



The Corporation of the Town of LaSalle

Date	July 18, 2018	Report No:	PW-WWC-05-18
Directed To:	Water/Wastewater Committee	Attachments:	-Service Agreement -Amending Agreement -Second Amending Agreement
Department:	Public Works	Policy References:	
Prepared By:	Lena Petros, CET. Manager of Water and Wastewater		
Subject:	OCWA Agreement 2019-2023		

RECOMMENDATION:

That the Committee concurs with continuing to have OCWA maintain the Town's sanitary sewer system and bring this agreement to Council for formal execution.

REPORT:

Ontario Clean Water Agency (OCWA) is the organization that has been contracted by the Town to maintain our sanitary and storm pump stations, as well as being the Overall Responsible Operator (ORO) on our sanitary sewer collection system. The current contract with OCWA will expire January 2019. There have been a number of changes to our system since the previous contract was prepared and executed and these changes are now reflected in this new contract that covers January 1, 2019 to December 31, 2023.

The changes from the beginning of the last contract, have been adding one new pump station at Donato Subdivision. This is an increase in Operations Estimate of 1.8% (\$229,237 for 2018 to \$233,534 for 2019); also, Operational Support Services increase of 14% (\$30,704 for 2018 to \$35,030 for 2019).

These increases are mostly reflecting the results of OCWA's collective bargaining increases over these years; new pump station added; and use of vehicle.

Over the life of this new contract the annual increases are negotiated based on prior year activity on our system. The prior year activities are reconciled against what OCWA's workload actually was and if excess fees were paid during that operational year, the Town is issued a credit and as such the subsequent year fees are adjusted accordingly.


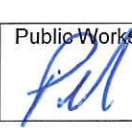
As noted earlier OCWA takes on the role being the ORO for The Town of LaSalle Sewage System and therefore takes care of all Audits and/or Questions from the Ministry of the Environment.

At this time, we are recommending that this Committee approve continuing to use OCWA for sanitary sewer maintenance and move forward to bring this contract execution to be brought to a regular council meeting for final approval and execution.

Respectfully submitted,



Lena Petros, CET.
Manager of Water and Wastewater

Reviewed by:							
CAO	Treasury	Clerks	Public Works	Planning	Parks & Rec	Building	Fire
							

SECOND AMENDING AGREEMENT

THIS AMENDING AGREEMENT made as of the 1st day of January, 2019.

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 THE TOWN OF LASALLE

(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 January 1st, 2009 concerning the operation and maintenance of the Client's Facility (the "Existing Agreement") attached as Appendix A to this Amending Agreement, and a first amending agreement effective January 1, 2014 concerning the operation and maintenance of the Client's Facility (the "Amending Agreement") attached as Appendix B to this Second Amending Agreement;

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

AND WHEREAS the Council of the Client passed By-Law No. _____ on the ____ day of _____, 2018 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 amendments to the Existing Agreement:

1. 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 January 1, 2019 and shall continue in effect for a term of five years, ending December 31, 2023 (the “Initial Term”) and then may be renewed for successive five year terms (each a “Renewal Term”) upon agreement between the parties, unless terminated under Section 6.2 of this Agreement.”

2. Section 2.3 Optional Services of the Existing Agreement is hereby deleted and replaced with the following:

“Section 2.3 - 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:

- (a) Labour rates on Business Days, Monday to Friday, (0730 to 1600) shall be billed at \$85.00/hour/person for an senior operations manager or process and compliance technician and \$60.00/hour/person for an operator or mechanic, plus vehicle expenses at \$0.50/km/vehicle;
- (b) Labour rates after hours and on weekends shall be billed at \$127.50/hour/person for a senior operations manager or process and compliance technician and \$90.00/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.50/km/vehicle;
- (c) Labour rates on Statutory holidays shall be billed at \$127.50/hour/person for a senior operations manager or process and compliance technician and \$90.00/hour/person for an operator or mechanic, with a minimum eight (8) hour charge, plus vehicle expenses at \$0.50/km/vehicle;
- (d) 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.
- (e) The labour rates set out in paragraphs (a) (b) and (c) above are subject to any increase which OCWA’s applicable OPSEU employees may receive during the term of this Agreement. Any increase in the labour rates shall coincide with the start date of such increases, including any retroactive start dates.

3. Section 4.2 of the Existing Agreement is hereby deleted and replaced with the following:

“Section 4.2 - Operations Estimate

No later than October 30th of each year of the Initial Term or any Renewal Term, OCWA shall prepare and submit to the Client, for its approval, an estimate of the charges associated with the provision of the operational and maintenance Services for the following calendar year. The Client will inform OCWA no later than December 1st whether the estimate is approved or not approved (the approved estimate is referred to as the “Estimate”). If the Client does not provide OCWA with its decision regarding approval by the December 1st date, the estimate shall be deemed approved. The Estimate shall be OCWA’s authorization to incur the expenditures in the Estimate. The Estimate for the first year of the Initial Term is \$233,534.”

4. Section 4.3 of the Existing Agreement is hereby deleted and replaced with the following:

“Section 4.3 - Payment of the Estimate

The Client shall pay OCWA the annual Estimate for each Year of the Initial Term or any Current Term, in twelve (12) equal monthly payments, in advance, on the first day of each month. The first payment shall be due and payable on January 1st, 2019. The monthly payment will be \$19,461.17.”

5. Section 4.6 of the Existing Agreement is hereby deleted and replaced with the following:

“Section 4.6 – Operational Support Services

- (a) In addition to payment of the Estimate, as reconciled with the Actual Charges, the Client shall also pay OCWA an annual Operational Support Fee (the “Operational Support Services”) to provide the management Services, which shall be \$35,030. for the first year of the Initial Term (“Year One”). The Operational Support Fee shall be paid by the Client in twelve (12) equal monthly instalments at the same time and in the same manner as the Estimate. The monthly payment shall be \$2,919.17.
- (b) For the second year (“Year Two”) and subsequent years of the Initial Term, the annual operational support service fee shall be \$35,030. plus the CPI Adjustment.
- (c) The Operational Support Service Fee in any Renewal Term shall be as agreed by the Client and OCWA. If the Client and OCWA cannot reach an agreement on the Estimate and Operational Support Service Fee for any Renewal Term within six (6) months of the beginning of the last year of the current term (whether the Initial Term or a Renewal Term) (the “Current Term”), this Agreement will be terminated one year from the last day of the Current Term. The Parties shall treat this final year in the same manner as if the Current Term was extended an additional year.”

6. Part 2. Street Address of the Facility of “Schedule A – The Facility” is hereby deleted and replaced with the following;

“Part 2. Street Address of the Facility

Station Number	Site Name	911 Address
La Salle Flow Bldg.	La Salle Forcemain Flow Metering Bldg.	4155 Ojibway Parkway Windsor, Ont.
L S # 1	Reaume Rd. PS # 1	6400 Milford Ave.
L S # 2	Ellsworth St. PS # 2	499 Front Rd.
L S # 3	Turkey Creek PS # 3	305 Front Rd.
L S # 4	Ramblewood Subd. PS # 4	249 Ramblewood Dr.
L S # 6	Kenwood Dr. PS # 6	402 Kenwood Dr.
L S # 7	Malden/Reaume PS # 7	6520 Malden Rd.
L S # 8	Delmar St. PS # 8	1855 Delmar St.
L S # 10	Heritage Est. PS # 10	1995 Cousineau Rd.
L S # 11	Machette Rd. PS # 11	6620 Machette Rd.
L S # 12	Machette Rd. PS # 12	6235 Machette Rd.
L S # 13	Normandy Dr. PS # 13	5995 N. Woodmont Ave.
L S # 14	Marentette Drain PS # 14	2305 Front Rd.
L S # 15	Victory Dr. PS # 15	526 Victory Dr.
L S # 16	Bechard PS # 16	220 Bechard Beach lane
L S # 17	Martin Lane PS # 17	456 Martin Lane
L S # 18	Laurier Pkwy PS # 18	2119 Laurier Pkwy.
L S # 19	Laurier Pkwy PS # 19	3020 Laurier Pkwy.
Vollmer Storm PS	Vollmer Rec. Centre Storm PS.	2147 Judy Recker Cres.
7 Lakes Estates Storm Water PS	7 Lakes Estates Development	7198 Meo Blvd.
	Donato Subdivision Development	

7 Air relief chambers located along the 30” sewage forcemain from LaSalle P.S. #1 to Lou Romano located beside the Ojibway Parkway, Windsor, Ontario.

7. “Schedule C – The Services” is hereby deleted and replaced with the following;

1. Services

A. Wastewater Treatment

- (a) Ensure that daily operations comply with Environmental Laws;

- (b) Inspect stand by power, chemical feeders, gas monitoring equipment, lifting devices, and potable water back flow preventers;
- (c) Remove screening from LaSalle P.S. #1 bar screen drying area as required using a vacuum truck;
- (d) OCWA staff will on a routine basis:
 - (i) monitor and adjust dosages of process chemical as required;
 - (ii) record and analyze electricity used, chemicals used, and wastewater flow calculations;
 - (iii) collect sewage samples and perform routine wastewater tests in accordance with the Environmental Compliance Approval or legislation;
- (e) Calculate, record and analyze the amount of wastewater being pumped to the Lou Romano Plant, the daily flows and monthly flows for billing, pumping station run hours, and standby equipment running hours;
- (f) Complete OCWA's internal operational data forms for statistical input into PDC;
- (g) Calibrate equipment in accordance with the Facility's Environmental Compliance Approval; and
- (h) Cleaning of wet wells.

B. Wastewater Collection

- (a) Act as overall responsible operator (ORO) for the Facility;
- (b) Ensure that daily operations comply with Environmental Laws;
- (c) Inspect equipment at pumping stations and forcemains to ensure proper operation of bar screens, pumps, stand by power and other chemical feeders;
- (d) Conduct a station check involving a visual status of Pressure Relief Valve (PRV) and the above ground vent pipe within the 7 chambers along the 30" sewage forcemain from LaSalle P.S. #1 to Lou Romano;
- (e) Comply with the City of Windsor's sewer use by-law;
- (f) Record flow readings on operational forms for computer input;
- (g) Calibrate equipment in accordance with the Facility's Environmental Compliance Approval; and
- (h) Cleaning of wet wells.

2. Routine Maintenance

OCWA will:

- (a) Carry out a routine lubrication program including greasing and oiling as required in the lubrication schedule;
- (b) Perform routine maintenance duties to equipment by following preventive maintenance procedures;
- (c) Maintain an inventory of all key equipment and tools;
- (d) Ensure the security of the Facility by locking doors and gates; and
- (e) Grass cutting and snow removal will be conducted at pumping stations on an as required basis.

3. Capital Improvements

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

4. Efficient Operation/Record Keeping

- (a) OCWA, acting reasonably, is responsible for ensuring the efficient operation of the Facility's processes.
- (b) OCWA will maintain records regarding the operation of the Facility in compliance with Environmental Laws.

5. Regulatory Matters

- (a) OCWA shall prepare the Facility for any scheduled inspection by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA.
- (b) Responding to a regulatory report on behalf of the Client (for example, a report of an inspection from the MOE or MOL), either directly or indirectly shall be considered an Unexpected Expense as per Section 4.7. Subject to any approvals of the Client required by Paragraph 4.7(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports (in accordance with Paragraph 4.7(a)) or negotiate changes to the reports with the regulatory authorities if related to the operation of the Facility. If any

orders are issued by a regulatory authority which will require Capital Expenditures or any additional services, then OCWA may negotiate with the Client to provide such services at additional cost to be agreed upon by the Parties.

6. Reporting

OCWA shall provide a Facility performance report, within forty-five (45) days of the completion of each quarter or such other period as the Client and OCWA may agree upon.

7. Staffing

- (a) OCWA will ensure the Facility is operated with certified operators and other trained staff as required by Environmental Laws.
- (b) OCWA will ensure that staff working at the Facility are trained in normal process operation and maintenance of the Facility and that all staff are trained to deal with emergency situations.

8. Emergency Situations

- (a) OCWA will ensure that there are contingency plans in place for OCWA staff to address non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- (b) In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.
- (c) Emergency responses outside of regular work hours shall be billed to the Client in accordance with Section 2.3.

8. *"Schedule D – Insurance" is hereby deleted and replaced with the following;*

Property Insurance

Insured Perils: All Risks of direct physical loss or damage (including Flood and Earthquake) occurring during the term of this policy, except as hereinafter excluded.

Policy Limits:

- Replacement Value
- Extra expenses
- Expediting expenses

Insurable Value: \$5,352,296 (Subject to Annual Review by the Client)

Deductibles: Earthquake – 3% of the value of the property insured subject to a minimum of \$100,000.

Flood – A flood deductible of 3% of the value of the property insured subject to a minimum amount of \$100,000 applies to locations in the 100-year flood zones.

A flood deductible of 2% of the value of the property insured subject to a minimum amount of \$75,000 applies to locations in the 500-year flood zones.

A flood deductible of \$50,000 applies to all other locations.

Sewer Back-Up & Water Damage: \$100,000

All Other Losses: \$5,000 based on the insurable value of the Facilities at the time of execution of this Agreement (except earthquake, flood and sewer back-up).

The above is subject to change on an annual basis.

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

Property Insured: Property of every kind and description as declared except as excluded under the "Property Excluded" section of the policy.

Boiler & Machinery Insurance

Coverage: Sudden & Accidental Breakdown of a Pressure, Mechanical, and Electrical Object including Production Machinery as defined under the policy. Coverage applies to the loss of the "Object" itself and for loss to other insured property directly damaged by the "Accident", except as excluded under the policy.

Limit: \$100,000,000 per Accident.

Deductibles: \$5,000 for Property Damage per Accident for the year 2019; subject to changes on an annual basis.

Where the Client's property is repaired or replaced, the Client will pay the deductible. Where OCWA's property is repaired or replaced, OCWA will

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

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

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 2019; 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 (60 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 for Professional Liability Insurance

Deductible: \$100,000 for the year 2019; subject to change on an annual basis.

9. *"Schedule E – Change Order Form" is hereby added:*

SCHEDULE E - Change Order Form



Ontario Clean Water Agency
Agence Ontarienne Des Eaux

Change Order Form

Change Being Requested			
Name of Change:			
Ontario Clean Water Agency (OCWA)	Per: _____ Name: _____ Title: _____	Date (YYYY/MM/DD):	
Client	Per: _____ Name: _____ Title: _____	Date (YYYY/MM/DD):	
Adjustment			
Check Appropriate Type of Change			
Apply (Y/N)	Type of Change:		
<input type="checkbox"/>	Adjustment to Estimate		
<input type="checkbox"/>	Change to Service		
<input type="checkbox"/>	Impact		
Adjustment to Estimate			
Description – Attach Additional Documentation if Required			
Change in Services			
Description – Attach Additional Documentation if Required			

Cost Breakdown for Change in Services			
Item		One-time Cost	Annual Cost
	Total Cost:		

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 TOWN OF LASALLE

Date of Signing

By: _____
(Authorized Signing Officer)

Date of Signing

By: _____
(Authorized Signing Officer)

SERVICES AGREEMENT

BETWEEN

ONTARIO CLEAN WATER AGENCY

A N D

THE CORPORATION OF TOWN OF LASALLE

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
RECITALS	1
ARTICLE 1 - INTERPRETATION.....	2
SECTION 1.1 - DEFINITIONS	2
SECTION 1.2 - INTERPRETATION	2
ARTICLE 2 - RESPONSIBILITIES OF OCWA	2
SECTION 2.1 - RETENTION OF OCWA	2
SECTION 2.2 - PERFORMANCE OF SERVICES	2
SECTION 2.3 - OPTIONAL SERVICES.....	3
SECTION 2.4 - STANDARD OF CARE	4
SECTION 2.5 - OCWA AS INDEPENDENT CONTRACTOR	4
SECTION 2.6 - AUTHORIZED REPRESENTATIVES	4
SECTION 2.7 - REPORTING.....	5
SECTION 2.8 - INDEMNIFICATION OF THE CLIENT.....	5
SECTION 2.9 - INSURANCE.....	5
SECTION 2.10 - REPRESENTATIONS AND WARRANTIES OF OCWA.....	6
ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT	6
SECTION 3.1 - REPRESENTATIONS AND WARRANTIES OF THE CLIENT	6
SECTION 3.2 - COVENANTS OF THE CLIENT	7
SECTION 3.3 - EXONERATION AND INDEMNIFICATION OF OCWA	8
ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES	8
SECTION 4.1 - INITIAL TERM OF AGREEMENT	8
SECTION 4.2 - OPERATIONS ESTIMATE	9
SECTION 4.3 - PAYMENT OF THE ESTIMATE	9
SECTION 4.4 - RECONCILIATION OF THE ESTIMATE AND ACTUAL CHARGES	9
SECTION 4.5 - OTHER CHARGES.....	9
SECTION 4.6 - OPERATIONAL SUPPORT SERVICES	10
SECTION 4.7 - CAPITAL EXPENDITURES.....	10
SECTION 4.8 - UNEXPECTED EXPENSES	11
SECTION 4.9 - INTEREST ON LATE PAYMENTS	11
SECTION 4.10 - PARTIAL PAYMENT OF DISPUTED INVOICES	11
ARTICLE 5 - DISPUTE RESOLUTION.....	12
SECTION 5.1 - MEDIATION.....	12
ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION.....	12
SECTION 6.1 - EXISTING AGREEMENTS.....	12
SECTION 6.2 - TERMINATION OF AGREEMENT	13
SECTION 6.3 - EARLY TERMINATION	14
SECTION 6.4 - FINAL SETTLEMENT	14
SECTION 6.5 - TRANSFER OF OPERATIONS.....	14

ARTICLE 7 - GENERAL	15
SECTION 7.1 - OWNERSHIP OF TECHNOLOGY.....	15
SECTION 7.2 - AGREEMENT TO GOVERN.....	15
SECTION 7.3 - HEADINGS	15
SECTION 7.4 - ENTIRE AGREEMENT.....	15
SECTION 7.6 - CHANGE IN CIRCUMSTANCE	15
SECTION 7.7 - AMENDMENTS AND WAIVERS.....	16
SECTION 7.8 - SUCCESSORS AND ASSIGNS.....	16
SECTION 7.9 - SURVIVAL.....	16
SECTION 7.10 - SEVERABILITY	16
SECTION 7.11 - NOTICES	17
SECTION 7.12 - COUNTERPARTS.....	17
SECTION 7.13 - FREEDOM OF INFORMATION.....	17
SECTION 7.14 - CONFIDENTIALITY AND SECURITY	18
 SCHEDULE A - THE FACILITY	
SCHEDULE B - DEFINITIONS	
SCHEDULE C - THE SERVICES	
SCHEDULE D - INSURANCE	

SERVICES AGREEMENT

THIS AGREEMENT effective as of the 1st day of January, 2009,

B E T W E E N

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

("OCWA")

A N D

THE CORPORATION OF THE TOWN OF LASALLE

(the "Client")

RECITALS

- (a) OCWA is in the business of providing operations and maintenance services for wastewater facilities.
- (b) The Client is the owner of the LaSalle Wastewater Collection System more particularly described in Schedule A (the "Facility").
- (c) The Client wishes to retain the services of OCWA to operate and maintain the Facility in accordance with the provisions of this agreement (the "Agreement").
- (d) The Client and OCWA (collectively, the "Parties" and each a "Party") are entering this Agreement to set out their respective rights and obligations with respect to the management, operation and maintenance of the Facility.
- (e) The Council of the Client on the 27 day of January, 2009 passed By-Law No. 7021 authorizing the Client to enter into this Agreement.

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

ARTICLE 1 - INTERPRETATION

Section 1.1 - Definitions

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

Section 1.2 - Interpretation

The rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.

ARTICLE 2 - RESPONSIBILITIES OF OCWA

Section 2.1 - Retention of OCWA

- (a) The Client retains OCWA to provide management, operation and maintenance services, as described in Schedule C to this Agreement, in respect of the Facility (the "Services"). The Client acknowledges and agrees that OCWA bears no responsibility for the design of the Facility.
- (b) The Client acknowledges and agrees that for the purposes of Section 449 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, OCWA is an agent of the Client.

Section 2.2 - Performance of Services

- (a) OCWA shall deliver the Services in compliance with all applicable Environmental Laws, except as described in Paragraphs 2.2(b) and (c) below and in any of the following circumstances:
 - (i) the Client not making the Capital Expenditures reasonably recommended by OCWA as per Section 4.7 herein;
 - (ii) failure of the Client to meet its representations and warranties specified in this Agreement;
 - (iii) failure of any equipment at the Facility, unless the failure is due to negligent maintenance by OCWA;
 - (iv) the wastewater transmitted to the Facility for treatment does not meet the requirements of the Client's sewer use by-law or any Environmental Law;

- (v) the wastewater transmitted to the Facility for treatment contains contaminants or other substances which cannot be treated or removed by the Facility's processes;
 - (vi) the quantity or quality of wastewater transmitted to the Facility exceeds the Facility's design or operating capacity.
 - (vii) operational upset conditions caused by the acceptance of septage or leachate.
- (b) OCWA may temporarily cease to provide or reduce the level of provision of Services hereunder in the event of an emergency, a breakdown or any Uncontrollable Circumstance. OCWA shall, when practicable, endeavour to give the Client reasonable advance notice of any such occurrence.
- (c) Notwithstanding any other provision of this Agreement, delay in the performance of, or a failure to perform any term of this Agreement by OCWA, shall not constitute default under this Agreement or give rise to any claim for damages suffered by the Client if and to the extent caused by occurrences or circumstances beyond the reasonable control of OCWA (an "Uncontrollable Circumstance"), including but not limited to any circumstances set out in Paragraph 2.2(a), decrees of government, acts of God (including but not limited to hurricanes, tornadoes, floods and other weather disturbances), sabotage, strikes, lockouts and other industrial disturbances, insurrections, war, civil disturbances, pandemics, riots, explosions, fire and acts of third parties.
- (d) In the event that OCWA determines that a deficiency exists with respect to the operation of the Facility, OCWA will use its best efforts to contact the Client and obtain the Client's approval prior to undertaking any remedial measures to correct the deficiency. The Client acknowledges that such measures may be beyond the scope of the Services and thus subject to an additional charge.
- (e) Notwithstanding Paragraph 2.2(d) above, the Client recognizes that in an emergency situation or where an Uncontrollable Circumstance exists, OCWA's primary concern will be to use all reasonable efforts to maintain the Facility in compliance with Environmental Laws and that OCWA may be required to correct a deficiency or deal with the emergency situation without obtaining the Client's prior approval. Should such a situation arise, OCWA will provide as much information as possible to the Client and will work with the Client to ensure the emergency situation is appropriately addressed.

Section 2.3 - Optional Services

- (a) If requested by the Client, OCWA may provide Optional Services to the Client, provided that the Client and OCWA agree in writing to the specific scope of work required.

- (b) Unless otherwise agreed to in writing, fees for Optional Service 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:
- (i) Labour rates on Business Days, Monday to Friday, (0730 to 1600) shall be billed at \$85.00/hour/person for an operations manager, assistant operations manager or process and compliance technician and \$55.00/hour/person for an operator or mechanic, plus vehicle expenses at \$0.50/km/vehicle;
 - (ii) Labour rates at all other times (after hours and on weekends) shall be billed at \$120.00/hour/person for an operations manager, assistant operations manager or process and compliance technician and \$75.00/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses at \$0.50/km/vehicle;
 - (iii) 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 cost together with a Service Fee.
- (c) Once OCWA has agreed to provide Optional Services to the Client, the Optional Services shall be subject to the terms and conditions of this Agreement, with any necessary changes having been made.

Section 2.4 - Standard of Care

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

Section 2.5 - OCWA as Independent Contractor

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

Section 2.6 - Authorized Representatives

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

Section 2.7 - Reporting

OCWA shall provide the following reports to the Client:

- (a) a summarized financial report, on a quarterly basis indicating expenditures to date and funds remaining.

Section 2.8 - Indemnification of the Client

- (a) OCWA shall exonerate, indemnify and hold harmless the Client, its directors, officers, employees and agents from and against Claims which may be suffered or incurred by, accrue against or be charged to or recoverable from the Client to the extent that such Claim is solely attributed to OCWA's negligence or wilful misconduct when performing the Services, except where such Claim is due to an Uncontrollable Circumstance or to a condition of the Facility which existed prior to OCWA's commencement of the Services (a "Pre-existing Condition"), including but not limited to those listed in Schedule F. Such Pre-existing Conditions shall be the ongoing responsibility of the Client. OCWA, in providing these Services, is not responsible, accountable or liable, in any way, for Pre-existing Conditions, either directly or indirectly.
- (b) The Client shall be deemed to hold the provisions of this Section 2.8 that are for the benefit of the Client's directors, officers, employees and agents in trust for such directors, officers, employees and agents as third party beneficiaries under this Agreement.
- (c) Notwithstanding Paragraph 2.8(a) above, OCWA shall not be liable in respect of any Claim to the extent the Claim is covered by the Insurance.

Section 2.9 - Insurance

- (a) OCWA shall maintain, subject to reasonable availability, insurance coverage as described in Schedule D to this Agreement (the "Insurance") and the Client shall be an additional insured under the Commercial General Liability and Contractor's Pollution Liability Insurance. The Client acknowledges that, given the unpredictability of the insurance market, deductibles and coverage limits may not be available (or may not be reasonably priced) from year to year, and therefore, insurance coverage is reviewed annually.
- (b) The Client specifically recognizes and agrees that neither OCWA nor the Crown bears any responsibility for the Pre-existing Condition(s) of the Facility. As such, OCWA is not required to obtain insurance for this purpose and the Client has or will obtain its own insurance.
- (c) The Client shall be responsible for securing its own insurance for any other operations with which it is involved that are not part of the Services. The Client acknowledges that OCWA's Commercial General Liability and Contractor's Pollution Liability insurance shall not extend to cover any claims, exposure or liability beyond those directly linked to

the provision of Services by OCWA staff. The Client further acknowledges that it will have no recourse under OCWA's Commercial General Liability and Contractor's Pollution Liability insurance for any operations that do not form part of the Services.

- (d) In the event of a claim under the Insurance, the payment of deductibles is as specified in Schedule D.

Section 2.10 - Representations and Warranties of OCWA

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

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

ARTICLE 3 - RESPONSIBILITIES OF THE CLIENT

Section 3.1 - Representations and Warranties of the Client

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

- (a) The Client has the full power and authority to enter into and perform its obligations under this Agreement.
- (b) The Client has passed all necessary By-Laws and has obtained all necessary Authorizations to enable it to enter into and perform its obligations under this Agreement and to operate the Facility, (including, without limitation, any Authorizations required from the Ontario Municipal Board and the Ministry of the Environment), and the Authorizations are in good standing.
- (c) The Client has provided OCWA with a true copy of each of the Authorizations referred to in Paragraph 3.1(b) above prior to the date of this Agreement, including a certified copy of each municipal By-Law required to authorize the Client to enter into and perform its obligations under this Agreement.
- (d) As the owner of the Facility, the Client is fully aware of its responsibilities and obligations regarding the operation and maintenance of the Facility under Applicable Laws, including without limitation its responsibilities under the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40. ("the OWRA") and its regulations.

- (e) The Client warrants that there are no Pre-existing Conditions existing at the Facility which would affect OCWA's ability to operate the Facility in compliance with the terms of this Agreement and Applicable Laws, other than what is listed in Schedule F. The Client acknowledges and agrees that the Client shall be responsible for addressing such Pre-existing Conditions.
- (f) The Client warrants that as of the date of execution of this Agreement, to the best of the Client's knowledge, the Facility is in compliance with all Applicable Laws.
- (g) The Client is not aware of the presence of any designated substances as defined under the *Occupational Health and Safety Act* (OHSA) at the Facility. The Client acknowledges and agrees that it is responsible for dealing with the designated substances (including but not limited to asbestos) in accordance with the OHSA and its regulations and to notify OCWA of the location of any designated substances in the Facility.

Section 3.2 - Covenants of the Client

The Client hereby covenants the following for the benefit of OCWA:

- (a) The Client agrees to promptly pay all amounts owing to OCWA under this Agreement as they become due, including any interest charges on late payments as determined under Section 4.9.
- (b) The Client agrees to promptly provide OCWA with any information relating to the Facility which could have a bearing on the provision of Services by OCWA, including but not limited to any engineering report prepared in respect of the Facility, any Authorization or amendment to any Authorization, as well as any governmental notice or order relating to the Facility.
- (c) The Client agrees to commit the necessary resources to appropriately address and comply with any such reports, Authorizations, notices or orders.
- (d) The Client shall repair, maintain and keep in a good working state, in accordance with good engineering practices and the standards reasonably applicable to an owner of a like wastewater treatment facility, all wastewater works that belong to or are under the control of the Client and that collect and transmit wastewater to the Facility.
- (e) The Client shall take reasonable steps to ensure that wastewater transmitted to the Facility complies with the Client's sewer use by-law and any Environmental Laws. If requested by OCWA, the Client shall provide OCWA with copies of the Client's inspection reports (sewer usage, cross-connections, sump pump connections) if available.
- (f) The Client shall inform OCWA if the Facility is to accept septage or leachate. The Client shall provide OCWA with a report of a professional engineer indicating that the Facility is capable of handling such additional Loadings. The Client shall provide OCWA with a

list of haulers from which OCWA is to accept septage or leachate at the Facility. OCWA shall not be responsible for any operational impacts caused by the septage or leachate. The Client shall be fully responsible for any additional costs incurred as a result of the acceptance of septage or leachate at the Facility.

Section 3.3 - Exoneration and Indemnification of OCWA

- (a) Subject to Paragraph 3.3(c) below, the Client shall exonerate, indemnify and hold harmless OCWA, its directors, officers, employees and agents and Her Majesty the Queen in Right of Ontario, as represented by the Minister of the Environment and all directors, officers, employees and agents of the Ministry of the Environment (collectively referred to as the "Indemnified Parties") from and against any and all Claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties that, in any way, arise from the Services provided under this Agreement.
- (b) OCWA shall be deemed to hold the provisions of this Article 3 that are for the benefit of OCWA's directors, officers, employees and agents and the other Indemnified Parties as defined above, in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
- (c) Notwithstanding Paragraph 3.3(a) above, the Client shall not be liable in respect of any Claim:
 - (i) to the extent that such Claim is covered by the Insurance; however, the Client shall be responsible for any deduction or self-insured retention amount in accordance with Schedule D; and
 - (ii) to the extent that such Claim is caused solely by OCWA's negligence or wilful misconduct in providing the Services.

ARTICLE 4 - TERM, PAYMENT FOR SERVICES AND OTHER CHARGES

Section 4.1 - Initial Term of Agreement

This Agreement shall start on the Effective Date of January 1, 2009 and shall continue in effect for an initial term of five years, ending on December 31, 2013 (the "Initial Term") and then may be renewed for successive two-year terms (each a "Renewal Term") upon agreement between the Parties, unless terminated under Section 6.2 of this Agreement.

Section 4.2 - Operations Estimate

No later than October 31st of each year of the Initial Term or any Renewal Term, OCWA shall prepare and submit to the Client, for its approval, an estimate of the charges associated with the provision of the operational and maintenance Services for the following calendar year. The Client will inform OCWA no later than December 1st whether the estimate is approved or not approved (the approved estimate is referred to as the "Estimate"). If the Client does not provide OCWA with its decision regarding approval by the December 1st date, the estimate shall be deemed approved. The Estimate shall be OCWA's authorization to incur the expenditures in the Estimate. The Estimate for the first year of the Initial Term is \$185,573.50.

Section 4.3 - Payment of the Estimate

The Client shall pay OCWA the annual Estimate in twelve (12) equal monthly payments, in advance on the first day of each month. For the first year of the Initial Term, each monthly payment shall be \$15,464.45. The first payment shall be due and payable on January 1, 2009. Payment shall be made by the Client by cheque.

Section 4.4 - Reconciliation of the Estimate and Actual Charges

At the end of each calendar year, OCWA will determine the actual charges for providing the Services to the Client for that year (the "Actual Charges") which, as indicated in Paragraph 2.9(a), may include an increase in premium for the Insurance. If the Estimate paid by the Client for the year exceeds the Actual Charges, OCWA will pay the Client the difference within thirty (30) days of OCWA making the determination. If the Actual Charges exceed the Estimate paid by the Client, the Client shall pay OCWA the difference within thirty (30) days of OCWA notifying the Client in writing of the determination.

Section 4.5 - Other Charges

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

- (a) OCWA's Operational Support Services (as described in Section 4.6 below);
- (b) Capital Expenditures (as described in Section 4.7 below);
- (c) Unexpected Expenses (as described in Section 4.8 below); and
- (d) fees for additional services provided by OCWA (as described in Paragraph 2.3(b) above).

Section 4.6 - Operational Support Services

- (a) In addition to payment of the Estimate, as reconciled with the Actual Charges, the Client shall also pay OCWA an annual Operational Support Services (the "Operational Support Services") to provide the management Services, which shall be **\$27,286.44** for the first year of the Initial Term ("Year One"). The Operational Support Services shall be paid by the Client in twelve (12) equal monthly installments at the same time and in the same manner as the Estimate. The monthly payment of the Operational Support Services for Year One of the Initial Term shall be **\$2,273.87**.
- (b) For the second and subsequent years, the inflation adjustment shall be added to the Operational Support Services for year one of the agreement on a cumulative basis.
- (c) The Operational Support Services in any Renewal Term shall be as agreed by the Client and OCWA. If the Client and OCWA cannot reach an agreement on the Estimate and Operational Support Services for any Renewal Term within six (6) months of the beginning of the last year of the current term (whether the Initial Term or a Renewal Term) (the "Current Term"), this Agreement will be terminated one year from the last day of the Current Term. The Parties shall treat this final year in the same manner as if the Current Term was extended an additional year.

Section 4.7 - Capital Expenditures

- (a) "Capital Expenditures" means the charges for all capital items in relation to the Facility, including new or replacement equipment, any overhaul or rebuild of equipment, any non-routine repair; maintenance (excluding routine maintenance); any alterations and any associated installations, commissioning, including labour and preselection charges, together with the Service Fee. Capital Expenditures shall be billed to the Client in the same manner as described in Paragraph 2.3(b). These charges would normally be for items beyond the normal "routine" operational estimate as listed in Section 4.2 Operations Estimate.
- (b) No later than October 31st of each Year this Agreement is in force, or a date as the Parties may agree in writing, OCWA will provide the Client with an estimate of the Capital Expenditures reasonably required for the operation of the Facility for the following Year. The Client's written approval of the estimate or revised estimate authorizes OCWA to incur the Capital Expenditures included in the approved estimate (the "**Approved Capital Expenditures**").
- (c) OCWA will invoice the Client for the Approved Capital Expenditures together with supporting documentation and the Client shall pay the invoice within thirty (30) days of the date of invoice.

Section 4.8 - Unexpected Expenses

- (a) "Unexpected Expenses" means unanticipated expenditures or additional costs which may include Capital Expenditures in addition to the Approved Capital Expenditures, that OCWA reasonably incurs in order to address a Change in Applicable Laws, any Uncontrollable Circumstance, any work required by regulatory order (e.g. MOE or MOL) or identified through an inspection (e.g. ESA, MOE, MOL) that is not solely the result of OCWA's negligence in performing the Services or any other emergency situation, together with the Service Fee.
- (b) In the event that OCWA is required to incur Unexpected Expenses, the prior approval of the Client with respect to those Unexpected Expenses will be required only if time permits. Within ten (10) days of incurring the Unexpected Expenses, OCWA will provide the Client with a report detailing the reasons the Unexpected Expenses were incurred.
- (c) Any Unexpected Expenses will be invoiced to the Client together with appropriate supporting documentation, and the Client should pay the invoice within thirty (30) days of the date of the invoice.

Section 4.9 - Interest on Late Payments

- (a) **Monthly Payment of Estimate and Operational Support Services.** If the Client's monthly payment of the Estimate and Operational Support Services are not available in its designated bank account on the agreed to date of payment, OCWA will notify the Client that the funds were not available. Interest will be charged to the Client starting from the day after the payment was due in the account. Interest shall be paid at a rate determined by the Minister of Finance, from time to time, as payable on overdue accounts, in accordance with the *Financial Administration Act*, R.S.O. 1990, c.F.12, plus any banking charges and an administrative fee.
- (b) **Other Invoices.** Invoices, other than for the monthly payment set out in Section 4.9(a) above, shall be paid no later than thirty (30) days from the date of the invoice and interest shall begin to accrue one (1) day after the payment is due.

Section 4.10 - Partial Payment of Disputed Invoices

- (a) If the Client wishes to dispute any portion of an invoice, within forty-five (45) days from the date on the disputed invoice, the Client must provide written notice to OCWA of the charges in dispute. If no written notice is received within the above forty-five (45) days, the invoice shall be deemed to be approved and interest shall be payable by the Client, if still unpaid after thirty (30) days from the Client's receipt of the invoice.
- (b) If the Client disputes any portion of an invoice, the Client shall nonetheless pay to OCWA the undisputed portion of the invoice by the due date and shall also continue to

pay all monthly payments of the Estimate and Operational Support Services due on the first of each month. If any additional amount is finally determined to be payable to OCWA, the Client shall pay OCWA the additional amount, plus interest as provided in Section 4.9 above, within ten (10) days from the date of final determination.

- (c) If the disputed charges cannot be resolved within a reasonable time, the Parties shall seek resolution in accordance with Article 5, Dispute Resolution.

ARTICLE 5 - DISPUTE RESOLUTION

Section 5.1 - Mediation

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

ARTICLE 6 - EXISTING AGREEMENTS AND TERMINATION

Section 6.1 - Existing Agreements

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

Section 6.2 - Termination of Agreement

- (a) At least twelve calendar months before the expiry of the Current Term, either:
 - (i) the Client shall notify OCWA in writing whether it wishes to terminate or renew this Agreement at the end of the Current Term. However, OCWA reserves the right to decline to renew the Agreement by notifying the Client in writing of its decision to decline, within thirty (30) days of receipt of the Client's written request to renew; or
 - (ii) OCWA shall notify the Client in writing that it wishes to terminate this Agreement at the end of the Current Term.
- (b) If no notice is given as indicated in Clause 6.2(a)(i) or (ii) and the Parties do not agree to negotiate the Estimate for the next Renewal Term within the last six (6) months of the final year of the Current Term, then the Current Term shall be extended by one (1) year and Article 4 will apply accordingly.
- (c) During the Initial Term or any Renewal Term, this Agreement may only be terminated by either the Client or OCWA if:
 - (i) there has been a material breach of the Agreement;
 - (ii) the Party complaining of the breach has given written notice of the breach to the other Party;
 - (iii) the other Party does not correct the breach within thirty days of receiving the notice; and
 - (iv) the complaining Party terminates in accordance with Paragraph 6.2(d).
- (d) Where there is a material breach and: (i) such material breach has not been corrected within the time set out in Paragraph 6.2(c) above; (ii) the material breach has not been referred to mediation pursuant to Section 5.1 of this Agreement; and (iii) the Parties have not otherwise agreed in writing, then the complaining Party may terminate this Agreement by giving at least thirty (30) days notice in writing to the other Party.
- (e) If either Party disputes the existence of a breach or that the breach is material, then the dispute may be referred to mediation under Section 5.1 of this Agreement.
- (f) After the Initial Term, either the Client or OCWA may terminate this Agreement only as follows:
 - (i) for any reason, upon twelve months (12) prior written notice; or

- (ii) if there has been a material breach of the Agreement, in accordance with the procedures described in Paragraphs 6.2(c) and 6.2(d) above.
- (g) For greater certainty, continued non-payment of monies owed to OCWA under this Agreement shall constitute a material breach of this Agreement by the Client.

Section 6.3 - Early Termination

If this Agreement is terminated for any reason prior to expiry of the Current Term, the Client shall pay OCWA for the Services rendered up to the date of termination (including reconciliation with the actual Charges) and any outstanding Operational Support Services, Capital Expenditures, Unexpected Expenses or other charges for extra services negotiated by the Parties plus any applicable Service Fees, and OCWA shall pay the Client for any moneys owed up to the date of termination in accordance with Section 6.4. Since Insurance is purchased on an annual basis, the Client will be charged the remainder of the annual premium for the Insurance.

Section 6.4 - Final Settlement

If OCWA ceases to operate and maintain the Facility, there shall be a final settlement of all accounts with respect to the Actual Charges, Operational Support Services and any other charges and expenses incurred by OCWA and amounts owing by or to the Client under this Agreement and any Existing Agreement including, but not limited to the outstanding debt, if any, owed to OCWA, no later than ninety (90) days after OCWA ceases to provide the Services or thirty (30) days after OCWA has provided the Client with a final invoice, whichever comes later.

Section 6.5 - Transfer of Operations

Upon the termination of this Services Agreement, OCWA will return the following documents to the Client:

- (a) The log book for the Facility.
- (b) The original operations manual(s) that were provided by the Client to OCWA at the commencement of the Services.
- (c) A list of emergency phone numbers from the contingency plan binders used by OCWA staff in respect of the Facility.
- (d) Maintenance and repair records of equipment at the Facility.

ARTICLE 7 - GENERAL

Section 7.1 - Ownership of Technology

The Client acknowledges and agrees that in providing the Services, OCWA may utilize certain technology developed by or for OCWA, for example, OCWA's WMMS, Outpost 5 and/or PDC (the "Technology"). The Client further agrees that use of the Technology by OCWA with respect to the Facility does not in any way give the Client any ownership or licensing rights in or to the Intellectual Property Rights to the Technology unless otherwise agreed to in writing between the Parties.

Section 7.2 - Agreement to Govern

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

Section 7.3 - Headings

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

Section 7.4 - Entire Agreement

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

Section 7.6 - Change in Circumstance

- (a) In the event that there is a change in circumstances or condition that is not covered under the terms of this Agreement, including, without limitation, a Change in Applicable Laws or change in the scope of services provided (a "Change in Circumstance"), then the Party asserting the occurrence of such Change in Circumstance shall give written notice to the other Party, and the written notice shall contain:
 - (i) details of the Change in Circumstance;
 - (ii) details of the inadequacy of this Agreement; and
 - (iii) a proposal for an amending agreement to remedy the Change in Circumstance.

- (b) The Parties shall negotiate in good faith any amendments to this Agreement necessary to give effect to or comply with the Change, including any adjustments to the Estimate or the Services to be provided, which shall be effected as of the date of the Change. If the Parties dispute the existence of a Change, or the recommendation proposed to rectify the Change or the terms and provisions of any amendment to the Agreement, then either Party may refer the dispute to mediation under Article Five.

Section 7.7 - Amendments and Waivers

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

Section 7.8 - Successors and Assigns

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

Section 7.9 - Survival

All representations and warranties given by each of the Parties, all outstanding payment obligations, and the confidentiality obligation under Section 8.14, shall survive indefinitely the termination of this Agreement.

Section 7.10 - Severability

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

Section 7.11 - Notices

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

- (i) if to the Client:

Town of Lasalle
1900 Normandy Road
Lasalle, Ontario N9H 1P8
Telephone: (519) 969-7770 ext 225
Fax: (519) 969-4469
Attention: Mr. Kevin Miller, Chief Administrative Officer

- (ii) if to OCWA:

Ontario Clean Water Agency
Wonderland Road
London, Ontario
N6L 1A7
Telephone: (519) 652-7014 ext 7002
Fax: (519) 652-7020
Attention: Jackie Muller, Client Services Representative (A)

- (b) A Party to this Agreement may change its address for the purpose of this Section by giving the other Party notice of such change of address in the manner provided in this Section.

Section 7.12 - Counterparts

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

Section 7.13 - Freedom of Information

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

Section 7.14 - Confidentiality and Security

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

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

ONTARIO CLEAN WATER AGENCY

12/22/2008
Date of Signing

By: Dan Atkinson
(Dan Atkinson, VP Operations)

12/24/2008
Date of Signing

By: Sandra Wilkerson
for (Brenda Baker, VP Finance)

THE CORPORATION OF THE TOWN OF LASALLE

JAN 27, 2009
Date of Signing

By: Gary Baxter
(Gary Baxter, Mayor)

JAN 27, 2009
Date of Signing

By: Kevin Miller
(Kevin Miller, Chief Administrative Officer)

SCHEDULE A - The Facility

Part 1. Description of the Facility

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

The facility consists of 1 primary pump station with 18 additional pump stations.

All pump stations pump into #1 which pumps to the West Windsor Primary Sewage Treatment Plant.

Part 2. Street Address of the Facility

The street address of the Facility is as follows:

Pump Stations are as follows:

LaSalle's sewage force main flow building at Lou Romano STP in Windsor Ontario

#1 - 6400 Milford Ave. Off of Reaume Rd. (Main Pump Station)

#2 - 499 Elsworth Ave. Off Front Rd.

#3 - 305 Front Rd. @ Hwy #18

#4 - 249 Ramblewood Drive

#6 - 402 Kenwood Blvd. Off Michigan Ave.

#7 - 6250 Malden Rd. @ Reaume Rd.

#8 - 1855 Delmar St. Off Malden Rd.

#10 - 1995 Cousineau Rd. @ Heritage Dr.

#11 - 6620 Matchette Rd. By Cervi Blvd.

#12 - 6235 Matchette Rd. By Minto Ave.

#13 - 5995 North Woodmont Ave. @ Nomandy St.

#14 - 2305 Front Rd.

#15 - 526 Victory St. Behind empty lot

#16 - 220 Bechard Lane Off Front Rd.

#17 - 456 Martin Lane

Vollmer Rec.Center Storm Water P.S.

*Seven Lakes Estates Sewage P.S.

Seven Lakes Estates Storm Water P.S.

LaSalle Forcemain Flow Building" @ 4155 Ojibiwa Parkway

7 Air relief chamber located along the 30" sewage force main from LaSalle P.S. #1 to the Lou Romano beside the Ojibiwa Parkway, Windsor, Ontario

SCHEDULE B - Definitions

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

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

"Agreement" means this agreement together with Schedules A, B, C and D attached hereto and all amendments made hereto by written agreement between OCWA and the Client.

"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 Capital Expenditures" is defined in Paragraph 4.7(b) of this Agreement.

"Authorizations" means any by-laws, licences, 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 2.6 of this Agreement.

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

"Capital Expenditures" 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 in Circumstance" is defined in Paragraph 7.6(a).

"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 November of the previous Year as compared to the CPI of November of the current Year. For example, the CPI Adjustment for Year 2007, is the CPI of November 2006 divided by the CPI of November 2005.

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

"Crown" means Her Majesty the Queen in Right of Ontario.

"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, licences, 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.

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

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

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

"Hydro Costs" means hydroelectricity costs due to the operation and maintenance of the Facility.

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

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

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

"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.

"MOE" means the (Ontario) Ministry of the Environment.

"MOL" means the (Ontario) Ministry of Labour.

"Operational Support Services" is defined in Paragraph 4.6(a) of this Agreement.

"Optional Services" means any services not included in Schedule C "the Services" that the Client and OCWA agree in writing to designate as "Optional Services" subject to Section 2.3.

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

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

"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 Section 2.8 of this Agreement.

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

"SCADA" means Supervisory Control and Data Acquisition.

"Service Fee" means an additional fee of 15% charged to the Client when OCWA purchases materials, supplies, equipment or contractor's services on behalf of the Client.

"Services" is defined in Section 2.1 of this Agreement.

"Technology" is defined in Section 8.1 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.

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

"Year" means the 365 day period from January 1st to December 31st of the calendar year.

SCHEDULE C - The Services

The Services are set out below:

1. Services

A. Wastewater Treatment

- i. Ensure that daily operations comply with Environmental Laws;
- ii. Inspect process control equipment to ensure proper operation of bar screens, barminutor/comminutor, primary and secondary wastewater treatment clarifiers, pumps, blower and aeration systems, filters, disinfection systems, digesters, sludge holding tanks, stand by power, other chemical feeders, gas monitoring equipment, lifting devices, and potable water back flow preventers;
- iii. Remove screening from LaSalle P.S. #1 bar screen drying area as required using a vacuum truck
- iv. OCWA staff will on a routine basis:
 - monitor and adjust dosages of process chemical as required;
 - record and analyze electricity used, chemicals used, chlorine residuals, disinfection, process water and wastewater flow calculations;
 - collect raw sewage samples in accordance with the Certificate of Approval or legislation
- v. Calculate, record and analyze the amount of wastewater being pumped to the Lou Romano Plant, the daily flows and monthly flows for billing, pumping station run hours, and standby equipment running hours;
- vi. Complete OCWA's internal operational data forms for statistical input into PDC;
- vii. Calibrate equipment in accordance with the Facility's Certificate of Approval;
- viii. Clean wet wells using high pressure/vacuum truck.

B. Wastewater Collection

- i. Ensure that daily operations comply with Environmental Laws;
- ii. Inspect equipment at pumping stations and forcemains to ensure proper operation of bar screens, barminutor/comminutor, pumps, blowers, disinfection systems, filters, stand by power and other chemical feeders; Comply with City of Windsor's sewer by-law;
- iii. Record flow readings on operational forms for computer input;
- iv. Calibrate equipment in accordance with the Facility's Certificate of Approval;
- v. Clean wet wells.

2. Routine Maintenance

OCWA will:

- (a) carry out a routine lubrication program including greasing and oiling as required in the lubrication schedule;
- (b) perform routine maintenance duties to equipment by following preventive maintenance procedures;
- (c) maintain an inventory of all key equipment and tools; and
- (d) ensure the security of the Facility by locking doors and gates.
- (e) Grass cutting & snow removal at pumping stations as required

3. Capital Improvements

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

4. Efficient Operation/Record Keeping

- (a) OCWA, acting reasonably, is responsible for ensuring the efficient operation of the Facility's processes.
- (b) OCWA will maintain records regarding the operation of the Facility in compliance with Environmental Laws.

5. **Regulatory Matters**

- (a) OCWA shall prepare the Facility for any scheduled inspection by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA.
- (b) Responding to a regulatory report on behalf of the Client (for example, a report of an inspection from the MOE or MOL), either directly or indirectly shall be considered an Unexpected Expense as per Section 4.8. Subject to any approvals of the Client required by Paragraph 4.8(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports (in accordance with Paragraph 4.8(a)) or negotiate changes to the reports with the regulatory authorities if related to the operation of the Facility. If any orders are issued by a regulatory authority which will require Capital Expenditures or any additional services, then OCWA may negotiate with the Client to provide such services at additional cost to be agreed upon by the Parties.

6. **Reporting**

OCWA shall provide a Facility performance report, within forty-five (45) days of the completion of each quarter or such other period as the Client and OCWA may agree upon.

7. **Staffing**

- (a) OCWA will ensure the Facility is operated with certified operators and other trained staff as required by Environmental Laws.
- (b) OCWA will ensure that staff working at the Facility are trained in normal process operation and maintenance of the Facility and that all staff are trained to deal with emergency situations.

8. **Emergency Situations**

- (a) OCWA will ensure that there are contingency plans in place for OCWA staff to address non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- (b) In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.
- (c) Emergency responses outside of regular work hours shall be billed to the Client in accordance with Paragraph 2.3(b).

SCHEDULE D - Insurance

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

Property Insurance

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

Limits:

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

Deductibles: For the year 2008, subject to change on an annual basis:

All Perils	-	\$5,000 (except earthquake and flood)
Earthquake	-	\$100,000 (minimum)
Flood	-	\$50,000

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

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

Boiler and Machinery Insurance

Coverage: Insures against loss or damage arising from an accident with Pressure Objects, Production Machines, and Machinery and Service Supply in use or connected ready for use.

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

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

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

Deductibles: \$5,000 for the year 2008; subject to change on an annual basis.

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

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

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 2008; 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 (60 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 performances of the services provided by OCWA.

Limit: \$5,000,000 per loss on a Claims Made basis with automatic, extended reporting periods. \$5,000,000 aggregate.

Deductible: \$100,000 for the year 2008; subject to change on an annual basis.

AMENDING AGREEMENT

THIS AMENDING AGREEMENT made as of the 1st day of January, 2014.

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 THE TOWN OF LASALLE
(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 January 1st, 2009 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 have agreed to amend the Existing Agreement, as described below;

AND WHEREAS the Council of the Client passed By-Law No. 7693 on the 14 day of October, 2014 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 amendments to the Existing Agreement:

1. Section 2.3 Optional Services of the Existing Agreement is hereby deleted and replaced with the following:

"Section 2.3 - 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:

- (a) Labour rates on Business Days, Monday to Friday, (0730 to 1600) shall be billed at \$85.00/hour/person for an operations manager, assistant operations manager or process and compliance technician and \$55.00/hour/person for an operator or mechanic, plus vehicle expenses *for OCWA vehicles only* at \$0.50/km/vehicle;
- (b) Labour rates after hours and on weekends shall be billed at \$127.50/hour/person for an operations manager, assistant operations manager or process and compliance technician and \$82.50/hour/person for an operator or mechanic, with a minimum four (4) hour charge, plus vehicle expenses *for OCWA vehicles only* at \$0.50/km/vehicle;
- (c) Labour rates on Statutory holidays shall be billed at \$127.50/hour/person for an operations manager, assistant operations manager or process and compliance technician and \$82.50/hour/person for an operator or mechanic, with a minimum eight (8) hour charge, plus vehicle expenses *for OCWA vehicles only* at \$0.50/km/vehicle;
- (d) 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.
- (e) The labour rates set out in paragraphs (a) (b) and (c) above are subject to any increase which OCWA's applicable OPSEU employees may receive during the term of this Agreement. Any increase in the labour rates shall coincide with the start date of such increases, including any retroactive start dates.
- (f) OCWA shall use vehicles supplied by the Client during the term of this Agreement. There will be no mileage charge for the use of the Client's vehicle. In the event that an OCWA vehicle is required (i.e. responding to an emergency) the above mileage charges set out in paragraphs (a), (b) and (c) will apply.

2. *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 January 1, 2014 and shall continue in effect for a term of five years, ending December 31, 2018 (the "Initial Term") and then may be renewed for successive five year terms (each a "Renewal Term") upon agreement between the parties, unless terminated under Section 6.2 of this Agreement."

3. *Section 4.2 of the Existing Agreement is hereby deleted and replaced with the following:*

"Section 4.2 - Operations Estimate"

No later than October 30th of each year of the Initial Term or any Renewal Term, OCWA shall prepare and submit to the Client, for its approval, an estimate of the charges associated with the

provision of the operational and maintenance Services for the following calendar year. The Client will inform OCWA no later than December 1st whether the estimate is approved or not approved (the approved estimate is referred to as the "Estimate"). If the Client does not provide OCWA with its decision regarding approval by the December 1st date, the estimate shall be deemed approved. The Estimate shall be OCWA's authorization to incur the expenditures in the Estimate. The Estimate for the first year of the Initial Term is \$229,237."

4. Section 4.3 of the Existing Agreement is hereby deleted and replaced with the following:

"Section 4.3 - Payment of the Estimate

The Client shall pay OCWA the annual Estimate for each Year of the Initial Term or any Current Term, in twelve (12) equal monthly payments, in advance, on the first day of each month. The first payment shall be due and payable on January 1st, 2014. The monthly payment will be \$19,103.08."

5. Section 4.5 of the Existing Agreement is hereby deleted and replaced with the following:

"Section 4.5 - Other Charges

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

- (a) OCWA's Operational Support Services (as described in Section 4.6);
- (b) Capital Expenditures (as described in Section 4.7);
- (c) Unexpected Expenses (as described in Section 4.8);
- (d) Charges for any Optional Services that are provided by OCWA to the Client (as described in Paragraph 2.3(b).
- (e) SCADA maintenance via Outpost 5

6. Section 4.6 of the Existing Agreement is hereby deleted and replaced with the following:

"Section 4.6 - Operational Support Services

- (a) In addition to payment of the Estimate, as reconciled with the Actual Charges, the Client shall also pay OCWA an annual Operational Support Fee (the "Operational Support Services") to provide the management Services, which shall be \$30,704.00 for the first year of the Initial Term ("Year One"). The Operational Support Fee shall be paid by the Client in twelve (12) equal monthly instalments at the same time and in the same manner as the Estimate. The monthly payment shall be \$2,558.67.

- (b) For the second year ("Year Two") and subsequent years of the Initial Term, the annual operational support service fee shall be \$30,704.00 plus the CPI Adjustment.
- (c) The Operational Support Service Fee in any Renewal Term shall be as agreed by the Client and OCWA. If the Client and OCWA cannot reach an agreement on the Estimate and Operational Support Service Fee for any Renewal Term within six (6) months of the beginning of the last year of the current term (whether the Initial Term or a Renewal Term) (the "Current Term"), this Agreement will be terminated one year from the last day of the Current Term. The Parties shall treat this final year in the same manner as if the Current Term was extended an additional year."

7. Part 2. Street Address of the Facility of "Schedule A – The Facility" is hereby deleted and replaced with the following;

"Part 2. Street Address of the Facility

Station Number	Site Name	911 Address
La Salle Flow Bldg.	La Salle Forcemain Flow Metering Bldg.	4155 Ojibway Parkway Windsor, Ont.
L S # 1	Reaume Rd. PS # 1	6400 Milford Ave.
L S # 2	Ellsworth St. PS # 2	499 Front Rd.
L S # 3	Turkey Creek PS # 3	305 Front Rd.
L S # 4	Ramblewood Subd. PS # 4	249 Ramblewood Dr.
L S # 6	Kenwood Dr. PS # 6	402 Kenwood Dr.
L S # 7	Malden/Reaume PS # 7	6520 Malden Rd.
L S # 8	Delmar St. PS # 8	1855 Delmar St.
L S # 10	Heritage Est. PS # 10	1995 Cousineau Rd.
L S # 11	Machette Rd. PS # 11	6620 Machette Rd.
L S # 12	Machette Rd. PS # 12	6235 Machette Rd.
L S # 13	Normandy Dr. PS # 13	5995 N. Woodmont Ave.
L S # 14	Marentette Drain PS # 14	2305 Front Rd.
L S # 15	Victory Dr. PS # 15	526 Victory Dr.
L S # 16	Bechard PS # 16	220 Bechard Beach lane
L S # 17	Martin Lane PS # 17	456 Martin Lane
L S # 18	Laurier Pkwy PS # 18	2119 Laurier Pkwy.
L S # 19	Laurier Pkwy PS # 19	3020 Laurier Pkwy.
Vollmer Storm PS	Vollmer Rec. Centre Storm PS.	2147 Judy Recker Cres.
7 Lakes Estates Storm Water PS	7 Lakes Estates Development	7198 Meo Blvd.

7 Air relief chambers located along the 30" sewage forcemain from LaSalle P.S. #1 to Lou Romano located beside the Ojibway Parkway, Windsor, Ontario.

8. "Schedule B" Definitions "CPI Adjustment" is hereby deleted and replaced with the following:

"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 of September of the current Year. For example, the CPI Adjustment for Year 2014, is the CPI of September 2013 divided by the CPI of September 2012.

9. "Schedule C – The Services" is hereby deleted and replaced with the following;

1. Services

A. Wastewater Treatment

- (a) Ensure that daily operations comply with Environmental Laws;
- (b) Inspect stand by power, chemical feeders, gas monitoring equipment, lifting devices, and potable water back flow preventers;
- (c) Remove screening from LaSalle P.S. #1 bar screen drying area as required using a vacuum truck;
- (d) OCWA staff will on a routine basis:
 - (i) monitor and adjust dosages of process chemical as required;
 - (ii) record and analyze electricity used, chemicals used, and wastewater flow calculations;
 - (iii) collect sewage samples and perform routine wastewater tests in accordance with the Environmental Compliance Approval or legislation;
- (e) Calculate, record and analyze the amount of wastewater being pumped to the Lou Romano Plant, the daily flows and monthly flows for billing, pumping station run hours, and standby equipment running hours;
- (f) Complete OCWA's internal operational data forms for statistical input into PDC;
- (g) Calibrate equipment in accordance with the Facility's Environmental Compliance Approval; and
- (h) Cleaning of wet wells.

B. Wastewater Collection

- (a) Ensure that daily operations comply with Environmental Laws;
- (b) Inspect equipment at pumping stations and forcemains to ensure proper operation of bar screens, pumps, stand by power and other chemical feeders;
- (c) Conduct a station check involving a visual status of Pressure Relief Valve (PRV) and the above ground vent pipe within the 7 chambers along the 30" sewage forcemain from LaSalle P.S. #1 to Lou Romano;
- (d) Comply with the City of Windsor's sewer use by-law;
- (e) Record flow readings on operational forms for computer input;
- (f) Calibrate equipment in accordance with the Facility's Environmental Compliance Approval; and
- (g) Cleaning of wet wells.

2. Routine Maintenance

OCWA will:

- (a) Carry out a routine lubrication program including greasing and oiling as required in the lubrication schedule;
- (b) Perform routine maintenance duties to equipment by following preventive maintenance procedures;
- (c) Maintain an inventory of all key equipment and tools;
- (d) Ensure the security of the Facility by locking doors and gates; and
- (e) Grass cutting and snow removal will be conducted at pumping stations on an as required basis.

3. Capital Improvements

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

4. Efficient Operation/Record Keeping

- (a) OCWA, acting reasonably, is responsible for ensuring the efficient operation of the Facility's processes.

- (b) OCWA will maintain records regarding the operation of the Facility in compliance with Environmental Laws.

5. Regulatory Matters

- (a) OCWA shall prepare the Facility for any scheduled inspection by the Ministry of the Environment ("MOE") and shall accompany the MOE during such inspection. OCWA will review with the Client any inspection reports prepared by regulatory authorities that are provided to OCWA.
- (b) Responding to a regulatory report on behalf of the Client (for example, a report of an inspection from the MOE or MOL), either directly or indirectly shall be considered an Unexpected Expense as per Section 4.7. Subject to any approvals of the Client required by Paragraph 4.7(b) of this Agreement, OCWA will either correct deficiencies identified in such inspection reports (in accordance with Paragraph 4.7(a)) or negotiate changes to the reports with the regulatory authorities if related to the operation of the Facility. If any orders are issued by a regulatory authority which will require Capital Expenditures or any additional services, then OCWA may negotiate with the Client to provide such services at additional cost to be agreed upon by the Parties.

6. Reporting

OCWA shall provide a Facility performance report, within forty-five (45) days of the completion of each quarter or such other period as the Client and OCWA may agree upon.

7. Staffing

- (a) OCWA will ensure the Facility is operated with certified operators and other trained staff as required by Environmental Laws.
- (b) OCWA will ensure that staff working at the Facility are trained in normal process operation and maintenance of the Facility and that all staff are trained to deal with emergency situations.

8. Emergency Situations

- (a) OCWA will ensure that there are contingency plans in place for OCWA staff to address non-routine operational situations and emergency situations such as spills, by-passes, overflows, hydro interruptions and equipment failure.
- (b) In the event of an emergency, OCWA shall implement such contingency plans and shall make all reasonable efforts to maintain the Facility in compliance with Environmental Laws.

- (c) Emergency responses outside of regular work hours shall be billed to the Client in accordance with Section 2.3.

9. *"Schedule D – Insurance" is hereby deleted and replaced with the following;*

Property Insurance

Insured Perils:	All Risks of direct physical loss or damage (including Flood and Earthquake) occurring during the term of this policy, except as hereinafter excluded.
Policy Limits:	<ul style="list-style-type: none">- Replacement Value- Extra expenses- Expediting expenses
Insurable Value:	\$5,352,296 (Subject to Annual Review by the Client)
Deductibles:	<p>Earthquake – 3% of the value of the property insured subject to a minimum of \$100,000.</p> <p>Flood – A flood deductible of 3% of the value of the property insured subject to a minimum amount of \$100,000 applies to locations in the 100-year flood zones.</p> <p>A flood deductible of 2% of the value of the property insured subject to a minimum amount of \$75,000 applies to locations in the 500-year flood zones.</p> <p>A flood deductible of \$50,000 applies to all other locations.</p>
Sewer Back-Up & Water Damage:	\$100,000
All Other Losses:	\$5,000 based on the insurable value of the Facilities at the time of execution of this Agreement (except earthquake, flood and sewer back-up).

The above is subject to change on an annual basis.

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

Property Insured: Property of every kind and description as declared except as excluded under the "Property Excluded" section of the policy.

Boiler & Machinery Insurance

Coverage: Sudden & Accidental Breakdown of a Pressure, Mechanical, and Electrical Object including Production Machinery as defined under the policy. Coverage applies to the loss of the "Object" itself and for loss to other insured property directly damaged by the "Accident", except as excluded under the policy.

Limit: \$100,000,000 per Accident.

Deductibles: \$5,000 for Property Damage per Accident for the year 2014; subject to changes on an annual basis.

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

Automobile Insurance

Coverage: Automobile Liability for OCWA owned or leased vehicles.

Limit: \$5,000,000

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 2014; 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 (60 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 for Professional Liability Insurance

Deductible: \$100,000 for the year 2014; subject to change on an annual basis.

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

ONTARIO CLEAN WATER AGENCY

July 24/14
Date of Signing

By: [Signature]
(Authorized Signing Officer)

7/25/2014
Date of Signing

By: [Signature]
(Authorized Signing Officer)

THE CORPORATION OF THE TOWN OF LASALLE

10/14/14
Date of Signing

By: [Signature]
(Authorized Signing Officer)

10/14/14
Date of Signing

By: [Signature]
(Authorized Signing Officer)