

**Amendments to Water Servicing Agreement
(January 16, 2006)**

THE CORPORATION OF THE TOWN OF TECUMSEH

BY-LAW NUMBER 2006-27

Being a by-law to authorize the execution of an Amending Agreement between The Corporation of the Town of Tecumseh, The Windsor Utilities Commission and The Corporation of the City of Windsor

WHEREAS The Windsor Utilities Commission, The Corporation of the Town of Tecumseh and The Corporation of the City of Windsor entered into a Contract dated November 10, 2004, for the purpose of establishing the terms and conditions upon which water would be supplied by the Commission to Tecumseh;

AND WHEREAS the Ministry of the Environment has written a letter dated October 31, 2005, indicating its concerns regarding the firm dates for completion of this joint project;

AND WHEREAS the parties desire to amend the Contract on the terms and conditions set forth in this Amending Agreement to establish dates for the completion of the terms;

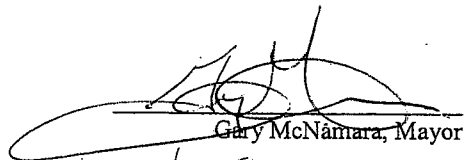
AND WHEREAS under Section 5 of the *Municipal Act* 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law;

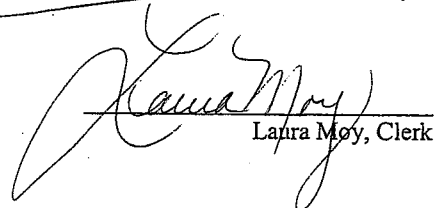
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF TECUMSEH HEREBY ENACTS AS FOLLOWS:

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 Amending Agreement between The Corporation of the Town of Tecumseh, The Windsor Utilities Commission and The Corporation of the City of Windsor dated the 16th day of January, 2006, a copy of which Amending Agreement is attached hereto and forms part of the by-law and to do such further and other acts which may be necessary to implement the said Amending Agreement.
2. **That** this by-law shall come into force and take effect upon on the date of the third and final reading thereof.

READ a first, second and third time and finally passed this 11th day of April, 2006.

"SEAL"


Gary McNamara, Mayor


Laura Moy, Clerk

This Amending Agreement
dated this 16th day of January, 2006

BETWEEN

THE WINDSOR UTILITIES COMMISSION

“the Commission”

-and-

THE CORPORATION OF THE TOWN OF TECUMSEH

“Tecumseh”

-and-

THE CORPORATION OF THE CITY OF WINDSOR

“Windsor”

WHEREAS the Windsor Utilities Commission, the Corporation of the Town of Tecumseh and The Corporation of the City of Windsor (the “Parties”) entered into the Contract (the “Contract”) dated November 10, 2004 for the purpose of establishing the terms and conditions upon which water would be supplied by the Commission to Tecumseh;

AND WHEREAS the Ministry of the Environment has written a letter dated October 31, 2005 indicating its concerns regarding the firm dates for completion of this joint project;

AND WHEREAS the parties desire to amend the Contract on the terms and conditions set forth in this amending agreement (the “Agreement”) to establish dates for the completion of the terms.

AS SUCH, in consideration of the Parties agreeing to amend their obligations in the existing Contract, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Parties agree to keep, perform, and fulfill the promises, conditions and agreements as set out below.

Amendments

The Contract is amended as follows:

- a) Article 1, item 1.1 (c) "**Effective Date**" means the date on which the commission first supplies water to Tecumseh in accordance with the provisions of Article 2 hereof, which Effective Date is projected to be no later than the 31st day of March, 2006.
- b) Article 2, item 3 (e) "Operation of the system within lands annexed by Windsor, currently under Tecumseh control will continue under the current arrangement until connection to the Commission supply system is completed. Final connections are expected to be completed by March 31, 2006."
- c) Article 2, item 3 (g) "The Commission acknowledges that certain metering upgrades, supply piping and pump installation, as set out in Schedule "C" to this Agreement, will be required in the short term to supply Tecumseh and covenants and agrees to proceed with construction and installation of these items in 2005-2006. The Commission also acknowledges that construction of the Banwell Road Reservoir and Booster Pumping Station is required to meet the future servicing needs of Tecumseh and agrees to proceed in 2005 with the Class Environment Assessment, following which the Commission will employ its best efforts to commence construction of this project, for completion prior to the future needs being required.
- d) Article 2, item 4, "**Effective Date**" "The parties acknowledge and agree that the Effective date of this Agreement is projected to be the 31st day of March, 2006. The parties undertake and agree to apply all reasonable efforts and energy to fulfill or achieve the Effective date projection. The parties also agree to use their best efforts to prepare and execute the Deactivation Agreement by May 31, 2006."

The following provisions are hereby added immediately following Article 1, Item 14 MISCELLANEOUS (j):

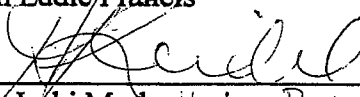
- (k) Provision of bi-monthly joint progress reports to the Ministry beginning November 30, 2005 and continuing until the deadline date of the agreement (January 31, March 31 and May 31, 2006).
- (l) Joint written confirmation to the Ministry by both the Commission and Tecumseh immediately following the deadline date that the connections are in place and water is being delivered to Tecumseh.

- (m) By November 30, 2005, Tecumseh will document amendments to Tecumseh's existing Environmental Study report through consultation with Ministry Environmental Assessment staff and confirm that a Schedule B project is proceeding, with abandonment of the previous proposal.
- (n) Prior to May 31, 2006, Tecumseh will coordinate the decommissioning schedule for the Tecumseh Water Treatment Plant with the City of Windsor and the Windsor Utilities Commission.


IN WITNESS WHEREOF the parties hereto have hereunder affixed their Corporate Seals duly attested by the hands of their proper respective signing officers duly authorized on their behalf.

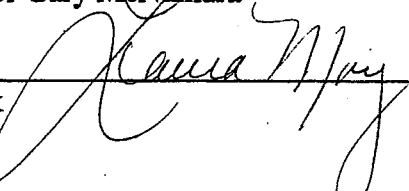
THE WINDSOR UTILITIES COMMISSION

Per: 
 Chairman Eddie Francis

Per: 
 Secretary ~~Jacki Merlo~~ Helga Reidel.

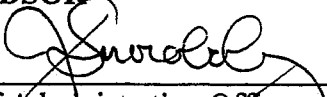
THE CORPORATION OF THE TOWN OF TECUMSEH

Per: 
 Mayor Gary McNamara

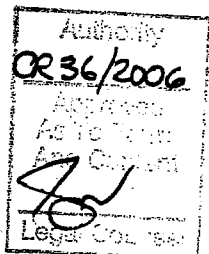
Per: 
 Clerk

In addition to being a party to this Amendment, by executing this Amendment, Consent in accordance with the *Municipal Act, 2001* is hereby granted.

THE CORPORATION OF THE CITY OF WINDSOR

Per: 
 Chief Administrative Officer
 John Skorobohacz

Per: 
 D/Clerk
 Gary Cian



Ministry of the Environment Ministère de l'Environnement

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File: SI-ES-WI 500

October 31, 2005

Peter Neufeld, Chief Operating Officer
Windsor Utilities Commission
787 Ouellette Ave.
P.O. Box 1625, Station A
Windsor, ON N9A 5T7

Greg Keating, Chief Administrative Officer
The Corporation of the Town of Tecumseh
917 Lesperance Road
Tecumseh, ON N8N 1W9

Dear Sirs:

Re: Windsor/Tecumseh Water Supply Agreement

At the September 8, 2005 meeting hosted by the Town of Tecumseh, attended by the Windsor Utilities Commission and the Ministry of the Environment, a goal of the meeting was to establish consensus on firm dates for interim upgrades necessary for Tecumseh to be supplied with water from the City of Windsor.

The ministry's position on the matter relates to the provision of water to Tecumseh, anticipated to occur by September 30, 2005 and stipulated as a key milestone in a formal agreement signed by both parties in November 2004. This milestone date was not achieved, in part due to a six month delay in signing the agreement and delays encountered by both parties in installing infrastructure upgrades necessary to permit water to be transported.

The ministry is concerned that this deadline was not met as interim upgrades to the Tecumseh Water Treatment Plant were approved on the premise that water would be supplied by September 30, 2005 from a facility that meets minimum treatment requirements.

At the September 8th meeting the ministry put forth options to formalize the schedule in an effort to ensure that future milestones would be achieved and that the project would move forward as quickly as possible. One such option was the issuance of Provincial Officer's Orders which would require firm schedules to be produced by both parties.

Recent progress and a commitment from the two parties to achieve challenging but achievable milestones is evidence that the Town of Tecumseh and City of Windsor are working by mutual agreement toward specific deadlines acceptable to all parties, including the ministry.

Based on recent discussions with the Windsor Utilities Commission and the Town of Tecumseh, it is our understanding that the two parties have agreed to prepare and sign off on an addendum to the original agreement which will stipulate firm dates for completion of this joint project. The ministry understands that this addendum will be ratified no later than November 30, 2005 and will outline the steps necessary to permit project completion by a deadline of March 31, 2006, with the provision of financial incentives, as necessary, to assure completion.

Due to the nature and history of this project the ministry would feel compelled to issue orders should the agreement addendum not be finalized by November 30, 2005 or if the timelines of this agreement are not met.

The addendum should also acknowledge provision of monthly joint progress reports to the ministry beginning November 30, 2005 until the deadline date of the agreement. Further, the addendum should prescribe provisions for written confirmation by both parties immediately following the deadline date that the connections are in place and water is being delivered to Tecumseh.

As part of the addendum, or through separate documentation to the ministry, the Town of Tecumseh must also do the following:

1. By November 30, 2005, document amendments to your existing Environmental Study Report through consultation with ministry Environmental Assessment staff and confirm that you are proceeding with a Schedule "A" project and are abandoning your previous proposal;
2. By November 30, 2005, provide a decommissioning schedule for the Tecumseh Water Treatment Plant.

We are pleased that recent actions have moved this project forward significantly with respect to achievement of the revised deadline date of March 31, 2006. The ministry will assess the addendum and monthly progress reports and will take no further action should achievement of these important milestones continue to occur as scheduled. In the event that milestones are not being met the ministry will turn to the mandatory compliance option.

Yours truly

Gary Johnson
Supervisor - Safe Drinking Water Branch
Sarnia/Windsor District Office

c: George De Groot – Town of Tecumseh
Norbert Poggio – Windsor Utilities Commission
Tim Little – MOE, SDWB - London
Jill Wales – MOE, SDWB - Sarnia
Holie Arseneault – MOE, SDWB - Windsor
Peter Burns – MOE, LSB - London

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**Water Servicing Agreement
(November 10, 2004)**

THE CORPORATION OF THE TOWN OF TECUMSEH

BY-LAW NO. 2004-71

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 water services to the Town of Tecumseh

WHEREAS the Windsor Utilities Commission ("Commission"), the City of Windsor ("Windsor") and the Town of Tecumseh ("Tecumseh") have determined that there is mutual benefit to entering into an agreement for the purchase by Tecumseh of water from the Commission to meet its current and future water needs;

AND WHEREAS it is deemed expedient by the parties to enter into this Agreement to provide for the terms and conditions upon which water will be supplied by the Commission to Tecumseh;

AND WHEREAS Windsor, Tecumseh, the Commission, The Public Utilities Commission of the Town of Tecumseh ("TUC"), and The Windsor-Tecumseh Joint Waterworks Board entered into an Agreement dated October 1, 1988 ("the Prior Agreement") governing, among other matters, the Joint Board System currently supplying the needs of Tecumseh and provisions for the deactivation of that plant;

AND WHEREAS the parties and TUC have determined that the terms and conditions for the deactivation and disposal of the Joint Board System ("the JBS") contained in the Prior Agreement are no longer relevant for the parties and TUC and that a separate agreement will be entered into, at the same time as this Agreement, to govern the deactivation and disposal of the JBS ("the Deactivation Agreement"), and that this Agreement and the Deactivation Agreement will be as of the Effective Date replace and abrogate the Prior Agreement.


AND WHEREAS the Commission also supplies water to end-use customers in the former Township of Sandwich South, now within Tecumseh under Agreement dated March 5, 1990, which Agreement will also be replaced by and abrogated by this Agreement, save and except for the water rates provisions thereof, which shall continue for the time being to operate and apply to the parties hereto as may be necessary to fulfill the requirements of Article 5(c) hereof;

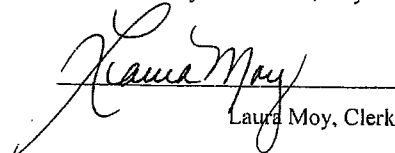
AND WHEREAS under Section 5 of the Municipal Act 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law;

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, the Windsor Utilities Commission 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 9th day of November, 2004.


Gary McNamara, Mayor


Laura Moy, Clerk

**WATER AGREEMENT
AMONG**

**THE WINDSOR UTILITIES COMMISSION,
THE CORPORATION OF THE CITY OF WINDSOR,
AND THE CORPORATION OF THE TOWN OF TECUMSEH**

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THIS AGREEMENT made in triplicate this 10th day of ~~October~~ ^{NOVEMBER} 2004

AMONG:

THE WINDSOR UTILITIES COMMISSION

"the Commission"

-and-

THE CORPORATION OF THE TOWN OF TECUMSEH

"Tecumseh"

-and-

THE CORPORATION OF THE CITY OF WINDSOR

"Windsor"

RECITALS

1. The Commission is a municipal service board of Windsor, pursuant to s. 195 of the *Municipal Act, 2001* ("the Act").
2. Pursuant to s. 196 of the Act, the consent of Windsor is required to authorize the Commission to enter into an agreement to supply water to Tecumseh.
3. The Commission, Tecumseh and Windsor are collectively referred to in this Agreement as "the parties".
4. The parties have determined that there is mutual benefit in entering into an agreement for the purchase by Tecumseh of water from the Commission to meet its current and future needs for 50 years.
5. The Commission currently enjoys treatment capacity for water of 349 million litres per day total as authorized by a Ministry of Environment ("MOE") Certificate of Approval, with potential for increases in treatment capacity. The treatment capacity is comprised of 268 million litres per day by A. H. Weeks Water Treatment Plant and 81 million litres per day from the old water treatment plant. The foreseeable requirements of Tecumseh for water is 87 million litres per day, and the current daily peak hour requirement of Windsor is 278 million litres per day. The Commission therefore represents that it enjoys adequate treatment capacity and readily available expansion treatment capacity to supply the requirements of both Windsor and Tecumseh, and to fulfill the obligations imposed upon it by the provisions hereof.
6. It is deemed expedient by the parties to enter into this Agreement to provide for the terms and conditions upon which water will be supplied by the Commission to Tecumseh.

7. Windsor, Tecumseh, the Commission, The Public Utilities Commission of the Town of Tecumseh ("TUC"), and The Windsor-Tecumseh Joint Waterworks Board entered into an Agreement dated October 1, 1988 ("the Prior Agreement") governing, among other matters, the Joint Board System currently supplying the needs of Tecumseh and provisions for the deactivation of that plant.

8. The parties and TUC have determined that the terms and conditions for the deactivation and disposal of the Joint Board System ("the JBS") contained in the Prior Agreement are no longer relevant for the parties and TUC and that a separate agreement will be entered into, to govern the deactivation and disposal of the JBS ("the Deactivation Agreement"), and that this Agreement and the Deactivation Agreement will as of the Effective Date replace and abrogate the Prior Agreement. The parties agree to use their best efforts to effect such agreement before December 31, 2004.

9. The Commission also supplies water to end-use customers in the former Township of Sandwich South, now within Tecumseh under Agreement dated March 5, 1990, which Agreement will also be replaced by and abrogated by this Agreement, save and except for the water rates provisions thereof, which shall continue for the time being to operate and apply to the parties hereto as may be necessary to fulfill the requirements of Article 5(c) hereof.

10. Windsor has been made a party to this agreement, as it is the owner of the Commission and wishes to be bound by the provisions of this agreement jointly and severally with the Commission.

11. The following is the agreement of the parties.

THIS AGREEMENT WITNESSES that in consideration of the sum of One Dollar in lawful money of Canada, paid by each of the parties to the other, and in consideration of the mutual covenants and obligations herein contained, the receipt and sufficiency whereof are hereby acknowledged, it is agreed by and among the parties as follows:

ARTICLE 1

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following words and terms shall have the meanings ascribed to them as follows:

- (a) **"Bulk Supply"** means the total of all water supplied to Tecumseh via boundary meters. Tecumseh provides, at its sole expense, and in its sole discretion, all billing and collection services, metering and maintenance of the

distribution system and any related services to end-customers supplied with water delivered via bulk supply.

(b) **"C.P.I."** means the Standard Consumer Price Index for Ontario for the 12 month period ending on the 30th day of November of each year, to be effective on the 1st day of January in the next ensuing year, as set out in Schedule "A" hereto attached.

(c) **"Effective Date"** means the date on which the Commission first supplies water to Tecumseh in accordance with the provisions of Article 2 hereof, which Effective Date is projected to be no later than the 30th day of September, 2005.

(d) **"Elevated Tank"** means the elevated water storage facility owned by the Town of Tecumseh and situate on Family Tradition Foods property at 1192 Lacasse Boulevard, Tecumseh.

(e) **"Maximum Daily Flow"** means the maximum quantity of water supplied to Tecumseh on any day, and for the purposes hereof, the Maximum Daily Flow shall not exceed 87 Million Litres (87 MLD)

(f) **"MOE"** means the Ministry of Environment for Ontario, or other such successor organization that may from time to time be designated by the Province of Ontario to prescribe or control drinking water standards in the Province of Ontario.

(g) **"Non-Regulatory Improvements Price Change"** means a price change caused by non-regulatory improvements made by the Commission to its water treatment facilities, which result in significant and measurable improvements in water quality

(h) **"Regulatory Change"** means change, mandated by statutes or regulations enacted or promulgated by the Province of Ontario, enacted after the "Effective Date" of this Agreement, impacting the manner in which water is to be treated or supplied by the Commission.

(i) **"Regulatory Price Change"** means that portion of any increase in the price for water charged by the Commission to its customers, which increase is attributable to Regulatory Change.

(j) **"Retail Supply"** means water supply from the Commission to end-customers in Tecumseh not serviced by bulk supply.

(k) **"Summer Levy"** means an additional charge assessed for all water consumed in any of the summer months (May through October, both inclusive) in excess of the average water consumed during the winter months (November

through April, both inclusive). The application of Summer Levy is illustrated on the Chart attached as Schedule "B" hereto attached.

INTERPRETATION

1.2 For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "this Agreement" means this Agreement as it may from time to time be supplemented or amended in writing;
- (b) the Recitals and the Schedules are included in and form part of this Agreement;
- (c) all terms used herein which are denoted with initial capital letters shall have the meanings assigned to them by section 1.1 of this Agreement; and
- (d) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof.

ARTICLE 2

2. MAXIMUM SUPPLY

- a) The Commission will supply water to Tecumseh up to the Maximum Daily Flow.
- b) Water may be supplied to Tecumseh in excess of the Maximum Daily Flow only upon Tecumseh and the Commission entering into a written amending agreement, the entering into of which agreement will depend on the Commission's ability at that time to supply all customers on the water supply system, an acceptable location for the new supply, and for additional mains or works that may be required. Tecumseh and the Commission agree to negotiate such amending agreement in good faith.
- c) Tecumseh agrees to take immediate and effective corrective action as necessary not to exceed the Maximum Daily Flow to its customers during any one-day period exclusive of fire flows. In no case shall any party permit service connections at any location that will cause the Maximum Daily Flow to be exceeded.

- d) Tecumseh is responsible for its own water distribution system within the boundaries of Tecumseh. Tecumseh is also responsible for any new storage works that may be required to supply Tecumseh's fire flow of water. Storage for equalization and peak hour flow of water for Tecumseh is the responsibility of the Commission.
- e) Tecumseh will not produce or purchase potable water from sources other than the Commission without prior written approval of the Commission. Existing water supplies from the Union Water System and the Amherstburg Water System and contiguous extensions thereto, that are not in replacement of water supplied by the Commission, are exempted from this provision. Tecumseh will notify the Commission of said supplies within 30 days of execution of this Agreement. Mixing of water from alternate sources with water from the Commission will not be permitted except with prior written approval by the Commission.
- f) Tecumseh retains the right to supply its own water upon termination of this agreement.

3. SHARING OF WORKS

- a) The parties to this Agreement will fund and call all tenders for the construction of watermains, reservoirs and pumping stations within their respective supply area, provided that the final construction drawings and specifications for all feeder and trunk mains shall be provided to the Commission and the parties shall exercise control over the construction and installation thereof within their supply area.
- b) All meter pits and appurtenances necessary to meter water for bulk supply within the intent of this Agreement shall be provided by Tecumseh and shall be constructed to Commission specifications. The Cost of the meters, meter pits and appurtenances and their installation and maintenance shall be the responsibility of Tecumseh. The location of such meter pits and appurtenances will be subject to Commission approval. The meters, meter pits and appurtenances will be owned by Tecumseh. Tecumseh agrees to maintain all boundary meters according to American Water Works Association standards for large meters. Tecumseh will allow access to the meters at all reasonable times by Commission staff in coordination with Tecumseh staff to check the calibration of the meters.
- c) The Commission agrees to provide transmission mains to the boundary of Tecumseh. Ownership of watermains installed at the expense of the Commission will reside with the Commission.

- d) Tecumseh agrees to permit the Commission to install or have installed monitoring equipment at the Elevated Tank location to permit use of the Elevated Tank for system pressure control. The Commission shall deliver peak hourly flow and shall maintain sufficient storage in the Elevated Tank for fire flows in Tecumseh. Tecumseh will assume ongoing costs for maintenance and other works required at the Elevated Tank. The Commission will be responsible for costs for equipment and maintenance thereof required to monitor the Elevated Tank. Tecumseh will allow access to the equipment at all reasonable times by Commission staff in coordination with Tecumseh staff. The Commission agrees to comply with Tecumseh access policies and to maintain appropriate insurance coverage for its staff and equipment, and to indemnify and hold harmless and keep indemnified Tecumseh against any and all liability of whatever kind or nature which Tecumseh may incur in connection with Tecumseh having granted access to or use of the Elevated Tank by the Commission. Provided that this indemnity shall not extend to liability that arises by virtue of the negligence or wrongful acts of Tecumseh, its officers, agents or employees.
- e) Operation of the system within the lands annexed by Windsor, currently under Tecumseh control will continue under the current arrangement until connection to the Commission supply system is completed. Final connections are expected to be completed by 2005.
- f) The Commission acknowledges and agrees that by entering into this Agreement, Tecumseh has determined to rely on the Commission to supply its water needs for 50 years. In consequence thereof, Tecumseh has determined to abandon plans for construction of its own water treatment facilities, as would otherwise have been prescribed or required by MOE. The Commission therefore covenants, undertakes and promises, as follows:
- i. to supply the water needs of Tecumseh in accordance with the provisions hereof; and
 - ii. to cause to be made and to be maintained in good operating condition and repair all such capital and operating improvements and enhancements to its water treatment facilities as may from time to time be necessary in order to fulfill the obligations on its part herein contained.
- g) The Commission acknowledges that certain metering upgrades, supply piping and pump installation, as set out in Schedule "C" to this Agreement, will be required in the short term to supply Tecumseh and covenants and agrees to proceed with construction and installation of these

items in 2004-2005. The Commission also acknowledges that construction of the Banwell Road Reservoir and Booster Pumping Station is required to meet the future servicing needs of Tecumseh and agrees to proceed in 2004 with the Class Environmental Assessment, following which the Commission will employ its best efforts to commence construction of this project, for completion in the calendar year 2006.

- h) The Commission and Tecumseh agree to set up a Permanent Joint Staff Liaison Committee (PJS LC) comprised of representatives from each of the Commission 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, metering upgrades, supply piping, pump installations and other capital improvements and up-grades, on-going maintenance and operation, budget issues, sharing of technical information on plant and collection system operational matters, best management practices and regulatory changes. The PJS LC will draft a Memorandum of Understanding (MOU) that will set out its terms of reference. The Commission's Chief Engineer, Water, will chair the PJS LC.

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 in the MOU. Copies of all reports on issues of joint concern which are to be submitted to the Commission shall be provided to Tecumseh's representative on the PJS LC in accordance with the time lines established by the PJS LC in the MOU to enable Tecumseh's representative to comment thereon and the Commission's representative on the PJS LC shall give reasonable consideration to such comments.

4. EFFECTIVE DATE

The parties acknowledge and agree that the Effective Date of this Agreement is projected to be the 30th day of September, 2005. The parties undertake and agree to apply all reasonable efforts and energy to fulfill or achieve the Effective Date projection. The parties also agree to use their best efforts to prepare and execute the Deactivation Agreement by December 31, 2004.

5. WATER RATES

The rate to be charged by the Commission for water supplied to Tecumseh pursuant to this Agreement will include the following components:

- a) rates as set out in Schedule "A", hereto;
- b) payment for water received will be governed by the Commission's
 - o standard practices for due dates and late payment charges; and

- c) retail rates will apply to the areas of Tecumseh currently serviced by the Commission and will remain as specified by the existing agreement, dated March 5, 1990, until such time as bulk supply is commenced to those customers, after which bulk supply rates will be charged in accordance with Schedule "A".

6. MAINTENANCE OF DISTRIBUTION SYSTEM AND QUALITY OF WATER

- a) The quality of water to be supplied to and discharged by the bulk meters for Tecumseh by the Commission, shall be the standard of water quality necessary to enable Tecumseh to supply to end users in Tecumseh, water of a standard of quality not less than the minimum standard of quality for drinking water prescribed from time to time by MOE, presuming that Tecumseh maintains its water distribution system in reasonable operating condition.
- b) Tecumseh shall be responsible for maintenance of all water distribution system piping and appurtenances for bulk supply from the bulk meter locations to Tecumseh end-customers.
- c) Tecumseh shall be responsible for water quality testing within the Tecumseh distribution system and actions arising from such testing.
- d) Tecumseh and the Commission agree to work together through the PJSCLC to optimize the system performance with regard to ensuring adequate water quantity and maintenance of water quality.

7. FUTURE SALE OF WATER BY TECUMSEH OR THE COMMISSION

- a) Tecumseh will not resell water to any party outside the limits of Tecumseh without the prior written consent of the Commission, with the exception of the existing agreement dated the 13th day of May, 2003 between Tecumseh and the Town of Lakeshore for the supply of a maximum daily flow of 1.75 million litres of water. Tecumseh agrees that without the prior written consent of the Commission and Windsor it will not amend that agreement, nor enter into a new agreement that would result in additional supply above this maximum flow being made available to Lakeshore.
- b) The parties acknowledge that the Commission is free to sell water to its current, and any future, customers (other than Tecumseh) at the price or prices it shall from time to time, in its unfettered discretion determine. However, and notwithstanding any other provision in this Agreement contained, in the event that the Commission sells water to a municipality

or a municipal service board thereof at a rate lower than the rate charged at the time to Tecumseh, the Commission shall offer the reduced rate to the Town of Tecumseh.

8. RETAIL SUPPLY

- a) The provisions of this Article 8 hereof shall apply only to the areas in Tecumseh currently serviced by the Commission in pursuance of the provisions of the Prior Agreement.
- b) Connections to mains in service will be installed by the Water Division of the Commission upon written application approved by Tecumseh. Such application will be processed through the Customer Service Division of the Commission with the customer paying the installation charge equal to the then prevailing charge for similar installation in the City of Windsor plus fifteen (15%) percent. The service policy to be applied to such installations from time to time shall be the same as then in effect in the City of Windsor.
- c) The Commission will accept responsibility for billing all water to customers in the retail supply area and will collect all accounts arising out of such billings, provided that if the Commission exhausts all its normal remedies for the collection of such accounts, Tecumseh will pay on demand the amount thereof to the Commission and will thereupon stand in the place and stead of the Commission as the creditor of such customer. The Commission hereby sets over, transfers and assigns to Tecumseh, all such delinquent accounts, with full legal right and benefit of recourse against the account debtors. From time to time as the exigencies of the circumstance may require, the Commission shall grant to Tecumseh such further assurances as may be necessary in order to afford Tecumseh the right of legal redress against the account debtors.
- d) If at any time hereafter Tecumseh shall transfer customers on retail supply to bulk supply, it hereby covenants and agrees to pay to the Commission for all meters, attachments and appurtenances owned by the Commission a sum equal to the original capital cost thereof, less depreciation calculated in a straight line basis over 20 years from the date of acquisition, at the rate of 5% per year.

9. DURATION AND TERMINATION

- a) The term of this Agreement shall be 50 years commencing on the date of execution.,
- b) Notwithstanding Article 9(a) herein, this Agreement may be terminated by Tecumseh by giving to the Commission notice in writing at least three

years prior to such termination. It is agreed that the cost of transmission mains dedicated to the delivery of water to end users exclusively in Tecumseh, constructed pursuant to Clause 3(c) to supply the water capacity allocated to Tecumseh are amortized by the Commission over 20 years from the date of completion of these mains and are financed at 7% interest per annum. At the effective date of termination by Tecumseh, Tecumseh shall pay to the Commission the outstanding balance of such cost, together with an additional 10% of the outstanding balance as a termination fee.

10. 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 *Arbitration Act, 1991*, 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.

11. 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.

12. EMERGENCY RATIONING

- a) Notwithstanding any other provisions of this Agreement or any other Agreement entered into by the Commission under which the Commission supplies water, where at any time a state of emergency or water shortage beyond the control of the Commission exists by reason of damage or destruction, failure or breakdown of any of the works of the Commission, wastage of water, water demand in excess of its treatment resources or other matters restricting the ability of the Commission to supply water, the Commission may, during the state of emergency or water shortage, allocate and distribute its available water equitably among its customers, including Tecumseh, and interrupt or decrease delivery of water under this Agreement during the continuance of the emergency or water shortage in order to effect which is in the opinion of the Commission, the most economical, efficient and equitable use and distribution of the available water supply, provided that any such reduction or interruption of supply to customers of Tecumseh shall on a proportionate basis be no greater than the reduction in supply to other customers of the Commission, including customers in Windsor.
- b) In the event of such emergency rationing, the parties hereto further agree to participate in any water conservation measures directly and through its customers that the Commission deems advisable to impose upon its other

customers during such state of emergency or water shortage beyond the control of the Commission.

13. INDEMNIFICATION

Tecumseh hereby covenants and agrees to indemnify and save the Commission and Windsor 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 Tecumseh contained in the Agreement;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation, covenant or warrant made by Tecumseh in the Agreement; and
- c) any failure by Tecumseh to perform any of the covenants or agreements contained in the Agreement.

The Commission and Windsor hereby covenant and agree to indemnify and save harmless Tecumseh 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:

- d) any non-performance or non-fulfillment of any of the covenants or agreements on the part of the Commission or Windsor contained in the Agreement;
- e) any misrepresentation, inaccuracy, incorrectness or breach of any representation, covenant or warrant made by the Commission or Windsor in the Agreement; and
- f) any failure by the Commission or Windsor to perform any of the covenants or agreements contained in the Agreement.

14. MISCELLANEOUS

- a) This agreement shall be binding upon and enure to the benefit of the parties hereto, and their respective successors and assigns. In the event that Windsor shall during the term of this Agreement create a new entity, either corporate or as a City functional area as a successor to the Commission, or should the Commission and Windsor wish to assign this agreement to a private sector or partly or wholly non-government owned entity, the Commission may assign this agreement to the successor, provided always that such successor and Windsor shall be bound by, and Windsor shall remain liable to Tecumseh notwithstanding such assignment, and the assignment shall be subject to, the provisions of this agreement. Such successor shall as a further precondition to assignment deliver a participation

agreement to Tecumseh, whereby the assignee agrees to be bound by the provisions hereof.

- b) The paragraph titles or captions contained in this agreement are for convenience only and shall not be deemed to be a part of the context of this Agreement.
- c) All pronouns or any variations thereof contained in this agreement shall be deemed to be referable to the masculine, feminine, neuter, singular or plural if the identity of the person or persons, firm or firms, corporation or corporations may require.
- d) This agreement contains the entire understanding between the parties hereto and supersedes any prior understandings and/or written or oral agreements between them respecting all subject matters contained within this agreement. There are no representations, agreements, arrangements or undertakings, oral or written, between and among the parties hereto relating to the subject matter of this agreement that are not fully expressed herein.
- e) In the event that any provision of this agreement may be held to be invalid the same shall not affect in any respect whatsoever the validity of the remainder of this agreement.
- f) A waiver by a party of its rights or of the performance by any other party of any of its obligations under this agreement shall be without prejudice to such parties other rights under this agreement and shall not constitute a waiver of any other of such rights or of the performance by the other party of any other of its or their obligations under this agreement.
- g) This agreement may be amended or altered but such amendment or alteration shall only be effective when reduced in writing and signed by all of the parties hereto.
- h) This agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
- i) The rights and obligations of the parties hereto shall be governed and construed in all respects by the law of Canada and the law of the Province of Ontario, and subject to the provisions hereof, the courts of the Province of Ontario shall have the sole and exclusive jurisdiction to entertain any action arising in connection with this agreement.
- j) Windsor covenants and agrees that it has by execution of these presents, agreed to carry out and be bound by each and every of the covenants, obligations and agreements on the part of the Commission contained herein, and it agrees to and with the Commission that the obligations of the Commission and Windsor herein contained are joint and several.

IN WITNESS WHEREOF the parties hereto have hereunder affixed their Corporate Seals duly attested by the hands of their proper respective signing officers duly authorized on their behalf

THE WINDSOR UTILITIES COMMISSION

Per: [Signature]
Chairman Roy Dattagello
Per: [Signature] *Eddie Francis*
Secretary Jacki Merlo
Per: [Signature] *JL 12*
Vice Chair

THE CORPORATION OF THE TOWN OF TECUMSEH

Per: [Signature]
Mayor Gary McNamara
Per: [Signature]
Clerk Laura Moy

In addition to being a party to this Agreement, by executing this Agreement, Consent in accordance with the *Municipal Act, 2001* is hereby granted

THE CORPORATION OF THE CITY OF WINDSOR

Per: [Signature]
Chief Administrative Officer/City Manager
John Skorobohacz
Per: [Signature]
Acting Clerk George Wilkki

Authority
11-20-04/2004
Approved
As To Form
[Signature]
Legal Counsel

Authority
11-20-04/2004
Approval
Of Technical
Content
[Signature]
City Engineer

Authority
ed
ncial
City Treasurer

SCHEDULE "A"

PART I: RATES FOR WATER SUPPLY TO TECUMSEH

1. Bulk Supply Rates are established as at February 5, 2004:

- a) Water Consumption \$0.266 per cubic meter
- b) Summer Levy \$0.160 per cubic meter

2. Retail Supply Rates are established as per the March 5, 1990 agreement. The rate to be charged to the retail water customers in Tecumseh (former Township of Sandwich South) shall be in accordance with the Prior Agreement until such time as bulk supply is commenced to these remaining customers, after which rates will be charged in accordance with this Schedule A subject to the adjustment set out in it.

3. Bulk Rates will be adjusted on January 1 of each year of this Agreement, commencing January 1, 2005, based on the "C.P.I".

PART II: TEN YEAR ADJUSTMENT

1. In addition to price adjustments referable to C.P.I., as prescribed by Part I to this Schedule, the Commission may as hereinafter set out increase prices at the completion of each 10 year period of this Agreement.
2. The Commission may at any time during the twelve month period immediately following the 10th anniversary of the Effective Date, adjust the Bulk Supply Rate to reflect a Regulatory Price Change or Changes made by the Commission to its customers (other than Tecumseh) during the immediately preceding ten year period.
3. The Commission may similarly at any time during the twelve month period immediately following the 20th anniversary of the Effective Date, and at any time during the twelve month period immediately following each 10th year anniversary of the Effective Date thereafter; adjust the Bulk Supply Rate to reflect Regulatory Price Change or Changes made by the Commission to its customers (other than Tecumseh) during the immediately preceding ten year period
4. The Commission may also at any time during the 12 month period immediately following the 10th anniversary of the Effective Date, adjust the Bulk Supply Rate to reflect Non-Regulatory Improvements Price Change or Changes made by the Commission to its customers (other than Tecumseh) during the immediately preceding ten year period.

5. The Commission may similarly at any time during the 12 month period immediately following the 20th anniversary of the Effective Date, and at any time during the 12 month period immediately following each 10th year anniversary of the Effective Date thereafter, adjust the Bulk Supply Rate to reflect Non-Regulatory Improvements Price Change or Changes made by the Commission to its customers (other than Tecumseh) during the immediately preceding ten year period.
6. Notwithstanding the foregoing:
 - a) adjustments to the Bulk Supply Rate to reflect Regulatory Price Changes and Non-Regulatory Improvements Price Changes may be imposed only to the extent that the cumulative amount of all Regulatory Price Changes and Non-Regulatory Improvements Price Changes during the particular 10 year period exceed the C.P.I. for such period; and
 - b) neither a Regulatory Price Change nor a Non-Regulatory Improvements Price Change may be imposed by the Commission unless and until such Change is applied fairly, evenly and equitably among all customers of the Commission.
7. The issues or questions of whether a proposed price adjustment is the result of a Regulatory Price Change, or a Non-Regulatory Improvements Price Change, or whether a proposed price adjustment is applied fairly, evenly and equitably among all customers of the Commission, shall in the first instance be determined by unanimous consent of the PJSLC, and in the absence of unanimous consent, by the arbitral provisions contained in the Agreement to which this Appendix is attached.

PART III: NO OTHER PRICE INCREASES

1. Other than as set out in this Schedule, the Commission may not at any time increase the Bulk Supply Rates for water supplied to the Town of Tecumseh.

SCHEDULE "B"

ILLUSTRATION OF SUMMER LEVY

| Water Consumption | | | | | Water Consumption | | | | |
|--|------|----------|----------|----------|---|------|----------|----------|----------|
| | | cubic m. | cubic m. | cubic m. | | | cubic m. | cubic m. | cubic m. |
| | | Customer | Winter | Summer | | | Customer | Winter | Summer |
| | | A | Average | Levy | | | B | Average | Levy |
| Winter | Nov | 23 | | | Winter | Nov | 28 | | |
| | Dec | 24 | | | | Dec | 24 | | |
| | Jan | 23 | | | | Jan | 46 | | |
| | Feb | 22 | | | | Feb | 39 | | |
| | Mar | 25 | | | | Mar | 38 | | |
| | Apr | 27 | | | | Apr | 35 | | |
| Summer | May | 32 | 24 | 8 | Summer | May | 45 | 35 | 10 |
| | June | 43 | 24 | 19 | | June | 65 | 35 | 30 |
| | July | 55 | 24 | 31 | | July | 68 | 35 | 33 |
| | Aug | 45 | 24 | 21 | | Aug | 56 | 35 | 21 |
| | Sep | 38 | 24 | 14 | | Sep | 49 | 35 | 14 |
| | Oct | 25 | 24 | 1 | | Oct | 66 | 35 | 31 |
| In December Customer A would pay 24 cubic m. x \$0.266 (\$6.384) for water consumed | | | | | In December Customer B would pay 24 cubic m. x \$0.266 (\$6.384) for water consumed | | | | |
| In July, Customer A would pay, 55 cubic m. x \$0.266 plus (55-24) x \$0.160 summer levy, (\$14.63) normal consumption plus (\$4.96) summer levy for a total of \$19.59 for water consumed. | | | | | In July, Customer B would pay 68 cubic m. x \$0.266 plus (68-35) x \$0.160 summer levy, (\$18.09) normal consumption plus (\$5.28) summer levy for a total of \$23.37 for water consumed. | | | | |

SCHEDULE "C"

IMPROVEMENTS AND ENHANCEMENTS

1. Twinning of the transfer header from the A.H. Weeks plant to D Reservoir;
2. Installation of a third, variable-speed pump and accessories at the George Avenue Pumping Station;
3. Construction of a second supply main on Tecumseh Road East from Forest Glade Drive to Banwell Road.

The Commission has determined at the time of this Agreement that the above Improvements and Enhancements are appropriate to be made, but reserves the right to substitute for these identified Improvements and Enhancements such other technical Improvements and Enhancements as it deems are sufficient to allow the Commission to fully meet its obligations to Tecumseh as contained in this Agreement.

**Wastewater Servicing Agreement
(November 1, 2004)**

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 3rd 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 1st, 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 5th, 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 15th, 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 28th, 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;

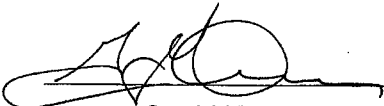
AND WHEREAS the Corporation of the Town of Tecumseh is desirous of entering into new agreement which shall replace the Basic Agreement and all subsequent amending agreements except the second amending agreement, and is in perpetuity;

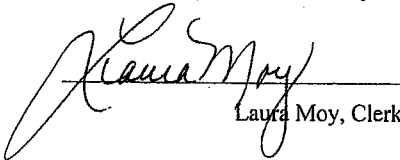
AND WHEREAS under Section 5 of the Municipal Act 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law;

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 9th 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 1st.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 3rd 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 1st, 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 5th 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 15th 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 28th 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;

m³: 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 nd stage expansion to 109.1MLD (24MGD) | \$19 million |
| 3 rd 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 PJSCL 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

THE CORPORATION OF THE TOWN OF TECUMSEH

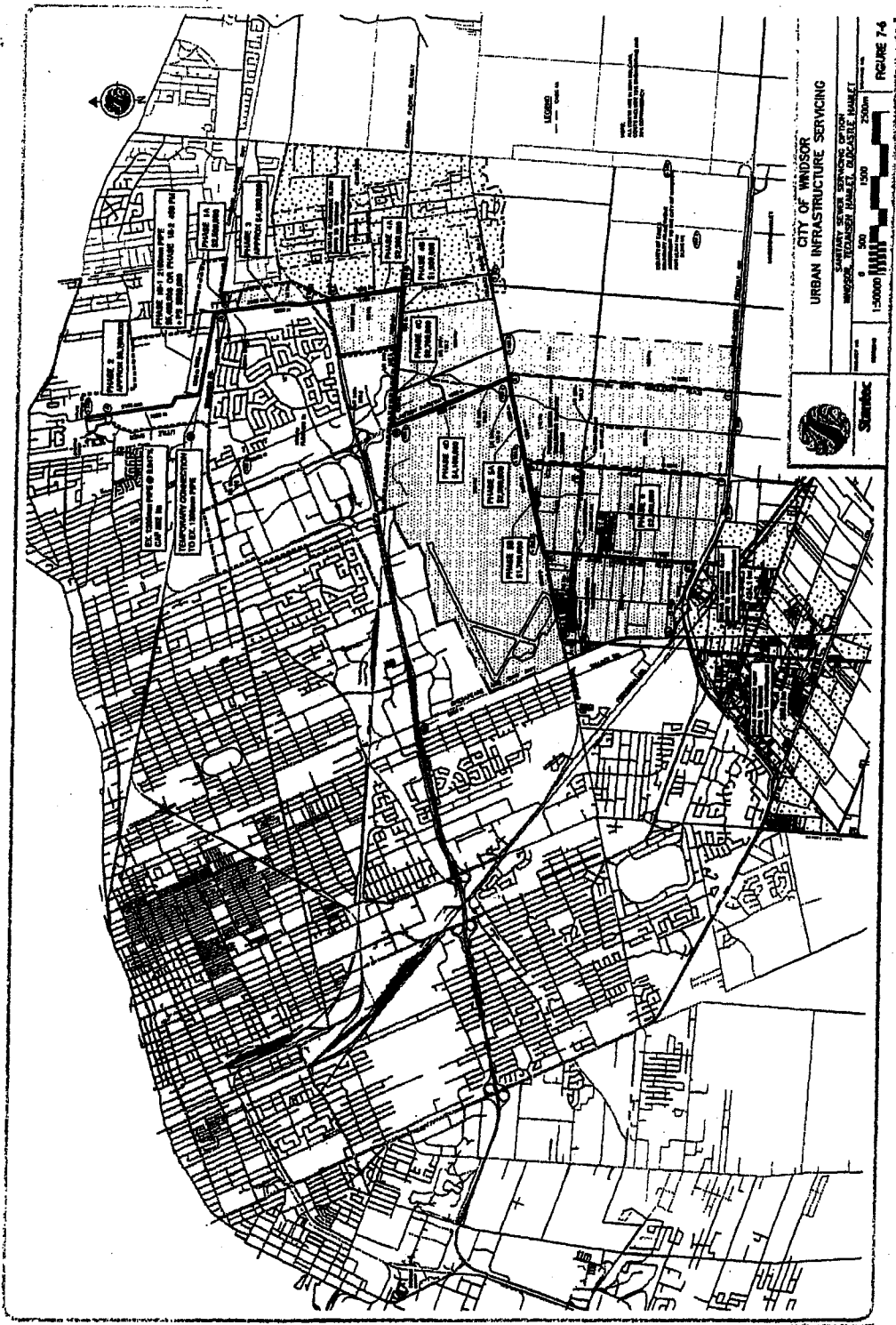
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Authority
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Legal Counsel

Authority
M-204/2004
Approval
Of Technical
Content
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City Engineer

Authority
Approved
as to Financial
Content
[Signature]
City Treasurer



TO LPPCP
ROUTE ALONG BANWELL

| Pipes | Location | From | To | (m) | (mm) | COVER | US | D/S | AVERAGE | UNIT | TOTAL | FLOWS | | | GROSS SURPLUS BASED ON FLOWS | | | W |
|-------|--------------------|-----------------------|-------------------------|------|------|-------|-----|-----|----------|---------------|--------|--------|-----|-----|------------------------------|---------------|-------|---|
| | | | | | | | | | | | | W | Q | W | W | TECHNISEH | W | |
| 6 | BR Concession Road | Offshoots | Division (CR42) | 2400 | 975 | 3.5 | 4 | 3.8 | \$ 685 | \$ 2,251,000 | 315.5 | 180.5 | 325 | 37% | 832,139 | \$ 1,419,861 | | |
| 6b | Conroy Road 42 | BR Concc. Rd | BR Concc. Rd | 1450 | 1200 | 4.0 | 4.5 | 4.3 | \$ 848 | \$ 1,650,000 | 719.5 | 387.5 | 325 | 44% | 902,785 | \$ 757,215 | | |
| 6c | Conroy Road 42 | BR Concc. Rd | BR Concc. Rd | 1300 | 1350 | 4.5 | 5.0 | 4.8 | \$ 1,136 | \$ 1,992,800 | 1099.3 | 744.3 | 325 | 70% | 1,307,727 | \$ 685,073 | | |
| 4d | Leeson Parkway | CP tracks | CP tracks | 1900 | 1650 | 5.0 | 5.0 | 5.0 | \$ 1,558 | \$ 2,998,270 | 1376.8 | 1050.8 | 325 | 76% | 2,062,108 | \$ 936,162 | | |
| 4c | Along CP tracks | East End of Twin Oaks | Leeson Parkway | 1250 | 1650 | 5.5 | 5.5 | 5.1 | \$ 1,158 | \$ 1,448,250 | 1180.2 | 1180.2 | 325 | 79% | 1,448,250 | \$ 0 | | |
| 4b | Banwell Road | Banwell Road | East End of Twin Oaks | 1100 | 1650 | 5.5 | 5.5 | 5.1 | \$ 1,558 | \$ 1,714,050 | 1180.2 | 1180.2 | 325 | 79% | 1,714,050 | \$ 0 | | |
| 4a | Banwell Road | South Service Rd | 150 m south of Tecumseh | 1300 | 2100 | 6.0 | 6.0 | 6.0 | \$ 2,300 | \$ 2,991,000 | 2564.5 | 1248.5 | 325 | 49% | 1,778,220 | \$ 1,212,780 | | |
| 3 | Along BR Road | Banwell Road | 150 m south of Tecumseh | 400 | 2100 | 6.0 | 6.0 | 6.0 | \$ 4,500 | \$ 1,800,000 | 2564.5 | 1248.5 | 325 | 49% | 1,486,722 | \$ 313,278 | | |
| 1b | Along CH tracks | Banwell Road | Forest Glade trunk | 1300 | 2100 | 6.0 | 6.0 | 6.0 | \$ 3,000 | \$ 3,900,000 | 2564.5 | 1248.5 | 325 | 49% | 2,714,841 | \$ 1,185,159 | | |
| 2 | Forest Glade trunk | CH tracks | LPPCP | 1800 | 2100 | 6.0 | 6.0 | 6.0 | \$ 2,300 | \$ 4,158,000 | 2564.5 | 1248.5 | 325 | 49% | 3,274,841 | \$ 883,159 | | |
| | Total | | | | | | | | | \$ 34,043,000 | | | | | \$ 20,015,200 | \$ 14,027,800 | | |
| | Average | | | | | | | | | | | | | | | 51.7% | 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.