

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2004-09

Being a by-law to authorize the signing of an Operation and Maintenance Agreement for the Boblo Island Wastewater Treatment Plant with the Ontario Clean Water Agency

WHEREAS the Municipal Act, 2001 authorizes Municipalities to pass by-laws in regard to spheres of jurisdiction with Public Utilities being one of the spheres (S.O. 2001 C. 25 S.11(1)) and;

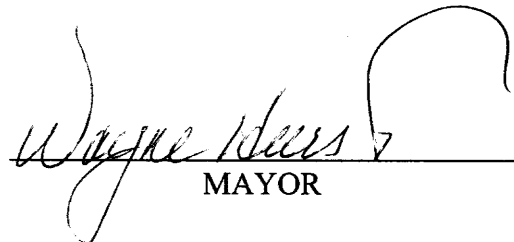
WHEREAS the Corporation of the Town of Amherstburg has taken over the operation and maintenance of the Boblo Island Wastewater Treatment Plant and;

WHEREAS the Town deems it appropriate to contract out the operation and maintenance of the Boblo Island Water Treatment Plant

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

1. That we approve the Services Agreement dated January 1st, 2004 between the Ontario Clean Water Agency and the Corporation of the Town of Amherstburg, attached hereto and forming part of this by-law.
2. That the Mayor & Clerk be authorized to sign the attached agreement and apply the Corporate Seal thereto.

Read a first, second and third time and finally passed on the 9th day of February, 2004.


MAYOR


CLERK

Certified to be a true copy of By-law
No. 2004-09 passed by Council of the
Town of Amherstburg on Feb. 9th, 2004

Clerk

SERVICES AGREEMENT
BETWEEN
ONTARIO CLEAN WATER AGENCY
AND
THE CORPORATION OF THE TOWN OF AMHERSTBURG

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SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of January, 2004,

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.
("OCWA")

A N D

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(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 or beneficial owner of the Boblo Island Wastewater Treatment Plant more particularly described in Schedule A (the "Facility").
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facility 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 Facility.
- (e) The Council of the Corporation of the Town of Amherstburg on the 9th day of February, 2004 passed By-law No. 2004-09 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 – INTERPRETATION

Section 1.1 - Definitions

In this Agreement, definitions are set out in Schedule B, or within applicable provisions as indicated.

Section 1.2 - Interpretation

The rule of construction that a document is to be construed more strictly against the party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation 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 described in Schedule C to this Agreement, in respect of the Facility (the "Services").

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, 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 under Section 4.6 below;
 - (ii) failure of the Client to meet its representations and warranties specified in this Agreement;
 - (iii) mechanical failure of any equipment at the Facility unless the mechanical failure is due to negligent maintenance by OCWA;
 - (v) the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Laws;
 - (vi) the wastewater transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes;
 - (vii) the quantity or quality of wastewater transmitted to the Facility exceeds the Facility's design or operating capacity;
 - (viii) operational upset conditions caused by the acceptance of septage or leachate;
 - (ix) unavailability of approved lands for application of sludge.
- (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. OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of any 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 (an "Uncontrollable Circumstance"), including but not limited to any circumstances set out in Paragraph 2.2(a), 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.
- (d) In the event that a deficiency in connection with the Facility is determined to exist, OCWA, in its discretion, may take remedial measures that it determines are reasonably necessary in attempting to maintain the Facility in compliance with Environmental Laws. Such measures may be beyond the scope of the Services and as such would be subject to extra costs as described in Paragraph 4.5 (f). 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 the Facility in compliance with Environmental 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 to this Agreement are examples of Excluded Services. If the Client subsequently requests OCWA to provide the Excluded Services, the Excluded Services may be provided at additional cost to the Client following negotiation.

Section 2.4 - Standard of Care

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

Section 2.4.1 - Nuisance Abatement

OCWA shall make all reasonable efforts to ensure that odour and noise are effectively controlled while OCWA operates the Facility and that adjacent neighborhoods are minimally disrupted.

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 of the other Party's Authorized Representative.

Section 2.7 - Reporting

Within thirty (30) days of the end of each calendar 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. The report shall include an accounting of expenditures and those details requested by the Client to assist the Client in the preparation of annual operating budgets for the Facility.

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 to the extent that such Claim is caused by OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to a condition of the Facility which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule F. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly. The Client shall be deemed to hold the provisions of this Section 2.8 that are for the benefit of the Client's directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.

Section 2.9 - Insurance

- (a) OCWA shall arrange for and maintain, subject to reasonable availability, 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 the Insurance. If there is a significant change in the Insurance, the Client will be notified of such changes.
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the pre-existing condition of the Facility. As such, OCWA is not required to obtain insurance for this purpose and that the Client has or will obtain its own insurance.

- (c) 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.
- (d) 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.
- (e) 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 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.
- (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 Ministry of the Environment, 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.
- (d) As owner or beneficial owner of the Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility.
- (e) The Client warrants that there are no Pre-existing Conditions existing at the Facility which would affect OCWA's ability to operate the Facility under this Agreement, other

than what is listed in Schedule F. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.

- (f) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facility is in compliance with all Applicable Laws.

Section 3.2 - Covenants of the Client

The Client hereby covenants for the benefit of OCWA:

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.8.
- (b) 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, including but not limited to any engineering report required by regulation or governmental notice or order pertaining to the Facility.
- (c) 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 that belong to or are under the control of the Client and that collect and transmit wastewater to the Facility.
- (d) The Client agrees to: (i) immediately provide OCWA with a copy of all orders which apply to the Facility as they may be issued to the Client by any regulatory agency from time to time; and (ii) commit the necessary resources (financial, technical, legal) to address such orders.
- (e) The Client shall take reasonable steps to ensure that wastewater transmitted to the Facility complies with the Client's sewer use by-law and any Environmental Laws. If requested by OCWA, the Client shall provide OCWA with copies of the Client's inspection reports (sewer usage, cross-connections, sump pump connections) if available.
- (f) The Client shall inform OCWA if the Facility is to accept septage or leachate. The Client shall provide OCWA with a report of a professional engineer indicating that the Facility is capable of handling such additional Loadings. The Client shall provide OCWA with a list of haulers from which OCWA is to accept septage or leachate at the Facility. OCWA shall not be responsible for any operational impacts caused by the septage or leachate. The Client shall be fully responsible for any additional costs incurred as a result of the acceptance of septage or leachate at 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 directors, 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 provisions 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 3.3, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by the Insurance and where the premiums were paid for by the Client; or
 - (ii) to the extent that such 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 December 1, 2003 and shall continue in effect for an initial term of three (3) years and one month, ending on December 31, 2006 (the "Initial Term") and then shall be renewed for successive three (3) year terms in accordance with Section 4.3 and Paragraph 6.1(a), unless terminated under Section 6.2 of this Agreement.

Section 4.2 - Annual Price for Initial Term

- (a) Subject to any adjustments made pursuant to other provisions of this Agreement, 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 December 1, 2003 through to December 31, 2004 inclusive: \$47,448.05.
 - (ii) For Year Two from January 1, 2005 through to December 31, 2005 inclusive: \$45,460.34 plus an adjustment for maintaining the Insurance which is renewed annually by OCWA (if over the CPI adjustment).
 - (iii) For Year Three from January 1, 2006 through to December 31, 2006 inclusive: \$47,241.99 plus an adjustment for maintaining the Insurance which is renewed annually by OCWA (if over the CPI adjustment).

- (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 during November of the previous Year as compared to the CPI of November of the current Year shall be the inflation adjustment for the next Year. For example, the inflation adjustment for Year 2005 is the CPI of November 2004 divided by the CPI of November 2003. The adjustment shall be calculated as soon as necessary information is available from Statistics Canada. In Year Two of the Agreement and subsequent Years, the inflation adjustment shall be added to the Annual Price (less Hydro Costs) for Year One of the Agreement on a cumulative basis.

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 cannot agree in writing on the Annual Price for any Renewal Term within six months of the beginning of the last Year of the Initial Term or Renewal Term, as the case may be, (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 plus an adjustment for inflation calculated as described in Paragraph 4.2(b), 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 Current Term, in twelve monthly payments, in advance, on the first day of each month. Payment shall be made by the Client by pre-authorized bank debit from a bank account designated by the Client or as agreed to by the Client and OCWA. In Year One of the Initial Term, the monthly payment of the Annual Price shall be \$3,649.85. The first payment shall be due and payable on December 1, 2003 and available in the Client's designated bank account on that date.

Section 4.5 - Items not included in the Annual Price

The Annual Price, for each Year of the Initial Term and any Renewal Term, covers all charges for the Services, but does not cover items or matters that are outside the scope of the Services, such as Excluded Services, and without restricting the generality of the foregoing, does not include the following:

- (a) any Capital Expenditures except as set forth in Paragraph 4.6(d) or charges resulting from any failure of the Client to implement reasonably recommended Capital Expenditures;
- (b) additional costs resulting from changes to Environmental Laws or the application thereof. Although certain sections of the *Nutrient Management Act, 2002* (and its regulations) have come into force, the Parties acknowledge and agree that any additional services and associated costs related to meeting the above noted regulatory requirements have not yet been determined as of the date of execution of this Agreement, and therefore such costs have not been included in the Annual Price. OCWA reserves the right to negotiate with the Client to provide such additional services, if any, for additional cost;

- (c) Unexpected Expenses (as defined in Paragraph 4.7(a) below);
- (d) the payment of municipal taxes or municipal grants in lieu of taxes;
- (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; and
- (f) any charges resulting from OCWA having to address an emergency, breakdown or Uncontrollable Circumstance and, without limiting the generality of the foregoing, such charges resulting from those situations addressed in Section 2.2 of this Agreement.
- (g) any charges for repairs and replacement which are covered up to a total of \$5,000 on an annual basis by the Client's repair and replacement fund.

Section 4.6 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items \$5,000.00 or greater in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding routine maintenance); any alterations and any associated installations with a useful life greater than one year, or which add at least one year to the useful life of associated equipment not including OCWA's labour, preselection charges, or service fee.
- (b) Within the first ninety (90) days of the execution of this Agreement, OCWA shall provide the Client with a listing of reasonably recommended Capital Expenditures which OCWA believes will be required for the Facility.
- (c) No later than October 31st of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with an estimate of the Capital Expenditures exceeding \$5,000.00 reasonably required for the operation of the Facility for the following Year as well as for an additional four year period.
- (d) The Client shall pay for all Capital Expenditures, or as instructed by the Client, OCWA will invoice the Client for any Approved Capital Expenditures together with any additional labour costs and supporting documentation and the Client shall pay the invoice within 30 days of receipt.

Section 4.7 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures that OCWA reasonably incurs in order to address equipment failure, acts of third parties, or other circumstances beyond OCWA's reasonable control, including but not limited to 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 within thirty (30) days of 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*, R.S.O. 1990, c.F.12, plus any banking and administrative charges. Continued non-payment shall constitute a material breach under Section 6.1(b).

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

Section 4.10 - Hydro Costs

OCWA is not responsible for paying the hydroelectricity charges. The Client shall pay all hydroelectricity bills.

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 may be referred to a mediator.
- (b) The fees and expenses of the mediator shall 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 - TERMINATION

Section 6.1 - Termination of Agreement

- (a) At least twelve calendar months before the expiry of the Current Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or
 - (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Current Term.

If no notice is given as indicated in Clause 6.1(a)(i) or (ii), or the Parties do not otherwise agree in writing, then the Agreement shall automatically renew for a further five year period ("Renewal Term"). Notice received in the final year of the Current Term must be given at least twelve calendar months before any such date of termination.

- (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;
 - (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 6.1(b) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (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, either the Client or OCWA may terminate this Agreement only as follows:
- (i) in accordance with Section 6.3;
 - (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 6.1(b) above.

Section 6.2 - Early Termination

If this Agreement is terminated prior to expiry of the Current Term, the Client shall pay OCWA for the Services rendered up to the date of termination and OCWA shall pay the Client for any monies owed up to the date of termination in accordance with Section 6.4.

Section 6.3 - 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 or as soon as the Parties may agree. If OCWA no longer operates the Facility at 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 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 6.4 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Annual Price and any other expenses incurred by OCWA and amounts owing by or to the Client under this Agreement no later than ninety days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provide the Client with a final invoice, whichever comes later.

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 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA shall 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 or licensing rights in or Intellectual Property Rights to, the Technology regardless of who funded the Technology.

Section 8.2 - Agreement to Govern

If there is any inconsistency between the main body of this Agreement and any Schedule to this Agreement, the provision in the main body shall govern.

Section 8.3 - 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 8.4 - 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, and conditions, whether collateral, express, implied or statutory, between the Client and OCWA with respect thereto.

Section 8.5 - Proposal not Part of Agreement

OCWA's proposal to the Client to operate the Facility dated October 3, 2003 shall not form part of this Agreement.

Section 8.6 - 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. All amendments shall be attached to this Agreement as a Schedule. 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 8.7 - 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 8.8 - Survival

All representations, warranties and indemnities given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation under Section 8.13, shall survive indefinitely the termination of this Agreement.

Section 8.9 - Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

Section 8.10 - Notices

- (a) All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be properly given if sent by confirmed facsimile or by registered mail postage prepaid, return receipt requested, or by courier, to the parties at their respective addresses as set forth below, or to such other addresses as the parties may advise by like notice. Such notices if sent by facsimile, registered mail or courier shall be deemed to have been given when received.

(i) if to the Client: **Town of Amherstburg**
Box 159
217 Sandwich Street South
Amherstburg, ON

Telephone: **(519) 736-3664**
 Fax: **(519) 736-7080**
 Attention: **Lou Zarlenga, Public Services Manager**

(ii) if to OCWA: **Box 790**
1215 Fort Street
Sarnia, ON N7T 7J9

Telephone: **(519) 344-7420**
 Fax: **(519) 344-4337**
 Attention: **Client Service Representative**

- (b) 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 8.11 - 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.

Section 8.12 - Freedom of Information

The Client understands and agrees that this Agreement and any materials or information provided to OCWA through the performance of the Services may be subject to disclosure under the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended, or as otherwise required by law.

Section 8.13 - Confidentiality and Security

The Parties shall strictly maintain confidential and secure, all material and information provided, directly or indirectly, by the other Party pursuant to this Agreement. Subject to relevant legislation related to freedom of information or the protection of privacy and any other laws, neither Party shall directly or indirectly disclose to any person, either during or following the term of this Agreement, any such material or information provided to it by the other Party without first obtaining the written consent of the Party who provided such material or information, allowing such disclosure.

Section 8.14 - Year 2000 Compliance

The Parties represent and warrant that all proprietary and non-proprietary 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 the delivery or the quality of each Party's respective obligations under this Agreement or the ability each to provide accurate invoicing and payment in respect of the Services (collectively the "Parties' Systems"), shall be "Year 2000 Compliant", meaning that the Parties' Systems are designed to be capable of operating after the calendar year 2000 AD, without error or reduction in performance relating to date data, specifically including any error relating to date data which represents or references different centuries or more than one century.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

11/29/2003
Date of Signing

By: *Dea Lechner*
(Authorized Signing Officer)

12/10/2003
Date of Signing

By: *Gunda Bohn*
(Authorized Signing Officer)

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Date of Signing

By: *Wayne Hurst*
Wayne Hurst, Mayor

FEBRUARY 13/04
Date of Signing

By: *David Mailloux*
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:

Rotating Batch Reactor

A communal sewage treatment facility consisting of one fixed film rotating biological contactor unit, with primary settling tank, rotating biological disk (Envirex Series 300), secondary clarifier, buoyant upflow gravity filter (Bugs Filter) and ultraviolet disinfection treated discharge to the Detroit River, rated for average flow of 258.5 m³/day, on the east side of Bois Blanc Island.

Sewage Lift Stations

Duplex Sewage Lift Pump (East): 8' diameter well consisting of two 600 Volt Meyers Submersible pumps with a capacity of 400 USGPM at 30 feet TDH. With Automatic duplex control with alternating pump start, pump stop, and high level alarm.

Duplex Sewage Lift Pump (West): A well consisting of two 480 Volt Flygt Submersible pumps, inlet screen, with float control and high level alarm.

Part 2. Street Address of the Facility

The location of the Facility is as follows:

Residential Community of Boblo Island
Amherstburg, ON

SCHEDULE B - Definitions

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

“Agreement” means this agreement together with Schedules A, B, C, D, E, F and G 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.

“Applicable Laws” means any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licences, judgments, orders, injunctions, authorizations, directives, whether federal, provincial or municipal including, but not limited to all laws relating to occupational health and safety matters, fire prevention and protection, health protection and promotion, land use planning, environment, Building Code, or workers’ compensation matters.

“Approved Capital Expenditures” is defined in Paragraph 4.6(d) of this Agreement.

“Authorizations” means each of the sewer use and water by-laws, licences, certificates of approval, permits, consents and other authorizations or approvals required under Environmental Laws from time to time in order to operate the Facility.

“Authorized Representatives” 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” 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.

“Environmental Laws” means, any and all statutes, by-laws, regulations, permits, approvals, certificates of approval, licences, judgments, orders, judicial decisions, injunctions, and authorizations related to environmental matters or occupational health and safety and which are applicable to the regulation of the operation of water or wastewater facilities.

“Excluded Services” is defined in Section 2.3 of this Agreement.

“Facility” is defined in Paragraph (b) of the Recitals to this Agreement and further described in Schedule A.

“Hydro Costs” means hydroelectricity costs due to operation of the Facility.

“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.

“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 Paragraph (d) of the Recitals to the Agreement.

“Parties System” is defined in Section 8.14 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.

“Pre-existing Condition” is defined in Section 2.8 of this Agreement.

“Renewal Term” is defined in Paragraph 6.1(a) of this Agreement.

“Services” is defined in Section 2.1 and further described in Schedule C to this Agreement.

“Technology” is defined in Section 8.1 of this Agreement.

“Termination for Cause” is defined in Paragraph 6.1(b) 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.

“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” means the 365 day period from January 1 to December 31 of the calendar year.

“Year 2000 Compliant” is defined in Section 8.14 of this Agreement.

SCHEDULE C - The Services

1. Operating Duties

Subject to the provisions of this Agreement, the Services are those services set out below:

A. Wastewater Treatment Facility

- inspect process control equipment to ensure proper operation of a Rotary Batch Reactor wastewater treatment facility, pumps, blower systems, alum and chemical feeder;
- check pumping stations and forcemains to ensure that everything is in order operationally (also take routine readings);
- operate pump controls and valve controls for pumping of all process streams;
- clean bar screens;
- monitor alum in feed tank;
- check filters as required on a routine basis;
- recording and analyzing wastewater flow, chemicals used;
- 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, chemicals used, and the sludge hauled;
- performing routine wastewater tests such as suspended solids, BOD, total solids, Total Phosphorus, temperature, 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 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 as per the MOE Certificate of Approval and ensuring that they are shipped to the proper labs (analysis to ensure a representative analysis.); and
- ensuring that the operations comply with and fulfill the requirements of the Certificate of Approval and other legal documents.

2. Routine Maintenance

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 preventive maintenance procedures by checking machinery and electrical equipment when required and overhauling equipment when necessary;
- 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. Where reasonable, 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(c) and (d) 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.

5. Regulatory Matters

OCWA shall prepare the Facility for the annual scheduled inspection by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA. Subject to any approvals of the Client required by Paragraph 4.6(c) and (d) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports or negotiate changes to the reports with the regulatory authorities. If any orders are issued by a regulatory authority which will require Capital Expenditures or additional services, OCWA will negotiate with the Client to provide such additional services at additional cost.

6. Staffing

As appropriate, OCWA will staff the Facility with certified operators and other trained staff as required by regulation under Environmental Laws.

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 safety, energy management and how to deal with emergency situations.

OCWA shall provide the Client with a copy of OCWA's annual training program

OCWA shall implement a safety program at the Facility for OCWA staff.

Every Tuesday the Boblo Island facilities will be visited by a certified operator to perform operational and maintenance duties from 08:00 to 12:00 hours.

On the first Tuesday of every month, the maintenance crew will arrive on site to perform the monthly calibrations and maintenance as per OCWA's Work Management System (WMS).

During the hours that the facility is unmanned, staff will be available on a "on-call" basis 24 hours a day seven days a week. The management team are also available 24 hours seven days a week.

OCWA shall provide the Client on an annual basis on the anniversary date of the Agreement with a twelve month schedule of the on-call personnel to be utilized for on-call status. The Client's Manager of Public Services or their designee will be notified of any changes to the schedule.

The following staff positions will form the operational services team:

- Administrative Assistant
- Instrumentation Technician
- Process Compliance Technician
- Maintenance Mechanic
- Senior Operator
- Operator (3)

Management will be provided by the local Operations Manager, Essex West Hub.

OCWA's standard hours of operation are from 0800 hrs. to 1630 hrs., Monday to Friday.

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.

In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.

8. Sludge

The Client acknowledges and agrees that the Client will assume responsibility for arranging for all aspects of sludge removal, storage and spreading and is required to comply with all relevant Environmental 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. OCWA will assist the Client to ensure the sludge from the Boblo Island RBC can be disposed of through the Amherstburg Wastewater Treatment Plant sludge processing system.

9. Maintenance of Grounds

OCWA shall maintain the grounds around the Facility. Snow accumulation will be managed as required.

10. Equipment Maintenance

OCWA shall be responsible for maintaining all manufacturer's warranties on the Client's new and existing equipment at the Client's expense and in assisting the Client at the Client's expense in enforcing existing equipment warranties and guarantees.

OCWA shall provide the Client upon request with full documentation that shows that preventative maintenance is being performed on all Client owned equipment in accordance with manufacturers recommendations.

As part of the equipment maintenance service, OCWA shall create a spare parts inventory.

11. Responsibility for Repairs

OCWA shall notify the Client of the status of the repairs and replacement fund quarterly. The Client's approval will be required for any subsequent expenses in excess of the \$5,000.00 fund limit. Details related to the additional expenses will be provided to the Client by OCWA.

SCHEDULE D - Excluded Services

Services that will not be provided by OCWA include but are not limited to, the following ("Excluded Services"):

- installation and/or inspection of new sewer services;
- cost to prepare the 2003 annual report as per the MOE Certificate of Approval;
- high pressure sewer flushing;
- cost for non-routine sampling and lab analysis;
- providing locates for subsurface infrastructure components;
- responding to regulatory orders issued solely to the Client; and
- sludge removal, storage and spreading.

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:

- Replacement Value (Subject to Annual Reports)
- Extra expenses
- Expediting expenses

Deductibles: For the year 2003, subject to change on annual basis.

All Perils	-	\$50,000 except earthquake and flood
Earthquake	-	\$50,000 (minimum)
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 with Pressure Objects, Production Machines, and Machinery and Service Supply in use or connected ready for use.

Objects: Fired and Unfired Pressure Vessels (Excess of 15PSI) Piping, Production Machinery and Service Supply.

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

Limit: \$60,000,000 per accident.

Deductibles: \$2,500 for the year 2003; subject to change on annual basis.

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 for OCWA owned or leased vehicles.

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

Coverage: Collision

Coverage: Comprehensive

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 Premises, Property, Products and operations of the insured.

Limit: \$20,000,000 per occurrence.

Deductible: \$10,000 for the year 2003; subject to change on annual basis.

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 for the year 2003; subject to change on annual basis

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.

SCHEDULE F - List of Pre-Existing Conditions**List of Pre-existing Conditions**

As per Paragraph 3.1(e) of this Agreement, the following Pre-existing Conditions have been identified:

1. Non-Compliance Issues Related to the Certificate of Approval:

- Sampling - No Composite Samplers on site;
- No back up alum feed pump; and
- Plant Certification Level not posted.

2. Health & Safety Issues:

- No eye wash station at Facility;
- No permanent gas detection and or monitoring at this Facility;
- No potable water service for Facility cleaning & equipment cleaning;
- There is no signage, WHMIS labeling, pipe & valve labeling or flow indication;
- No 911 address signage;
- Entrance way grading at top of stairs unsafe;
- No permanent phone line at Facility for emergency communications or alarm notifications;
- No environmental alarm monitoring or notification on a 24/7 availability; and
- Electrical code compliance verification.

3. Issues Related to O. Reg. 435/93:

- No log book found on site at time of visit;
- No facility SOP/Operation Manual found at Facility;
- No contingency plan found at Facility;
- No as built drawings found at Facility;
- No OIC designated operator documentation at the Facility;
- No maintenance records or manuals found for the Facility;
- No verification of instrument calibrations at the Facility;
- No log books found for sewage stations connected to the system or equipment manuals;
- No posted OH & S, EMS policy at the Facility;
- No operator certification identification posted at the Facility; and
- No sludge management procedures, records & disposal requirements for the Facility.

4. Operational Issues:

- Facility and pumping station(s) have no emergency power supply capabilities;
- UV display will require service;
- chart recorder showing flow while no flow observed on flow mag meter indicator;
- no wire identification / labeling for the pump station at RBC;
- RBC pump station - wiring in pump control panel requires maintenance;
- pressure gauge (0-30 psi.) on compressor in RBC not working;
- West pumping station has a number of structural and equipment deficiencies which will require corrective maintenance:
 - No pull chain for one of the pumps;
 - Small safety platform in wet well appears unsafe;
 - Both pump bases appear to be off center and twisted;
 - Confined space entry design inadequate;
 - No designed pump lifting equipment or structures at site;
 - No environmental alarm system or 24/7 monitoring/notification ability;
 - No 911 address;
 - No log book; and
 - No "as built" drawings or information related to connected sewers and / or force mains.

In order to provide the Client with an assessment of the Facility, the Facility would be reviewed by OCWA's Compliance Branch to ensure that any non-compliance issues can be properly noted and identified prior to assuming operational responsibility based on our current assessment.

SCHEDULE G - Fee Schedule

Fee schedule for the Initial Term of the agreement.

Expenditures	Year 1	Year 2	Year 3	Total
Personnel Services	\$15,000.00	\$15,450.00	\$15,913.50	\$46,363.50
Utilities	\$1,000.00	\$1,030.00	\$1,060.90	\$3,090.90
Chemicals	\$5,100.00	\$5,253.00	\$5,410.59	\$15,763.59
Equipment	\$4,800.00	\$4,944.00	\$5,092.32	\$14,836.32
Materials/Supplies	\$1,000.00	\$1,030.00	\$1,060.90	\$3,090.90
Outside Services	\$3,138.56	\$3,511.27	\$3,950.88	\$10,600.71
Repair & Maintenance	\$5,000.00	\$5,150.00	\$5,304.50	\$15,454.50
Other	\$0.00	\$0.00	\$0.00	\$0.00
Overhead	\$8,759.64	\$9,092.07	\$9,448.40	\$27,300.11
Total	\$43,798.20	\$45,460.34	\$47,241.99	\$136,500.53

The fee for the month of Dec.1, 2003 to Dec.31, 2003 will be \$3,649.85 in addition to the schedule above.