

**Tri-County Water Board Agreement including Amendments approved by Tri-County  
Water Board on January 15, 2019 – Resolution #07-2019.**

THIS AGREEMENT made on the 22nd day of July, 2014

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN  
(hereinafter referred to as "West Elgin")

THE CORPORATION OF THE MUNICIPALITY OF SOUTHWEST MIDDLESEX  
(hereinafter referred to as "Southwest Middlesex")

THE CORPORATION OF THE MUNICIPALITY OF DUTTON/DUNWICH  
(hereinafter referred to as "Dutton/Dunwich")

THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT  
(hereinafter referred to "Chatham-Kent")

-and-

THE CORPORATION OF THE VILLIAGE OF NEWBURY  
(hereinafter referred to as "Newbury")

WHEREAS West Elgin, Southwest Middlesex, Dutton/Dunwich, Chatham-Kent, and Newbury (collectively referred to as the "Parties" and individually as a "Party") cooperatively recover, treat, and supply water to the Parties through a water recovery and treatment system located in West Elgin;

AND WHEREAS the Parties have agreed to terminate the Purchase Capacity Agreements of November 5, 1991 and the Management Agreement of November 5, 1991 and have consented to enter into new agreements with respect to the water recovery and treatment system of the Parties;

AND WHEREAS the water recovery and treatment system in West Elgin has been upgraded, improved and expanded;

AND WHEREAS the Parties wish to establish a separate and distinct joint municipal service board to govern the management of the System, as defined herein;

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

Definitions

"Administering Municipality" or "Administering Authority" means the Party to whom the responsibilities of day to day management and administration have been assigned.

"Agreement" means this Agreement including all Schedules annexed hereto and any future amendments to the Agreement.

"Area Water Board" shall have the meaning ascribed thereto in Section 2 herein.

"Members" means Members of the Area Water Board duly appointed by the Parties.

"Operator" means any third party contractor duly appointed by the Area Water Board to operate all or part of the System.

"Regulatory Directive" means any Order or a letter from the Province of Ontario or any other regulatory authority directing the Area Water Board, the Administering Municipality, the Administering Authority or the Parties to take certain actions in connection with the System.

"System" means the water recovery, water treatment system and related watermains and more particularly described in Schedule "A" of this Agreement.

"System Service Rate(s)" shall have the meaning ascribed thereto in Section 46 herein.

#### Area Water Board

Pursuant to Section 202 of the Municipal Act, 2001, the parties shall establish a separate and distinct Joint Municipal Service Board, to be known as the Area Water Board (the "Area Water Board") composed of Members from each of the Parties. The Parties intend that Members of the Area Water Board shall act in the best interests of the System and all users of the System.

#### Purpose of this Agreement and Termination of Prior Agreements

By this Agreement, the Parties intend to provide for those matters which, in their opinion, are necessary to establish one comprehensive agreement that governs all matters relating to the Area Water Board and the System. The Parties hereby terminate the Purchase Capacity Agreements of November 5, 1991 and the Management Agreement of November 5, 1991.

#### 4. Delegation of Control and Management

Subject to Section 2 and the other terms of this Agreement, the Parties hereby confer responsibility for the control and management of the System upon the Area Water Board pursuant to Section 202 of the Municipal Act, 2001. For clarity, each Party's distribution system shall not form part of the System and the management of each Parties' stand-alone distribution systems shall not be subject to this Agreement.

#### 5. Allocation of Capacity to the Parties

The Parties hereby acknowledge that the capacity of the System shall be allocated and the percentages of the Parties' ownership of the System shall be allocated in accordance with Schedule "C" attached to this Agreement. The Parties' ownership of the System may change over time in accordance with this Agreement. For clarity, as of this date, the ownership of the System and the capacity allocation shall be based on the following proportions:

- (a) West Elgin shall be allocated 43.24% of the System;
- (b) Southwest Middlesex shall be allocated 24.72% of the System;
- (c) Dutton/Dunwich shall be allocated 19.14% of the System;
- (d) Chatham-Kent shall be allocated 7.95% of the System; and
- (e) Newbury shall be allocated 4.95% of the System.

6. Agency

The Area Water Board shall be the agent of the Parties for all actions taken within the Area Water Board's scope of authority. The Area Water Board shall not otherwise be the agent of the Parties.

7. Procedural By-Law

The Area Water Board shall pass a Procedural By-Law governing the procedural matters relating to the Area Water Board as required under Section 238 of the Municipal Act, 2001. The Procedural By-Law may supplement the terms set out in this Agreement but shall confirm the following points:

- (a) Each Party may appoint one (1) Member to the Area Water Board when the Area Water Board is formed. Commencing with this Agreement and on an annual basis thereafter on or before January 1<sup>st</sup> of each year each Party may appoint one (1) additional Member to the Area Water Board for every ten (10) percent of the total water consumption of the System consumed by that Party in the three (3) full previous years. Each Party may appoint one of their Members who is not an elected official. For clarity, if a Party has only one (1) representative, that representative is not required to be an elected official. Apart from the one (1) Member appointed by a Party who is not an elected official, all other Members representing that Party must be elected officials. The initial appointments shall be made no later than sixty (60) days from the date of this Agreement and shall be for the remainder of the term of the Municipal Councils. When each new Council begins its term, the Parties shall appoint its Members of the Area Water Board at the beginning of the term of Council;
- (b) The term of office of an Area Water Board Member cannot exceed the balance of the term of Council. As a general rule, the appointment shall be for the balance of the term of the municipal Council, subject to each Party's right to revoke any appointment. Despite this restriction, Members may be re-appointed and the term of each Area Water Board Member continues until his or her successor has been appointed;
- (c) Each Party will appoint Area Water Board Members as often as necessary to ensure that vacancies are minimized and that the functions of the Area Water Board will be facilitated;

- (d) A Party may revoke the appointment of any Area Water Board Member appointed by it for such reasons as it considers advisable, but may not leave any such position vacant for more than fifteen (15) days;
- (e) An alternate member appointed by a Party may attend a meeting in place of any Area Water Board Member appointed by that Party;
- (f) Each Area Water Board Member shall have one vote with respect to any question;
- (g) Notwithstanding Subsection 7(a), a Party may not have more than fifty (50) percent of the total number of Members, nor more than fifty (50) percent of all eligible votes for the Area Water Board;
- (h) Based on the above, the initial number of Members and votes apportioned to the Parties comprising the Area Water Board will be the following based on the 2010- 2012 average consumption numbers as noted in Schedule "B";

Party	Members/votes
West Elgin	Four (4)
Southwest Middlesex	Three (3)
Dutton/Dunwich	Three (3)
Chatham-Kent	One (1)
Newbury	One (1)

- (i) Members will not receive any remuneration from the System, other than for expenses, which shall require approval of the Area Water Board. This does not prevent a Member who is also a member of a municipal Council or any other board from receiving remuneration as a municipal Councillor or member of any other board;
- (j) If additional municipalities are added to the System, or a municipality wishes to withdraw from the System, or in the event of municipal restructuring, membership in the Area Water Board may be altered along with such terms and conditions as determined by a simple majority vote of the Area Water Board at a meeting called for that purpose;
- (k) The quorum for any meeting of the Area Water Board shall be more than fifty (50%) per cent of the Members. An alternate Member shall be included when determining quorum for any meeting of the Area Water Board;
- (l) The Chair and Vice-Chair of the Area Water Board will be elected from among the Members to serve for a one (1) year term. The Chair and Vice-Chair shall not be from the same municipality. Elections will be conducted during the January meeting annually;
- (m) In the absence of the Chair, the Vice-Chair will act as Chair of the Area Water Board;
- (n) Each Member, (or Alternate Member), in attendance will have one (1) vote. The Board will make decisions by a simple majority vote, except where otherwise specified in this Agreement;
- (o) The Area Water Board will meet quarterly, or more often as requested by a majority of the

Members, or at the call of the Chair or Vice-Chair. A minimum of five (5) working days' notice of meetings will be provided, unless the meeting has been called on an emergency basis. At the January election meeting an annual schedule of meeting dates will be determined, subject to the conditions above;

- (p) The Parties shall have the right to call a Meeting of the Area Water Board by providing written notice of the meeting to each of the other Parties. The Parties shall provide five (5) working days' notice of the Meeting, unless the Meeting has been called on an emergency basis. The requisite notice for all meetings shall include a summary of the business to be transacted at the meeting. The summary of the business to be transacted at the meeting shall be sufficient for all Parties to determine the business that will be addressed at the meeting, failing which the business transacted at the meeting shall be null and void unless otherwise agreed by the Parties;
- (q) The Parties acknowledge that the provisions of the Municipal Act relating to in camera and open meetings in Sections 239 to 246 inclusive shall apply to the meetings of the Area Water Board;
- (r) Meetings of the Area Water Board shall be conducted in accordance with Roberts Rules of Order, except as set out in this Agreement or as required by law; and
- (s) Minutes of all Meetings shall be circulated without any of the Parties reviewing the content of the Minutes prior to distribution. Any objects to the content of the Minutes shall be noted by the objecting Party at the following meeting.

#### 8. Proceeds of Disposition

The proceeds of disposition of any surplus property used for the System shall be applied in a manner determined by the Area Water Board.

#### 9. Duties of the Area Water Board

The Area Water Board shall be responsible for the management and control of the System, subject only to the duties specifically delegated to the Administering Municipality or the Administering Authority. Without limiting the above, the Area Water Board shall be responsible for:

- a. Obtaining approvals;
- b. Contracting for services;
- c. Entering into agreements with individuals, corporations and governments;
- d. Operating bank accounts and carrying out other financial transactions;
- e. Approval of all operational policies for the System;

- f. Approving and controlling annual Operating Budgets and Capital Budgets;
- g. The setting of the System Service Rates;
- h. Consideration and approval of New Capacity Proposals and New Capacity Budgets and the draft Financial Plan;
- i. Receive and review all Ministry correspondence and reports relating to the Area Water Board and the System;
- j. Appointment of the Administering Municipality, the Administering Authority and Operator, if applicable, for the System;
- k. Determining matters relating to permitting new municipalities to join the System or to receive water from the System;
- l. Acquiring new property, or disposing of surplus property for the System;
- m. Setting cost sharing formulas for payments by the Parties for projects relating to the System;
- n. Determining the level of any Reserve Fund(s) and the manner of maintaining such fund(s);
- o. Preparing and submitting regular reports to the Parties;
- p. All personnel matters including hiring, termination, compensation and all other relevant personnel matters for employees of the Area Water Board;
- q. Considering all applications for large service connections of water main extensions to the System;
- r. Procurement of insurance coverage for the Members;
- s. Entering into agreements with individuals, corporations and other governments or agencies for the activities listed above;
- t. Any other duties and functions required to be managed for the System unless those functions are specifically delegated to the Administering Municipality or the Administering Authority.

Unless an agreement is within the Administering Municipality's or the Administering Authority's scope of authority, all agreements for the System shall be entered into by the Area Water Board and shall be signed by the Chair of the Area Water Board after authorization by resolution of the Area Water Board.

#### 10. Appointment of Administering Municipality and Administering Authority

The parties hereby appoint West Elgin as the initial Administering Municipality. The Administering Municipality may, at any time, be removed and replaced by one of the other parties or an independent Administering Authority by a majority vote of members of the Area Water Board, or by an Order of the Ontario Municipal Board. In the event of an Ontario Municipal Board Order replacing the Administering Municipality, the new Administering Municipality or Administering Authority, as the case may be, cannot be replaced by a vote of the Area Water Board within three (3) years of the date of the said Order unless the Administering Municipality is in default under this Agreement and has failed to cure such default within a reasonable time of receiving a default notice from one or more of the Parties.

11. Duties of the Administering Municipality or the Administering Authority

The Administering Municipality or the Administering Authority may only execute agreements on behalf of the Area Water Board that are within its authority under this section. Unless otherwise agreed by the parties, the administrative functions are as follows:

- (a) keeping separate books, records and accounts. Such books, records and accounts shall kept separately from the books, records and accounts of any of the Parties;
- (b) liaison with Ministry of the Environment staff on matters of compliance;
- (c) liaison with any Operator and administering any Operating Agreement, if applicable;
- (d) negotiating agreements with any Operator and administration of such agreements, subject to the approval of such agreements by the Area Water Board;
- (e) preparing annual Capital Budgets, annual Operating Budgets, all other Budgets as well as the proposed System Service Rates;
- (f) billing and receiving payments from the Parties in accordance with the approved System Service Rates and volumes of water taken;
- (g) making payments to any Operator;
- (h) making payments on any provincial capital debt and other financing payments (principal and interest payments);
- (i) preparing and keeping Minutes of Area Water Board Meetings and circulating the Minutes in a timely manner to the Members on the Area Water Board and the Parties;
- (j) administering any Reserve Funds;
- (k) raising capital financing;
- (l) invoicing the Parties for amounts payable under this Agreement;
- (m) operating bank accounts for the purposes set out in this Section 11;
- (n) making day-to-day operation and maintenance decisions and implementing or providing

for the implementation of those decisions, where they are not being implemented by the Operator, up to a maximum value of Ten Thousand (\$10,000.00) Dollars or any other value as determined by the Area Water Board from time to time;

- (o) providing quarterly and annual reports to the Area Water Board regarding water use and a comparison of the budgeted versus actual water use;
  - (p) provide quarterly and annual financial reports including budgeted versus actual operating and capital revenue and expenses; and
  - (q) such other functions as are recommended and approved by the Area Water Board.
12. The management arrangements in this Agreement and the delegation of tasks to the Administering Municipality, the Administering Authority or the Area Water Board as set out in this Agreement may be amended by a three-quarter (3/4) majority vote of the Members of the Area Water Board in a meeting called for this purpose.

13. Compliance with Provincial Licences

All Parties are jointly and severally responsible for compliance with Regulatory Directives for the System as well as any approvals and operating licences for the System.

Obligations of Municipalities

14. Each Party shall repair, maintain and keep in good state of repair, and in accordance with good engineering practices, its water distribution system and any common elements within their Municipal boundaries that belongs to or is under the control of the Party and that is supplied with water from the System.
15. Each Party shall use its best efforts to prevent the contamination of any kind to enter its water distribution system. In the event that any contamination enters the distribution system, the Party shall forthwith take such steps as may be necessary to correct such contamination and to prevent such a condition in the future.
16. In the event that a Party shall be required to install recording equipment in its distribution system, the Party shall permit System staff, or its servants or agents, access at or near the point the primary part of the System enters the Party's distribution system, to employ such equipment at any time or times for the purpose of reading or testing same.
17. Each Party shall provide to the Area Water Board its water demand forecast by September 1<sup>st</sup> of each year for the subsequent year.
18. The Area Water Board may charge interest to the Parties at 1.25% per month (or 15% per annum) or such other rate as determined by the Area Water Board, if amounts due to it from a Party are not paid within thirty (30) days.



#### 19. Auditing of Area Water Board Records

The Area Water Board shall direct that its Records be audited at least annually or upon the request of any of the Parties. In the event that one of the Parties requests an audit over and above the annual audit required under this Section 19, that Party shall bear the costs of the requested audit.

#### 20. Auditing of Administering Municipality Records

The Records of the Administering Municipality and/or the Administering Authority which pertain to its responsibilities under this Agreement shall be audited at least annually or upon the request of any of the Parties. In the event that one of the Parties requests an audit over and above the annual audit required under this Section 20, that Party shall bear the costs of the requested audit.

21. The Area Water Board shall establish and approve the annual remuneration of the Administering Municipality or Administering Authority by a simple majority vote.

#### Budget Approval

22. The Administering Municipality or the Administering Authority will, in accordance with guidelines prepared by the Area Water Board, prepare and submit to the Area Water Board:

- (a) a draft Operating Budget for the next following calendar year;
- (b) a draft Capital Replacement and Rehabilitation Budget for that same period;
- (c) a draft System Service Rate; and
- (d) a draft Financial Plan for a minimum of five (5) years.

23. The draft budgets and System Service Rate must be submitted by the Administering Municipality or Administering Authority to the Area Water Board no later than October 15<sup>th</sup> of the year preceding the year for which the Budgets or System Service Rates are prepared.

24. The Area Water Board will review and approve an annual budget and System Service Rate.

#### Operating Budget

25. Operating budgets will include both direct and indirect costs normally associated with operating and maintaining the System, including routine and minor replacement parts, and the costs incurred by the Administering Municipality or Administering Authority in administering

the System as well as the costs of the Operator. Operating costs will exclude those items agreed by the Area Water Board to be capital. The Operating Budget prepared and approved shall detail all items of expected revenue and expense, in accordance with accepted accounting practice and as may be required by the Area Water Board.

26. In the event that the Area Water Board does not approve a draft Operating Budget for a year prior to December 1st of the year previous the year for which the draft Operating Budget is prepared, then the default new Operating Budget will be the prior year's Operating Budget, adjusted by the increase over a twelve-month period for the All-items Index (1981 = 100) for Ontario in Table 8, Consumer Price Index Major Components (Not Seasonally Adjusted), of Consumer Price Indexes published by Statistics Canada (Catalogue No. 62-010-XPB) for the most recent twelve-month period for which the Index is available ending prior to November 1<sup>st</sup> of the year prior to the year for which the draft Budget is proposed. The Area Water Board may from time to time choose a new Index for the purposes of this provision. If the Area Water Board subsequently approves the draft Budget, such approved Budget shall supersede the default Budget.
27. In the event that there are payments required to be made under an agreement with an Operator, and the applicable agreement provides for higher payments than would be covered by applying the twelve-month increase in the Index referred to in section 26 to the previous year's payments under the agreement with the Operator or its predecessor, the default Operating Budget will be further increased by an amount sufficient to cover the payments to the Operator.

#### Capital Replacement and Rehabilitation Budget (Capital Budget)

28. The Capital Replacement and Rehabilitation Budget will project capital replacement and rehabilitation expenditures in accordance with all legislative requirements for the System.
29. In the event that the Area Water Board does not approve a draft capital budget for a year prior to December 1st of the year prior to the year for which the draft Capital Budget is proposed, then the default new Capital Budget will be the lesser of the capital costs established in the Financial Plan or the Capital Budget for the previous year (for which the draft Capital Budget is prepared), adjusted by the increase over a twelve-month period in the All-items Index (1981=100) for Ontario in Table 8, Consumer Price Index Major Components (Not Seasonally Adjusted), of Consumer Price Indexes published by Statistics Canada (Catalogue No. 62-010-XPB) for the most recent twelve-month period for which the Index is available ending prior to November 1st of the year preceding the year for which the draft budget is proposed. The Area Water Board may from time to time choose a new Index for the purposes of this provision. If the Area Water Board subsequently approves the draft Capital Budget, such approved budget shall supplant the default Capital Budget.
30. Capital Repairs – Emergency Requirements

This Section 30 shall only apply when there is an urgent risk to the system or an emergency repair that must be completed. In the event that an emergency replacement or

rehabilitation expenditure must, in the opinion of the Administering Municipality or the Administering Authority, be made during the course of the year, to address an emergent or urgent risk to the System, that is not provided for in the Capital Replacement and Rehabilitation Budget, or an expenditure is required under a statute that is not provided for in the Operating Budget or Capital Replacement and Rehabilitation Budget, then the Area Water Board or Administering Municipality or the Administering Authority may incur such expenditure and the Area Water Board will recover it as an addition to the Capital Replacement and Rehabilitation Budget in one or more subsequent years, to the extent that it is not provided for in the Capital Replacement and Rehabilitation Reserve Fund

31. Area Water Board Approval

The Area Water Board shall take all necessary steps to have the draft Budgets completed and approved by October 31<sup>st</sup> in each preceding calendar year. For clarity, the draft Budgets shall not be submitted to the Parties' Municipal Councils for approval as the Area Water Board shall have the sole responsibility for approving the draft Budgets.

Water Billing and Collection

32. The Area Water Board (through the Administering Authority or Administering Municipality) shall invoice the Parties at the System Service Rates for all costs relating to the System in accordance with this Agreement. Each Party shall be responsible to bill and collect fees for the services provided by the System to individual properties within its geographic boundaries.
33. Subject to section 34, each Party shall be invoiced herein for the water used in the System in accordance with the following:

(a) Chatham-Kent

Chatham-Kent shall be invoiced for the monthly water which goes through the Chatham-Kent Meter. Chatham-Kent hereby agrees to a minimum annual purchase of water of sixty-six thousand three hundred and eleven (66,311 m<sup>3</sup>) cubic metres from the System. Southwest Middlesex will read this meter and supply the reading to the Administering Municipality or Administering Authority.

(b) Dutton/Dunwich

Dutton/Dunwich will be invoiced for the total water which goes through the Eagle meter, Marsh Line meter and Pioneer Line Meters. These meters will be read by staff from the Operating Authority. In return for being granted full ownership of the Iona Chamber/Interconnect, Dutton/Dunwich hereby agrees to a minimum annual purchase of water of two hundred and two thousand four hundred and twenty-two (202,422 m<sup>3</sup>) cubic metres from the System. This minimum purchase volume shall be in excess of the volume of water obtained by Dutton/Dunwich through the said Iona Chamber/Interconnect.

(c) Southwest Middlesex

Southwest Middlesex will be invoiced for the total water which goes through the Southwest Middlesex meter, less the amounts that are invoiced to Chatham-Kent and the Village of Newbury. The meter located at the reservoir shall be read by the Operating Authority. Southwest Middlesex hereby agrees to a minimum annual purchase of water of two hundred and eighty-one thousand one hundred and thirty-five (281,135 m<sup>3</sup>) cubic metres from the System. For the purposes of this covenant, the water volumes supplied by Southwest Middlesex to Chatham-Kent and the Village of Newbury from the System shall not be considered.

(d) Village of Newbury

The Village of Newbury shall be invoiced for the monthly water which goes through the Village of Newbury meter. The Village of Newbury hereby agrees to a minimum annual purchase of water of thirty-four thousand and sixty-five (34,068 m<sup>3</sup>) cubic meters from the System.

Southwest Middlesex will read this meter and supply the reading to the Administering Municipality or Administering Authority.

(e) West Elgin

West Elgin shall be invoiced for the total water that goes through the Marsh Line West Meter, Eagle West Meter, Finney St. Meter, Silver Clay Meter and the Consumption of West Lorne & Graham Road (South of West Lorne) distribution water customers plus an average system loss as determined by the Area Water Board. The Area Water Board shall establish the initial average system loss percentage. The Area Water Board shall review the annual system loss percentage annually and shall make amendments to the annual system loss percentage as necessary. West Elgin hereby agrees to a minimum annual purchase of water of three hundred and seventy-eight thousand seven hundred and twenty-one (378,721 m<sup>3</sup>) cubic metres from the System.

(f) The Parties acknowledge that the minimum purchase volumes set out in this Section 33 represent seventy-five (75%) per cent of the average consumption numbers for each Party in 2011, 2012 and 2013. The said minimum purchase volumes have been determined based on the calculations set out in Schedule "D" of this Agreement. If in any year the total volume of water purchased by any of the Parties is less than the minimum specified above, the Party shall pay to the Area Water Board the difference between (i) the amount achieved by multiplying the rate for water and the minimum purchase volume, and (ii) the total of the monthly charges paid by the Party during the applicable year.

(g) The Parties agree that should there be significant new development or a significant closure of a water consumer within the boundaries of any of the Parties, then that Party shall have the right to request a review of the minimum

annual purchase volume specified in this agreement and the Area Water Board shall agree to such a review.

34. Notwithstanding sections 33(a) and 33(f), the Area Water Board (through the Administering Authority or Administering Municipality) shall invoice Southwest Middlesex for:
- a. the monthly water which goes through the Chatham-Kent Meter, until such time as an agreement is reached between Southwest Middlesex and Chatham- Kent with respect to Chatham-Kent's use of the Southwest Middlesex water distribution system, at which time section 33(a) shall come into effect; and
  - b. the monthly water that goes through the Village of Newbury Meter, until such time as an agreement is reached between Southwest Middlesex and the Village of Newbury with respect to the Village of Newbury's use of the Southwest Middlesex water distribution system, at which time section 33(f) shall come into effect.

Chatham-Kent hereby agrees to pay Southwest Middlesex for the monthly water that goes through the Chatham-Kent Meter until such time as section 33(a) comes into effect; and the Village of Newbury hereby agrees to pay Southwest Middlesex for the monthly water that goes through the Village of Newbury Meter until such time as section 33(f) comes into effect.

35. Chatham-Kent and Southwest Middlesex and the Village of Newbury and Southwest Middlesex shall have until 11:59 pm on December 31, 2019, to reach the agreements referred to in section 34(a) and (b). In the event that an agreement between Chatham-Kent and Southwest Middlesex, or an agreement between the Village of Newbury and Southwest Middlesex, cannot be reached within the aforementioned time period, the affected parties, be it Chatham-Kent and Southwest Middlesex or the Village of Newbury and Southwest Middlesex, hereby agree to refer the matter to binding arbitration. The following provisions apply in the event of an arbitration between Chatham-Kent and Southwest Middlesex, an arbitration between the Village of Newbury and Southwest Middlesex or an arbitration between Chatham-Kent, the Village of Newbury and Southwest Middlesex:
- a. The rules and procedures to be used by the arbitrator shall be as set out in the Arbitrations Act, (Ontario), as amended, and every statutory provision that may be substituted for it or for any provision in it. The parties agree that the decision of the arbitrator shall be final and binding and that there shall be no appeal from it. The arbitrator shall have the discretion to award the non-offending party its costs and expenses incurred in connection with or as a result of such arbitration and on a substantial indemnity basis. The decision and award of the arbitrator may be entered and enforced in the relevant courts having jurisdiction.

- b. Each party to the arbitration shall pay an equal share of the costs of the arbitrator and each party shall be responsible for its own costs including but not limited to legal, engineering and other expenses.

#### Reserve Fund

- 36. A Capital Replacement and Rehabilitation Reserve Fund will be held by the Area Water Board for the purpose of ensuring that sufficient funds are held to properly maintain the System. The Area Water Board will hold this fund in a dedicated interest-bearing account.
- 37. The Area Water Board may collect funds for the said Reserve Fund through the System Service Rates, or in some other manner that the Area Water Board may decide from time to time.

#### New Capacity in the System

##### 38. Optimization Study

Prior to any capital expansion or increase in capacity for the System, an Optimization Study will be undertaken for the possible reallocation or more efficient use of the existing System.

##### 39. System Capacity

The Area Water Board shall, from time to time, review the capacity requirements for the System and make recommendations to the Parties to reallocate capacities as may be identified by that review, subject to Section 38 herein.

- 40. Schedule "C" sets out each Party's percentage ownership of the capacity in the System. Schedule "C" shall be amended from time to time to reflect changes in each Party's ownership of the said capacity. Each Party will be allowed to draw water up to the maximum capacity that was originally purchased by that Party in the System as shown in Schedule "C", subject only to that Party's agreement to sell capacity to one of the Parties or to a new municipality that is accepted into this System by the Area Water Board.
  - (a) The reserve capacity in the intake and/or the System over and above the total purchased by the Parties shall be allocated by the Area Water Board to either the parties to this Agreement or additional parties who connect to the System. The Area Water Board shall establish the purchase price. The purchase price

shall be set at fair market value and a professional opinion shall support the purchase price. Any money received from the sale of the Reserve Capacity shall be placed into a capital Reserve in accordance with the Reserve Fund section of this Agreement.

- (b) Any party to this Agreement may sell a portion of their original capacity as identified in Schedule "C" to another Party to this agreement or purchase capacity from another Party to this Agreement, subject to the approval of the Area Water Board and compliance with this Agreement. Any such transfer of capacity shall occur at fair market value and a professional opinion shall support the value assigned to the transaction. The Area Water Board shall establish the fair market value of the capacity based on this information.
- 41. The Area Water Board shall prepare, or have prepared, a draft Financial Plan for the System, forecasting future capital expansion requirements for the System over a minimum five (5) year period. The draft Financial Plan will be developed based on demand forecasts by the Parties. The draft Financial Plan will be updated or reviewed every year.
  - 42. Based on the draft Financial Plan, the Area Water Board will prepare, or have prepared, a new capacity capital plan to address future new capacity capital requirements for the System over a ten (10) year period or such other time period determined by the Area Water Board.
  - 43. The Area Water Board shall prepare, or have prepared, the first draft Financial Plan and first new draft Financial Plan within one (1) year of the date of this Agreement.
  - 44. Subject to Sections 36 to 39 herein, the Area Water Board will provide new capacity on an as-required basis sufficiently in advance of growth as to not impede development for any Party. In any event, the Area Water Board will initiate the design and construction of works required for System optimization, or capital expansion of the System, when recorded water flow demand on the System reaches eighty-five (85) percent of the System capacity, or as otherwise determined by the Area Water Board.
  - 45. The Area Water Board shall decide how to finance and recover the costs of providing new capacity.
  - 46. No Party will make changes or permit changes to works connected to the System that will have an adverse effect on the System or result in a larger demand being placed on the System than the System is designed to meet, and for the purposes of this section, the Area Water Board may, from time to time, allocate and reallocate any unallocated capacity in the System among the Parties.

47. Further work required to expand the System's capacity beyond the work described in "Schedule A" would require the participation of only those municipalities that require additional capacity in excess of their allocated capacities.

#### System Service Rates

48. The Area Water Board will establish a "System Service Rate" for the System that will be charged to the Parties to pay the costs of the System. The System Service Rate will be amended from time to time as agreed to by the Area Water Board. The System Service Rate (in dollars per cubic metre) will be determined on the basis of dividing the total budgeted costs of the System by the total forecast water usage. The costs of the System shall include:
- (a) the Operating Budget costs;
  - (b) the Capital Budget costs;
  - (c) the Reserve Fund costs;
  - (d) the cost of repaying any capital debt and interest for the System; and
  - (e) any other costs that the Area Water Board decides to include in the System Service Rate.
49. In the event that the Area Water Board does not approve the draft System Service Rate for a year prior to October 31<sup>st</sup> of the previous year, the lesser of the rate established in the proposed System Service Rate or the previous System Service Rate plus an increase equal to the average rate increase in the Consumer Price Index would apply until such times as that year's System Service Rate is approved by the Board.

#### 50. New Municipalities (Parties)

A new municipality to the System shall be required to purchase capacity in the System prior to: (i) becoming a Party to this Agreement; (ii) appointing Members to the Area Water Board; and (iii) connecting to the System. Admission of a new municipality to the System will require a simple majority vote of the Area Water Board. The Area Water Board's approval of the new municipality shall be subject to the new municipality's purchase of capacity in the System. Where the requests of any new municipality for a volume of water from the System is approved by the Area Water Board, and such supply of water would affect the System Service Rate adversely for the Parties, the Area Water Board shall require a capital payment from the new municipality in order to stabilize the System Service Rate to the level which existed prior to the approved entry of the new municipality to the System. Further, any new municipality must first become a Party and agree to be bound by all the terms and conditions of this Agreement. If the entry of a new municipality would cause the System Service Rate to decrease, such a benefit must be conferred rateably upon all Parties based on their capacity allocation.

#### 51. Parties Leaving the System



- (a) Any Party wishing to withdraw from the System shall provide the other Parties with a minimum of eighteen (18) months' notice of its intention to do so. Such notice is to be effective on December 31st of the year in which the eighteen (18) month period ends. Any such Party shall continue to be responsible annually for its portion of the outstanding capital debt of the System as it exists at the date of departure. The Party that leaves the System shall pay an annual charge based on the percentage calculation of their share of the total flows from the System during the final full year in which the Party was a participant in the System (Party's total annual flow divided by the Total System flow times the annual debt charge), or the percentage calculation of their share of total flow, whichever is the greater. However, if arrangements can be made for a new municipality or another existing Party to assume the capital obligations of an existing Party, then the existing Party shall be released from such obligations. A Party leaving the System will not be entitled to any capital payment or payment of equity in the System upon leaving. Such Party may be entitled to a proportion of any Reserve Fund in the sole and absolute discretion of the Area Water Board, such payment to be based upon: (i) the proportions referred to in Schedule "B"; (ii) the amount of the Reserve Fund; (iii) the liabilities of the System; (iv) any need to expand, maintain or repair the System in the future and corresponding costs of same; and (v) such other factors as the Area Water Board may reasonably consider having regard to the best interests of the System. A party that leaves the System will not be responsible at date of departure from the System for debt incurred after the departure date but shall remain responsible for its share of the debt relating to the System as of the date of departure.
- (b) A party that has given notice of its intention to withdraw from the System shall be responsible for the cost of a modelling study by a qualified and independent engineering body to determine what, if any, operational changes to the System are required to ensure the safety and viability of the System.
- (c) The Party referenced in 49(b) above shall submit a proposed Terms of Reference for the modelling study and the name of the engineering body proposed to undertake the study to the Area Water Board which shall approve or reject the proposals. Should the Area Water Board reject the proposal(s), it shall state in detail the reasons for its rejection. The Party referenced in 49(b) shall then revise its proposal(s) and make a subsequent submission to the Area Water Board. Should the Area Water Board again fail to approve the subsequent submission, the issue shall be resolved through the Dispute Resolution process described in Section 52.
- (d) A party withdrawing from the System shall in addition, be responsible for capital costs which have been identified in the modelling study.
- (e) In the event that a Party leaves the System, the Party shall transfer all of its right, title and interest in its ownership of the System to the Parties remaining in the System rateably in accordance with their ownership of the capacity based on Schedule "C", as amended from time to time. The remaining Parties shall not be required to remit payment to the Party withdrawing from the System for the transfer of the withdrawing Party's capacity contemplated in this Section 49(e).

## 52. Prohibited Actions

Unless otherwise determined by the Parties or by this Agreement, the Parties hereby agree as follows:

- (a) No additional municipality shall be admitted as an owner or user of the System;
- (b) Apart from the System's unallocated capacity, the capacity allocations set out in Section 5 and Schedule "C" herein shall not be reallocated; and
- (c) There shall be no sale or transfer of all or part of the System.

## 53. Parties Right to Information

The Parties acknowledge that the following information relating to the System shall be fully disclosed and shared among the Parties:

- (a) Ministry Orders (MOE, Labour, etc.);
- (b) Serious Occurrence Reports;
- (c) Ministry Inspection Reports;
- (d) Monthly Use/Capacity Calculations;
- (e) Annual Report;
- (f) Correspondence re: System operations;
- (g) Legal correspondence;
- (h) Annual Available Capacity Report;
- (i) Operator's Reports;
- (j) Annual Proof of Insurance;
- (k) Quarterly Financial Report; and
- (l) Administering Municipality or Administering Authority Report.

(the "Listed Information").

In the event that the Administering Municipality or the Area Water Board receives a request for the Listed Information from any of the Parties, the Listed Information shall be delivered to the requesting party within fifteen (15) business days. If the request is vague or requires clarification, the Administering Municipality or the Area Water Board shall, within fifteen (15) business days, send to the requesting party a notice for more particulars about the request. Assuming a clear request is made, the Listed Information shall be provided within the timelines contemplated herein. If the Listed Information is relevant to a decision of the Area Water Board, the decision shall not be made until such time as the Listed information has been produced. The Parties shall have a further general right to all information relevant to the System.

## Dispute Resolution

- 54. All disputes, claims, controversies or questions arising out of, under, or in connection with, or in relation to this Agreement or its interpretation, performance or non-performance, or any breach of it, shall be submitted to binding arbitration as follows:

- (a) the Party and the Area Water Board may agree to appoint a single arbitrator, who has experience in drinking water treatment systems whose decision shall be final and binding; or
  - (b) in the event that the Party and the Area Water Board cannot agree upon a single arbitrator, then the Party shall select one individual and the Board shall select one individual and the resulting two individuals shall select a third individual who shall be the sole arbitrator. If either the Party or the Area Water Board fails to appoint a nominee within fifteen (15) days after receipt of a written notice from the other of them requiring that such appointment be made, then the individual chosen by either the Party or the Area Water Board, as the case may be, shall be the sole arbitrator.
55. In all other respects, the rules and procedures to be used by the arbitrator shall be as set out in the Arbitrations Act, (Ontario), as amended, and every statutory provision that may be substituted for it or for any provision in it. The parties agree that the decision of the arbitrator shall be final and binding and that there shall be no appeal from it. The arbitrator shall have the discretion to award the non-offending party its costs and expenses incurred in connection with or as a result of such arbitration and on a substantial indemnity basis. The decision and award of the arbitrator may be entered and enforced in the relevant courts having jurisdiction.
56. The Party(ies) who initiate the arbitration shall pay 50% of the costs of the arbitrator and the Area Water Board shall be responsible for the remaining 50%. Each Party shall be responsible for its own costs including but not limited to legal, engineering and other expenses.

#### Default

57. If the Administering Municipality is in default of this Agreement, the other Parties shall have the right to provide the Administering Municipality with notice of default ("Default Notice"). The Default Notice will set out the particulars of the default and specify the actions to be undertaken to remedy the default. The remedial efforts shall be completed within 30 days of the Administering Municipality's receipt of the Default Notice or such reasonable time that may be required to remedy the default, failing which any non-defaulting Party shall have the right to make application to the Ontario Municipal Board to replace the Administering Municipality with one of the non-defaulting Parties or an Administering Authority deemed acceptable by the Ontario Municipal Board. If the Administering Municipality is also the Operator of the System, any non-defaulting Party shall also have the right to apply to the Ontario Municipal Board for the removal of the Administering Municipality as the System's Operator.

#### Liabilities Upon Dissolution

58. The Parties hereby confirm that upon dissolution of the Area Water Board, all rights, claims, undertakings, obligations, assets and liabilities of the Area Water Board shall vest in the Parties and shall be shared by the Parties in accordance with each Party's ownership

interest in the capacity of the System as of the date of the Area Water Board's dissolution. The Parties' current ownership interests in the System are set out in Schedule C.

## GENERAL

59. This Agreement and its interpretation shall be governed by the laws of the Province of Ontario.
60. The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or a provision hereof.
61. No amendment to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.
62. This Agreement constitutes the entire agreement between the Parties and supersedes all previous or contemporaneous communications, representations or agreements. No oral agreement or conversation with any officer, agent or employee of any of the Parties, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained.
63. This Agreement shall enure to the benefit of the Parties and be binding upon their respective successors and assigns.
64. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.
65. The failure on the part of one Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.
66. Any notice required to be or maybe given or made by one of the Parties hereto to the other shall be in writing and shall be delivered to the office of the Clerk of each of the other Parties and may be delivered by hand or by courier, by registered mail, or by facsimile or e- mail that provides a record of the text of the notice, addressed to the party for whom it is intended at their address or at the last address of which the sender has received notice in accordance with this Section. Any notice shall be deemed to be effective five (5) days from the day it is mailed or the date of delivery if the notice is delivered by courier, facsimile or by e- mail. E- mail delivery shall require a receipt response.

67. The Parties hereto agree that they will do all acts and things and execute and deliver such further and other papers and documents and pass all resolutions and enact such by-laws as may be necessary and desirable or reasonably required by a party hereto to carry out the intent and purpose of and give full effect to this Agreement and every part thereof.

68. No Assignment

This Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent may be arbitrarily withheld.

69. Compliance with Agreement and Applicable Laws

The Area Water Board and the Parties shall comply with all terms, covenants and provisions of this Agreement and, with respect to the System and the subject matter of this Agreement, shall also comply with all applicable by-laws, statutes, regulations, ordinances and all other applicable laws. The contract with the Administering Authority or Administering Municipality and the contract with any Operator shall include a provision substantially similar to this Section 67.

70. Unless otherwise agreed to in writing by the Province of Ontario, Ontario's concurrence being subject to Canada's consent, the Parties shall not sell, transfer, assign ownership of the entire System to a third party or otherwise encumber the System prior to October 31, 2020, nor shall the Parties amend or rescind this Section 68 during the same period. This Section 68 shall not prohibit a Party from leaving the System in accordance with Section 49 of this Agreement and shall not prohibit the Area Water Board from adding a new municipality to the System in accordance with this Agreement. In the event that a Party leaves the System in accordance with Section 49, the remaining Parties shall retain ownership of the System and comply with this Section 68.

71. Reporting to the Parties

The Parties acknowledge that they may be obliged to include their proportionate shares of assets and liabilities of the System in their financial statements. The Area Water Board and the Parties shall make reasonable commercial efforts to report to the Parties' Treasurers all financial information that may be required for each Party to meet their obligations to report their share of the System's assets and liabilities on their financial statements.

Reasonable commercial efforts shall be made to provide each Party's Treasurer with this information on or before March 31 each year.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by affixing their proper seals attested by the signature of proper persons duly authorized in that behalf:

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk  
We have the authority to bind the Corporation

THE CORPORATION OF THE MUNICIPALITY OF SOUTHWEST  
MIDDLESEX

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk  
We have the authority to bind the Corporation

THE CORPORATION OF THE MUNICIPALITY OF DUTTON/DUNWICH

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk  
We have the authority to bind the Corporation

THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

\_\_\_\_\_  
Mayor

---

Clerk  
We have the authority to bind the Corporation

THE CORPORATION OF THE VILLAGE OF NEWBURY

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Reeve

---

Clerk  
We have the authority to bind the Corporation

## **SCHEDULE “A”**

### **DESCRIPTION OF THE SYSTEM**

Raw water intakes  
Low lift Pumping Station and Grounds  
Raw water transmission line  
Water Treatment Plant and Grounds  
Water Mains (as outlined below):

400mm from Water Treatment Plant to Eagle Meter Pit  
400mm from Water Treatment Plant to Stand Pipe in West Lorne  
400mm from Stand Pipe in West Lorne to Pumping Station and Reservoir owned by Southwest Middlesex  
West Lorne Stand Pipe and Grounds

#### Exclusions

- (a) All connections to the 400mm watermain between the Water Treatment Plant and the SWM Reservoir
- (b) All meters except those located in the Water Treatment Plant
- (c) All equipment and infrastructure that forms part of the Iona Chamber/Interconnect

**NOTE:** Item(s) can be added or deleted from the System through amendments to this Schedule as decided by the Area Water Board.



## **SCHEDULE “B”**

### **PROPORTIONAL WATER CONSUMPTION AND REPRESENTATION ON BOARD**

Party	2010 Water Consumption m <sup>3</sup>	2011 Water Consumption m <sup>3</sup>	2012 Water Consumption m <sup>3</sup>	3 Year Average Water Consumption m <sup>3</sup>
West Elgin	486,083	503,358	539,029	509,490
Southwest Middlesex	443,590	356,647	371,058	390,342
Dutton/Dunwich	439,301	433,218	427,527	433,349
Chatham-Kent	96,026	88,562	90,606	91,731
Newbury	48,399	61,141	49,094	52,878
Total	1,513,399	1,442,926	1,477,314	1,477,880

- I. The interests of the Parties in the System shall be as tenants-in-common, each as to the undivided interest according to their proportional water consumption.
2. This schedule will be updated for each Council term on the basis of the water consumption of each Party over the previous three (3) full years. For clarity, the election year shall be excluded because data will not be available for the year of the election (the election will be held prior to the completion of that year).

## SCHEDULE “C”

### CAPCITY IN SYSTEM AND OWNERSHIP

Party	Capacity in MJ	Percentage
West Elgin	1,715,315	43.24
Southwest Middlesex	980,390	24.72
Dutton/Dunwich	758,835	19.14
Chatham-Kent	314,995	7.95
Newbury	196,370	4.95
<b>TOTAL PURCHASED CAPACITY</b>	<b>3,965,725</b>	
<b>Capacity in the Intake</b>	<b>5,365,500</b>	
<b>Reserve Capacity in the Intake</b>	<b>1,399,775</b>	
<b>Capacity in the Plant</b>	<b>4,416,500</b>	
<b>Reserve Capacity in the Plant</b>	<b>450,775</b>	

## SCHEDULE "D"

### MINIMUM PURCHASE VOLUME CALCULATIONS

	2011	2012	2013	Total	Average	75% of Average (to be include in Section 33)
<b><u>Section 33 (a) – Chatham-Kent</u></b>						
Water Consumption:	88,561	90,606	86,072	265,242	88,414	66,311 m <sup>3</sup>
<b><u>Section 33 (b) – Dutton Dunwich</u></b>						
Water Consumption:						
- Iona Connection	138,462	146,916	147,160	432,538	144,179	
Tri-County						
- Eagle	200,450	208,477	188,070	596,997	198,999	
- Marsh	94,034	106,158	37,779	237,971	79,324	
- Marsh Adjust 11 & 12	-	36,306	-	36,306		
- Pioneer	-	2,285	8,739	11,024	3,675	
- From West Elgin Plant	294,484	280,614	234,588	809,686	269,895	202,422 m <sup>3</sup>
<b><u>Section 33 (c) – Southwest Middlesex</u></b>						
Water Consumption:						
- Total Billed to Southwest	518,983	510,758	512,417	1,542,158	514,053	
- Adjust for Newbury	61,137	49,094	42,147	152,378	50,793	
- Adjust for Chatham-Kent	88,561	90,606	86,075	265,242	88,414	
Amount for Section 33	369,285	371,058	384,195	1,124,538	374,846	281,135 m <sup>3</sup>
<b><u>Section 33 (d) – Newbury</u></b>						
Water Consumption:						
- Billed to Newbury	61,137	49,094	42,147	152,378	50,793	
- Adjustment Griffore Farms	14,529	1,590				
Amount for Section 33	46,608	47,504	42,147	136,259	45,420	34,065 m <sup>3</sup>
<b><u>Section 33 (e) - West Elgin</u></b>						
Water Consumption:						
- Water Billed	483,088	511,460	445,599	1,440,147	480,049	
- Water Losses WL	20,270	27,569	26,899	74,738	24,913	
Amount for Section 33	503,358	539,029	472,498	1,514,885	504,962	378,721 m <sup>3</sup>