

# AGENDA

## THE FOURTH MEETING OF THE SECONDARY WATER BOARD OF THE CITY OF ST. THOMAS - 2021

MEETING ROOM

THURSDAY  
December 16, 2021

Via TEAMS video conferencing

4:30 P.M.

### DISCLOSURE OF INTEREST

### MINUTES

Confirmation of the minutes of the meeting held on October 14, 2021.

### NEW BUSINESS

COVID-19 Vaccination Policy

### REPORTS

#### EMPS Operations and Maintenance Amending Agreement -

Report SWB07-21 of the Director of Environmental Services and City Engineer.

#### EMPS Joint Occupancy and Use Agreement Elgin-Middlesex Pumping Station -

Report SWB08-21 of the Director of Environmental Services and City Engineer.

### UNFINISHED BUSINESS

None

### Next Meeting

At the Call of the Chair

### ADJOURNMENT

**Directed to:** Members of the Board of Management for the St. Thomas Area Secondary Water Supply System

**Date Authored:**

Nov. 18, 2021

**Meeting Date:**  
December 16, 2021

**Department:** Environmental Services

**Attachment**

**Prepared By:** Justin Lawrence  
Director, Environmental Services, City Engineer

2021-11-12 - EMPS Operation and Maintenance OCWA Amending Agreement

**Subject:** **St. Thomas Area Secondary Water Supply System – EMPS Operations and Maintenance Amending Agreement**

**Recommendation:**

THAT: Report SWB07-21, St. Thomas Area Secondary Water Supply System – EMPS Operations and Maintenance Amending Agreement, be received for information; and further

THAT: The Board Chair and Vice Chair be authorized to sign the Amending Agreement for the Operation and Maintenance of the Elgin Middlesex Pump Station (EMPS) on behalf of the Joint Board of Management.

**Origin:**

The contract with Ontario Clean Water Agency (OCWA) to manage the operation and maintenance of the Elgin Middlesex Pumping Station (EMPS) is up for renewal as of July 1, 2022.

**Analysis:**

OCWA was initially retained on a five (5) year term to operate and maintain the EMPS beginning July 1, 2012. In 2016, the contract was renewed for a 5 year period, ending July 1, 2022. Staff have been in discussion with OCWA to negotiate the specific wording of an amending agreement, subject to Board approval. The attached Amending Agreement has been prepared to grant OCWA the operation and maintenance contract for a 5-year and 6-month term starting on July 1<sup>st</sup> 2022 and ending December 31, 2027. The contract wording allows one additional 5-year renewal term upon completion.

The Elgin Area Primary Water Board has also been discussing a 5.5 year amending agreement and awarded the contract to OCWA at their October 7, 2021 meeting.

A copy of the amending agreement from OCWA is attached for information. The amending agreements overall approach, maintenance details, pricing and defined responsibilities are similar to the previous contract. A provision related to Waiver of Consequential Damages has been added; a provision allowing OCWA to review labour and milage rates on an annual basis, which relates only to Optional Services was added. The definition of CPI adjustment was revised to provide more clarity. Pricing was adjusted by inflation as contemplated in the original agreement.

OCWA has performed well over the course of both of the 5-year terms and received consistent compliance ratings on MECP inspections. Our partners at the EMPS include the Aylmer Secondary Water System and the City of London and they are seeking approval of this agreement after a detailed staff and legal review.



Respectfully Submitted,



Justin Lawrence,  
Director, Environmental Services, City Engineer

---

Reviewed By:

ES

Treasury

HR

City Clerk

City Manager

# AMENDING AGREEMENT

THIS AMENDING AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

B E T W E E N

**ONTARIO CLEAN WATER AGENCY/AGENCE ONTARIENNE DES EAUX**,  
a corporation established under the *Capital Investment Plan Act, 1993, c.23*, Statutes  
of Ontario.

(referred to in this Amending Agreement as “OCWA”)

A N D

**THE CORPORATION OF CITY OF LONDON, AYLMER AREA SECONDARY  
WATER SUPPLY SYSTEM BOARD OF MANAGEMENT and THE ST.  
THOMAS AREA SECONDARY WATER SUPPLY SYSTEM BOARD OF  
MANAGEMENT**

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

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

## **BACKGROUND TO THIS AMENDING AGREEMENT**

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

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

**AND WHEREAS** the Client and OCWA have agreed to amend the Existing Agreement, as described below;

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

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

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

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

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

**Amendments to the Existing Agreement:**

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

**“Section 2.9 - Waiver of Consequential Damages**

In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.”

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

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

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

**“Section 4.1 – Initial Term of Agreement**

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

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

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

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

“**Section 6.2 – Early Termination**

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

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

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

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

“(i) If to the Clients:

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

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

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

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

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

Telephone: (519) 631-1680  
Email: jlawrence@stthomas.ca  
Attention: Director of Environmental Services

With copy to the Regional Water Supply:

Elgin Area Primary Water Supply System  
235 North Centre Road, Suite 200  
London, ON M5X 4E7

Telephone: (519) 930-3505  
Fax: (519) 474-0451  
Email: ahenry@huronelginwater.ca  
Attention: Director, Regional Water Supply

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

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

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

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

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

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

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

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

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

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

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

**Renewal of the Existing Agreement:**

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

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

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

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

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

**ONTARIO CLEAN WATER AGENCY**

\_\_\_\_\_  
Date of Signing By: \_\_\_\_\_  
(Authorized Signing Officer)

\_\_\_\_\_  
Date of Signing By: \_\_\_\_\_  
(Authorized Signing Officer)

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_



\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)

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

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)  
**ST. THOMAS AREA SECONDARY WATER  
SUPPLY SYSTEM BOARD OF MANAGEMENT**

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
By:  
(Authorized Signing Officer)

## **SCHEDULE A - The Facility**

### **OVERVIEW**

This Schedule contains a description of the following:

- Description of existing system
- Description of future capital works
- Description of scope of work

### **DESCRIPTION OF EXISTING SYSTEM**

#### Overview

The Elgin Middlesex Pumping Station is located at 490 South Edgeware Road, northeast of the City of St. Thomas in the Municipality of Central Elgin.

The Elgin Middlesex Pumping Station (EMPS) property and buildings are owned by the Elgin Area Primary Water Supply System Joint Board of Management.

Within the Elgin Middlesex Pumping Station is process equipment owned by the following:

1. City of London
2. Aylmer Area Secondary Water Supply System Joint Board of Management, administered by the Municipality of Malahide
3. St. Thomas Area Secondary Water Supply System Joint Board of Management, administered by the City of St. Thomas

Delineation of the system ownership between the Elgin Area Primary Water Supply System and the other systems is included in the CD/DVD of supporting information that has been provided as part of the *Request for Proposals for Lake Huron & Elgin Area Primary Water Supply Systems Contract Successful Proponent Procurement dated August 2, 2011*, under the folder E3 -Drawings – EMPS.

At present, the Supervisory Control and Data Acquisition (SCADA) system is monitored at the Elgin Area Water Treatment Plant (WTP).

#### City of London Water System

The City of London portion of the EMPS comprises the following:

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

- piping, electrical, mechanical, instrumentation, and SCADA/PLC controls

#### Aylmer Area Secondary Water Supply System

The Aylmer Area Secondary Water Supply System portion of the EMPS comprises the following:

- piping and valves specific to the Aylmer pump trains up to and excluding the flow meter located on the discharge header
- two variable speed centrifugal pumps
- one 600 kW emergency diesel generator (shared with St. Thomas Area Secondary Water Supply System)
- one rechlorination system using chlorine gas (shared with St. Thomas Area Secondary Water Supply System)
- piping, electrical, mechanical, instrumentation, and SCADA/PLC controls

#### St. Thomas Area Secondary Water Supply System

The St. Thomas Area Secondary Water Supply System portion of the EMPS comprises the following:

- piping and valves specific to the St. Thomas pump trains up to and excluding the flow meter
- three variable speed centrifugal pumps
- one 600 kW emergency diesel generator (shared with Aylmer Area Secondary Water Supply System)
- one rechlorination system using chlorine gas (shared with Aylmer Area Secondary Water Supply System)
- piping, electrical, mechanical, instrumentation, SCADA/PLC controls

#### Additional Information

A CD/DVD containing supporting information has been provided as part of the *Request for Proposals for Lake Huron & Elgin Area Primary Water Supply Systems Contract Successful Proponent Procurement dated August 2, 2011*.

#### **DESCRIPTION OF FUTURE CAPITAL WORKS**

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

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

## **“SCHEDULE B - Definitions**

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

**“Agreement”** means this agreement together with Schedules A, B, C, D, E, F, H, I and J attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

**“Annual Price”** is defined in Section 1 under Schedule D of this Agreement.

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

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

**“Authorizations”** means any by-laws, licenses, certificates of approval, permits, consents and other authorizations or approvals required under Applicable Laws from time to time in order to operate the Facility.

**“Authorized Representative(s)”** is defined in Section 2.5 of this Agreement.

**“Best Practices”** means best Operations and Maintenance and management practices as established in accordance with applicable Canadian water utility or industry standards that a prudent and reasonable operator of the Facilities would follow in similar circumstances, having regard to the objectives and terms of this Agreement.

**“Business Days”** means a day other than a Saturday, Sunday or statutory holiday in Ontario.

**“Capital Projects”** is defined in Paragraph 4.7(a) of this Agreement.

**“Change in Applicable Laws”** means the enactment, adoption, promulgation, modification, issuance, repeal or amendment of any Applicable Laws that occur after the date this Agreement is executed by both Parties.

**“Change Order”** means the document shown in Schedule “I” describing the changes to the Agreement agreed to by both parties.

**“Claim”** means any claim, fine, penalty, liability, damages, loss and judgments (including but not limited to, costs and expenses incidental thereto).

**“CPI Adjustment”** means the percentage difference between the Statistics Canada Consumer Price Index, All Items (Ontario) (“CPI”) during September of the previous Year as compared to the CPI (Ontario) of September of the current Year. For example, the CPI Adjustment for Year 2021, is the CPI (Ontario) of September 2020.

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

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

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

**“Effective Date”** is defined on Page 1 of this Agreement.

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

**“ESA”** means the Electrical Safety Authority.

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

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

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

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

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

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

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

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

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

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

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

**“Municipal Drinking Water Licensing Program”** means the MECP’s program which requires owners of municipal drinking water systems to obtain a “municipal drinking water license” (as defined under the SDWA) in accordance with Part V of the SDWA and as part of such process will require owners to: prepare an operational plan and submit the operational plan to the MECP; retain an accredited operating authority; obtain a “drinking water works permit” (as defined in the SDWA); prepare and submit a financial plan in accordance with Part V of the SDWA; and obtain a permit to take water.

**“OHSA”** means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

**“Optional Services”** means any services not included in the Annual Price that the Client and OCWA agree in writing to designate as “Optional Services” subject to Section 4.12.

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

**“Parties”** is defined in Paragraph (d) of the Recitals to the Agreement.

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

**“Pre-existing Condition”** is defined in Schedule F of this Agreement.

**“Regional Water Supply”** is defined as the administrating body for the payment of services and utilities for the Facility. The Regional Water Supply is the Elgin Area Primary Water Supply c/o the Regional Water Supply Division of the City of London, acting in its capacity as Administrator for the Elgin Area Primary Water Supply System in accordance with Transfer

Order Elgin Area W1/1998 (dated November 29, 2000) issued by the Ontario Minister of the Environment. The Client may, at its discretion and acting reasonably, change the entity which acts as the administrating body as identified in this Agreement, subject to the Terms and Conditions of this Agreement, including but not limited to Section 7.10 (Notices).

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

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

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

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

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

“**Services**” is defined in Schedule C of this Agreement.

“**Technology**” is defined in Section 7.1 of this Agreement.

“**Uncontrollable Circumstance**” is defined in Paragraph 2.2(c) of this Agreement.

“**Unexpected Expenses**” is defined in Paragraph 4.8(a) of this Agreement.

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

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

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

## “SCHEDULE C - The Services

### **A. General**

OCWA will use trained, certified operators and professional staff to manage, operate and maintain the systems presented in this Services Agreement to:

- Manage, operate and maintain the systems described in this Schedule
- Comply with all Applicable Laws
- Provide insurance coverage as defined in Schedule E
- Have in place adequate contingency and emergency plans acceptable to the Client and employ a workplace safety program that meets or exceeds provincial standards
- Meet the potable water performance criteria
- Conduct onsite sampling and operational testing as necessary, and sampling and laboratory testing with an accredited laboratory in Ontario
- Maintain a preventive maintenance program for the facilities, which shall include at a minimum:
  - Pump station (internal) valves, and yard/watermain valves exercised at least annually
  - Maintenance and calibration of instrumentation and analyzers
  - Maintenance of backflow prevention and meters
  - Periodic inspection of pumps and associated equipment
- Deliver detailed monthly reports to the Client that demonstrate compliance and support all future planning, including operational activities, maintenance activities, and regulatory compliance, and management system conformance. The frequency of reporting is further described in Schedule G.
- Manage all human resource functions such as payroll, recruitment, termination and employee relations
- Ship and receive (and purchase where applicable) all materials, consumables and supplies related to the operation and maintenance of the Facilities
- Obtain and pay for all software excluding the systems' PLC and HMI (SCADA) software, WaterTrax (laboratory information management system as provided by Regional Water Supply; CMMS license for use by OCWA is OCWA's responsibility)
- Provide 24-hour 7-day per week monitoring of the pumping systems and facilities, and responding to alarms, emergency response, etc. as necessary (based on twenty-four (24) call-outs per full Year)
  - Total number of call outs (24) for the three (3) combined EMPS systems
  - The above noted 24 callouts is an annual total, if callouts are required beyond the total 24 included these will be invoiced to the respective system following process of optional services
- Pay for all maintenance inclusive of pipes and, sandblasting/recoating of equipment, etc., up to and including \$1,000 per single item. Items in excess of \$1,000 will be invoiced to the Client in addition to the Service Fee

Specific components related to the Scope of Services are listed below.



**B. Staffing, Training and Certification**

OCWA will ensure that the Facility is visited by a licensed operator at least once per weekday (Monday to Friday) (excluding Statutory Holidays) for operational checks, includes sampling and testing, equipment operational checks, instrumentation checks, and logbook entries.

OCWA shall respond as necessary to alarms and emergencies.

OCWA shall have discretion to staff the Facility as required to fulfill deliver the Services in accordance with this Agreement and comply with the requirements in the *Safe Drinking Water Act*.

All training and fees required to maintain operator's certification in accordance with Applicable Laws shall be OCWA's responsibility.

**C. Effective Management and Service Levels**

OCWA will perform the Services in compliance with all Applicable Laws in effect at the time of the relevant submission, and as amended from time to time.

**D. Control and Accountability**

OCWA provide complete and comprehensive financial, operational and maintenance details for all activities related to the Facility's functions.

OWCA will deliver frequent formal and informal reporting to the Client, including but not limited to regular contact regarding day-to-day issues, periodic meetings, and timely delivery of all relevant documentation relating to the management, operation and maintenance of the facilities.

**E. Compliance Responsibility**

OCWA will ensure complete and timely compliance with all Applicable Laws.

Compliance activities or Capital Improvements that result from changes in the law or from regulatory intervention will be pre-approved by the Client.

**F. Capital Improvements**

OCWA will record information on the frequency and causes of equipment breakdown and repair prices to determine replacement needs.

OCWA will identify elements of the Facility that require upgrading or improvement and bring these to the attention of the Client with due regard for planning and budgeting requirements. The funding of Capital improvements will be the responsibility of the Client. The Client will have

final approval for any Capital Improvement proposed by OCWA. OCWA shall not rely in any way on the Client's annual capital budgets and acknowledges that the identification of a capital improvement in the Client's capital budgets in no way ensures that the capital improvement will be carried out by the Client.

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

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

#### **G. Asset Protection**

OCWA will be the steward of the Facility on behalf of the Client. OCWA will maintain the Facility based on industry standards for similar facilities, normal wear and tear excluded.

OCWA will maintain and utilize the Client's computerized maintenance management system (CMMS; currently incorporated into the CMMS of the Elgin Area Primary Water Supply System) to control and record all maintenance activities, including but not limited to routine, preventative and breakdown maintenance activities.

OCWA will provide the Client with immediate and complete access to all available information relating to the Facility as well as regular reporting.

#### **H. Operational and Maintenance Duties**

OCWA will perform regularly scheduled inspections and carry out associated operational and maintenance duties at the Facility, including all related equipment, to ensure that the Facility is operated and maintained effectively. OCWA will perform inspection and maintenance duties in accordance with the Operations Manuals for the Facility, as well as the Operation and Maintenance (O&M) manuals developed and provided by the suppliers of the specific equipment.

#### **I. Services Innovation and Improvement**

OCWA will propose innovative strategies to the Client to enhance performance and reduce the overall cost of the Facility's operations without adversely impacting health and safety, or acceptable operating standards.

OCWA will operate and maintain the Facility cooperatively with the Client, including but not limited to the dosage of chlorine for secondary disinfection, and pumping schedules.

The Client will consider cost savings-sharing formula for dealing with savings that result from innovations proposed and implemented by OCWA.

**J. Risk Management**

OCWA will implement risk identification strategies and create, maintain and implement contingency, emergency, and health and safety plans to manage risk for the Client's facilities within OCWA's control under this Agreement.

OCWA will respond to emergency situations within thirty (30) minutes and appropriate staffing will be available within a reasonable amount of time based on the criticality of the emergency/alarm event.

**K. Site Visits**

OCWA will facilitate site visits at the Facility on a periodic basis. Visitors to the Facility will include the Client's staff, MECP staff, maintenance services staff as well as the Health Units' staff.

**L. Potable Water Performance Criteria**

At all times, OCWA will deliver the Services in accordance with the requirements of the *Safe Drinking Water Act*, the Drinking Water Systems Regulation (O. Reg. 170/03) and the Ontario Drinking Water Quality Standards (O. Reg. 169/03), except for Uncontrollable Circumstances.

**M. Sampling and Testing Requirements**

OWCA will perform sampling and testing at the Facility in accordance with the *Safe Water Drinking Act*, the Drinking Water Systems Regulation (O. Reg. 170/03), Municipal Drinking Water Licenses (or Certificates of Approval) and Applicable Laws.

Sampling and testing shall occur for the following three sub-systems separately:

1. City of London
2. Aylmer Area Secondary Water Supply System
3. St. Thomas Area Secondary Water Supply System

**N. Addressing Potential Performance Concerns**

OCWA is committed to maintaining excellent client service and transparent communications regarding the performance of its staff working at the Facility. If the Client has concerns about the work performance of OCWA's staff, these concerns can be forwarded in writing to OCWA's General Manager for the Facility. The Client's concerns about the work performance of OCWA's staff will be thoroughly reviewed with the assistance of OCWA's Human Resources Department, and dealt with on a case-by-case basis. OCWA will apprise the Client of the actions

taken to improve performance. In addressing issues of staff work performance, OCWA will attempt to have a resolution that is satisfactory to both Parties.”

**SCHEDULE D – The Annual Price And Other Charges.**

**1. Annual Price for the Initial Term**

In accordance with Section 4.2 and subject to any adjustments made pursuant to other provisions of this Agreement, the Client shall pay OCWA a price for the Services for each Year of the Initial Term in the following amounts (the “Annual Price”):

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

**2. Payment of the Annual Price**

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

**3. Optional Services**

Unless otherwise agreed to in writing, fees for Optional Services which OCWA agrees to provide to the Client shall be billed directly to the Client on a time and materials basis at the following rates which may be adjusted on an annual basis:

- (a) Labour rates on Business Days, Monday to Friday (0730 to 1600) shall be billed at \$100.00/hour/person for an operations manager; \$90.00/hour/person for a team lead; \$70.00/hour/person for operations and maintenance staff, plus applicable expenses and plus vehicle expenses at \$0.50/km/vehicle;
- (b) Labour rates for after hours and on weekends shall be billed at \$127.50/hour/person for an operations manager and team lead; \$97.50/hour/person for operations and maintenance staff with a minimum four (4) hour charge; plus applicable expenses and plus vehicle expenses at \$0.50/km/vehicle.
- (c) Costs for parts, equipment and supplies, and outside labour charges (i.e., contractors), used by OCWA staff to provide the Optional Services shall be billed to the Client, and the Client will pay such costs together with a Service Fee.

“**Service Fee**” means an additional fee charged to the Client when OCWA purchases materials, supplies, equipment or contractor’s services on behalf of the Client. For any individual item or service purchased, the Service Fee shall be calculated as follows:

- (a) 15% of the first \$10,000; plus
- (b) 10% on the amount from \$10,000 to \$50,000; plus
- (c) 5% on the amount in excess of \$50,000.

For example, the Service associated with a capital project which required \$56,000 in supplies and materials would be \$5,800 (15% x \$10,000 + 10% x \$40,000 + 5% x \$6,000).”

**“SCHEDULE E - Insurance**

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

**Automobile Insurance**

**Coverage:** Automobile Liability for OCWA owned or leased vehicles.

**Limit:** \$5,000,000 per Occurrence

**Commercial General Liability Insurance**

**Coverage:** Third party liability including legal fees, for property damage and/or bodily injury as caused by OCWA’s negligence arising out of OCWA’s operations of the Facilities.

**Limit:** \$5,000,000 per Occurrence.

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

**Contractor’s Pollution Liability/Professional Liability Insurance**

**Coverage:** Professional Liability: To pay on behalf of OCWA sums which OCWA shall become legally obligated to pay as damages and/or claims expense as a result of claims made first against OCWA, and reported to the insurer, in writing during the policy period, automatic extended reporting period (90 days), and by reason of any act, error or omission in professional services rendered or that should have been rendered by OCWA, or by any person for whose acts errors or omissions OCWA is legally responsible, and arising out of the conduct of OCWA’s profession.

Pollution legal liability covering third party property damage and bodily injury and clean up costs for pollution conditions arising out of the performance of the services provided by OCWA.

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

**Limit:** \$5,000,000 per loss on a Claim Made basis for Professional Liability Insurance

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

**“SCHEDULE H – Pricing**

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

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

The Parties agree that the Annual Fee includes:

**Salaries and Benefits** – salaries, on call, ORO

**Transportation and Communication** – data communication, mobile phone, training

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

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

**Costs Included in the Annual Price:**

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

**Costs Excluded from the Annual Price:**

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



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

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

**Directed to:** Members of the Board of Management for the St. Thomas Area Secondary Water Supply System

**Date Authored:**

11/18/2021

**Meeting Date:**

12/16/2021

**Department:** Environmental Services

**Attachment**

**Prepared By:** Justin Lawrence  
Director, Environmental Services, City Engineer

EMPS Joint Occupancy and Use Agreement\_FINAL\_20211112

**Subject:** **Joint Occupancy and Use Agreement Elgin-Middlesex Pumping Station**

**Recommendation:**

THAT: Report No. SWB 08-21 relating to the Joint Occupancy and Use Agreement Elgin-Middlesex Pumping Station be received for information; and further

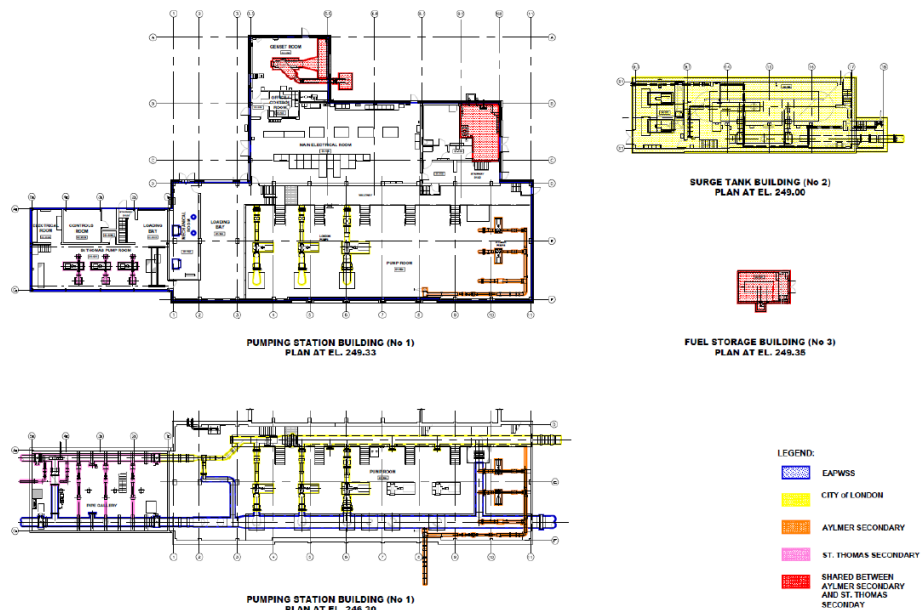
THAT: The Board Chair and Vice Chair be authorized to sign the agreement regarding the Joint Occupancy and Use for the Elgin-Middlesex Pumping Station on behalf of the Joint Board of Management.

**Background:**

The City of St. Thomas, Township of Southwold and Municipality of Central Elgin jointly own the St. Thomas Area Secondary Water Supply System (STASWSS) and the STASWSS portion of the Elgin Middlesex Pumping Station (EMPS).

The STASWSS is comprised of a transmission main (operated by City of St. Thomas Environmental Services Dept.), and a pumping station, located within the Elgin Middlesex Pumping Station (operated by the Ontario Clean Water Agency (OCWA)). Our partners at the EMPS also include the Aylmer Area Secondary Water Supply System, Elgin Area Primary Water Supply System, and the City of London.

A previous version of the agreement has been approved by the St. Thomas Secondary Board, however a number of minor alterations have been made to wording and to further clarify ownership boundaries and responsibilities. The ownership alteration clarified that the suction header within the EMPS building, up to and including the first isolation valve prior to the pumps owned by the Secondary Board would be owned by the Elgin Primary Board. In addition, there were wording changes to further clarify the original intent of the agreement.



The Regional Water Supply (RWS), in its capacity as the administering body for the Elgin Primary Water Supply System has drafted the attached agreement between Elgin, London, St. Thomas and Aylmer outlining the occupancy and use of the Property, the Facility and the EMPS, with the exclusion of the provision of operating services by a contracted operating authority, or the operation of water works by any of the Parties.

This agreement has an effective date of January 1, 2022 and, subject to amendment or termination in accordance with provisions within the Agreement, the Agreement shall continue indefinitely.

**Financial Impact:**

Costs for this agreement have been reviewed in detail and are accommodated within the secondary water rates. The yearly fees that are collected are only spent if projects are completed. So, in the event the fees generate more than is needed each year, then a reserve fund is built up which can only be used at the EMPS on approved projects.

In net terms over the long run, this agreement will not alter the relative shares for water funded through the St. Thomas Area Secondary or the Elgin Area Primary Water Supply Systems.

Respectfully Submitted,



Justin Lawrence,  
Director, Environmental Services, City Engineer

---

Reviewed By:  \_\_\_\_\_  
Treasury      Env. Services      Planning      City Clerk      HR      Other

## Joint Occupancy and Use Agreement Elgin – Middlesex Pumping Station

THIS AGREEMENT made in quadruplicate the \_\_\_\_ day of \_\_\_\_\_, 2021

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON  
(herein after referred to as “**London**”)

AND

THE ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM  
(herein after referred to as “**St. Thomas**”)

AND

THE AYLMER AREA SECONDARY WATER SUPPLY SYSTEM  
(herein after referred to as “**Aylmer**”)

AND

THE ELGIN AREA PRIMARY WATER SUPPLY SYSTEM  
(herein after referred to as “**Elgin**”)

(herein after collectively referred to as the “**Parties**”)

WHEREAS Elgin owns the property municipally known as 490 South Edgware Road in the Municipality of Central Elgin (the “**Property**”) at which Elgin owns, operates and maintains a terminal reservoir and associated appurtenances of Elgin.

AND WHEREAS Elgin owns and maintains a building on the Property known as the Elgin-Middlesex Pumping Station (the “**EMPS**”) that is jointly occupied by London, Aylmer and St. Thomas.

AND WHEREAS London, Aylmer, and St. Thomas jointly occupy the **EMPS** for their operation of pumping stations and associated equipment and appurtenances.

AND WHEREAS Elgin, London, Aylmer, and St. Thomas wish to enter into an Agreement related to the joint occupancy of London, Aylmer, and St. Thomas of the EMPS.

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 parties agree as follows:

## Article 1. INTERPRETATION

### Section 1.1 Purpose and Affect

Elgin, London, St. Thomas and Aylmer agree that the scope of this agreement is limited to the occupancy and use of the Property, the Facility and the EMPS, and excludes the provision of operating services by a contracted operating authority, or the operation of water works by any of the Parties.

### Section 1.2 Definitions

- “Annual Rate” means the cost per square metre of occupancy charged to each of London, Aylmer, and St. Thomas for their respective occupancy of the Elgin-Middlesex Pumping Station.
- “Aylmer” means the Aylmer Area Secondary Water Supply System, supplying water to the Township of Malahide, The Municipality of Central Elgin, and the Town of Aylmer
- “Business Day” means a day other than any holiday as defined in the Interpretation Act (Ontario) and Boxing Day.
- “CMMS” means the Computerized Maintenance Management System owned and utilized by Elgin, and having given authorization for the use of the CMMS for the purposes of tracking work and activities undertaken for the benefit of the EMPS at no cost or liability to Elgin.
- “Elgin” means the Elgin Area Primary Water Supply System
- “EMPS” means the building which contain the pumps and associated equipment of London, Aylmer, and St. Thomas. For clarity, this includes the original pumping station building constructed in about 1967 and the building addition constructed in 1996 and the associated building services, but excludes the Surge Control Building owned by London and the Storage Building jointly owned by Aylmer and St. Thomas.
- “Facility” means the EMPS building, the Surge Control Building owned by London, the Storage Building jointly owned by Aylmer and St. Thomas, the meter chamber owned by St. Thomas, and any building-related services including the sanitary septic system, the HVAC system, and the electrical system.
- “London” means the Corporation of the City of London
- “Property” means the property owned by Elgin located in the Municipality of Central Elgin, municipally known as 490 South Edgeware Road.
- “RWS” means the Regional Water Supply Division of the City of London, seconded to report to and administer Elgin on behalf of the Board of Management for the Elgin Area Primary Water Supply System.

**Joint Use and Occupancy Agreement**  
**Elgin – Middlesex Pumping Station**

---

- “SCADA” means the Supervisory Control and Data Acquisition System. Elgin has authorized the routing of control code from the Aylmer SCADA at the EMPS, the London SCADA at EMPS, and St. Thomas SCADA at EMPS for the purposes and benefit of remote operation of the EMPS from Elgin’s water treatment plant at no cost or liability to Elgin.
- “St. Thomas” means the St. Thomas Secondary Water Supply System, supplying water to the city of St. Thomas, the Municipality of Central Elgin, the Township of Southwold, and the Municipality of Dutton Dunwich.
- "Uncontrollable Circumstance" means any event or condition which materially alters the rights and obligations of the Parties under this Agreement, or the management, operation or maintenance of the Facility, or the EMPS, which is beyond the reasonable control of or could not reasonably be anticipated by the Party relying thereon as justification for a delay in or non-performance of any obligation of such Party pursuant to this Agreement and shall include but not be limited to:
- i. an act of God, landslide, lightning, earthquake, hurricane, flood, tornado or other natural disaster, fire, explosion, acts of public enemy, terrorism, war, blockade, sabotage, insurrection, riot or public disturbance;
  - ii. an order of any court, administrative or governmental agency of competent jurisdiction which has not been made as a result directly or indirectly of the actions or inaction of Elgin, London, St. Thomas, and/or Aylmer. This specific provision shall be construed strictly against the Party seeking to so rely to excuse non-performance or delay;
  - iii. a Change of Laws. This specific provision be construed strictly against the Party seeking to so rely to excuse non-performance or delay;
  - iv. loss or inability to obtain service from a utility;
  - v. provided, however, that a failure by a Party to perform its obligations under this Agreement arising from or related to such Party's insufficient cash flow or its economic or financial condition generally, shall not constitute an Uncontrollable Circumstance

**Section 1.3 Term, Amendment and Termination**

The Parties agree that this agreement has an effective date of January 1, 2022 and, subject to amendment or termination in accordance with this Section, this Agreement shall continue indefinitely.

This Agreement may be amended from time to time by mutual agreement of the Parties. No amendments to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.

Any Party shall have the right to terminate this Agreement. The terminating Party shall provide twelve (12) months written Notice of Termination to the Parties pursuant to [Section 9.9](#) of this Agreement.

### **Section 1.4 Identification of Sole Ownership – Elgin**

The Parties acknowledge that Elgin is the sole owner of the Property, the two cells of the reservoir on the Property, the valve house on the Property, the swab-catch and settling pond on the Property, the overflow and drain from the reservoir, the site drainage and runoff, the associated piping and appurtenances associated with the transmission pipeline to the Property, and the EMPS and associated building-related services on the Property but excluding the pumps and related equipment owned and operated by London, Aylmer, and St. Thomas.

In addition, the Parties acknowledge that Elgin owns:

- the water meter on the discharge piping after the pumps at the Facility that is associated with St. Thomas;
- the water meter on the discharge piping after the pumps at the Facility that is associated with Aylmer;
- the water meter on the discharge piping after the surge tanks in the Surge Control Building that is associated with London;
- the discharge piping from the reservoir outlet and the suction header up to and including the first isolation valve on the suction header within the EMPS;
- The driveway, perimeter fence, and landscaping of the Property;
- The 25m (approximate) communications tower;
- The electrical substation supplying power to the Facility;
- The EMPS building-related services including septic system, HVAC, overhead crane, and exterior lighting

The Parties further acknowledge that Elgin does not own, in whole or in part, and has no obligations, except where specifically identified within this Agreement, with respect to assets identified as solely or jointly owned by London, St. Thomas or Aylmer, including but not limited to the Surge Control Building and related assets owned by London, and the Storage Building jointly owned by Aylmer and St. Thomas that was previously used for the storage of diesel fuel for the backup generator.

For greater clarity, the assets on the Property which are owned by Elgin are identified in [Schedule A](#) of this Agreement.

### **Section 1.5 Identification of Sole Ownership – London**

The Parties acknowledge that London is the sole owner of the pumps generally referred to as #4, #5, and #6, including their associated electrical systems, controls and appurtenances, the transmission pipeline from the discharge header of London's pumps in the EMPS to London's water distribution system, and the Surge Control Building including all equipment within the building, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by London are identified in [Schedule A](#) of this Agreement, and the assets within the Facility which are owned by London are identified in [Schedule B](#) of this Agreement.

### **Section 1.6 Identification of Sole Ownership – St. Thomas**

The Parties acknowledge that St. Thomas is the sole owner of the pumps generally referred to as #1, #2, and #3, including their associated electrical systems, controls and appurtenances, and the transmission pipeline from the discharge header of St. Thomas' pumps in the EMPS to St. Thomas's water transmission system, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by St. Thomas are identified in [Schedule A](#) of this Agreement, and the assets within the EMPS which are owned by St. Thomas are identified in [Schedule B](#) of this Agreement.

### **Section 1.7 Identification of Sole Ownership – Aylmer**

The Parties acknowledge that Aylmer is the sole owner of the pumps generally referred to as #7, and #8, including their associated controls and appurtenances, and the transmission pipeline from the EMPS to Aylmer's water transmission system, except the water meter owned by Elgin.

For greater clarity, the assets on the Property which are owned by Aylmer are identified in [Schedule A](#) of this Agreement, and the assets within the EMPS which are owned by Aylmer are identified in [Schedule B](#) of this Agreement.

### **Section 1.8 Identification of Joint Ownership**

#### **1. *Rechlorination System***

The Parties acknowledge that Aylmer and St. Thomas jointly own a rechlorination system within the EMPS, including associated electrical systems, controls and appurtenances, which benefit Aylmer and St. Thomas.

#### **2. *Backup Generator***

The Parties acknowledge that Aylmer and St. Thomas jointly own a backup generator within the EMPS, including associated electrical systems, controls, fuel storage tank, and appurtenances, which benefit Aylmer and St. Thomas.

#### **3. *Diesel Fuel Storage Tank***

The Parties acknowledge that Aylmer and St. Thomas jointly own an above-ground diesel fuel storage tank located outside the EMPS for the Backup Generator, which benefit Aylmer and St. Thomas.

#### **4. *Storage Building***

The Parties acknowledge that Aylmer and St. Thomas jointly own the building which formerly contained an above-ground fuel storage tank. The fuel storage tank was previously decommissioned and removed by Aylmer and St. Thomas, and the fuel tank replaced with an above-ground storage tank located exterior to the EMPS. The building is currently used for storage of materials and equipment associated with Aylmer and/or St. Thomas.

For greater clarity, the assets on the Property which are jointly owned by London, St. Thomas and/or Aylmer are identified in [Schedule A](#) of this Agreement, and the assets within the Facility which are jointly owned by London, St. Thomas, and/or Aylmer are identified in [Schedule B](#) of this Agreement.



## **Article 2. Operation and Maintenance of the Terminal Reservoir and Property**

### **Section 2.1 Site Security**

London, Aylmer, and St. Thomas acknowledge and agree that the Property, the Facility, and the EMPS (as applicable) will be secured by Elgin's master key and/or access control system. Monitoring of the site security, including any existing door-switches and motion sensors, will be undertaken by Elgin.

Elgin agrees to allow unrestricted access by London, Aylmer, and St. Thomas to the Facility and the EMPS, including the Operating Authority of London, Aylmer, and St. Thomas, subject to reasonable security protocols implemented by Elgin.

The Parties agree that unrestricted access is not granted to London, Aylmer, and St. Thomas to the two cells of the reservoir on the Property, the valve house on the Property, the swab-catch and settling pond on the Property, the overflow and drain from the reservoir, the associated piping and appurtenances associated with the transmission pipeline to the Property.

### **Section 2.2 Property Maintenance**

Further to [Section 1.4](#), Elgin is responsible for maintaining the Property including snow removal, pavement maintenance, perimeter fencing, grass cutting and landscaping.

### **Section 2.3 Property Taxes**

Elgin is responsible for paying Property Taxes, or payments in lieu of taxes, to the municipality with respect to the Property and Facility.

## **Article 3. Operation and Maintenance of the Elgin-Middlesex Pumping Station and the Facility**

### **Section 3.1 Maintenance and Repair of the EMPS Building and Building-Related Assets**

Elgin shall be responsible for the maintenance and repair of the EMPS building and building-related assets, including the building HVAC, exterior building lighting, septic system, and electrical substation and excluding the motor control centres and related electrical systems associated with London, Aylmer and St. Thomas.

### **Section 3.2 Maintenance and Repair of Pumps and Associated Equipment**

Notwithstanding [Section 2.1](#), London, Aylmer, and St. Thomas shall each be responsible for maintaining and repairing all assets related to their respective pumps and associated equipment.

### **Section 3.3 Maintenance and Repair of Jointly Owned Assets**

Prior to undertaking the maintenance or repair of jointly owned assets, the joint owners of the asset shall agree in writing to the apportionment of all related costs associated with the repair. [Schedule C](#) of this Agreement may be used as a guide with regard to the apportionment of costs.

### **Section 3.4 Supervisory Control and Data Acquisition**

London, Aylmer, and St. Thomas are each responsible for their respective SCADA systems, including but not limited to the programmable logic controllers (PLC) and human-machine interface (HMI), or other similar control-related equipment, at the EMPS.

If London, Aylmer, and St. Thomas use the same operating authority for the operation of the EMPS that is used by Elgin, Elgin hereby consents to allowing the remote operation of the EMPS to be routed through Elgin's SCADA system and remotely controlled at the Elgin water treatment plant. London, Aylmer and St. Thomas further agree that any routed controls through Elgin's SCADA system shall comply with the network security requirements of Elgin, and any cost associated with adding, maintaining, modifying, or deleting the control routing and associated programming will be at the cost of London, Aylmer, and St. Thomas.

### **Section 3.5 Computerized Maintenance Management System**

If London, Aylmer, and St. Thomas use the same operating authority for the operation of the EMPS that is used by Elgin, Elgin hereby consents to allowing the use of Elgin's CMMS for managing and maintaining the work records associated with the EMPS. The utilization of Elgin's CMMS will be at no cost to London, Aylmer, and St. Thomas.

Notwithstanding the forgoing, any cost associated with the addition of assets, modification of asset data or work schedule, or exportation of data related to assets owned or jointly owned by London, Aylmer and/or St. Thomas, including costs associated with licencing and using Elgin's CMMS, shall be at the cost of London, Aylmer, and St. Thomas.

### **Section 3.6 Coordination of Operating Authority**

London, Aylmer, St. Thomas, and Elgin agree to coordinate the activities of the respective operating authorities for work undertaken at the EMPS, the Facility, and the Property.

### **Section 3.7 Payment of Operating Expenses**

London, Aylmer, and St. Thomas authorize and delegate to the RWS the authority to approve, pay, and recover the regular, reoccurring operational costs incurred with respect to the operation of the EMPS. For further clarity, RWS shall undertake payment of the following regular reoccurring operating expenses on behalf of London, Aylmer, and St. Thomas:

- If the operating authority used by London, Aylmer, and St. Thomas is the same as the operating authority of Elgin, the monthly Service Fee from the operating authority for the operation of the EMPS and the Facility on behalf of London, Aylmer, and St. Thomas
- Electricity
- Natural Gas

All other fees and charges will be paid by London, Aylmer and/or St. Thomas for materials, services and supplies related to the Facility and the EMPS.

## **Joint Use and Occupancy Agreement**

### **Elgin – Middlesex Pumping Station**

---

In lieu of Elgin paying and providing other services under this Agreement, London, Aylmer, and St. Thomas agree that Elgin will not be allocated costs associated with electricity. London, Aylmer and St. Thomas are not obligated to pay for other operating expenses associated with the remainder of the Property and Facility, including but not limited to property maintenance and payment of property taxes.

### **Section 3.8 Allocation of Operating Expenses**

On a monthly basis, RWS will invoice to London, Aylmer, and St. Thomas for the regular reoccurring operational expenses paid by RWS on behalf of London, Aylmer, and St. Thomas as authorized in [Section 3.7](#). The regular reoccurring operational expenses shall be apportioned to each of London, Aylmer, and St. Thomas proportionate to the respective occupancy and/or material utilization.

For greater clarity, the allocation of common operating expenditures which have been authorized for payment are outlined in [Schedule C](#) of this Agreement.

### **Section 3.9 Payment for Occupancy**

#### *1. Annual Rate Charged for Occupancy*

On or before January 1, 2022 and by January 1st every 5 years thereafter, Elgin will notify each of London, Aylmer, and St. Thomas the Annual Rate charged to each of London, Aylmer and St. Thomas for their respective occupancy of the EMPS.

#### *2. Dedicated Reserve Fund*

Revenue from the Annual Rate charged to each of London, Aylmer, and St. Thomas will be placed in a dedicated Reserve Fund which will be used as a source of finance for maintenance, repairs and the renewal of the EMPS building and building-related assets. The dedicated Reserve Fund shall not be used for any other purpose than the maintenance, repair and renewal of the EMPS building and building-related assets, which may include principle and interest payments for debentures and/or intra-Fund loans issued for this purpose.

#### *3. Asset Management Plan*

Starting in 2020 and every five-years thereafter, Elgin will update the Asset Management Plan which will form the basis of establishing the long-term financial requirements for the maintenance, repairs and renewal of the EMPS building and building-related assets. The Annual Rate set by Elgin shall be sufficient to ensure the long-term financial requirements necessary are available in the dedicated Reserve Fund for the EMPS.

## **Article 4. Undertaking Repairs and Capital Investments**

### **Section 4.1 Repairs to Sole-Owned Assets**

Where a Party is the sole owner or has the sole care and control of an asset, that respective Party is responsible for any Repair of any asset beyond that which may be included in a service agreement with a contracted operating authority, including the cost of the Repair. That Party is responsible for the coordination of the operating authority and any contractor utilized for the Repair, with the activities undertaken by the other Parties.

## **Section 4.2 Repairs to Jointly Owned Assets**

Where an asset is jointly owned, the Parties which jointly own the asset are collectively responsible for any Repair of the jointly owned asset, beyond that which may be included in a service agreement with a contracted operating authority. The Parties which jointly owned the asset are collectively responsible for the coordination of the operating authority and any contractor utilized for the Repair, with the activities undertaken by the other Parties.

## **Section 4.3 Capital Improvements**

The Parties are separately entitled to undertake capital improvements at the Facility, including the replacement of existing assets or the construction and installation of new assets, subject to [Section 7.1](#) and [Section 7.2](#) of this agreement. The capital improvement is the sole responsibility of the Party, including but not limited to financing, project management, project coordination with other Parties, permits and approvals.

If a capital improvement will be jointly owned by two or more of the Parties, the Parties must agree in writing, prior to undertaking the project, the allocation of the anticipated costs.

The Parties are not entitled to remove, replace, alter, or otherwise modify any asset to which they are not the sole owner without the express written permission of the asset's owner or joint owners.

## **Article 5. Representations, Warrantees and Covenants**

### **Section 5.1 Representations, Warrantees and Covenants of Elgin**

*1. Authority to Contract.*

Elgin warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

*2. Provision of Information.*

Elgin shall use reasonable care to prepare and supply to St. Thomas, London, and/or Aylmer, for the benefit of itself or themselves of any report or information required hereunder.

*3. Skilled Personnel.*

Elgin represents and warrants to St. Thomas, London, and Aylmer that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

*4. Construction and Maintenance.*

Elgin covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of Elgin at the Facility and on the Property.

5. *Access.*

Elgin covenants and agrees to allow unrestricted access to London, Aylmer, and St. Thomas to the Property and the Facility in accordance with [Section 2.1](#) of this Agreement.

**Section 5.2 Representations, Warrantees and Covenants of London**

1. *Authority to Contract.*

London warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. *Provision of Information.*

London shall use reasonable care to prepare and supply to Elgin, Aylmer, and/or St. Thomas, for the benefit of itself or themselves of any report or information required hereunder.

3. *Skilled Personnel.*

London represents and warrants to Elgin, Aylmer, and St. Thomas that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

4. *Construction and Maintenance.*

London covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of London at the Facility.

5. *Use of the Property.*

London covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

**Section 5.3 Representations, Warrantees and Covenants of Aylmer**

1. *Authority to Contract.*

Aylmer warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

2. *Provision of Information.*

Aylmer shall use reasonable care to prepare and supply to Elgin, London, and/or St. Thomas, for the benefit of itself or themselves of any report or information required hereunder.

3. *Skilled Personnel.*

Aylmer represents and warrants to Elgin, London, and St. Thomas that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

**Joint Use and Occupancy Agreement  
Elgin – Middlesex Pumping Station**

---

**4. Construction and Maintenance.**

Aylmer covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of Aylmer at the Facility.

**5. Use of the Property.**

Aylmer covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

**Section 5.4 Representations, Warrantees and Covenants of St. Thomas**

**1. Authority to Contract.**

St. Thomas warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.

**2. Provision of Information.**

St. Thomas shall use reasonable care to prepare and supply to Elgin, London, and/or Aylmer, for the benefit of itself or themselves of any report or information required hereunder.

**3. Skilled Personnel.**

St. Thomas represents and warrants to Elgin, London, and Aylmer that they have, and any employee or other person that they may retain to help perform services hereunder, will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

**4. Construction and Maintenance.**

St. Thomas covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with any good engineering practice and applicable law, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the care and control of St. Thomas at the Facility.

**5. Use of the Property.**

St. Thomas covenants and agrees to not utilize the Property without the express written permission of Elgin, except where permitted to by this Agreement.

## **Article 6. Liability, Indemnity, and Insurance**

### **Section 6.1 Indemnification of London, Aylmer, and St. Thomas by Elgin**

Elgin shall indemnify and hold London, Aylmer, and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of Elgin, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Elgin.

### **Section 6.2 Indemnification of Elgin, Aylmer, and St. Thomas by London**

London shall indemnify and hold Elgin, Aylmer and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of London, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of London.

### **Section 6.3 Indemnification of Elgin, London, and St. Thomas by Aylmer**

Aylmer shall indemnify and hold London, Elgin and St. Thomas, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of Aylmer, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Aylmer.

### **Section 6.4 Indemnification of Elgin, London, and Aylmer by St. Thomas**

St. Thomas shall indemnify and hold London, Aylmer and Elgin, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of St. Thomas, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of St. Thomas.

### **Section 6.5 Waiver of Consequential Damages**

In no event shall the Parties be liable to each other, and each party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

### **Section 6.6 Uncontrollable Circumstances**

In the event that performance of this Agreement in the reasonable opinion of a Party is made impossible by reason of an Uncontrollable Circumstance, and if a Party seeks to rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as grounds for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall:

1. Provide prompt notice to the other Party of the occurrence of the act, event or condition as soon as reasonably practicable after the Party first knew of such occurrence and give an estimation of its expected duration and the probable impact on the performance of its obligations hereunder,
2. Exercise all reasonable efforts to continue to perform its obligations hereunder,
3. In accordance with this Agreement, as expeditiously as reasonably practicable take action to correct or cure the act, event or condition preventing its performance,
4. Exercise all reasonable efforts to mitigate or limit damages to the other Party, and
5. Provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability *to perform*,

Except as expressly provided under the terms of this Agreement, no Party to this Agreement shall be liable to the other Parties for any loss, damage, delay, default, or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

## **Article 7. Changes and Amendments to the Agreement**

### **Section 7.1 New Equipment and Processes**

Where a capital improvement is undertaken by London, Aylmer and/or St. Thomas in the EMPS that results in a change in their respective occupancy of the EMPS or Facility, or results in a change in their consumption of natural gas or electricity, the [Schedule C](#) of this agreement shall be reviewed and if necessary revised with respect to the allocation of costs based on occupancy and/or utilization.

Any amendments or changes to [Schedule C](#) shall be agreed upon in writing by the Parties.

### **Section 7.2 New Buildings or Building Additions**

Buildings or other permanent structures shall not be extended or added to the Property by London, Aylmer, and/or St. Thomas without the express written permission of Elgin.



### **Section 7.3 Material Changes to the Agreement**

A Party must provide Notice to the other Parties upon the initiation of a project or undertaking which may materially affect the allocation of costs, and/or coordination of operational responsibilities, and/or ownership or joint ownership of assets.

Any Party may request that the Agreement and/or Schedules be reviewed by the Parties upon significant changes to processes and equipment at the Facility that materially affect the allocation of costs, and/or coordination of operational responsibilities, and/or ownership or joint ownership of assets.

### **Section 7.4 Renegotiation of the Agreement**

Any Party can give Notice to the other Parties requesting a review and renegotiate the terms and conditions of the Agreement at any time. The Notice must include, at a minimum: (1) identification of proposed changes to the process/equipment, (2) anticipated impact on the agreement, and (3) proposed changes/amendments to the agreement.

A Notice of request to review and amend the Agreement and/or Schedules must be submitted to the Parties in writing. The Parties agree to meet within a reasonable timeframe to discuss proposed amendments to the Agreement and/or Schedules.

All Parties must respond in writing to the notifying Party within 14 days of the Notice, specifying their acceptance of the proposed changes or the timeframe for which the negotiations are to take place.

All changes or amendments to this Agreement must be rendered in writing.

## **Article 8. Health and Safety**

### **Section 8.1 Asbestos**

Elgin will maintain and update at least annually an asbestos inventory of the EMPS, and provide an updated inventory to each of London, Aylmer and St. Thomas. Elgin is responsible for the maintenance, repair and abatement, if and as applicable, of asbestos containing materials that is associated with the EMPS building and building-related assets.

London, Aylmer, and St. Thomas will immediately notify Elgin of any damage observed to asbestos containing substances related to construction or operational activities undertaken by London, Aylmer and/or St. Thomas.

Each of London, Aylmer, and St. Thomas are responsible for the maintenance, repair and abatement, if and as applicable, of asbestos containing materials associated with their pumps and associated equipment.

### **Section 8.2 Notification of Designated Substances**

Elgin, London, Aylmer, and St. Thomas acknowledge and agree that each of Elgin, London, Aylmer, and St. Thomas, individually, are each responsible for the notification of designated substances to the Parties, their operating authority, and any contractor undertaking a Repair or Capital Investment on their behalf at the EMPS and the Facility.

## **Article 9. General Provisions**

### **Section 9.1 Dispute Resolution.**

If a dispute arises between the parties, the parties agree that the Dispute Resolution Process outlined in [Schedule D](#) shall be used.

### **Section 9.2 Applicable Law.**

This Agreement and its interpretation shall be governed by the laws of the Province of Ontario.

### **Section 9.3 Headings.**

The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

### **Section 9.4 Entire Agreement.**

This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No oral agreement or conversation with any officer, agent or employee of Elgin, London, Aylmer and/or St. Thomas, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained.

### **Section 9.5 Enurement and Assignment.**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns.

### **Section 9.6 Survival.**

Wherever this Agreement contains an express obligation by one or more Parties to indemnify any other Party, such obligation to indemnify shall survive the completion or termination of this Agreement and continue in full force and effect.

### **Section 9.7 Severability.**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

### **Section 9.8 Waiver.**

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

**Section 9.9 Notices.**

**1. Delivery Mode and Address.**

Any Notice required to be or may be given or made by one of the parties hereto to the other, it shall be in writing and shall be delivered in person, transmitted by facsimile, transmitted by e-mail, or similar means of recorded electronic communication, or sent by ordinary or registered mail to the respective addresses of the parties hereto:

If to Elgin:

The Elgin Area Primary Water Supply System  
235 North Centre Road, Suite 200  
London, Ontario N5X 4E7

Attention: Director – Regional Water  
Phone: (519) 930.3505 ext.1355  
Facsimile: (519) 474.0451  
eMail: GENERAL@HuronElginWater.CA  
and copied to: AHENRY@HuronElginWater.CA

If to London:

The Corporation of the City of London  
300 Dufferin Avenue  
London, ONT N6A 4L9

Attention: Kelly Scherr, Deputy City Manager – Environment & Infrastructure  
Phone: (519) 661-2489, ext. 2391  
Facsimile: (519) 661-2354  
eMail: KSCHERR@LONDON.CA

If to Aylmer:

The Aylmer Area Secondary Water Supply System  
c/o The Corporation of the Township of Malahide  
87 John Street South  
Aylmer, ONT N5H 2C3

Attention: Chief Administrative Officer / Clerk  
Phone: 519-773-5344 ext.225  
Facsimile: 519-773-5334  
eMail: MALAHIDE@MALAHIDE.CA

**Joint Use and Occupancy Agreement  
Elgin – Middlesex Pumping Station**

---

If to St. Thomas:

The St. Thomas Area Secondary Water Supply System  
c/o the Corporation of the City of St. Thomas  
PO Box 520, 545 Talbot Street  
St. Thomas, ONT N5P 3V7

Attention: Justin Lawrence, City Engineer  
Phone: (519) 631-1680 x.4165  
eMail: JLAWRENCE@STTHOMAS.CA

2. Time of Delivery.

Any such Notice 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), or if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other events which might reasonably be expected to disrupt the delivery of document by mail, any notice hereunder shall be delivered or transmitted by means of recorded electronic communications as aforesaid.

**Section 9.10 Counterparts: Electronic Copies**

This Agreement may be executed by two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic or email exchange bearing the copies of a party's signature shall constitute a valid and binding execution and delivery of this Agreement by such party. Such electronic copies shall constitute enforceable original documents.

**[The remainder of this page intentionally left blank]**

**Joint Use and Occupancy Agreement  
Elgin – Middlesex Pumping Station**

---

**IN WITNESS WHEREOF** Elgin, London, St. Thomas and Aylmer have caused this Agreement to be executed by the affixing of their proper seals attested by the signature of the proper persons duly authorized in that behalf.

**THE ELGIN AREA PRIMARY WATER SUPPLY SYSTEM**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chief Administrative Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**THE AYLMER AREA SECONDARY WATER SUPPLY SYSTEM**

\_\_\_\_\_  
Mayor, Township of Malahide

\_\_\_\_\_  
CAO/Clerk, Township of Malahide

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**THE ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM**

**Joint Use and Occupancy Agreement**  
**Elgin – Middlesex Pumping Station**

---

---

Chair, St. Thomas Area Secondary  
Water Supply System Joint Board of  
Management

---

Date

---

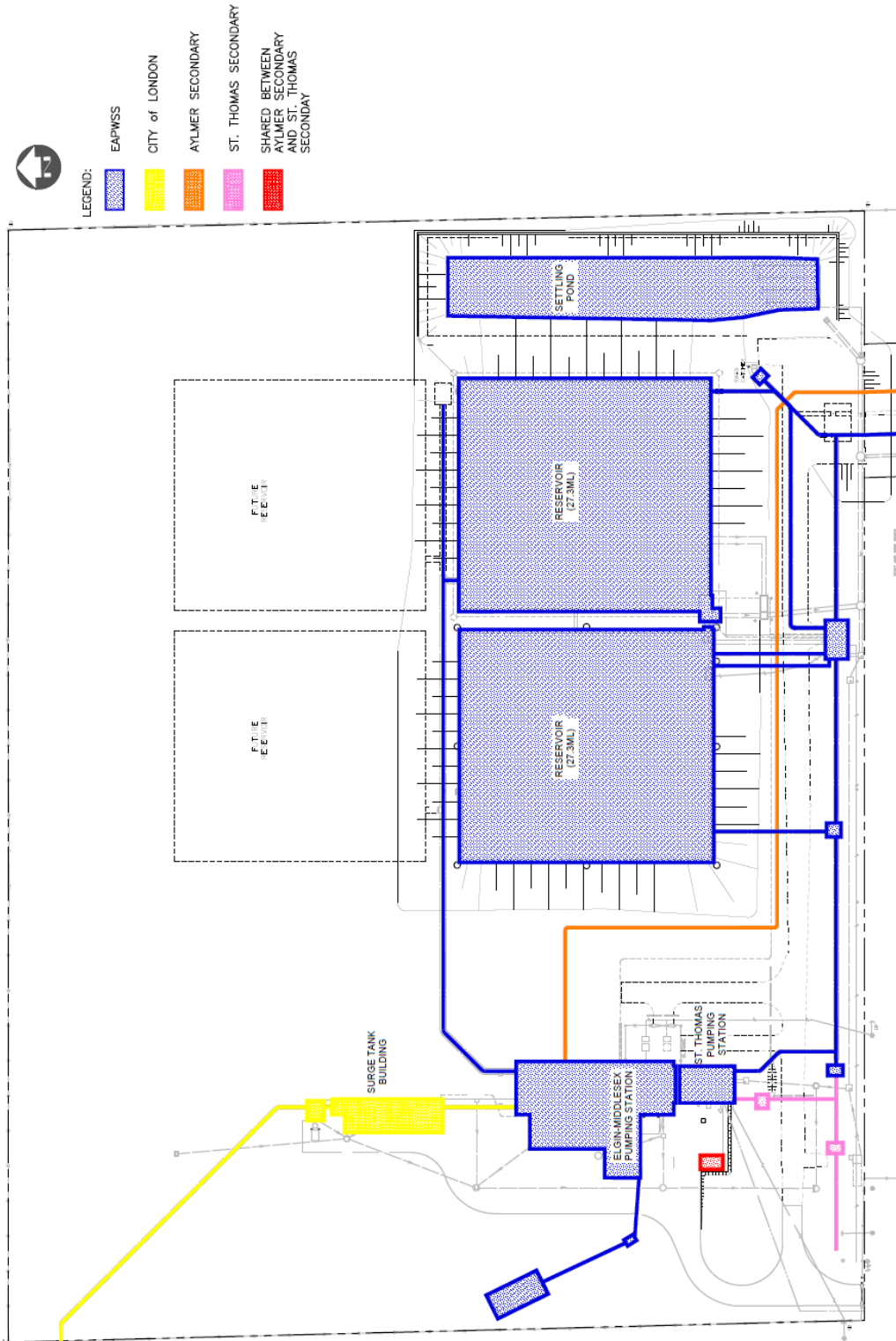
Co-Chair, St. Thomas Area Secondary  
Water Supply System Joint Board of  
Management

---

Date

**SCHEDULE A**

**ELGIN-MIDDLESEX PUMPING STATION AND TERMINAL RESERVOIR PROPERTY**



**SCHEDULE B**

**ELGIN MIDDLESEX PUMPING STATION – GROUND & BASEMENT LEVELS**





## SCHEDULE C

### ALLOCATION OF COSTS AND EXPENDITURES

#### Beneficiary by Area:

Where expenditures are agreed to be allocated by area of occupancy or shared occupancy, the following table, in whole or in part, shall be used for calculating the proportionate allocation of cost where appropriate:

LOCATION	LONDON (m <sup>2</sup> )	ST. THOMAS (m <sup>2</sup> )	AYLMER (m <sup>2</sup> )	ELGIN (m <sup>2</sup> )	TOTAL (m <sup>2</sup> )
Common Hallways, Loading Bay, and Lobbies	50.8 (33.3%)	50.7 (33.3%)	50.7 (33.3%)	n/a	<b>152.2</b>
Chlorine Room	n/a	36.7 (50%)	36.6 (50%)	n/a	<b>73.3</b>
Backup Generator Room	n/a	31.1 (50%)	31.1 (50%)	n/a	<b>62.2</b>
Control Room	3.5 (33.3%)	3.5 (33.3%)	3.5 (33.3%)	n/a	<b>10.5</b>
Electrical Room(s)	67.0 (32.7%)	71.0 (34.6%)	67.0 (32.7%)	n/a	<b>205.0</b>
Mechanical Room	13.3 (33.3%)	13.2 (33.3%)	13.3 (33.5%)	n/a	<b>39.8</b>
Pump Room(s) – ground level	432.2 (67.8%)	113.2 (17.8%)	91.7 (14.4%)	n/a	<b>637.1</b>
Pump Room(s) – Basement level	385.8 (54.7%)	160.4 (22.7%)	85.0 (12.0%)	74.5 (10.6%)	<b>705.7</b>
<b>SUBTOTAL EMPS</b>	<b>952.6</b> (50.5%)	<b>479.8</b> (25.4%)	<b>378.9</b> (20.0%)	74.5 (4.0%)	<b>1885.8</b>
Surge Control Building	261.3 (100%)	n/a	n/a	n/a	<b>261.3</b>
Former Fuel Storage Building	n/a	13.0 (50%)	13.0 (50%)	n/a	<b>26.0</b>
<b>TOTAL</b>	<b>1213.9</b> (55.9%)	<b>492.8</b> (22.7%)	<b>391.9</b> (18.0%)	74.5 (3.4%)	<b>2173.1</b>

## Joint Use and Occupancy Agreement Elgin – Middlesex Pumping Station

---

### Operating Expenditures:

Regularly occurring operating expenditures include the service fee payable to a common operating authority contracted to operate and maintain the Elgin-Middlesex Pumping Station on behalf of London, St. Thomas and Aylmer. In addition, common operational costs such as electricity, natural gas, chemicals and fuel are to be divided between the benefiting partners as follows:

EXPENSE	LONDON	ST. THOMAS	AYLMER
Operating Service Fee <sup>1</sup>	69.5%	20.0%	10.5%
Electricity	<i>Electrical cost allocation estimated in proportion to the pump run-times, adjusted for pump size (horsepower), on a monthly basis. <sup>2</sup></i>		
Natural Gas (heating) <sup>3</sup>	58.0%	23.7%	18.3%
Other Chemicals	n/a	n/a	n/a
Diesel Fuel	n/a	50.0%	50.0%
Chlorine <sup>4</sup>	n/a	64.5%	35.5%

### Repairs and Capital Expenditures – Single Beneficiary:

Capital expenditures and repairs excluded from the service agreement with the operating authority are the responsibility of the party that owns the asset. Where the expenditure is excluded from the service agreement with the operating authority, the party that owns the asset is responsible for all costs associated with the repair or capital investment.

### Repairs and Capital Expenditures – Multiple Beneficiary:

Capital expenditures and repairs excluded from the service agreement with the operating authority are the responsibility of the Parties that jointly own the asset. Where the expenditure is excluded from the service agreement with the operating authority, the Parties that jointly own the asset are responsible for all costs associated with the repair or capital investment.

Prior to the repair or capital investment being undertaken, the Parties that jointly own the asset are to agree in writing with respect to project management, budget, and allocation of costs.

---

<sup>1</sup> Value derived from the estimated volume proportion (5-year average)

<sup>2</sup> Algorithm used for the allocation of electrical costs on a monthly basis should be adjusted if sub-metering is installed by the Parties.

<sup>3</sup> Calculation based on proportion of area of occupancy

<sup>4</sup> Value derived from the estimated volume proportion (5-year average) between Aylmer and St. Thomas

## **SCHEDULE D**

### **DISPUTE RESOLUTION PROCESS**

In the event of a controversy or dispute between the Parties arising out of or in connection with this Agreement or regarding the interpretation of the provisions thereof, the following process will be followed:

1. The Party alleging a controversy or dispute (the “Disputing Party”) must notify the other Party (the “Recipient Party”) or other Parties (the “Recipient Parties”) in writing of such dispute or controversy (“Dispute Notice”) and specify the particulars of such dispute or controversy in the Dispute Notice.
2. Upon receipt of a Dispute Notice by the Recipient Party(s), the Recipient Party(s) and the Disputing Party must mutually consult in good faith in an attempt to settle amicably and in the spirit of cooperation any such controversy or dispute.
3. If on the date which is fourteen (14) days after the Recipient Party’s receipt of the Dispute Notice the Disputing Party and the Recipient Party(s) have not amicably settled the matter(s) set out in the Dispute Notice then the matter(s) shall be referred to a single arbitrator whose decision shall be final and binding. If the Parties cannot agree on the arbitrator, either party may apply under Section 10 of the Ontario Arbitrations Act for the Court to select an Arbitrator.