

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 1998-81

A by-law to authorize the Mayor and Clerk on behalf of the municipality to sign an agreement between the Ministry of the Environment and the Recipient regarding the Malden Sewage Works Project 88-1251-01.

WHEREAS the Ministry of the Environment has provided financial assistance towards the Malden Sewage Works Project 88-1251-01, under the Provincial Water Protection Fund.

AND WHEREAS the Town of Amherstburg is desirous to enter into the attached agreement and proceed with the said project.

NOW THEREFORE THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

1. That the Mayor and Clerk are hereby authorized to sign on behalf of the municipality, referred to as the "Recipient", the Agreement hereto annexed and marked as Schedule 'A'.
2. That this By-Law shall be enacted at the signing of the agreement.

Read a first, second and third time and finally passed this 23rd day of November, 1998.


MAYOR


CLERK

DATE: _____

MINISTRY

FILE REFERENCE: Sewage Works Project No. 88-1251-01

PROVINCIAL WATER PROTECTION FUND

AGREEMENT FOR SEWAGE WORKS PROJECT

BETWEEN:

THE CORPORATION OF THE TOWN OF AMHERTSBURG

referred to herein as the "Recipient"

AND:

**HER MAJESTY, THE QUEEN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT**

referred to herein as the "Ministry"

This Agreement defines the terms and conditions of a financial contribution to assist with the construction of sewage works (the "Sewage Works Project") required to resolve infrastructure problems that cause an immediate and serious problem for human health or the environment upon consideration of the Recipient's application for funding assistance under the Provincial Water Protection Fund and recommended as the preferred alternative (taking into consideration solutions identified by a full review of alternatives); said project being more particularly described in Schedule A (herein referred to as the "Project"). The amount of assistance is based on the cost of the Project, population and relevant factors, as deemed by the Ministry. The details of the Eligible Costs, Payment Schedules, Description of Project, Maximum Financial Assistance and Projected Project Cash Flows for the Project are outlined in Attachments A and B, and Schedules A and B to this Agreement.

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

SECTION 1.0 TERM OF AGREEMENT

- 1.1 Subject to any extension or termination of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date of execution by the parties below, up to and including March 31, 2005.
- 1.2 Notwithstanding Section 1.1 above, the Ministry shall not be obligated to provide financial assistance under this Agreement after March 31, 2001.

SECTION 2.0 PROJECT AWARD, MANAGEMENT AND COMPLETION

- 2.1 The Recipient shall be fully responsible for the implementation of the Project (including area/joint servicing schemes) and shall arrange to retain any services necessary to properly carry out the Project. Where implementation of the Project is dependent on completion of a project by others (for example, a neighbouring municipality), the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient. The Ministry shall not be responsible for implementation of the Project or any interdependent project of others. The Ministry shall not be responsible for any costs associated with operation, maintenance and repair of the works.
- 2.2 The Recipient agrees to award a construction contract for a significant portion, as deemed by the Ministry, of the Project by March 31, 1999, otherwise, the Ministry may withhold payment or terminate its obligations under this Agreement in accordance with Section 8.1 of this Agreement.
- 2.3 The Recipient agrees to adhere to the established cash flows in Schedule B as amended from time to time and agreed to by the Ministry.
- 2.4 The Recipient, and through the Recipient, its contractors, project managers and consultants performing work under this Agreement, shall put in effect and maintain in full force and effect during the Term of this Agreement,
 - (i) all the necessary performance and other bonds (as a minimum, 100% performance bonds and 100% labour and material payment bonds are required to be in place); and
 - (ii) all the necessary insurance policy coverage for the Project, including, at a minimum, the following:

- Comprehensive General Liability policies of insurance for the Project that will protect the Recipient for all sums the Recipient may become obligated to pay as damages because of Property Damage, Bodily Injury and Personal Injury which are caused in the course of carrying out the Project, to an inclusive limit not less than ten million (\$10,000,000.00) dollars (including pollution coverage) per occurrence; and
- automobile insurance (owned and non-owned or hired units) to an inclusive limit not less than one million (\$1,000,000.00) dollars per occurrence.

- 2.5 During the term of this Agreement, the Recipient shall have each policy of insurance referred to above in Section 2.4 include, at a minimum, endorsements for Cross-Liability, Contractual Liability, Independent Contractors and naming the Ministry, its officers and servants, as additional insureds with identical coverage as if a separate policy had been issued to the Recipient and the Ministry.
- 2.6 The policies referred to in Section 2.4 shall contain a clause stating that the policy will not be cancelled, terminated or significantly modified unless a prior notice of at least thirty (30) days has been given to each insured.
- 2.7 Prior to any payments being made with respect to the construction component, the Recipient shall provide the Ministry with valid Certificates of Insurance (and a renewal replacement as may be necessary) referencing this Agreement, confirming the requirements in Sections 2.4, 2.5 and 2.6, and stating any pertinent exclusions, as applicable, contained by the policies.
- 2.8 The Recipient, and through the Recipient, its contractors, project managers and consultants performing work under this Agreement, shall ensure that there are no conflict of interest situations in its procurement of goods and services.
- 2.9 Except as otherwise approved by the Ministry, all portions of the construction component of the Project (including materials and equipment) shall be competitively tendered, as deemed by the Ministry, to competent contractors capable of completing the construction component of the Project, and shall be purchased in accordance with the "Agreement on the Opening of Public Procurement for Ontario and Quebec" and the contract will be awarded to the lowest responsible bidder. Invitations to Tender must be advertised in one or more of the following: a daily newspaper accessible to suppliers from both provinces; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX. The use of "suppliers lists" is acceptable but only where such lists are fully open to qualified suppliers from both provinces. This provision applies to all procurement regardless of value and is not subject to the threshold value specified in the "Agreement on the Opening of Public Procurement for Ontario and Quebec", currently \$100,000.

- 2.10 Except as otherwise approved by the Ministry, the engineering, consulting and project management services component of the Project shall be acquired through an objective competitive process as deemed by the Ministry. Upon request, the Recipient shall provide sufficient documentation, in the opinion of the Ministry, to establish that this requirement has been met. Requests for proposals must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.
- 2.11 The Recipient shall submit the final claims with the required documentation for approval, cost reviews, audits and settlement within 3 months of completion of the Project and no later than December 31, 2000. Upon completion of the cost reviews, audits and settlement, the Ministry shall not be obligated to consider any further claims in relation to the Project. The Recipient shall also submit, upon request, the required documentation for approval, cost reviews and audits on an interim basis.

SECTION 3.0 FINANCIAL ASSISTANCE

- 3.1 The financial assistance is intended for and shall be used only for the Project described in Schedule A. The maximum amount of financial assistance for the Project under this Agreement is set out in Schedule B.
- 3.2 The financial assistance is based on eligible expenditures as determined according to Attachment A. Construction work, awarded or commenced, prior to September 1, 1997 is not eligible. Engineering costs incurred prior to September 1, 1997 may be eligible if the Recipient provides sufficient justification, as deemed by the Ministry, that the costs relate to the Project.
- 3.3 The Recipient acknowledges and agrees that the amount of financial assistance under this Agreement for the Project shall be determined by the Ministry, in its sole discretion, as a percentage of eligible costs under this Agreement after taking into consideration such factors as share in an area/joint servicing scheme for area/joint servicing scheme projects, population, average total taxable assessment per household and average household income, as deemed appropriate by the Ministry, after having already taken into consideration such factors as:
- a) a deduction for costs that are not eligible under this Agreement (including Attachment A) which includes any portion of the water works or sewage works which, in the opinion of the Ministry, do not relate to the infrastructure problems that cause an immediate and serious problem for human health or the environment (for example, facilities relating to accommodating growth are not eligible);

b) a deduction for financial assistance under another Ministry grant program, provincial grant program or joint federal/provincial grant program; and

c) a deduction for reserve funds;

as deemed appropriate by the Ministry.

- 3.4 Where actual costs are lower or appear likely to be lower than the total eligible expenditures identified in Schedule B, or where additional funding is secured from other sources (government or private), the Recipient shall immediately notify the Ministry. The Ministry will, in its sole discretion, adjust the amount of the financial assistance on the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take into account the revised costs and the contribution from other sources. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.5 Where implementation of the Project is dependent on completion of a project by others (for example, a neighbouring municipality) and the interdependent project is not completed by others in whole or in part, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.6 The Recipient shall immediately notify the Ministry if it does not intend to carry out the Project in whole or in part as specified in Schedule A in which case the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.7 In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of financial assistance under this Agreement, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.

- 3.8 If the Recipient becomes aware of any alternatives to the Project that are more cost effective (for example, an area/joint servicing scheme), the Recipient shall immediately notify the Ministry, in which case the Ministry may, in its sole discretion, adjust the amount of financial assistance or require repayment in accordance with Section 3.6 of this Agreement. Likewise, if the Ministry becomes aware of any alternatives to the Project that are more cost effective, the Recipient will be notified and the Ministry may, in its sole discretion, adjust the amount of financial assistance or require repayment in accordance with Section 3.6 of this Agreement.
- 3.9 If the Recipient either rejects a grant under the Provincial Water Protection Fund or receives an additional grant under the Provincial Water Protection Fund in relation to another project, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 3.10 The Recipient may claim its normal Goods and Services Tax (GST) refund of normally 57.14 percent (current level) of the GST, currently at seven (7) percent, via the process established by the Department of National Revenue under the GST Legislation. The financial assistance is based on the net amount of GST to be paid by the Recipient.
- 3.11 Sections 3.1 to 3.10 shall survive the expiration or early termination of this Agreement.

SECTION 4.0 PAYMENT PROCEDURES

- 4.1 Payments will be made in accordance with Attachment B and relevant terms of this Agreement. Payment of financial assistance is contingent on receipt and approval by the Ministry of invoices and a detailed statement of costs for the eligible expenses under this Agreement, including Attachment A. Payment of financial assistance on any invoice is subject to the approval of the Ministry.
- 4.2 The Recipient shall submit the detailed statement of costs claimed and corresponding invoices together with updated Projected Project Cash Flows as set out in Schedule B, signed by the Chief Financial Officer or other authorized official of the Recipient, on a quarterly basis in a form satisfactory to the Ministry. The costs claimed must be reasonable and supported by documentation acceptable to the Ministry.

- 4.3 The Recipient shall provide such information and in such form in relation to financial assistance payments as is specified from time to time by the Ministry. As a condition precedent to any payment of financial assistance, invoices and proper documentation as specified in this Agreement must be submitted for the approval of the Ministry.
- 4.4 The Ministry may, in its sole discretion, withhold payment where the Recipient is in default of obtaining any necessary permits, approvals or licences applicable to the Project or is in default of compliance with any provisions of this Agreement or any applicable environmental legislation.
- 4.5 Notwithstanding Section 3.1 of this Agreement, the Ministry will hold back an amount (normally 10%), in its sole discretion, the release of which shall be contingent on the implementation and completion of the Project and upon receipt and approval by the Ministry of the final claim for the Project as required, all in accordance with Section 2.11 of this Agreement. Upon release, the amount of the hold back is subject to an adjustment equal to the difference between the amount of the financial assistance as defined in Sections 3.1 to 3.10 (and any other relevant sections) of this Agreement and the total payments made to date. The Ministry is not obligated to pay interest on the hold back or any other payments under this Agreement if delayed.

SECTION 5.0 OVERPAYMENT

- 5.1 Funds advanced to the Recipient prior to settlement in accordance with Section 2.11 of this Agreement shall not be construed as a final determination of financial assistance applicable to the Project. Upon conducting a cost review or audit of the Project, the Ministry will determine the amount of financial assistance on the Project. The Recipient agrees to repay to the Ministry, upon receipt of a written demand and within the period specified by the Ministry, that portion of the total of the funds advanced that exceeds the financial assistance applicable to the Project, as determined by the Ministry, as well as any funds used for a purpose other than that stated in the terms of this Agreement, as determined by the Ministry.
- 5.2 The Ministry may deduct any overpayment of financial assistance pursuant to Section 5.1 made on the Project from financial assistance payable on any other project(s) of the Recipient under the Provincial Water Protection Fund or other provincial program(s) (either current or future). Any overpayment made on any other project(s) of the Recipient under the Provincial Water Protection Fund or other provincial program(s) (either current or future) may in turn be deducted from financial assistance owing on the Project.

- 5.3 The Ministry reserves the right to demand interest on any overpayment of financial assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Province of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.
- 5.4 Sections 5.1, 5.2 and 5.3 shall survive the expiration or early termination of this Agreement.

SECTION 6.0 INFORMATION REQUIREMENTS

- 6.1 The Recipient shall submit progress reports for the Project to the Ministry from time to time, as requested, in a form satisfactory to the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry.
- 6.2 The Recipient, and through the Recipient, its contractors, project managers and consultants performing work under this Agreement shall maintain separate records and documentation for the Project and keep all records and documentation for 5 years after completion of the cost review, audit and settlement by the Ministry referred to in Section 2.11 of this Agreement and, upon request, submit all records and documentation relating to the Project including, but not limited to, work authorizations, invoices, time sheets, payroll records, estimates and actual cost of the activities carried out pursuant to this Agreement, together with tenders and proposals, final measurements, payment certificates, change orders, correspondence, memoranda, contracts and amendments thereto which shall be maintained in accordance with generally accepted accounting practices and principles.
- 6.3 The Recipient shall make available and provide, upon request, at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses) all records and documentation (including invoice summaries and certified statement of final costs) of the Recipient and its auditors, contractors, project managers and consultants relating to the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s), for the purposes of cost reviews, audits and settlement, as deemed by the Ministry, of the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s); such material to be provided to the Ministry and other departments of the Province of Ontario as may be required from time to time, all in a form and manner satisfactory to the Ministry and other departments of the Province of Ontario, as applicable.

- 6.4 The Ministry may require the assistance of an external auditor to carry out an audit of the material referred to in Sections 6.2 and 6.3 of this Agreement. If so, the Recipient shall, upon request, retain an external auditor acceptable to the Ministry at the Recipient's expense. The Recipient shall ensure that any auditor who conducts an audit pursuant to this section of the Agreement or otherwise, provides a copy of the audit report to the Ministry for its consideration at the same time that the audit report is given to the Recipient.
- 6.5 The Recipient shall supply, upon request, such information in respect of the Project and its results as the Ministry may require. The Ministry, its agents and employees, shall be allowed access to the Recipient's premises and staff and to the site to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) confirm the results of the Project in terms of resolving the infrastructure problems that cause an immediate and serious problem for human health or the environment.
- 6.6 The Recipient shall prepare and update annually thereafter a five-year water and sewage capital plan which outlines how the Recipient intends to meet its financial and other commitments for water and sewage infrastructure. Upon request, the Recipient shall provide to the Ministry a copy of the current five-year water and sewage capital plan.
- 6.7 If, in the opinion of the Ministry, any of the information requirements of Sections 6.2 to 6.6 of this Agreement are not met, the Ministry may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future). In addition, the Ministry may require repayment for some or all of the financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s), to which the required information relates in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 6.8 Sections 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7 shall survive the expiration or early termination of this Agreement.

SECTION 7.0 FOLLOW-UP REPORT AND COST-RECOVERY PLAN

- 7.1 Within two years of substantial completion of the Project, or such longer period as is specified in writing by the Ministry, the Recipient shall conduct a study to determine whether or not the infrastructure problems for which financial assistance has been provided by the Ministry have been resolved. Unless otherwise agreed to by the Ministry, the study will be conducted at the Recipient's expense by an independent consultant satisfactory to the Ministry

with administrative assistance from the Ministry where appropriate. The results of the study will be submitted within two years of substantial completion of the Project, or such longer period as is specified in writing by the Ministry, in a format acceptable to the Ministry. Upon request, the Recipient shall provide such information and permit such inspection of the works by the Ministry as necessary to confirm the results of the study.

- 7.2 If the study referred to in Section 7.1 of this Agreement is not completed or the study reveals that some or all of the infrastructure problems for which financial assistance has been provided by the Ministry have not been resolved to the satisfaction of the Ministry, the Recipient will either i) take the necessary steps to implement corrective measures at its own expense, or ii) upon request, repay the Ministry some or all of the financial assistance provided under this Agreement in an amount to be determined by the Ministry and within the period specified by the Ministry.
- 7.3 Upon request, the Recipient shall provide such information and permit such inspection of the works by the Ministry as necessary to confirm the results of the implementation of corrective measures pursuant to Section 7.2.
- 7.4 The Ministry may deduct any amount of financial assistance to be repaid pursuant to Section 7.2 from financial assistance payable on the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future).
- 7.5 Upon substantial completion of the Project, the Recipient shall:
 - a) implement, at the Recipient's expense, an updated water and sewage service cost recovery plan for full cost recovery and, upon request, provide a copy of the updated cost recovery plan to the Ministry; and
 - b) upon request, provide the Ministry with a copy of any Council resolution(s), user rate by-laws and any other by-laws to implement the updated cost recovery plan for full recovery of costs.
- 7.6 If the updated cost recovery plan referred to in Section 7.5 of this Agreement is not implemented upon substantial completion of the Project, the Ministry may, in its sole discretion, require implementation as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future). In addition, the Ministry may require repayment for some or all of the financial assistance for the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.

- 7.7 Sections 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6 shall survive the expiration or early termination of this Agreement.

SECTION 8.0 EARLY TERMINATION

- 8.1 If, in the opinion of the Ministry, the Recipient fails to proceed diligently with the Project or abandons the Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, the Ministry may, by giving notice in writing to the Recipient, withhold payment or terminate this Agreement.
- 8.2 In the event that this Agreement is terminated pursuant to Section 8.1 above, the Ministry may, in its sole discretion, refrain from making any further payment in relation to monies due or accruing due. The Ministry may, in its sole discretion, pay to the Recipient a portion of the financial assistance for costs incurred by the Recipient in connection with the Agreement up to and including the date of any such termination. In addition, the Ministry may require repayment for some or all of the financial assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry. The Ministry may deduct the amount of financial assistance to be repaid from financial assistance payable on any other project(s) of the Recipient under the Provincial Water Protection Fund or any other provincial program(s) (either current or future). This provision shall survive the expiration or termination of this Agreement.
- 8.3 Despite Section 8.1, the Ministry reserves the right to terminate this Agreement without cause prior to the awarding of a contract and without cause prior to expiration of this Agreement, upon such conditions as the Ministry may require, with a minimum of fourteen (14) days written notice to the Recipient. If the Ministry terminates the Agreement prior to its expiration, the Ministry shall only be responsible for the payment of financial assistance on a portion of the cost incurred by the Recipient in connection with the Agreement up to and including the date of any such termination. The portion paid will be calculated on the same basis as the financial assistance in Sections 3.1 to 3.10 of this Agreement.
- 8.4 If, in the opinion of the Ministry, the Legislative Assembly of Ontario does not provide sufficient funds to continue the financial assistance for any fiscal year during which this Agreement is in effect, the Ministry may terminate this Agreement in accordance with the terms specified in Section 8.3 of this Agreement.

SECTION 9.0 TRANSFER OF ASSETS

- 9.1 The Recipient shall not transfer the ownership of all or part of the works established with financial assistance from the Ministry, unless the Ministry agrees to the transfer and the Recipient has repaid the Ministry for some or all of the financial assistance in an amount to be determined by the Ministry and within the period specified by the Ministry. Any transfer of ownership in contravention of this provision does not relieve the Recipient of its obligation to repay the Ministry for some or all of the financial assistance in the amount determined by the Ministry and within the period specified by the Ministry.
- 9.2 Section 9.1 of this Agreement does not apply to a transfer of ownership to another municipality, public utility commission or local services board provided that (i) the Recipient obtains the consent of the Ministry; and (ii) the Recipient, makes arrangements satisfactory to the Ministry regarding consent of the Ministry and the obligation to repay the Ministry referred to in Section 9.1, in the event of any transfer of ownership by the municipality, public utility commission or local services board acquiring the works. Any transfer of ownership by the Recipient in contravention of this provision does not relieve the Recipient of its obligation under Section 9.1 to repay the Ministry for some or all of the financial assistance in the amount determined by the Ministry and within the period specified by the Ministry.
- 9.3 Sections 9.1 and 9.2 apply to any other dealing with all or part of the works established with financial assistance from the Ministry (for example, lease).
- 9.4 The Ministry may deduct the amount of financial assistance to be repaid under Section 9.1 from financial assistance payable on any other project(s) of the Recipient under the Provincial Water Protection Fund or any other provincial program(s) (either current or future).
- 9.5 In making a determination under Section 9.1 of this Agreement, the Ministry will give the Recipient an opportunity to make written submissions.
- 9.6 Sections 9.1, 9.2, 9.3, 9.4 and 9.5 shall survive the expiration or early termination of this Agreement.

SECTION 10.0 INDEMNITY

- 10.1 In no event shall the Ministry be liable for any bodily injury, death or property damage to the Recipient, its employees, agents, operators, contractors, project managers or consultants, or for any claim, demand or action by any third party against the Recipient, its employees, agents, contractors, project managers or consultants, arising out of or in any way related to the Agreement or the Project.

- 10.2 In no event shall the Ministry be liable for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, operators, contractors, project managers or consultants arising out of or in any way related to this Agreement or the Project.
- 10.3 The Recipient shall at all times indemnify, save and keep harmless the Ministry, its employees and agents, from and against all suits, judgements, claims, demands, expenses and losses (including, without limitation, reasonable legal expenses) and for any and all liability for damages to property and injury to persons (including death) howsoever caused, as a result of any claim, demand or action arising out of or in any way related to this Agreement or the Project.
- 10.4 Sections 10.1, 10.2 and 10.3 shall survive the expiration or early termination of this Agreement.

SECTION 11.0 OTHER

- 11.1 Any public report, signs, announcement, brochure, audiovisual material, or other public communication or publications relating to this Agreement or the Project by the Recipient shall be at its own expense and shall reflect the financial participation of the Ministry in the Project, unless otherwise agreed to by the Ministry.
- 11.2 In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.
- 11.3 This Agreement, including:
- ATTACHMENT A - Eligible Costs
 - ATTACHMENT B - Payment Schedules
 - SCHEDULE A - Description of Project
 - SCHEDULE B - Maximum Financial Assistance and Projected Project Cash Flows
- constitutes the entire Agreement between the parties. There are no prior or collateral agreements or representations.
- 11.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

- 11.5 The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.
- 11.6 The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 11.7 The headings are not to be considered part of this Agreement and are included solely for convenience and not intended to be full or accurate descriptions of the content of the paragraphs.
- 11.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada.
- 11.9 The Recipient acknowledges that this Agreement and any material submitted to the Province pursuant to this Agreement may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31. This Section shall survive expiration or early termination of this Agreement.
- 11.10 This Agreement shall not be assigned or varied, except by a document in writing, dated and signed on behalf of the Ministry and the Recipient.
- 11.11 The Recipient represents and warrants to the Ministry that:
- 11.11.1 it is conducting its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals and, furthermore, that it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
 - 11.11.2 it has or will apply for all permits, approvals, and licences which are required in order to carry out the Projects (such as, Certificates of Approval, Ontario Municipal Board Approval where required);
 - 11.11.3 it validly exists as a corporate entity with full power to perform and observe all the terms and conditions of this Agreement;
 - 11.11.4 where applicable, it has passed a mandatory connection by-law;

11.11.5 in relation to the Project under this Agreement,

- a) it has (or will establish expeditiously) an active reserve fund in place for unexpected repairs as well as the orderly replacement and upgrading of the works;
- b) it has (or will establish expeditiously) an active preventive maintenance program for proper operation and maintenance of the works;
- c) there are no discretionary capital budget expenditures that could be deferred;
- d) there are no opportunities to reduce current or planned debt financing through better matching debt terms to asset life or by reducing burden through lower current interest rates;
- e) a plan is being implemented expeditiously for recovery of the full costs of the municipal services from users; and
- f) where the project is converting from a private works to a communal works, it is willing to own and operate the works;

11.11.6 the Project conforms in all material ways to the Environmental Assessment Act and it has conducted an Environmental Assessment in accordance with the Municipal Engineers Association Class Environmental Assessment process; and

11.11.7 it has prepared an Environmental Study Report where required by the Municipal Engineers Association Class Environmental Assessment process for municipal water and wastewater projects, and it has completed Phase 4 of the Environmental Assessment process where required.

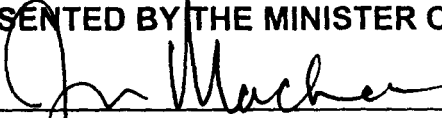
11.12 Upon request, the Recipient shall provide the Ministry with proof of the matters referred to in Sections 11.11.2, 11.11.4, 11.11.5, 11.11.6 and 11.11.7. It is a condition precedent to any payment under this Agreement that the Representations and Warranties under Section 11.11 are true at the time of payment and that the Recipient is not in default of compliance with any terms of this Agreement. Where this is not the case, the Ministry may, in its sole discretion, adjust the amount of financial assistance for the Project or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future), to take this into account. In addition, the Ministry may require repayment for some or all of the financial

assistance of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry. This Section shall survive expiration or early termination of this Agreement.

- 11.13 The Ministry reserves the right to demand interest on any repayment of financial assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Province of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry. This Section shall survive expiration or early termination of this Agreement.
- 11.14 Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Ministry for any purpose whatsoever.
- 11.15 The provision of financial assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of the Ministry and the Recipient acknowledges that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Ministry or to bind the Ministry in any manner whatsoever other than as specifically provided in this Agreement.
- 11.16 The Ministry acknowledges that, in connection with carrying out the Project, the Recipient may engage one or more employees, agents, consultants, project managers or independent contractors. The Ministry acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents, consultants, project managers and independent contractors, including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents, consultants, project managers and independent contractors and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.

In witness whereof, the Recipient and the Ministry have respectively executed and delivered the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER OF THE ENVIRONMENT**

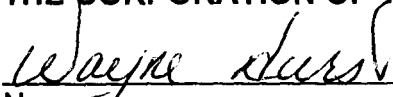


Name: Jim MacLean
Title: Assistant Deputy Minister
Environmental Sciences and Standards Division

Dec 9/98

Date


THE CORPORATION OF THE TOWN OF AMHERTSBURG



Name: *Wayne Sturs*
Title: *MAYOR.*

Nov 26/98

Date


CLERK.

ATTACHMENT A

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and The Corporation of The Town of Amherstburg (the "Recipient").

Eligible Costs

General

1. a) Only costs related to the Project described in Schedule A are eligible. For greater certainty, where Schedule A identifies a portion of the works that are specifically excluded from the description of the Project under this Agreement, those costs are not eligible.

b) Any portion of the works which, in the opinion of the Ministry, does not relate to the infrastructure problems that cause an immediate and serious problem for human health or the environment are not eligible (for example, costs related to accommodating growth are not eligible).

c) The most cost-effective solution in terms of capital investment and long term operation must be adopted. Costs related to a solution or a portion of the Project that is not cost-effective, in the opinion of the Ministry, are not eligible.

d) Costs claimed under another Ministry grant program, provincial grant program or joint federal/provincial grant program are not eligible.

e) The same costs cannot be claimed on more than one project under the Provincial Water Protection Fund. Costs applicable to more than one project must be split or prorated.

f) Where costs are only partly eligible, the cost of the eligible portion must be identified by the Recipient.

g) Only costs for work actually performed are eligible.

h) The eligibility of any items not listed in this Agreement will be determined in accordance with Ministry policies and guidelines.

i) The final eligibility of items claimed (including items specified in this Attachment A, where exceptional circumstances exist) is at the sole discretion of the Ministry. The Recipient should consider consulting with Ministry staff when in doubt over specific items prior to making an expenditure.

2. Construction Costs

a) Except as otherwise approved by the Ministry, all portions of the construction component of the Project (including materials and equipment) shall be competitively tendered, as deemed by the Ministry, to competent contractors capable of completing the construction component of the Project, and shall be purchased in accordance with the "Agreement on the Opening of Public Procurement for Ontario and Quebec" and the contract will be awarded to the lowest responsible bidder. Invitations to Tender must be advertised in one or more of the following: a daily newspaper accessible to suppliers from both provinces; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX. The use of "suppliers lists" is acceptable but only where such lists are fully open to qualified suppliers from both provinces. This provision applies to all procurement regardless of value and is not subject to the threshold value specified in the "Agreement on the Opening of Public Procurement for Ontario and Quebec", currently \$100,000.

b) Construction costs, including normal holdbacks, are eligible, even if they have not yet been paid by the Recipient to suppliers, contractors, etc., as long as there is a contractual obligation of a fixed amount to be paid.

c) The cost of change orders to plans and specifications are allowed if they relate to the Project and are properly justified as deemed by the Ministry. The costs of work done on a cost-plus basis or on purchase orders are allowed if pertinent to the Project, whether done by a contractor or by the Recipient using its own forces.

d) The consultant's final measurement summary, individual payment certificates including the final payment certificate, along with change orders, all supported by invoices and other proof of payment are normally sufficient supporting documentation.

e) The cost of awards made to the contractor by a Board of Arbitration or a court of law are eligible if they are relevant to the Project. The cost of out-of-court settlements are eligible if they are relevant to the Project and are reasonable as deemed by the Ministry. The Recipient should consider consulting with the Ministry prior to settlement.

f) If the Recipient employs its own forces or utilizes its own equipment to perform part or all of the construction work, a detailed accounting of costs is required, supported by detailed work authorizations. A detailed cost analysis will be performed by Ministry auditors to ensure the amounts claimed are reasonable in comparison to other works of the same type that are performed by competitive tender. The calculation of construction costs eligible for grants may

include a payroll burden to be added to the labour costs. Such a payroll burden will be allowed, up to 35% of the labour cost, to include actual fringe benefit payments (including paid vacations, statutory holidays, sick leave, down time, etc.) as charged by the Recipient to its own public works projects and overhead or administrative expenses, and is deemed reasonable and acceptable by the Ministry. A charge for the use of the equipment is allowable, so long as such charge does not exceed the rate established by the Ministry of Transportation. The allowable charge is to be calculated on the same basis as the Recipient charges for the use of the same equipment to its public works projects.

Work performed by the Recipient using its own forces or equipment to assist a contractor, unless specifically approved by the Ministry, is not eligible.

g) Construction work, awarded or commenced, prior to September 1, 1997 is not eligible.

h) Interest on maintenance security paid to the contractor is not eligible.

i) Costs of repairing damage to roads, railways, easements, public utilities, etc., are allowed if they are specifically related to the construction of the Project and required to bring the roads, railways, easements, public utilities, etc. to the "as was" condition.

j) Service connection costs are allowed only for that portion from the main to the property line.

k) Installation costs for hydrants are allowed, provided that the construction of the distribution system, together with hydrants, is not exclusively for the purpose of improving or providing fire protection.

3. Engineering Costs (related to Construction Project)

a) Eligible engineering costs include reasonable costs of the Recipient, as deemed by the Ministry, for project management and engineering services for the Project as described in Schedule A and comprise the following: pre-design/preliminary engineering, design, project management, contract administration, construction supervision (general and site), construction inspection of the works, and all other engineering items related to the Project.

b) Costs related to studies, including engineering study reports (ESRs), class environmental assessments, efficiency and optimization studies, are not eligible unless otherwise specified in Schedule A.

c) Except as otherwise approved by the Ministry, project management and engineering costs for individual consulting service contracts will be eligible for funding assistance if an objective competitive process, in the opinion of the Ministry, was used to engage the consultants. Invitations to Tender must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.

Where the Recipient engages a consulting engineering and/or project management service without using an objective competitive process, in the opinion of the Ministry, for individual contracts above \$25,000, the Recipient, after providing sufficient justification for direct assignment, as deemed by the Ministry, may claim total project management and engineering costs up to a maximum of 12% of the final construction cost in accordance with the following provisions:

- the claimed costs do not exceed actual costs;
- allowable engineering design cost will be dependent on the nature of the project and cannot exceed 6% of the final construction cost;
- allowable supervision (general plus site) cost will be dependent on the nature of the project and cannot exceed 5% of final construction cost and;
- allowable project management cost will be dependent on the nature of the project and cannot exceed 1% of the final construction cost.

Project management and engineering costs for individual consulting service contracts of less than \$25,000, if directly assigned, will be eligible for funding assistance only if sufficient justification for direct assignment, as deemed by the Ministry, has been provided by the Recipient.

d) Where the Recipient acquires project management services for a design-build project without an objective competitive process, in the opinion of the Ministry, the eligible cost for the project management service, excluding site inspection, will be dependent on the nature of the project and the design-build contract, and cannot exceed 3% of the design-build contract cost. Sufficient justification for direct assignment, as deemed by the Ministry, must be provided by the Recipient.

In instances where a site inspector is retained by the project manager, sound justification must be provided in support of this requirement. The eligible cost for site inspection will be dependent on the nature of the project and design-build contract, and cannot exceed 2% of the final design-build contract cost.

Adequate documentation that clearly distinguishes between project management service costs excluding site inspection costs and those for site inspection must be provided.

e) The costs associated with the selection of a competent consulting engineer and project manager are eligible provided that the costs are reasonable in the opinion of the Ministry. The Recipient's in-house costs associated with this selection are not eligible.

f) When a full-time engineering consultant for design and contract administration is retained, the Recipient's in-house costs are not eligible.

When engineering services are provided by the Recipient's in-house staff, either alone or in combination with a part-time engineering consultant, the eligible engineering costs are limited as follows:

- with supporting documentation:
 - up to 6% of the cost of construction for design only; and
 - up to 6% of the cost of construction for project management/contract administration and inspection;
- without supporting documentation:
 - fixed 3% of the cost of construction for design only; and
 - fixed 3% of the cost of construction for project management/contract administration and inspection.

The work done by the Recipient's in-house staff and any part-time engineering consultant must be clearly identified by the Recipient and must exclude any duplication. The Recipient's in-house costs must be properly documented and supported by work authorizations.

g) Eligible design costs are those applicable to the construction components described in Schedule A of this Agreement. Design costs shall not include any part of the cost of an overall study or survey of pollution problems and pollution control.

h) Preliminary surveys and related report costs are not allowable unless they are exclusively related to the Project and are necessary for proper design.

i) Engineering costs incurred prior to September 1, 1997 may be eligible if the Recipient provides sufficient justification, as deemed by the Ministry, that the costs are related to the Project.

4. Land Costs

a) The actual cost of land used for treatment facilities, pumping stations, water storage facilities, sewers and watermains is eligible. Land purchased to meet Province of Ontario standards for buffer zones for various facilities will be considered eligible. The costs for easements are eligible, together with the legal costs of arranging easements.

b) The cost of land is the actual cost to the Recipient, regardless of the date of purchase. Property taxes paid as part of the land cost to the former owner are allowable, but no amount is allowable in lieu of tax for any period when title is held by the Recipient. The cost of land held for possible future use is not eligible, even if the land was purchased out of necessity. Land purchase agreements and a survey drawing of the properties will be required as supporting documentation.

c) Legal, survey and appraisal fees incurred at the time of purchase are eligible.

5. Legal Costs

Amounts actually paid for legal services are eligible provided that they are related solely to the Project. Amounts paid for administrative services to outside legal firms are not eligible. Fees for a solicitor on the Recipient's staff are not eligible. Disbursements to third parties for items such as land registration, legal surveys and appraisals, are allowed. Copies of all invoices will be required for supporting documentation. Legal costs related to review and execution of this Agreement are not eligible.

6. Taxes

Non-refundable portion of taxes (currently 42.86% of the current GST of 7%) is eligible. Provincial sales taxes paid by the Recipient on eligible components of the Project are eligible.

7. Materials and Equipment Costs

a) The amounts actually paid for materials and equipment used at the site and required in connection with the Project are eligible where such amounts are not included under "construction costs" above. Except as otherwise approved by the Ministry, all materials and equipment shall be competitively tendered, as deemed by the Ministry, and shall be purchased in accordance with the terms of the "Agreement on the Opening of Public Procurement for Ontario and Quebec" and

the contract will be awarded to the lowest responsible bidder. Invitations to Tender must be advertised in one or more of the following: a daily newspaper accessible to suppliers from both provinces; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX. The use of "suppliers lists" is acceptable but only where such lists are fully open to qualified suppliers from both provinces. This provision applies to all procurement regardless of value, and is not subject to the threshold value specified in the "Agreement on the Opening of Public Procurement for Ontario and Quebec", currently \$100,000.

b) The cost of materials supplied by the Recipient, if not in the contract price, may be allowed, but only in the exact amount that the Recipient paid for the materials. There can be no other added amount for administration, handling or storage of materials.

c) In the construction of treatment plants and pumping stations, an upset expense limit of 2% of the total construction costs, to a maximum of \$40,000 is allowed for basic furniture, safety equipment, laboratory equipment, and specialty tools required to operate treatment plants and pumping stations. These costs must be supported by invoices.

d) The cost of movable equipment, not included in the permanent works, such as loaders, spare pumps, or trucks, is not eligible.

8. Miscellaneous

Some of the Recipient's expenses directly related to the Project can be included as miscellaneous costs. Examples of these are Ontario Government fees, site restoration costs, advertising for tenders, etc. Other costs may be approved subject to the following:

i) General overhead, administration and executive costs are not eligible. Examples of the Recipient's administrative costs that are not eligible are:

insurance certificates and policies that the Recipient would require regardless of the Project, financing costs such as debentures and interest costs (interim financing charges), courier, postage, taxi, transportation, printing, reproduction, photographic, meeting and telephone costs, cost of surveying supplies and drafting supplies.

ii) The cost of an external auditor referred to in Section 6.4 of this Agreement is not an eligible expense.

iii) The cost of the Follow-up Report referred to in Section 7.1 of this Agreement is not eligible and costs associated with the corrective measures referred to in Section 7.2 of this Agreement are not eligible.

iv) The cost of preparing and submitting the application for financial assistance is not eligible.

v) Ongoing operations, maintenance and repair costs, including staff wages and expenses, laboratory supplies and expenses, and spare parts, are not eligible.

vi) All miscellaneous costs require supporting documentation including, where applicable, documentation demonstrating adoption of the most cost-effective solution.

ATTACHMENT B

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and The Corporation of The Town of Amherstburg (the "Recipient").

Payment Schedules

Subject to the terms of this Agreement, the Ministry will make payments based on quarterly claims on the Project by the Recipient, which include the expenses incurred to date and may include a projection of the costs to be incurred for the current quarter. The Ministry will hold back an amount (normally 10%) of each advance, in its sole discretion, which will be released after completion of the Ministry's final cost review for the Project, subject to an adjustment in accordance with the terms of this Agreement. Claims for payment must be substantiated with satisfactory documentation as deemed by the Ministry.

The financial assistance advances for the Project will be processed in accordance with the following conditions:

<u>Condition</u>	<u>Maximum Cumulative Payments</u>
Signing of Agreement	Nil
Ministry Approval of Engineering Terms of Reference and concurrence with assignment of consulting engineer or award of a design-build contract	Based on up to 3% of financial assistance (less holdback and other deductions under this Agreement)
Receipt of environmental and technical approvals	Based on up to 6% of financial assistance (less holdback and other deductions under this Agreement)
Awarding of construction contract or certification by Recipient of commencement of construction on a design-build contract	Based on eligible construction cost (less holdback & other deductions under this Agreement)
Completion of cost review and audit	Release of holdback or recovery of overpayments net of adjustments

Note 1:

No payments will be made with respect to land costs or construction costs until a Certificate of Approval has been issued and an unconditional construction contract awarded for a significant portion of the works as deemed by the Ministry.

Note 2:

No payments will be made with respect to the construction component until the Ministry has received valid Certificates of Insurance (and a renewal replacement as may be necessary) referencing this Agreement, confirming the requirements in Sections 2.4, 2.5 and 2.6 and stating any pertinent exclusions, as applicable, contained by the policies.

Note 3:

An adjustment will be processed after the implementation and completion of the Project and upon receipt and approval by the Ministry of the final claim for the Project as required, all in accordance with Section 2.11 of this Agreement. The adjustment will equal the difference between the amount of the financial assistance as defined in Sections 3.1 to 3.10 (and relevant sections of this Agreement) and the total of the payments made to date.

Note 4:

The financial assistance is made after adjusting for contributions from other Provincial, Federal, Municipal sources or private sources received or receivable.

SCHEDULE A

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and The Corporation of The Town of Amherstburg (the "Recipient").

Description of Project

Sewage Works Project No. 88-1251-01

The scope of the project for which financial assistance is being provided under this agreement being the preferred option in the Environmental Study Report prepared by LaFontaine, Cowie, Burratto and Associates Limited, dated October 1997, including modifications as necessary for purposes of this Agreement, consists of the following:

1. Construction of a communal sewage collection and treatment system to service the communities of Amherst Point, Bar Point, Willow Beach, Lakewood Beach and the Lake Erie Country Club area (all in the former Township of Malden).

Note

Insofar as provision may be made in the capacity of the new sewage collection and treatment system to extend services to areas outside of these communities or to accommodate growth, the cost of over sizing the systems to provide this additional capacity is *not* eligible for funding assistance.

SCHEDULE B

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the "Ministry") and The Corporation of the Town of Amherstburg (the "Recipient").

Maximum Financial Assistance

1. The maximum amount of financial assistance for the Project under this Agreement is \$6,262,914 and is based on a maximum eligible cost of \$ 9,663,500, a reserve fund deduction of \$0, and a fixed percentage assistance of 64.81%.

Projected Project Cash Flows

Sewage Works Project No. 88-1251-01

Calendar Year	Quarter	Eligible Expenditures (\$)
1998	Third	NIL
	Fourth	200,000
1999	First	250,000
	Second	1,000,000
	Third	1,000,000
	Fourth	2,000,000
2000	First	2,000,000
	Second	2,000,000
	Third	1,000,000
	Fourth	213,500
2001	First	
Total		9,663,500

Estimated date of completion of Project January 2001

Note 1: The above cash flows are based on project milestones as determined by the Recipient. The Ministry may require the Recipient to provide such project milestones and projected project cash flows from time to time.