

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 1999-41

**Being a By-law to authorize the signing of an Agreement with
the Ontario Clean Water Agency for the operation of
the Amherstburg Wastewater Treatment Plant,
the Amherstburg Water Treatment Plant
and the Edgewater Beach Lagoon System**

WHEREAS Subsection 10(2), Section 11 of the Ontario Water Resources Act, R.S.O. 1990, Chapter 0.40, as amended and subsection 63(3), any municipality may enter into agreements with the Crown with respect to the supply of water or the reception, treatment, and disposal of sewage;

AND WHEREAS Her Majesty The Queen on Right of Ontario, as represented by the Minister of the Environment and its several predecessors in law (and The Ontario Clean Water Agency [OCWA]), collectively referred to as the "Crown", entered into various agreements with the Town of Amherstburg concerning the operation and maintenance of various water and wastewater treatment facilities in the Town of Amherstburg;

AND WHEREAS OCWA is the successor in title to the Crown as a result of The Capital Investment Plan Act, 1993;

AND WHEREAS The Town and OCWA desire to enter into an agreement providing for the operation, supervision, control, maintenance, repair, administration, and insuring by OCWA of certain water and wastewater treatment facilities, which are owned by the municipality;

AND WHEREAS The Town of Amherstburg proposes to reimburse the OCWA for its costs of the operation, supervision, control, maintenance, repair, administration and insurance of the facilities as outlined in the three agreements attached hereto.


NOW THEREFORE THE COUNCIL OF THE CORPORATION

OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and are hereby authorized to execute the agreements, a copy of which are attached hereto and form a part of this By-law, and any other documents necessary to carry out the intention of the parties.
2. That this By-law shall come into force and effect in accordance with the agreements attached hereto.

Read a first, second and third time and finally passed this 9th day of August, 1999.


MAYOR


CLERK

Certified to be a true copy of By-law No. 1999-41,
passed by the Council of the Town of Amherstburg,
on the 9th day of August, 1999.

CLERK

Agreement Terms For:

**The Operation and Maintenance
The Town of Amherstburg's Water Treatment Facility**

SERVICES AGREEMENT

THIS AGREEMENT made as of the 16th day of August, 1999.

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 Agreement as "OCWA")

A N D

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(referred to in this Agreement as the "Client")

BACKGROUND TO THIS AGREEMENT

- (a) Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and its several predecessors in law [and OCWA] (collectively referred to as the "Crown") entered into various agreements (the "Existing Agreements") with the Client concerning the operation and maintenance of a water treatment facility in the Town of Amherstburg (as further described in Schedule A to this Agreement) (the "Facility").
- (b) OCWA is the successor in title to the Crown as a result of the Capital Investment Plan Act, 1993.
- (c) The Client and OCWA desire to enter into this Agreement for the purpose of further clarifying and delineating their respective rights and obligations with respect to the operation, payment and billing arrangements of and for the Facility.
- (d) The Council of the Client on the 9th day of August, 1999 passed By-Law No. 1999-41 authorizing the Client to enter into this Agreement.

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

ARTICLE 1 - INDEX TO DEFINITIONS

Section 1.1 - 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, and E attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

"**Annual Price**" is defined in Paragraph 4.2(a) of this Agreement.

"**Approved Capital Expenditures**" is defined in Paragraph 4.6(b) of this Agreement.

"**Authorizations**" means each of the sewer use and water by-laws, licences, certificates of approval, permits, consents and other authorizations required under any law, regulation, by-law or government policy in order to operate the Facility from time to time.

"**Authorized Representatives**" is defined in Section 2.5 of this Agreement.

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Ontario.

"**Capital Expenditures**" is defined in Paragraph 4.6(a) of this Agreement.

"Claim" means any claim, fine, penalty, liability, damages, (including but not limited to, damage for economic loss), loss and judgements (including but not limited to, costs and expenses incidental thereto) of any kind and nature whatsoever.

"Current Term" is defined in Section 4.3 of this Agreement.

"Excluded Services" is defined in Section 2.3 of this Agreement.

"Existing Agreements" is defined in the "Background to this Agreement".

"Facility" is defined in the "Background to this Agreement" and further described in Schedule A.

"Indemnified Parties" is defined in Section 3.3 of this Agreement.

"Initial Term" is defined in Section 4.1 of this Agreement.

"Non-Terminating Party" is defined in Section 6.3 of this Agreement.

"Prime Rate" is defined in Paragraph 4.8(a) of this Agreement.

"Services" is defined in Section 2.1 and further described in Schedule B to this Agreement.

"Terminating Party" is defined in Section 6.3 of this Agreement.

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

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

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

The Client retains OCWA to provide management, operation, administration and maintenance services (as further described in Schedule B to this Agreement) in respect of the Facility (the "Services").

Section 2.2 - Performance of Services

(a) OCWA shall operate the Facility in compliance with all applicable laws, regulations and Authorizations except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:

- (i) the Client not making the Capital Expenditures recommended by OCWA under Section 4.6 below;
- (ii) mechanical failure of any equipment at the Facility unless the mechanical failure is due to improper or inadequate maintenance by OCWA;
- (iii) the water transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes;

b) OCWA may temporarily cease to provide or reduce, the level of provision of Services hereunder in the event of an emergency, a breakdown or any other reason beyond the reasonable control of OCWA; provided, however, that OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of each such occurrence.

c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the control of OCWA, including but not limited to

circumstances where water transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processing, decrees of

government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, war, civil disturbances, riots, explosions, fire and acts of third parties (any such occurrence or circumstance is referred to as an "Uncontrollable Circumstance").

Section 2.3 - Excluded Services

The services set out in Schedule C to this Agreement are specifically excluded from the Services (the "Excluded Services"). If the Client subsequently requires OCWA to provide the Excluded Services, the Excluded Services may be provided at additional cost to the Client.

Section 2.4 - OCWA as Independent Contractor

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

Section 2.5 - Authorized Representatives

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

Section 2.6 - Reporting

Each quarter or such other period as the Client and OCWA may agree upon, OCWA shall provide the Client's Authorized Representative with a report describing the Facility's performance for that period.

Section 2.7 - Indemnification of the Client

OCWA shall exonerate, indemnify and hold harmless the Client, its officers, employees and agents from and against any and all Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client that are caused by OCWA's negligence or wilful misconduct when performing the Services. The Client shall be deemed to hold the provisions of this Section 2.7 that are for the benefit of the Client's officers, employees and agents in trust for such officers, employees and agents as third party beneficiaries under this Agreement.

Section 2.8 - Insurance

- (a) OCWA shall arrange for insurance coverage of the Facility as described in Schedule D to this Agreement and the Client shall be an additional insured under such coverage. If there is a significant change in the insurance coverage described in Schedule D, the Client will be notified of such changes.
- (b) The Client may, at its cost, maintain additional insurance in respect of the Facility if it wishes and OCWA shall be an additional insured under such insurance.
- (c) The Client shall be responsible for securing its own insurance for any operations with which it is involved that are not the subject of this Agreement as it will have no recourse under OCWA's policies of insurance for any such operations.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

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

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement, including but not limited to, the power and authority to pay the Annual Price (including any inflation or flow and loadings adjustment) and any other charges related to the provision of the Services, when due and payable, under this Agreement.
- (b) The Client has passed all necessary by-laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, including without limitation, any Authorizations required from the Ontario Municipal Board, and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal by-law required to authorize the Client to enter into and perform its obligations under this Agreement.

Section 3.2 - Covenants of the Client

The Client hereby covenants for the benefit of OCWA:

- (a) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA.
- (b) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices, all water works that belong to or are under the control of the Client and that distribute water from the Facility.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, either arise from or are connected with the operation of this Agreement.
- (b) OCWA shall be deemed to hold the provision of this Section 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding the other provisions of this Section 3, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by a policy of insurance put in place by OCWA and/or the Ministry of the Environment, the premiums of which were paid for by the Client; or
 - (ii) where the Claim is caused by OCWA's negligence or wilful misconduct in providing the Services.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on **September 1, 1999** and shall continue in effect for an initial term of **three (3) years** (the "Initial Term") and then shall be renewed for successive **three (3) year** terms unless terminated under Section 6.2 of this Agreement.

Section 4.2 - Annual Price for Initial Term

- (a) The Client shall pay OCWA for OCWA's provision of the Services, a price for each year of the Initial Term in the following amounts (the "Annual Price"):

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement, including but not limited to, the power and authority to pay the Annual Price (including any inflation or flow and loadings adjustment) and any other charges related to the provision of the Services, when due and payable, under this Agreement.
- (b) The Client has passed all necessary by-laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, including without limitation, any Authorizations required from the Ontario Municipal Board, and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal by-law required to authorize the Client to enter into and perform its obligations under this Agreement.

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- (a) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA.
- (b) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices, all water works that belong to or are under the control of the Client and that distribute water from the Facility.

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- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, either arise from or are connected with the operation of this Agreement.
- (b) OCWA shall be deemed to hold the provision of this Section 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding the other provisions of this Section 3, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by a policy of insurance put in place by OCWA and/or the Ministry of the Environment, the premiums of which were paid for by the Client; or
 - (ii) where the Claim is caused by OCWA's negligence or wilful misconduct in providing the Services.

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Section 4.2 - Annual Price for Initial Term

- (a) The Client shall pay OCWA for OCWA's provision of the Services, a price for each year of the Initial Term in the following amounts (the "Annual Price"):

- (i) For Year One from **September 1, 1999** through to **August 31, 2000** inclusive: **\$608,213.30**
 - (ii) For Year Two and subsequent Years: **\$608,213.30** plus an adjustment for inflation calculated as described below in Paragraph 4.2(b).
- (b) Statistics Canada Consumer Price Index, All Items (Ontario) ("CPI") shall be used to calculate the inflation adjustment referred to in Paragraph 4.2(a) above. The percentage difference between the CPI on the first day as compared to the last day of a year shall be the inflation adjustment for the next year. The adjustment will be calculated as soon as necessary information is available from Statistics Canada and the Annual Price will be retroactively adjusted to January 1. In year two of the Agreement and subsequent years, the inflation adjustment shall be added to the Annual Price for year one of the Agreement on a cumulative basis.
- (c) The Annual Price includes all additional charges prescribed by Regulation 157/93 under the Ontario Water Resources Act.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for any renewal term will be as agreed between the Client and OCWA. If the parties can not agree on the Annual Price for any renewal term within six months of the beginning of the last year of the Initial Term or a renewal term (the "Current Term"), this Agreement will be terminated six months from the last day of the Current Term. During this six month period, the Client shall pay the Annual Price paid for the last year of the Current Term, as indicated above, pro-rated over the six month period.

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each year of the Initial Term or any renewal term, in twelve monthly payments, in advance, on the first day of each month. In Year One of the Initial Term, the monthly payment of the Annual Price shall be **\$50,684.44**, one-twelfth of the payment in 4.2 (a)(i). The first payment shall be due and payable on **September 1, 1999**. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client or by some other method acceptable to OCWA and the Client.

Section 4.5 - Items not included in the Annual Price

The Annual Price, for each year of the Initial Term, covers all charges associated with the provision of the Services, with the exception of the following:

- (a) any Capital Expenditures over the amount set forth in Paragraph 4.6(d);
- (b) any charges resulting from the supply of new or increased services required by changes to the law, government policy or to the Facility's certificates of approval;
- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (d) the payment of municipal taxes or municipal grants in lieu of taxes; and
- (e) any charges resulting from adverse tax changes in respect of the Services or the Facility, excluding income taxes payable by OCWA on its own revenues.
- (f) any charges arising from a significant increase in flows, as set out in Part 1 of Schedule E to this Agreement.

Section 4.6 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair, maintenance (excluding day-to-day maintenance); any alterations and any associated installations, commissioning and preselection charges, together with OCWA's service fee.

- (b) No later than **October 31st** of each year this Agreement is in force, OCWA will provide the Client with an estimate of the Capital Expenditures required for the operation of the Facility for the following year. The Client's approval of any estimate authorizes OCWA to incur the Capital Expenditures included in the estimate (the "Approved Capital Expenditures").
- (c) OCWA will invoice the Client for the Approved Capital Expenditures together with any additional supporting documentation and the Client shall pay the invoice immediately upon receipt.
- (d) OCWA will not be required to obtain the prior approval of the Client for any Capital Expenditure item costing less than \$2,000 of Capital Expenditures for each year of the Initial Term on a noncumulative basis. For all capital items costing more than \$2,000, OCWA will obtain at least three price quotes, one of which may be from OCWA if it can perform the work. In all cases, approval of the Client will be obtained before proceeding with the work.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures that OCWA incurs in order to address equipment failure, acts of third parties, or other circumstances beyond OCWA's control, such as unregulated septic dumping, illegal industrial waste discharges or overflows, an emergency situation or any situation resulting from an Uncontrollable Circumstance.
- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred and the Client shall pay OCWA for the Unexpected Expenses immediately upon receipt of an invoice from OCWA.

Section 4.8 - Interest on Late Payments

- (a) "Prime Rate" means the rate of interest expressed as an annual percentage rate announced from time to time by the Royal Bank as its reference rate then in effect for determining interest rates on commercial demand loans in Canadian dollars made in Canada whether or not any such loans are made by such bank on the day of determination.
- (b) If the Client's monthly payment of the Annual Price is not available in its designated bank account on the agreed date of payment, OCWA will notify the Client that the funds were not available. On the next Business Day, OCWA will again attempt to withdraw the monthly payment. If funds are not available when the second attempt to withdraw funds is made, OCWA will notify the Client that the payment is late, and in addition to paying the monthly payment owing to OCWA, the Client shall pay OCWA interest at the Prime Rate plus 3%. Interest shall accrue on a daily basis from the day after the second attempt to withdraw funds is made.
- (c) All late payments, other than those described in Paragraph 4.8(b) above, shall bear interest at the Prime Rate plus 3%. Interest shall accrue on a daily basis from the date after payment is due.

Section 4.9 - Partial Payment of Disputed Invoices

If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided above in Paragraph 4.8(c) above, within ten days from the date of final determination.

Section 4.10 - Price Adjustment for Significant Changes in Flows

- (a) Subject to Paragraph 4.10(c) below, if there is a significant decrease or increase in flow at the Facility, as described in Part 1 of Schedule E, the current Annual Price shall be reduced or increased, as applicable, by an amount calculated using the formula set out in Part 2 of Schedule E.
- (b) There shall be no reduction in the Annual Price where the decrease in flow at the Facility results from a change made to the Facility or its operations, paid for by OCWA.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Arbitration

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, the issue shall be determined by a sole arbitrator appointed by mutual agreement between the Client and OCWA. Failing agreement, the issue shall be determined by a panel of three arbitrators: one arbitrator shall be appointed by the Client and a second arbitrator shall be appointed by OCWA. These two arbitrators shall appoint a third, who shall chair the arbitration. The determination of the sole arbitrator or the arbitration panel, as applicable, shall be final and binding upon OCWA and the Client and there shall be no appeal from the determination.
- (b) The arbitration shall be governed by the provisions of the Arbitrations Act.

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Existing Agreements

- (a) Subject to Paragraph 6.1(c) below, upon the execution of this Agreement, all Existing Agreements between the Client and the Crown under Section 63 of the Ontario Water Resources Act, R.S.O. 1990, c.O.40 entered into before the 1st day of April, 1974, are terminated.
- (b) Subject to Paragraphs 6.1(a) and 6.1(c) of this Agreement, the provisions in the Existing Agreements between the Client and OCWA or the Client and one of OCWA's predecessors, shall be terminated.
- (c) Notwithstanding any other provision in this Agreement and in particular Paragraphs 6.1(a) and (b) above, all financial obligations of the Client to OCWA or any of OCWA's predecessors under any Existing Agreement, including but not limited to the obligation of the Client to pay any outstanding debt owed in respect of the Facility, shall remain in effect until such time, if applicable, that new financing arrangements have been entered into between the Client and OCWA.

Section 6.2 - Termination of Agreement

- (a) At least twelve calendar months before the expiry of the Initial Term, either party shall notify the other in writing whether it wishes to renew or terminate this Agreement at the end of the Initial Term.
- (b) During the Initial Term, this Agreement cannot be terminated by either the Client or OCWA unless:
- (i) there has been a material breach of the Agreement; and
 - (ii) the party complaining of the breach has given written notice of the breach to the other party; and
 - (iii) the other party does not correct the breach within thirty days of receiving the notice; and

- (iv) after the thirty days referred to in paragraph (iii) above has expired, the party complaining of the breach gives the other party six months written notice of termination.

If either party disputes the existence of a breach or that the breach is material, the dispute may be referred to arbitration under Section 5.1 of this Agreement.

- (c) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) in accordance with Section 4.3;
 - (ii) for any reason, upon twelve months prior written notice; or
 - (iii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraph 6.2(b) above.

Section 6.3 - Early Termination

If either party terminates this Agreement (referred to in this Section as the "Terminating Party"):

- (i) prior to the end of the Initial Term and the other party (referred to in this Section as the "Non-Terminating Party") has not committed a material breach of the Agreement that has not been corrected as described in Paragraph 6.2(b) above;

or

- (ii) in any renewal term and the Terminating Party does not provide the Non-Terminating Party, with proper notice as required by Paragraph 6.2(c) above and there has not been a material breach by the Non-Terminating Party that has not been corrected as described in Paragraph 6.2(b) above;

then the Terminating Party shall be responsible for all costs incurred by the Non-Terminating Party as a result of such termination.

Section 6.4 - Inventory Count of Consumables/Supplies

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

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

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

Section 6.5 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement, no later than ninety days after OCWA ceases to provide the Services.

ARTICLE 7 - GENERAL

Section 7.1 - Agreement to Govern

If there is any inconsistency between this Agreement and any Schedule to this Agreement, this Agreement shall govern.

Section 7.2 - Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Section 7.3 - Entire Agreement

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto, except for the provisions of any Existing Agreements which remain in effect in accordance with Paragraphs 6.1(b) and (c) of this Agreement.

Section 7.4 - Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated July, 1998 shall not form part of this Agreement.

Section 7.5 - Amendments and Waivers

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

Section 7.6 - Successors and Assigns

This Agreement shall operate to the benefit of and be binding upon, the parties hereto and their successors and assigns.

Section 7.7 - Survival

All representations, warranties and indemnities given by each of the parties, shall survive indefinitely the termination of this Agreement.

Section 7.8 - Severability

If any covenant, obligation or provision hereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions or the application of each provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable.

Section 7.9 - Notices

(a) Any notice, or other communication required or permitted to be given hereunder by either party to this Agreement shall be in writing and shall be delivered in person, transmitted by fax or sent by registered mail, addressed as follows:

- (i) if to the Client:
Town of Amherstburg
P.O. Box 159
271 Sandwich St. South
Amherstburg, Ontario N9V 2Z3
Telephone: (519) 736-0012
Fax: (519) 736-5403
Attention: Mr. William King, Chief Administrative Officer

- (ii) if to OCWA:
Union Hub
P.O. Box 359
1615 Union Ave.
Ruthven, Ontario N0P 2G0

Telephone: (519) 326-1995
Fax: (519) 326-0450
Attention: Mr. Anthony Pizans, Client Services Representative

- (b) If delivered in person or transmitted by fax, any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day).
- (c) If mailed, any such notice or other communication shall be deemed to have been given and received on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days afterwards a labour dispute or other event occurs, which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by fax as provided in this Section 7.9.
- (d) A party to this Agreement may change its address for the purpose of this Section by giving the other party notice of such change of address in the manner provided in this Section.

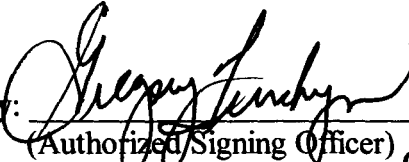
Section 7.10 - Counterparts

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

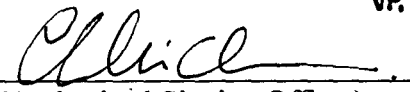
IN WITNESS WHEREOF the parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

August 17/99
Date of Signing

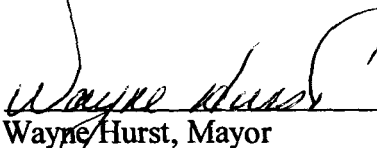
By: 
(Authorized Signing Officer) **Greg Turchyn**
VP, Area Office

Apr 11 99
Date of Signing

By: 
(Authorized Signing Officer) **Louise Wickson**
VP, Finance & Corporate Services

**THE CORPORATION OF
THE TOWN OF AMHERSTBURG**

Sept. 14/99
Date of Signing

By: 
Wayne Hurst, Mayor

Sept. 14/99
Date of Signing

By: 
David Mailloux, Clerk

SCHEDULE A

The Facility

Part 1. Description of the Facility

For the purposes of this Agreement, the Facility is comprised of the following:

Class 4 water treatment plant with a capacity of 4 million Imperial Gallons per day. A conventional water treatment with flocculation, coagulation, sedimentation and filtration. Class 3 water distribution system including a 500,000 Imperial Gallon water tower.

Part 2. Street Address of the Facility

The street address of the Facility is as follows:

415 Front Road North
Amherstburg, Ontario
N9V 2V5

SCHEDULE B

The Services

For the purposes of this Agreement, the following services shall constitute the services to be provided by OCWA and are collectively referred to herein as "the Services":

1. Operating Duties

OCWA will perform regularly scheduled inspections and carry out associated operational duties at the Facility, including all related equipment, buildings and property to ensure that the Facility is operating effectively. Specifically, OCWA will:

A. Water Treatment Plant

- inspect process control equipment to ensure proper operation of chlorinators, flash mixing, coagulation, flocculation systems, clarifier, pumps, filters, chemical feeders;
- check low lift pumping station to ensure that everything is in order (also taking routine readings);
- operate pump controls and valve controls for pumping of all process streams;
- hoses down weirs, walls and channels in flocculation and sedimentation tanks and clarifier;
- receiving and handling of chemicals and mixing polyelectrolyte and water in a liquid feed tank; and
- check filters and backwashing filters as required on a routine basis;

B. Water Distribution

- open, exercise and flush water hydrants as required for Malden distribution, make repairs and paint where necessary and winterize each fall;
- inspect water tower, stand-pipe and ground water reservoir yearly through visual inspection, draining, checking controls and valves, or by monitoring pressure and water levels; and
- inspect distribution system, visually for major leaks, exercise main distribution shut-off valves and collect samples and monitor chlorine residual.

2. Day-to-Day Maintenance

OCWA will provide day-to-day maintenance of the Facility in accordance with industry standards and equipment manufacturer's instructions. Specifically, OCWA will:

- carry out a routine lubrication program including greasing and oiling as specified in the lubrication schedule;
- perform day-to-day maintenance duties to equipment by following the preventive maintenance procedures; by checking machinery and electrical equipment when required;
- maintain an inventory on all equipment and tools; and
- ensure the security of the project by locking doors and gates.

3. Capital Improvements

- OCWA will record information on the frequency of equipment breakdown and repair costs to determine replacement needs. Parts of the Facility requiring upgrading or improvement will be identified and brought to the attention of the Client in accordance with Paragraph 4.6(b) of this Agreement.

4. Optimization and Compliance of Operation

OCWA will regularly analyze, investigate and implement measures to improve the effectiveness and efficiency of the Facility.

OCWA is responsible for ensuring an efficient operation of the process and keeping records on a regular basis by:

A. Water Treatment and Distribution

- recording and analyzing water flow, chemicals used, chlorine residuals, turbidity;
- checking chemical feed pumps, and performing routine calculations and evaluations and determining operational adjustment requirements;
- calculating, recording and analyzing daily and monthly water flows, pump running hours, the amount of chlorine, fluoride, and alum used;
- routinely conducting the following water tests: chlorine residual, water temperature, colour, pH, turbidity; recording the results and making operational adjustments such as increased chemical dosages;
- completing the daily operating forms for statistics for computer input and output forms and correcting the results of the output forms to ensure a proper monitoring of plant flows and process;
- collecting samples for routine analysis for bacti and chemicals and ensuring that they are shipped to the proper labs for analysis;
- ensuring that the daily operations comply with and fulfill the requirements of the Certificate of Approval and other legal documents;
- working with the Client to encourage a water conservation program such as water meters, water efficient shower heads and toilets, wise use of water and promotions; and
- repairing water leaks in distribution system.

5. Regulatory Matters

- OCWA will handle day-to-day regulatory requirements and contacts with regulatory authorities in respect of operating issues concerning the Facility. OCWA will review any inspection reports prepared by regulatory authorities that are provided to OCWA. Subject to any approvals of the Client required by Paragraph 4.6(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports or negotiate changes to the reports with the regulatory authorities.

6. Staffing

- OCWA will staff the Facility with certified operators and other trained staff as required training by regulation under the Ontario Water Resources Act.
- All OCWA staff at the Facility will be trained for the normal process operation and maintenance of the Facility and will also receive training on how to deal with emergency situations.
- OCWA staff will be available to provide 24 hour coverage at the Facility in the event of illness or emergencies.

7. Emergency Situations and Safety

- OCWA will ensure that the Facility has a contingency plan in place to deal with non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- OCWA will regularly inspect the Facility and provide ongoing safety training to staff.

SCHEDULE C

The following services will not be provided by OCWA and are considered to be "Excluded Services" for the purposes of this Agreement:

- thawing water services;
- installation and/or inspection of new water services;
- snow removal around hydrants;
- foam swabbing and pigging watermains;
- cost for sampling and non-routine lab analysis;
- reading residential water meters

SCHEDULE D

INSURANCE

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

Property Insurance

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

Limits:

- \$2,398,500,000 combined limit any one loss, casualty, or disaster
- \$2,398,500,000 annual aggregate of flood claims
- \$2,398,500,000 annual aggregate of earthquake claims
- Replacement Value (Subject to Annual Reports)
- \$25,000,000 for extra expenses above and beyond regular costs associated with running the operation
- Extra expenses associated with shutting down the business for up to six weeks on interruption by Civil Authority

Deductibles: All Perils - \$2,500 except earthquake and flood
Earthquake - the greater of \$100,000 or 3%;
Flood - \$25,000

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

Boiler and Machinery Insurance

Coverage: Insures against loss or damage arising from an accident to scheduled object in use or connected ready for use.

Objects: Boilers, Pressure Vessels (Excess of 15PSI) Piping.

Accident: Sudden and accidental breakdown of an object which causes it physical damage, requiring its repair or replacement.
Subject to policy exclusions.

Limit: \$10,000,000 per loss.

Deductible: \$1000.

Automobile Insurance

Coverage: Automobile Liability.

Limit: \$2,000,000
Accident Benefits per Ontario Statutes.

Coverage: Collision **Deductible:** \$250

Coverage: Comprehensive **Deductible:** \$100

Comprehensive General Liability Insurance

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

Limit: \$10,000,000 per occurrence.

Deductible: \$2,500

Pollution Liability Insurance

Coverage: Pollution legal liability covering third party property damage and bodily injury and clean up costs for pollution conditions emanating from the Facilities, with a coverage limit of \$2,000,000.00 per claim or occurrence and aggregate. Coverage provides for on-site clean up of the Facilities.

Limit: \$2,000,000 per loss on a Claims Made basis with automatic, extended reporting periods. \$2,000,000 aggregate.

Deductible: \$50,000.

SCHEDULE E

Part 1: Changes in Flows

- (a) A significant decrease in flow means a flow that is at least 6% less than the flow of the Base Year.
- (b) A significant increase in flow means a flow that exceeds the flow of the Base Year by 6% or more.

"Base Year" means, in the case of the Initial Term, the immediately preceding year (eg. If the Initial Term begins in 1998, the Base Year is 1997). In the case of a renewal term, the Base Year means the year immediately preceding the first year of the renewal term.

Part 2: Formula for Flow Change Price Adjustment

$$\text{Price Adjustment} = \left(\frac{A-B}{B} \right) \times C \times D$$

A = Total flow for previous year.

B = The total flow of the Base Year (1997).

C = 32%: Flow changes would impact on hydro, chemicals, maintenance, repairs, and/or process control. These items comprise a weighted average of 32% of the Annual Price.

D = Annual Price for the previous year.

Agreement Terms For:

The Operation and Maintenance
The Town of Amherstburg's Wastewater Treatment Facility

SERVICES AGREEMENT

THIS AGREEMENT made as of the 16th day of August, 1999.

BETWEEN

**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 Agreement as "OCWA")

AND

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(referred to in this Agreement as the "Client")

BACKGROUND TO THIS AGREEMENT

- (a) Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and its several predecessors in law [and OCWA] (collectively referred to as the "Crown") entered into various agreements (the "Existing Agreements") with the Client concerning the operation and maintenance of a wastewater treatment facility in the Town of Amherstburg (as further described in Schedule A to this Agreement) (the "Facility").
- (b) OCWA is the successor in title to the Crown as a result of the Capital Investment Plan Act, 1993.
- (c) The Client and OCWA desire to enter into this Agreement for the purpose of further clarifying and delineating their respective rights and obligations with respect to the operation, payment and billing arrangements of and for the Facility.
- (d) The Council of the Client on the 9th day of Aug, 1999 passed By-Law No. 1999-41 authorizing the Client to enter into this Agreement.

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

ARTICLE 1 - INDEX TO DEFINITIONS

Section 1.1 - 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, and E attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

"**Annual Price**" is defined in Paragraph 4.2(a) of this Agreement.

"**Approved Capital Expenditures**" is defined in Paragraph 4.6(b) of this Agreement.

"**Authorizations**" means each of the sewer use and water by-laws, licences, certificates of approval, permits, consents and other authorizations required under any law, regulation, by-law or government policy in order to operate the Facility from time to time.

"**Authorized Representatives**" is defined in Section 2.5 of this Agreement.

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in Ontario.

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

"Claim" means any claim, fine, penalty, liability, damages, loss and judgements (including but not limited to, costs and expenses incidental thereto) of any kind and nature whatsoever.

"Current Term" is defined in Section 4.3 of this Agreement.

"Excluded Services" is defined in Section 2.3 of this Agreement.

"Existing Agreements" is defined in the "Background to this Agreement".

"Facility" is defined in the "Background to this Agreement" and further described in Schedule A.

"Indemnified Parties" is defined in Section 3.3 of this Agreement.

"Initial Term" is defined in Section 4.1 of this Agreement.

"Loadings" means the product of the raw sewage flow and the raw sewage concentration of BODs, suspended solids or total phosphorous.

"Non-Terminating Party" is defined in Section 6.3 of this Agreement.

"Prime Rate" is defined in Paragraph 4.8(a) of this Agreement.

"Services" is defined in Section 2.1 and further described in Schedule B to this Agreement.

"Terminating Party" is defined in Section 6.3 of this Agreement.

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

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

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

The Client retains OCWA to provide management, operation, administration and maintenance services (as further described in Schedule B to this Agreement) in respect of the Facility (the "Services").

Section 2.2 - Performance of Services

(a) OCWA shall operate the Facility in compliance with all applicable laws, regulations and Authorizations except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:

- (i) the Client not making the Capital Expenditures recommended by OCWA under Section 4.6 below;
- (ii) mechanical failure of any equipment at the Facility unless the mechanical failure is due to improper or inadequate maintenance by OCWA;
- (iii) the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law;
- (iv) the wastewater transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes; and
- (v) the quantity of wastewater transmitted to the Facility exceeds the Facility's design capacity.

b) OCWA may temporarily cease to provide or reduce, the level of provision of Services hereunder in the event of an emergency, a breakdown or any other reason beyond the reasonable

control of OCWA; provided, however, that OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of each such occurrence.

c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the control of OCWA, including but not limited to the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law, the wastewater transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes, the quantity of wastewater transmitted to the Facility exceeds the Facility's design capacity, decrees of government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, war, civil disturbances, riots, explosions, fire and acts of third parties (any such occurrence or circumstance is referred to as an "Uncontrollable Circumstance").

Section 2.3 - Excluded Services

The services set out in Schedule C to this Agreement are specifically excluded from the Services (the "Excluded Services"). If the Client subsequently requires OCWA to provide the Excluded Services, the Excluded Services may be provided at additional cost to the Client.

Section 2.4 - OCWA as Independent Contractor

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

Section 2.5 - Authorized Representatives

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

Section 2.6 - Reporting

Each quarter or such other period as the Client and OCWA may agree upon, OCWA shall provide the Client's Authorized Representative with a report describing the Facility's performance for that period.

Section 2.7 - Indemnification of the Client

OCWA shall exonerate, indemnify and hold harmless the Client, its officers, employees and agents from and against any and all Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client that are caused by OCWA's negligence or wilful misconduct when performing the Services. The Client shall be deemed to hold the provisions of this Section 2.7 that are for the benefit of the Client's officers, employees and agents in trust for such officers, employees and agents as third party beneficiaries under this Agreement.

Section 2.8 - Insurance

- (a) OCWA shall arrange for insurance coverage of the Facility as described in Schedule D to this Agreement and the Client shall be an additional insured under such coverage. If there is a significant change in the insurance coverage described in Schedule D, the Client will be notified of such changes.
- (b) The Client may, at its cost, maintain additional insurance in respect of the Facility if it wishes and OCWA shall be an additional insured under such insurance.

- (c) The Client shall be responsible for securing its own insurance for any operations with which it is involved that are not the subject of this Agreement as it will have no recourse under OCWA's policies of insurance for any such operations.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

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

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement, including but not limited to, the power and authority to pay the Annual Price (including any inflation or flow and loadings adjustment) and any other charges related to the provision of the Services, when due and payable, under this Agreement.
- (b) The Client has passed all necessary by-laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, including without limitation, any Authorizations required from the Ontario Municipal Board, and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal by-law required to authorize the Client to enter into and perform its obligations under this Agreement.

Section 3.2 - Covenants of the Client

The Client hereby covenants for the benefit of OCWA:

- (a) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA.
- (b) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the Facility.
- (c) The Client shall take reasonable steps to ensure that wastewater transmitted to the Facility complies with the Client's sewer use by-law presently in force.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, either arise from or are connected with the operation of this Agreement.
- (b) OCWA shall be deemed to hold the provision of this Section 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding the other provisions of this Section 3, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by a policy of insurance put in place by OCWA and/or the Ministry of the Environment, the premiums of which were paid for by the Client; or
 - (ii) where the Claim is caused by OCWA's negligence or wilful misconduct in providing the Services.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on **September 1, 1999** and shall continue in effect for an initial term of **three (3) years** (the "Initial Term") and then shall be renewed for successive **three (3) year** terms unless terminated under Section 6.2 of this Agreement.

Section 4.2 - Annual Price for Initial Term

- (a) The Client shall pay OCWA for OCWA's provision of the Services, a price for each year of the Initial Term in the following amounts (the "Annual Price"):
 - (i) For Year One from **September 1, 1999** through to **August 31, 2000** inclusive:
\$234,206.00
 - (ii) For Year Two and subsequent Years: **\$234,206.00** plus an adjustment for inflation Calculated as described below in Paragraph 4.2(b).
- (b) Statistics Canada Consumer Price Index, All Items (Ontario) ("CPI") shall be used to calculate the inflation adjustment referred to in Paragraph 4.2(a) above. The percentage difference between the CPI on the first day as compared to the last day of a year shall be the inflation adjustment for the next year. The adjustment will be calculated as soon as necessary information is available from Statistics Canada and the Annual Price will be retroactively adjusted to January 1. In year two of the Agreement and subsequent years, the inflation adjustment shall be added to the Annual Price for year one of the Agreement on a cumulative basis.
- (c) The Annual Price includes all additional charges prescribed by Regulation 157/93 under the Ontario Water Resources Act.

Section 4.3 - The Annual Price in Renewal Terms

The Annual Price for any renewal term will be as agreed between the Client and OCWA. If the parties can not agree on the Annual Price for any renewal term within six months of the beginning of the last year of the Initial Term or a renewal term (the "Current Term"), this Agreement will be terminated six months from the last day of the Current Term. During this six month period, the Client shall pay the Annual Price paid for the last year of the Current Term, as indicated above, pro-rated over the six month period.

Section 4.4 - Payment of the Annual Price

The Client shall pay OCWA the Annual Price for each year of the Initial Term or any renewal term, in twelve monthly payments, in advance, on the first day of each month. In Year One of the Initial Term, the monthly payment of the Annual Price shall be **\$19,517.17**; one-twelfth of the payment in 4.2(a)(i). The first payment shall be due and payable on **September 1, 1999**. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client or by some other method acceptable to OCWA and the Client.

Section 4.5 - Items not included in the Annual Price

The Annual Price, for each year of the Initial Term, covers all charges associated with the provision of the Services, with the exception of the following:

- (a) any Capital Expenditures over the amount set forth in Paragraph 4.6(d);
- (b) any charges resulting from the supply of new or increased services required by changes to the law, government policy or to the Facility's certificates of approval;
- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (d) the payment of municipal taxes or municipal grants in lieu of taxes; and

- (e) any charges resulting from adverse tax changes in respect of the Services or the Facility, excluding income taxes payable by OCWA on its own revenues.
- (f) any charges resulting from a significant increase in Loadings, as set out in Part 1 of schedule F to this Agreement.

Section 4.6 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding day-to-day maintenance); any alterations and any associated installations, commissioning and preselection charges, together with OCWA's service fee.
- (b) No later than **October 31st** of each year this Agreement is in force, OCWA will provide the Client with an estimate of the Capital Expenditures required for the operation of the Facility for the following year. The Client's approval of any estimate authorizes OCWA to incur the Capital Expenditures included in the estimate (the "Approved Capital Expenditures").
- (c) OCWA will invoice the Client for the additional Approved Capital Expenditures together with any additional supporting documentation and the Client shall pay the invoice immediately upon receipt.
- (d) OCWA will not be required to obtain the prior approval of the Client for any Capital Expenditure item costing less than \$2,000 of Capital Expenditures for each year of the Initial Term on a noncumulative basis. For all capital items costing more than \$2,000, OCWA will obtain at least three price quotes, one of which may be from OCWA if it can perform the work. In all cases, approval of the Client will be obtained before proceeding with the work.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures that OCWA incurs in order to address equipment failure, acts of third parties, or other circumstances beyond OCWA's control, such as unregulated septic dumping, illegal industrial waste discharges or overflows, an emergency situation or any situation resulting from an Uncontrollable Circumstance.
- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred and the Client shall pay OCWA for the Unexpected Expenses immediately upon receipt of an invoice from OCWA.

Section 4.8 - Interest on Late Payments

- (a) "Prime Rate" means the rate of interest expressed as an annual percentage rate announced from time to time by the Royal Bank as its reference rate then in effect for determining interest rates on commercial demand loans in Canadian dollars made in Canada whether or not any such loans are made by such bank on the day of determination.
- (b) If the Client's monthly payment of the Annual Price is not available in its designated bank account on the agreed to date of payment, OCWA will notify the Client that the funds were not available. On the next Business Day, OCWA will again attempt to withdraw the monthly payment. If funds are not available when the second attempt to withdraw funds is made, OCWA will notify the Client that the payment is late, and in addition to paying the monthly payment owing to OCWA, the Client shall pay OCWA interest at the Prime Rate plus 3%. Interest shall accrue on a daily basis from the day after the second attempt to withdraw funds is made.
- (c) All late payments, other than those described in Paragraph 4.8(b) above, shall bear interest at the Prime Rate plus 3%. Interest shall accrue on a daily basis from the date after payment is due.

Section 4.9 - Partial Payment of Disputed Invoices

If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided above in Paragraph 4.8(c) above, within ten days from the date of final determination.

Section 4.10 - Price Adjustment for Significant Changes in Flows and Loadings

(a) Subject to Paragraph 4.10(b) below, if there is a significant decrease or increase in loadings at the Facility, as described in Part 1 of Schedule E, the current Annual Price shall be reduced or increased, as applicable, by an amount calculated using the formula set out in Part 2 of Schedule F.

(b) There shall be no reduction in the Annual Price where the decrease in flow and loadings at the Facility results from a change made to the Facility or its operations, paid for by OCWA.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Arbitration

(a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, the issue shall be determined by a sole arbitrator appointed by mutual agreement between the Client and OCWA. Failing agreement, the issue shall be determined by a panel of three arbitrators: one arbitrator shall be appointed by the Client and a second arbitrator shall be appointed by OCWA. These two arbitrators shall appoint a third, who shall chair the arbitration. The determination of the sole arbitrator or the arbitration panel, as applicable, shall be final and binding upon OCWA and the Client and there shall be no appeal from the determination.

(b) The arbitration shall be governed by the provisions of the Arbitrations Act.

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Existing Agreements

(a) Subject to Paragraph 6.1(c) below, upon the execution of this Agreement, all Existing Agreements between the Client and the Crown under Section 63 of the Ontario Water Resources Act, R.S.O. 1990, c.O.40 entered into before the 1st day of April, 1974, are terminated.

(b) Subject to Paragraphs 6.1(a) and 6.1(c) of this Agreement, the provisions in the Existing Agreements between the Client and OCWA or the Client and one of OCWA's predecessors, shall be terminated.

(c) Notwithstanding any other provision in this Agreement and in particular Paragraphs 6.1(a) and (b) above, all financial obligations of the Client to OCWA or any of OCWA's predecessors under any Existing Agreement, including but not limited to the obligation of the Client to pay any outstanding debt owed in respect of the Facility, shall remain in effect until such time, if applicable, that new financing arrangements have been entered into between the Client and OCWA.

Section 6.2 - Termination of Agreement

(a) At least twelve calendar months before the expiry of the Initial Term, either party shall notify the other in writing whether it wishes to renew or terminate this Agreement at the end of the Initial Term.

(b) During the Initial Term, this Agreement cannot be terminated by either the Client or OCWA unless:

- (i) there has been a material breach of the Agreement; and
- (ii) the party complaining of the breach has given written notice of the breach to the other party; and
- (iii) the other party does not correct the breach within thirty days of receiving the notice; and
- (iv) after the thirty days referred to in paragraph (iii) above has expired, the party complaining of the breach gives the other party six months written notice of termination.

If either party disputes the existence of a breach or that the breach is material, the dispute may be referred to arbitration under Section 5.1 of this Agreement.

- (c) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) in accordance with Section 4.3;
 - (ii) for any reason, upon twelve months prior written notice; or
 - (iii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraph 6.2(b) above.

Section 6.3 - Early Termination

If either party terminates this Agreement (referred to in this Section as the "Terminating Party"):

- (i) prior to the end of the Initial Term and the other party (referred to in this Section as the "Non-Terminating Party") has not committed a material breach of the Agreement that has not been corrected as described in Paragraph 6.2(b) above;

or

- (ii) in any renewal term and the Terminating Party does not provide the Non-Terminating Party, with proper notice as required by Paragraph 6.2(c) above and there has not been a material breach by the Non-Terminating Party that has not been corrected as described in Paragraph 6.2(b) above;

then the Terminating Party shall be responsible for all costs incurred by the Non-Terminating Party as a result of such termination.

Section 6.4 - Inventory Count of Consumables/Supplies

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

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

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

Section 6.5 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement, no later than ninety days after OCWA ceases to provide the Services.

ARTICLE 7 - GENERAL

Section 7.1 - Agreement to Govern

If there is any inconsistency between this Agreement and any Schedule to this Agreement, this Agreement shall govern.

Section 7.2 - Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Section 7.3 - Entire Agreement

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto, except for the provisions of any Existing Agreements which remain in effect in accordance with Paragraphs 6.1(b) and (c) of this Agreement.

Section 7.4 - Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated July, 1998 shall not form part of this Agreement.

Section 7.5 - Amendments and Waivers

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

Section 7.6 - Successors and Assigns

This Agreement shall operate to the benefit of and be binding upon, the parties hereto and their successors and assigns.

Section 7.7 - Survival

All representations, warranties and indemnities given by each of the parties, shall survive indefinitely the termination of this Agreement.

Section 7.8 - Severability

If any covenant, obligation or provision hereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions or the application of each provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable.

Section 7.9 - Notices

(a) Any notice, or other communication required or permitted to be given hereunder by either party to this Agreement shall be in writing and shall be delivered in person, transmitted by fax or sent by registered mail, addressed as follows:

- (i) if to the Client:
Town of Amherstburg
P.O. Box 159
271 Sandwich St. South
Amherstburg, Ontario N9V 2Z3
Telephone: (519) 736-0012

Fax: (519) 736-5403
Attention: Mr. William King, Chief Administrative Officer

(ii) if to OCWA:
Union Hub
P.O. Box 359
1615 Union Ave.
Ruthven, Ontario NOP 2G0

Telephone: (519) 326-1995
Fax: (519) 326-0450
Attention: Mr. Anthony Pizans, Client Services Representative

- (b) If delivered in person or transmitted by fax, any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day).
- (c) If mailed, any such notice or other communication shall be deemed to have been given and received on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days afterwards a labour dispute or other event occurs, which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by fax as provided in this Section 7.9.
- (d) A party to this Agreement may change its address for the purpose of this Section by giving the other party notice of such change of address in the manner provided in this Section.

Section 7.10 - Counterparts

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

IN WITNESS WHEREOF the parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

By: Gregory Turchyn
(Authorized Signing Officer)
Greg Turchyn
VP, Area Office

By: Louise Wickson
(Authorized Signing Officer)
Louise Wickson
VP, Finance & Corporate Services

THE CORPORATION OF THE TOWN OF AMHERSTBURG

By: Wayne Hurst
Wayne Hurst, Mayor

By: David Mailloux
David Mailloux, Clerk

August 17/99
Date of Signing

Sept 1/99
Date of Signing

Sept. 14/99
Date of Signing

Sept. 14/99
Date of Signing

SCHEDULE A

The Facility

Part 1. Description of the Facility

For the purposes of this Agreement, the Facility is comprised of the following:

The Amherstburg Wastewater Treatment Plant is a primary treatment facility. It is situated at 496 Sandwich Street South, Amherstburg, Ontario and provides wastewater treatment services to homes and businesses in the Town of Amherstburg. The maintenance and management of two pumping stations are included in this contract: Pumping Station #1 and the Crownridge Pumping Station. The operation and management of the collection system is excluded.

Part 2. Street Address of the Facility

The street address of the Facility is as follows:

Amherstburg WPCP
496 Sandwich Street South
Amherstburg, Ontario
N9V 2Z3

SCHEDULE B

The Services

For the purposes of this Agreement, the following services shall constitute the services to be provided by OCWA and are collectively referred to herein as "the Services":

1. Operating Duties

OCWA will perform regularly scheduled inspections and carry out associated operational duties at the Facility, including all related equipment, buildings and property to ensure that the Facility is operating effectively. Specifically, OCWA will:

A. Wastewater Treatment Facility

- inspect process control equipment to ensure proper operation of primary wastewater treatment clarifiers, pumps, and chemical feeders;
- check pumping stations and forcemains to ensure that everything is in order (also take routine readings);
- sound clarifier for sludge depth;
- operate pump controls and valve controls for pumping of all process streams;
- clean grit channels;
- skim chlorine contact chambers and settling tanks;
- rake bar screens and check classifier;
- hose down weirs, walls and channels;
- mix and monitor chlorine and other process chemicals; and
- collect samples as required;

2. Day-to-Day Maintenance

OCWA will provide day-to-day maintenance of the Facility in accordance with industry standards and equipment manufacturer's instructions. Specifically, OCWA will:

- carry out a routine lubrication program including greasing and oiling as specified in the lubrication schedule;
- perform day-to-day maintenance duties to equipment by following the preventive maintenance procedures; by checking machinery and electrical equipment when required;
- maintain an inventory on all equipment and tools; and
- ensure the security of the project by locking doors and gates.

3. Capital Improvements

- OCWA will record information on the frequency of equipment breakdown and repair costs to determine replacement needs. Parts of the Facility requiring upgrading or improvement will be identified and brought to the attention of the Client in accordance with Paragraph 4.6(b) of this Agreement.

4. Optimization and Compliance of Operation

OCWA will regularly analyze, investigate and implement measures to improve the effectiveness and efficiency of the Facility.

OCWA is responsible for ensuring an efficient operation of the process and keeping records on a regular basis by:

A. Wastewater Collection and Treatment

- recording and analyzing wastewater flow, chemicals used, chlorine residuals, process water and wastewater flow calculations;
- checking chemical feed pumps, comparing to routine calculations and determining operational adjustment requirements;
- calculating, recording, and analyzing the amount of wastewater treated, the daily flows and monthly flows, pumping station running hours, diesel running hours, amount of chlorine and chemicals used, and the sludge hauled;
- performing routine wastewater tests such as suspended solids, BOD, total solids, chlorine residual, Total Phosphorus, temperature, 30 minute settling and recording results, calculating plant process control parameters and making operational adjustments as required such as increasing chemical feed;
- on a routine basis, completing the daily operating forms for statistics for computer input and output forms and correcting the results of the output forms to ensure a proper monitoring of plant flows and process for wastewater treatment;
- collecting samples for heavy metals and trace organics, conducting routine analysis for coliform bacteria and chemicals and ensuring that they are shipped to the proper labs (sampling to ensure a representative analysis.);
- ensuring that the daily operations comply with and fulfill the requirements of the Certificate of Approval and other legal documents; and
- evaluating methods for reducing peak flows and equalizing flow to treatment plant, ie. installing variable speed control.

5. Regulatory Matters

- OCWA will handle day-to-day regulatory requirements and contacts with regulatory authorities in respect of operating issues concerning the Facility. OCWA will review any inspection reports prepared by regulatory authorities that are provided to OCWA. Subject to any approvals of the Client required by Paragraph 4.6(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports or negotiate changes to the reports with the regulatory authorities.

6. Staffing

- OCWA will staff the Facility with certified operators and other trained staff as required training by regulation under the Ontario Water Resources Act.
- All OCWA staff at the Facility will be trained for the normal process operation and maintenance of the Facility and will also receive training on how to deal with emergency situations.

- OCWA staff will be available to provide 24 hour coverage at the Facility in the event of illness or emergencies.

7. **Emergency Situations and Safety**

- OCWA will ensure that the Facility has a contingency plan in place to deal with non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.

- OCWA will regularly inspect the Facility and provide ongoing safety training to staff.

SCHEDULE C

The following services will not be provided by OCWA and are considered to be "Excluded Services" for the purposes of this Agreement:

- installation and/or inspection of new sewer services;
- cost for sampling and non-routine lab analysis;
- hauling sludge and disposal of sludge;
- management and operation of the collection system;
- grass cutting; and
- payment for electricity, taxes and water (these are paid for by the Client)

SCHEDULE D

INSURANCE

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

Property Insurance

- Perils:** "All Risks" including earthquake and flood. Subject to policy exclusions.
- Limits:**
- \$2,398,500,000 combined limit any one loss, casualty, or disaster
 - \$2,398,500,000 annual aggregate of flood claims
 - \$2,398,500,000 annual aggregate of earthquake claims
 - Replacement Value (Subject to Annual Reports)
 - \$25,000,000 for extra expenses above and beyond regular costs associated with running the operation
 - Extra expenses associated with shutting down the business for up to six weeks on interruption by Civil Authority
- Deductibles:** All Perils - \$2,500 except earthquake and flood
Earthquake - the greater of \$100,000 or 3%;
Flood - \$25,000
- Property Insured:** All reported properties including buildings and equipment situated within 1,000 feet of the premises. Includes pumping stations, excludes underground sewer and water system.

Boiler and Machinery Insurance

- Coverage:** Insures against loss or damage arising from an accident to scheduled object in use or connected ready for use.
- Objects:** Boilers, Pressure Vessels (Excess of 15PSI) Piping.
- Accident:** Sudden and accidental breakdown of an object which causes it physical damage, requiring its repair or replacement.
Subject to policy exclusions.
- Limit:** \$10,000,000 per loss.
- Deductible:** \$1000.

Automobile Insurance

Coverage: Automobile Liability.

Limit: \$2,000,000
Accident Benefits per Ontario Statutes.

Coverage: Collision **Deductible:** \$250

Coverage: Comprehensive **Deductible:** \$100

Comprehensive General Liability Insurance

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

Limit: \$10,000,000 per occurrence.

Deductible: \$2,500

Pollution Liability Insurance

Coverage: Pollution legal liability covering third party property damage and bodily injury and clean up costs for pollution conditions emanating from the Facilities, with a coverage limit of \$2,000,000.00 per claim or occurrence and aggregate. Coverage provides for on-site clean up of the Facilities.

Limit: \$2,000,000 per loss on a Claims Made basis with automatic, extended reporting periods. \$2,000,000 aggregate.

Deductible: \$50,000.

SCHEDULE E

Part 1: Changes in Loadings as measured by Sludge Production (in kg)

- (a) A significant decrease in sludge production (kg) means sludge production that is at least 6% less than the sludge production of the Base Year.
- (b) A significant increase in sludge production (kg) means sludge production that exceeds the sludge production of the Base Year by 6% or more.

"Base Year" means, in the case of the Initial Term, the immediately preceding year (eg. If Initial Term begins in 1998, the Base Year is 1997). In the case of a renewal term, the Base Year means the year immediately preceding the first year of the renewal term.

Part 2: Formula for Sludge Production Change Price Adjustment

$$\text{Price Adjustment} = \left(\frac{A-B}{B} \right) \times C \times D$$

A = Total sludge produced (kg) for previous year.

B = The total sludge produced (kg) in the Base Year (1997).

C = 36 %: Changes in sludge production would impact on use of chemicals and/or labour costs. These items comprise a weighted average of 36 % of the Annual Price.

D = Annual Price for the previous year.

Agreement Terms For:

**The Operation and Maintenance
The Town of Amherstburg's Wastewater Treatment Facility
for the Edgewater Beach**

August 16, 1999

The Corporation of the Town of Amherstburg
271 Sandwich St. South
Amherstburg, ON N9V 2Z3

Attention: Mr. Bill King, Chief Administrative Officer

Dear Mr. King:

Agreement to Operate and Maintain
The Town of Amherstburg's Wastewater Treatment Facility for the Edgewater Beach and
Texas Road Area.

We are writing to confirm the new agreement the Corporation of the Town of Amherstburg (the "Client") and the Ontario Clean Water Agency (OCWA) have reached concerning the wastewater Facility located in the Town of Amherstburg, as further described in Attachment One (the "Facility").

OCWA shall operate and maintain the Client's Facility, described in Attachment One, upon the following terms:

1. The Services OCWA shall provide:

OCWA shall provide the Services, which are itemized in Attachment Two.

2. Excluded Services

At the Client's request, OCWA is not to provide the services listed in Attachment Three. However, if the Client subsequently wants OCWA to provide any of the excluded services, OCWA will provide them after the Client and OCWA agree on the price.

3. Compliance

OCWA shall perform the Services in accordance with this agreement and in compliance with all relevant laws, regulations and the authorizations described in Attachment Four, Part I.

4. Duration of Agreement

This agreement shall start on **September 1, 1999** and shall continue in effect for an initial term of **three (3) years** and then renewed for a successive **three (3) year** term unless terminated under section 16 of this agreement. The Annual Price for each renewal term shall be determined under section 11 of this agreement.

5. The Annual Price in the initial term

The Annual Price for the Services during the initial **three (3) year** term is as follows:

- (a) Year One: from **September 1, 1999** to **August 31, 2000** inclusive, the Annual Price shall be **\$105,188.89** which is the estimated charges minus major non-recurring items.
- (b) The Annual Price for Year Two and subsequent years shall be **\$105,188.89**, i.e. the same dollar amount as in 5(a) immediately above plus an adjustment for inflation calculated as described in Attachment Four, Part K.
- (c) The Annual Price includes all additional charges prescribed by regulation.

6. What the Annual Price Does and Does Not Cover

The Annual Price for each year of the initial term covers all costs of providing the Services. The Annual Price does not, however, include the following amounts, which shall be for the Client's account:

- (a) any Capital Expenditures over the annual limit payable by OCWA, as set out in Section 8;
- (b) the cost of supplying new or increased services required by changes to the law, policy or certificate of approval;
- (c) the cost of significant increases in flows, as set out in Section 9;
- (d) the cost of major increases in flows, as set out in Section 10;
- (e) the cost of responding to unforeseen circumstances at the Facility or emergency situations (such as an overflow or flood), including Unexpected Costs as described in Attachment Four, Part B;
- (f) municipal taxes or grants in lieu;
- (g) the cost of expansions;
- (h) the cost of adverse tax changes in respect of the Services or the Facility, excluding income taxes payable by OCWA on its own revenues.
- (i) the costs of chemicals and associated expenses for lagoon treatment
- (j) the costs for repairs to sewers due to blockages, collapses and or construction damage;

7. Invoicing and Payment of the Annual Price

OCWA shall send the Client a monthly invoice. The Client shall pay OCWA the Annual Price for each year of the initial period or any renewal period in twelve (12) monthly payments in advance on the first day of each month. In Year One of the initial period, the monthly payments of the Annual Price shall be **\$8,765.74**, which is one-twelfth of the amount given in section 5(a) above. The first payment shall be due and payable on **September 1, 1999**. Payment shall be made by pre-authorized bank debit from a bank account designated by the Client or by some other method acceptable to OCWA and the Client.

8. Capital Expenditures

- (a) No later than **October 31** of each year, OCWA shall give the Client a list and an estimate of the Capital Expenditures required by the Facility in the following year. The Client's

approval of an estimate shall authorize OCWA to incur the estimated Capital Expenditures.

- (b) OCWA shall invoice the Client for the approved Capital Expenditures it incurs and the Client shall pay the invoice upon receipt.
- (c) The term "Capital Expenditures" means the charges of:
 - i) any new or replacement equipment;
 - ii) any overhaul or rebuild of equipment;
 - iii) any non-routine repair;
 - iv) maintenance, excluding day-to-day maintenance;
 - v) any alteration;

including any associated installation, commissioning and preselection costs together with OCWA's service fee for managing the project.

9. Price Adjustment When Significant Changes in Flows

If there is a significant decrease or increase in flow, as described in Attachment Four, Part N, the current Annual Price shall be reduced or increased, as applicable, by an amount calculated by using the formula in Attachment Four, Part O.

- (b) There shall be no reduction in the Annual Price where the decrease in flow results from a change made to the Facility or its operations, paid for by OCWA.

10. Re-negotiation if Major Flow Change/Expansion/Alteration

The Annual Price and the fixed price method of billing are subject to re-negotiation if:

- (a) The Annual Price and the fixed price method of billing are subject to re-negotiation if:
 - (i) there is a major decrease or increase in flows, as described in Attachment Four, Part N; or
 - (ii) the Facility undergoes an expansion or alteration.
- (b) Section 10(a) shall not apply if:
 - (i) there is a decrease in flow that results from a change made to the Facility or its operations, paid for by OCWA; or
 - (ii) there is an expansion or alteration made to the Facility that is paid for by OCWA.

11. The Annual Price in renewal periods

The Annual Price for any renewal period shall be as agreed between the Client and OCWA. If they cannot agree on the Annual Price for any renewal term within six months of the end of the last year of the current term (whether the initial term or a renewal term) (the "Current Term"), this Agreement will be terminated six months from the last day of the Current Term. During this six month period, the Client shall pay the Annual Price for the last year of the Current term, as indicated above, pro-rated over the six month period, with the inflation and flow rate adjustment as outlined in attachment 4 K, N and O applied if required.

12. Reporting by OCWA

Every quarter, OCWA shall provide the Client with a Facility performance report, as described in Attachment Two.

13. Indemnity Given by OCWA

OCWA shall indemnify the Client and the Client's employees, officers and agents in respect of any liability, claim or expense that arises from OCWA's negligence or willful misconduct when performing the Services.

14. Indemnity Given by the Client

The Client shall indemnify OCWA and OCWA's directors, officers, employees and agents in respect of any liability, claim or expense in relation to the Services or the Facility, except where the liability, claim or expense arises from OCWA's negligence or willful misconduct when performing the Services.

15. Insurance

OCWA shall arrange for the insurance coverage referred to in Attachment Two, as part of the Services. The Client will be notified if there is a significant change in this insurance coverage.

16. Termination and Transfer of Land

This agreement shall be terminated only as described in Attachment Four, Parts L and M. If OCWA no longer operates the Facility at the termination of this agreement, the following shall take place:

- (a) the Client shall arrange and pay the costs for any interest in land used exclusively by the Facility to be transferred "as is" from OCWA to the Client;
- (b) OCWA and the Client shall pay all outstanding amounts owing to the other under this and any other agreement relating to the Facility.
- (c) OCWA will not purchase any additional property in conjunction with this facility without the Client's prior approval.

17. Attachment Four: General Provisions

The general provisions set out in Attachment Four shall form part of this agreement.

18. Prior Agreements

Any prior agreement between the Client and OCWA shall be dealt with as described in Attachment Four, Parts P, Q, R and S.

If this letter reflects your understanding of the agreement with OCWA concerning the operation and maintenance of the Facility, please show your agreement by arranging for all **four (4)** copies of this letter to be signed and dated in the space provided below by the persons authorized to sign contracts for your municipality. When signed by your municipality, this letter shall create a


binding and legally-enforceable contract between us. When signed, please return two copies of this letter. We appreciate the opportunity of entering into this agreement with you and look forward to a mutually-beneficial relationship.

Yours truly,

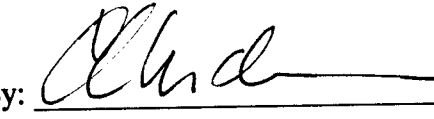
ONTARIO CLEAN WATER AGENCY

BY:

August 17/99
Date of Signing


By: 
Greg Turchyn
VP, Area Office

Sept 1/99
Date of Signing


By: 
Louise Wickson
VP, Finance & Corporate Services

We AGREE TO AND ACCEPT the terms set out in OCWA's letter and in Attachments One, Two, Three and Four this 14th day of September, 19 99 :

THE CORPORATION OF THE TOWN OF AMHERSTBURG


Wayne Hurst,
Mayor

Sept. 14/99
Date of Signing


David Mailloux,
Clerk

Sept. 14/99
Date of Signing

*Please affix
Corporate Seal*

Attachments: One, Two, Three and Four

**ATTACHMENT ONE TO THE LETTER
AGREEMENT BETWEEN THE CLIENT & OCWA**

The Facility: Description, Street Address and Legal Description

Part 1. Description of the Facility

For the purposes of this agreement, the Facility is comprised of the following:

Several pumping stations including the Point West Pumping Station, Kingsbridge Pumping Station, Anderdon Pumping Station #1, Anderdon Pumping Station #2, River Canard Pumping Station, Edgewater Beach #1 Pumping Station, Dot & Canal Street Pumping Station, Cooper's Marina Pumping Station, Middle Side Road Pumping Station, Whelan's Pumping Station and a three-cell waste stabilization lagoon system with a seasonal discharge to the Detroit River.

Part 2. Legal Description of the Lands on which the Facility is Situated

Concession 1, Part of Lot 21
Lots 1 & 2 on Plan 1455
Also Part 1-3 on Registered Plan 12R 4647

**ATTACHMENT TWO TO THE LETTER
AGREEMENT BETWEEN THE CLIENT AND OCWA**

The Services

The following are the services referred to in Item 1(a) of the letter agreement:

[Note: The following list is as complete as possible, but is not intended to be exhaustive]

1. Operating Duties

OCWA will perform regularly scheduled inspections and carry out associated operational duties at the Facility, including all related equipment, buildings and property to ensure that the Facility is operating effectively. Specifically, OCWA will:

Wastewater Treatment Plant

- check pumping stations to ensure that everything is in order (also take routine readings);
- inspect wastewater lagoon berms routinely for erosion and rodent control;
- inspect wastewater lagoon routinely, to monitor level, odour, algae growth and to collect lagoon samples as required; and
- treat wastewater annually/bi-annually with alum to remove phosphorus from lagoon cell contents prior to discharge when required and sample discharge as per requirements.

2. Day-to-Day Maintenance

OCWA will provide day-to-day maintenance of the Facility in accordance with industry standards and equipment manufacturer's instructions. Specifically, OCWA will:

- carry out a routine lubrication program including greasing and oiling as specified in the lubrication schedule;
- perform maintenance duties to equipment by following the preventive measures procedures; by checking machinery and electrical equipment when required and
- maintain an inventory on all equipment and tools; and
- ensure the security of the project by locking doors and gates.

3. Capital Improvements

- OCWA will record information on the frequency of equipment breakdown and repair costs to determine replacement needs. Parts of the Facility requiring upgrading or improvement will be identified and brought to the attention of the Client in accordance with section 8 of this agreement

4. Optimization and Compliance of Operation

OCWA will continually investigate and implement measures to improve the effectiveness and efficiency of the Facility.

The operator is responsible for ensuring an efficient operation of the process and keeping records on a regular basis by:

Wastewater Collection and Treatment

- recording and analyzing wastewater flow, and wastewater flow calculations;
- calculating, recording, and analyzing the amount of wastewater treated, the daily flows and monthly flows, pumping station running hours, diesel running hours;
- on a routine basis, completing the operating forms for statistics for computer input and output forms and correcting the results of the output forms to ensure a proper monitoring of plant flows and process for wastewater treatment;

- collecting samples, conducting routine analysis for coliform bacteria and chemicals when required and ensuring that they are shipped to the proper labs (analysis to ensure a representative analysis.);
- ensuring that the daily operations comply with and fulfill the requirements of the Certificate of Approval and other legal documents;
- evaluating methods for reducing peak flows and equalizing flow to treatment plant. i.e. installing variable speed control.

5. Reporting

The reporting shall include:

- An Quarterly Facility Performance Report to include information on flows, bypasses, loadings and influent and effluent concentrations and water quality.

6. Insurance

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

Property Insurance

- Perils:** "All Risks" including earthquake and flood. Subject to policy exclusions.
- Limits:**
- \$2,398,500,000 combined limit any one loss, casualty, or disaster
 - \$2,398,500,000 annual aggregate of flood claims
 - \$2,398,500,000 annual aggregate of earthquake claims
 - Replacement Value (Subject to Annual Reports)
 - \$25,000,000 for extra expenses above and beyond regular costs associated with running the operation
 - Extra expenses associated with shutting down the business for up to six weeks on interruption by Civil Authority

Deductibles: All Perils - \$2,500 except earthquake and flood
Earthquake - the greater of \$100,000 or 3%;
Flood - \$25,000

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

Boiler and Machinery Insurance

Coverage: Insures against loss or damage arising from an accident to scheduled object in use or connected ready for use.

Objects: Boilers, Pressure Vessels (Excess of 15PSI) Piping.

Accident: Sudden and accidental breakdown of an object which causes it physical damage, requiring its repair or replacement.
Subject to policy exclusions.

Limit: \$10,000,000 per loss.

Deductible: \$1000.

Automobile Insurance

Coverage: Automobile Liability.

Limit: \$2,000,000
Accident Benefits per Ontario Statutes.

Coverage: Collision **Deductible:** \$250

Coverage: Comprehensive **Deductible:** \$100

Comprehensive General Liability Insurance

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

Limit: \$10,000,000 per occurrence.

Deductible: \$2,500

7. Regulatory Matters

- OCWA will handle day-to-day regulatory requirements and contacts with regulatory authorities in respect of operating issues concerning the Facility. OCWA will review any inspection reports prepared by regulatory authorities that are provided to OCWA. Subject to any approvals of the Client required by section 8 of the agreement, OCWA will either correct all deficiencies identified in such inspection reports or negotiate changes with the regulatory authorities.

8. Staffing

- OCWA will staff the Facility with certified operators as required by regulation under the Ontario Water Resources Act.
- All OCWA staff at the Facility have been trained for the normal process operation and maintenance of the Facility and have also received training on how to deal with emergency situations. Staff will continue to receive training on an ongoing basis.
- OCWA staff are available to provide twenty-four (24) hour coverage at the Facility in the event of illness, emergencies or vacation.

9. Emergency Situations and Safety

- The Facility has a contingency plan in place to deal with non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- OCWA regularly inspects the Facility and provides ongoing safety training to staff.

**ATTACHMENT THREE TO THE LETTER
AGREEMENT BETWEEN THE CLIENT & OCWA**

The following services will not be provided by OCWA and are considered to be "Excluded Services" for the purposes of this Agreement:

- installation and/or inspection of sewer services;
- locates for new or existing sewer services;
- high pressure sewer flushing;
- lagoon treatment and chemicals;
- cost for non-routine sampling and lab analysis;
- repairs to sanitary sewers due to blockages, collapses or construction activity etc.

**ATTACHMENT FOUR TO THE LETTER
AGREEMENT BETWEEN THE CLIENT AND OCWA**

General Provisions

The following provisions form part of the agreement between the Client and OCWA with respect to the operation and maintenance of the Facility:

Part A: Emergencies

OCWA may temporarily cease to provide or reduce the level of the Services due to any cause beyond OCWA's reasonable control. If practicable, OCWA will try to give the Client reasonable advance notice. In any event, OCWA will notify the Client of the situation as soon as possible.

Part B: Unexpected Costs

If OCWA incurs Unexpected Costs, the Client's prior approval is required only if time permits. Within ten (10) days of incurring Unexpected Costs, OCWA shall provide a written explanation to the Client. The Client shall pay OCWA for the Unexpected Costs within 30 days of receipt of OCWA's invoice.

The term "Unexpected Costs" means unanticipated costs OCWA incurs in respect of the Facility because of equipment failure, unforeseen circumstances, an emergency situations (such as overflow or flood), or acts of third parties (such as unregulated septic dumping or illegal industrial waste discharges).

Part C: Arbitration

- (a) If a dispute arises between the Client and OCWA which they cannot resolve within a reasonable time, the issue shall be determined by a sole arbitrator appointed by mutual agreement. If the Client and OCWA cannot agree on an arbitrator, the issue shall be determined by a panel of three arbitrators: one arbitrator shall be appointed by the Client and a second arbitrator shall be appointed by OCWA. These two arbitrators shall appoint a third, who shall chair the arbitration. The determination of the sole arbitrator or the arbitration panel shall be final and binding upon OCWA and the Client and cannot be appealed.
- (b) The arbitration shall be governed by the Arbitration's Act.

Part D: Interest on Late Payments

Late payments shall bear interest at three percent (3%) over the rate of interest announced from time to time by the Bank of Montreal as its reference rate for determining interest rates on commercial demand loans made in Canada in Canadian dollars. Interest shall accrue on a daily basis from the day after payment is due.

Part E: Relationship

When performing the Services, OCWA shall act as an independent contractor and neither OCWA nor its employees, agents or subcontractors shall be subject to the control or direction of the Client, except as expressly stated in the preceding letter.

Part F: Authority and Compliance of the Client

The Client warrants that it has the power and authority to enter into and carry out all of its obligations under this agreement. The Client has passed all by-laws and has obtained all approvals necessary to enable it to enter into and perform this agreement. The Client undertakes to comply with its own sewer use and water by-laws.

Part G: Final Accounting

If OCWA ceases to operate the Facility, there shall be a settlement of all accounts no later than ninety (90) days after the cessation of Services.

Part H: Indemnity Held in Trust

- (a) The indemnity provided by OCWA in section 13 of this agreement covers not only the Client but also extends to the Client's officers, employees and agents. The Client shall be considered to hold such extended indemnity in trust for its officers, employees and agents as third party beneficiaries under this agreement.
- (b) The indemnity provided by the Client in section 14 covers not only OCWA, but also extends to OCWA's directors, officers, employees and agents. OCWA shall be considered to hold such extended indemnity in trust for its directors, officers, employees and agents as third party beneficiaries under this agreement.

Part I: Authorizations

In this agreement, the term "authorizations" means any sewer use and water by-laws, licences, certificates of approval, permits, consents and any other authorizations required under any law, regulation or by-law to operate the Facility.

Part J: Part Payment of Disputed Invoices

If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided in Part D, within ten (10) days from the date of final determination.

Part K: Inflation Adjustment

Statistics Canada's Consumer Price Index, for Ontario ("CPI") shall be used to calculate the inflation adjustment referred to in Section 5 of the letter agreement. The cumulative percentage difference between the CPI on the first day as compared to the last day of a year shall be the inflation adjustment for the next year. The adjustment will be calculated as soon as necessary information is available from Statistics Canada and the Annual Price will be retroactively adjusted effective January 1st. In Year Two and subsequent years, the inflation adjustment shall be added to the Annual Price for Year One on a cumulative basis.

Part L: Termination of Agreement During the Initial Term

At least twelve (12) months before the expiry of the initial **three (3) year** term, the Client shall notify OCWA in writing if it does not wish to renew this agreement.

During the initial five (5) years of the term, this agreement cannot be terminated by either the Client or OCWA unless:

- (a) there has been a material breach of the agreement ; and
- (b) the party complaining of the breach has given written notice of the breach to the other party; and
- (c) the other party does not correct the breach within thirty (30) days of receiving the notice; and
- (d) after the thirty (30) days referred to in paragraph have expired, the party complaining of the breach gives the other six (6) months written notice of termination.

If either party disputes the existence of a breach or that the breach is material, the dispute may be referred to arbitration under Part C of this Attachment.

Part M: Termination of this Agreement After the Initial Term

After the initial term of this agreement, either the Client or OCWA may terminate this agreement for any reason, upon twelve (12) months' prior written notice.

Part N: Changes in Flows

- (a) A significant decrease in flow means a flow that is at least 6% less than the flow of the Base Year.
- (b) A significant increase in flow means a flow that exceeds the flow of the Base Year by 6% or more.

Part O: Formula for Flow Change Price Adjustment

$$\text{Price Adjustment} = \frac{\text{A} - 1997 \text{ Total Plant Flow}}{1997 \text{ Total Plant Flow}} \times 0.25 \times \text{B}$$

A = Total flow for current year

0.25 represents the flow changes that impact on hydro, chemicals, maintenance, repairs and process control. These items comprise 25% of the Annual Price.

B = Annual Price for the previous year

Part P: Termination of Certain Agreements Made Before April 1974

As soon as both the Client and OCWA execute this letter agreement, all operating agreements or operating portions of agreements between the Client and Her Majesty the Queen in right of Ontario under section 63 of the Ontario Water Resources Act, R.S.O. 1990, chapter 0.40 entered into before the first day of April, 1974 are terminated.

Part Q: Amendment of Other Agreements

Any agreement between the Client and OCWA (except an agreement referred to in Part P above) shall remain in effect, except to the extent inconsistent with this letter agreement.

Part R: Financial Obligations to Continue

Despite any other provision of this letter agreement, all financial obligations existing under any other agreement between the Client and OCWA or its predecessors shall remain in effect until new financing arrangements are entered into between the Client and OCWA.

Part S: Facility Expansions

This letter agreement shall not affect OCWA's responsibility to provide the financing for any expansion of the Facility under any agreement entered into after March 31 1974, between the Client and OCWA or its predecessors.

Part T: Inventory Count of Consumables/Supplies

OCWA and the Client will conduct an inventory count of consumables/supplies at the Facility on the first day of the initial term. If OCWA no longer operates the Facility at the termination of this agreement, OCWA shall either:

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

If the amount of consumables/supplies at the Facility on the date of termination exceeds the amount on the first day of the initial period, either the Client will reimburse OCWA for any excess or OCWA may select to take possession of any excess.

Part U: Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement, no later than ninety days after OCWA ceases to provide the Services.

Part V: Agreement to Govern

If there is any inconsistency between this Agreement and any Schedule to this Agreement, this Agreement shall govern.

Part W: Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

Part X: Entire Agreement

This Agreement constitutes the entire agreement between the Client and OCWA with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto, except for the provisions of any Existing Agreements which remain in effect in accordance with Paragraphs 6.1(b) and (c) of this Agreement.

Part Y: Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated July, 1998 shall not form part of this Agreement.

Part Z: Amendments and Waivers

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

Part AA: Successors and Assigns

This Agreement shall operate to the benefit of and be binding upon, the parties hereto and their successors and assigns.

Part AB: Survival

All representations, warranties and indemnities given by each of the parties, shall survive indefinitely the termination of this Agreement.

Part AC: Severability

If any covenant, obligation or provision hereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions or the application of each provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable.

Part AD: Notices

(a) Any notice, or other communication required or permitted to be given hereunder by either party to this Agreement shall be in writing and shall be delivered in person, transmitted by fax or sent by registered mail, addressed as follows:

- (i) if to the Client:
Town of Amherstburg
P.O. Box 159
271 Sandwich St. South
Amherstburg, Ontario N9V 2Z3
Telephone: (519) 736-0012
Fax: (519) 736-5403
Attention: Mr. William King, Chief Administrative Officer

- (ii) if to OCWA:
Union Hub
P.O. Box 359
1615 Union Ave.
Ruthven, Ontario NOP 2G0

Telephone: (519) 326-1995
Fax: (519) 326-0450
Attention: Mr. Anthony Pizans, Client Services Representative

- (b) If delivered in person or transmitted by fax, any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day).
- (c) If mailed, any such notice or other communication shall be deemed to have been given and received on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days afterwards a labour dispute or other event occurs, which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by fax as provided in this Section 7.9.
- (d) A party to this Agreement may change its address for the purpose of this Section by giving the other party notice of such change of address in the manner provided in this Section.

Part AE: Counterparts

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