

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;

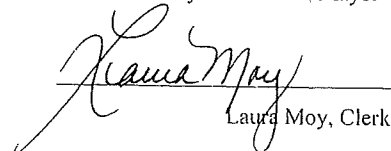
AND WHEREAS under Section 5 of the Municipal Act 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law;

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 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 PJSLC 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 Battagello
Eddie Francis
Per: [Signature] J.R.
Secretary Jacki Merlo
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

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

THE CORPORATION OF THE CITY OF WINDSOR

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

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

Authority
Approved
As To Financial
Content
City Treasurer
[Signature]

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
<p>In December Customer A would pay 24 cubic m. x \$0.266 (\$6.384) for water consumed</p> <p>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.</p>					<p>In December Customer B would pay 24 cubic m. x \$0.266 (\$6.384) for water consumed</p> <p>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.</p>				

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.