

***Municipal Water and Sewage Transfer Act, 1997***  
**Section 2**

**Transfer Order for the**  
**ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM**  
**Transfer Order St. Thomas Area W1/1998**

To: The Corporation of the City of St. Thomas  
City Clerk, Attention: Peter J. Leack

And to: The Corporation of the Municipality of Central Elgin  
Administrator & Clerk, Attention: Ken G. Sloan

The Corporation of the Township of Southwold  
CAO/Clerk-Treasurer, Attention: David Aristone

(the "Municipalities")

Whereas the Ontario Clean Water Agency (the "Agency") is the owner of the St. Thomas Area Secondary Water Supply System (the "System") described in Schedule B;

Whereas the Agency is responsible for the operation of the System;

Whereas The Ontario Water Resources Commission (the "Commission"), (predecessor to the Ontario Clean Water Agency), and the Ford Motor Company of Canada Limited ("Ford") entered into an agreement dated September 20, 1967, as amended by an agreement dated October 26, 1971, to provide water works to serve, among others, Ford at its assembly plant near St. Thomas, Ontario;

Whereas the Ministry of the Environment (the "Ministry")(the successor to the Ministry of Environment and Energy) gave notice of the proposal to issue this Transfer Order to the Municipalities on the **13<sup>th</sup> day of November, 1998;**

Whereas no submissions were received;

Pursuant to subsection 2(1) of the *Municipal Water and Sewage Transfer Act, 1997* (MWASTA), the works, properties and assets acquired by the Province for the purpose of the System, including any other assets, liabilities, rights and obligations of the Agency, (except as provided below or in orders under section 10 or subsection 2(6) of MWASTA), are hereby transferred jointly to the Municipalities, effective the 29<sup>th</sup> day of November, 2000.

This Transfer Order does not transfer any chattels used by the Agency in connection with the operation of the System. The title to such chattels remains governed by the agreement under which the System is operated from time to time.

Pursuant to subsection 2(5) of *MWASTA*, certain liabilities are not transferred, but all other liabilities and obligations of the Agency or its predecessors with respect to the System (other than the Agency's continued obligation to operate them under section 7 of *MWASTA*) are transferred jointly to the Municipalities.

Supplementary transfer orders for registration purposes confirming the transfer of the interests in land transferred by this order will be issued under subsection 2(6) of *MWASTA*.

For greater certainty, the rights and obligations of the Agency under any agreement (including those between a railway, a company that operates a pipeline, or the Government of Canada with respect to a canal or other federally-owned waterway or airport and the Agency or one of its predecessors) providing for a railway, pipeline, waterway or airport and the System crossing each other or occupying the same property, are transferred jointly to the Municipalities.

Pursuant to section 8 of *MWASTA*, this transfer order does not affect the Municipalities' obligations to make payments to the Agency.

Pursuant to section 9 of *MWASTA*, The Corporation of the Township of Southwold ("Southwold") will continue to provide water services to Ford from the St. Thomas Area Secondary Water Supply System to a connection at the intersection of the Bostwick Road and the south limit of Lot 46 east of the north branch of Talbot Road, in the Township of Southwold; at a minimum pressure of 50 pounds per square inch at the point of delivery, in a quantity sufficient to permit Ford to withdraw water at an average rate of flow of 1,040 Imperial gallons per minute, but not exceeding 1,560 Imperial gallons per minute, nor exceeding 1,500,000 Imperial gallons per day, except in an emergency, or with the prior approval of the Southwold; Ford shall pay Southwold in accordance with monthly invoices charging the product of the System Rate for the Elgin Area Primary Water Supply System, and the System Rate for the St. Thomas Area Secondary Water Supply System, and a gallonage charge of one half cent (\$0.005) per thousand Imperial gallons, and any costs incurred by Southwold related to the provision of water services and the total volume of water taken (or estimated by Southwold to have been taken) where the minimum volume to be charged for in any month is 20,800,000 Imperial gallons. The provisions herewith regarding the provision of water services to Ford shall expire 20 years after the effective date of this Order, at which time Southwold will charge Ford for the provision of water services on the same basis as it charges other water users.

Pursuant to section 9 of *MWASTA*, the Joint Board established in Schedule A, will continue to provide water services to Southwold in a manner that will enable Southwold

to continue to provide water services to Ford in accordance with the provisions of this Order.

Subject to subsection 8(3) and section 10 of *MWASTA*, the Municipalities will continue to make payments on account of capital (principal and interest) to the Agency until the balance of the capital has been repaid to the Crown.

Subject to section 10 of *MWASTA*, subsequent to this transfer occurring, the Agency will issue one (or, if necessary, more) adjusting account(s) and the Municipalities shall make the payment(s) required by the account(s) to the Agency or, in the event an adjusting account shows an overpayment, the Agency shall make the required payment(s) to the Municipalities.

The management of the System will be governed by Schedule A.

Dated the 29th day of November, 2000.



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Minister of the Environment

***Municipal Water and Sewage Transfer Act, 1997***

**Schedule A**

**To a Transfer Order to:**

**The Corporation of the City of St. Thomas  
The Corporation of the Municipality of Central Elgin  
The Corporation of the Township of Southwold**

**ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM  
JOINT MANAGEMENT**

This transfer order is subject to the following terms and conditions.

**Joint Board of Management**

1. A Joint Board of Management (the "Joint Board") is hereby established to govern the management of the St. Thomas Area Secondary Water Supply System (the "System") described in Schedule B.
  - (a) The Joint Board shall comprise four (4) Representatives ("Representatives"); the council of The Corporation of the City of St. Thomas may appoint two (2) Representatives; the council of The Corporation of the Municipality of Central Elgin may appoint one (1) Representative; and the council of The Corporation of the Township of Southwold may appoint one (1) Representative.
  - (b) Alternative Representatives may be appointed for each Representative by the same means as in paragraph (a). An Alternative Representative, in the absence of the Representative, is entitled to attend meetings of the Joint Board and vote.
  - (c) Representatives on the Joint Board will serve at the pleasure of their respective municipal council.
  - (d) Representatives will not receive any remuneration, other than for expenses. This does not prevent a member who is also a member of a municipal council or board from receiving remuneration as a municipal councillor or board member.
  - (e) Each Representative will have one (1) vote. Except where otherwise specified in this Schedule, the Joint Board will make decisions by a simple majority vote. In calculating whether a vote has carried, only the votes of those present and voting shall be considered.

- (f) Staff of a Municipality may attend meetings of the Joint Board, as directed by the Joint Board, a Municipal Council, or a Representative. Such attendees do not have voting privileges on the Joint Board.
- (g) The Chair and Vice-Chair of the Joint Board will be elected from among the Representatives to serve one (1) year terms.
- (h) In the absence of the Chair, the Vice-Chair will act as Chair of the Joint Board.
- (i) The Joint Board will meet semiannually, or more often as requested by a majority of the Representatives, 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.
- (j) A quorum of the Joint Board is three (3) Representatives, provided that all three Municipalities are represented. The quorum will be redefined by the Joint Board should the number of Representatives on the Joint Board change.
- (k) 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 on the Joint Board may be altered along with such terms and conditions as are determined by a three-quarters majority vote of the Joint Board at a meeting called for that purpose.
- (l) Representatives to the Joint Board will act in the best interest of the System as a whole and of the System users.
- (m) The Joint Board will establish rules as to when meetings will be in-camera as per the appropriate legislation.

### **Authority**

- 2. The Joint Board will have full authority and necessary powers, to manage on behalf of the Municipalities, the System including for the purpose of constructing, operating, repairing, and improving the System:
  - (a) obtaining approvals;
  - (b) contracting for services;
  - (c) entering into agreements with individuals, corporations and other governments;
  - (d) operating bank accounts and other transactions;
  - (e) approving the annual Operating Budget, and the annual Capital Replacement and Rehabilitation Budget;

- (f) setting the System Rate; and
  - (g) executing conveyances of any surplus property.
3. Agreements and conveyances entered into by the Joint Board on behalf of the Municipalities may be executed by the Chair and one (1) other Representative, or as otherwise directed by the Joint Board, on behalf of the Joint Board on behalf of the Municipalities. The proceeds of the disposition of any surplus property will be used for the System, unless otherwise determined by the Joint Board.
  4. The Joint Board may delegate specific administrative functions to another party, subject to such terms and conditions as the Joint Board decides from time to time.
  5. In addition to the authority in section 4, the Joint Board may enter into agreements with the Joint Board of the Elgin Area Primary Water Supply System, subject to such terms and conditions as agreed from time to time, to delegate specific authorities and administrative functions.
  6. The management arrangements specified in this Order may be changed upon a three-quarter majority vote of the Joint Board at a meeting called for this purpose.

**Effective Date**

7. The Municipalities may appoint Representatives to the Joint Board prior to the effective date of the order, and the Joint Board may make administrative arrangements so that it is able to commence functioning on the effective date of the order.

**Compliance with Approvals or Certificates of Approval**

8. All Municipalities are jointly and severally responsible for compliance with Approvals or Certificates of Approval for the System.

**Administering Municipality**

9. Subject to any operating agreement between the Joint Board and an Operating Agent, The Corporation of the City of St. Thomas will be the Administering Municipality, responsible for the administration of the System on behalf of the Municipalities and the Joint Board. The Administering Municipality may execute agreements on behalf of the Joint Board on behalf of the Municipalities that are within its authority under this section. In this section, Operating Agent means the Ontario Clean Water Agency, or anyone else with whom the Joint Board enters into an operating agreement, from time to time. Unless changed under the

provisions of section 4, the administrative functions are:

- (a) keeping books, records and accounts,
  - (b) liaison with Ministry of the Environment staff on matters of compliance;
  - (c) liaison with the Operating Agent;
  - (d) negotiating agreements with the Operating Agent, subject to the approval of the Joint Board;
  - (e) preparing capital and operating budgets;
  - (f) preparing rates;
  - (g) billing and receiving payments from the Municipalities in accordance with the System Rate and the volumes of water taken;
  - (h) making payments to the Joint Board of the Elgin Area Primary Water Supply System, or its Administering Municipality;
  - (i) making payments to the Operating Agent;
  - (j) making payments on any provincial capital debt and other financing payments;
  - (k) raising capital financing;
  - (l) preparing and keeping minutes of Joint Board meetings, circulating the minutes in a timely manner to the Representatives, and making the minutes available to the public on demand;
  - (m) holding reserve funds;
  - (n) operating bank accounts;
  - (o) 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 Operating Agent, up to a maximum value of \$25,000.00, or any other value as determined by the Joint Board from time to time; and
  - (p) such other functions as are recommended by the Administering Municipality and approved by the Joint Board.
10. The Administering Municipality may charge interest at prime (as charged by the bank used by the Administering Municipality) plus 2.5%, if amounts due to it from another municipality are not paid when due.
11. The records of the Joint Board and the Administering Municipality with respect to the System shall be audited on a regular basis. Municipalities and their auditors will have access to administrative and financial records related to the System upon request.

#### **Approval of Budgets and System Rate**

12. The Administering Municipality will, on an annual basis and in accordance with guidelines prepared by the Joint Board, prepare and submit to the Joint Board:
- (a) a draft Operating Budget;

- (b) a draft Capital Replacement and Rehabilitation Budget; and
  - (c) a draft System Rate.
13. The draft Budgets and System Rate must be submitted by the Administering Municipality to the Joint Board no later than September 30<sup>th</sup> of the year preceding the year for which the Budget or System Rate is prepared, or another date specified by the Joint Board.
14. The Joint Board will review and approve each draft annual Budget and the System Rate.

**Operating Budget**

15. 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 in administering the System. Operating costs will exclude those items agreed by the Joint Board to be capital.
16. In the event that the Joint Board does not approve a draft Operating Budget for a year prior to December 1<sup>st</sup> of the year preceding the year for which the draft Operating Budget is prepared, then the default new Operating Budget will be the Operating Budget preceding the year for which the draft Operating Budget 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 1<sup>st</sup> of the year preceding the year for which the draft Budget is prepared. The Joint Board may from time to time choose a new Index for the purposes of this provision. If the Joint Board subsequently approves the draft Budget, such approved Budget shall supersede the default new Budget.
17. In the event that there are payments required to be made under an agreement with an Operating Agent, and the agreement provides for higher payments than would be covered by applying the twelve-month increase in the Index referred to in Section 16 to the previous year's payments under the agreement with the Operating Agent or its predecessor, the default new Operating Budget will be further increased by an amount sufficient to cover the payments to the Operating Agent.

**Capital Replacement and Rehabilitation Budget**

18. The Capital Replacement and Rehabilitation Budget will project capital replacement and rehabilitation expenditures for the following five (5) year period.



19. In the event that the Joint Board does not approve a draft Capital Replacement and Rehabilitation Budget for a year prior to December 1<sup>st</sup> of the year preceding the year for which the draft Capital Replacement and Rehabilitation Budget is prepared, then the default new Capital Replacement and Rehabilitation Budget will be the Capital Replacement and Rehabilitation Budget preceding the year for which the draft Capital Replacement and Rehabilitation Budget 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 1<sup>st</sup> of the year preceding the year for which the draft Budget is prepared. The Joint Board may from time to time choose a new Index for the purposes of this provision. If the Joint Board subsequently approves the draft Budget, such approved Budget shall supersede the default new Budget.
20. In the event the Joint Board proposes a capital or other expenditure not otherwise provided for, it may arrange for one or more municipalities to finance the expenditure and shall provide in the Joint Board's future budgets for the repayment of such financing.
21. In the event that an urgent replacement or rehabilitation expenditure has to be made during the course of the year, 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 Rehabilitation and Replacement Budget, then the Joint Board or Administering Municipality may incur such expenditure and the Joint Board will recover it as an addition to the Rehabilitation and Replacement Budget in one or more subsequent years, to the extent that it is not provided for in the Capital Replacement and Rehabilitation Reserve Fund.

#### **Capital Replacement and Rehabilitation Reserve Fund**

22. A Capital Replacement and Rehabilitation Reserve Fund shall be held by the Administering Municipality for the purpose of ensuring that sufficient funds are held to properly maintain the System. The Administering Municipality will hold this fund in a dedicated interest bearing account.
23. The Joint Board may collect funds for the Capital Replacement and Rehabilitation Reserve Fund through the System Rate, or in some other manner that the Joint Board may decide from time to time.

### **New Capacity Capital Budget**

24. The Joint Board will provide new capacity to the St. Thomas Area Secondary Water Supply System on an as-required basis sufficiently in advance of growth as to not impede development in any Municipality, and will establish a New Capacity Capital Budget as required for this purpose.
25. Prior to any capital expansion of the St. Thomas Area Secondary Water Supply System, an optimization study will be undertaken for the possible re-rating and extending the capacity of the existing facilities.
26. One or more of the Municipalities may request, at any time, that the Joint Board prepare, or have prepared, a New Capacity Capital Budget. The apportionment, among the Municipalities, of costs for the New Capacity Capital Budget will be incorporated in the System Rate, or as decided by the Joint Board. Where proposed new capacity will benefit municipalities in addition to the requesting municipalities, the requesting municipalities may ask that a portion of the costs of the new capacity be allocated to and paid for by other benefitting municipalities. The costs of planning, obtaining environmental approvals and providing new capacity will be included in the New Capacity Capital Budget.
27. The Joint Board may decide how to finance the costs of providing new System capacity.
28. No municipality will make changes or permit changes to be made 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 Joint Board may, from time to time, allocate and reallocate any unused capacity in the System among the Municipalities.

### **System Rate**

29. A System Rate will be set by the Joint Board for the System that will be charged to all Municipalities to pay the costs of the System. The System Rate (in dollars per thousand imperial gallons) will be determined on the basis of dividing the total forecast System costs by the total forecast System water usage where the System costs include:
  - (a) the Operating Budget costs;
  - (b) the Capital Replacement and Rehabilitation Budget costs;
  - (c) the Capital Replacement and Rehabilitation Reserve Fund costs;
  - (d) the cost of paying the System Rate of the Elgin Area Primary Water Supply System;

- (e) the cost of repaying capital debt on the System; and
  - (f) any other costs that the Joint Board agrees to include in the System Rate.
30. In the event that the Joint Board does not approve the draft System Rate for a year prior to December 1<sup>st</sup> of the year preceding the year for which the draft System Rate is prepared, then the default System Rate will apply, calculated by dividing the costs of the Budgets by the forecast water usage on the same basis as used for the most recent System Rate. If the Joint Board subsequently approves the draft System Rate, such approved System Rate will supersede the default System Rate.

#### **Raising Funds for Capital Budgets**

31. Each municipality is responsible for raising its share of the capital for both Capital Budgets provided that any municipality may agree to raise some or all of the share of another municipality.
32. To the extent that the Joint Board allocates unused System capacity to a Municipality, that Municipality may extend local distribution works to individual properties and recover the capital costs through property taxes on those properties or in some other manner as that Municipality may decide from time to time.

#### **Budget Continuity**

33. In the event that either the first Operating Budget or Capital Rehabilitation and Replacement Budget is not approved by the Joint Board within one month of the effective date of this Order, the Ontario Clean Water Agency will provide the budgets to the Municipalities. If the original operating period is less than a calendar year, the Ontario Clean Water Agency may provide budgets for the fractional year, if the fractional year budget is not agreed to by the Joint Board within one month of the Joint Board being established. In the event the first budgets are for a fractional year, the default budgets for the succeeding year, if necessary, will be based on the fractional year budgets being recalculated to an annualized basis.

#### **Dispute Resolution**

34. The Joint Board will develop and agree to a dispute resolution process.
35. A Municipality will attempt and fail to resolve a dispute via the agreed upon dispute resolution process, prior to applying to the Ontario Municipal Board to resolve a dispute as provided for by subsection 6(4) of the *Municipal Water and Sewage Transfer Act, 1997*.

  
Minister of the Environment

***Municipal Water and Sewage Transfer Act, 1997***

**Schedule B**

**To a Transfer Order to:**

**The Corporation of the City of St. Thomas  
The Corporation of the Municipality of Central Elgin  
The Corporation of the Township of Southwold**

**ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM**

1. Description of the works comprising the St. Thomas Area Secondary Water Supply System:
  - ***pumping facilities*** including three (3) pumps located at the St. Thomas Reservoir and Booster Pumping Station site;
  - ***a transmission pipeline*** comprising a trunkmain extending 4 kilometres from the St. Thomas Reservoir and Booster Pumping Station site to the old St. Thomas Water Works site on Edgeware Road in St. Thomas, a 750 millimetre diameter watermain commencing at the St. Thomas Water Works site, extending northerly approximately 1 kilometre to an elevated storage tank on Edgeware Road, then extending westerly approximately 1.6 kilometres along Edgeware Road to County Road 26, then extending approximately 1 kilometre along an easement to Bostwick Road, then extending northwesterly approximately 3.6 kilometres along Bostwick Road to the Ford Motor Company of Canada Limited assembly plant (at the intersection of Bostwick Road and Talbotville Road, the diameter of the watermain is reduced to 500 millimetres );
  - ***an elevated storage tank*** having an approximate capacity of 760,000 litres, located at Edgeware Road; and
  - associated site works, piping, electrical, mechanical and instrumentation controls.