

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2001-46

Being a By-law to authorize the signing of an Agreement with the Ontario Clean Water Agency for the operation of the Malden Sequential Batch Reactor (SBR) and the Rotary Biological Contactor (RBC)

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;

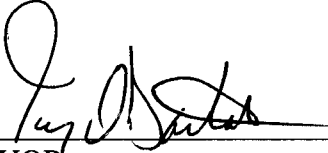
AND WHEREAS The Town of Amherstburg proposes to reimburse the OCWA for its costs of the operation, supervision, control, maintenance, repair, administration and insurance of the facilities as outlined in the three agreements attached hereto.

NOW THEREFORE THE COUNCIL OF THE CORPORATION

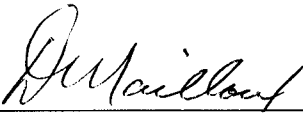
OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

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 October 2001.



MAYOR



CLERK

Certified to be a true copy of By-law No. 2001-46 passed by the Council of the Town of Amherstburg on the 9th day of October, 2001.

CLERK

SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of September, 2001

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, chapter 23, Statutes of Ontario
(referred in this Agreement as "OCWA")

A N D

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

RECITALS

- (a) OCWA is in the business of providing operation and maintenance services for water and wastewater facilities.
- (b) The Client is the owner of the facility more particularly described in Schedule A, (the "Facility") pursuant to a transfer under the Municipal Water and Sewage Transfer Act, 1997.
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Malden Sequential Batch Reactor (SBR) and the Rotary Biological Contactor (RBC) wastewater Facilities, in accordance with the provisions of this agreement (the "Agreement").
- (d) The Client and OCWA (collectively, the "Parties") are entering this Agreement to clarify and set out their respective rights and obligations with respect to the operation, maintenance, invoicing and payment arrangements for the Facilities.
- (e) The council of the Client on the 9 day of OCTOBER, 2001 passed by-law No. 2001-46 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, definitions are set out in Schedule B, or with applicable provisions, as indicated.

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 "C" 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 reasonably recommended by OCWA in the Estimate as described under Section 4.2 below;
- (ii) mechanical failure of any equipment at the Facility unless the mechanical failure is due to negligent 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 or any Applicable 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;
- (v) the quantity of wastewater transmitted to the Facility exceeds the Facility's design capacity or nutrient content that is unable to support the biological process

(b) OCWA may temporarily cease to provide or reduce, the level of provision of Services hereunder in the event of an emergency, a breakdown or any Uncontrollable Circumstance; 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 reasonable 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, the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law or any Applicable 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").

(d) OCWA, in its discretion, may take remedial measures that it determines are reasonably necessary to attempt to maintain compliance with Applicable Laws. Within the context of Section 2, such measures may be beyond the Services and as such, would be part of the Actual Charges incurred pursuant to Section 4.4. OCWA shall use its best efforts to contact the Client and obtain the Client's approval prior to undertaking such remedial measures.

(e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that such remedial measures taken by OCWA may be as a result of an emergency situation or an Uncontrollable Circumstance and that in such situations OCWA's primary concern will be making all reasonable efforts to maintain compliance with Applicable Laws.

Section 2.3 - Excluded Services

Any services not set out in the Services are excluded from this Agreement (the "Excluded Services") and, without limiting the generality of the foregoing, those services set out in Schedule D are examples of 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 - Standard of Care

OCWA shall deliver the Services as would a reasonable operator with like skills in like circumstances.

Section 2.5 - 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 2.6 - 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 in the other party's Authorized Representative.

Section 2.7 - Reporting

OCWA shall provide the following reports to the Client:

- (a) a quarterly report summarizing relevant activities and maintenance operations, actual expenditures, laboratory analyses, treatment results, water quality, sludge utilization and safety activities and any special studies.

Section 2.8 - Indemnification of the Client

OCWA shall exonerate, indemnify and hold harmless the Client, its directors, 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 2.8 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 2.9 - Insurance

- (a) OCWA shall arrange for insurance coverage of the Facility as described in Schedule E to this Agreement (the "Insurance") and, with the exception of automobile insurance, the Client shall be an additional insured under such coverage. If there is a significant change in the insurance coverage described in Schedule E, the Client will be notified of such change.
- (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 or which are Excluded Services that are not the subject of this Agreement. The Client acknowledges that it will have no recourse under OCWA's policies of insurance for any such operations.
- (d) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule E.

Section 2.10 - Representations and Warranties of OCWA

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

- (a) that it has full power and authority and has taken all necessary steps to enter into and perform its obligations under this Agreement; and
- (b) OCWA's staff are trained and capable of carrying out the terms of this Agreement.

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

The Client represents and warrants to OCWA that:

- (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 the authority to pay the Estimate, the Actual Charges, the Management Fee and any other costs that OCWA may incur in performing the Services, when due and payable under this Agreement.
- (b) The Client has passed all necessary by-laws and 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 each of the Authorizations is 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 execution of this Agreement, including a certified copy of each municipal by-law and other approval required to authorize the Client to enter into and perform its obligations under this Agreement.
- (d) As owner of the Facility the Client is fully aware of its responsibilities and obligations and, as part of its due diligence in operating the Facilities, has selected OCWA as operator to provide the Services.

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 and the standards reasonably applicable to an owner of a like facility, 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 - 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 3.3 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 3.3, 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 arose solely as the result of 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, 2001 and shall continue in effect for an initial term of three (3) years (the "Initial Term") and then shall be renewed for successive two year terms unless terminated under Section 6.2 of this Agreement.

Section 4.2 - Estimate

No later than October 31st of each year of the Initial Term, OCWA shall prepare and submit to the Client, for its approval, an estimate of the charges associated with the provision of the Services for the following calendar year, including a list of the Capital Expenditures required for the operation of the Facility for the following year. The Client will inform OCWA no later than December 1st whether the estimate is approved (the approved estimate is referred to as the "Estimate"). The Estimate, shall be OCWA's authorization to incur the expenditures in the Estimate.

Sequential Batch Reactor (SBR):

The Estimate for the first year of the Initial Term is **\$143,342.00**.

Rotray Biological Contactor (RBC):

The Estimate for the first year of the Initial Term is **\$44,086.00**.

Section 4.3 - Payment of the Estimate

The Client shall pay OCWA the Estimate for the Initial Term, in twelve monthly payments, in advance on the first day of each month. Each monthly payment shall be \$11,945.16 and \$3,673.83. The first payments shall be due and payable on September 1, 2001. Payment shall be made by the Client by pre-authorized debit from an account designated by the Client or as agreed to by the Client and OCWA.

Section 4.4 - Reconciliation of the Estimate and Actual Charges

At the end of each calendar year, OCWA will determine the actual charges for providing the Services to the Client for that year (the "Actual Charges"). If the Estimate paid by the Client for the year exceeds the Actual Charges, OCWA will pay the Client the difference within thirty days of OCWA making the determination. If the Actual Charges exceed the Estimate paid by the

Client, the Client shall pay OCWA the difference within thirty days of OCWA notifying the Client in writing of the determination.

Section 4.5 - Other Charges

The Estimate, as reconciled with the Actual Charges, includes all charges associated with providing the Services, except for the following:

- (a) OCWA's Management Fee (as described in Section 4.6 below); and
- (b) Unexpected Expenses (as described in Section 4.7 below).

Section 4.6 - Management Fee

- (a) In addition to payment of the Estimate, as reconciled with the Actual Charges, the Client shall also pay OCWA fixed annual management fees of:

Sequential Batch Reactor (SBR): \$17,920.00.

Rotray Biological Contactor (RBC): \$5,510.00.

(the "Management Fee") for every year of the Initial Term. The Management Fee shall be paid by the Client in twelve equal monthly instalments at the same time and in the same manner as the Estimate.

- (b) The Management Fee in any renewal term shall be as agreed by the Client and OCWA. If the Client and OCWA cannot reach an agreement on the Management Fee for any renewal term within six months of the beginning 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 will pay the Management Fee paid for the last year of the Current Term, as indicated above, pro-rated over the six month period.
- (c) The Management Fee includes all additional charges prescribed by Regulation 157/93 under the Ontario Water Resources Act.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures, including any Capital Expenditures that OCWA reasonably incurs in order to address equipment failure, acts of third parties, or other circumstances beyond OCWA's reasonable control (such as unregulated septic dumping, illegal industrial waste discharges and 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

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, or if a certified cheque payable to the Ontario Clean Water Agency, has not been received, 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 that rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the Financial Administration Act plus any banking and administrative charges.

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 Section 4.8 above, within ten days from the date of final determination.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Mediation

- (a) If a dispute arises between the Client and OCWA which cannot be resolved within a reasonable time, the issue shall be referred to a mediator.
- (b) The fees and expenses of the mediator will be divided equally between the Parties.
- (c) Involvement in mediation is on a without prejudice basis and does not preclude and is not a bar to either Party pursuing whatever legal remedies may be available, including litigation.

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Existing Agreements

- (a) Subject to Paragraph 6.1(b) of this Agreement, any existing agreements between the Client and OCWA or the Client and one of OCWA's predecessors which deals with the subject matter described in this Agreement (an "Existing Agreement") shall be terminated.
- (b) Notwithstanding any other provisions in this Agreement and in particular Paragraphs 6.1(a) 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, the Client shall notify OCWA in writing whether it wishes to renew or terminate this Agreement at the end of the Initial Term or any Renewal Term. If no notice is given as required by this section or the parties do not otherwise agree in writing then the Agreement shall renew for a further two year period ("Renewal Term").
- (b) During the Initial Term or any Renewal Term, this Agreement may be terminated by either the Client or OCWA ("Termination for Cause") if :
 - (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.
- (c) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.2(b) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; or (iii) the Parties have not otherwise agreed in writing, then the complaining party may terminate this Agreement by giving at least six months notice in writing to the other Party.
- (d) If either Party disputes the existence of a breach or that the breach is material, the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (e) After the Initial Term of this Agreement, either the Client or OCWA may terminate this Agreement as follows:
 - (i) for any reason, upon twelve months prior written notice; or
 - (ii) if there has been a material breach of the Agreement, in accordance with the procedure described in Paragraphs 6.2(b) and (c) above and Section 6.3 below.

Section 6.3 - Early Termination

If there has been Termination for Cause, then the terminating party shall be paid its actual costs up to the date of termination. Such costs may include, on the part of the Client, the costs of retendering or hiring a replacement and temporary operator until a permanent operator can be retained, and in the case of OCWA, the costs of demobilization.

Section 6.4 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Actual Charges, Management Fee and any other charges and 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 - INNOVATIONS

Section 7.1 - Innovations

Either Party may bring forward innovative ideas for the operation of the Facility and both parties agree to reasonably consider such innovative ideas.

ARTICLE 8 - GENERAL

Section 8.1 - Year 2000 Compliance

The Client acknowledges and agrees that OCWA shall assume no liability, either directly or indirectly, associated with computer hardware, software and firmware (including without limitation all telecommunications, imbedded systems and premise technology), individually and in combination that are used by each and that may impact on the delivery or the quality of OCWA's obligations under this Agreement that were installed by the Client or was installed while the Client was operating the Facility. This provision is for the benefit of OCWA and is intended to ensure that OCWA is fully protected from all liability of a "Year 2000" or Y2K nature for equipment and systems that are not or were not installed or approved by OCWA. Without limiting the generality of any other indemnity provided herein, the Client agrees to indemnify OCWA for all Claims that are of a "Year 2000" or Y2K nature and related to equipment and systems not installed or approved by OCWA.

Section 8.2 - Agreement to Govern

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

Section 8.3 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA may utilize certain technology developed by or for OCWA, whether existing now or in the future, including but not limited to technology such as WMMS, Outpost 5 and PDC (the "Technology"). The Client further agrees that the use of the Technology at the Facility does not in any way give the Client any ownership rights in or Intellectual Property Rights to, the Technology.

Section 8.4 - 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 8.5 - 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 and agreements between the Client and OCWA with respect thereto except for the provisions of any Existing Agreements that remain in effect in accordance with Section 6.1 of this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement and in the provisions of the Existing Agreements which remain in effect in accordance with Paragraphs 6.1(b) and (c) of this Agreement.

Section 8.6 - Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated April 30, 2001 shall not form part of this Agreement.

Section 8.7 - 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 8.8 - Successors and Assigns

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

Section 8.9 - Survival

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

Section 8.10 - 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 continue to be valid and enforceable.

Section 8.11 - Notices

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
Sandwich Street South
Amherstburg, Ontario N9V 2Z3
Telephone: (519) 736-0012 Fax: (519) 736-5403
Attention: William King, CAO

(ii) if to OCWA:
Ontario Clean Water OCWA
P.O. Box 340
1615 Union Avenue
Ruthven, Ontario N0P 2G0
Telephone: (519) 326-4447 Fax: (519) 326-0450
Attention: Anthony Pizans

- (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; provide, 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 8.11.
- (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 8.12 - 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

11/20/2001
Date of Signing

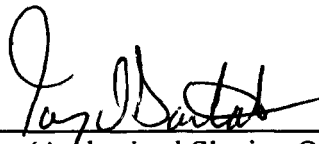
By: 
(Authorized Signatory)

11/1/01
Date of Signing


By: 
(Authorized Signatory)

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Oct 16/01
Date of Signing

By: 
(Authorized Signing Officer)

Oct 16/01
Date of Signing

By: 
(Authorized Signing Officer)

SCHEDULE A

THE FACILITY

Part 1. Description of the Facility

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

Malden area Sequential Batch Reactor (SBR) wastewater treatment facility and associated pumping stations as well as a Rotary Biological Contactor (RBC) wastewater treatment facility.

Part 2. Street Addresses of the Facilities

The street address of each Facility is as follows:

Malden Area McLeod Avenue WPCP (SBR)
458 McLeod Ave.
Amherstburg, ON

Malden Area Big Creek Marsh WPCP (RBC)
187 Lakeside Drive,
Amherstburg, ON

The street address of each pumping station is as follows:

- P.S. #2: 1835 Erie Avenue
- P.S. #3: 187 Lakewood Drive
- P.S. #5: 374 Lakeside Drive

SCHEDULE B

DEFINITIONS

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

"Actual Charges" is defined in Section 4.4 of this Agreement.

"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.

"Applicable Laws" is to be broadly interpreted and means, with respect to any person, property, transaction, event or other matter dealt with in this Agreement, any and all statutes, by-laws, regulations, enactments, ordinances, rules, permits, consents, approvals, certificates of approval, licences, judgments, orders, judicial decisions, common-law rules, decrees, injunctions, agreements, authorizations, regulations, policies, guidelines, directives, objectives, whether federal, provincial or municipal including, but not limited to all laws relating to occupational health and safety matters, fire prevention and protection, health protection and promotion, land use planning, environment, Building Code, or workers' compensation matters.

"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 Representative" is defined in Section 2.6 of this Agreement.

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

"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, (and excluding routine maintenance); any alterations and any associated installations, commissioning, including labour and preselection charges, together with OCWA's service fee.

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

"Current Term" is defined in Paragraph 4.6(b) of this Agreement.

"Estimate" is defined in Section 4.2 of this Agreement.

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

"Existing Agreements" is defined in Paragraph 6.1(a) of this Agreement.

"Facility" means the wastewater treatment facilities as defined in the Background to this Agreement and further described in Schedule A to this Agreement.

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

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

"Insurance" is defined in Paragraph 2.9(a) and further described in Schedule E.

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

"Management Fee" is defined in Paragraph 4.6(a) of this Agreement.

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

"Parties" is defined in the Recitals.

"Parties' Systems" is defined in Paragraph 8.1(a) of this Agreement.

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

"Renewal Term" is defined in Paragraph 6.2(a) of this Agreement.

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

"Technology" is defined in Section 8.2 of this Agreement.

"Termination for Cause" is defined in Paragraph 6.2(b) of this Agreement.

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

"Unexpected Expenses" is defined in Section 4.7 of this Agreement.

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

"Year 2000 Compliant" is defined in Section 8.1 of this Agreement.

SCHEDULE C

THE SERVICES

1. Operating Duties

Subject to the provisions of this Agreement, the Services are those services set out in this Schedule. Specifically, 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 Plant

- inspect process control equipment to ensure proper operation of wastewater treatment tankage, pumps, blower and aeration systems, filters, alum and other chemical feeders;
- check pumping stations to ensure that everything is in order (also take routine readings);
- sound tankage for sludge depth to ensure proper waste rates;
- operate pump controls and valve controls for pumping of all process streams;
- clean grit channels;
- skim contact chambers and settling tanks;
- rake bar screens;
- hose down weirs, walls and channels in wastewater tankage;
- mix and monitor alum feed tanks and other process chemicals; and
- samples as required.

2. Routine Maintenance

OCWA will provide routine maintenance of the Facility as would a reasonable operator. Specifically, OCWA will:

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

3. Capital Improvements

OCWA, acting as a reasonable operator, 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 Sections 4.2 or 4.7 of this Agreement.

4. Optimization and Compliance of Operation

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

OCWA, acting reasonably, is responsible for ensuring an efficient operation of the process and keeping records on a daily basis by:

A. Wastewater Collection and Treatment

- recording and analyzing wastewater flow, electricity used, chemicals used, turbidity, process water and wastewater flow calculations;
- checking chemical feed pumps and return sludge rates, 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 chemicals used, and the sludge hauled;
- performing routine wastewater tests such as suspended solids, BOD, total solids, chlorine residual, dissolved oxygen, 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 or wasting return sludge;
- 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 (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; and
- evaluating methods for reducing peak flows and equalizing flow to treatment plant through 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 Municipality required by Section 4.2 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 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 received training on how to deal with emergency situations should they arise. Staff will continue to receive training on an ongoing basis.
- 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.

8. **Sludge**

The Client acknowledges and agrees that it is responsible for arranging for all aspects of sludge removal, storage and spreading and is required to comply with all relevant Applicable Laws, including but not limited to, any relevant regulatory guidelines on biosolids management and disposal issued by the Ministry of the Environment and any relevant certificates of approval.

SCHEDULE D

EXCLUDED SERVICES

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;
- snow removal at plant, pumping stations;
- high pressure sewer flushing;
- cost for non-routine sampling and lab analysis;
- grass cutting;
- window cleaning;
- cleaning out of digester.

SCHEDULE E

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

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

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

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 15 psi) 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.

Deductibles: \$2,500.

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

Automobile Insurance

Coverage: Automobile Liability.

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

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

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

Deductible: The deductible will be paid by OCWA.

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: \$20,000,000 per occurrence.

Deductible: \$10,000

Where OCWA is negligent the deductible will be paid by OCWA. Where the Client is negligent, the deductible will be paid by the Client. In cases where both OCWA and the Client are negligent the deductible will be divided equally.

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 \$10,000,000.00 per claim or occurrence and aggregate. Coverage provides for on-site clean up of the Facilities.

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

Deductible: \$50,000.

Where OCWA is negligent the deductible will be paid by OCWA. Where the Client is negligent, the deductible will be paid by the Client. In cases where both OCWA and the Client are negligent the deductible will be divided equally.

Where neither the Client nor OCWA is negligent the deductible will be paid as follows:

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