

**THE CORPORATION OF THE TOWN OF TECUMSEH**

**BY-LAW NO. 2004-70**

Being a by-law to authorize the execution of an Agreement between the Corporation of the Town of Tecumseh and the City of Windsor for the provision of wastewater services to the Town of Tecumseh

**WHEREAS** there exists a sewage treatment plant, the Little River Pollution Control Plant ("LRPCP") and a Windsor/Tecumseh trunk sewer between the Gauthier / Cedarwood pumping station and the LRPCP, that have been jointly paid for by both the City of Windsor ("Windsor") and the Town of Tecumseh ("Tecumseh");

**AND WHEREAS** Windsor is the owner and operator of two sewage treatment plants; namely the LRPCP, and the Lou Romano Water Reclamation Plant, ("LRWRP");

**AND WHEREAS** Windsor and Tecumseh entered into an agreement on the 3<sup>rd</sup> of March 1970, regarding the construction of a trunk sanitary sewer and the treatment of sewage from Tecumseh and St. Clair Beach by Windsor, (the "Basic Agreement");

**AND WHEREAS** Windsor and Tecumseh entered into an amending agreement on December 1<sup>st</sup>, 1971, which increased the size of the trunk sewer and increased Windsor's allowable share of the flow through the sewer, (the "First Amending Agreement");

**AND WHEREAS** Windsor and Tecumseh entered into a further amending agreement on October 5<sup>th</sup>, 1972, to incorporate Green Giant Foods Limited, ("Green Giant"), sewage and to provide for a surcharge agreement to treat that sewage, (the "Second Amending Agreement");

**AND WHEREAS** Windsor and Tecumseh entered into a further amending agreement on September 15<sup>th</sup>, 1974, to include the treatment of sewage from a portion of Sandwich South, (the "Third Amending Agreement");

**AND WHEREAS** Windsor and Tecumseh entered into a further amending agreement on April 28<sup>th</sup>, 1986, to eliminate the geographical limitation respecting sewage from Sandwich South, (the "Fourth Amending Agreement");

**AND WHEREAS** the Basic Agreement and subsequent amending agreements have clauses providing capacity for sewage treatment from Tecumseh at LRPCP, and providing for a proportionate payment of the operating and maintenance costs, including replacement costs, of the plant on an ongoing basis;

**AND WHEREAS** the Basic Agreement and subsequent amending agreements have clauses providing for both parties to cost share in any improvements and expansions of the LRPCP;

**AND WHEREAS** certain lands, formerly located in Tecumseh, are now located in Windsor as a result of an Agreement made between Tecumseh, Windsor and the County of Essex, which Agreement came into effect on January 1, 2003, (the "Annexed Lands Agreement");

**AND WHEREAS** Windsor and Tecumseh have agreed to enter into a new agreement regarding the conveyance and treatment of sewage, existing and future, from Tecumseh and the Annexed Lands to the LRPCP, and from Tecumseh to the LRWRP. This agreement includes an agreement respecting sewage from Family Tradition Foods Limited, formerly Green Giant, and for a surcharge agreement to treat that sewage;


**AND WHEREAS** the Corporation of the Town of Tecumseh is desirous of entering into new agreement which shall replace the Basic Agreement and all subsequent amending agreements except the second amending agreement, and is in perpetuity;

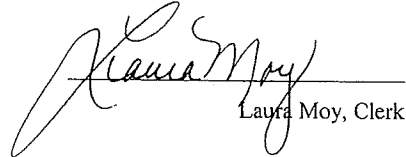
**AND WHEREAS** under Section 5 of the Municipal Act 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law;

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

1. **That** the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of the Corporation of the Town of Tecumseh, to execute an Agreement, dated the 10th day of November, 2004, between the Corporation of the Town of Tecumseh and the City of Windsor, annexed hereto as Schedule "A", and to do such further and other acts which may be necessary to implement the said Agreement.
2. **That** this by-law shall come into full force and take effect on the date of the third and final reading thereof.

**READ** a first, second and third time, and finally passed this 9<sup>th</sup> day of November, 2004.

  
Gary McNamara, Mayor

  
Laura Moy, Clerk

This Agreement made in sextuplicate to take effect as and from  
November 1, 2004

BETWEEN:

THE CORPORATION OF THE CITY OF WINDSOR,  
Hereinafter called "WINDSOR"

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF TECUMSEH,  
Hereinafter called "TECUMSEH"  
(an amalgamation of the town of Tecumseh, the village of St. Clair  
Beach, and the township of Sandwich South, January 1<sup>st</sup>.1999)

OF THE SECOND PART.

RECITALS:

- A. There exists a sewage treatment plant, the Little River Pollution Control Plant ("LRPCP") and a Windsor/Tecumseh trunk sewer between the Gauthier / Cedarwood pumping station and the LRPCP, that have been jointly paid for by both Windsor and Tecumseh;
- B. Windsor is the owner and operator of two sewage treatment plants. LRPCP is presently provisionally rated at 14MGD, and the Lou Romano Water Reclamation Plant, ("LRWRP"), is presently rated at 35MGD;
- C. The parties entered into an agreement on the 3<sup>rd</sup> of March 1970, regarding the construction of a trunk sanitary sewer and the treatment of sewage from Tecumseh and St. Clair Beach by Windsor, (the "Basic Agreement");
- D. The parties entered into an amending agreement on December 1<sup>st</sup>, 1971 which increased the size of the trunk sewer and increased Windsor's allowable share of the flow through the sewer, (the "First Amending Agreement");
- E. The parties entered into a further amending agreement on October 5<sup>th</sup> 1972 to incorporate Green Giant Foods Limited, ("Green Giant"), sewage and to provide for a surcharge agreement to treat that sewage, (the "Second Amending Agreement");

- F. The parties entered into a further amending agreement on September 15<sup>th</sup> 1974 to include the treatment of sewage from a portion of Sandwich South, (the "Third Amending Agreement");
- G. The parties entered into a further amending agreement on April 28<sup>th</sup> 1986 to eliminate the geographical limitation respecting sewage from Sandwich South, (the "Fourth Amending Agreement");
- H. The Basic Agreement and subsequent amending agreements have clauses providing capacity for sewage treatment from Tecumseh at LRPCP, and providing for a proportionate payment of the operating and maintenance costs, including replacement costs, of the plant on an ongoing basis;
- I. The Basic Agreement and subsequent amending agreements have clauses providing for both parties to cost share in any improvements and expansions of the LRPCP;
- J. Certain lands, as set out in Appendix "A" attached hereto, (the "Annexed Lands"), and formerly located in Tecumseh, are now located in Windsor as a result of an Agreement made between Tecumseh, Windsor and the County of Essex, which Agreement came into effect on January 1, 2003, (the "Annexed Lands Agreement");
- K. Windsor and Tecumseh have agreed to enter into a new agreement regarding the conveyance and treatment of sewage, existing and future, from Tecumseh and the Annexed Lands to the LRPCP, and from Tecumseh to the LRWRP. This agreement includes an agreement respecting sewage from Family Tradition Foods Limited, formerly Green Giant, and for a surcharge agreement to treat that sewage;
- L. This new agreement shall replace the Basic Agreement and all subsequent amending agreements except the second amending agreement, and is in perpetuity;
- M. The ultimate servicing of Tecumseh Urban Areas will be from a combination of capacities at LRWRP and/or LRPCP.

**Article 1 - Concerning Recitals**

The recitals hereinbefore set forth are hereby incorporated again as fully and as effectively as if they were set out herein.

## Article 2 – Concerning Interpretations

Where used in this Agreement, the following terms shall have the following meanings:

*Annual Average Day Flow(AADF)*: means the average daily flow of sewage passing through the flow measuring device(s) and as measured on the totalizer installed therein, calculated from time to time over the preceding 365 days;

*City Engineer*: means the City Engineer of the City of Windsor;

*Composite sample*: means a sample that is composed of a series of grab samples taken at intervals during the sampling period;

*Communal Sewage Services*: means municipal sewage works and municipal sewage systems that can be described as small-scale satellite wastewater collection, treatment, and disposal facilities. Communal sewage services are separated from and unconnected to full municipal services which are connected to large centralized treatment plants that may serve entire municipalities. Communal sewage facilities can be comprised of gravity, pressure, or vacuum sewer collection systems, secondary, tertiary, or stabilization pond treatment technologies, and discharge treated wastewater to either the surface of the ground, surface water, or subsurface environment.

*Construction Price Index means*: the Non-Residential Building Construction Price Index maintained by Statistics Canada and which is a quarterly series measuring the changes in contractors' selling prices of non-residential building construction (ie. commercial, industrial and institutional) and which relates to both general and trade contractors' work and exclude the cost of land, design and real estate fees.

*Day*: means a 24 hour period starting at 0001 hours and includes Saturdays, Sundays, and holidays;

*Family Tradition Foods Limited*: means Family Tradition Foods Limited, a company incorporated under the laws of Canada and operating a cannery and food processing business in Tecumseh;

*Grab sample*: means an aliquot of the flow being sampled, taken at one particular time and place;

*Improvements*: means modifications to the LRPCP and LRWRP that may reasonably be required from time to time, for the continued efficient and effective treatment of sewage;

*Interim Solution*: means the consideration Tecumseh intends to pursue of using Communal Sewage Services for the long term planning and approved growth management where full municipal services are not readily available. The long-term objective is to connect the services to full municipal services when sufficient

uncommitted reserve sewage treatment capacity and sewage conveyance capacity is available for that area. The use of the communal system would be for new development or for existing development where it is in Tecumseh's interest to protect the environment and public health;

*L/s*: means a flow rate of litres per second;

*m<sup>3</sup>*: means cubic metres;

*MGD*: means a flow rate of million imperial gallons per day;

*Operating Costs*: means the sum of those budgetary items in the accounts of Windsor for the operation of the particular treatment plant (LRPCP or LRWRP) which shall include but not be limited to the following: Salaries, wages, chemicals, equipment rentals, annual provision for replacement of equipment (as herein defined), fuel, power water and gas, service contracts and equipment maintenance, biosolids disposal, building and grounds maintenance including tankage, office and laboratory supplies, and other items as are correctly attributable, pursuant to Generally Accepted Accounting Practices, to the proper operation of the particular treatment plant; excluding debt and interest charges;

*Peak wet weather flow*: means the maximum instantaneous flow of sewage generally, but not necessarily, occurring during wet weather events;

*Proportional to flow sampler*: means a mechanical device used in flow measurement to obtain aliquot samples of waste water at specific time intervals (not exceeding one hour) throughout a particular period and where the aliquot volume of the sample is in direct proportion to the flow passing during the period;  
*Replacement of Equipment*: shall mean the sum of the charges for replacement annually of the component parts of the equipment contained in the particular treatment plant computed by the straight line method based on the estimated life of each such component part and which replacement charges shall be placed annually in a special reserve account established pursuant to section 307 of the Municipal Act annually for the purpose of replacing worn out or obsolete items of equipment but not the repair thereof.

*Sanitary Sewage*: means the biodegradable sewage containing domestic and industrial waste to the limits provided by City of Windsor bylaw 11446.

*Substantial Completion*: shall have the meaning ascribed to it in section 2 of the Construction Lien Act, R.S.O. 1990;

*Tecumseh Urban Areas*: shall be as designated in Tecumseh's Official Plan

*Ultimate Flow*: is defined as the maximum allowable AADF measured at one or more measuring facilities:

- Tecumseh's Ultimate Flow to LRPCP shall be as established by Article 4.A.

- Tecumseh's Ultimate Flow to the LRWRP shall be as established by Article 4.B

*Year:* means calendar year.

**Article 3 – Concerning Term of Agreement**

This agreement shall continue in force and effect until:

- (a) Terminated by mutual agreement of Windsor and Tecumseh; or
- (b) Terminated by a legislative enactment of the Province of Ontario;

But otherwise this agreement shall be in force in perpetuity.

**Article 4 – Concerning treatment Capacity**

**A. LRPCP:**

- i. The LRPCP has a provisional certificate of approval for 14MGD.
- ii. The previous 3 year AADFs to the LRPCP are as follows:

Windsor total annual average day flow m3		Tecumseh total annual average day flow m3	
2001	34830.80	2001	12359.61
2002	31938.63	2002	12264.93
2003	31328.66	2003	12272.33
Average:	32,699.36 (approx 7.2MGD)	Average:	12,298.96 (approx 2.7MGD)
% ratio	72.7%	% ratio	27.3%

- iii. It is agreed by the parties that the LRPCP capacity as the plant presently exists (i.e up to 16MGD) will be allocated and any improvements thereof will be paid for, on the basis of the ratio that the parties presently contribute sewage to the plant, as noted in ii. above.

It is further agreed by the parties that since Windsor estimates it requires 12 MGD for the Annexed Lands, the cost of LRPCP expansion to it's maximum capacity (i.e. from 16 MGD to 32 MGD) will be shared on the basis of 12/16ths Windsor, 4/16ths Tecumseh.

Thus the parties agree the following ratios will apply, except as adjusted by section iv:

Ultimate Flows (%)	Windsor	Tecumseh
Present flow of 10 MGD	7.27 (72.7%)	2.73 (27.3%)
Allocation of 10-14 MGD	2.91 (72.7%)	1.09 (27.3%)
Allocation of 14-16 MGD	1.45 (72.7%)	0.55(27.3%)
Allocation of future plant expansions to:		
20 MGD	3.0 (75%)	1.0 (25%)
24 MGD	3.0 (75%)	1.0 (25%)
28 MGD	3.0 (75%)	1.0 (25%)
32MGD	3.0 (75%)	1.0 (25%)
Total Allocation of ultimate plant build out of 32MGD	23.63	8.37

- iv. The parties recognise that the Ministry of Environment (MOE) may limit development in the plant sewer shed, when the plant reaches 90% of capacity existing at any given time and/or effluent quality is not meeting MOE requirements because of hydraulic or organic overload due to the high flows. Also, development plans that exceed plant capacity could be held up without a commitment to expand. The parties recognise that it could take up to 5 years to achieve Substantial Completion of an expansion phase from commencing the Environmental Assessment process.

Thus it is recognized that long range planning will be necessary to accommodate the expansions of the LRPCP and that development in both communities will need to be factored into the Ministry of Environment Uncommitted Reserve Capacity calculations on an annual basis and that such development needs will likely trigger plant expansions.

It is recognised by the parties that development may take place at a different pace in the respective municipalities. Since both parties are desirous of delaying any plant expansion until such is necessary to serve both parties, Windsor and Tecumseh agree that when one party reaches it's capacity allocation due to development, that party may "borrow" available plant capacity from the other party until the lender requires that capacity for its own development. The need for "repayment of the borrowed capacity" would then be the trigger for plant expansion. Any such "loan" would require the approval of the other party, which approval shall not be unreasonably withheld. Such a loan will not alter the capacity allocations under this agreement or alter any responsibility for payment of any expansions to increase capacity in the future.

There may be circumstances where the parties mutually agree to allow such a loan to be permanent. In the event that any such loan becomes permanent, the borrower agrees to retroactively pay its proportionate share of the capital cost of



such borrowed capacity at cost plus the Construction Price Index (CPI) increase from the date of Substantial Completion of the construction contract for the capacity in question to the date of the loan permanency agreement.

The parties recognise and agree that if at any time plant capacity is jointly fully allocated by commitment for development in the municipalities (including any "loans" mentioned above), and if at that time one of the two parties does not wish to develop further and therefore does not wish to participate in a plant expansion; then the other party shall either wait for the first party to participate or alternatively the second party may trigger a plant expansion by agreeing to pay 100% of the cost of said expansion. Such an arrangement shall not relieve either party of its rights or obligations for allocations and payment of future capacity as described herein. Future payment for plant capacity by the first party will involve retroactive payment of the first party's proportionate share of capital cost of such capacity at cost plus the Construction Price Index (CPI) increase from the date of Substantial Completion of the construction contract for the capacity in question to the date of the requirement of the first party for additional capacity. Such payment shall include interest calculated from the date of Substantial Performance of the expansion in question, at the rate established in Article 10.2, or other such rate as the parties may mutually agree to.

The parties agree that the Permanent Joint Staff Liaison Committee will be the avenue for discussion on such items, for recommendations to be made to the respective municipalities.

**B. LRWRP:**

- i. LRWRP presently has a maximum treatment capacity available to Tecumseh of 0.6MGD due to limitations in the conveyance system. In the event that additional conveyance capacity becomes available in the future, Windsor agrees that it shall consider the sale of any available increased treatment capacity to Tecumseh on terms and conditions that are mutually agreeable to both parties.

**C. SALE OF EXCESS CAPACITY TO THIRD PARTIES**

- i) Tecumseh agrees not to transfer any treatment capacity from either plant to third parties unless first complying with this paragraph, and shall first submit a written offer to transfer the capacity to Windsor on the same terms and conditions that it proposes to offer to transfer it to others.
- ii) If, within 30 days of receipt of the offer, Windsor advises Tecumseh in writing that it accepts the offer and will acquire the excess capacity from Tecumseh on the terms set forth in the offer, Windsor and Tecumseh shall be bound to complete the transfer on such terms and

conditions at the price contained in the offer and Tecumseh shall not sell such excess capacity to any other person.

- iii) If within 30 days of receipt of the offer, Windsor has not accepted the offer, Tecumseh shall be entitled to transfer such excess capacity at a price, which is equal to or greater than the price contained in the offer and on such terms that are no less advantageous to Tecumseh than those contained in the offer.

**Article 5 – Concerning Discharge Rate Limitations**

- 5.1 Tecumseh will not exceed the Ultimate Flows provided under this agreement to either treatment plant, on an Annual Average Day Flow basis.
- 5.2 Tecumseh will not exceed the peak wet weather flow established in the original agreement of 33cfs (935 L/s) through its existing outlet at the Gauthier / Cedarwood Pump Station, based on an instantaneous flow.
- 5.3 Tecumseh will not exceed a peak wet weather flow 1308 L/s through an outlet at Banwell Road and E.C. Rowe Expressway, based on an instantaneous flow.
- 5.4 Tecumseh will not exceed a peak wet weather flow of 85L/s through an outlet at North Talbot Road and King's Highway 401, based on an instantaneous flow.
- 5.5 Tecumseh agrees to operate and maintain any pumping stations or other flow controlling devices required to direct and/or limit flow, within Tecumseh at Tecumseh's sole cost.
- 5.6 In the event that outlets other than those identified herein become operational and are intended for use by Tecumseh, Tecumseh shall, before using such outlets:
  - a. notify Windsor of the intended use and the projected flow values for any such outlet(s) immediately; and
  - b. obtain Windsor's approval for the use of any such outlet(s), which approval shall not be unreasonably withheld.
- 5.7 Discharge rate limitations may be adjusted in the future, subject to approval of Windsor, which approval shall not be unreasonably withheld.

**Article 6 – Concerning Sewage Treatment at LRPCP**

- 6.1 It is agreed that sewage from Tecumseh Urban Areas, save and except that sewage that is sent to LRWRP shall be ultimately transmitted from Tecumseh to LRPCP.
- 6.2 Notwithstanding Article 6.1, both parties shall support an Interim Solution for Tecumseh Urban Areas until conveyance is provided to either LRPCP or LRWRP.
- 6.3 Windsor agrees to treat at the LRPCP the sanitary sewage sent to LRPCP by Tecumseh, up to the Ultimate Flow noted herein.

- 6.4 Windsor agrees to operate and maintain the LRPCP in accordance with the requirements of the Ontario Ministry of Environment or its successor body as those may be determined from time to time.
- 6.5 Tecumseh agrees to pay to Windsor its proportion of the annual operating costs of the LRPCP which amount shall be calculated as follows and in which calculation "CY" means the current year of the Agreement and "PY" means the previous year of the Agreement:

Step 1 – Calculate Total Cost per Cubic Meter for PY by dividing the Total Operating Costs for the PY by the Total flow at the plant in the PY. This will equal the "PY Cost per Cubic Meter"

Step 2 – Multiply the PY Cost per Cubic Meter by the Total flow sent by Tecumseh in the CY

**Article 7 – Concerning Sewage Treatment at LRWRP**

- 7.1 It is agreed that Tecumseh wishes to acquire access to treatment capacity for the Oldcastle Hamlet, and that the available treatment capacity due to conveyance limitations at this time is 0.6MGD at LRWRP, for that purpose.
- 7.2 Tecumseh will implement a program of utilizing 0.6 MGD to LRWRP and may pursue an Interim Solution concurrently.
- 7.3 Windsor agrees to treat at the LRWRP, sanitary sewage from a portion of Tecumseh, up to the Ultimate Flow noted herein.
- 7.4 Windsor agrees to operate and maintain the LRWRP in accordance with the requirements of the Ontario Ministry of Environment or its successor body as those may be determined from time to time.
- 7.5 Tecumseh agrees to pay to Windsor its proportion of the annual operating costs of the LRWRP which amount shall be calculated as follows and in which calculation "CY" means the current year of the Agreement and "PY" means the previous year of the Agreement:

Step 1 – Calculate Total Cost per Cubic Meter for PY by dividing the Total Operating Costs for the PY by the Total flow at the plant in the PY. This will equal the "PY Cost per Cubic Meter"

Step 2 – Multiply the PY Cost per Cubic Meter by the Total flow sent by Tecumseh in the CY

**Article 8 – Concerning Flow Measurement**

- 8.1 Tecumseh agrees to construct or cause to be constructed, at the expense of Tecumseh, a sampling manhole and measuring facilities complete with flow measuring flume, or other appropriate measuring device as mutually agreed upon by the Parties, at each location where Tecumseh sewage enters Windsor or the joint sewer system.
- 8.2 Each flow measuring flume shall be equipped with flow recording equipment that shall be capable of recording instantaneous flow and 24hr flow trending, as well as totalizers for period flow accumulation recording, as mutually agreed upon by the parties.
- 8.3 Tecumseh agrees to keep and maintain, or cause to be kept and maintained, for as long as this agreement is in force, daily records of the flow readings. These records shall be made available to the City Engineer upon request and copies thereof shall be supplied to the City Engineer as requested.
- 8.4 Windsor shall be permitted to attend, upon giving reasonable notice, at the measuring facilities to verify the calibration of the flow measuring system, as often as may be reasonably expected. This verification shall not relieve Tecumseh from the responsibility to maintain the facilities in good working order

**Article 9 – Concerning payment for the expansion of Little River Pollution Control Plant**

- 9.1 It is agreed that future improvements and expansions of the LRPCP as and when required, up to a total build out capacity of 32MGD and including additional flow equalization storage at the LRPCP, will be cost shared on the basis of the capacity allocations as described in Article 4.A.
- 9.2 Present estimates of treatment capacity increase costs are as follows:

Initial expansion to 90.9MLD (20MGD)	\$31 million
2 <sup>nd</sup> stage expansion to 109.1MLD (24MGD)	\$19 million
3 <sup>rd</sup> stage expansion to 127.3MLD (28MGD)	\$17 million
Final expansion to 145.5MLD (32MGD)	\$17 million

These preliminary estimates are 2003 dollars based on conventional secondary treatment technology and do not include any flow equalization that may be required, nor any improvements that may be needed from time to time. Tecumseh agrees to pay its percentage, as described in Article 4.A., of the final tendered prices and associated costs for the various expansion stages, upon Substantial Performance of said expansion phases.

Associated costs include all costs that are properly attributable to the project. These costs include all reasonable, specific, direct costs internally allocated to the project by Windsor.

Additionally, Tecumseh agrees to pay Windsor either interim financing charges up to the date of Substantial Performance, at the rate established by Windsor at the time, or alternatively provide payment on receipt of contractor progress payment certificates as construction proceeds.

9.3 Plant expansions will be triggered as described in Article 4.

9.4 Any grants or funding other than that specifically provided to either party alone, with respect to the improvements and expansions, are to be applied jointly in reduction of the final cost of the improvements and expansions, and Tecumseh's percentage share of the final cost of the improvements and expansions as so reduced shall remain as detailed in Section 4.A.

9.5 The parties hereto agree that the costs associated with any and all upgrades/improvements to the LRPCP which are not considered to be expansions shall be shared by the parties on an actual percentage basis that corresponds to each party's use of the total capacity of the LRPCP.

**Article 10 – Concerning payment for the expansion/upgrade of LRWRP and the use of existing sewers in Windsor for flows to the LRWRP**

10.1 Tecumseh agrees to purchase 0.6MGD capacity at LRWRP, and the use of capacity in the existing sewer system for a cost of \$ 6.1 million, made up of the following costs/credits:

- \$4.8 million for 0.6MGD treatment capacity
- \$1.9 million for use of conveyance capacity
- Less \$0.6 million as value for land of the Tecumseh water plant

10.2 Tecumseh agrees the \$6.1million is payable as follows:

- i. \$3.0 million payable within 30 days of the signing of this Agreement;
- ii. \$1.8 million payable on June 30, 2005, provided that the Councils of the Town of Tecumseh and the City of Windsor have adopted the Class Environmental Assessment currently being conducted in association with the portion of the Project as defined in Appendix "A" as areas 1A, 1B, 2 and 3 and further, provided that construction documents have been completed, tendered and awarded with respect to the portion of the Project defined in Appendix "A" as areas 1A, 1B and 3; and
- iii. \$1.3 million payable on April 1, 2006 provided that Substantial Completion of the construction of the Trunk Sanitary Sewer has

been achieved with respect to areas 1A, 1B and 3 as defined in Appendix "A".

In the event that the above timelines are not met Windsor agrees to pay interest on the advanced funds, at the Bank of Canada prime rate less 2%, effective June 30, 2005 payable on deposits received as of that date. Interest would not be retroactive but would be calculated and owing effective June 30, 2005 onward. The rate would be variable, changing as the Bank of Canada rate changes.

- 10.3 Tecumseh agrees to pay a proportion of the final tendered prices and associated costs of any improvements or upgrades, (not including the 2004 upgrade/expansion), required by legislation or regulation to the LRWRP, following Substantial Performance thereof. Such proportion will be in proportion to the capacity purchased; i.e. 0.6/48 or 1.25%.

Associated costs include all costs that are properly attributable to the portion of the Project respecting areas 1A, 1B and 3 as defined in Appendix "A". These costs include all reasonable, specific, direct costs internally allocated to the project by Windsor.

Additionally, Tecumseh agrees to pay Windsor either interim financing charges up to the date of Substantial Performance, at the rate established by Windsor at the time, or alternatively provide payment on receipt of contractor progress payment certificates as construction proceeds.

- 10.4 Windsor agrees that it shall consider the sale of any available increased treatment capacity to Tecumseh on terms and conditions that are mutually agreeable to both parties.

*Article 11 – Concerning cost sharing of the construction of new Sanitary Trunk Sewers to the LRPCP*

- 11.1 Windsor agrees to provide additional sewage outlet to LRPCP by constructing the necessary trunk system within the City, as described in Appendix A and more particularly items 1A, 1B, and 3) by April 1, 2006.

11.2 Windsor covenants that phase 2 in Appendix A will be constructed by Windsor when flows reach a level that requires twinning of the existing sewer, in sufficient time to allow for uninterrupted development in either municipality.

- 11.3 The construction of trunk sewers to service Windsor's annexed lands and Tecumseh lands will be cost shared in accordance with Appendix "B" and:
- Costs will be readjusted based on final construction costs

- Final cost sharing will be based on design flows agreed to at the time of final design
- Additionally, Tecumseh agrees to pay Windsor either interim financing charges up to the date of Substantial Performance, at the rate established by Windsor at the time, or alternatively provide payment on receipt of contractor progress payment certificates as construction proceeds.
- The parties agree to pay their proportionate share of future repairs to the trunk sewers serving both Windsor and Tecumseh.
- Once the joint sewers are constructed and paid for, no adjustments will be made for any subsequent reductions in the actual use of sewer capacity by either party.

**Article 12 – Concerning payment for the maintenance of existing sewers in Windsor for flows to the LRWRP**

12.1 Tecumseh agrees to pay, upon connection, its' share, being 6%, of the maintenance of the sewage collection system between the Windsor - Tecumseh border and the LRWRP. Such payment would be paid annually by Tecumseh to Windsor and will be calculated based on the MPMP reported cost/Km of maintaining sewers in Windsor multiplied by the number of kilometres of sewer being utilized by Tecumseh multiplied by 6%. Should the reporting requirements for the MPMP cease to exist, the components of the calculation will be calculated in a manner consistent with past practice, as described in Appendix "C" hereto.

**Article 13 – Concerning Family Tradition Foods Limited**

13.1 The terms and conditions of the Agreement made between the City of Windsor and Tecumseh concerning Family Tradition Foods Limited and dated October 5, 1972 shall remain in full force and effect until changed by mutual agreement of both parties and shall not be altered by the terms of this Agreement, and the parties hereto agree to use their best efforts to effect such mutually acceptable changes on or before December 31, 2004. The PJSJC shall review FTF activities as part of their terms of reference.

**Article 14 – Concerning Inflow and Infiltration**

14.1 The parties hereto mutually agree to follow best practices to reduce inflow and infiltration to the LRPCP and to form a liaison committee to monitor and openly discuss efforts to reduce inflow and infiltration, recognizing both municipalities contribute to high inflow and infiltration and both municipalities benefit by reduced inflow and infiltration efforts.

**Article 15 – Concerning Sewer Use Bylaws of both Municipalities.**

15.1 From time to time Windsor intends to pass such bylaw or bylaws as may be advisable to prohibit conveyance to the Little River Pollution Control Plant and

the Lou Romano Water Reclamation Plant, of any substance that may be harmful to the plants or the operation thereof, such bylaw presently being bylaw number 11446. Tecumseh agrees to enact and proactively enforce similar bylaws.

- 15.2 Tecumseh hereby grants to Windsor the right at any time or from time to time to inspect any part of the trunk sanitary sewer or internal sewage collection system in Tecumseh provided that Windsor shall give Tecumseh reasonable notice of such inspection.

**Article 16 – Concerning Resolution of Disputes:**

- a) Any dispute arising out of the interpretation of this agreement may in first instance be resolved through mediation by way of a mediator agreed to by the disputants. If the disputants cannot agree to a mediator or in the event the dispute is not resolved through mediation, the matter in dispute shall be referred to arbitration as hereinafter set out.
- b) Any dispute, controversy or claim arising out of or in connection with, or relating to this Agreement, or the performance, breach, termination or validity thereof, not resolved through mediation, shall be finally settled by arbitration. Either party may initiate arbitration by delivering a written demand for arbitration upon the other party. The arbitration shall be conducted in accordance with the Ontario Arbitration Act, S. O. 1991, c.17. The arbitration shall take place in Windsor, Ontario, and shall be conducted in English.
- c) The arbitration shall be conducted by a single arbitrator having no financial or personal interest in the business affairs of either of the parties. The arbitrator shall be appointed jointly by agreement of the parties, failing which an arbitrator shall be appointed by a judge of the Superior Court of Justice of Ontario. Absent agreement or an award in the arbitration to the contrary, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.
- d) The arbitrator shall have the authority to award any remedy or relief that a court or a judge of the Superior Court of Justice of Ontario could order or grant in accordance with this Agreement, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.



- e) The arbitral award shall be in writing, stating the reasons for the award and be final and binding on the parties with no rights of appeal. The award may include an award of costs, including reasonable legal fees and disbursements and fees and expenses of the arbitrator. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.

**Article 17 – Concerning Force Majeure:**

Any delay or failure of a party to perform its obligations under this Agreement shall be excused if and to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of that party, such as by way of example and not by way of limitation, acts of God, action by any governmental authority other than Windsor or Tecumseh (whether valid or invalid), fires, floods, wind storms, explosions, riots, natural disasters, wars, sabotage, labour problems (including lock-outs, strikes and slow downs), malicious acts, vandalism, terrorist acts, accident to the parties water works, inability to obtain power, material, raw water, labour, equipment or transportation, or court injunction or order and this provision shall be applicable whether the party is wholly or partially prevented from carrying out all or any of the terms of this Agreement; provided that the party shall have the right to determine and settle any strike, lock-out, labour dispute in which the party may be involved and repair any accident or damage in any manner in its sole discretion. The party shall provide written notice of delay, including anticipated delay within five days.

**Article 18 – Indemnification:**

Each of the undersigned hereby covenant and agree to indemnify and save the others of them harmless from any and all claims, demands, actions, causes of action, damage, loss, deficiency, costs, liability and expense in respect of or arising out of any of the following:

- a) any non-performance or non-fulfillment of any of the covenants or agreements on the part of each of the undersigned contained in the Agreement;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation, covenant or warrant made by each of the undersigned in the Agreement; and
- c) any failure by each of the undersigned to perform any of the covenants or agreements contained in the Agreement.

**Article 19 – Concerning the Liaison Committee:**

Windsor and Tecumseh agree to set up a Permanent Joint Staff Liaison Committee (PJS LC) comprised of an equal number of representatives from each of Windsor and Tecumseh who shall meet regularly and not less than once every 3 months to review and discuss items of an operational nature including, without limitation:

- The operation and maintenance of the treatment plants and collection system,
- Capital works programs and up-grades,
- Sewer use bylaw issues,
- The Family Tradition Foods Agreement,
- Uncommitted Reserve Capacity for the plants and triggers for plant expansions including loans of capacity, etc,
- Budget issues,
- Best management practices
- Pending changes in legislation
- Proposed reports to Windsor City Council related to plant operations
- Monitoring of Trunk Sanitary Sewer flows
- Issues arising from the "borrowing" and "re-payment" of sewage treatment capacity

The City Engineer, or his designate, will chair the PJS LC.

For the purposes of this agreement reviewing and discussing items shall mean discussions between the parties, at which Windsor will inform and update Tecumseh on the issues. Such discussions shall be for informational purposes and to obtain input from committee members on the items of discussion. Windsor's representatives shall give reasonable consideration to such input.

Formal agendas and copies of all relevant reports, financial information and similar material on issues of joint concern are to be prepared and provided to all members of the PJS LC in accordance with the time lines established by the PJS LC. Copies of all reports on issues of joint concern which are to be submitted to the PJS LC shall be provided to Tecumseh's representative on the PJS LC in accordance with the time lines established by the PJS LC to enable Tecumseh's representative to comment thereon and the PJS LC representative shall give reasonable consideration to such comments.

Tecumseh agrees that all decisions regarding the Operation and Maintenance of Windsor's sewage treatment plants are the ultimate responsibility of and in the sole discretion of Windsor.

#### **Article 20 – Miscellaneous**

- 20.1 Neither Windsor or Tecumseh shall be liable for any costs, damages or losses incurred by either municipality arising out of any delays in the construction of any of the works contemplated by this agreement or the failure in the operation of the LRPCP or the LRWRP for any reason or reasons beyond the control of the applicable municipality

- 20.2 Tecumseh does not have and will not have acquired any ownership in the Windsor trunk sanitary sewers or in the LRPCP or in the LRWRP. Windsor does not and will not acquire any ownership in the trunk sanitary sewers in Tecumseh. Tecumseh has acquired a right of transmission through the Windsor sanitary sewers for sanitary sewage as well as a right to the treatment of that sewage.
- 20.3 Notwithstanding anything to the contrary herein contained, this agreement shall be subject to the approval of any agencies or departments of the governments of Ontario and Canada, as may have jurisdiction with respect thereto.
- 20.4 Each of the parties hereto shall pass such bylaws and do, sign, execute, and perform all such things, deeds and documents as are necessary to implement the provisions of this agreement without delay and so as to commence and complete all necessary construction as expeditiously as possible
- 20.5 This agreement may be amended from time to time upon the mutual agreement of the parties hereto
- 20.6 This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF WINDSOR

*[Signature]*  
MAYOR/CAO  
*[Signature]*  
CLERK

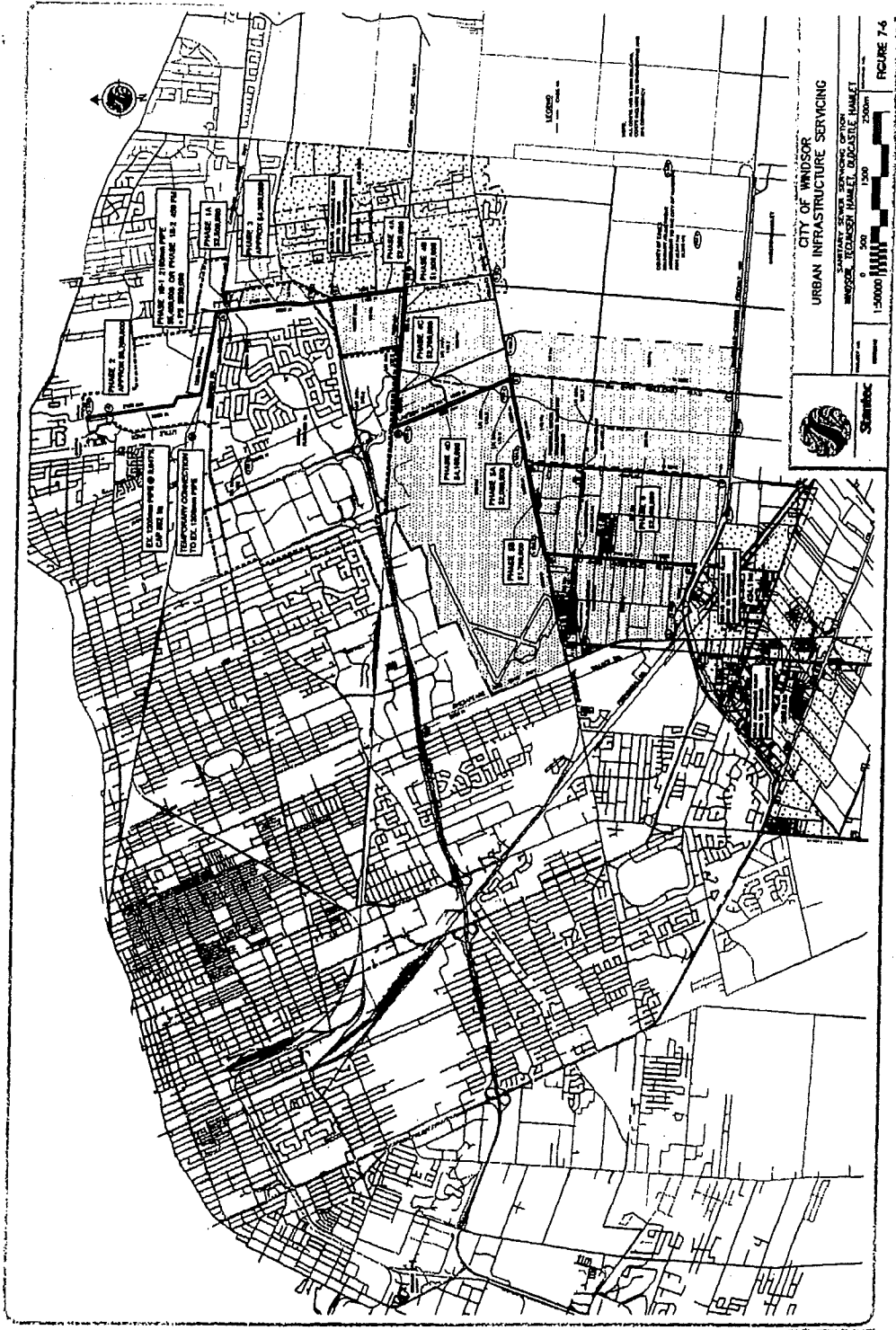
THE CORPORATION OF THE TOWN OF TECUMSEH

MAYOR *[Signature]*  
CLERK *[Signature]*

Authority  
M-204/2004  
Approved  
As To Form  
*[Signature]*  
Legal Counsel

Authority  
M-204/2004  
Approval  
Of Technical  
Content  
*[Signature]*  
City Engineer

Authority  
Approved  
as to Financial  
Content  
*[Signature]*  
City Treasurer



CITY OF WINDSOR  
 URBAN INFRASTRUCTURE SERVICING  
 SEWER SERVICING OPTION  
 WINDSOR, WINDSOR HAMLET, BURGESSVILLE HAMLET  
 1:5000  
 0 500 1000 2000m

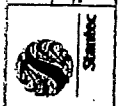


FIGURE 7-6

Not to be used for any other purpose without the written consent of SERRAVALLO Engineering Inc.

TO LRPCP  
ROUTE ALONG BARNWELL

Phase	Location	From	To	(m)	(mm)	COVER	DIS	AVERAGE	UNIT PRICE	TOTAL PRICE	COST SHARING BASED ON FLOWS				
											US	W	T	N	
										TOTAL		WINDSOR		TECHNISEN	
										FLOW		FLOW		FLOW	
										L/A		L/A		L/A	
										TOTAL		TOTAL		TOTAL	
										GROSS		GROSS		GROSS	
6	8th Concession Road	Offsite	1000	175	3.5	4	3.8	\$ 895	\$ 3,133	515.5	184.5	325	37%	\$ 632,198	\$ 1,419,861
5b	County Road #2	1000	1350	4.0	4.5	4.3	\$ 849	\$ 1,859,890	712.5	367.5	325	54%	\$ 902,785	\$ 1,757,175	
5c	County Road #2	1000	1350	4.5	5.0	4.8	\$ 1,136	\$ 1,983,630	1069.3	744.3	325	70%	\$ 1,387,727	\$ 855,853	
4c	Lawson Parkway	1000	1650	5.0	5.0	5.0	\$ 1,559	\$ 3,098,270	1375.0	1050.0	325	76%	\$ 2,852,108	\$ 944,161	
4c	Along CP tracks	1250	1650	5.2	5.2	5.2	\$ 1,358	\$ 2,679,172	1315.2	1180.2	325	78%	\$ 1,498,841	\$ 400,029	
4b	Along CP tracks	1000	1650	5.1	5.2	5.1	\$ 1,528	\$ 2,315,620	1515.2	1180.2	325	79%	\$ 1,817,372	\$ 486,250	
4a	Barnwell Road	1000	1650	6.0	6.0	6.0	\$ 2,300	\$ 4,047,000	2656.5	1248.5	1308	49%	\$ 1,979,450	\$ 2,079,810	
3	Barnwell Road	1000	2100	6.0	6.0	6.0	\$ 2,300	\$ 4,830,000	2556.5	1248.5	1308	49%	\$ 1,196,722	\$ 1,243,278	
2	Along CN tracks	1300	2100	6.0	6.0	6.0	\$ 3,000	\$ 5,285,000	2556.5	1248.5	1308	49%	\$ 1,196,722	\$ 1,243,278	
1b	Along CN tracks	1900	2100	6.0	6.0	6.0	\$ 2,286	\$ 3,183,000	2526.5	1248.5	1308	49%	\$ 2,736,481	\$ 2,862,890	
2	Forest Check bank	LRPCP						\$ 3,183,000						\$ 270,015,200	\$ 14,967,800
Average											58.7%		41.3%		

note:  
contingency = 20%  
engineering = 15%

## WASTEWATER SYSTEM

LINE  
**3103 Wastewater collection**

Desired outcome	Efficient wastewater system
Efficiency measure in words	Operating costs for the collection of wastewater per kilometre of wastewater main
Calculation	$\frac{\$ \text{ Operating costs for wastewater collection}}{\text{Total kilometres of wastewater mains}}$

**Numerator** Operating costs for wastewater collection

**Definition** This measure applies to separate sanitary sewer systems and to combined sanitary/storm sewer systems. Separate storm sewer systems are not included.

Collection includes pumping (lift station), cleaning and maintenance of pipes and emergency operations.