or Capital Investment on their behalf at the EMPS and the Facility.

Article 9. General Provisions

Section 9.1 Dispute Resolution.

If a dispute arises between the parties, the parties agree that the Dispute Resolution Process outlined in [Schedule D](#) shall be used.

Section 9.2 Applicable Law.

This Agreement and its interpretation shall be governed by the laws of the Province of Ontario.

Section 9.3 Headings.

The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

Section 9.4 Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No oral agreement or conversation with any officer, agent or employee of Elgin, London, Aylmer and/or St. Thomas, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained.

Section 9.5 Enurement and Assignment.

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

Section 9.6 Survival.

Wherever this Agreement contains an express obligation by one or more Parties to indemnify any other Party, such obligation to indemnify shall survive the completion or termination of this Agreement and continue in full force and effect.

Section 9.7 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 9.8 Waiver.

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

Section 9.9 Notices.

1. Delivery Mode and Address.

Any Notice required to be or may be given or made by one of the parties hereto to the other, it shall be in writing and shall be delivered in person, transmitted by facsimile, transmitted by e-mail, or similar means of recorded electronic communication, or sent by ordinary or registered mail to the respective addresses of the parties hereto:

If to Elgin:

The Elgin Area Primary Water Supply System
235 North Centre Road, Suite 200
London, Ontario N5X 4E7

Attention: Director – Regional Water
Phone: (519) 930.3505 ext.1355
Facsimile: (519) 474.0451
eMail: GENERAL@HuronElginWater.CA
and copied to: AHENRY@HuronElginWater.CA

If to London:

The Corporation of the City of London
300 Dufferin Avenue
London, ONT N6A 4L9

Attention: Kelly Scherr, Deputy City Manager – Environment & Infrastructure
Phone: (519) 661-2489, ext. 2391
Facsimile: (519) 661-2354
eMail: KSCHERR@LONDON.CA

If to Aylmer:

The Aylmer Area Secondary Water Supply System
c/o The Corporation of the Township of Malahide
87 John Street South
Aylmer, ONT N5H 2C3

Attention: Chief Administrative Officer / Clerk
Phone: 519-773-5344 ext.225
Facsimile: 519-773-5334
eMail: MALAHIDE@MALAHIDE.CA

**Joint Use and Occupancy Agreement
Elgin – Middlesex Pumping Station**

If to St. Thomas:

The St. Thomas Area Secondary Water Supply System
c/o the Corporation of the City of St. Thomas
PO Box 520, 545 Talbot Street
St. Thomas, ONT N5P 3V7

Attention: Justin Lawrence, City Engineer
Phone: (519) 631-1680 x.4165
eMail: JLAWRENCE@STTHOMAS.CA

2. Time of Delivery.

Any such Notice shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day), or if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other events which might reasonably be expected to disrupt the delivery of document by mail, any notice hereunder shall be delivered or transmitted by means of recorded electronic communications as aforesaid.

Section 9.10 Counterparts: Electronic Copies

This Agreement may be executed by two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic or email exchange bearing the copies of a party's signature shall constitute a valid and binding execution and delivery of this Agreement by such party. Such electronic copies shall constitute enforceable original documents.

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**Joint Use and Occupancy Agreement
Elgin – Middlesex Pumping Station**

IN WITNESS WHEREOF Elgin, London, St. Thomas and Aylmer have caused this Agreement to be executed by the affixing of their proper seals attested by the signature of the proper persons duly authorized in that behalf.

THE ELGIN AREA PRIMARY WATER SUPPLY SYSTEM

Chair

Chief Administrative Officer

Date

Date

THE CORPORATION OF THE CITY OF LONDON

Mayor

Clerk

Date

Date

THE AYLMER AREA SECONDARY WATER SUPPLY SYSTEM

Mayor, Township of Malahide

CAO/Clerk, Township of Malahide

Date

Date

THE ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM

**Joint Use and Occupancy Agreement
Elgin – Middlesex Pumping Station**

Chair, St. Thomas Area Secondary
Water Supply System Joint Board of
Management

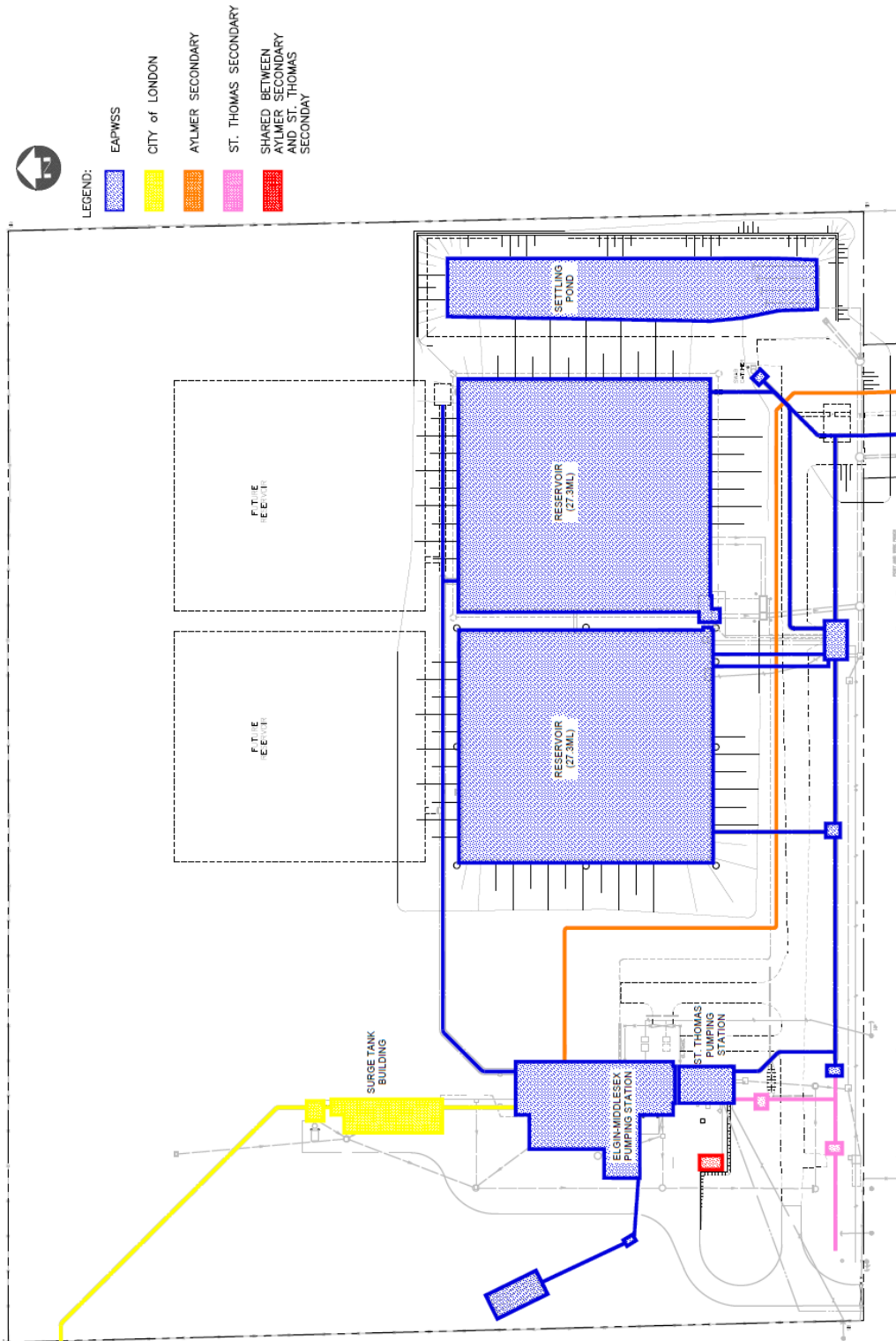
Date

Co-Chair, St. Thomas Area Secondary
Water Supply System Joint Board of
Management

Date

SCHEDULE A

ELGIN-MIDDLESEX PUMPING STATION AND TERMINAL RESERVOIR PROPERTY



SCHEDULE B

ELGIN MIDDLESEX PUMPING STATION – GROUND & BASEMENT LEVELS



SCHEDULE C

ALLOCATION OF COSTS AND EXPENDITURES

Beneficiary by Area:

Where expenditures are agreed to be allocated by area of occupancy or shared occupancy, the following table, in whole or in part, shall be used for calculating the proportionate allocation of cost where appropriate:

LOCATION	LONDON (m ²)	ST. THOMAS (m ²)	AYLMER (m ²)	ELGIN (m ²)	TOTAL (m ²)
Common Hallways, Loading Bay, and Lobbies	50.8 (33.3%)	50.7 (33.3%)	50.7 (33.3%)	n/a	152.2
Chlorine Room	n/a	36.7 (50%)	36.6 (50%)	n/a	73.3
Backup Generator Room	n/a	31.1 (50%)	31.1 (50%)	n/a	62.2
Control Room	3.5 (33.3%)	3.5 (33.3%)	3.5 (33.3%)	n/a	10.5
Electrical Room(s)	67.0 (32.7%)	71.0 (34.6%)	67.0 (32.7%)	n/a	205.0
Mechanical Room	13.3 (33.3%)	13.2 (33.3%)	13.3 (33.5%)	n/a	39.8
Pump Room(s) – ground level	432.2 (67.8%)	113.2 (17.8%)	91.7 (14.4%)	n/a	637.1
Pump Room(s) – Basement level	385.8 (54.7%)	160.4 (22.7%)	85.0 (12.0%)	74.5 (10.6%)	705.7
SUBTOTAL EMPS	952.6 (50.5%)	479.8 (25.4%)	378.9 (20.0%)	74.5 (4.0%)	1885.8
Surge Control Building	261.3 (100%)	n/a	n/a	n/a	261.3
Former Fuel Storage Building	n/a	13.0 (50%)	13.0 (50%)	n/a	26.0
TOTAL	1213.9 (55.9%)	492.8 (22.7%)	391.9 (18.0%)	74.5 (3.4%)	2173.1

Joint Use and Occupancy Agreement Elgin – Middlesex Pumping Station

Operating Expenditures:

Regularly occurring operating expenditures include the service fee payable to a common operating authority contracted to operate and maintain the Elgin-Middlesex Pumping Station on behalf of London, St. Thomas and Aylmer. In addition, common operational costs such as electricity, natural gas, chemicals and fuel are to be divided between the benefiting partners as follows:

EXPENSE	LONDON	ST. THOMAS	AYLMER
Operating Service Fee ¹	69.5%	20.0%	10.5%
Electricity	<i>Electrical cost allocation estimated in proportion to the pump run-times, adjusted for pump size (horsepower), on a monthly basis.²</i>		
Natural Gas (heating) ³	58.0%	23.7%	18.3%
Other Chemicals	n/a	n/a	n/a
Diesel Fuel	n/a	50.0%	50.0%
Chlorine ⁴	n/a	64.5%	35.5%

Repairs and Capital Expenditures – Single Beneficiary:

Capital expenditures and repairs excluded from the service agreement with the operating authority are the responsibility of the party that owns the asset. Where the expenditure is excluded from the service agreement with the operating authority, the party that owns the asset is responsible for all costs associated with the repair or capital investment.

Repairs and Capital Expenditures – Multiple Beneficiary:

Capital expenditures and repairs excluded from the service agreement with the operating authority are the responsibility of the Parties that jointly own the asset. Where the expenditure is excluded from the service agreement with the operating authority, the Parties that jointly own the asset are responsible for all costs associated with the repair or capital investment.

Prior to the repair or capital investment being undertaken, the Parties that jointly own the asset are to agree in writing with respect to project management, budget, and allocation of costs.

¹ Value derived from the estimated volume proportion (5-year average)

² Algorithm used for the allocation of electrical costs on a monthly basis should be adjusted if sub-metering is installed by the Parties.

³ Calculation based on proportion of area of occupancy

⁴ Value derived from the estimated volume proportion (5-year average) between Aylmer and St. Thomas

SCHEDULE D

DISPUTE RESOLUTION PROCESS

In the event of a controversy or dispute between the Parties arising out of or in connection with this Agreement or regarding the interpretation of the provisions thereof, the following process will be followed:

1. The Party alleging a controversy or dispute (the “Disputing Party”) must notify the other Party (the “Recipient Party”) or other Parties (the “Recipient Parties”) in writing of such dispute or controversy (“Dispute Notice”) and specify the particulars of such dispute or controversy in the Dispute Notice.
2. Upon receipt of a Dispute Notice by the Recipient Party(s), the Recipient Party(s) and the Disputing Party must mutually consult in good faith in an attempt to settle amicably and in the spirit of cooperation any such controversy or dispute.
3. If on the date which is fourteen (14) days after the Recipient Party’s receipt of the Dispute Notice the Disputing Party and the Recipient Party(s) have not amicably settled the matter(s) set out in the Dispute Notice then the matter(s) shall be referred to a single arbitrator whose decision shall be final and binding. If the Parties cannot agree on the arbitrator, either party may apply under Section 10 of the Ontario Arbitrations Act for the Court to select an Arbitrator.