

THE WINDSOR UTILITIES COMMISSION

-and-

ENWIN UTILITIES LTD.

WATER SYSTEM OPERATING AGREEMENT

November 6, 2012

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WATER SYSTEM OPERATING AGREEMENT

THIS AGREEMENT is made as of November 6, 2012.

BETWEEN:

THE WINDSOR UTILITIES COMMISSION, a Commission organized under the laws of the Province of Ontario (hereinafter referred to as "**WUC**"),

AND

ENWIN UTILITIES LTD., a corporation incorporated under the laws of the Province of Ontario (hereinafter referred to as "**EnWin**"),

RECITALS:

1. WUC owns and operates the Business (as defined below) in the City of Windsor and EnWin is a licenced electricity distributor permitted to operate and manage the Business of WUC pursuant to Section 5(2) of Ontario Regulation 161/99 made under the *Ontario Energy Board Act*, as amended.
2. On February 17, 2003, the City Council of the City of Windsor adopted and gave a shareholder direction to Windsor Canada Utilities Ltd. ("**WCU**"), the wholly owned subsidiary of the City of Windsor and sole shareholder of EnWin, that established an objective for WCU, namely: "Optimization of community prosperity through delivery of utility services at competitive rates achieving maximum shareholder value through sustaining the utility businesses, enlightened dividend policies and retaining a viable municipal tax base through local business retention and new development."
3. The Parties have agreed to enter into this Agreement pursuant to which EnWin has agreed to provide or cause to be provided, from and after the Effective Date, services for WUC with respect to performance of the Business with respect to the Facilities, all upon the terms and conditions set forth herein (all services are as described in this Agreement for the purposes of carrying out the Business, including management, administrative services, construction operations and maintenance services and are hereinafter collectively referred to as the "**Services**").
4. WUC covenants to establish rates for water to be charged to water rate payers ("**Water Rates**") and pay for the Services in accordance with the terms and conditions set out herein.
5. Having regard to the constating, governing and authoritative legislation, regulations, codes, and by-laws applicable to WUC and EnWin, WUC and EnWin seek to restructure the operation, management and administration of a water utility which will pursue high quality service to customers, low rates for ratepayers, good value to the City of Windsor, and a positive workplace for employees.

NOW THEREFORE in consideration of the premises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith, all capitalized terms shall have the meanings set forth below:

- 1.1.1 “**Additional Services**” has the meaning ascribed thereto in Section 4.3;
- 1.1.2 “**Affiliate**” for purposes of this Agreement two Persons are “Affiliates” if one of them Controls the other or they are both Controlled by the same Person, in either case whether directly or indirectly through a chain of Controlled intermediaries. Notwithstanding, the forgoing and for greater certainty, the Parties agree that WUC and EnWin are Affiliates for the purposes of this Agreement;
- 1.1.3 “**Agreement**” means this Water System Operating Agreement as it may be amended, modified or supplemented from time to time;
- 1.1.4 “**Applicable Law**” means any applicable law including any statute, regulation, by-law, treaty, guideline, directive, rule, standard, requirement, order, judgment, injunction, award, decree, code or resolution of a Governmental Authority, whether or not having the force of law, binding on the Parties, and includes all Environmental Laws and Regulations in effect from time to time;
- 1.1.5 “**Business**” means the business of: (i) developing, designing, financing, constructing, permitting, licensing, maintaining, owning, operating and managing the Facilities; (ii) producing, delivering and selling of water processed by and delivered through the Facilities; and (iii) all activities ancillary to the activities in the foregoing clauses (i) and (ii);
- 1.1.6 “**Business Day**” means a day other than Saturday, Sunday, a statutory holiday or any other day on which Canadian chartered banks are generally not open for business in the Province of Ontario;
- 1.1.7 “**Capital Expenditures**” means, with respect to any period, without duplication, all costs and expenses of a capital nature, which are incurred in respect of such period in accordance with generally accepted accounting principles;
- 1.1.8 “**Capital Expenditure Plan**” means the capital expenditure plan for the Business established in accordance with Section 4.5;
- 1.1.9 “**Change of Control**” means any change in the holding of securities of a Party whereby, immediately following such change:
 - (a) a person not affiliated with a Party prior to such change holds greater than 50% of the voting securities of a Party or is in a position to exercise control over such Party, or

- (b) a group of persons (none of whom are affiliated with a Party prior to such change) acting jointly and in concert hold greater than 50% of the voting securities of a Party or are in a position to exercise control over such Party,

whether such change in the holding of such securities occurs by way of a sale, transfer, reorganization, recapitalization, consolidation, amalgamation, arrangement, merger, redemption or otherwise;

- 1.1.10 **"Claim"** has the meaning ascribed thereto in Section 13.3.1;
- 1.1.11 **"Confidential Information"** has the meaning ascribed thereto in Section 16.2;
- 1.1.12 **"Control"** or **"Controlled"** means, with respect to two Persons, that Person ("A") directly controls Person ("B") where A has the power to directly determine the management and policies of B by contract or status (for example the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B;
- 1.1.13 **"Dispute"** has the meaning ascribed thereto in Section 15.1;
- 1.1.14 **"Documents"** means, collectively, this Agreement, the Material Contracts and the Permits and any other agreements, certificates or instruments delivered pursuant to such documents;
- 1.1.15 **"Effective Date"** means the date [NTD: Insert date or event corresponding to financial close];
- 1.1.16 **"Employee Arrangement Agreement"** means the agreement dated as of the Effective Date between Parties that sets out the obligations of Parties in respect of the transfer of the employees of the business from WUC to EnWin;
- 1.1.17 **"Environmental Laws and Regulations"** means all applicable environmental or health and safety laws, statutes, regulations, by-laws, treaties, resolutions and ordinances of any Governmental Authority, including: (i) all regulations, resolutions, ordinances, decrees, guidelines, standards, policies and other similar documents and instruments of all courts and governmental authorities, bureaus and agencies, domestic and foreign, whether issued by environmental regulatory agencies or otherwise; and (ii) all laws, by-laws, regulations, resolutions, ordinances, guidelines, standards, policies and decrees relating to natural and human environmental matters (including air, land, surface water, ground water, treated water, drinking water and distributed water, and immovable and movable property), public or occupational health and safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of a Hazardous Substance;
- 1.1.18 **"EnWin"** has the meaning ascribed thereto in the preamble to this Agreement;
- 1.1.19 **"EnWin Event of Default"** means any of the events described in Section 10.3;

- 1.1.20 “**Event of Default**” means, with respect to WUC, a WUC Event of Default and, with respect to EnWin, an EnWin Event of Default;
- 1.1.21 “**Facilities**” means any and all water distribution and processing facilities and other facilities or assets (being either tangible, intangible, real or personal) from time to time owned by WUC, including those related to district energy;
- 1.1.22 “**Force Majeure**” means, for the purposes hereof, an event, condition or circumstance (and the effect thereof) which is not within the reasonable control of the Party and its Affiliates claiming Force Majeure and which, by the exercise of due diligence, the Party and its Affiliates claiming Force Majeure is unable to prevent or overcome, including events in the nature of acts of God, fire, explosion, civil disturbance, war, riot, insurrection, military or guerrilla action, terrorist activity, economic sanction, blockade or embargo, sabotage, flooding, earthquake, drought, strikes or labour disputes, events of force majeure claimed by suppliers or subcontractors, inability to obtain or maintain a Permit, and action taken or restraint imposed that is of general application by any Governmental Authority, except for any such action or restraint that constitutes an Imposition of Governmental Authority, (so long as the Party claiming Force Majeure has not applied for or assisted in the application for, and has opposed where and to the extent possible, such action or restraint by such Governmental Authority);
- 1.1.23 “**Governmental Authority**” means any court or governmental ministry, department, tribunal, commission, board, bureau, agency, or instrumentality of Canada, or of any province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing having or purporting to have jurisdiction over the Business or over any Party to this Agreement, including, for greater certainty, the Ontario Energy Board and its successors and any Person acting under the authority of a Governmental Authority. For greater certainty, for purposes of this Agreement, none of WCU, EnWin or WUC is a Governmental Authority;
- 1.1.24 “**Hazardous Substance**” means: (i) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (ii) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Laws and Regulations; (iii) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Laws and Regulations; and (iv) all other substances or wastes of any nature with respect to which liability or standards of conduct are imposed under any Environmental Laws and Regulations.
- 1.1.25 “**Implementation Rate Change**” has the meaning ascribed thereto in Section 7.1.5;

- 1.1.26 “**Imposition of Governmental Authority**” has the meaning ascribed thereto in Section 12.1.1;
- 1.1.27 “**Indemnified Party**” has the meaning ascribed thereto in Section 13.3.1;
- 1.1.28 “**Indemnifying Party**” has the meaning ascribed thereto in Section 13.3.1;
- 1.1.29 “**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) and any other bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors rights and the bankruptcy, insolvency, moratorium, reorganization, creditor protection or similar laws of any other applicable jurisdiction, as they may be amended from time to time;
- 1.1.30 “**Insolvent**” means, in relation to any Person: (i) being insolvent or bankrupt or making a proposal or filing a notice of intent to do so, pursuant to or under any Insolvency Legislation (or any other Applicable Law); or (ii) having a trustee or receiver or manager appointed in respect of its assets, and, in respect of a petition into bankruptcy, any such appointment continues unstayed and in effect for a period of sixty (60) days;
- 1.1.31 “**Material Adverse Effect**” means any change (or changes taken together) in the affected Party that materially and adversely affects the ability of such Party to perform its obligations under this Agreement;
- 1.1.32 “**Material Change**” means a change to the forecasted Operating Expenses set out in an Operating Expenses Plan relative to the actual Operating Expenses incurred during the applicable calendar year or a change to forecasted Capital Expenditures set out in a Capital Expenditure Plan or relative to actual Capital Expenditures incurred in the applicable calendar year, where such change cannot be funded through revenues received from Water Rates implemented on the basis of such Operating Expenses Plan or Capital Expenditure Plan;
- 1.1.33 “**Material Change Notice**” has the meaning ascribed thereto in Section 4.4.5;
- 1.1.34 “**Material Contracts**” means all agreements, undertakings and other documents to which EnWin, or their permitted assigns or permitted delegates pursuant to the terms hereof, is now, or may become, a Party in relation to the Business, including the breach of which, or default under which, would have a material adverse effect on the Business;
- 1.1.35 “**Mediator**” has the meaning ascribed thereto in Section 15.1.2;
- 1.1.36 “**MFIPPA**” means the *Municipal Freedom of Information Act and Protection of Privacy Act* of Ontario, as amended from time to time;
- 1.1.37 “**Operating Accounts**” means the principal bank accounts of WUC for operational purposes;

- 1.1.38 “**Operating Expenses**” means, with respect to any period, without duplication, all costs and expenses of WUC, excluding Capital Expenditures, in connection with the Business and the Facilities, which are incurred by or on behalf of WUC, in respect of such period in accordance with generally accepted accounting principles;
- 1.1.39 “**Operating Expenses Plan**” means the operating plan for the Business established in accordance with Section 4.4;
- 1.1.40 “**Party**” or “**Parties**” means WUC and EnWin and all of their successors and assigns.
- 1.1.41 “**Permits**” means all consents, certificates, waivers, exemptions, rights, rights of way, entitlements, licenses, approvals, registrations, permits or other authorizations granted by any Governmental Authority or any other Person under any Applicable Law in respect of, or which are in any way material to, the Facilities or the Business;
- 1.1.42 “**Person**” means any natural person, corporation, division of a corporation, partnership, trust, joint venture (which includes a co-ownership), association, company, estate, unincorporated organization or Governmental Authority;
- 1.1.43 “**Personal Information**” has the meaning ascribed thereto in Section 16.3;
- 1.1.44 “**PIPEDA**” means the *Personal Information Protection and Electronic Documents Act* of Canada, as amended from time to time;
- 1.1.45 “**Plan Period**” has the meaning ascribed thereto in Section 4.6.5;
- 1.1.46 “**Plans**” means, collectively, the Operating Expenses Plan, the Capital Expenditure Plan and the Water System Financial Plan, each as in effect or amended from time to time;
- 1.1.47 “**Proposed OEP**” has the meaning ascribed thereto in Section 4.4.1;
- 1.1.48 “**Proposed CEP**” has the meaning ascribed thereto in Section 4.5.1;
- 1.1.49 “**Prudent Industry Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the water management industry in Ontario during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, water quality, reliability, safety and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include prudent practices, methods, and acts generally accepted in Ontario;
- 1.1.50 “**Rate Model**” has the meaning ascribed thereto in Section 7.1.2;
- 1.1.51 “**Representative**” means a Party’s Affiliates, and a Party’s and its Affiliates’ officers, directors, employees, legal counsel, advisors, contractors, and consultants;

- 1.1.52 **“Revised Operating Expenses Plan”** has the meaning ascribed thereto in Section 4.4.5;
- 1.1.53 **“Revised Capital Expenditure Plan”** has the meaning ascribed thereto in Section 4.5.5;
- 1.1.54 **“Senior Leadership”** has the meaning ascribed thereto in Section 15.1.1;
- 1.1.55 **“Services”** has the meaning ascribed thereto in the recitals to this Agreement;
- 1.1.56 **“Successor WSFP”** has the meaning ascribed thereto in Section 4.6.5;
- 1.1.57 **“System Plan Expiry Date”** is the last date in the Plan Period;
- 1.1.58 **“Taxes”** means all taxes, rates, duties, charges, impositions, levies and assessments whatsoever which are levied, imposed or assessed against the Facilities or the revenues therefrom by any Governmental Authority, and including those levied, imposed or assessed thereon for education, schools, utilities and local improvements or in respect of any occupancy or use thereof, including goods and services tax. If the system of personal or real property taxation shall be altered or varied and any new tax shall be levied or imposed on EnWin or WUC in respect of all or any portion of the Business or Facilities or the revenues therefrom in substitution for or in addition to those presently levied or imposed, then any such new tax levy shall be deemed to be and shall be included in Taxes. For greater certainty, the term **“Taxes”** includes capital, income or any other taxes payable at any time by WUC;
- 1.1.59 **“Term”** means, in respect of this Agreement, the initial term from the Effective Date, until the fifth (5th) anniversary of such date, or the last day of any renewal terms, unless terminated earlier in accordance with the terms hereof;
- 1.1.60 **“Termination Assistance Services”** has the meaning ascribed thereto in Section 10.5;
- 1.1.61 **“Third Party Costs”** means charges and expenses, including Capital Expenditures and Operating Expenses, payable to Persons that: (i) are not Affiliates of EnWin; or (ii) are Affiliates of EnWin and in which case such charges and expenses do not exceed their fair market value on an arms-length basis of the goods or services provided;
- 1.1.62 **“Third Party Reviewer”** means any Person that is a suitably qualified professional engineer, lawyer, accountant or consultant appointed from time to time to perform the audits described in Section 8.3;
- 1.1.63 **“Water Rates”** has the meaning ascribed thereto in the recitals to this Agreement;
- 1.1.64 **“Water System Financial Plan”** means the financial plan prescribed by and filed pursuant to the *Safe Drinking Water Act, 2002* as detailed in O. Reg 453/07, as amended or replaced from time to time, and that shall be substantially comparable to the form attached as Exhibit A unless the applicable regulation stipulates otherwise;

1.1.65 “WCU” has the meaning ascribed thereto in the recitals to this Agreement;

1.1.66 “WUC” has the meaning ascribed thereto in the preamble to this Agreement; and

1.1.67 “WUC Event of Default” means any of the events described in Section 10.1.

1.2 Headings

The division of this Agreement into Articles, Sections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to “Articles” and “Sections” followed by a number or a letter are to Articles and Sections of this Agreement.

1.3 Interpretation

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders. Where the word “including” or “includes” is used in this Agreement it means “including without limitation” or “includes without limitation”, respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under the Documents.

1.4 Accounting Principles

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Accounting Standards Board, or any successor authoritative body, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement or any document, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the Parties, be made in accordance with generally accepted accounting principles applied on a consistent basis.

1.5 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted.

1.6 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment shall be made or such action shall be taken on or not later than the next succeeding Business Day.

1.7 Funds

All dollar amounts referred to in this Agreement are in lawful money of Canada.

**ARTICLE 2
APPOINTMENT OF ENWIN**

2.1 Appointment of EnWin

Subject to the provisions of this Agreement, WUC hereby engages EnWin, exclusively from the Effective Date to: (i) perform or cause to be performed the obligations and to provide or cause to be provided the Services hereunder, including those more fully described in Article 4; (ii) provide or cause to be provided services not currently required or contemplated by WUC in respect of the Business or the Facilities or described in Article 4 as the need for such services arise; and (iii) do such things and execute such agreements on behalf of WUC as are necessary or desirable in respect of the provision of such Services.

2.2 Acceptance of Appointment

EnWin hereby accepts the exclusive appointment provided for in Section 2.1 and agrees to act in such capacity and to provide or cause to be provided such Services upon the terms and conditions set forth in this Agreement. EnWin will ensure that its resources and services and those of its Affiliates, as applicable, will be made available to enable EnWin to fulfill its obligations under this Agreement.

2.3 Notification to Third Parties

WUC shall notify all other parties to the Documents of the appointment of EnWin under this Agreement and shall execute all directions and other instruments as may be necessary or desirable to document EnWin's authority in relation to the provision of the Services to WUC in respect of the Business.

**ARTICLE 3
OBLIGATIONS AND COVENANTS OF WUC**

3.1 Rights, Obligations and Covenants of WUC

WUC covenants and agrees with EnWin during the Term and in accordance with the terms and conditions of this Agreement as follows:

- 3.1.1 to make available and grant access, to EnWin and its representatives, to: (i) the Facilities; (ii) the books and records of WUC; and (iii) the consultant, counterparties and contractors of WUC, in each of the foregoing cases in order for EnWin to perform its obligations, covenants and responsibilities pursuant to the terms hereof;
- 3.1.2 to pay or provide any direction for payment to EnWin to enable it to pay, as the case may be, all Operating Expenses pursuant to Section 4.4, any remuneration payable to EnWin pursuant to Section 4.8 and any other expenses of WUC which are required to ensure the compliance of the Business with Applicable Law, Taxes and other government fees, utility charges, dues, rates and assessments of whatever nature or kind and to whomever assessed now or hereafter charged or payable with

respect to the Business, in each of the foregoing cases including any interest and penalties thereon when and as the same become due and payable;

- 3.1.3 not to hire, employ, engage or cause any other Person to provide services comparable in whole or in part to those provided or to be provided by EnWin hereunder without first obtaining the prior written consent of EnWin;
- 3.1.4 when requested by EnWin, to make decisions within a reasonable time with respect to material operational matters that require its approval and to provide instructions or advice to EnWin for such operations;
- 3.1.5 to consider in accordance with Section 4.4, the Operating Expenses Plan, and to comply with the Operating Expenses Plan and any amendments or modifications thereto once confirmed, and in particular, to make available to EnWin, as may be required, all necessary funds required to pay for Operating Expenses provided in the Operating Expenses Plan;
- 3.1.6 to consider in accordance with Section 4.5, the Capital Expenditure Plan, and to comply with the Capital Expenditure Plan and any amendments or modifications thereto once confirmed, and in particular, to make available to EnWin, as may be required, all necessary funds required to pay for Capital Expenditures provided in the Capital Expenditure Plan;
- 3.1.7 to approve Water Rates in accordance with the model and methodology, set out in Section 7.1;
- 3.1.8 to provide, or cause to be provided, all information as may be reasonably requested by EnWin in relation to the Business for the performance of the Services hereunder and to promptly notify EnWin of any material facts or information of which WUC is aware in relation to and which may affect the Business, or the performance of the obligations, covenants or responsibilities of EnWin pursuant to this Agreement, including any pending or threatened suits, actions, claims, proceedings or orders by or against WUC;
- 3.1.9 in accordance with the Employee Arrangement Agreement, to arrange for the transfer and to transfer to EnWin: (i) all non-unionized employees of the Business; and (ii) all unionized employees of the Business, on the Effective Date or a date thereafter to be determined in EnWin's sole discretion. The Parties Agree that each such transfer described above shall be completed in accordance with the Employee Arrangement Agreement;
- 3.1.10 in accordance with the Employee Arrangement Agreement, to compensate EnWin for all post-retirement obligations of the Business' employees either in a lump sum payment or pursuant to a payment schedule to be determined by EnWin acting reasonably;
- 3.1.11 to promptly notify EnWin if any Governmental Authority contacts WUC with respect to compliance with Applicable Law or Permits; and

- 3.1.12 to comply with all Applicable Laws and with the terms and conditions of this Agreement and not to provide instructions to EnWin: (i) inconsistent with this Agreement; (ii) in breach of Applicable Law or that would reasonably be expected to result in a breach of Applicable Law if implemented; or (iii) that would otherwise result in the provision of the Services or the operation of the Facilities or Business in a manner that is inconsistent with Prudent Industry Practice.

ARTICLE 4 OBLIGATIONS AND COVENANTS OF ENWIN

EnWin covenants and agrees with WUC during the Term and in accordance with the terms and conditions of this Agreement to provide, or to cause to be provided by its Affiliates or suitably qualified contractors, subcontractors or third parties, in accordance with Prudent Industry Practice, as applicable, the Services described in this Article 4.

4.1 Management Services

EnWin covenants and agrees with WUC as follows to directly or indirectly:

- 4.1.1 cause or supervise the carrying out of all day-to-day management, secretarial, accounting, administrative, liaison, representative, regulatory and reporting functions and obligations of WUC in relation to the Business and to comply in every material respect with all Applicable Laws;
- 4.1.2 cause or supervise the establishment and maintenance of books and records for the Business consistent with industry standards and in compliance with generally accepted accounting principles;
- 4.1.3 prepare and implement the Operating Expenses Plan and any applicable amendment to the Operating Expenses Plan, in accordance with Section 4.4;
- 4.1.4 prepare and implement the Capital Expenditure Plan, and any applicable amendment to the Capital Expenditure Plan in accordance with Section 4.5;
- 4.1.5 supervise and provide direction, on behalf of WUC, under the Documents and implement any amendments, modifications, terminations, replacements or extensions to the Documents;
- 4.1.6 engage, supervise and direct its Affiliates and any contractors, subcontractors and other third parties necessary or desirable for the provision of the Services hereunder;
- 4.1.7 appoint accountants, legal counsel and other accounting, financial or legal advisors or aids and technical, commercial, marketing or other advisors or aids;
- 4.1.8 establish and maintain appropriate policies and procedures to enable compliance by EnWin and WUC, as applicable, in all material respects with:
 - (a) the requirements of Applicable Law affecting the Facilities and the Business;

- (b) the Operating Expenses Plan;
 - (c) the Capital Expenditure Plan;
 - (d) the Water System Financial Plan;
 - (e) each of the Permits, and the obtaining and maintenance thereof; and
 - (f) Prudent Industry Practice;
- 4.1.9 to perform on behalf of WUC any contractual obligations by which WUC is bound including Material Contracts;
- 4.1.10 attend to all matters necessary for any reorganization, bankruptcy or insolvency proceedings, dissolution or winding up of WUC, subject to approval by WUC;
- 4.1.11 if necessary, supervise the timely calculation and payment of Taxes relating to the Facilities and Business payable, and the filing of all tax returns due, by WUC;
- 4.1.12 cause the annual consolidated financial statements of WUC to be: (i) prepared in accordance with generally accepted accounting principles; (ii) audited to the extent required by Applicable Law or required by WUC; and (iii) submitted to WUC for its approval;
- 4.1.13 manage any legal or regulatory action or dispute against or involving WUC and commence, in the name of WUC, as the case may be, any litigation or dispute resolution process in relation to the Business;
- 4.1.14 obtain insurance of the Business and the Facilities, together with other insurances against other risks;
- 4.1.15 be the primary contact with all third parties, including other stakeholders and Governmental Authorities, with respect to the Business and any other matters reasonably related thereto;
- 4.1.16 keep the Facilities free and clear of all liens and encumbrances arising out of or in connection with the acts, omissions or indebtedness of EnWin or of its Affiliates, employees, agents or subcontractors that are unrelated to the Business;
- 4.1.17 identify, evaluate and recommend the sale of all or any significant part of the Business or the Facilities from time to time and, if WUC approves any sale, negotiate and manage the execution of such sale on behalf of WUC;
- 4.1.18 subject to WUC's financing requirements and the terms and conditions in place as between WUC and its debt holders, including EnWin or any of its Affiliates, recommend to WUC and, if approved by WUC, use commercially reasonable efforts to procure the raising of funds whether by way of debt, equity or otherwise, including the negotiation and execution of such raising of funds, but without any obligation to provide such funds;

- 4.1.19 provide to WUC periodic reports, in accordance with this Agreement, and participate in meetings with WUC upon request for purposes of reporting on EnWin's performance under this agreement and to promptly notify WUC of any material facts or information of which EnWin is aware in relation to and which may affect the Business, or the performance of the obligations, covenants or responsibilities of WUC pursuant to this Agreement, including any pending or threatened suits, actions, claims, proceedings or orders by or against EnWin or the Business before any Governmental Authority, arbitrator, court or administrative tribunal; and
- 4.1.20 generally provide or cause to be provided and perform all other services or duties reasonably related to the day-to-day management of WUC and the Business and contemplated by the Services hereunder.

4.2 Construction Operations and Maintenance Services

EnWin covenants and agrees with WUC as follows to directly or indirectly:

- 4.2.1 operate and maintain the Facilities and administer the Business in a competent, diligent and efficient manner, and arrange for all Services required in order to operate and maintain the Facilities and Business, in every material respect in accordance with Applicable Law, Prudent Industry Practice, the Documents and the Plans as of the Effective Date;
- 4.2.2 maintain, in full force and effect, or obtain, as may be required, all Permits in respect of the Business and any Permit required by EnWin to provide the Services;
- 4.2.3 implement, or cause to be implemented, Capital Expenditures in accordance with the Capital Expenditure Plan and Operating Expenses in accordance with the Operating Expenses Plan;
- 4.2.4 prepare, or cause to be prepared, conceptual plans, studies and designs, (including outlines of costs and scope of work) in respect of all Capital Expenditures or other modifications or enhancements to the Facilities;
- 4.2.5 maintain and be familiar with, or modify and amend following any Capital Expenditure, as the case may be, the as-built drawings of the Facilities;
- 4.2.6 in emergency situations or during the occurrence of an event of Force Majeure, take all such actions as a reasonably prudent owner of a facility similar to the Facilities would take in similar circumstances to safeguard life or property or to prevent or minimize an interruption in the production of water;
- 4.2.7 take reasonable precautions for the safety of persons and property, including posting appropriate hazard warnings on the Facilities, initiating safety precautions and programs and enforcing on-site control of safety for all persons who provide Services at or visit the Facilities;
- 4.2.8 prepare, modify and update, as required by Applicable Law, the manuals which set out the policies and procedures for operating, maintaining and managing the

Facilities; and setting forth procedures for establishing a quality assurance program, safety and environmental procedures;

- 4.2.9 use reasonable care necessary to keep the Facilities clean, orderly and free from debris, rubbish or waste to the extent consistent with the operation and maintenance of the Facilities;
- 4.2.10 use reasonable care not to generate, store, transport, accumulate, dispose, discharge or release any Hazardous Substance on, in or from any property in connection with the Facilities, except in compliance in all material respects with all applicable Environmental Laws and Regulations;
- 4.2.11 use reasonable efforts to secure and maintain from vendors, suppliers and subcontractors indemnities, warranties and guarantees as may be commercially available in accordance with Prudent Industry Practice regarding supplies, equipment and services purchased for the Facilities, all of which shall be assigned to WUC, and assist WUC in preserving and enforcing such indemnities, warranties or guarantees;
- 4.2.12 notify WUC of any material defects or deficiencies in the Facilities discovered by EnWin and assist in making any claim under warranties relating to the Facilities;
- 4.2.13 maintain a maintenance and materials management system for planning, work scheduling, spare parts inventory and purchasing;
- 4.2.14 maintain an inventory control system to identify, catalogue and disburse spare parts for the maintenance of the Facilities and procure spare parts and refurbish, where practical or economical, spare parts to allow their reuse;
- 4.2.15 in accordance with the Employee Arrangement Agreement, complete the transfer from WUC of (i) all non-unionized employees (ii) and all unionized employees of the Business on the Effective Date or a date thereafter to be determined by EnWin acting reasonably;
- 4.2.16 in accordance with the Employee Arrangement Agreement, to provide WUC with a payment schedule detailing the manner with which it shall pay EnWin for all post-retirement obligations of the Business' employees and make payment to the Business' employees in accordance with the Employment Arrangement Agreement;
- 4.2.17 upon completion of the transfer of all of the non-unionized and unionized employees of the Business to EnWin from WUC in accordance with the Employee Arrangement Agreement, make available, together with any existing employees, such employees as are necessary to perform the Services;
- 4.2.18 communicate with local stakeholders, Governmental Authorities and other Persons interested in the operation of or affected by the Business;
- 4.2.19 administer all Documents to which WUC is a party or by which it is bound relating to the operations and maintenance of the Facilities, including communications with third parties in connection therewith; and

- 4.2.20 perform all other services that are reasonably necessary or appropriate in connection with the operation and maintenance of the Facilities.

4.3 Additional Services

Provided that EnWin or its Affiliates have suitably qualified personnel to provide such Services, EnWin agrees to provide or cause to be provided all such other services to WUC in respect of the Business or the Facilities not currently described in this Article 4 and as may from time to time be agreed by the Parties (the “**Additional Services**”). The Parties agree to negotiate in good faith the scope of any and all Additional Services and the remuneration to be paid to EnWin in respect thereof; All such Additional Services shall be provided in accordance with Prudent Industry Practice, Permits and Applicable Law.

4.4 Operating Expenses Plan

- 4.4.1 EnWin shall prepare a proposed Operating Expenses Plan (the “**Proposed OEP**”) for each calendar year with respect to the Business. It shall include an annual budget that forecasts and sets out Operating Expenses for such calendar year, together with a proposed schedule of expenditures, required in order to operate and maintain the Business and the Facilities pursuant to the terms of this Agreement during the applicable calendar year. The Proposed OEP shall encompass multiple consecutive calendar years, the number of which shall be determined by EnWin in its sole discretion, but which shall in any event be no fewer than two (2) consecutive calendar years. As a transitional measure, for the calendar year commencing January 1, 2013, EnWin shall adopt the current Water System Financial Plan as the Proposed OEP.
- 4.4.2 For the period commencing January 1, 2014, EnWin shall submit to the Chair of WUC a Proposed OEP by November 1, 2013. Subsequently, any Proposed OEP shall be submitted to the Chair of WUC no later than sixty (60) days prior to the end of period for the Operating Expenses Plan in effect from time-to-time. WUC shall review a Proposed OEP on the basis of whether EnWin, upon executing the Proposed OEP, will be compliant with the terms and conditions of this Agreement and WUC will be compliant with the then current Water System Financial Plan, all Applicable Laws, Permits and Material Contracts. WUC shall provide confirmation in respect of the foregoing no more than thirty (30) days following the receipt of the Proposed OEP from EnWin. Such confirmation shall not be unreasonably withheld.
- 4.4.3 If WUC determines that parts of the Proposed OEP, if performed as planned, would not result in: (i) EnWin being compliant with this Agreement; or (ii) in WUC being compliant with the then current Water System Financial Plan, Applicable Laws, Permits and Material Contracts; then WUC may propose in writing modifications to the Proposed OEP. Any suggested modifications to the Proposed OEP proposed by WUC must be in accordance with the then current Water System Financial Plan, Prudent Industry Practice, Applicable Laws, Permits and Material Contracts. No more than (30) days following the receipt of the Proposed OEP from EnWin, WUC shall specify those parts of the Proposed OEP that it asserts require modification. To the extent EnWin disagrees that a modification is required to the Proposed OEP in order for EnWin to comply with the terms and conditions of this Agreement or for WUC to be compliant with Applicable Laws, Permits and Material Contracts, then

EnWin and WUC shall follow the dispute resolution mechanism in Section 15.1. During the term of the Dispute, EnWin shall proceed, to the extent practicable, with those parts of the Proposed OEP that are not the subject of Dispute and those parts shall be deemed to be confirmed and form part of the Operating Expenses Plan.

- 4.4.4 Upon receipt of confirmation from WUC, the Proposed OEP shall be adopted as the Operating Expenses Plan. If after thirty (30) days following the receipt of the Proposed OEP from EnWin, (i) WUC has not confirmed the Proposed OEP for such calendar year, or (ii) WUC has not suggested modifications or confirmed acceptance of any parts of the Proposed OEP, then WUC shall be deemed to have confirmed the Proposed OEP in its entirety. In this circumstance, EnWin shall adopt the Proposed OEP as the Operating Expenses Plan and WUC shall provide all necessary funds to EnWin for such reasonable expenditures to implement the Operating Expenses Plan, including Third Party Costs. The Operating Expenses Plan shall remain effective until replaced by a new or revised plan.
- 4.4.5 In the event that EnWin identifies a Material Change to the Operating Expenses that will require an amendment to the Operating Expenses Plan in order for EnWin to comply with the Operating Expense Plan, EnWin shall provide WUC with written notice (a "**Material Change Notice**") that describes the material changes to the Operating Expenses and attaches a revised Operating Expenses Plan (the "**Revised Operating Expenses Plan**"). Section 4.4.3 of this agreement shall apply to the Revised Operating Expenses Plan. In applying and interpreting Section 4.4.3 in this regard "Revised Operating Expenses Plan" shall be substituted for "Proposed OEP".
- 4.4.6 If after thirty (30) days following the receipt of the Material Change Notice from EnWin, (i) WUC has not confirmed the Revised Operating Expenses Plan attached to the Material Change Notice, or (ii) WUC has not suggested modifications or confirmed acceptance of any parts of the Revised Operating Expenses Plan, then WUC shall be deemed to have confirmed the Revised Operating Expenses Plan and WUC shall provide all necessary funds to EnWin for such reasonable expenditures to implement the Revised Operating Expenses Plan, including Third Party Costs.

4.5 Capital Expenditure Plans

- 4.5.1 EnWin shall prepare a proposed Capital Expenditure Plan (the "**Proposed CEP**") for each calendar year with respect to the Business. It shall include an annual budget that forecasts and sets out Capital Expenditures for such calendar year, together with a proposed schedule of expenditures required in order to operate and maintain the Business and the Facilities pursuant to the terms of this Agreement during the applicable calendar year. The Proposed CEP shall encompass multiple consecutive calendar years, the number of which shall be determined by EnWin in its sole discretion, but which shall in any event be no fewer than two (2) consecutive calendar years. As a transitional measure, for the calendar year commencing January 1, 2013, EnWin shall adopt the current Water System Financial Plan as the Proposed CEP.
- 4.5.2 For the period commencing January 1, 2014, EnWin shall submit to the Chair of WUC a Proposed CEP by November 1, 2013. Subsequently, any Proposed CEP shall be submitted to the Chair of WUC no later than sixty (60) days prior to the end

of period for the Capital Expenditure Plan in effect from time-to-time. WUC shall review a Proposed CEP on the basis of whether EnWin, upon executing the Proposed CEP, will be compliant with the terms and conditions of this Agreement and WUC will be compliant with the then current Water System Financial Plan, all Applicable Laws, Permits and Material Contracts. WUC shall provide confirmation in respect of the foregoing not more than thirty (30) days following the receipt of the Proposed CEP from EnWin. Such confirmation shall not be unreasonably withheld.

- 4.5.3 If WUC determines that parts of the Proposed CEP, if performed as planned, would not result in: (i) EnWin being compliant with this Agreement; or (ii) in WUC being compliant with the then current Water System Financial Plan, Applicable Laws, Permits and Material Contracts; then WUC may propose in writing modifications to the Proposed CEP. Any suggested modifications to the Proposed CEP proposed by WUC must be in accordance with the then current Water System Financial Plan, Prudent Industry Practice, Applicable Laws, Permits and Material Contracts. Not more than thirty (30) days following the receipt of the Proposed CEP from EnWin, WUC shall specify those parts of the Proposed CEP that it asserts require modification. To the extent EnWin disagrees that a modification is required to the Proposed CEP in order for EnWin to comply with the terms and conditions of this Agreement or for WUC to be compliant with Applicable Laws, Permits and Material Contracts, then EnWin and WUC shall follow the dispute resolution mechanism in Section 15.1. During the term of the Dispute, EnWin shall proceed, to the extent practicable, with those parts of the Proposed CEP that are not the subject of Dispute and those parts shall be deemed to be confirmed and form part of the Capital Expenditure Plan.
- 4.5.4 Upon receipt of approval from WUC, the Proposed CEP shall be adopted as the Capital Expenditure Plan. If after thirty (30) days following the receipt of the Proposed CEP from EnWin, (i) WUC has not confirmed the Proposed CEP, or (ii) WUC has not suggested modifications to or confirmed acceptance of any parts of the Proposed CEP, then WUC shall be deemed to have confirmed the Proposed CEP in its entirety. In this circumstance, EnWin shall adopt the Proposed CEP as the Capital Expenditure Plan and WUC shall provide all necessary funds to EnWin for such reasonable expenditures to implement the Capital Expenditure Plan, including Third Party Costs. The Capital Expenditure Plan shall remain effective until replaced by a new or revised plan.
- 4.5.5 In the event that EnWin identifies a Material Change to the Capital Expenditures that will require an amendment to the Capital Expenditure Plan in order for EnWin to comply with the Capital Expenditure Plan, EnWin shall provide WUC with a Material Change Notice that describes the material changes to the Capital Expenditures and attaches a revised Capital Expenditure Plan (the "**Revised Capital Expenditure Plan**"). Section 4.5.3 of this Agreement shall apply to the Revised Capital Expenditure Plan. In applying and interpretation Section 4.5.3 in this regard "Revised Capital Expenditure Plan" shall be substituted for "Proposed CEP".
- 4.5.6 If after thirty (30) days following the receipt of the Material Change Notice from EnWin, (i) WUC has not confirmed the Revised Capital Expenditure Plan attached to the Material Change Notice, (ii) WUC has not suggested modifications to or confirmed acceptance of any parts of the Revised Capital Expenditure Plan, then

WUC shall be deemed to have confirmed the Revised Capital Expenditure Plan and WUC shall provide all necessary funds to EnWin for such reasonable expenditures to implement the Revised Capital Expenditure Plan, including Third Party Costs.

4.6 Water System Financial Plans

- 4.6.1 As of the Effective Date, WUC and EnWin shall adopt the current Water System Financial Plan for the period remaining in respect of the Water System Financial Plan until the System Plan Expiry Date.
- 4.6.2 EnWin shall achieve the objectives of the Water System Financial Plan over the Plan Period and WUC acknowledges that EnWin may deviate from the planned Operating Expenses and Capital Expenditures to the extent: (i) the Water System Financial Plan remains achievable within the Plan Period; (ii) EnWin remains compliant with the terms and conditions of this Agreement; and (iii) WUC remains compliant with the Applicable Laws.
- 4.6.3 EnWin may, in its sole discretion, submit to the Chair of WUC an update to the Water System Financial Plan from time to time. In accordance with the processes and time periods set out in Section 4.6.7 and Section 4.6.8, WUC shall review any update that is submitted on the basis of whether: (i) EnWin is compliant with the terms and conditions of this Agreement, in particular, whether the Water System Financial Plan remains achievable; and (ii) whether WUC will be compliant with all Applicable Laws, Permits and Material Contracts.
- 4.6.4 Notwithstanding Section 4.6.3 as a transition measure EnWin may, in its sole discretion, submit to the Chair of WUC updates to the current Water System Financial Plan during the period between the Effective Date and November 1, 2013 and such updates shall be reviewed by WUC in accordance with Section 4.6.3.
- 4.6.5 To the extent practicable prior to the System Plan Expiry Date, EnWin shall prepare a successor Water System Financial Plan (the “**Successor WSFP**”) that shall extend over a six (6) calendar year time period or such time period required by Applicable Law (the “**Plan Period**”). The Successor WSFP shall set out the plan, schedule and budget for Operating Expenses and Capital Expenditures for the Facilities for each year of the Plan Period. The Successor WSFP shall also set out the pro forma financial statements, forecast operating budget and forecast Water Rates for the Plan Period, as well as any other requirements of the Applicable Law.
- 4.6.6 At least one hundred and twenty (120) days prior to the expiry of the System Plan Expiry Date, EnWin shall submit to the Chair of WUC the Successor WSFP for the Plan Period. WUC shall review the Successor WSFP on the basis of whether EnWin, upon proceeding with the Successor WSFP, will be compliant with the terms and conditions of this Agreement and WUC will be compliant with all Applicable Laws, Permits and Material Contracts. WUC shall approve the Successor WSFP at least thirty (30) days after the receipt of the Successor WSFP. Such approval shall not be unreasonably withheld.
- 4.6.7 If WUC determines that the Successor WSFP, if performed as planned, would not result in EnWin being compliant with this Agreement or in WUC being compliant

with Applicable Laws, Permits and Material Contracts, then WUC may propose, in writing, modifications to the Successor WSFP. Any suggested modifications to the Successor WSFP proposed by WUC must be in accordance with Prudent Industry Practice, Applicable Laws, Permits and Material Contracts and not impair EnWin's ability to complete the Successor WSFP or render the Successor WSFP unachievable. Within thirty (30) days following the receipt of the Successor WSFP from EnWin, WUC shall confirm those parts of the updated Successor WSFP that it asserts do not require modification. To the extent EnWin disagrees that a modification is required to the Successor WSFP in order for EnWin to comply with the terms and conditions of this Agreement or for WUC to be compliant with Applicable Laws, Permits and Material Contracts, then EnWin and WUC shall follow the Dispute resolution mechanism in Section 15.1. During the term of the Dispute, EnWin shall proceed, to the extent practicable, with those parts of the Successor WSFP that are not the subject of Dispute;

- 4.6.8 Upon receipt of confirmation from WUC, the Successor WSFP shall be adopted as the Water System Financial Plan. If after thirty (30) days following the receipt the Successor WSFP or an update to the Water System Financial Plan from EnWin, WUC has not confirmed the sufficiency of the Successor WSFP or proposed modifications to the updated Water System Financial Plan for such calendar year, WUC shall be deemed to have approved the updated Water System Financial Plan and WUC shall provide all necessary funds to EnWin for such reasonable expenditures to implement the Water System Financial Plan, including Third Party Costs.

4.7 Personnel

- 4.7.1 EnWin is responsible for hiring all labour, administrative, professional and supervisory personnel required to perform and provide the Services in accordance with the Agreement. EnWin will extend offers of employment to the non-union employees of WUC in accordance with EnWin's normal employment policies and the Employee Arrangement Agreement. The Parties acknowledge that EnWin will be, under Applicable Law, a successor employer of the WUC employees who accept EnWin's offer of employment. WUC will be liable for payment of all legal obligations relating to the termination of employment of any WUC employees who do not accept an offer of employment from EnWin. WUC's liability for payment of legal obligations relating to the termination of employment of any WUC employees in accordance with the foregoing terms of this section will extend to all amounts required to be paid either by Applicable Law or by contract, including payment in lieu of notice, termination pay, severance pay, vacation pay, legal costs, costs of defence or other proceedings and all other outstanding amounts relating to any termination of employment. WUC will bear and discharge any and all liability for wages and other employee benefits or claims, including vacation pay, in respect of all of its employees until and unless those employees commence employment with EnWin.
- 4.7.2 All WUC employees hired by EnWin shall be employees of EnWin not of WUC. As between EnWin and WUC, EnWin shall be solely responsible for the determination and payment of wages and benefits and other terms and conditions of employment of such former WUC employees and EnWin shall comply with the

terms and conditions of all applicable agreements with any labour organization representing the former WUC employees concerning wages, benefits and terms and conditions of employment from and after the Effective Date.

- 4.7.3 Immediately prior to the Effective Date, WUC shall rescind or revoke the appointment of any officers of WUC who are either a WUC or EnWin employee. WUC agrees not to appoint any officers on or after the Effective Date.

4.8 Remuneration of EnWin

- 4.8.1 WUC hereby covenants and agrees to pay to EnWin all Operating Expenses and Capital Expenditures on a fully allocated cost basis, inclusive of EnWin's cost of capital in accordance with accepted regulatory practice, and as invoiced by EnWin in a manner that shows in reasonable detail the basis for the amount owing under each invoice.
- 4.8.2 If any payment payable to EnWin hereunder is not received by EnWin within thirty (30) days after its due date (both before and after judgment), interest at a rate per annum equal to the late payment interest rate on EnWin's tariff of rates and charges approved by the Ontario Energy Board will accrue from the due date of such payment until such payment is made. A Dispute as to the payment of an invoice or of any amount pursuant to the terms of this Agreement will not allow a Party to delay payment of the disputed invoice or amount and the Parties agree to submit the resolution of all such Disputes in accordance with Section 15.1, if not otherwise resolved within five (5) days. EnWin shall have no liability as a result of this Agreement to make or arrange for payments of any amount on behalf of WUC from EnWin's own funds.

4.9 Use of WUC's Funds

The Operating Accounts shall be under the sole ownership of WUC utilizing signing officers selected by EnWin in accordance with sound management and accounting practices and approved by WUC, from time to time. If EnWin receives any payments of funds on behalf of WUC, it will hold such amounts in trust and deposit such amounts in the Operating Accounts. The funds in the Operating Accounts shall be used to pay the following, listed on a priority basis: (i) any debt service and statutory obligations of WUC; (ii) Operating Expenses as they become due in accordance with the Operating Expenses Plan and to EnWin under this Agreement; (iii) Capital Expenditures as they become due in accordance with the Capital Expenditure Plan and to EnWin under this Agreement; and (iii) all other fees and indemnities payable by WUC to any Person.

4.10 Third Party Costs

WUC shall be responsible for payment of all Third Party Costs. EnWin shall not incur on behalf of WUC any Third Party Costs other than those that are directly or indirectly reasonably related to the provision of the Services. EnWin has the right to determine, in its sole discretion, whether it shall: (i) make payments for Third Party Costs on behalf of WUC; or (ii) direct WUC to pay said Third Party Costs directly. If EnWin makes any payment on behalf of WUC or any other charge or expense related to the Services from its own funds, such payment shall be reimbursed to EnWin. EnWin shall provide to WUC an invoice for the Third Party Costs and other charges and expenses payable by WUC to EnWin as

a reimbursement of such amounts duly incurred on behalf of WUC. Payment shall be due upon presentation of the invoice.

ARTICLE 5 POWER AND AUTHORITY

5.1 Powers and Authority of EnWin

EnWin shall have, during the Term and subject to the provisions of this Agreement, all the powers and authority required to provide the Services provided or to be provided by EnWin to WUC. On behalf of WUC, EnWin shall have full right, power and authority to execute, deliver and enter into, or cause to be executed, delivered or entered into, amendments to all contracts, leases, licenses, and other documents and agreements (including the Material Contracts), to make or cause to be made applications and filings with Governmental Authorities and to take such other actions as EnWin considers appropriate in its sole discretion in connection with the Business and Services in the name of and on behalf of WUC.

5.2 Restrictions on EnWin's Powers and Authority

In the exercise of its powers and authority and in the performance of its obligations, covenants and responsibilities hereunder, without first obtaining the written approval of WUC, EnWin shall not nor shall it cause to be done the following:

- 5.2.1 Disposition of Assets or Equipment. Except as otherwise provided in any confirmed Operating Expenses Plan or Capital Expenditure Plan, sell or otherwise dispose of any assets or equipment which are a material part of the Business or are material to the operation or maintenance of the Facilities;
- 5.2.2 Plans. Amend, modify, or deviate from the provisions of any of the Plans, except in accordance with this Agreement;
- 5.2.3 Expenses. Invoice or receive reimbursements from WUC other than for amounts to be reimbursed by WUC to EnWin as Third Party Costs, Operating Expenses, Capital Expenditures or as otherwise authorized pursuant to the terms of this Agreement;
- 5.2.4 Limit on Expenditures. Undertake a material expenditure: (i) outside EnWin's scope of responsibilities; or (ii) which is not in accordance with the provisions of any of the Plans;
- 5.2.5 Amend Material Contracts. Materially amend or terminate any Material Contract, including this Agreement, on behalf of WUC if such amendment or termination would have a material negative impact on the Business or WUC;
- 5.2.6 Pledges. Except in the ordinary course of business, pledge the credit of WUC or encumber the Facilities or the revenues of the Business in any way in respect of any agreements entered into between WUC and any third party or provide financial assistance to any third party;
- 5.2.7 Violations. Knowingly violate any Applicable Law with respect to the Facilities or the Business provided hereunder, or knowingly violate any material Permits;

- 5.2.8 Representations and Warranties. Except in the ordinary course of business, make any representation or warranty relating to WUC;
- 5.2.9 Settlement of Claims. Settle, compromise (including agreeing to any penalty for any violation of any Applicable Law or Permit), assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim (unless such claim relates to an insurable event), suit, debt, demand or judgment against or due by WUC or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same without the express prior written consent of WUC;
- 5.2.10 Scope of Authority. Engage in any transaction, including in respect of any party related to EnWin, on behalf of WUC not permitted under this Agreement;
- 5.2.11 Commingling of Funds. Comingle its funds with the funds of WUC;
- 5.2.12 Dissolution and Liquidation. Initiate or undertake any steps to dissolve or liquidate the Business;
- 5.2.13 Change of Business. Alter or change the nature of the Business; or
- 5.2.14 Auditors. Appoint the auditors of WUC.

5.3 Execution of Documents

EnWin may execute or cause to be executed any document required to be executed pursuant to the terms hereof for the provision of the Services on behalf of WUC as follows:

“EnWin Utilities Ltd. as agent for Windsor Utilities Commission”

Per: _____
Authorized Signatory

ARTICLE 6 TERM AND ADDITIONAL SERVICES

6.1 Term of Agreement

This Agreement shall become effective on the Effective Date and shall continue in full force and effect throughout the Term and may only be terminated earlier in the circumstances described in Article 10.

6.2 Renewal

Provided that no EnWin Event of Default has occurred and is continuing at such time, this Agreement shall be automatically renewed on the same terms and conditions for successive periods of five (5) years unless EnWin provides to WUC or WUC provides to EnWin written notice to the contrary no later than one hundred and eighty (180) days prior to the end of the expiry of the applicable five (5) year initial Term or the end of the five (5) year renewal period then in effect. A written notice of non-renewal shall be subject to Section 10.5 of this Agreement.

6.3 Survival

Any obligation of the Parties pursuant to the terms hereof which accrued prior to the termination of this Agreement and was intended to continue after the termination of this Agreement shall survive the termination of this Agreement.

ARTICLE 7 RATE SETTING

7.1 Rate Setting

- 7.1.1 For purposes of recovering and funding Operating Expenses, Capital Expenditures, accumulation of reserves for capital and borrowing commitments and taking into account the Operating Expenses Plan, the Capital Expenditure Plan, any amendment or revision to the aforesaid plans under Section 4.4.5 or Section 4.5.5 and its debt obligations, WUC shall fix Water Rates. In setting Water Rates, WUC shall ensure compliance with this Agreement, Prudent Industry Practice and all Applicable Laws. The Water Rates shall encompass multiple consecutive calendar years that correspond with any applicable confirmed Operating Expenses Plan or Capital Expenditure Plan.
- 7.1.2 The Water Rate setting methodology shall be based on accepted rate setting principles for public utilities as reflected in the requirements of the Ontario Energy Board. This methodology shall be realized through the use of a rate model ("**Rate Model**"). The Rate Model may vary from Ontario Energy Board rate models to the extent it is reasonable to vary in order to reflect the delivery of water services and the recovery of Water Rates.
- 7.1.3 In calculating the proposed Water Rates, EnWin shall initially utilize a Rate Model prepared by the consulting firm Elenchus with principal offices located at 34 King St. East in Toronto, Ontario. From time-to-time, EnWin may at its sole discretion utilize a Rate Model prepared by EnWin or by a vendor or other source other than Elenchus, provided that the rates generated by such Rate Model adhere to Applicable Law, Prudent Industry Practice and accepted rate-setting principles for public utilities.
- 7.1.4 At the same time as a Proposed OEP or Proposed CEP is submitted, EnWin shall provide to WUC the proposed Water Rates based on the calculations of the Rate Model. In the event there is a Revised Operating Expenses Plan or a Revised Capital Expenditure Plan, EnWin shall provide to WUC a proposed Water Rate based upon a revised result from the Rate Model. In either case, WUC shall fix Water Rates no more than 30 days after receiving the proposed Water Rates from EnWin. The implementation date for the Water Rates may be a date other than the date that the Water Rates are fixed.
- 7.1.5 If the proposed change in Water Rates is less than or equal to the percentage change in Water Rates required to implement the Water System Financial Plan the "**Implementation Rate Change**"), then WUC shall approve the proposed Water Rates. To the extent that the proposed change in Water Rates exceeds the Implementation Rate Change, then WUC may consider the increment above the

Implementation Rate Change by considering the Rate Model inputs giving rise to such an increment and makes changes to such inputs if WUC so chooses. However, any adjustment must be only in respect of the increment in Water Rates above Implementation Rate Change and must ensure that all of WUC's debt obligations can be satisfied, the Operating Expenses Plan and Capital Expenditure Plan remain achievable and WUC is in compliance with this Agreement, Prudent Industry Practice and all Applicable Laws.

7.2 Reserve Account

In addition to accounting for the cost consequences arising from the Operating Expenses Plan and the Capital Expenditure Plan, the Rate Model shall make provision for the accumulation of a reserve amount to be used for future Capital Expenditures and debt repayment priorities and the amount accumulated for this purpose shall be consistent with the Water System Financial Plan and this Agreement. Amounts recovered in respect of the reserve amount shall be retained in a cash account that will be subject to certain conditions restricting the use of the accumulated funds as agreed upon by EnWin and WUC, acting reasonably.

ARTICLE 8 RECORDS AND AUDITS

8.1 Books and Records

EnWin shall directly or indirectly keep proper books, records and accounts in conformity with generally accepted accounting principles and all material requirements of Applicable Law in which full, true and correct entries will be made of all dealings and transactions in relation to the performance of the obligations of EnWin under this Agreement, at EnWin's place of business.

8.2 Compliance

EnWin shall submit to the Chair of WUC within ninety (90) days after the end of each calendar year a certificate in the form of certificate attached hereto as Exhibit B, signed on behalf of EnWin by two senior officers of EnWin stating that a review of the activities of EnWin and WUC during the preceding calendar year has been made under the supervision of such officers and that, based on that review and to their best knowledge, EnWin has fulfilled all of its obligations, and complied with all of the terms of, this Agreement, in all material respects and that no EnWin Event of Default (or event which, with notice or lapse of time or both, could become an EnWin Event of Default) occurred during such calendar year.

8.3 Third Party Reviews

In conjunction with the approval of the Operating Expenses Plan or Capital Expenditure Plan, the Parties shall determine what, if any, Third Party Reviewers are required and, as applicable, appoint said Third Party Reviewers: (i) to review and report the sufficiency of EnWin's performance pursuant to this Agreement; (ii) to certify that the Facilities were operated and maintained in all material respects in accordance with this Agreement, Prudent Industry Practices and Applicable Law; and (iii) to assess and review any opportunity to enhance the Facilities or to develop and construct new Facilities. The Third Party Reviewers shall individually or collectively be responsible for ensuring that EnWin's performance of the Services are maintaining or improving:

- 8.3.1 the interests of consumers with respect to prices and the adequacy, reliability and quality of water services;
- 8.3.2 the economic efficiency and cost effectiveness in the provision of water services and the maintenance of financially viable water operations; and
- 8.3.3 water conservation and demand management.

**ARTICLE 9
REPRESENTATIONS AND WARRANTIES**

9.1 Representations and Warranties of WUC

WUC represents and warrants as follows to EnWin and acknowledges and confirms that EnWin is relying upon such representations and warranties:

- 9.1.1 WUC is validly organized and is duly authorized and, to the extent required and applicable, licensed to own the Facilities and to carry on the Business as presently owned and carried out;
- 9.1.2 WUC has the full power and authority to execute this Agreement which will constitute a valid and legally binding obligation of WUC enforceable against WUC in accordance with its terms subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights and to the fact that specific performance and injunction are equitable remedies available only in the discretion of the court;
- 9.1.3 neither the execution and delivery of this Agreement nor compliance with the terms hereof: (i) has resulted or will result in a violation of the terms of the constating documents of WUC or any resolution of its commissioners; (ii) has resulted or will result in a breach of or constitute a default, under any Document to which WUC is a party or by which it is bound; (iii) has resulted or will result in a violation of any provision of any Applicable Law, the occurrence of which could reasonably be expected to have a material adverse effect on the performance of its obligations under the terms hereof; or (iv) requires as of the date hereof Permits, except as have been obtained or may be obtained in the ordinary course of business;
- 9.1.4 as of the date hereof, there are no suits, actions, proceedings, judgments or orders pending or, to the knowledge of WUC, threatened against or affecting WUC, the Business or the Facilities by or before any Governmental Authority that would, if adversely determined, have a material adverse effect on WUC, the Business or the Facilities; and
- 9.1.5 as of the date hereof, each of the Material Contracts is in full force and effect and there has been no notice or claim of a material default or breach thereunder or of the occurrence of any condition entitling any Person to terminate its obligations thereunder.

The representations and warranties of WUC shall survive the execution of this Agreement and remain in full force and effect throughout the Term.

9.2 Representations and Warranties of EnWin

EnWin represents and warrants as follows to WUC and acknowledges and confirms that WUC is relying upon such representations and warranties:

- 9.2.1 EnWin is validly organized under the laws of the Province of Ontario and is duly authorized and, to the extent required, licensed and maintains all required qualifications to carry on its business in the Province of Ontario;
- 9.2.2 EnWin has full power and authority to execute this Agreement, which will constitute a valid and legally binding obligation of EnWin enforceable against EnWin in accordance with its terms subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights and to the fact that specific performance and injunction are equitable remedies available only in the discretion of the court;
- 9.2.3 neither the execution and delivery of this Agreement nor compliance with the terms hereof: (i) has resulted or will result in a violation of the terms of the constating documents of EnWin or any resolutions of its respective directors or shareholders (as applicable) or of any Applicable Law; (ii) has resulted or will result in a breach of or constitute a default under any agreement to which EnWin is a party or by which it is bound; (iii) has resulted or will result in a violation of any provision of any Applicable Law, the occurrence of which could reasonably be expected to have a material adverse effect on the performance of its obligations under the terms hereof; or (iv) requires Permits, except as such have been obtained or may be obtained in the ordinary course of business;
- 9.2.4 as of the date hereof, there are no suits, actions, proceedings, judgments or orders pending or, to the knowledge of EnWin, threatened against or affecting EnWin or any of its assets by or before any court, tribunal, board or other Governmental Authority that would, if adversely determined, have a material adverse effect on EnWin or on its performance of its duties and obligations hereunder; and
- 9.2.5 EnWin has the capability to perform its obligations, covenants and responsibilities pursuant to the terms hereof.

The representations and warranties of EnWin shall survive the execution of this Agreement and remain in full force and effect throughout the Term.

ARTICLE 10 DEFAULT AND REMEDIES

10.1 Event of Default by WUC

WUC shall be in default under this Agreement upon the occurrence of any of the following events relating to WUC, the Facilities or Business, each of which shall be deemed to be an event of default with respect to WUC for the purposes of this Agreement (a "WUC Event of Default"):

- 10.1.1 WUC breaches or fails to observe or perform any of WUC's material obligations under this Agreement and, within forty-five (45) days after written notice from

EnWin to WUC specifying the nature of such breach or failure, WUC fails to cure such breach or failure; provided, however, that if the fact, circumstance or condition that is the subject of such obligation cannot reasonably be corrected within such forty-five (45) day period and if, within such period of forty-five (45) days, WUC provides reasonable evidence to EnWin that it has commenced, and thereafter proceeds with all due diligence, to correct the fact, circumstance or condition that is the subject of such obligation, said period shall be extended for a reasonable period thereafter for WUC to correct the same with all due diligence;

- 10.1.2 notwithstanding Section 10.1.1, WUC fails to pay any amount which is required to be paid by WUC to EnWin pursuant to the terms hereof after fifteen (15) days from the due date and after receiving a notice thereof from EnWin; and
- 10.1.3 WUC: (i) becomes Insolvent; (ii) is subject to any proceeding, voluntary or involuntary, with a view to postponing or rescheduling its debts generally or of distributing its assets among its creditors under the provisions of any Insolvency Legislation for the benefit of creditors; (iii) goes into liquidation; (iv) winds up either voluntarily or under an order of a court of competent jurisdiction; (v) makes a general assignment for the benefit of its creditors; or (vi) otherwise takes any action that acknowledges that it is Insolvent.

10.2 Remedies of EnWin

Upon the occurrence of a WUC Event of Default which has not been remedied, EnWin may, without recourse to legal process and without limiting any other rights or remedies which it may have at law, in equity, or otherwise, terminate this Agreement immediately or set a date for termination of this Agreement by delivery of a written notice of termination to WUC.

10.3 Events of Default by EnWin

EnWin shall be in default under this Agreement upon the occurrence of any of the following events, each of which shall be deemed to be an event of default with respect to EnWin for the purposes of this Agreement (an “EnWin Event of Default”):

- 10.3.1 EnWin breaches or fails to observe or perform any of EnWin’s material obligations under this Agreement and, within forty-five (45) days after written notice from WUC specifying the nature of such breach or failure, EnWin fails to cure such breach or failure; provided, however, that if the fact, circumstance or condition that is the subject of such obligation cannot reasonably be corrected within such forty-five (45) day period and if, within such period of forty-five (45) days, EnWin provides reasonable evidence to WUC that it has commenced, and thereafter proceeds with all due diligence, to correct the fact, circumstance or condition that is the subject of such obligation, said period shall be extended for a reasonable period thereafter for EnWin to correct the same with all due diligence;
- 10.3.2 notwithstanding Section 10.3.1, EnWin fails to pay any amount which is required to be paid to WUC pursuant to the terms hereof after fifteen (15) days from the due date and after receiving a notice thereof from WUC; and

10.3.3 EnWin: (i) becomes Insolvent; (ii) is subject to any proceeding, voluntary or involuntary, with a view to postponing or rescheduling its debts generally or of distributing its assets among its creditors under the provisions of any Insolvency Legislation for the benefit of creditors; (iii) goes into liquidation; (iv) winds up either voluntarily or under an order of a court of competent jurisdiction; (v) makes a general assignment for the benefit of its creditors; or (vi) otherwise takes any corporate action that acknowledges that it is Insolvent.

10.4 Remedies of WUC

Upon the occurrence of an EnWin Event of Default which has not been remedied, WUC may, without recourse to legal process and without limiting any other rights or remedies which it may have at law, in equity, or otherwise, terminate this Agreement immediately or set a date for termination of this Agreement by delivery of a written notice of termination to EnWin.

10.5 Termination Assistance

In the event of the termination of this Agreement pursuant to Section 10.2 or Section 10.4 or non-renewal under Section 6.2 the Parties shall make commercially reasonable efforts to cooperate with each other to provide the services and advice required and otherwise requested by each to effect a smooth transition of the Services (the “**Termination Assistance Services**”) provided, however, in providing such Termination Assistance Services a Party shall not be obligated to use resources beyond those otherwise then being provided by that Party.

ARTICLE 11 FORCE MAJEURE

11.1 Consequences of Force Majeure

During the occurrence of an event of Force Majeure, the obligations of the Party affected by such event of Force Majeure, to the extent that such obligations cannot be performed, are delayed or cannot be complied with as a result of such event of Force Majeure, shall be suspended, and such Party shall not be considered to be in breach or default hereunder, for the period of such occurrence except that the occurrence of an event of Force Majeure shall not relieve it of its obligations to make payments to the other Party. The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure. No obligation of a Party that arose prior to the event of Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

11.2 Notice

The non-performing Party: (i) shall give the other Party prompt written notice of the particulars of the event of Force Majeure and its expected duration; (ii) shall continue to furnish regular reports with respect thereto on a timely basis during the continuance of the event of Force Majeure; and (iii) shall use commercially reasonable efforts to remedy its inability to perform.

11.3 Burden of Proof

The burden of proof as to whether an event of Force Majeure has occurred and as to the consequences of such an event of Force Majeure shall be upon the Party claiming Force Majeure.

11.4 Duties of the Parties

The Parties shall use all commercially reasonable efforts to prevent or avoid any event, condition or circumstance, which would result in an event of Force Majeure, to minimize the effects of each event of Force Majeure and to reduce and minimize any ensuing delay or interruption in the performance of their obligations hereunder.

11.5 Liabilities

Neither EnWin nor WUC will be liable to the other for any damage or loss resulting from an interruption of production, transmission or distribution of water caused by an event of Force Majeure pursuant to the terms hereof.

ARTICLE 12 IMPOSITION OF GOVERNMENTAL AUTHORITY

12.1 Imposition of Governmental Authority

12.1.1 An “**Imposition of Governmental Authority**” shall occur if:

- (i) a Governmental Authority causes to come into force any bylaw, resolution, regulation, statute, order, ruling or judgment first having legal effect on or after the date of the Effective Date;
 - (ii) the effect of the action referred to in Section 12.1.1(i) is borne principally by EnWin or WUC; and
 - (iii) such action affects WUC’s ability to recover its costs through Water Rates or EnWin’s ability to recover from WUC any costs incurred by EnWin on behalf of WUC under this Agreement in respect of provision of the Services, except where such action is in response to any act or omission on the part of EnWin that is contrary to Applicable Law (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement.
- (a) Notwithstanding the foregoing, none of the following shall be an Imposition of Governmental Authority:
- (i) Applicable Law of general application or any action of a Governmental Authority pursuant thereto;
 - (ii) any bylaw, resolution, regulation, statute, order, ruling or judgment prior to the Effective Date has been introduced by a Governmental Authority in a similar form to the final form of the by-law that is passed by the applicable Governmental Authority, provided that any amendments made to such proposed by-law in becoming such by-law does not have a Material Adverse Effect on EnWin.

12.2 Consequences of Imposition on Governmental Authority

To the extent that there is an Imposition on Governmental Authority, then:

- 12.2.1 EnWin, upon becoming aware of the consequences of such Imposition on Governmental Authority, shall promptly notify WUC;
- 12.2.2 WUC, upon becoming aware of the consequences of such Imposition on Governmental Authority, shall promptly notify EnWin;
- 12.2.3 the Parties shall engage in good faith negotiations to amend this Agreement on the basis that such amendments together with the Imposition on Governmental Authority will substantially permit WUC to recover through Water Rates and EnWin to recover from WUC all costs incurred by EnWin on behalf of WUC; and
- 12.2.4 if the Parties fail to reach agreement on the amendments described in Section 12.2.3, the matter shall be determined in accordance with the dispute resolution mechanism set out in Section 15.1.

ARTICLE 13 INDEMNIFICATION

13.1 EnWin's Indemnification

EnWin will indemnify and hold harmless WUC and its respective general partners, limited partners, directors, officers, employees, shareholders, agents and Affiliates, as applicable, to the fullest extent permitted by law, from and against any loss, claim, liability, expense or damage resulting from a breach, omission or contravention of any of EnWin's obligations, covenants or responsibilities to be performed or executed by EnWin under this Agreement or EnWin's negligence, provided that in each case, the Party to be indemnified has acted in good faith in accordance with the provisions of this Agreement and without gross negligence or willful misconduct.

13.2 WUC's Indemnification

WUC will indemnify and hold harmless EnWin and its respective general partners, limited partners, directors, officers, employees, shareholders, agents and Affiliates, as applicable, to the fullest extent permitted by law, from and against any loss, claim, liability, expense or damage resulting from a breach, omission or contravention of any of WUC's obligations, covenants or responsibilities to be performed or executed by WUC under this Agreement or WUC's negligence, provided that in each case, the Party to be indemnified has acted in good faith in accordance with the provisions of this Agreement and without gross negligence or willful misconduct.

13.3 Claim Process

- 13.3.1 If a Party entitled to indemnification pursuant to the terms hereof (the "**Indemnified Party**") intends to seek indemnification from the other Party (the "**Indemnifying Party**"), the Indemnified Party shall give the Indemnifying Party notice of such claim for indemnification within thirty (30) days of the receipt of actual knowledge or information by the Indemnified Party of any possible claim or action ("**Claim**") including the commencement of any Claim which is subject to indemnification. The Indemnifying Party shall have no liability for any claim or action for which such notice is not provided to the extent that the failure to give such notice prejudices the Indemnifying Party.

- 13.3.2 The Indemnifying Party shall have the right to assume the defence of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel, the reasonable costs of which shall be at the Indemnifying Party's expense, to assert such legal defences and to otherwise participate in the defence of such action on behalf of such Indemnified Party.
- 13.3.3 Should any Indemnified Party be entitled to indemnification under this Article 13 as a result of a Claim, and should the Indemnifying Party fail to assume the defence of such Claim, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party, settle) such Claim. Except to the extent expressly provided herein, no Indemnified Party shall settle any Claim with respect to which it has sought or intends to seek indemnification pursuant to this Section 13.3 without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- 13.3.4 Except to the extent expressly provided herein, no Indemnifying Party shall settle any Claim with respect to which it may be liable to provide indemnification pursuant to this Article 13 without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the claimant(s) or plaintiff(s) regarding any such Claim and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party.

13.4 Net Amount

In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 13, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual out-of-pocket loss, net of any insurance proceeds or other amount recovered from any other Person.

13.5 Survival of Obligation

The obligation to indemnify under this Article 13 will continue in full force and effect notwithstanding the termination of this Agreement, with respect to any loss, claim, liability, damage or other expense based on events or conditions which occurred prior to such termination.

13.6 Limitation of Liability

Save as expressly set out in this Agreement, no Party shall be liable to the other Party for any indirect or consequential losses or damages.

ARTICLE 14
ASSIGNMENT, CHANGE OF CONTROL AND DELEGATION

14.1 Assignment by WUC

14.1.1 WUC shall not sell or assign its rights or obligations under this Agreement without the prior written consent of EnWin, which consent may not be unreasonably withheld provided that WUC shall have provided EnWin with at least ninety (90) days prior written notice, failing which such consent may be unreasonably withheld. Notwithstanding the foregoing, WUC shall be entitled to assign this Agreement without the prior written consent of EnWin: (i) as security if required pursuant to any financing documents or any documentation relating to any indebtedness incurred by WUC or any guarantee granted by WUC; and (ii) together with the Facilities to any transferee thereof and provided that prior to such assignment WUC, EnWin and the transferee shall execute and deliver such documents as are acceptable to the signatories thereof, which documents shall include a release of WUC of its obligations hereunder and an assumption by the assignee of such obligations.

14.2 Assignment and Change of Control by EnWin

14.2.1 EnWin shall not: (i) sell or assign its rights or obligations under this Agreement; or (ii) undergo a Change of Control, without the prior written consent of WUC, which consent may not be unreasonably withheld provided that EnWin shall have provided WUC with at least ninety (90) days prior written notice, failing which such consent may be unreasonably withheld. Notwithstanding the foregoing, EnWin shall be entitled to assign this Agreement without the prior written consent of WUC:

- (a) if EnWin shall have provided WUC with at least ninety (90) days prior written notice and the assignee is an Affiliate of EnWin; or
- (b) as security if required pursuant to any financing documents or documentation relating to any indebtedness incurred by EnWin or any guarantee granted by EnWin.

14.2.2 Upon any such assignment, WUC, EnWin and the assignee shall execute and deliver such documents as are reasonably acceptable to the signatories thereof, which documents shall include a release of EnWin of its obligations, covenants and responsibilities hereunder and an assumption by the assignee of such obligations.

14.2.3 For greater certainty, a Change of Control of EnWin shall be deemed to be an assignment of the Agreement, subject to the terms and conditions set out in Section 14.2.1, above.

14.3 Delegation of EnWin's Obligations

EnWin may delegate any of its obligations under this Agreement to any of its Affiliates without the prior written consent of WUC provided that such Affiliate is a reputable Person capable of performing such obligation. EnWin shall at all times remain liable and responsible for all obligations under this Agreement notwithstanding the delegation of any obligations hereunder to any of its Affiliates.

ARTICLE 15
RESOLUTION OF DISPUTES AND ARBITRATION

15.1 Dispute

All disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, and all other agreements entered into pursuant to the terms of this Agreement (“**Disputes**”) shall be resolved as follows:

- 15.1.1 it shall be referred first to the Chair of EnWin and the Chair of WUC or the designates of either or both of the chairs (the “**Senior Leadership**”) who shall endeavor to reach a decision;
- 15.1.2 in the event a decision cannot be arrived at by the Senior Leadership within twenty (20) Business Days from the date the Dispute was referred to them, any of the parties to the Dispute may give notice that it wishes to mediate the Dispute. Within twenty (20) Business Days of such notice, the parties to the Dispute will agree on and appoint a qualified and impartial mediator (the “**Mediator**”), failing which any party to the Dispute may apply to ADR Chambers Canada or such comparable body and the Mediator shall be appointed by that body. Within ten (10) Business Days of the appointment of the Mediator, each party to the Dispute shall provide the Mediator and each other party to the Dispute with a written statement of its position, including a summary of the arguments supporting its position. The Mediator will meet with the parties to the Dispute as the Mediator so determines and may request additional reasonable information. The costs of the Mediator shall be borne equally by the parties to the Dispute; and
- 15.1.3 if the Dispute is not resolved within thirty (30) Business Days after the appointment of the Mediator, or if no party to the Dispute has given notice that it wishes to mediate, then the Dispute shall be resolved by arbitration in accordance with Sections 15.1.4 and 15.1.5 below.
- 15.1.4 The Parties shall submit any arbitration under this Article 15 to a single arbitrator agreed upon by both Parties. If the Parties cannot agree upon a single arbitrator within ten (10) days after the Dispute is referred to arbitration, each Party shall within ten (10) more days choose one individual who shall sit on a three-member arbitration panel. The two arbitrators appointed shall name the third arbitrator within ten (10) days or, if they fail to do so within that time period, either Party may make application to a court of competent jurisdiction for appointment of the third arbitrator. Any arbitrator selected to act under this Agreement shall be qualified by education, training and experience to pass on the particular question in Dispute and shall have no connection to either of the Parties other than acting in previous arbitrations.
- 15.1.5 The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted in the City of Windsor, Ontario unless the Parties agree otherwise in writing. The decisions of the arbitrator or arbitration panel shall be made in writing and shall be final and binding on the Parties as to the questions submitted and the Parties shall have no right of appeal from such decisions. All costs and expenses relating to a Dispute which is

fully determined or settle by arbitration, including reasonable legal fees, will be borne by the Party determined to be liable or to have erred in respect of such Dispute; provided, however, that if complete wrong-doing or liability is not assessed against only one Party or if no liability is assessed, the Parties will share the total costs in proportion to their respective amounts of liability so determined or the Parties will equally share the total costs where no liability or wrong-doing is assessed, as the case may be. The Parties agree to keep all details of the arbitration proceeding and the arbitral award strictly confidential. Notwithstanding the provisions to arbitrate any Dispute hereunder, either Party may seek from a court any equitable relief (including, without limitation, injunctive relief) that may be necessary to protect such Party's rights. This Article 15 shall survive the termination or expiry of this Agreement.

15.2 Confidentiality

All information disclosed by any Party in relation to the resolution of Disputes pursuant to the terms hereof shall be subject to the provisions of Section 16.2 and shall not be used for any purpose other than the resolution of a Dispute pursuant to the terms hereof.

15.3 Continued Performance

During the conduct of dispute resolution procedures pursuant to this Article 15, the Parties shall continue to perform their respective obligations under this Agreement and neither Party shall exercise any other remedies to resolve a Dispute.

**ARTICLE 16
GENERAL PROVISIONS**

16.1 Notice

Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or by transmittal by telecopier or other electronic means of communication addressed to the respective Party as follows:

To WUC:

Chair
Windsor Utilities Commission
P.O. Box 1625
787 Ouellette Avenue
Windsor, Ontario
N9A 5T7

Fax: : 519.255.2767

With a copy to:

William J. Willis

McTague Law Firm LLP
455 Pelissier Street
Windsor, ON
N9A 6Z9

Fax: 519.255.4360

To EnWin:

President & CEO
EnWin Utilities Ltd.
P.O. Box 1625
787 Ouellette Avenue
Windsor, Ontario
N9A 5T7

Fax: 519.255.2767

With a copy to:

Jeffrey M. Slopen

Miller Canfield Paddock and Stone LLP
443 Oullette Avenue, Suite 300
Windsor, Ontario
N9A 6R4
Fax: 519.977.1566

or to such other address, telecopier number as a Party may from time to time notify the other in accordance with this Section 16.1. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or, if made or given by electronic means of communication, on the first Business Day following the transmittal thereof.

16.2 Confidentiality

EnWin hereby agrees that it will not at any time use, disclose or make available to any Person, and will take reasonable steps to prevent such disclosure and restrain further disclosure by any other Person, and will take reasonable steps to prevent such disclosure and restrain further disclosure by any other Person, any non-public or confidential information of or concerning the Business, the Facilities or the affairs of WUC whether acquired in connection with the performance of its duties and obligations pursuant to the terms hereof or otherwise or prior to or after the commencement of this Agreement (the “**Confidential Information**”), except:

16.2.1 such use as may be expressly permitted in or necessary or advisable for the performance of this Agreement or of any of the Documents;

- 16.2.2 such disclosure as may be required in order to comply with any Applicable Law, including disclosure obligations of EnWin or its Affiliates;
- 16.2.3 such information as comes into the public domain independently where to the knowledge of EnWin the Person disclosing the same is not under an obligation of confidentiality to WUC;
- 16.2.4 such information as can be demonstrated by the Person desiring to disclose such information, to have come into its possession independently of anything done under this Agreement; and
- 16.2.5 such information as may be required to be disclosed pursuant to MFIPPA;

provided, however,

- 16.2.6 nothing in this Section 16.2.6 shall prevent EnWin from disclosing, without disclosing any Confidential Information, any expertise, ideas, concepts, know-how or knowledge of the Business, the Facilities or the affairs of WUC developed or, to the extent distinct, acquired by EnWin before or after the entering into of this Agreement;
- 16.2.7 if and to the extent that PIPEDA may be or become applicable, EnWin agrees and acknowledges that if any information relating to the customers of WUC is disclosed to EnWin or its Representative, EnWin shall strictly comply and shall cause its Representatives to strictly comply with the requirements of PIPEDA and such other requirements, policies or procedures of WUC related to or arising from such disclosures;
- 16.2.8 EnWin may disclose the Confidential Information to an Affiliate of EnWin if any such Affiliate agrees to be bound by the terms of this Section 16.2 but without any rights of further disclosure and such Affiliate covenants in such agreement that it will not use any such information to the detriment of WUC; and
- 16.2.9 Section 16.2 shall expire and be at an end on the second anniversary of the termination of this Agreement.

16.3 Liability for Breach of Confidentiality

Except for disclosures made pursuant to Section 16.2 or as required by law or any Governmental Authority as required pursuant to the policies, codes, directives or other requirements of any Governmental Authority, or as required to fulfill the terms of this Agreement, each Party shall be responsible for any breach of this Agreement by the Party, its Representatives and any person to whom it discloses any Confidential Information or personal information as that term is defined in applicable privacy legislation such as MFIPPA and PIPEDA (“**Personal Information**”). The Parties agree that the disclosing Party would be irreparably injured by a breach of this Agreement by the receiving Party or by any person to whom it discloses any Confidential Information or Personal Information and that monetary damages would not be a sufficient remedy. Therefore, in such event, the disclosing Party shall be entitled to equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

16.4 Press Releases

Subject to disclosures required by Applicable Law, press releases in respect of this Agreement may only be made with the prior written consent of EnWin and WUC.

16.5 Amendments

The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by WUC and EnWin.

16.6 Governing Law; Submission to Jurisdiction

This Agreement will be governed by, and is to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario. Each of the Parties will irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario.

16.7 Benefit of this Agreement

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

16.8 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.

16.9 No Partnership or Joint Venture

It is understood and agreed that nothing contained in this Agreement nor any acts of the Parties shall be deemed to constitute EnWin and WUC as partners of each other or to create a joint venture between the Parties.

16.10 Waiver

No waiver of any breach of this Agreement will be effective or binding unless in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

16.11 Time of Essence

Time shall be of the essence in respect of this Agreement.

16.12 Entire Agreement

Except for written agreements dated on or after the date of this Agreement and made in respect of this Agreement or the subject matter hereof, this Agreement constitutes the entire agreement between the

Parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and understandings between the Parties with respect thereto.

16.13 Further Assurances

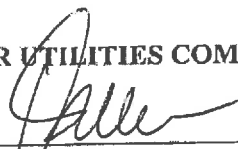
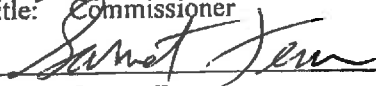
Each Party will, from time to time, execute and deliver all such documents and instruments and do all acts and things, as the other Party may from time to time reasonably request to effectively carry out or better evidence the purpose and intent of this Agreement.

16.14 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by a Party hereto by electronic means of transmission will be as effective as delivery of an original executed copy of this Agreement by such Party.

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto as of the date set forth above.

WINDSOR UTILITIES COMMISSION
By: 
Name: Biagio (Bill) Marra
Title: Commissioner
By: 
Name: Garnet Fenn
Title: Commissioner



ENWIN UTILITIES LTD.
By: 
Name: Maxwell Zalev
Title: President and CEO
By: 
Name: Victoria Zuber
Title: Vice President and CFO

EXHIBIT A
FORM OF WATER SYSTEM FINANCIAL PLAN



WINDSOR
UTILITIES
COMMISSION

Windsor Utilities Commission
Financial Plan- Water Division
2010-2015

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Windsor Utilities Commission
Cash Flow Forecast
Water Treatment and Distribution Division



BREAKDOWN OF EXPENDITURES

	2010 Budget	2011 Forecast	2012 Forecast	2013 Forecast	2014 Forecast	2015 Forecast
Capital Asset Acquisitions (1)	14,193,293	15,600,000	19,000,000	17,700,000	41,200,000	19,900,000
Cost of Production	4,790,049	4,908,813	5,023,558	4,288,070	5,471,438	5,993,716
Operating Expenses	19,400,831	19,974,681	20,028,659	20,628,959	21,160,037	21,948,108
Financing Expenses	1,624,857	1,887,857	19,911,000	2,000,000	2,000,000	2,000,000
Existing Debt Service Payments (2)					(21,824,000)	864,980
New Debt Service Payments (3)						
New Debt Service Payments (3)			(20,000,000)			30,000
Debt Service Payments (4)	132,854	148,812	206,912	1,000,000	1,548,720	2,097,440
Financial Interest Expenses (5)	2,268,892	2,100,000	2,000,000	3,000,000	(18,079,280)	1,952,200
Debt Service Interest Expenses (6)	4,018,749	3,984,888	1,117,812	3,000,000	48,170,545	47,428,533
Total Financing Expenses (Approved)	47,400,886	45,016,172	42,824,724	48,328,959	48,170,545	48,170,545
Total Expenditures Forecasted						

BREAKDOWN OF REVENUES

Total Water Rate Revenues (6)	41,451,462	42,994,447	44,896,613	46,227,700	48,446,943	50,366,641
Other Miscellaneous Revenues	349,646	702,716	851,006	895,124	708,605	717,065
Total Revenues Forecasted	41,801,108	43,697,163	45,747,619	47,122,824	49,155,548	51,083,706
TOTAL NET CASH FLOW	(770,904)	(1,091,519)	1,357,886	1,884,740	1,060,942	208,115
ESTIMATED CASH BALANCE AT END OF YEAR						

NOTES

- (1) Capital is reflected by recent amendments to WUG master plan report for deferral of reserves to 2014 and growth requirements to beyond plan period.
- (2) Assumes existing debt service payments in 2011 and 2012 are paid and refinanced over 10 year term at 6% interest rate.
- (3) Assumes new debt service payments are based on existing project forecasted in 2014 and repaid over 20 years with 6% annual interest rate.
- (4) Includes interest from bank accounts/bank loans.
- (5) Includes existing and new debt service interest expense.
- (6) No water rate increases have been made for 2010 and 3% increase to residential bill (usage 22 cubic metres per month) in 2011-2013 and 4% increase in 2014 and 2015.

**WINDSOR UTILITIES COMMISSION
CAPITAL BUDGET
2010-2015**



WINDSOR UTILITIES COMMISSION

Description	FIVE YEAR FORECAST					TOTAL CAPITAL BUDGET
	2010	2011	2012	2013	2014	
WUC Watermain Projects						
Total WUC Watermain Projects	2,739,510	6,844,732	6,412,954	8,641,213	6,672,037	31,649,446
City Watermain Projects						
Total City Watermain Projects	8,161,890	9,556,268	9,521,719	8,185,945	9,618,174	36,221,790
Total Watermain Projects and Improvements	9,200,000	12,400,000	11,600,000	14,828,158	15,089,350	69,871,236
Growth Related Capital Work						
Growth Treatment Facilities-Reservoir				21,424,000		21,424,000
Total Growth Projects				21,424,000		21,424,000
Engineering Projects		316,404	10,400	228,200		554,904
Total Engineering Projects		316,404	10,400	228,200		554,904
Transmission and Distribution Projects						
Total Transmission and Distribution Projects	499,725	183,830	187,600	198,900	205,200	1,640,000
Other Projects						
Total Other Projects	1,381,505	1,530,000	1,590,000	1,490,000	1,690,000	7,530,000
Water Treatment Facilities						
SCADA System	1,500,000					
AJ Biken Pumping Station	1,325,000	1,050,798	937,510	153,700	156,600	2,817,608
Alberta Waste WTP	10,000	405,600	65,000	351,000	216,000	1,147,600
Generator Building					64,800	64,800
Pressure Station			78,000			78,000
Stroms Reservoir and Pumping Station			802,000			802,000
Stroms Water Tower			410,750	72,817		483,567
JF Cook Reservoir and Pumping Station			339,120	714,440		1,053,560
Old WTP					515,898	515,898
Total Water Treatment Facilities	3,110,000	5,222,000	4,331,290	1,369,817	3,037,950	17,039,945
TOTAL CAPITAL BUDGET	17,119,225	23,952,032	23,100,000	27,422,000	24,747,000	115,340,257

**WATER TREATMENT AND DISTRIBUTION
OPERATING BUDGET 2010**
For the Period Ending December 31, 2010

	2010 Budget	2011 Forecast	2012 Forecast	2013 Forecast	2014 Forecast	2015 Forecast
REVENUE FROM WATER RATES						
TOTAL REVENUES	949,846	702,716	687,006	696,124	706,906	717,055
OTHER REVENUES	4,750,849	4,908,813	5,055,595	5,213,070	5,371,488	5,530,718
COST OF PRODUCTION	37,611,053	38,788,350	40,182,980	41,592,733	43,020,669	44,459,981
GROSS INCOME	20,208,718	20,822,371	20,517,644	21,304,128	22,162,027	22,877,198
OPERATING EXPENSES	182,023,023	182,865,281	183,712,216	184,564,675	185,419,128	186,274,583
OPERATING INCOME	4,784,777	6,141,786	6,482,796	7,037,274	7,584,289	8,182,613
Depreciation	2,584,982	2,100,000	2,000,000	1,900,000	1,800,000	1,700,000
Debt Service Interest Expense	182,054	182,054	182,054	182,054	182,054	182,054
Interest Expense	2,017,741	2,017,741	2,017,741	2,017,741	2,017,741	2,017,741
NET INCOME	6,279,681	8,969,130	10,429,748	12,072,451	12,705,119	14,728,530

Winco Utilities Commission
 Water Revenues and Residential Bill Impact
 Five Year Water Rate Model

	2010	2011	2012	2013	2014	2016
(No Rate Increases)						
Fixed Meter Charges	17,028,285	17,028,285	17,028,285	17,028,285	17,028,285	17,028,285
Water Consumption Charges	8,788,347	9,854,834	10,883,402	11,876,081	12,853,862	13,812,388
Summer Levy Revenues	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
Watermain Levy	11,822,438	12,063,908	12,580,284	13,051,505	13,721,380	14,450,800
Wholesale Revenues	2,601,382	2,857,410	2,914,558	2,972,849	3,032,306	3,092,952
Total Revenues	41,451,452	42,994,447	44,538,519	46,227,700	48,245,643	50,355,641
Summarized Expenses:						
Water Retail Revenues	27,027,642	28,083,128	29,111,887	30,203,345	31,351,967	32,542,388
Total Wholesale Revenues	2,801,382	2,857,410	2,914,558	2,972,849	3,032,306	3,092,952
Watermain Replacement Levy	11,822,438	12,063,908	12,580,284	13,051,505	13,721,380	14,450,800
Total Expenses	41,451,452	42,994,447	44,538,519	46,227,700	48,245,643	50,355,641
Average Monthly Residential Bill (based upon 22 m3) \$	\$ 32.80	\$ 33.88	\$ 34.91	\$ 35.87	\$ 37.40	\$ 38.95
\$ Change Per Month from Previous Year	\$	\$ 0.98	\$ 1.02	\$ 1.06	\$ 1.48	\$ 1.66
% Increase From Previous Year		3%	3%	3%	4%	4%
Water Consumption Rate (per cubic metre)	\$ 0.266	\$ 0.287	\$ 0.328	\$ 0.362	\$ 0.407	\$ 0.458
Resolving Status						
Budget Billed Wincoiser (m3)		39,180,251				

Windsor Utilities Commission
Residential Bill Impact- Per Monthly Water Usage

Monthly Usage	Current Bill- 2010	Proposed Bill- 2011	Difference	% Difference
10 cu. mtrs.	\$28.28	\$28.72	\$0.44	1.55 %
15 cu. mtrs.	\$30.20	\$30.88	\$0.68	2.25 %
20 cu. mtrs.	\$32.13	\$33.03	\$0.90	2.80 %
22 cu. mtrs.	\$32.90	\$33.89	\$0.99	3.01 %
25 cu. mtrs.	\$34.06	\$35.18	\$1.12	3.29 %
30 cu. mtrs.	\$35.99	\$37.34	\$1.35	3.75 %

WINDSOR UTILITIES COMMISSION
Balance Sheet
(In thousands of dollars)



	2010 Budget	2011 Forecast	2012 Forecast	2013 Forecast	2014 Forecast	2015 Forecast
Assets						
Current assets:						
Cash	3,500	5,398	1,358	1,886	1,091	208
Accounts receivable	2,500	2,875	2,501	3,698	3,140	3,900
Unbilled revenues	1,500	1,400	2,623	2,732	2,144	1,500
Prepaid expenses	346	359	359	1,000	1,500	1,500
Supplies and prepaid expenses	397	397	397	397	397	397
	7,853	10,727	8,784	10,276	8,905	8,317
Property, plant and equipment (net)	170,583	180,352	180,906	200,943	224,478	246,222
Work in progress	50	50	50	50	50	50
TOTAL ASSETS	178,886	189,829	190,133	211,269	234,333	254,889
Liabilities and Equity						
Current liabilities:						
Bank overdrafts	770	1,081	5,878	5,404	4,506	3,126
Accounts payable and accrued liabilities	5,377	2,690	5,800	2,000	5,000	3,500
Due to related parties	1,212	1,811	2,000	2,000	2,000	2,000
Current portion of debentures and debt	4,322	18,511	11,878	11,404	12,270	12,468
	11,881	24,093	11,878	11,404	12,270	12,468
Long term liabilities:						
Deferred taxes and long term debt	18,840	18,000	18,000	18,000	34,789	31,084
Retained debt service	10	8	8	8	4	2
Employment future benefits	19,118	18,094	18,859	17,738	18,670	19,651
	38,068	36,092	36,859	35,738	52,333	51,447
Equity:						
Contributed capital	52,104	62,554	62,504	62,554	63,104	63,354
Reserves	70,553	80,120	81,246	103,272	116,877	124,503
Retained Earnings	155,627	145,174	158,350	165,128	174,861	187,887
TOTAL LIABILITIES AND EQUITY	178,886	189,829	190,133	211,269	234,333	254,889

EXHIBIT B

FORM OF OFFICERS CERTIFICATE

**ENWIN UTILITIES LTD.
OFFICER'S CERTIFICATE**

TO: Windsor Utilities Commission ("WUC")

RE: Water System Operating Agreement dated as of November 6, 2012 (the "Agreement")
between WUC and Enwin Utilities Ltd. ("EnWin")

The undersigned certify for and on behalf of EnWin in their capacities as officers of EnWin, and not in their personal capacities, as follows:

1. Capitalized terms used in this Certificate and not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.
2. A review of the activities of EnWin and WUC during the preceding calendar year has been made under our supervision.
3. Based on the review mentioned in paragraph 2 of this Certificate, and to the best of our knowledge, EnWin has fulfilled all of its obligations and complied with all of the terms of the Agreement in all material respects.
4. Based on the review mentioned in paragraph 2 of this Certificate, and to the best of our knowledge, no EnWin Event of Default (or event which, with notice or lapse of time or both, could become an EnWin Event of Default) occurred during the preceding calendar year.

[Remainder of this page left intentionally blank.]

DATED this _____ day of _____, 2012.

Name: _____

Title: _____

Name: _____

Title: _____