

Bill No. 92
2022

By-law No. A.- ____ - ____

A by-law to approve an Amending Agreement Between Ontario Clean Water Agency and the Corporation of the City of London, Aylmer Area Secondary Water Supply System Board of Management and the St. Thomas Area Secondary Water Supply System Board of Management, for the continued contracted operation of the Elgin-Middlesex Pumping Station.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Amending Agreement Between Ontario Clean Water Agency and the Corporation of the 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 "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Amending Agreement attached as Schedule "1" to this By-law, between Ontario Clean Water Agency and the Corporation of the City of London, the Aylmer Area Secondary Water Supply System Board of Management, and the St. Thomas Secondary Water Supply System Board of Management for the operation, maintenance, and management of the Elgin-Middlesex Pumping Station is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk BE AUTHORIZED to execute the Agreement, substantially in the form attached to this by-law, and satisfactory to the City Solicitor, and all documents required to fulfill its conditions.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council February 15, 2022

Ed Holder
Mayor

Michael Schulthess
City Clerk

First reading – February 15, 2022
Second reading – February 15, 2022
Third reading – February 15, 2022

Schedule 1
AMENDING AGREEMENT

THIS AMENDING AGREEMENT made as of the _____ day of _____, 2022.

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.

(referred to in this Amending Agreement as “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**

(referred to in this Amending Agreement as the “Client”)

(Each a “Party” and together, “the Parties”)

WHEREAS the Client and OCWA entered into an agreement effective July 1, 2017 concerning the operation and maintenance of the Client’s Facility (the “Existing Agreement”) attached as Appendix A to this Amending Agreement;

AND WHEREAS the Client and OCWA agree to renew the term of the Existing Agreement for additional five years and six months which shall start on July 1, 2022 and end on December 31, 2027 with an option to renew for additional five-year periods or such other period as may be agreed upon by the Parties.

AND WHEREAS the Client and OCWA agree to amend the Existing Agreement, as described below;

AND WHEREAS the Council of the Corporation of the City of London passed By-Law No. _____ on the _____ day of _____ 20__ authorizing the Client to enter into this Amending Agreement;

AND WHEREAS the Board of the Aylmer Area Secondary Water Supply System Board of Management passed By-Law No. _____ on the _____ day of _____ 20__ authorizing the Client to enter into this Amending Agreement;

AND WHEREAS the Board of the St. Thomas Area Secondary Water Supply System Board of Management passed Motion No. _____ on the _____ day of _____ 20__ authorizing the Client to enter into this Amending Agreement;

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

1. Any capitalized terms not defined herein shall have the meaning ascribed to such term in the Existing Agreement.

Amendments to the Existing Agreement:

2. **Section 2.9 Waiver of Consequential Damages** is hereby inserted in the Existing Agreement as follows:

“Section 2.9 - 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.”

3. **Section 2.7** of the Existing Agreement is hereby amended to insert the following:

“(f) No later than thirty (30) days following the Effective Date of this Agreement, the Client will provide certificates of insurance for its property and boiler and machinery insurance policies to OCWA. The insurance coverage for both policies should be on a full replacement cost basis.”

4. **Section 4.1** of the Existing Agreement is hereby deleted and replaced with the following:

“Section 4.1 – Initial Term of Agreement

This Agreement shall start on July 1, 2022 the “Effective Date” and shall continue in effect for a term of five years and six months, ending December 31, 2027 (the “Renewal Term”) and then may be renewed for additional five-year (or such other period as may be agreed upon between the Parties) renewal terms (each a “Renewal Term”) upon written agreement between the Parties, subject to Sections 4.3 and 6.2 of this Agreement.”

5. **Section 4.12** of the Existing Agreement is hereby amended to insert the following:

“(d) The labour and mileage rates described in Schedule D will be reviewed annually by OCWA and may be subject to change”

6. **Section 6.2** of the Existing Agreement is hereby deleted and replaced with the following:

“Section 6.2 – Early Termination”

If this Agreement is terminated for any reason prior to the expiry of the Current Term, then the Client shall pay OCWA for all Services provided up to the date of termination, as well as any costs relating to the early termination, including but not limited to the costs of cancelling or transferring agreements with suppliers and subcontractors; as well as any previously incurred Major Maintenance Expenditures, costs related to Capital Projects, Unexpected Expenses and Optional Services.”

7. **Section 6.5(a)** of the Existing Agreement is hereby deleted and replaced with the following:

“(a) The log book(s) for the Facility, (including electronic, hard copy or other formats not captured at the signing of the Agreement).”

8. **Section 7.9(a)(i)** of the Existing Agreement is hereby deleted and replaced with the following:

“(i) If to the Clients:

City of London
663 Bathurst St.
London, ON N5Z 1P8

Telephone: (519) 661-2500, ext. 4938
Fax: (519) 661-2352
Email: jsimon@london.ca
Attention: Division Manager, Water Operations, City of London

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

Telephone: (519) 773-5344 ext. 231
Fax: (519) 773-5334
Email: MSweetland@malahide.ca
Attention: Director of Public Works

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

Telephone: (519) 631-1680
Email: jlawrence@stthomas.ca

Attention: Director of Environmental Services

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
Email: ahenry@huronelginwater.ca
Attention: Director, Regional Water Supply

(ii) if to OCWA:
Ontario Clean Water Agency
450 Sunset Drive Suite 370
St Thomas, ON N5R 5B1

Telephone: (519) 519 871 6762
Fax: N/A
Email: cmurchland@ocwa.com
Attention: Regional Hub Business Manager”

9. Schedule A – The Facility of the Existing Agreement is hereby deleted and replaced with a new Schedule A, which is attached to this Agreement.

10. Schedule B – Definitions of the Existing Agreement is hereby amended to remove the following definition of ““MOECC” means the (Ontario) Ministry of the Environment and Climate Change” and replaced with following:

“MECP” means the Ministry of the Environment, Conservation and Parks”

All references in the Existing Agreement where MOECC is used should be replaced with MECP. An amended Schedule B is attached to this Agreement.

Additional wording has been included to reflect the CPI adjustment will be based on Ontario rates.

11. Schedule C – The Services of the Existing Agreement is hereby deleted and replaced with a new Schedule C, which is attached to this Agreement.

12. Schedule D – The Annual Price and Other Charges of the Existing Agreement is hereby deleted and replaced with a new Schedule D, which is attached to this Agreement.

13. Schedule E – Insurance of the Existing Agreement is hereby deleted and replaced with a new Schedule E, which is attached to this Agreement.

14. Schedule H – Pricing to the Existing Agreement is hereby deleted and replaced with a new Schedule H, which is attached to this Agreement.

Renewal of the Existing Agreement:

15. The Parties have agreed to renew the Existing Agreement for an additional term (the “Renewal Term”) of five (5) years and six (6) months pursuant to Section 4.1 of the Existing Agreement (as amended from time to time). The Renewal Term shall commence on July 1, 2022 and end on December 31, 2027.

16. Pursuant to Section 4.3 of the Existing Agreement, the Client shall pay OCWA a price for the Services for each Year of the Renewal Term in the following amounts (the “Annual Price”):

- i. For the period from **January 1, 2022** through to **December 31, 2022** (Year One) inclusive: \$216,063.53 (being the annual rate for 2021) + CPI (Ontario) as defined September of 2021. The Annual Price for each following Year of the Renewal Term shall be calculated by adding CPI (Ontario) as defined in September of the previous year to the current annual rate (Example: 2023 Annual Price will be calculated as 2022 rate + CPI (Ontario) as defined in September 2022). The CPI (Ontario) Adjustment shall be calculated annually as soon as necessary information is available from Statistics Canada (Ontario CPI Index) based on September defined values.

17. All other terms and conditions in the Existing Agreement shall continue to apply, *mutatis mutandis*. The Parties hereby covenant and agree that each of them shall perform and observe the terms, covenants and provisos contained in the Existing Agreement as fully as if such terms, covenants and provisos had been repeated in this Amending Agreement in full, with such modifications only as are necessary to make them applicable to and consistent with this Amending Agreement.

IN WITNESS WHEREOF the Parties have duly executed this Amending Agreement.

ONTARIO CLEAN WATER AGENCY

Date of Signing By: _____
(Authorized Signing Officer)

Date of Signing By: _____
(Authorized Signing Officer)

THE CORPORATION OF THE CITY OF LONDON

Date of Signing By: _____
(Authorized Signing Officer)

Date of Signing By: _____

(Authorized Signing Officer)

**AYLMER AREA SECONDARY WATER SUPPLY
SYSTEM BOARD OF MANAGEMENT**

Date of Signing

By:

(Authorized Signing Officer)

Date of Signing

By:

(Authorized Signing Officer)

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

Date of Signing

By:

(Authorized Signing Officer)

Date of Signing

By:

(Authorized Signing Officer)

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 Municipality 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 and valves specific to the London pump trains up to the chamber immediately to the North of the surge building excluding the flow meter which is owned by EAPWSS
- three centrifugal pumps, all at constant speed known as Pump 4, Pump 5 and Pump 6
- one hydropneumatic surge tank with two air compressors and a surge relief piping system configured on the discharge and suction pump header

- 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 and valves specific to the Aylmer pump trains up to and excluding the flow meter located on the discharge header
- two variable 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 and valves specific to the St. Thomas pump trains up to and excluding the flow meter
- three variable 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

London - Future consideration for replacement of the 2 air compressors related to the surge control system

St. Thomas - Future consideration to the control and operation of the St. Thomas pumps pending the final design related to the St. Thomas (Ford) water tower.”

“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, H, I and J attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

“Annual Price” is defined in Section 1 under Schedule D 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 Major Maintenance Expenditures” is defined in Paragraph 4.6(b) of this Agreement.

“Authorizations” means any by-laws, licenses, 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 Projects” is defined in Paragraph 4.7(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 Order” means the document shown in Schedule “I” describing the changes to the Agreement agreed to by both parties.

“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 (Ontario) of September of the current Year. For example, the CPI Adjustment for Year 2021, is the CPI (Ontario) of September 2020.

“Current Term” is defined in Section 4.3 of this Agreement.

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

“Drinking Water Quality Management Standard (DWQMS)” means the standard that sets out the minimum requirements for the operation of a drinking water system.

“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, licenses, 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.

“Indemnification Process” means the procedures a Party is required to follow to obtain indemnification:

- (a) upon receipt of a claim, or notice of claim, the Party shall immediately forward such claim or notice of claim to the Indemnifying Party;
- (b) if requested by the Indemnifying Party, the Party shall provide all documentation relating to the claim, or notice of claim;
- (c) the Party shall take such steps necessary to protect its right to defend such claim, or notice of claim, and shall assign such right to the Indemnifying Party including any subrogation rights;
- (d) the Indemnifying Party shall not settle any claim, or notice of claim, without the prior written consent of the Party; and
- (e) the Party shall have the right to take-over the defence of any claim, or notice of claim and the Indemnifying Party shall fully co-operate with such action.

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

“indemnifying Party” means the Party responsible for dealing with any Claims and paying out any Claims.

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

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

“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.

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

“MECP” means the (Ontario) Ministry of the Environment, Conservation and Parks.

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

“Municipal Drinking Water Licensing Program” means the MECP’s program which requires owners of municipal drinking water systems to obtain a “municipal drinking water license” (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 MECP; 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 the Annual Price that the Client and OCWA agree in writing to designate as “Optional Services” subject to Section 4.12.

“Overall Responsible Operator” or **“ORO”** means the person who will act as the overall responsible operator pursuant to Section 23 of O.Reg. 128/04 under the *Safe Drinking Water Act, 2002* (the “SDWA”) in respect of the Facility.

“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 Schedule F 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 Administrator 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.

“**Routine Maintenance**” means regular and/or repetitive activities recommended by the equipment or facility manufacturer or practices of a prudent operator to maintain the reasonably expected life of the equipment and components thereof and includes preventative maintenance.

“**SCADA**” means Supervisory Control and Data Acquisition.

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

“**Service Fee**” is defined and described in Schedule “D”.

“**Services**” is defined in Schedule C 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 4.8(a) of this Agreement.

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

“**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 January 1 to December 31 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 defined in Schedule E
- 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
- Maintain 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 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 G.
- 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 HMI (SCADA) software, WaterTrax (laboratory information management system as provided by Regional Water Supply; 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)
 - Total number of call outs (24) for the three (3) combined EMPS systems
 - The above noted 24 callouts is an annual total, if callouts are required beyond the total 24 included these will be invoiced to the respective system following process of optional services
- 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

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 licensed 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 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.

OCWA shall provide support resources for capital projects, detailed report reviews, data compilation, and research of historic information all in support of capital improvements managed by the Secondary Boards or other requested special work.

- A 16 hour total limit on management, team leads and operations/maintenance staff resources for each project under the direction and control of the Secondary Boards.
- OCWA will in consultation with the Client at the initiation phase of each project define the support requested and estimate the number of resource hours forecasted, additional hours will be tracked and invoiced following the Optional Services

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 a reasonable amount of time based on the criticality of the emergency/alarm event.

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, MECP 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 Licenses (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 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 – The Annual Price And Other Charges.

1. Annual Price for the Initial Term

In accordance with Section 4.2 and 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 period from **January 1, 2022** through to **December 31, 2022** inclusive: **\$206,957.41 plus CPI at 4.4% CPI (Ontario) = \$216,063.53**. Any **following Year(s) will be set by adding CPI (Ontario) as defined in September to the current annual rate (Example 2023 will be calculated 2022 rate + CPI (Ontario) as defined in September** The CPI (Ontario) Adjustment shall be calculated annually as soon as necessary information is available from Statistics Canada (Ontario CPI Index) based on September defined values.

2. Payment of the Annual Price

In Year One of the Initial Term, the monthly payment of the Annual Price (\$216,063.53) shall be **\$18,005.29**. The first payment shall be due and payable on January 1, 2022.

3. Optional Services

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 which may be adjusted on an annual basis:

- (a) Labour rates on Business Days, Monday to Friday (0730 to 1600) shall be billed at \$100.00/hour/person for an operations manager; \$90.00/hour/person for a team lead; \$70.00/hour/person for operations and maintenance staff, plus applicable expenses and plus vehicle expenses at \$0.50/km/vehicle;
- (b) Labour rates for after hours and on weekends shall be billed at \$127.50/hour/person for an operations manager and team lead; \$97.50/hour/person for operations and maintenance staff with a minimum four (4) hour charge; plus applicable expenses and plus vehicle expenses at \$0.50/km/vehicle.
- (c) 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.

“**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% x \$10,000 + 10% x \$40,000 + 5% x \$6,000).”

“SCHEDULE E - Insurance

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

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000 per Occurrence

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: \$5,000,000 per Occurrence.

Deductible: \$50,000 for the year 2021; 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 (90 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 per loss on a Claim Made basis for Professional Liability Insurance

Deductible: \$50,000 for the year 2021; subject to change on an annual basis.”

“SCHEDULE H – Pricing

EMPS Price Proposal – Renewal Term						
Item	Year 1 2022	Year 2 2023	Year 3 2024	Year 4 2025	Year 5 2026	Year 6 2027
Total Fixed Price, excluding taxes	\$206,957.41 full year + 4.4% 2021 CPI (Ontario) Total Year \$216,063.53 Jan 1 to Jun 30 2022 \$108,031.76 July 1 to Dec 31 2022 \$108,031.76	\$216,063. 53 +CPI (Ontario)	2023 +CPI (Ontario)	2024 +CPI (Ontario)	2025 +CPI (Ontario)	2026 +CPI (Ontario)

The CPI Adjustment (Ontario), which will be calculated in accordance with the above.

The Parties agree that the Annual Fee includes:

Salaries and Benefits – salaries, on call, ORO

Transportation and Communication – data communication, mobile phone, training

Services – vehicles, lab equipment, repairs and maintenance, lab analysis, insurances as defined in Schedule E

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

Costs Included in the Annual Price:

- Annual DWQMS maintenance costs
- On call costs
- Lab costs
- Data communication and mobile phone costs
- Lifting device annual inspections
- 20 hours per week for operator
- Operator hours are Monday to Friday excluding weekends and holidays
- Shared ORO from EAPWSS

Costs Excluded from the Annual Price:

- Initial and final condition surveys
- All capital costs and or repairs in excess of \$1,000.00 pre tax
- All natural gas, diesel fuel and utilities costs

- Writing the DWQMS operational plans
- External DWQMS audit
- Chlorine gas

The Parties confirm that OCWA will continue to invoice for chlorine gas to be allocated 50% to the St Thomas Secondary Water Supply System and 50% to the Aylmer Area Secondary Water Supply System. OCWA will not require pre-approval for chlorine gas cost invoicing.”